



Morgan Lewis

REGISTERED FUNDS TRENDS AND DEVELOPMENTS

Quarter in Review Series: NINTH EDITION

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April 12, 2023

Overview

- Preparing for New Shareholder Reporting Requirements
- Regional Bank Failures: Lessons for Registered Funds
- SEC Examination and Enforcement Updates: What You Need to Know
- SEC's Liquidity Risk Management and Swing Pricing Proposal: Industry Pushes Back
- SEC Regulatory Agenda: What's Next?

PREPARING FOR NEW SHAREHOLDER REPORTING REQUIREMENTS

Preparing for New Shareholder Reporting Requirements

- **What?**

- In October 2022, the SEC adopted rule and form amendments related to (1) shareholder reports, (2) Form N-CSR, (3) Rule 30e-3, and (4) fund advertisements

- **Why?**

- Rules meant to modernize shareholder reports to better serve the needs of retail investors
- Layered disclosure approach

- **Who?**

- Rules apply to all registered open-end funds (mutual funds and most ETFs)
- Registered closed-end funds and business development companies excluded

- **When?**

- **Compliance date is July 24, 2024**
- Compliance date is tied to delivery, not a fund's fiscal year end

Preparing for New Shareholder Reporting Requirements

Next Steps

1. Identify internal/external stakeholders
2. Review content and format of shareholder reports and other implicated filings (e.g., Form N-CSR)
3. Evaluate electronic disclosure capabilities and website content
4. Assess broad-based securities market index
5. Consider implications of Rule 30e-3 changes
6. Plan for iXBRL implementation (and potential timing challenges)
7. Review fund advertisements

REGIONAL BANK FAILURES: LESSONS FOR REGISTERED FUNDS

Regional Bank Failures: Lessons for Registered Funds

- The ripple effects from the sudden collapse of federally insured banks (e.g., Silicon Valley Bank, Signature Bank) are being felt throughout the financial services and emerging business sectors.
- Policymakers and US government agencies have stepped in to reinforce the stability of the banking system.
- Lessons for registered funds
 - Valuation issues
 - Change in control implications of related bank acquisitions
 - Monitoring exposure to banking securities
 - Monitoring derivatives and counterparty exposure
 - Disclosure implications

SEC EXAMINATION AND ENFORCEMENT UPDATES: WHAT YOU NEED TO KNOW

SEC Examination and Enforcement Updates: What You Need to Know

Recap of 2022 SEC Activity

- ESG
- Conflicts of Interest (e.g., revenue sharing, cherry picking, business relationships)
- Recordkeeping – Off-Channel Communications
- Cybersecurity
- CCO Liability

SEC Examination and Enforcement Updates: What You Need to Know (cont.)

Look Forward

• 2023 Exam Priorities

- Compliance with New Rules Under Investment Advisers Act and Investment Company Act (Marketing Rule, Derivatives Rules, and Fair Valuation)
- Fiduciary Duty and Form CRS
- Registered Investment Companies – Compliance Programs and SEC Reporting
- Custody and Fees
- Digital Engagement Practices

• 2023 Enforcement Focus

- Crypto and Crypto-Related Assets
- Gatekeepers
- Outsourcing
- Undisclosed Fees and Cash Sweep Accounts

SEC'S LIQUIDITY RISK MANAGEMENT AND SWING PRICING PROPOSAL: INDUSTRY PUSHES BACK

SEC's Liquidity Risk Management and Swing Pricing Proposal: Industry Pushes Back

- On November 2, 2022, by a 3-2 vote, the SEC proposed significant changes to its rules governing swing pricing and liquidity risk management for registered open-end funds.
- If adopted, the Proposed Rules would result in:
 - **Mandated swing pricing** for all registered open-end funds other than money market funds and ETFs
 - **Imposition of a “hard close”** for funds required to implement swing pricing under the Proposed Rules
 - **Major changes to the Liquidity Rule** (i.e., Rule 22e-4 under the 1940 Act)
 - **Amendments to Forms N-1A, N-PORT, and N-CEN**
 - **Increased Form N-PORT filing frequency**

SEC's Liquidity Risk Management and Swing Pricing Proposal: Industry Pushes Back (cont.)

