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# Annual SEC and PCAOB update for public companies

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## From the authors

During 2023, the U.S. Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB) gathered momentum on their rulemaking slates. The SEC experienced some setbacks later in 2023, but we expect overall active rulemaking to carry into 2024.

While timing is always subject to change, the SEC's most recently updated rulemaking agenda estimates that potential final rules of significant interest such as climate change and shareholder proposals are coming in early 2024. Meanwhile, potential proposed rules such as human capital management disclosures, securities held of record, and corporate board diversity also have estimated proposal dates in 2024.

The PCAOB continues its rulemaking work with expected 2024 final standards on noncompliance with laws and regulations and quality control standards, among others.

As we reflect on the significant changes in 2023 and what is coming in 2024, we will continue keeping you informed.

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## From the Securities and Exchange Commission (SEC)

### SEC agenda and strategic plan

#### Fall 2023 agency rule list

On Dec. 6, 2023, the Office of Information and Regulatory Affairs released the Fall 2023 Unified Agenda of Regulatory and Deregulatory Actions, including the SEC's updated agency [rule list](#). SEC Chair Gary Gensler [stressed](#) the importance of modernizing rules to address changing technology and business models and to continue to promote fair, efficient, and resilient capital markets.

#### Strategic plan

The SEC's current [strategic plan](#) for 2022 through 2026 features three key goals:

- “Protect the investing public against fraud, manipulation, and misconduct.”
- “Develop and implement a robust regulatory framework that keeps pace with evolving markets, business models, and technologies.”
- “Support a skilled workforce that is diverse, equitable, and inclusive and is fully equipped to advance agency objectives.”

Among the initiatives to meet these goals, the SEC intends to:

- “Pursue enforcement and examination initiatives focused on identifying and addressing risks and misconduct that affects individual investors”
- “Enhance the use of market and industry data, particularly to prevent, detect, and enforce against improper behavior”
- “Modernize design, delivery, and content of disclosures”
- “Update existing SEC rules and approaches to reflect evolving technologies, business models, and capital markets”
- “Focus on the workforce to increase capabilities, leverage shared commitment to investors, and promote diversity, equity, inclusion, accessibility, and equality of opportunity”
- “Modernize the SEC's technology to enable the mission in a cost-effective, secure, and resilient manner”

### Rulemaking activity – final rules

#### Final rules on cybersecurity incidents, risk management, and governance disclosures

On July 26, 2023, the SEC [issued final rules](#) requiring enhanced standardized disclosures of material cybersecurity incidents and cybersecurity risk management, strategy, and governance. Under the new rules, registrants are required to use Form 8-K to disclose when they have experienced a material cybersecurity incident, and they must do so within four days of determining that the incident is material. Registrants also must make the following disclosures annually on Form 10-K:

- **Risk management.** The registrant's processes for assessing, identifying, and managing material risks from cybersecurity threats as well as whether and how any cybersecurity threats, including previous incidents, have materially impacted or are likely to materially impact the registrant's business strategy, results, or financial condition
- **Governance.** A description of board oversight over cybersecurity risk as well as management's role in assessing and managing material cybersecurity risk

Cybersecurity incident disclosures are required beginning Dec. 18, 2023 (or June 15, 2024, for smaller reporting companies). Risk management, strategy, and governance disclosures are required beginning with annual reports for fiscal years ending on or after Dec. 15, 2023.

For additional information about the rules, see the Crowe article [“SEC Ruling on Cybersecurity Incident Disclosure: What to Know.”](#)

**Court action on share repurchase rule**

On Dec. 19, 2023, the 5th U.S. Circuit Court of Appeals [ruled](#) to vacate the SEC's Share Repurchase Disclosure Modernization rule, which was intended to provide investors with more information and transparency when issuers buy back their equity securities.

The court earlier had determined that the SEC had not adequately addressed public comments, performed a proper cost-benefit analysis, or substantiated the need for the new rule, in violation of protocol required by the *Administrative Procedure Act*.

The rule would have required issuers to disclose daily share repurchase information quarterly or semiannually and to check a box indicating whether certain officers and directors traded in the relevant securities in the four business days before or after announcement of the repurchase plan or program. It also would have required descriptions of repurchase programs and practices as well as quarterly disclosures about the issuer's adoption and termination of the 10b5-1 trading arrangements.

**Final rule on *Privacy Act***

On Sept. 20, 2023, the SEC [issued](#) a [final rule](#) that updates its *Privacy Act* regulations' scope, definitions, and provisions over the safeguarding of personal information in the federal government. Among other modernizing changes, the final rule simplifies the process for submitting and receiving responses to *Privacy Act* inquiries, allows for electronic identity verification, and formally amends document duplication fees to reflect only the direct costs of making records available on electronic storage devices. The final rule also adds a provision for individuals to request certain information if their personal data is disclosed by the SEC.

The final rule became effective on Oct. 26, 2023.

**Final rule amendments on clearing U.S. Treasury securities**

On Dec. 13, 2023, the SEC [adopted](#) changes that require covered clearing agencies to have policies and procedures that require central clearing of specified secondary transactions. In addition, the final rules modify certain broker-dealer customer margin requirements.

The final rules are effective March 18, 2024, and have various compliance dates beginning March 31, 2025.

**Final rule changes on beneficial ownership reporting**

On Oct. 10, 2023, the SEC [adopted](#) final [amendments](#) to certain rules governing beneficial ownership reporting. Among other changes, the amendments shorten the initial Schedule 13D and Schedule 13G filing deadlines for investors that acquire a beneficial ownership greater than 5% of a covered class of equity securities. They also shorten the amendment filing deadlines in the event of changes to information previously reported.

For both initial filings and amendments, the final rule updates the business day cutoff time from 5:30 p.m. Eastern to 10 p.m. Eastern. It includes guidance clarifying that a person is required to disclose interests in all derivative securities (including cash-settled derivative securities) that use the issuer's equity security as a reference security. It also requires all Schedule 13D and 13G filings to be made using a structured, machine-readable data language.

The final rule becomes effective Feb. 5, 2024. Investors will be required to comply with amended Schedule 13G filing deadlines beginning Sept. 30, 2024. Structured data requirements will be effective for both Schedule 13D and 13G filers beginning Dec. 18, 2024.

**Extension of EDGAR filing deadline for Form 144**

On Feb. 21, 2023, the SEC adopted an [amendment](#) to Regulation S-T to extend the filing deadline for Form 144 from 5:30 p.m. Eastern to 10 p.m. Eastern on SEC business days. Additionally, the SEC adopted technical amendments designed to enhance the consistency of recently revised provisions related to the filing format of Form 144.

The amendments were effective March 20, 2023.

**Final rules on clearing agency governance and conflicts of interest**

On Nov. 16, 2023, the SEC [adopted final rules](#) governing registered clearing agencies. The new board and policy requirements aim to reduce the likelihood of conflicts of interest that could influence the board of directors or equivalent governing bodies. Among other requirements, the adopted rules establish independence requirements for boards and require the boards of clearing agencies to have both a nominating and a risk management committee. The rules also create policy and procedure requirements around monitoring and documenting conflicts of interest, managing risks from relationships with core service providers, and board obligations to consider viewpoints of participants and other stakeholders.

The final rules are effective Feb. 5, 2024. Compliance with the provisions is required by Dec. 5, 2024, with the exception of the board and board committee independence requirements, which have a compliance date of Dec. 5, 2025.

**Final rules on security-based swap execution facilities**

On Nov. 2, 2023, the SEC [adopted final rules](#) – collectively, new Regulation SE – establishing a regulatory framework for security-based swaps aligned with the Commodity Futures Trading Commission’s rules governing swap execution facilities. The final rules require security-based swap execution facilities (SBSEFs) to register with the SEC and impose certain requirements on such entities. Among them, registered SBSEFs are subject to certain trade execution requirements, must submit filings for rules and products, must monitor trading for trading manipulation or transaction disruptions, and must publish timely trading data on security-based swap transactions. The rules also address cross-border application of trade execution requirements.

Certain registered clearing agencies and registered SBSEFs that provide a marketplace only for security-based swap transactions are exempt. Concurrently, the final rules end existing temporary exemptions that exempt certain entities from registering as SBSEFs, national securities exchanges, or clearing agencies.

The final rules are effective Feb. 13, 2024. Qualifying entities must file an application to register with the SEC on Form SBSEF within 180 days of the effective date. This application must be complete (that is, the entity must have responded to any staff requests) within 240 days of the effective date for the entity to operate while the application is pending.

**Final amendments on investment fund names**

On Sept. 20, 2023, the SEC [adopted final rule](#) amendments expanding the scope of certain name-related requirements of the *Investment Company Act of 1940*. The final rule requires any fund with a name that suggests a focus on investments that have “particular characteristics” to maintain, by policy, at least 80% of the value of the fund’s assets in investments with those characteristics. For example, a fund with a name that indicates an investment strategy based in environmental, social, and governance (ESG) factors will be subject to this requirement.

Any terms used in a fund’s name that suggest an investment focus or that the fund’s distributions are tax-exempt must be consistent with the terms’ plain-English meaning or standard industry use. Funds also are required to disclose a definition of terms used in its name, including the investment selection criteria used by the fund in accordance with such terms.

In addition, the final rule requires funds to review their investments at least quarterly to verify compliance with the 80% investment policy; generally, a fund will be given 90 days to return to compliance if its investments fall below the threshold due to drift or unusual circumstances. Funds with derivative holdings will use the notional amount for purposes of determining compliance with the names rule.

The final rule was effective on Dec. 11, 2023.

**Final rule and new Form SHO on short positions and activity reporting**

On Oct. 13, 2023, the SEC [adopted a final rule](#) increasing the public availability of data on short sale positions and activity. Under the final rule, certain institutional investors will be required to report short sale information to the SEC on the new Form SHO if their monthly average of daily gross short positions

in an equity security exceeds \$10 million in value or 2.5% as a percentage of shares outstanding. The SEC will then release aggregated data on large short positions by individual security, including daily short sale activity data, to the public.

The final rule was effective on Jan. 2, 2024. Institutional investors will be required to comply 12 months after the effective date, and public aggregated reporting will commence three months thereafter.

#### **Final rule on securities loans reporting**

On Oct. 13, 2023, the SEC [adopted](#) a [final rule](#) requiring any securities lender – including any person, bank, insurance company, or pension plan that loans a security on behalf of itself or another person – to disclose specified loan terms to a registered national securities association (which currently is only the Financial Industry Regulatory Agency [FINRA]) to then be made available to the public. Securities lenders will be required to report lending information at the end of each business day. Under the final rule, FINRA will publicize certain information on an aggregate basis on the following business day, while other information, such as individual loan size, will be disclosed after 20 days.

The final rule was effective on Jan. 2, 2024. The rule provides for FINRA to create implementation rules to become effective within 12 months of the final rule's effective date, and for covered persons to begin reporting required information an additional 12 months thereafter.

