SEC Regulatory Update – 1Q 2025

Asset Managers & Investment Companies

April 2025

Contents

Introduction

This paper provides an overview of recent standard-setting activity by the SEC's Division of Investment Management, reminders on newly effective rules, updates on the SEC's regulatory agenda, recent enforcement actions, and exam priorities. This is current through events of March 15, 2025.

I. SEC Updates

Based on previous administration transitions, nominee Paul Atkins' approval as SEC chair could happen as early as March or April. At the time of this publication, his confirmation hearings have not been scheduled. His previous time at the SEC—first as a staffer in the 1990s and then as a commissioner from 2002 to 2008—offers several insights into his approach to regulation and enforcement. In a speech to the American Institute of CPAs, Atkins stated:

> *"It is inappropriate for regulators to take enforcement action over reasonable differences of opinion about the application of GAAP. Even if a sanction is "light," the mere existence of an enforcement action is significant. We must acknowledge the heavy personal toll an enforcement investigation takes on the subjects of the action."*

Both current Republican-appointed Commissioners Mark Uyeda (acting chair) and Hester Peirce have worked with Atkins during his previous SEC stints, which could make for quick regulatory change once he is confirmed. This change is likely to include more focus on capital formation and less focus on societal issues. The semiannual publication of the SEC's regulatory agenda in 2Q 2025 is likely to see substantial updates for the Division of Investment Management and may include reforms to the marketing rule.

SEC rulemaking will be subject to a new process. On February 18, 2025, President Donald Trump signed an executive order, "Ensuring Accountability for All Agencies," requiring independent agencies—including the SEC—to submit draft regulation to the president's Office of Information and Regulatory Affairs for review before **Federal Register** publication. Independent regulatory agencies must consult with the White House on their priorities and strategic plans, and the White House will set their performance standards. According to the order:

> *"No employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General's opinion on a matter of law, including but not limited to the issuance of regulations, guidance, and positions advanced in litigation, unless authorized to do so by the President or in writing by the Attorney General."*

Even before Atkins' confirmation, Uyeda is exercising his right as acting chair to make some significant changes:

- On January 29, 2025, the SEC extended the compliance date for Form PF changes for funds.
- On February 11, 2025, Uyeda issued a statement that he halted SEC lawyers from defending existing legal challenges on the climate disclosure rule in the Eighth Circuit court.
- On February 25, 2025, the SEC extended the compliance dates for changes for U.S. Treasury clearing.

"Direct participants will also have more time to implement important risk management changes to comply with U.S. Treasury covered clearing agency rules. The Commission stands ready to engage with market participants on issues associated with implementation." – Mark Uyeda, Acting Chair

- On February 27, 2025, the SEC dropped charges against Coinbase that it was operating an unregistered exchange and sold unregistered securities.

"… the regulation-by-enforcement strategy ill-served the Commission's staff. The Commission—unwisely in my view—chose not to use its policy tools but instead relied on a series of enforcement actions to write crypto policy." – Hester Peirce, SEC Commissioner

- On March 3, 2025, the SEC's Division of Corporation Finance enhanced the accommodations available for nonpublic review of draft registration statements to include additional registration statements. These accommodations were initially part of the *Jumpstart Our Business Startups Act* for emerging growth companies.

"Over the years, staff have observed companies seeking to raise capital are taking advantage of the nonpublic review process when available. Expanding these popular accommodations will provide new and existing companies greater flexibility to explore and plan public offerings. These enhanced accommodations will further support capital formation while retaining investor protections available to purchasers in public offerings." – Cicely LaMothe, Acting Director of the SEC's Division of Corporation Finance

- On March 10, 2025, the SEC issued a final rule repealing the August 2009 delegation of authority to issue format orders of investigation (subpoenas) from the director of the SEC's Division of Enforcement "to more closely align the Commission's use of its investigative resources with Commission priorities."
- On March 14, 2025, the SEC issued a final rule extending the compliance date by six months in response to an industry request for additional time to address implementation challenges.

Federal Staffing

The impact on SEC staffing levels and morale is still unclear from the announced hiring freeze, return-to-work executive order, the Office of Personnel Management's (OPM) Deferred Resignation Program (DRP), and plans to shrink the current civilian workforce.

On February 12, 2025, a judge lifted the pause on the DRP, noting that the unions that filed suit did not have standing to sue under the *Administrative Procedure Act* and that the U.S. District Court lacked jurisdiction (union suits should first go through the Federal Service Labor-Management Relation Statutes).[1] The ruling did not opine on the buyout's legality or prevent future legal challenges. Several media sources noted that roughly 75,000 employees had accepted the deal before OPM closed the program at 7 p.m. on February 12, 2025.[2] Despite this court ruling, there is still great uncertainty related to government agency staffing.

