

2023 ICI SECURITIES LAW DEVELOPMENTS CONFERENCE

**Practical Perspectives on Managing the Regulatory
Environment Under SEC Chairman Gensler**

Lea Anne Copenhefer, Laura Flores, Dave Freese,
Amy McDonald, John McGuire, and Jack O'Brien

Inside the Boardroom

Inside the Boardroom

- Complexity, Risk
- Expectations
- Resources, Capacity
- Return to Office
- Planning and Timelines
- Roles with new “Program Rules”

Dates & Data

Dates & Data

- Chairman Gary Gensler
 - Nominated February 3, 2021
 - Confirmed by Senate April 14, 2021
 - Sworn into office April 17, 2021
 - Completed end of Chairman Clayton's term (June 5, 2021)
 - Midpoint of term: November 2023
 - End of term: June 5, 2026
- Through August 31, 2023
 - 49 Proposed Rules (compare to 28 under Chairman Clayton in first two years)
 - 22 Final Rules (compare to 25 under Chairman Clayton in first two years)

Dates & Data

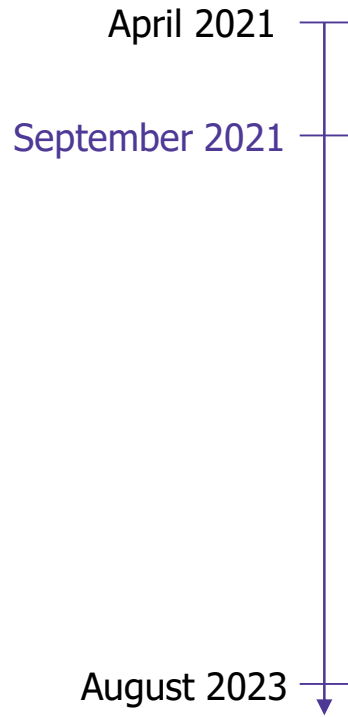
First 28 months following change in Presidential administration:

SEC Chair	President	Period	Number of Final Rules	Number of Proposed Rules
Gensler	Biden	2021-2023	22	49
Clayton	Trump	2017-2019	25	28
Schapiro	Obama	2009-2011	28	65
Pitt	Bush	2001-2003	34	48

Source: Bloomberg Law

Timeline of 1940 Act (and other) Proposals

Timeline of 1940 Act (and other) Proposals



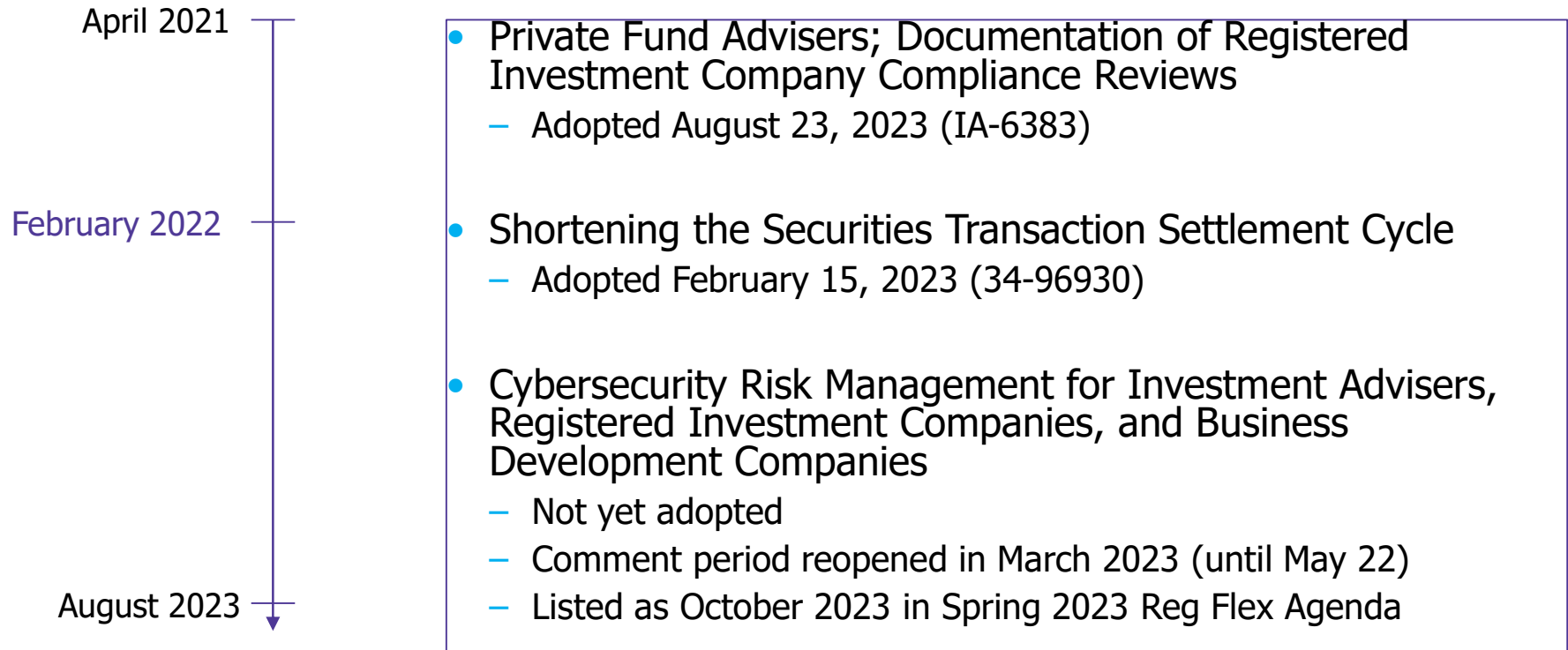
- Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers
 - Adopted November 2, 2022 (IC-34745)
- *Proxy Voting Advice also proposed on November 17, 2021, and adopted July 13, 2022 (34-95266)*