#### **Final rules on private fund advisers**

On Aug. 23, 2023, the SEC [adopted final rules](#), “Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews,” and amendments. The final rules include provisions for different groups of advisers. For example, under the final rules:

- Registered private fund advisers must provide investors with quarterly statements of fund-level information, obtain a financial statement audit for each private fund, and obtain a fairness opinion or valuation opinion in connection with adviser-led secondary transactions.
- All private fund advisers are subject to restrictions on certain activities that are against the public interest and protection of investors, unless the adviser adequately discloses or, in some cases, obtains consent for such activities. Private fund advisers also are subject to prohibitions on certain activities that result in preferential treatment to any investor.
- All registered advisers must annually document in writing the adequacy and effectiveness of their compliance policies and procedures.

The rules became effective Nov. 13, 2023. See the Crowe article [“SEC Private Fund Advisers Rule Boosts Investor Protection”](#) for more information.

#### **Final rule amendments on money market funds**

On July 12, 2023, the SEC [adopted amendments](#) to certain rules that govern money market funds under the *Investment Company Act of 1940*. The changes are designed to reduce the risk of investor runs on money market funds during periods of market stress, to address concerns about redemption costs and liquidity, and to protect remaining shareholders from dilution, among other things. To meet these objectives, the amendments will:

- Increase minimum liquidity requirements for money market funds to provide a more substantial liquidity buffer in the event of rapid redemptions
- Remove provisions in the current rule that permit a money market fund to suspend redemptions temporarily through a gate and allow money market funds to impose liquidity fees if their weekly liquid assets fall below a certain threshold
- Require institutional prime and institutional tax-exempt money market funds to impose liquidity fees when a fund experiences daily net redemptions that exceed 5% of net assets, unless the fund's liquidity costs are de minimis
- Require any nongovernment money market fund to impose a discretionary liquidity fee if the board determines that a fee is in the best interest of the fund

Additionally, the amendments will modify certain reporting forms applicable to money market funds and large private liquidity funds advisers.

The amendments were effective Oct. 2, 2023, with a tiered transition period for funds to comply. The reporting form amendments will become effective June 11, 2024.

#### **Final rules on security-based swaps fraud prevention**

The SEC on June 7, 2023, [adopted final rules](#) to prevent fraud, manipulation, and deception in connection with security-based swap transactions and to prevent undue influence over the chief compliance officer of security-based swap dealers and major security-based swap participants. Designed to prevent misconduct connected in any way with any security-based swap transaction, the rules consider the features fundamental to a security-based swap and will assist the SEC in its pursuit of actions that directly target misconduct that reaches security-based swaps. The final rules also protect the independence and objectivity of the chief compliance officer of a security-based swap dealer or major security-based swap participant.

The final rules were effective on Aug. 29, 2023.

#### **Final rule on private fund reporting**

The SEC on May 3, 2023, [adopted amendments](#) to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds. The amendments are designed to enhance the ability of the Financial Stability Oversight Council (FSOC) to assess systemic risk and to increase the SEC's oversight of private fund advisers and its investor protection efforts.

The amendments will require current reporting by large hedge fund advisers regarding certain events that might indicate significant stress at a fund that could harm investors or signal risk in the broader financial system; require quarterly event reporting for all private equity fund advisers regarding certain events that could raise investor protection issues; and require additional reporting by large private equity fund advisers to improve the ability of the FSOC to monitor systemic risk and improve the ability of both the FSOC and the SEC to identify and assess changes in market trends at reporting funds.

The amendments for current reporting were effective on Dec. 11, 2023, and the remaining amendments will become effective June 11, 2024.

#### **Final amendments on exchange exemptions**

On Aug. 23, 2023, the SEC [adopted final rule](#) amendments narrowing the exemptions for SEC-registered brokers and dealers from membership in a registered national securities association. The rule broadens oversight of the Financial Industry Regulatory Authority (FINRA), which is the only such association. Notably, under the amended rule, proprietary trading broker-dealer firms that trade off the exchange where they are members are no longer exempt.

The rule became effective Nov. 6, 2023.

#### **Final rule amendments to remove credit rating references from Regulation M**

To ensure the existence of appropriate measures of creditworthiness other than credit ratings, the SEC on June 7, 2023, [adopted final rule](#) changes to remove and replace references to credit ratings from existing exceptions provided in Rule 101 and Rule 102 of Regulation M, which prohibit activities that could artificially influence the market for an offered security.

The final rule amendments:

- “Remove existing rule exceptions that reference credit ratings for nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities included in Rule 101 and Rule 102 of Regulation M;
- “Replace those rule exceptions with new standards that are based on alternative standards of creditworthiness; and
- “Add an amendment to a recordkeeping rule applicable to broker-dealers in connection with their reliance on the new exceptions.”

The final rule was effective on Aug. 21, 2023.



**Final rule changes to shorten securities settlement cycle**

[Rule changes](#) designed to benefit investors and reduce the credit, market, and liquidity risks in securities transactions faced by market participants were [adopted](#) by the SEC on Feb. 15, 2023. They shorten the standard settlement cycle for most broker-dealer transactions in securities from two business days after the trade date (T+2) to one (T+1) and shorten the separate standard settlement cycle for firm commitment offerings prices after 4:30 p.m. from four business days after the trade date to two business days.

The rules also improve the processing of institutional trades by requiring broker-dealers to either enter into written agreements or establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.

Lastly, the rules add a new requirement to facilitate straight-through processing, which applies to clearing agencies that are central matching service providers. The rules require these providers to establish, implement, maintain, and enforce new policies and procedures reasonably designed to facilitate straight-through processing and require submission of an annual report to the SEC.

The final rules were effective on May 5, 2023. The compliance date for the final rules is May 28, 2024.

**Final rule on conflicts of interest in securitization transactions**

On Nov. 27, 2023, the SEC [adopted](#) a [final rule](#) prohibiting conflicts of interest in certain securitization transactions. The final rule prohibits asset-backed security (ABS) structures that put a securitization participant's interests ahead of an ABS investor's interests.

The final rule is effective Feb. 5, 2024.

## Rulemaking activity – proposed rules

**Proposed rule amendments on registration for index-linked annuities**

On Sept. 29, 2023, the SEC [issued proposed rule](#) and form amendments on the offering process and disclosure requirements for registered index-linked annuities (RILAs). Among other changes, the proposal would require RILA issuers to register offerings on Form N-4, which is used by most variable annuities, and would subject RILA advertising and sales literature to existing securities regulations.

Comments closed on Nov. 28, 2023.

**Proposed rules on broker-dealer predictive analytics and conflicts of interest**

On July 26, 2023, the SEC [proposed new rules](#) addressing potential conflicts of interest created when broker-dealers and investment advisers use predictive data analytics, artificial intelligence (AI), and similar technologies to interact with investors. Technologies within the scope of the proposed rules include computational models, algorithms, and other predictive methods or processes that could guide an investor's behavior and therefore have the potential to prioritize the firm's interests over those of an investor. Under the proposal, firms using such technologies would be required to eliminate or address conflicts of interest, maintain written policies and procedures designed to prevent violations of or achieve compliance with the proposed rules, and maintain books and records related to the requirements of the proposed rules.

Comments closed on Oct. 10, 2023.

**Proposed amendments on internet-based investment adviser registration**

The SEC [proposed](#) new [rule amendments](#) on July 26, 2023, to enact more restrictive requirements on the exemption that permits internet-based investment advisers to register with the commission. To qualify for the exemption under the proposal, internet-based investment advisers would be required to maintain an operational and interactive website and to provide advisory services to all clients exclusively through such a website. In accordance with these changes, the proposal also would make corresponding changes to Form ADV.

Comments closed on Oct. 2, 2023.

#### **Proposed daily computation of reserve requirements**

On July 12, 2023, the SEC [proposed](#) to amend the broker-dealer customer protection rule to require daily, rather than weekly, reserve computations and deposits.

Comments closed Sept. 11, 2023.

#### **Proposed rules on covered clearing agency risk management**

On May 17, 2023, the SEC [proposed](#) rule [amendments and a new rule](#) to improve risk management and resilience of covered clearing agencies (CCAs). According to a [fact sheet](#), the proposal would require a CCA to have:

- “Policies and procedures to establish a risk-based margin system that monitors intraday exposures on an ongoing basis and includes the authority and capacity to make intraday margin calls as frequently as circumstances warrant;
- “Policies and procedures to establish a risk-based margin system that address the use of substantive inputs, in addition to price data, in its risk-based margin system, including when such inputs are not readily available or reliable; and
- “Recovery and orderly wind-down plans (RWP) that include specific elements to ensure that the RWP is fit for purpose and provides sufficient identification of how a CCA would operate in a recovery and how it would achieve an orderly wind-down.”

Comments closed on July 17, 2023.

#### **Proposed amendments on electronic filing requirements**

On March 22, 2023, the SEC [released](#) proposed electronic filing [requirements](#), including structured data, for certain *Exchange Act* forms, filings, and other submissions that currently are filed in paper form. The proposal affects national securities exchanges, national securities associations, clearing agencies, broker-dealers, security-based swap dealers, and major security-based swap participants. The proposal also includes changes to Financial and Operational Combined Uniform Single (FOCUS) reports and affects withdrawal notices for certain dealing transactions related to determining whether a person is a securities-based swap dealer.

Comments closed on May 22, 2023.

#### **Proposed rules on broker-dealer cybersecurity risk management**

The SEC on March 15, 2023, [released](#) for public comment [proposed requirements](#) for broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents to address their cybersecurity risks.

Under the proposal, these entities would have to implement policies and procedures that are reasonably designed to address their cybersecurity risks. In addition, the design and effectiveness of the cybersecurity policies and procedures, including whether they keep up with changes in cybersecurity risk over the review period, would have to be assessed annually. New proposed notification requirements are designed to improve the SEC’s ability to obtain information about significant cybersecurity incidents affecting these entities. Additionally, the proposal includes disclosure requirements to improve transparency about the cybersecurity risks that can cause adverse impacts to the U.S. securities markets.

Comments closed on June 5, 2023.

#### **Proposed rules on consumer financial information privacy**

On March 15, 2023, the SEC [proposed](#) to [amend](#) Regulation S-P to require broker-dealers, investment companies, registered investment advisers, and transfer agents to notify individuals affected by certain types of data breaches.

Comments closed on June 5, 2023.

**Proposed rules on Regulation Systems Compliance and Integrity (SCI)**

On March 15, 2023, the SEC [proposed](#) to [amend](#) the scope of Regulation SCI and to update for technological developments.

Comments closed on June 13, 2023.

**Proposed rule on customer asset safeguarding for registered investment advisers**

On Feb. 15, 2023, the SEC [proposed](#) for public comment [rule changes](#) to enhance protections of customer assets managed by registered investment advisers. If adopted, the changes would amend and redesignate Rule 206(4)-2, the SEC's custody rule, under the *Investment Advisers Act of 1940*.

The proposed amendments would:

- Expand the current custody rule to include a wider array of client assets and advisory activities in the rule's protections
- Enhance the custodial protections that client assets receive under the rule
- Update certain recordkeeping and reporting requirements for advisers
- Although the proposal retains the current requirement for an adviser with custody of client assets to undergo a surprise examination from an independent public accountant to verify those assets, the proposal would modify the audit provision to expand the availability of its use to satisfy the requirement, enhance investor protection, and facilitate compliance.