[1]https://storage.courtlistener.com/recap/gov.uscourts.mad.280398/gov.uscourts.mad.280398.66.0.pdf.
[2]"NBC News: White House says about 75K federal workers accepted 'deferred resignation' offer," yahoo.com, February 12, 2025.

As legal challenges continue, the directors from the Office of Management and Budget and the OPM announced more details operationalizing the workforce optimization executive order. Agencies have until March 13, 2025 to develop reorganization plans, including cost efficiencies, reduction in force plans, and a list of essential positions. Phase two deliverables due by April 1, 2025 include new organization charts and plans to move offices out of Washington, D.C.

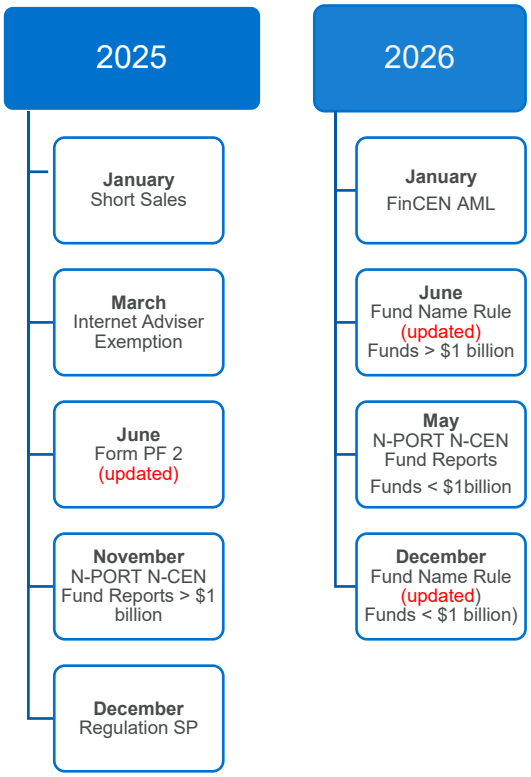
In response to Trump's executive order, "Return to In-Person Work," the SEC has notified union staffers to return to office beginning April 1, 2025.[3] The union representing SEC employees will challenge the mandate, as it violates a 2023 collective bargaining agreement that allows for remote work but has advised its members to plan to comply with the order while litigation is underway. Forbes has reported that certain SEC staff have been offered $50,000 to resign or retire in 30 days.

II. Enforcement Actions

Record-Keeping

On January 13, 2025, the SEC charged nine investment managers and three broker-dealers for allegedly failing to maintain and preserve electronic communications. The firms will pay $63 million in penalties and implement improvements to compliance policies and procedures. Personnel allegedly sent and received off-channel communications that were records required to be maintained under the securities laws. The enforcement action involved personnel at multiple levels of authority, including supervisors and senior managers.

III. Final Rules – On the Horizon



[3] "SEC calls staff back to office in April," politicopro.com, February 26, 2025.

2025

1. Short Sales

On October 13, 2023, the SEC voted three to two to create new Rule 13f-2 and update the consolidated audit trail (CAT) to increase market transparency on short activity on equity securities. Institutional investment managers will be required to report certain short sale-related data to the SEC monthly, 14 days after month-end. At the end of the following month, the SEC would publicly report aggregate data about large short positions, including daily short sale activity for each individual security.

Resource: SEC Finalizes New Short Sale Disclosures

2. Form PF Requirements

On February 8, 2024, the SEC and the Commodity Futures Trading Commission jointly adopted Form PF amendments that cover private funds, commodity pool operators, and commodity trading advisors. The rule will:

- Enhance reporting by **large hedge fund advisers** regarding qualifying hedge funds to provide better insight into the operations and strategies of these funds and their advisers and to improve data quality and comparability.
- Enhance **hedge fund** reporting to provide greater insight into hedge funds' operations and strategies, assist in identifying trends, and improve data quality and comparability.
- Amend how **advisers** report complex structures to improve the ability of the Financial Stability Oversight Council (FSOC) to monitor and assess systemic risk and to provide greater visibility for both FSOC and the commissions into these arrangements.
- Remove aggregate reporting for large hedge fund advisers.