- Industry criticisms include:
 - Proposed liquidity risk management rule changes would make it more difficult for open-end funds to offer certain investment strategies (e.g., bank loans)
 - Proposed amendments with respect to swing pricing and hard close requirements would potentially exclude mutual funds from certain distribution channels altogether
 - SEC is attempting to fix a problem that may not exist
 - SEC failed to quantify potential costs associated with compliance
 - The proposal is not sufficiently tailored and would create a one-size-fits-all approach
 - Proposal does not address how rules would impact smaller fund groups

SEC REGULATORY AGENDA: WHAT'S NEXT?

SEC Regulatory Agenda: What's Next?

On January 4, 2022, the Office of Information and Regulatory Affairs published Chair Gary Gensler's Fall 2022 "Reg Flex" agenda, which identifies the short- and long-term regulatory actions that the SEC plans to take over the coming months. Some of the more relevant items for investment companies and investment advisers include:

- ESG Factors (amendments proposed in May 2022; final action expected by October 2023)
- Fund Names Rule (amendments proposed in May 2022; final action expected by October 2023)
- Custody Rules for Investment Advisers (amendments proposed in February 2023)
- Fund Fee Disclosures and Reform (SEC may propose changes to the regulatory requirements relating to how investment companies disclose fund fees and expenses – October 2023)
- Money Market Funds (reforms proposed in December 2021; final action expected by April 2023)
- Digital Engagement Practices (SEC may propose rules relating to how investment advisers and broker-dealers use predictive data analytics, differential marketing, and behavioral prompts – April 2023)
- Cybersecurity (rules proposed in February 2022; agenda noted final action expected by April 2023. *However, on March 15, the SEC reopened the comment period for proposed cybersecurity risk management rules and amendments for registered investment advisers and funds until May 22, 2023*)
- Exchange-Traded Products (SEC requested public comment on listing and trading of exchange-traded products in the marketplace, and may propose a rule by October 2023)

Biography



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Jack counsels registered and private funds and fund managers in connection with organizational, offering, transactional, and compliance matters. He regularly works with a variety of different fund structures, including open-end and closed-end funds, exchange-traded funds, and hedge funds. He also counsels investment adviser and broker-dealer clients on various matters, particularly with respect to registration and disclosure, marketing regulations, pay-to-play issues, and transactions in exchange-traded funds.

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Brian represents mutual funds, exchange-traded funds (ETFs), closed-end funds, private funds, and their investment advisers in US and international legal, regulatory, and transactional matters. His experience extends to work in several areas, including the development and launch of new funds, fund reorganizations, corporate governance matters, and ongoing compliance issues. Additionally, Brian counsels investment adviser clients on the applicability and interpretation of securities laws, including with respect to business combinations, registration and disclosure, and pay-to-play issues.

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Jonathan advises investment companies, investment advisers, and private funds on a variety of regulatory compliance, corporate, and transactional matters. Jon counsels clients in all aspects of their organization, registration, operation, and liquidation. In addition, Jon advises broker-dealers on various matters, particularly with respect to regulatory compliance issues, market making activities, and transactions in exchange-traded funds. Jon is also a member of the firm's ESG & Sustainability Advisory Working Group, and regularly counsels clients on ESG investing strategies, disclosure, and related regulatory issues.

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Ali represents businesses, financial institutions, and individuals, including executives and public company directors, in government and regulatory matters involving the US Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), and the US Department of Justice (DOJ). Ali also defends and counsels clients in connection with internal investigations, whistleblower-related issues, compliance matters, and US federal and state securities litigation. Ali is an associate representative for the firm's Parent Lawyer Network.

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