Comments closed on May 8, 2023 and were [reopened](#) Aug. 23, 2023, through Oct. 30, 2023.

**Proposed ban on volume-based exchange transaction pricing for national market system stocks**

On Oct. 18, 2023, the SEC [issued](#) a [proposed rule](#) to restrict volume-based transaction pricing offered by national securities exchanges. Under the proposal rule, exchanges would be prohibited from offering volume-based transaction pricing when executing agency orders. Exchanges would be subject to anti-evasion clauses when executing member proprietary orders to facilitate members' compliance with the prohibition on agency orders. In addition, they would be required to maintain written policies and procedures to enforce these measures. Finally, the proposed rule would require equity exchanges with volume-based pricing for member proprietary orders to submit electronic, machine-readable structured data tables detailing their pricing tiers and the number of members qualifying for each tier to be made available to the public.

Comments closed on Jan. 5, 2024.

## Rulemaking activity – self-regulatory organizations

**New national market data plan**

On Sept. 1, 2023, the SEC [issued](#) an [order](#) directing the equity exchanges and FINRA to develop and file a new national market system (NMS) plan to govern consolidated equity market data. The SEC cited concerns about lack of efficiency and conflicts of interest inherent to the operation of the three existing NMS plans. It directed equity exchanges and FINRA to submit a new plan for public notice and comment by Oct. 23, 2023.

**Funding amendment to CAT NMS plan**

On Sept. 6, 2023, the SEC [approved](#) an [amendment](#) to the NMS plan governing the Consolidated Audit Trail (CAT), adopting a revised funding model called the "Executed Share Model." The amendment establishes a framework for allocating fees to develop and operate the CAT among participants and industry members based on executed equivalent share volume. It also modifies the method for calculating this volume. Participants will be required to submit Section 19(b) filings to impose fees on the industry members. These public filings will include details on the fees, including budgeted prospective CAT costs and certain costs previously covered entirely by the participants.

**Erroneous compensation listing standard amendments**

On June 9, 2023, both the [New York Stock Exchange](#) and the [Nasdaq](#) submitted amendments to their proposed erroneously awarded compensation listing standards, which were approved by the SEC. The

amended listing standards specify that a registrant had 60 days from Oct. 2, 2023, to adopt a recovery policy.

The Crowe article "[Accounting Restatement: SEC Expects Compensation Recovery](#)" provides additional information.

### **Approval of NYSE proposed listing standard on certain securities sales requiring shareholder approval**

On Dec. 26, 2023, the SEC granted accelerated [approval](#) to a NYSE proposal which amends the circumstances under which listed companies must obtain shareholder approval prior to a sale of securities to a significant shareholder, if is below "minimum price" (as defined by the NYSE listed company manual), and exceeds 1% of either the number of shares of common stock or the voting power outstanding before the sale. Under the amendment, the requirement to obtain shareholder approval would apply only to sales of securities to "active related parties." This category includes "directors, officers, controlling shareholders or members of a control group or any other substantial security holders of the company that have an affiliated person who is an officer or director of the company."

Comments closed Jan. 23, 2024.

## **Annual Conference on Current SEC and PCAOB Developments**

### **AICPA and CIMA annual conference**

The AICPA and CIMA held the annual Conference on Current SEC and PCAOB Developments in Washington, D.C., Dec. 4-6, 2023. Key themes included:

- Investor information needs are top of mind for regulators and standard-setters.
- Engagement of all stakeholders is needed to support high-quality financial reporting.
- The accounting profession fosters public trust and protects our capital markets.

Various stakeholders – preparers, regulators, standard-setters, auditors, users, and others – presented the audience with wide-ranging perspectives and insights.

### **Chief accountant remarks**

SEC Chief Accountant Paul Munter provided perspectives through the lens of financial reporting as a communication exercise, noting:

- The current economic environment is uncertain – citing interest rates, supply chain disruptions, and geopolitical matters – and stakeholders across the financial reporting ecosystem must ensure that investors have transparent disclosure to understand risks.
- Continued stakeholder engagement is necessary for standard-setting to be responsive to investor needs.

Munter noted that an accounting firm's culture must cascade throughout the firm and the audit practice alone cannot be solely responsible for audit quality and independence matters.

Finally, Munter shared reflections on the accounting profession:

- We all play an integral role in serving the public interest, which requires a commitment to lifelong learning.
- Attracting and retaining talent requires a coordinated approach to best convey the accounting profession's value proposition.

### **OCA staff remarks**

Office of the Chief Accountant (OCA) senior associate chief accountants Anita Doust, Nigel James, and Gaurav Hiranandani; Shehzad Niazi, deputy chief counsel; and Carlton Tartar, associate chief accountant, covered various topics that the staff has addressed in the past year, including:

- Perspectives on the Financial Accounting Standards Board (FASB) final ASU on segments
- Fair value matters
- Miscellaneous accounting topics, such as special purpose acquisition company (SPAC) and de-SPAC matters, deferred offering costs, and investment company observations
- Auditor independence
- Financial reporting in the current economic environment
- Monitoring of international standard-setting

### Corp Fin focus

Director of the Division of Corporation Finance (Corp Fin) Erik Gerding was joined by Corp Fin staff members Sarah Lowe, deputy chief accountant; Lindsay McCord, chief accountant; Craig Olinger, senior adviser to the chief accountant; and Melissa Rocha, deputy chief accountant, to discuss recent Corp Fin developments and focus areas including:

- Disclosure considerations in the current economic environment – transparent disclosures around inflation, other macroeconomic variables, interest-rate risk, and liquidity
- Perspectives on the FASB's final ASU on segments
- Views on non-GAAP measures
- Observations on recent final rules – erroneously awarded incentive-based compensation, pay versus performance, cybersecurity, and issuer share repurchases
- Miscellaneous matters – waiver requests, significance tests performed for acquisitions and disposals of businesses, and transaction accounting adjustments for pro forma presentation

### Crowe conference recap

For a deeper dive into the conference, read the Crowe report "[Highlights From the 2023 AICPA & CIMA Conference on Current SEC and PCAOB Developments](#)."

## From the Division of Enforcement

### SEC enforcement statistics

On Nov. 14, 2023, the SEC [released](#) enforcement statistics on fiscal year 2023. Overall, the SEC filed a total 784 enforcement actions, up 3% from the prior year, obtained a total of \$4.95 billion in financial remedies – one of the highest amounts in SEC history, second only to 2022 – and distributed \$920 million to harmed investors.

The published statistics include an overview of enforcement actions across different areas, such as investor protection and market integrity, recordkeeping violations, whistleblower protections, fraud, insider trading and market abuse, and the *Foreign Corrupt Practices Act*. Cybersecurity and ESG disclosures and crypto asset securities are also noted. The report highlights actions against individuals in key roles, including officers and directors, and gatekeepers such as accountants and auditors.

### Enforcement director at New York City Bar Association Compliance Institute

On Oct. 24, 2023, Gurbir Grewal, director of the Division of Enforcement, [spoke](#) on the continued importance of the role of compliance professionals in maintaining fair and efficient markets and upholding the public trust. Grewal talked about a three-pronged approach to proactive compliance, consisting of continuous education on the law and SEC activity, engagement across the business, and enforcement of compliance policies and procedures. While noting that the SEC takes into account actions of good faith based on reasonable inquiry, he stated that the SEC would pursue action against compliance personnel who affirmatively participate in misconduct, mislead investors, or fail to carry out compliance responsibilities.

## From the Division of Examinations

### SEC 2024 examination priorities

On Oct. 16, 2023, the SEC [published](#) the Division of Examination's examination priorities, including both core and emerging risks observed in the markets, for the year ahead. The division's risk-based

approach gives greater weight to areas that present heightened risk to the markets and the investing public; priorities generally are tailored to the category of entity being examined. However, the division also identifies several risks affecting various market participants, including cybersecurity and operational resilience as well as emerging financial technology (including crypto assets).

#### **Division of Examinations risk alert on investment adviser examinations**

On Sept. 6, 2023, the Division of Examinations [published](#) a risk alert providing details on the division's risk-based approach for selecting registered investment advisers for examination and for determining the scope of risk areas to examine. While the risk-based approach is evolutionary and based on macro factors such as market conditions and industry practices, the staff also considers entity-specific factors such as those related to an adviser's business activities and regulatory history. The risk alert also lists examples of typical information requested throughout the examination process.

## **Statements and speeches from SEC leadership**

### **On markets and regulation**

#### **SEC chair statement on corporate governance**

On Dec. 7, 2023, SEC Chair Gary Gensler [spoke](#) before the American Bar Association on the critical role of corporate governance in protecting investors and facilitating capital formation by building investor trust. He highlighted the historical precedent of securities law and the SEC's involvement in enforcing corporate governance. Gensler summarized the SEC's recent rulemaking initiatives related to corporate governance, including rules on executive compensation, insider trading, proxy voting, and beneficial ownership. Notably, Gensler called attention to the pending incentive-based compensation rules for financial institutions in accordance with Section 956 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, stating that the SEC stands ready to work with fellow financial regulators to fulfill this regulatory mandate.

#### **Chair keynote before enforcement forum**

On Oct. 25, 2023, Gensler delivered the keynote [speech](#) at Securities Docket's Securities Enforcement Forum. He spoke about the history and recent actions of the commission's enforcement program. Gensler addressed the need for regulation of the crypto asset markets and spoke about recent enforcement actions, such as violations of recordkeeping requirements (including the use of personal devices and nonofficial channels to conduct business) and the use of exit agreements to impede an employee's ability to file whistleblower complaints. In closing, Gensler emphasized the importance of protecting investors, working cooperatively in a timely fashion, and holding "gatekeepers" – those entities and individuals that uphold public trust, such as lawyers and auditors – especially accountable.

#### **Chair on regulation of Treasury markets**

On Nov. 7, 2023, Gensler [spoke](#) before the Securities Industry and Financial Markets Association on the significance of the Treasury markets and warned of volatility that could result from the participation of bank and nonbank intermediaries and their use of leverage to fund positions in the repurchase markets. Drawing parallels between recent market "jitters" and the market stress and subsequent instability leading up to historical financial crises, Gensler voiced concern that many trading in today's markets are unlikely to have experienced firsthand periods of instability and transitional monetary policy. Gensler summarized the commission's recent rulemaking activities and collaborative interagency efforts and emphasized the value of these reforms in upholding the Treasury markets.

#### **Chair before the FSOC**

Gensler on April 21, 2023, made a [statement](#) before the FSOC regarding financial stability risks and guidance on nonbank determinations. He shared his support of the guidance on nonbank determinations and described it as a "step towards ... helping us better protect people's jobs, livelihoods, and trust in our financial system."

Gensler noted that several times throughout history risks from one financial banking institution or from the banking sector have spilled into the broader economy, but he said that risks also can originate from outside the banking sector. He described the importance of recognizing that risk from both banks and nonbank financial companies can emanate throughout the economy to everyday Americans. He noted

that both the SEC and the FSOC have important roles within their respective authorities to enhance the resiliency of the financial system, and although risk will never be eliminated from the system, the SEC and FSOC must strive to “identify, manage, and guard against such risk to protect the American public.”