Resource: SEC Finalizes Second Set of Form PF Updates

3. Internet Adviser Exemption

Currently, under Rule 203A-2(e), investment advisers are generally prohibited from registering with the SEC unless they either reach the $100 million in assets under management (AUM) threshold, advise a regulated investment company (RIC), or qualify for an SEC exemption. State security authorities regulate these firms. The Internet Adviser Exemption permits SEC registration if advisory services are primarily through the internet, which is defined as fewer than 15 non-internet clients. This rule was last updated in 2002 and does not reflect evolutions in technology since then. The final rule, issued March 27, 2024, would narrow the use of this exemption by:

- Requiring an investment adviser relying on the exemption to at all times have an operational interactive website through which the adviser provides investment advisory services on an ongoing basis to more than one client.
- Eliminating the de minimis exception for non-internet clients. An internet investment adviser would be required to provide advice to all its clients exclusively through an operational interactive website.

Resource: New SEC Rule Narrows Internet Adviser Exemption

4. Form N-PORT, Form N-CEN Reporting, & Fund Liquidity Risk Guidance

On August 28, 2024, the SEC voted three to two to issue a final rule requiring monthly reporting of fund portfolio holdings by registered open-end funds, registered closed-end funds, and exchange-traded funds (ETFs) organized as a unit investment trust. Open-end funds also would be required to disclose details on service providers used for liquidity risk management. In response to feedback, the SEC dropped more extensive changes that included swing pricing, public reporting of liquidity classifications, and increased frequency of Regulation S-X-compliant portfolio information.

Resource: SEC Updates N-PORT & N-CEN Reports for Funds

5. Regulation S-P, Privacy of Consumer Information

On May 16, 2024, the SEC finalized updates to Regulation S-P (issued in 2000). The rule covers broker-dealers, investment companies, registered investment advisers (RIAs), and transfer agents. Changes include:

- Covered institutions must adopt written policies and procedures for an **incident response program** to address unauthorized access to or use of customer information. The incident response program should be reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information; include procedures to assess the nature and scope of any such incidents; and contain and control such incidents.
- Covered institutions must have written policies and procedures to provide **timely notification** (no later than 30 days after an incident) to affected individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization.
- Broadening the scope of information covered by Regulation S-P's requirements.

Resource: SEC Issues New Regulation S-P Rules

6. Fund Name Rules

On September 20, 2023, the SEC voted four to one to issue a final rule updating the 20-year-old "Names Rule" to ensure that a fund's name accurately reflects the fund's investments and risks. Highlights of the rule include:

- Broadens the scope of the 80% investment policy requirement to cover an additional 2,200 funds. The new rule more clearly covers using "thematic" strategies—artificial intelligence, health and wellness, travel/tourism, or environmental, social, and governance (ESG) funds.
- A fund must use a derivatives instrument's notional amount for compliance with its 80% investment policy (excluding certain currency hedges).
- An unlisted registered closed-end fund or a business development company (BDC) that is required to adopt an 80% investment policy cannot change its policy without a shareholder vote.

- A fund's prospectus must include the definitions of terms used in its name, including the criteria used to select investments that each term describes.
- New quarterly reviews of investments are required for consistency with the 80% investment policy requirement and additional record-keeping.

Fund Assets $1 Billion +	Fund Assets > $1 Billion
June 11, 2026 (as amended)	December 11, 2026 (as amended)

Resource: SEC Updates Fund Names Rules

2026

1. Anti-Money Laundering (FinCEN)

On August 28, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a **final rule** that updates the definition of "financial institutions" that are required to comply with anti-money laundering law and file suspicious activity reports required by the *Bank Secrecy Act*. The amendments add "investment adviser" to the definition of "financial institution" and define investment advisers to be SEC-registered investment advisers and exempt reporting advisers (ERAs). The final rule excludes RIAs that register with the SEC solely because they are:

- Midsize advisers
- Multi-state advisers
- Pension consultants
- RIAs that do not report any AUM on Form ADV

For advisers that have their principal office and place of business outside the U.S., the rule only applies to activities that take place within the U.S., including through the involvement of U.S. personnel of the investment adviser (branch or office within the U.S.) or providing services to a U.S. person or a foreign-located private fund with an investor who is a U.S. person. The final rule does not cover foreign private advisers or family offices.

The final rule does not exempt investment advisers from the requirements to file Currency Transaction Reports, adhere to the Recordkeeping and Travel Rules, or other general record-keeping requirements. However, investment advisers may deem these requirements satisfied for any mutual funds, bank- and trust company-sponsored collective investment funds, or any other investment adviser they advise subject to this rule that is already subject to anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements.

Effective Date	January 1, 2026

IV. Outstanding Proposals

1. Customer Identification Program (CIP)

On May 13, 2024, the SEC issued a joint proposal with FinCEN that would require RIAs and ERAs to establish, document, and maintain written CIPs, including procedures for:

- Verifying the identity of each customer to the extent reasonable and practicable.
- Maintaining records of the information used to verify a customer's identity, including name, address, and other identifying information.