Timeline of 1940 Act (and other) Proposals

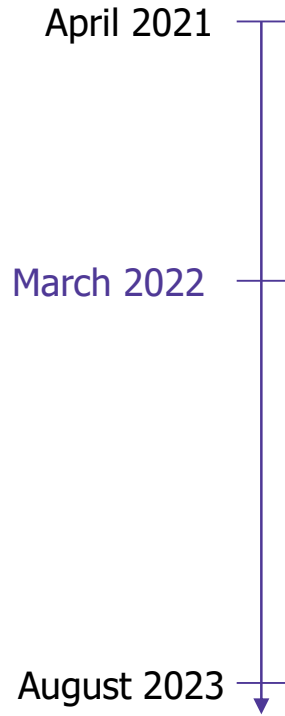


- Money Market Fund Reforms
 - Adopted July 12, 2023 (IC-34959)
- Share Repurchase Disclosure Modernization
 - Adopted May 3, 2023 (IC-34906)

Timeline of 1940 Act (and other) Proposals



Timeline of 1940 Act (and other) Proposals



- Cybersecurity Risk Management, Strategy, Governance and Incident Disclosure
 - Not yet adopted
- Further Definition of “As a Part of a Regular Business” in the Definition of Dealer and Government Securities Dealer
 - Not yet adopted
- Special Purpose Acquisition Companies, Shell Companies, and Projections
 - Not yet adopted

Timeline of 1940 Act (and other) Proposals



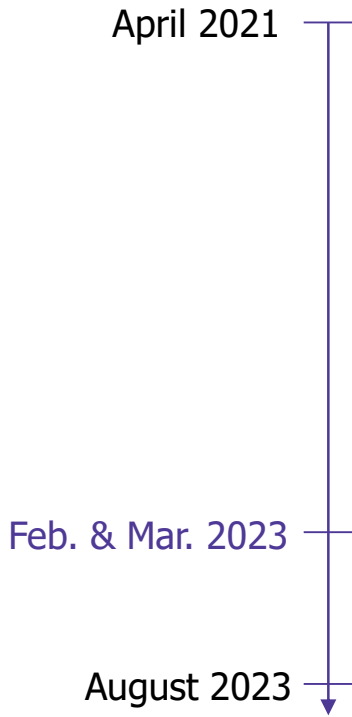
- Investment Company Names
 - Adopted September 20, 2023 (IC-35000)
- Environmental, Social and Governance Disclosures for Investment Advisers and Investment Companies
 - Not yet adopted
 - Listed as October 2023 in Spring 2023 Reg Flex Agenda

Timeline of 1940 Act (and other) Proposals



- Outsourcing by Investment Advisers
 - Not yet adopted
- Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting
 - Not yet adopted
 - Listed as October 2023 in Spring 2023 Reg Flex Agenda

Timeline of 1940 Act (and other) Proposals



- Safeguarding Advisory Client Assets
 - Not yet adopted
 - Was listed as October 2023 in Spring 2023 Reg Flex Agenda
 - Comment period reopened on August 23, 2023 (until Oct. 30)
- Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information
 - Not yet adopted

Timeline of 1940 Act (and other) Proposals

April 2021

- Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers
 - Not yet adopted

July 2023

August 2023

Still to come... (?)