#### **Commissioner on banking regulatory matters**

On May 11, 2023, SEC Commissioner Mark T. Uyeda presented the [keynote address](#) at the “21st Symposium on Building the Financial System of the 21st Century: An Agenda for Europe and the United States” in Frankfurt, Germany, organized by the Program on International Financial Systems of Cambridge, Massachusetts. In his address, Uyeda focused primarily on ongoing capital markets reforms in the United States and provided some thoughts about cross-border regulation of the financial markets. His speech addressed security markets and banking sector regulatory approaches; the SEC’s current regulatory agenda, which includes many pending proposals; and the importance of robust global markets.

#### **Commissioner on shareholder matters**

Uyeda delivered a [speech](#) on June 21, 2023, before the Society for Corporate Governance 2023 National Conference. He focused on Rule 14a-8 and shareholder proposals. He described current trends in shareholder proposals touching on the impact of changes in SEC staff positions, the significant increase in the number of proposals over the past two years matched with lower voting support, and the costs of shareholder proposals that are brought by a minority but paid by all shareholders.

Uyeda looked at ideas for policy changes, including greater use of private ordering to manage shareholder proposals, exclusion of proposals on social policy issues that lack a material relationship to the company, and changes to how SEC staff handles shareholder proposals.

He noted that some of these might require changes to Rule 14a-8 and SEC staff practices, while other ideas might not require any legislative or regulatory action. Finally, he warned that the SEC will not succeed in its mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation if it “does nothing to prevent value-eroding shareholder proposals from being part of the annual meeting process.”

#### **Commissioner on capital formation**

Uyeda delivered remarks in two separate forums regarding capital formation. In his March 3, 2023, remarks at the “[Going Public in the 2020s](#)” conference, Uyeda discussed the declining trend of entities accessing the public capital markets and suggested mechanisms to foster a more hospitable environment for being a public company while maintaining investor protection. On March 7, Uyeda [spoke](#) before the Institute of International Bankers, where he discussed key components of efficient capital formation and provided perspectives on how international securities activity can be facilitated across regulatory jurisdictions.

### **Testimony before Congress**

#### **SEC chair testimony to Senate subcommittee**

On July 19, 2023, Gensler [testified](#) before the U.S. Senate Appropriations Subcommittee on Financial Services and General Government to summarize the SEC’s fiscal year 2024 budget request. In his testimony, Gensler stated his support for the \$2.4 billion budget request as well as for additional funding of \$39.6 million requested to support General Services Administration-led real estate projects. Gensler detailed how the funds and proposed staffing levels would be allocated among the SEC’s divisions.

Gensler stressed the evolving threats presented by the market and noted that the increase in budget would help maintain and add to current staffing levels to help the SEC fulfill its expansive and growing responsibilities.

#### **Chair testimony before House financial services committee**

On Sept. 27, 2023, Gensler [testified](#) in front of the U.S. House of Representatives Committee on Financial Services, emphasizing the SEC’s wide-ranging role in serving individual investors. He noted the importance of continually updating regulations to address the rapidly evolving and increasingly interconnected markets and broader public participation, while allowing U.S. markets to remain innovative and competitive.

Gensler underscored the value of recent and ongoing activity, including rules and proposals on equity markets and private funds; disclosure requirements related to AI and predictive data analytics, crypto assets, climate risk, and cyber risk; Treasury markets; money market funds; and amendments to Form PF.

On April 18, 2023, Gensler again [appeared](#) before the House Financial Services Committee. Gensler said that the U.S. market faces challenges including recognizing that the U.S. cannot take its worldwide position and leadership for granted; technology, markets, and business models constantly change; and other fast-growing economies threaten to overtake the U.S. market position. He noted that the rules and regulations must be updated regularly and modernized to meet these challenges. He added that the SEC's role in this process is directly correlated to its three-part mission to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. He said the SEC is dedicated to updating its rules to meet the challenges of the times, and he embraces comments and feedback from stakeholders in the process. In addition to discussing the efficiency and competition of the markets, Gensler highlighted all of the proposals in process and outstanding to address the ever-increasing market and rapidly changing technology.

Gensler also noted that integrity and disclosure help protect investors and build trust and increase participation in capital markets. When addressing market integrity and disclosures, Gensler focused on AI and predictive data analytics proposals, as those areas are transforming a large part of the U.S. economy. He also discussed crypto assets and markets and climate risk disclosure.

With regard to resiliency, Gensler focused on Treasury markets, money market funds and open-end funds, and proposed improvements for systemic risk reporting on Form PF.

## On ESG and climate disclosures

### SEC commissioner on ESG

On April 28, 2023, SEC Commissioner Hester Peirce gave a [speech](#) addressing ESG issues before a seminar in Stockholm presented by Eurofi, the Paris-based organizer of gatherings of financial leaders and policymakers of the European Union. Peirce shared three significant concerns related to ESG reporting:

- ESG standards drive private capital to specific ESG-labeled assets and uses.
- By concentrating capital in favored assets, ESG rulemaking could become a source of instability.
- Pressure exists to converge on one single set of ESG standards worldwide.

Peirce expanded on her concerns that a single set of standards will direct private capital into ESG-identified activities and that could have dire consequences throughout the global economy. Peirce warned of the impossible task of having a converged set of ESG standards as this would require understanding and classifying all economic activity in terms of its effect on an increasing number of complex, sometimes mutually contradictory, metrics. She predicted that the concentration of capital in these ESG activities will create systemic instability and an investment bubble that, as history shows, will pop. Also, she said regulatory inducements to invest in particular sectors or in particular ways can harm investors, financial institutions, the financial system, and the broader economy. She noted that allowing for diversity across jurisdictions could mitigate the risks; however, that diversification would be inconsistent with pressure to converge the ESG standards. She said mutual recognition of different approaches would be a positive development, contrasted to requiring all jurisdictions to implement the same standards, which would create serious issues.

### Commissioner on ESG investing

Uyeda on Jan. 27, 2023, [spoke](#) before the California '40 Acts Group. His speech focused on issues related to asset managers' use of ESG investment strategies. He said that "ESG investing has taken the asset management industry by storm." In addition, Uyeda noted that describing products as ESG is good for business, but it is difficult to determine exactly what ESG means. Also, it can be challenging to identify when an ESG investment strategy is properly labeled as such.



Uyeda said the regulatory issues presented by ESG investing are nothing new, but ESG investing is complicated by three factors that make it difficult to establish ESG-specific frameworks:

- “[T]he inability to objectively define ‘ESG’ or any of its components”
- “[T]he temptation to place the regulators’ fingers on the scale in favor of specific ESG goals or objectives”
- “[T]he desire of certain asset managers to use client assets to pursue ESG-related goals without obtaining a mandate from clients”

In recognition of the difficulty in defining ESG, the SEC’s own ESG-related proposed rule for investment advisers and investment companies recognizes a “variety of perspectives concerning what ESG investing means, the issues or objectives it encompasses, and the ways to implement an ESG strategy.” In addition, Uyeda said that ESG measures increasingly are used to advance social or political causes, and the goal of ESG investing often is about something other than financial performance. He shared that consistency does not exist among ESG rating agencies, which calls into question how investment advisers are using ESG ratings to make decisions. He warned that the lack of a universal ESG definition creates the potential for abuses that can steer assets to particular companies based on social or political agendas.

Uyeda concluded with a caution that “ESG” can have different meanings, so to comply with federal securities laws, asset managers should describe precisely what they mean when they use the term to describe an ESG fund or product. He said the existing regulatory framework is well suited to guide the conduct of investment advisers, but “[a]ny emerging regulations should be careful not to tip the scale in favor of any particular political or social cause, and adherence to the established framework of focusing on financial materiality will continue to serve investors well.”

### **Chair on climate risk disclosure, discontinuance of LIBOR**

Gensler remarked on [climate risk disclosure](#) and the phase-out of the London Interbank Offered Rate (LIBOR) before the Financial Stability Oversight Council on July 28, 2023. Regarding the former, Gensler emphasized the role of the SEC in providing investors with fair and truthful disclosures, allowing investors to make informed investment decisions while remaining neutral on the merits of such investments. As such, Gensler noted that the SEC’s role in climate risk disclosures is to mandate consistent and comparable disclosures.

In the same session, Gensler commented on the discontinuation of LIBOR, comparing the previously ubiquitous rate, which often lacked meaningful underlying transactions, to the “emperor with no clothes.” Gensler cited multiple cases of banks fraudulently manipulating the rate and called for new alternatives to LIBOR to be transparent, robust, and appropriately supported by underlying transactions.

## **On emerging technologies and innovation**

### **SEC commissioner on digital assets**

On Jan. 20, 2023, Peirce [spoke](#) before the Digital Assets at Duke Conference. Peirce said that crypto assets’ value proposition depends primarily on the builders of the technology and not on regulators. She offered some lessons for the crypto asset industry:

- Do not wait for regulators to fix the problems that became evident in 2022. Root out harmful practices and encourage good behavior. Regulatory solutions, which often are inflexible, should be a last resort.
- Digital assets need to trade; therefore, centralized venues or decentralized exchange protocols are necessary. But trading markets are not the end point. Technologies like cryptography, blockchain, and zero-knowledge proofs offer new solutions.
- Each crypto asset, blockchain, and project needs to be assessed on its own merits.
- Problems in protocol design or at a centralized infrastructure provider can have far-reaching and disastrous consequences. Testing protocols and carefully analyzing the incentives can prevent problems.
- As long as a company is actively involved in crypto assets, investors should take the same precautions as they would when dealing with any other company.

- Risks, counterparties, counterparties' counterparties, collateral, leverage, conflicts of interest, motives for buying, risk controls, and concentration matter.

Peirce also advised that one of the most important things in the crypto asset industry is to listen to the critics inside and outside the industry. Peirce said that the SEC wants to regulate crypto assets but needs to conduct better, more precise, and more transparent legal analysis to develop a coherent and consistent legal framework that works across all asset classes. She noted that the SEC's approach of regulation by enforcement actions is the opposite of a rational regulatory framework. However, a notice-and-comment process allows broad public and internal participation in developing a sound and reasonable regulatory system. Peirce described five guiding principles that should be considered in developing such a regulatory framework:

- Take a nuanced approach that recognizes differences across blockchains and applications built on top of them, and differences among crypto assets.
- Carefully decide what areas of crypto assets to regulate on a federal level, along with when and how to do so.
- Be clear that government regulation is not the same as government endorsement.
- Understand that scaring traditional entities away from crypto is not realistic and does not protect investors.
- Preserve decentralization.

#### **Chief accountant on crypto asset services**

On July 27, 2023, Munter issued a [statement](#) that cautions accounting firms that perform nonaudit work for crypto asset clients to be aware of the risks presented by providing such services. Risks include:

- **Potential liability for antifraud violations.** Firms should consider the potential liability caused by statements made and language used by both the firm and its clients over the scope of work performed. Firms should take precautions during their client acceptance procedures, even with new clients with no previous history of misrepresentations.
- **Auditor independence.** Firms should consider whether their public statements, as well as any advocacy or lobbying efforts on behalf of an audit client, would lead a reasonable investor to believe that the firm's independence is impaired.