The proposal is designed to prevent illicit finance activity involving the customers of investment advisers by strengthening the AML/CFT framework for the investment adviser sector and is generally consistent with the CIP requirements for other financial institutions, such as brokers or dealers in securities and mutual funds.

Resource: Advisers Face Sweeping New SEC & FinCEN Customer Rules

The 27 respondents broadly supported AML initiatives. Investor groups felt the proposal did not go far enough to identify the underlying customer. Industry lobby groups highlighted potential interaction and duplication with an AML proposal issued by FinCEN in February (a final rule was issued on August 28, 2024). This CIP proposal is conditioned on the adoption of the expanded definition of "financial institutions" outlined in the AML proposal, making it challenging to evaluate the scope. Multiple respondents requested harmonization of rules for banks, broker-dealers, mutual funds, and other financial institutions already subject to CIP obligations. Specific exemptions were requested for employer-sponsored retirement funds, closed-end funds, unit investment trusts, and BDCs. Respondents sought clarity on the customer account definition and level of look through, *e.g.*, limited partnerships, customer with assets held at a qualified custodian, transferred accounts, private fund versus underlying investors, or sub-advisors. The U.S. Small Business Administration noted the proposal does not appropriately estimate the potential impact on small entities.

2. Safeguarding Advisory Client Assets (to Be Re-Exposed)

On February 15, 2023, the SEC voted four to one to approve a proposal to significantly expand investor protection on advisory client assets. The proposal would:

- Expand the custody rule's scope to cover additional client assets and add discretionary authority as a custody activity.
- Enhance the custodial protections for client assets.
- Add new custody record-keeping and reporting requirements.

If approved, the final rule would have staggered compliance dates depending on an adviser's regulatory AUM.

Feedback was mostly negative; most cited significant costs to both custodians and advisers (especially smaller entities), difficulties, potential reduction in custodying certain assets (such as derivatives, annuities, repo agreements, and loans), and an increase in advisory costs shutting out smaller individual investors. The Securities Industry and Financial Markets Association noted: "Ultimately, if not significantly revised and subjected to additional review and comment, we believe that the Proposal likely would (i) significantly disrupt the operation of financial markets, (ii) restrict the ability of advisers to provide clients with investment advice for certain asset classes, (iii) limit the availability of custodial services, (iv) increase costs borne by investors, (v) result in fewer custodians for clients and advisers from which to choose, and (vi) negate the efforts and considerations taken in previous guidance issued by the SEC." There also was strong pushback from crypto and decentralized finance (DeFi) market participants.

Resource: Expansion of Adviser's Safeguarding & Custody Rules?

3. Predictive Data Analytics Use by Broker-Dealers & Investment Advisers (to Be Re-Exposed)

On July 26, 2023, the SEC issued a proposal that would require:

- A firm to eliminate or neutralize the effect of conflicts of interest related to the firm's use of covered technologies in investor interactions that place the firm's or its associated persons' interests ahead of investors' interests.
- Investment advisers and broker-dealers using covered technology must have written policies and procedures reasonably designed to comply with the proposal.
- Record-keeping related to the proposed conflict rules.

"Covered technology" includes a firm's use of analytical, technological, or computational functions, algorithms, models, correlation matrices, or similar methods or processes that optimize for, predict, guide, forecast, or direct investment-related behaviors of an investor. This would generally apply to the use of a covered technology in a firm's engagement or communication with an investor, including by exercising discretion with respect to an investor's account, providing information to an investor, or soliciting an investor.

Comments were universally negative, noting that the changes would harm both investors and the trading markets. Many felt that some of the recent tech innovations have brought a younger and more diverse group of investors into the capital markets and on a path to long-term financial security and generational wealth. The academic community weighed in, challenging the data used to support the proposed legislation. Others suggested that new disclosure would be more appropriate and a less costly approach to address conflicts of interest. Industry participants and trade groups cited the proposal's overly broad scope, existing regulatory protections, and the SEC's lack of statutory authority to make these changes.

4. Liquidity & Swing Pricing for Open-End Funds (to Be Re-Exposed)

On November 2, 2022, the SEC issued a 400-plus-page proposal that would significantly change liquidity risk management and pricing practices for open-end management investment companies:

- Update the classification of investment liquidity and require a minimum of 10% of highly liquid assets.
- Require the use of swing pricing and implement a hard close.

The changes would not apply to money market funds or certain ETFs. If adopted, the final rule would have a two-year compliance date for the swing rule changes and allow one year to implement the liquidity updates.

