

SEC Announces Broad Annual Regulatory Agenda

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The wait is over for those hoping to gain a glimpse of the upcoming trajectory of the Biden administration's securities regulatory agenda. On June 11, 2021, the Securities and Exchange Commission (SEC) announced its anticipated annual regulatory agenda, including several proposed rules and new concepts that are in the pre-rulemaking stage. The "Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions" includes a list of short- and long-term regulatory actions that the SEC plans to take, with an apparent growing focus on investor protection.

With proposals ranging from exempt offerings, to continued regulatory action under the Dodd-Frank Act, to enhanced disclosures for public companies, this announcement by the SEC promises regulatory action on more than four dozen topics that are likely to be of interest to (and bear monitoring by) both public and private companies.

Among the items listed in the prerule stage is RIN 3235-AM85, in which the Division of Corporation Finance is considering recommending that the SEC seek comment "on ways to further update the Commission's rules related to exempt offerings to more effectively promote investor protection, including updating the financial thresholds in the accredited investor definition, ensuring appropriate access to and enhancing the information available regarding Regulation D offerings, and amendments related to the integration framework for registered and exempt offerings." Also included is prerule RIN 3235-AK77, wherein the SEC is considering seeking public comment on "potential rules to prevent fraud, manipulation, and deception in connection with security-based swaps in accordance with section 9(j) of the Exchange Act."

Other proposals highlighted in the SEC's release include the following:

- Disclosures relating to climate risk; human capital, including workforce diversity and corporate board diversity; and cybersecurity risk
- Market structure modernization within equity markets, treasury markets, and other fixed-income markets
- Transparency around stock buybacks, short sale disclosures, securities-based swaps ownership, and the stock loan market
- Investment fund rules, including money market funds, private funds, and ESG funds

- 10b5-1 affirmative defense provisions
- Unfinished work directed by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, including, among other things, securities-based swaps and related rules, incentive-based compensation arrangements, and conflicts of interest in securitizations
- Enhancing shareholder democracy
- Special purpose acquisition companies
- Mandated electronic filings and transfer agents

Regarding the various proposals, SEC Chair Gary Gensler was quoted in a [press release](#) as saying, “To meet our mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation, the SEC has a lot of regulatory work ahead of us.” He went on to conclude that he looked forward to “collaborating with my fellow commissioners and the dedicated staff to propose and finalize rules that will strengthen our markets, increase transparency, and safeguard investors.”

Based on Chairman Gensler’s statement, it seems clear that companies and practitioners should expect a very active regulatory year both in terms of rulemaking and enforcement.

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National Law Review, Volume XI, Number 189

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