In addition, Munter emphasized that firms found in violation of antifraud provisions of the federal securities laws or applicable independence requirements could be censured or suspended from appearing or practicing before the SEC pursuant to Rule 102(e) of the commission's Rules of Practice.

#### **Chair on AI**

On July 17, 2023, Gensler [spoke](#) on AI and exponential data growth before the National Press Club. Gensler highlighted examples of some of the regulatory and enforcement challenges presented by the integration of AI in the capital markets, such as:

- The potential for predictive models to mask systemic bias or to place the interests of advisers and brokers before those of retail investors and clients
- The rise of misinformation generated by or disseminated through AI
- The threat of concentration to a limited number of AI platforms, fed by the data of applications built on top of those platforms
- Threats to data privacy and ownership of intellectual property
- The risk of heightened financial instability by causing herd behavior in individual investors

Gensler concluded by reiterating both the challenges and opportunities presented by AI, and he emphasized that the SEC is "technology neutral."

#### **Chair on AI and predictive data analytics**

Gensler presented [remarks](#) before the Investor Advisory Committee at its June 22, 2023, meeting. Gensler shared his thoughts regarding digital engagement practices and how predictive data analytics and AI are transforming the U.S. economy. He described how AI is being used for call centers, account openings, compliance programs, trading algorithms, and sentiment analysis and how it has spurred

rapid changes in the field of robo-advisers and brokerage apps. He said that the use of predictive data analytics in these apps can benefit market access, efficiency, and returns to investors. However, he noted that it also can lead to potential conflicts including when advisers or brokers are optimizing for their own interests. Additionally, the data used in these analytic models could reflect historical biases, affecting fair access and prices in the markets. Gensler said he requested SEC staff to recommend potential rulemaking on these matters.

Gensler also spoke about the potential recommendations regarding single-stock ETFs and the importance of brokers and advisers complying with existing standards of conduct when providing advice or recommendations to investors regarding complex and high-risk products.

## On cybersecurity

### SEC enforcement director on cybersecurity

At the Financial Times Cyber Resilience Summit on June 22, 2023, Grewal presented [remarks](#) on cybersecurity's role in the public securities markets. Grewal indicated that cybersecurity is foundational to maintaining the integrity of the U.S. public securities markets and the economy as a whole.

Grewal highlighted five principles that the SEC's Division of Enforcement follows to guide its work aimed at ensuring companies take their cybersecurity and disclosure obligations seriously. These principles are:

- When publicly traded companies and other market participants face cyberattacks, the SEC considers the investing public to be additional potential victims.
- Companies need real policies that work in the real world, and they need to actually implement those policies. Generic "check the box" cybersecurity policies simply are not enough.
- Companies need to regularly review and update all relevant cybersecurity policies to keep up with constantly evolving threats.
- When a cyber incident happens, the right information must be reported to those making disclosure decisions. If they do not receive the proper information, it doesn't matter how robust disclosure policies are.
- The SEC has zero tolerance for gamesmanship around the disclosure decision. Companies that have, or think they might have, a material event should talk to the SEC sooner rather than later to comply with their disclosure obligations.

### Corp Fin director on cybersecurity disclosure rules

On Dec. 14, 2023, Gerding offered [commentary](#) on new compliance and disclosure [interpretations](#) (C&DIs) on the commission's recent cybersecurity disclosure rules, emphasizing that the rule does not require registrants to disclose technical or specific incident or system information. Referencing the C&DIs, Gerding noted that the new disclosure rules should not deter registrants from timely engagement with the relevant authorities. Gerding also reminded registrants of Corp Fin's open-door policy and emphasized the SEC's aim to incentivize good faith efforts in its continuing mission to elicit tailored and meaningful disclosures.

## Chief accountant observations on audit and accounting matters

### Statement of cash flows

On Dec. 4, 2023, Munter [addressed](#) investor focus on the statement of cash flows, including reminders on stakeholder responsibilities and perspectives on cash flow disclosure improvements.

### Risk assessment by auditors and management

On Aug. 25, 2023, Munter issued a [statement](#) on the importance of a comprehensive risk assessment that not only focuses on risks that directly affect the financial statements but also considers broader issues such as cybersecurity breaches, nonfinancial regulatory breaches, and revision restatements that could result in a material risk.

Munter encouraged management to consider external inputs such as regulator observations and analyst reports, and he said auditors should consider factors such as an entity's changes in strategy and

consistency of management's messaging to investors. In addition, Munter emphasized the importance of professional skepticism and cautioned auditors against unintentionally rationalizing away evidence that the root cause of a deficiency further indicates a pervasive, entitywide risk.

### Accounting standard-setting

On Feb. 14, 2023, Munter released current [observations](#) on the state of accounting standard-setting in today's ever-evolving business environment. The release focuses on key considerations for meeting investor information needs in a timely manner.

## From the Investor Advisory Committee

### IAC March meeting

The SEC's Investor Advisory Committee held a virtual [public meeting](#) on March 2, 2023. The panel discussions held during the meeting addressed the following topics:

- Growth of private markets relative to the public markets: Drivers and implications. This panel discussed the factors contributing to the growth of private markets, implications of this growth on decisions made by operating companies and investors, and if there should be modifications to the existing disclosure and regulatory framework.
- Oversight of investment advisers: Can regulators keep up with growth in the industry. This panel discussed how regulators are managing oversight of the growing registered investment adviser industry through their examination programs as well as potential approaches to enhancing oversight and bolstering the examination programs.
- The open-end fund liquidity risk management and swing pricing rule proposal. This panel discussed the potential use of swing pricing in the U.S. market and focused on possible impacts of the SEC's November 2022 proposed enhancements to the open-end fund liquidity framework and potential impacts from implementation of a "hard close" on mutual fund orders.

Gensler provided [prepared remarks](#), and commissioners [Peirce](#) and [Lizárraga](#) spoke.

### IAC June meeting

In a virtual IAC [public meeting](#) on June 22, 2023, topics included:

- Private funds and private markets and outbound investments in countries of concern
- Ensuring that digital engagement practices responsibly expand investment opportunities
- Audit committee workload and transparency
- Recommendations regarding single-stock exchange-traded funds (ETFs)
- Proposed amendments to Regulation 13D-G and proposed rule 10B-1 under the *Securities Exchange Act of 1934*
- Registered investment adviser oversight

Gensler provided [prepared remarks](#), and [Peirce](#) provided commentary and questions on the committee's agenda.

### IAC September meeting

The online IAC [meeting](#) on Sept. 21, 2023, covered:

- Exempt offerings under Regulation D Rule 506
- Oversight over accredited investors
- Human capital management disclosures (recommendation drafted by the Investor-as-Owner subcommittee)
- Open-end fund liquidity risk management programs and swing pricing (recommendation drafted by the Investor-as-Purchaser subcommittee)

[Gensler](#), [Peirce](#), and [Lizárraga](#) provided remarks.

## Small-business matters

### SBCFAC February meeting

On Feb. 7, 2023, the SEC Small Business Capital Formation Advisory Committee (SBCFAC) held a [meeting](#) to discuss challenges and opportunities for small businesses raising capital in 2023, alternatives to traditional financing for smaller private companies, the SEC's proposal on private fund reforms, and the role of equity research for smaller public companies.

### SBCFAC June meeting

With a focus on capital raising and reducing funding gaps for underrepresented founders, the SBCFAC [met](#) on June 14, 2023. The committee covered members' observations on the state of small-business capital raising and discussed remedying the funding gaps for underrepresented founders and startups. In addition, members discussed potential areas for future committee focus. This was the first meeting since the SEC's appointment of 14 new committee members. The full agenda, meeting materials, and information on how to watch the meeting are available via the Small Business Capital Formation Advisory Committee [webpage](#).

### Annual small business capital formation report

On Dec. 14, 2023, the SEC's Office of the Advocate for Small Business Capital Formation released its [annual report](#) analyzing trends in capital formation and garnering perspectives on the challenges faced by the "small business ecosystem."

### Annual Small Business Forum

The 42nd Small Business Forum was [hosted](#) by the SEC's Office of the Advocate for Small Business Capital Formation on April 24-27, 2023. It included four virtual sessions:

- "Exploring the Early-Stage Landscape: Trends and Strategies in Capital Raising"
- "Building Entrepreneurial Ecosystems: Laying the Groundwork to Support Small Businesses and Their Investors"
- "Investing in Small Business: Successes and Challenges Facing Smaller Funds"
- "Accessing the Public Markets: Becoming and Staying a Public Reporting Company"

Gensler presented prepared [remarks](#) before the forum, Peirce provided [remarks](#) during the "Exploring the Early-Stage Landscape: Trends and Strategies in Capital Raising" section, and Uyeda provided [remarks](#) during the "Investing in Small Business: Successes and Challenges Facing Smaller Funds" section.

### Commissioner remarks at the 50th Annual Securities Regulation Institute

At the 50th Annual Securities Regulation Institute on Jan. 30, 2023, SEC Commissioner Caroline Crenshaw presented the [keynote address](#) on issues with the small-business safe harbor. She discussed the origins of and the current state of Rule 506 of Regulation D, which is the primary exemption that large private issuers rely on to raise "essentially unlimited capital from an unlimited number of accredited investors." Crenshaw next noted some of the consequences of allowing limitless capital to flow into the private markets. Finally, she suggested two potential reforms:

- Revise Form D to provide essential information to all private investors, to the public markets, and to the regulators.
- Impose increased obligations on large private issuers and large capital raises.

Crenshaw said that increasing obligations on large private issuers and large capital raises is a tailored solution that helps the SEC fulfill its mandates as it both acknowledges Regulation D's purpose in allowing reprieve to smaller businesses and also helps eliminate the benefits and effective subsidies being given to large private issuers at the expense of small businesses. Additionally, such reform would provide better disclosures to investors. She said that the proposed reforms to Regulation D are incremental but essential to ensure that the private markets operate as originally intended.

## Interpretations, guides, and other matters

### Compliance and disclosure interpretations

On May 25, 2023, Corp Fin [published](#) three C&DIs on the commission's updated insider trading rules. The interpretations (120.26-120.28) address the following questions:

- “When are companies required to begin providing the quarterly Item 408(a) disclosures and the annual Item 402(x) and Item 408(b) disclosures (Item 16J of Form 20-F disclosures for foreign private issuers) in periodic reports?”
- “When are companies required to begin providing the disclosures in proxy or information statements?”
- “Rule 10b5-1(c)(1)(ii)(D)(2) permits a person (other than the issuer) to maintain two separate Rule 10b5-1 plans at the same time so long as trading pursuant to the later-commencing plan is not authorized to begin until after all trades under the earlier-commencing plan are completed or have expired without execution. If an individual terminates the earlier-commencing plan (i.e., the earlier-commencing plan does not end by its terms and without any action by the individual), when can trading begin under the later-commencing plan?”