Resource: Funds Face New Liquidity & Swing-Pricing Requirements

While individual investors supported the amendments, service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5, implementation costs understated and prohibitive to smaller investment advisers, implementation time too short given scope of change, and other regulatory updates.

5. Outsourcing by Investment Advisers

On October 26, 2022, the SEC issued a proposal seeking feedback on new minimum due diligence and monitoring requirements for investment advisers who outsource certain covered services:

- Advisers must conduct due diligence before outsourcing and periodically monitor service providers' performance and reassess whether to retain them. Oversight must be documented and detailed information on service providers would be required on Form ADV.
- Enhanced due diligence and monitoring will be required for third-party record-keepers.

If approved, the compliance date would be 10 months from the rule's effective date.

Resource: New Outsourcing Rules for Investment Advisers?

Ninety letters were received. Individual investors supported the amendments. Service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5; implementation costs understated and prohibitive to smaller investment advisers; implementation time too short given scope of change and other regulatory updates; scope clarification/exemptions for regulated banks; bank-affiliated RIAs, qualified custodians, and index providers; potential cyberthreats from required vendor disclosure; and lack of jurisdiction over service providers.

6. ESG Disclosures for Investment Advisers & Investment Companies

On May 25, 2022, the SEC issued a 362-page proposal with new rules and disclosures to give investors consistent, comparable, and reliable information on funds' and advisers' use of ESG factors. The changes would apply to RICs and BDCs, collectively "funds," and RIAs and certain unregistered advisers, collectively "advisers." Highlights include:

- New disclosures on ESG strategies in fund prospectuses, annual reports, and adviser brochures.
- Implementing a layered, tabular disclosure approach for ESG funds to allow investors to easily compare ESG funds.
- Greenhouse gas emissions disclosure would be required for certain environmentally focused funds for portfolio investments.

Resource: Investment Advisers & Companies Face New ESG Disclosures

Almost 200 comment letters were received. There was universal support for consistent standards. Investor groups supported the changes, while investment funds and industry groups suggested improvements to address the vagueness of the terms, materiality consideration, consistency with global standards, and application to fixed-income funds. Commenters challenged the three required buckets, primarily the ESG integration category. The energy and timber sectors felt these rules could negatively impact fund investments held. NASDAQ noted the rule could disincentivize funds and advisers from considering ESG investment strategies. The Forum for Sustainable and Responsible Investment noted, "Some aspects of the Proposal do not align with real-world fund investment approaches or investor informational needs." Several respondents, including the Securities Industry and Financial Markets Association and the attorneys general from several states, cited *West Virginia v. EPA*. Others urged a final rule on ESG reporting before these changes to investment advisers.

7. Cybersecurity – Investment Advisers

On February 9, 2022, the SEC proposed new rules to enhance cybersecurity preparedness and improve the resilience of investment advisers and investment companies against cybersecurity threats and attacks as follows:

- Require advisers and funds to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks.
- Require advisers to report significant cybersecurity incidents to the SEC on proposed Form ADV-C within 48 hours.
- Enhance adviser and fund disclosures related to cybersecurity risks and incidents.
- Require advisers and funds to maintain, make, and retain certain cybersecurity-related books and records.

Seventeen comment letters were received in the first comment round. Feedback mirrored comments on the registrant's cyber proposal above. Several funds requested more flexibility in implementing any new cyber rules, especially smaller funds. Many felt that administratively, cyber rule setting should not be under the anti-fraud provisions but rather under the general rulemaking authority. In the second comment round, an additional 84 comment letters were received. According to the Investment Adviser Association, "The Commission has severely underestimated the costs of the Adviser Proposals – both in isolation and on a cumulative basis – for all advisers, and especially for smaller advisers. At the same time, it has, in our view, overestimated the potential benefits, and we are concerned that the Adviser Proposals collectively will harm rather than further the Commission's stated goals. … Before taking final action on the Adviser Proposals, seek public feedback on a comprehensive implementation timeline for tiered and staggered compliance requirements and dates for all these proposals." Most industry participants felt 48 hours was too short for reporting and most requested an extended implementation period.

V. Risk Alerts

The Division of Examinations regularly issues Risk Alerts to remind firms of their obligations under the federal securities laws and help them improve their systems, policies, and procedures.

Registered Investment Companies: Review of Certain Core Areas and Associated Documents Requested (November 2024)

Initial Observations Regarding Advisers Act Marketing Rule Compliance (April 2024)

Investment Advisers: Assessing Risks, Scoping Examinations, and Requesting Documents (September 2023)

Examinations Focused on Additional Areas of the Adviser Marketing Rule (June 2023)

Observations from Examinations of Newly-Registered Advisers (March 2023)

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