- Fund Fee Disclosure and Reform
 - Listed as April 2024 in Spring 2023 Reg Flex Agenda
 - Division of Investment Management considering proposed changes to regulatory requirements related to registered investment companies' fees and fee disclosure

- Exchange-Traded Products
 - Listed as April 2024 in Spring 2023 Reg Flex Agenda
 - Division of Investment Management considering appropriate next steps with respect to issues for which the SEC previously sought public input, including risks posed by ETPs with certain characteristics

Managing a Changing Regulatory Landscape

Managing a Changing Regulatory Landscape



Interested Parties

- Keeping the Board looped in – potential alignment with educational sessions
- Trading counterparties
- Vendor solutions
- Investor and prospects



Business Impact

- Compliance cost escalation in a cost-sensitive environment
- Product realignments or consolidation
- ESG initiatives



Resource Assessment

- Internal vs. External capabilities
- Current system capabilities
- Vendor solutions
- Potential constraints on available talent
- Budget constraints



Planning for Compliance

- Establish teams, projects and captains
- Work backwards from compliance dates
- Calendar meetings and goals
- Build in time for beta testing
- Assume no grace periods

Lea Anne Copenhefer



Lea Anne Copenhefer

Boston

+1.617.951.8515

leanne.copenhefer@morganlewis.com

Lea Anne's practice focuses primarily on the representation of registered funds and their advisers or independent directors. Clients include advisers or independent directors of some of the largest registered fund complexes.

Lea Anne also performs special projects for mutual funds and fund directors, including complex restructurings, acquisitions, regulatory reviews and investigations, and litigation. Lea Anne has been responsible for significant portions of large-scale compliance program reviews.

Laura E. Flores



Laura Flores

Washington, D.C.

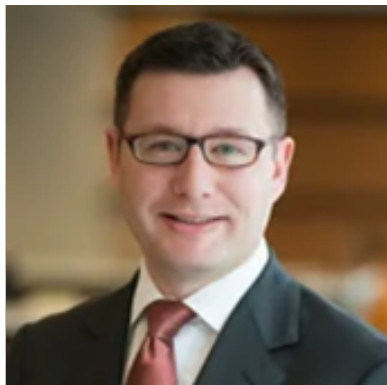
+1.202.373.6101

laura.flores@morganlewis.com

Laura's practice focuses on the regulation of investment companies and investment advisers. Laura regularly represents exchange-traded funds (ETFs), mutual funds, and variable insurance-dedicated products, as well as their sponsors and boards of directors, and investment advisers. She counsels both well-established clients and clients that are new to the industry on a variety of regulatory, transactional, compliance and operational issues, including the development of new financial products and services, federal and state registration issues, the preparation and implementation of compliance programs, business combinations involving investment companies and investment advisers, interpretive and "no-action" letter requests, requests for SEC exemptive relief, and regulatory examinations.

[Read Laura's extended profile >>](#)

David W. Freese



Dave Freese

Philadelphia

+1.215.963.5862

david.freese@morganlewis.com

The investment management world is complex and highly regulated, and **Dave** works closely with mutual funds, exchange-traded funds (ETFs), closed-end funds, private funds, and their investment advisers to navigate the shifting terrain. He brings particular experience in launching new fund complexes, from identifying legal issues that arise from proposed fund strategies, through initial US Securities and Exchange Commission (SEC) registration, organizational board of directors meetings, and fund seedings.

[Read Dave's extended profile >>](#)

Amy C. McDonald



Amy McDonald

Boston

+1.617.341.7701

amy.mcdonald@morganlewis.com

Amy advises registered funds, including mutual funds and exchange-traded funds (ETFs), and their investment advisers in a number of areas, such as US Securities and Exchange Commission (SEC) filings, regulatory and compliance issues, corporate matters, and Board governance. Amy also helps clients with advocacy efforts surrounding SEC rulemakings and advising on subsequent implementation and compliance questions. Amy is an active member of the firm's ESG & Sustainability Advisory Working Group, and frequently advises clients on ESG investing, disclosure, and compliance questions.

[Read Amy's extended profile >>](#)

W. John McGuire



John McGuire

Washington, D.C.

+1.202.373.6799

john.mcguire@morganlewis.com

John counsels clients on investment company and investment adviser regulatory issues and related issues affecting broker-dealers and transfer agents. He also assists clients with forming and acquiring investment companies and investment advisers. John routinely handles matters involving the establishment, representation, and counseling of exchange traded investment companies (ETFs), their advisers, and listing markets.

[Read John's extended profile >>](#)

John J. “Jack” O’Brien



Jack O’Brien

Philadelphia

+1.215.963.4969

john.obrien@morganlewis.com

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

THANK YOU

© 2023 Morgan Lewis

Morgan, Lewis & Bockius LLP, a Pennsylvania limited liability partnership
Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.
Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.
Our Beijing, Shanghai, and Shenzhen and offices operate as representative offices of Morgan, Lewis & Bockius LLP.
In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship.
Prior results do not guarantee similar outcomes. Attorney Advertising.