Throughout August, Corp Fin issued multiple new C&DIs. Highlights include the following:

- [Exchange Act rules](#) (updated Aug. 25, 2023). The new interpretations address questions on the cooling-off period and participation in 401(k) plans under the amended Rule 10b5-1.
- [Exchange Act forms](#) (updated Aug. 30, 2023). The new interpretations address questions on Form F-SR filing requirements for foreign private issuers or affiliated purchasers that have not repurchased registered equity securities as well as filing requirements for repurchases in the final quarter of the fiscal year.
- [Exchange Act Section 16](#) (updated Aug. 25, 2023). The new interpretation clarifies that the Rule 10b5-1(c) checkbox on Form 4 is not applicable to trading plans adopted prior to the effective date of the amendment to Rule 10b5-1.
- [Regulation AB](#) (updated Aug. 30, 2023). The new interpretation clarifies the definition of a “timely” filing for Form SF-3 eligibility.
- [Regulation S-K](#) (updated Aug. 25, 2023). The new interpretations address questions on required disclosures under Item 408(a)(1) for plans terminated due to expiration or completion as well as applicability of Item 408(a) for trading arrangements covering securities in which a director or officer has a pecuniary interest.

On Dec. 12, 2023, Corp Fin [issued](#) new C&DIs on its cybersecurity disclosure rules. The new C&DIs focus on the delay provision of the material cybersecurity incident disclosure requirement, which provides an allowance to delay disclosure if the U.S. attorney general provides written notification to the SEC that disclosure would pose a substantial risk to national security or public safety. They offer clarification on disclosure obligations when a registrant requests and is granted, or denied, a delay period or subsequent extension. The interpretations also state that the fact that a registrant consults with the Department of Justice (DOJ) regarding the availability of delay does not in itself determine that the incident is material, nor is a registrant precluded from consulting with the DOJ, or any law enforcement or national security agency, prior to completing a materiality assessment.

Corp Fin also issued [pay versus performance](#) and [erroneously awarded compensation](#) C&DIs during 2023.

### Removal of “glossy” annual report EDGAR submissions

On Jan. 11, 2023, the SEC updated its [Proxy Rules and Schedule 14A](#) C&DIs to withdraw the requirement to submit “glossy” annual reports to shareholders electronically on EDGAR.

### Statement on nontransparent exchange-traded funds

Staff from the Division of Investment Management issued a March 29, 2023, [statement](#) clarifying how nontransparent exchange-traded funds should present the required risk legend in digital advertisements.

### Small-entity compliance guide on insider trading

The SEC on Feb. 24, 2023, [released](#) a small-entity compliance guide on insider trading arrangements and related disclosures to address the Dec. 14, 2022, adopted amendments to Rule 10b5-1 under the *Securities Exchange Act of 1934*. The amendments update conditions of the affirmative defense to insider trading liability in Rule 10b5-1, place certain restrictions on Rule 10b5-1 plans, and require new disclosures. More details are in the Crowe article "[New SEC Insider Trading Rule: What Registrants Should Know](#)."

### Sample letter regarding China-specific disclosures

Corp Fin, on July 17, 2023, [released](#) a [sample letter](#) addressing China-specific disclosures for China-based companies. Expanding upon previous guidance, the sample letter focuses on the following disclosures:

- Obligations under the  *Holding Foreign Companies Accountable Act*  (HFCAA) for issuers identified by the SEC under the HFCAA
- Risk of intervention or control by the government of the People's Republic of China in the operations of China-based companies
- The  *Uyghur Forced Labor Prevention Act*

### Sample letter on XBRL disclosures

On Sept. 7, 2023, the SEC [published](#) an illustrative sample [letter](#) containing examples of comments that could be issued by Corp Fin regarding a company's extensible business reporting language (XBRL) disclosures.

### Definition of an accredited investor

On Dec. 15, 2023, the SEC issued a staff [report](#) on the definition of an accredited investor. The commission is required to reexamine the definition every four years under the Dodd-Frank Act. The report includes a review of the current accredited investor pool and feedback from the Investor Advisory Committee and Small Business Capital Formation Advisory Committee, and it concludes by encouraging feedback from the public.

### GAO flag on crypto assets SAB

On Oct. 31, 2023, the U.S. Government Accountability Office (GAO) issued a [decision](#) stating that the SEC had failed to follow agency protocol in issuing Staff Accounting Bulletin (SAB) 121, which publicized staff views on necessary disclosures of custodial obligations for entities trading in crypto assets. The GAO said that the contents of the SAB constitute agency rulemaking and should have been submitted for congressional review and subjected to a public comment period.

Following the decision, several members of Congress [submitted](#) a letter to the Office of the Comptroller of the Currency, the Federal Reserve Board of Governors, the Federal Deposit Insurance Corp., and the National Credit Union Administration. The letter requested that the regulators state that SAB 121 is not enforceable per the GAO's decision.

## Leadership changes

### New SEC chief accountant

On Jan. 11, 2023, the SEC [named](#) Paul Munter chief accountant. Munter has served as acting chief accountant since January 2021. The chief accountant leads the SEC's Office of the Chief Accountant and is the primary commission adviser on accounting and auditing matters. Prior to joining the SEC, Munter was a senior accounting instructor at the University of Colorado Boulder and retired as a partner at a public accounting firm.

### New deputy director of disclosure operations

On Feb. 14, 2023, the SEC [announced](#) that Cicely LaMothe was named deputy director of disclosure operations of the Division of Corporation Finance (Corp Fin), effective Feb. 12, 2023. LaMothe has served as acting deputy director for disclosure operations since August 2022.

LaMothe joined the SEC in 2002 and has held a number of senior leadership roles in Corp Fin including director of the disclosure review program, associate director of the Office of Assessment and Continuous Improvement, and associate director of disclosure operations.

#### **New director of Corp Fin**

On Jan. 13, 2023, the SEC [announced](#) Erik Gerding's appointment as director of the Division of Corporation Finance, effective on Feb. 3, 2023. Gerding has served as deputy director and replaces Renee Jones, who returns to the faculty of Boston College Law School. Gerding, who has degrees from Duke University and Harvard Law School, joined the SEC in October 2021 and leads Legal and Regulatory Policy in Corp Fin. Prior to joining the SEC, he was professor of law at the University of Colorado Law School and the University of New Mexico School of Law. He also practiced in the New York and Washington, D.C., offices of Cleary Gottlieb Steen & Hamilton LLP.

#### **New deputy director for Corp Fin legal and regulatory policy**

The SEC on May 19, 2023, [named](#) Mellissa Campbell Duru as the new deputy director for legal and regulatory policy in the Division of Corporation Finance (Corp Fin). Most recently, Duru was a special counsel at Covington & Burling LLP, where she worked in the securities and capital markets practice and served as a vice chair of the firm's environmental, social, and governance practice. Prior to that, Duru spent more than 15 years in various SEC roles.

## **From the PCAOB**

### **PCAOB annual report and strategic plan**

#### **PCAOB standard-setting, research, rulemaking agendas**

The PCAOB on Nov. 1, 2023, [posted](#) its updated agendas for its standard-setting, research, and rulemaking [projects](#). In the release announcing the revisions, the PCAOB highlighted that during 2023 the board "has taken more formal actions on standard setting and rulemaking than any year in the last 10 years." On the short-term standard-setting agenda, the PCAOB has eight projects, four of which have been proposed and are expected to be adopted in 2024 and four of which are expected to be proposed in 2024. The four projects that have been proposed include quality control, noncompliance with laws and regulations, general responsibilities of the auditor in conducting an audit, and amendments related to aspects of designing and performing audit procedures that involve technology-assisted analysis of information in electronic form. The planned proposals for 2024 include attestation, going concern, firm and engagement performance metrics, and substantive analytical procedures. The PCAOB also added a research project on communication of critical audit matters.

#### **PCAOB standard-setting agenda, rulemaking projects**

On May 16, 2023, the PCAOB staff [released](#) a revised standard-setting agenda. On the updated agenda, the performance metrics and substantive analytical procedures projects were moved and identified as short-term action (less than 12 months) projects. Two midterm category (greater than 12 months) projects were added on the use of a service organization and interim financial information reviews. Additionally, the PCAOB announced four new rulemaking projects to consider how PCAOB rules could be enhanced for firm reporting and transparency, contributory liability, follow-on disciplinary proceedings, and registration.

#### **PCAOB annual report**

The PCAOB [published](#) its "[2022 Annual Report](#)" on April 5, 2023. The report summarizes the PCAOB's operations and financial results for fiscal year 2022 and highlights accomplishments and developments for the year for each of the PCAOB's four strategic goals. These goals include modernizing standards, enhancing inspections, strengthening enforcement, and improving organizational effectiveness. Additionally, the report includes audited financial statements, a financial review, and management's report on internal control over financial reporting.

#### **PCAOB five-year strategic plan**

The PCAOB's current [strategic plan](#), which covers 2022-2026, is guided by three priorities: investor protection, engagement, and adaptability. The plan addresses four main goals: to modernize standards,



to enhance inspections, to strengthen enforcement, and to improve organizational effectiveness. For each goal, the PCAOB has identified objectives to achieve the goal.

## Standard-setting and research

### Final standard on auditors' use of confirmation

The PCAOB on Sept. 28, 2023, [adopted](#) a new standard, AS 2310, "The Auditor's Use of Confirmation," to replace in its entirety the current AS 2310, "The Confirmation Process." The new version is designed to strengthen and modernize the confirmation requirements. Among other changes, the standard includes a new requirement regarding confirming cash and cash equivalents held by third parties or otherwise obtaining relevant and reliable audit evidence by directly accessing information maintained by a knowledgeable external source.

The new standard, which was [approved](#) by the SEC on Dec. 1, 2023, will be effective for audits of financial statements for fiscal years ending on or after June 15, 2025.

### Proposed changes to amend auditing standards related to noncompliance with laws and regulations

On June 6, 2023, the PCAOB [issued](#) for public comment a [proposal](#) that would amend the PCAOB's auditing standards related to the auditor's responsibility for considering a company's noncompliance with laws and regulations, including fraud. The proposal is intended to strengthen and enhance auditor requirements to identify, evaluate, and communicate possible or actual noncompliance, explicitly including fraud within the definition of noncompliance with laws and regulations.

Among other changes, the proposal would:

- Expand the auditor's obligation to plan and perform audit procedures to identify laws and regulations with which noncompliance could reasonably have a material effect on the financial statements, assess and respond to risks of material misstatement of the financial statements due to that noncompliance, and identify information that might indicate such noncompliance has or may have occurred
- Change the auditor's procedures to increase understanding of the company, enhance the auditor's risk assessment procedures related to a company's noncompliance with laws and regulations, and improve identification of noncompliance
- Improve the requirements related to evaluating the timeliness and appropriateness of management's remedial actions
- Clarify and expand the auditor's requirements to communicate to management and the audit committee information indicating whether noncompliance has or may have occurred, including results of the auditor's evaluation

Comments closed on Aug. 7, 2023.

### Proposed changes to auditor responsibilities in technology-assisted analysis

As part of the PCAOB's strategic goal to modernize standards, the PCAOB on June 26, 2023, [issued](#) a proposal, "[Proposed Amendments Related to Aspects of Designing and Performing Audit Procedures That Involve Technology-Assisted Analysis of Information in Electronic Form.](#)" It addresses the use of AI in audits and includes changes to Auditing Standards (AS) 1105, "Audit Evidence," and AS 2301, "The Auditor's Responses to the Risks of Material Misstatement," as well as conforming amendments to other related PCAOB auditing standards.

Since 2010, when auditing standards on evidence and responses to risks were issued, the use of systems that maintain large volumes of information in electronic form has significantly increased. Auditors have greater access to large volumes of company-produced and third-party information in electronic form that could serve as audit evidence. Additionally, auditors have increased their use of data analysis tools. In response to these changes, the proposal seeks to improve audit quality by reducing the likelihood that an auditor who uses technology-assisted analysis will issue an opinion without obtaining sufficient appropriate audit evidence. Specifically, the proposal clarifies the auditor

responsibilities in the following areas: using reliable information in audit procedures, using audit evidence for multiple purposes, and designing and performing substantive procedures.

Comments closed on Aug. 28, 2023.

### **Request for comments on proposed auditing standard**

The PCAOB on April 17, 2023, [alerted](#) interested stakeholders of the opportunity to comment on its proposed standard, AS1000, "[General Responsibilities of the Auditor in Conducting an Audit](#)," which was issued on March 28, 2023. The proposed standard will replace certain interim standards with a unified one that addresses the general principles and responsibilities of an auditor working under PCAOB standards.

Comments closed on May 30, 2023.

## **Statements and speeches from PCAOB leadership**

### **Keynote speech and roundtable at AICPA-CIMA conference**

At the AICPA and CIMA conference, PCAOB Chair Erica Williams in her speech "[Too Much Is at Stake to Let Complacency Win](#)" highlighted the role of the audit and how the work of auditors gives stakeholders trust and confidence in the markets. Williams stressed the importance of auditors choosing vigilance over complacency in performing audits. She also covered:

- Standard-setting activities
- Inspection trends
- Enforcement actions

Williams and the PCAOB held a panel discussion covering various topics including how the board receives input and feedback on its rulemaking agenda through advisory groups and the comment letter process; key elements to promoting public trust in audits; the talent shortage in the public accounting profession; transparency in oversight activities, including inspection reports; inspections in China and Hong Kong; the role of technology in the audit; the PCAOB's interaction with global audit regulators; and the importance of timely communication with audit committees.

## **Leadership changes**

George R. Botic was [sworn in](#) as a PCAOB board member on Oct. 25, 2023, for a term that ends Oct. 24, 2028. Botic, who has served as director of the PCAOB's Division of Registration and Inspections since 2018, joined the PCAOB in 2003, and will be replacing board member Duane Desparte.

On Sept. 28, 2023, the PCAOB [announced](#) that Christine Gunia will serve as acting director of the Division of Registration and Inspections when Botic is sworn in as a PCAOB board member. Gunia has been with the PCAOB since 2004 and since 2018 has served as Division of Registration and Inspections deputy director for the global network firm inspection program.

On March 22, 2023, the PCAOB [announced](#) the appointment of Robert Rice as director of the Division of Enforcement and Investigations, effective March 31, 2023. He replaces acting Director Mark Adler, who retired. Rice has more than 30 years of experience in white-collar litigation and investigations, and he most recently served as special counsel to the U.S. attorney in New Jersey.

## **Inspections and enforcement**

### **2024 inspection priorities**

On Dec. 20, 2023, the PCAOB [released](#) a report, "[Spotlight: Staff Priorities for 2024 Inspections and Interactions With Audit Committees](#)," that details 2024 inspection focus considerations, key risks and considerations for auditors, technology-related considerations, and questions for audit committees to consider.

According to the report, in 2024, the PCAOB will continue to put emphasis on inspecting audits of public companies in industries and sectors with specialized accounting and those that might be negatively affected by uncertainties and volatility in the economic and geopolitical environment. Additionally, the PCAOB will concentrate on audits of companies engaged in merger and acquisition activities or business combinations, audits of audit broker-dealers, and nontraditional audit areas. The inspections will consider overall business risks including continuing high interest rates, tightening of credit availability, and inflationary challenges; disruptions in the supply chain and rising costs; business models affected by rapidly changing technology; geopolitical conflicts; and financial statements with a higher inherent risk of fraud, estimates involving complex models or processes, and presentation and disclosures that might be affected by complexities in the entity's activities.

To enhance communication, the report suggests questions for audit committee members to consider among themselves or in discussions with their independent auditors. These questions cover such topics as auditor understanding of the business, fraud, going concern, other auditors, CAMs, and the use of technology. Audit committees can use this report as a reference point when engaging with their auditors.

### **2023 inspections report**

On April 17, 2023, the PCAOB issued "[Spotlight: Staff Priorities for 2023 Inspections.](#)"

The PCAOB's 2023 inspection plan primarily reviews 2022 fiscal year-end audits. Some audits are selected randomly, while some are chosen based on risk. Inspections will focus on audit engagements with risks related to digital assets, first-year audits, multilocation audits, and significant or unusual events or transactions. Inspection priorities also include:

- Risk of fraud
- Auditing and accounting risks for certain financial statement focus areas
- Risk assessment and internal controls
- Use of the work of other auditors
- Quality control (including independence)
- Critical audit matters
- Cybersecurity
- Use of data and technology

The inspection priorities include specific considerations related to broker-dealers and financial services entities, as well as public companies engaging in M&A activities. For financial services entities, emphasis will be on audit areas that are particularly sensitive to risks related to interest rates, inflation, and uncertainty and volatility in the digital assets markets. In addition, inspectors will expand the number of audits they review for certain annually reviewed firms.

### **Target team's 2022 inspections observations**

The PCAOB on Dec. 21, 2023, published "[Spotlight: Observations From the Target Team's 2022 Inspections.](#)" which provides an overview of the target team's 2022 inspection work including observations, good practices, and key insights. In 2022, the team performed in-depth reviews across audit firms focusing on inspecting audits of public companies related to three areas: first post-IPO audit engagements, including private companies transitioning to public companies through traditional IPOs as well as private operating companies undertaking business combinations with SPACs; audit firms' use of shared service centers as part of the audit; and auditors' consideration of climate-related matters that are potentially material to a public company's financial statements.

### **Preview of 2022 inspection observations**

The PCAOB on July 25, 2023, [released](#) the report "[Staff Update and Preview of 2022 Inspection Observations.](#)" which provides aggregate observations from the PCAOB's inspections of public company audits in 2022. The report shows a year-over-year increase in the number of audits with deficiencies and highlights common deficiencies, observations related to quality control systems, trends in areas with recurring deficiencies, and good practices. According to the report, PCAOB staff expects approximately 40% of the audits reviewed will have at least one deficiency to include in Part I.A of the individual audit firm's inspection report; this is up from 34% in 2021.

The report also includes questions audit committees should consider in discussions with independent auditors to address PCAOB inspection findings. The questions focus primarily on whether the audit engagement has been inspected, whether the engagement partner has been inspected, inspection results, and how the audit firm is addressing inspection findings.

#### **Enhancements to inspection reports**

The PCAOB on May 2, 2023, [announced](#) enhancements to its inspection reports, which will be included effective immediately. The enhancements include a new section on auditor independence, more information related to fraud procedures and the identification and assessment of the risks of material misstatements, more commentary, and new graphs. These changes are designed to increase transparency and to provide more information that is relevant, reliable, and useful for investors and stakeholders.

#### **Inspection observations on engagement quality reviews**

The PCAOB on Oct. 12, 2023, [released](#) a new staff report, "Inspection Observations Related to Engagement Quality Reviews." This report focuses on the PCAOB-mandated engagement quality reviews (EQRs) process and says that 42% of firms inspected by the PCAOB in 2022 had a quality control criticism related to EQRs.

In addition to covering audit deficiency trends related to EQRs and good practices and reminders for auditors, the staff report provides key questions related to EQRs that audit committees might want to discuss as they engage with external auditors. These example questions focus on policies and procedures, reviewer experience, and significant judgments discussed.

#### **Annual broker-dealer inspection report**

On Aug. 10, 2023, the PCAOB released its "[Annual Report on the Interim Inspection Program Related to Audits of Brokers and Dealers](#)," which includes observations from inspections during 2022, guidance about and examples of effective procedures, and information about the inspection approach. According to the report, the percentage of firms with audit and attestation engagement deficiencies increased to 90%, up from the 78% identified in 2021.

The PCAOB also notes that this report should help broker-dealer owners and audit committees or equivalents as they oversee the work of their auditors and engage on financial reporting. With the report, the PCAOB released "[Supplementary Information Related to Audits of Brokers and Dealers](#)," which provides comparative data about selected firms and engagements and the results of PCAOB inspections over multiyear periods.

#### **Staff report on auditor risks related to crypto assets**

The PCAOB on June 14, 2023, released a new staff spotlight [report](#), "Inspection Observations Related to Public Company Audits Involving Crypto Assets," based on observations gathered during inspections from the past two years. The report says, "the use of crypto assets presents unique audit risks to public companies and broker-dealers and requires an appropriate risk assessment and audit response by audit firms."

The PCAOB identified common audit deficiencies related to auditor's procedures over crypto assets for the following areas:

- Fraud and significant unusual transactions
- Ownership of crypto assets
- Relevance and reliability of information used as audit evidence
- Revenue recognition in crypto asset transfer
- Arrangements with mining pool operators

The report also identifies good practices, such as use of consultations, subject-matter specialists, and technology-based tools, that have been implemented by some audit firms. Furthermore, the report details reminders for auditors regarding client acceptance and retention evaluation, IT infrastructure, consideration of fraud, related parties, evaluation of the presentation of the financial statements, and critical audit matters.

### Online tools to compare inspection report data

On July 19, 2023, the PCAOB [announced](#) six new search filters that users can apply to PCAOB inspection reports, giving investors, audit committee members, and other stakeholders better access to compare and understand inspection report data. The new filters are inspection type, total issuer audit clients, Part I.A deficiency rate, specific global network, inspection year, and audits reviewed.

## Meetings of advisory groups

### Investor Advisory Group meetings

The PCAOB Investment Advisory Group (IAG) [met](#) on March 9, 2023. Discussion topics included fraud, opportunities and challenges of auditing digital assets, and the format and content of inspection reports and data.

The IAG met on June 7, 2023, to [discuss](#) various topics including a standards-setting update, critical audit matters, fraud, and recommendations from the inspections and data transparency subcommittee. A recording of the meeting can be viewed at the PCAOB [website](#).

Finally, the IAG met on Oct. 10, 2023. Topics covered included a standard-setting update, an overview of PCAOB enforcement and investigations, a presentation on firm and engagement performance metrics, and recommendations on critical audit matters. A recording of the meeting is available on the PCAOB Investor Advisory Group Meeting [event page](#).

### Standards and Emerging Issues Advisory Group meetings

The Standards and Emerging Issues Advisory Group (SEIAG) met on March 30, 2023, and discussed comments received on the proposals on a firm's system of quality control and the auditor's use of confirmation. Additionally, the SEIAG discussed going concern, substantive analytical procedures, and the post-implementation review of critical audit matters and estimates and specialists.

The SEIAG met on June 29, 2023, and discussed, among other topics, post-implementation review of supervision of other auditors; emerging issues in auditing including the talent drain, the role of accounting and auditing in environmental issues, and the role of AI in auditing and financial reporting; and interim reviews. The recorded meeting, agenda, and presentation materials can be viewed on the PCAOB's [event page](#) for the meeting.

The SEIAG met on Nov. 2, 2023, to provide an update on standard-setting and rulemaking projects, to discuss emerging issues in auditing focusing on fraud detection, and to consider the uses of service organizations, among other topics. A recording of the meeting is available on the [meeting event page](#).

## Other matters of interest

### New audit committee resources

On June 21, 2023, the PCAOB issued a new [staff document](#), "Spotlight: Audit Committee Resource."

Audit committees play an important role in financial reporting through their oversight of the processes of public companies and the external audit. As part of their responsibilities, it is important that audit committee members communicate with auditors. This document suggests questions audit committee members might consider discussing among themselves or with their independent auditor in the following areas:

- Risk of fraud
- Risk assessment and internal controls
- Auditing and accounting risks
- Digital assets
- Merger and acquisition activities
- Use of the work of other auditors
- Talent and its impact on audit quality
- Independence

- Critical audit matters
- Cybersecurity

On Sept. 28, 2023, the PCAOB [released “2022 Conversations With Audit Committee Chairs,”](#) a new staff spotlight publication summarizing the results of conversations with 211 audit committee chairs related to the audits of their 2021 financial statements. It presents high-level observations and key takeaways related to staffing, COVID-19, communications, critical audit matters, and information from outside of the financial statements.

#### **Professional competence and skepticism**

On April 25, 2023, the PCAOB issued “[Spotlight: Professional Competence and Skepticism Are Essential to Quality Audits.](#)” The PCAOB staff reminds auditors to critically assess the audit firm’s capabilities, obtain a proper understanding of the company they are auditing, and perform their work with due professional care and skepticism, in several specific phases of an audit engagement:

- Client acceptance or continuance
- Audit planning
- Identifying and assessing risks of material misstatement
- Performing the work with due professional care
- Evaluating the results of the audit

The publication says, “the application of professional skepticism – an attitude that includes a questioning mind – is critical to planning and performing high quality audits and ensuring investors are protected. ... [A]uditors should have the necessary industry expertise and knowledge of the companies they audit” in order to apply professional skepticism effectively.

## **From the CAQ**

#### **Audit committee transparency report**

On Nov. 30, 2023, the CAQ and Ideagen Audit Analytics issued the “[2023 Audit Committee Transparency Barometer,](#)” which tracks S&P Composite 1500 proxy disclosures to evaluate transparency regarding audit committee oversight of the external auditor and other important financial reporting topics. The data gathered for this 10th annual report provides a macro-level view of public company transparency over the past decade.

The findings reveal a continued trend of increasing disclosures in key areas of traditional financial oversight and in evolving areas such as cybersecurity and ESG. The report identifies several areas for audit committees to improve disclosures specifically related to discussions of audit fees, how audit committees consider auditor tenure, and how audit committees are involved in engagement partner selection. The publication provides highlights of the results, a summary of disclosure rates, examples of effective disclosures, a sample leading practice audit committee matters and report, and questions to consider when preparing audit committee disclosures.

#### **Fall 2023 audit partner survey**

The CAQ on Dec. 6, 2023, released the “[Fall 2023 Audit Partner Pulse Survey,](#)” reporting results of its poll of audit partners at the country’s leading public company accounting firms about their perspectives on the current business environment in the United States.

Topics include economic outlook, negative effects of rulemaking, climate disclosures, expanding disclosures, noncompliance with laws and regulations (NOCLAR) proposed disclosures, cybersecurity, human capital and the accounting pipeline, and AI.

The survey revealed that compared to fall 2022, pessimism about the economy decreased by 30 percentage points and that approximately 75% of audit partners believe regulations are having a negative effect on businesses, mostly due to increased regulatory and legal risks and compliance costs. The number of companies seeing cybersecurity as a large economic risk increased 20 percentage

points since last year, while approximately 59% of public companies are using technology such as AI and machine learning to manage risk, fraud, and cybersecurity threats.

The fall survey updates results of the [“Spring 2023 Audit Partner Pulse Survey.”](#)

#### **Role of auditors in climate information**

On March 9, 2023, the CAQ issued [“The Role of the Auditor in Climate-Related Information.”](#) The publication helps stakeholders understand what types of climate-related information companies disclose today and how auditors might be involved.

#### **SEC non-GAAP financial measures guidance**

On Jan. 25, 2023, the CAQ issued [“CAQ Alert 2023-01: Updates to SEC Non-GAAP Financial Measures Compliance and Disclosure Interpretations \(C&DIs\)”](#) to provide an overview of the updates posted by the SEC on Dec. 13, 2022, and a comparison between the old C&DIs and the updated ones. The updates to the C&DIs encompass the SEC staff’s views that have been communicated in comment letters over the past several years.

## Appendix: Summary of SEC rulemaking activity

### Final rules

Description	Key dates
Cybersecurity incident, risk management, and governance disclosures	<p>Issued: July 26, 2023 Effective: Sept. 5, 2023</p> <p>Cybersecurity incident disclosures are required beginning Dec. 18, 2023 (or June 15, 2024, for SRCs).</p> <p>Cybersecurity risk management, strategy, and governance disclosures are required beginning with annual reports for fiscal years ending on or after Dec. 15, 2023.</p>
Share repurchase disclosures	<p>Issued: May 3, 2023</p> <p>Effective date was postponed pending further SEC action, per order issued on Nov. 22, 2023. The rule was subsequently vacated by the U.S. Court of Appeals for the 5th Circuit on Dec. 19, 2023.</p>
<i>Privacy Act</i> amendments	<p>Issued: Sept. 20, 2023 Effective: Oct. 26, 2023</p>
Amendment on clearing U.S. Treasury securities	<p>Issued: Dec. 13, 2023</p> <p>Changes to separation of house and customer margin, protection of customer assets, and access to clearance and settlement practices are required beginning March 31, 2025.</p> <p>Requirements to clear eligible secondary market transactions begin Dec. 31, 2025 (for cash transactions), and June 30, 2026 (for repurchase transactions).</p>
Amendments on beneficial ownership reporting	<p>Issued: Oct. 10, 2023 Effective: Feb. 5, 2024</p> <p>Compliance with amended Schedule 13G filing deadlines is required beginning Sept. 30, 2024.</p> <p>Compliance with structured data requirements is required beginning Dec. 18, 2024.</p>
Extension of EDGAR filing deadline for Form 144	<p>Issued: Feb. 21, 2023 Effective: March 20, 2023</p>



Clearing agency governance and conflicts of interest	<p>Issued: Nov. 16, 2023 Effective: Feb. 5, 2024</p> <p>Board and board committee independence requirements begin Dec. 5, 2025. All other requirements begin Dec. 5, 2024.</p>
Security-based swap execution facilities	<p>Issued: Nov. 2, 2023 Effective: Feb. 13, 2024</p> <p>Qualifying entities must file application to register with SEC on Form SBSEF by 180 days after effective date. Application must be complete by 240 days after effective date.</p>
Investment fund names	<p>Issued: Sept. 20, 2023 Effective: Dec. 11, 2023</p>
New Form SHO on short positions and activity reporting	<p>Issued: Oct. 13, 2023 Effective: Jan. 2, 2024</p> <p>Final rule and Form SHO requirement for certain institution investors begins Jan. 2, 2025. Public aggregated reporting to begin three months after.</p>
Securities loans reporting	<p>Issued: Oct. 13, 2023 Effective: Jan. 2, 2024</p> <p>FINRA must create implementation rules to come into effect by Jan. 2, 2025. Covered persons must begin reporting required information by Jan. 2, 2026.</p>
Private fund adviser requirements	<p>Issued: Aug. 23, 2023 Effective: Nov. 13, 2023</p> <p>Audit rule and quarterly statement rule have an 18-month transition period for all private fund advisers.</p> <p>Adviser-led secondaries rule, preferential treatment rule, and restricted activities rule have a 12-month transition period for larger private fund advisers (\$1.5 billion or more in private fund assets under management) or an 18-month transition period for smaller private fund advisers.</p>

Money market funds	Issued: July 12, 2023 Effective: Oct. 2, 2023  Amendments to Forms N-1A and N-CSR are effective Oct. 2, 2023. Amendments to Forms N-CR, N-MFP, and PF are effective June 11, 2024.
Security-based swaps fraud prevention	Issued: June 7, 2023 Effective: Aug. 29, 2023
Private fund reporting	Issued: May 3, 2023 Effective: June 11, 2024  Current reporting amendments are effective beginning Dec. 11, 2023. Remaining amendments are effective June 11, 2024.
Exchange exemptions	Issued: Aug. 23, 2023 Effective: Nov. 6, 2023  Compliance is required by Sept. 6, 2024.
Amendments to remove credit rating references from Regulation M	Issued: June 7, 2023 Effective: Aug. 21, 2023
Changes to shorten securities settlement cycle	Issued: Feb. 15, 2023 Effective: May 5, 2023  Compliance with final rule changes is required by May 28, 2024.
Conflicts of interest in securitization transactions	Issued: Nov. 27, 2023 Effective: Feb. 5, 2024  Compliance is required for any ABS closing on or after June 9, 2025.

## Proposed rules

Description	Key dates
Registration for index-linked annuities	Issued: Sept. 29, 2023 Comments closed: Nov. 28, 2023
Broker-dealer predictive analytics and conflicts of interest	Issued: July 26, 2023 Comments closed: Oct. 10, 2023
Internet-based adviser registration	Issued: July 26, 2023 Comments closed: Oct. 2, 2023
Computation of broker-dealer reserve requirements	Issued: July 12, 2023 Comments closed: Sept. 11, 2023
Covered clearing agency risk management	Issued: May 17, 2023 Comments closed: July 17, 2023
Electronic filing requirements	Issued: March 22, 2023 Comments closed: May 22, 2023
Broker-dealer cybersecurity risk management	Issued: March 15, 2023 Comments closed: June 5, 2023
Consumer financial information privacy	Issued: March 15, 2023 Comments closed: June 5, 2023
Regulation Systems Compliance and Integrity	Issued: March 15, 2023

	Comments closed: June 13, 2023
Customer asset safeguarding for registered investment advisers	Issued: Feb. 15, 2023 Comments closed: Oct. 30, 2023
Ban on volume-based exchange transaction pricing for national market system stocks	Issued: Oct. 18, 2023 Comments closed: Jan. 5, 2024

## Self-regulatory organizations

Description	Key dates
New national market data plan	Issued: Sept. 1, 2023
Funding amendment to CAT NMS plan	Issued: Sept. 6, 2023
Erroneous compensation listing standard amendments	Issued: June 9, 2023
Approval of NYSE proposed listing standard on certain securities sales requiring shareholder approval	Issued: Dec. 26, 2023 Comments closed: Jan. 23, 2024

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