

SEC Investment Management, Rulemaking and Enforcement Staff Outline Road Ahead

This post summarizes significant statements made by the staff of the Securities and Exchange Commission (SEC) at the December 7, 2017, ICI Securities Law Developments Conference. In her keynote address to the Conference, the Director of the SEC's Division of Investment Management (the "Division"), Dalia Blass, revealed that the Division plans to take a fresh look at the "investor experience" and what the SEC "asks of fund boards."

Disclosure Review

Noting that the average investor is likely to receive information regarding existing and potential investments from funds and multiple intermediaries, Blass explained that the Division planned to investigate whether the status quo presentation of disclosure to investors was clear and readily digestible enough to allow for truly informed investment decisions. Blass cited the Division's summary prospectus and plain English rules as past projects aimed at optimizing the investor experience. She said that the Division would seek to identify "defensive" and outdated disclosure in fund registration materials, and would also consider how to best equip younger generations investing almost entirely online with quick, meaningful and potentially interactive disclosure. Blass invited input from the industry on effective and ineffective approaches to communicating across generations within the investing public.

Fund Board Review

Highlighting the key role that fund boards play in protecting shareholder interests, Blass reported that the Division planned a policy-based board outreach initiative that would question whether the existing hodgepodge regulatory framework of trustee oversight responsibilities -- set out in rules, no-action letters, exemptive orders and SEC guidance -- continues to make sense. Blass said the Division planned to solicit industry input on how funds might benefit from a potential recalibration of the focus of board oversight and the flow of information to trustees, among other matters. Blass asked that in providing comments to the Division, industry participants include the perspective of traders, portfolio managers and other appropriate personnel, and offer constructive solutions to addressing ineffective, inefficient or outdated practices.

Valuation and Other Matters

Blass also mentioned that the Division was working, together with the SEC's Office of the Chief Accountant, to update staff guidance on the valuation of fund portfolio holdings, and would also focus on how innovations like blockchain technology and crypto currencies fit within the regulatory scheme. And while these goals were not reflected in the fall update to the [SEC's Regulatory Agenda](#), which was published on December 15, 2017, Diane Blizzard, Associate Director of the Division's Rulemaking Office, discussed other topics listed among the "short-term" rules that the SEC expects to take action on in the next 12 months.

- Blizzard emphasized that ETF rulemaking stood to free up the significant staff resources devoted to processing ETF applications, which aligned with Commission Kara Stein's expression of support for ETF rulemaking around "plain vanilla" ETFs intended for retail investors.
- Speaking to the proposed disclosure changes for what she characterized as increasingly complex variable annuity products, Blizzard said the staff sought to use technology to provide layered disclosure to investors that was both meaningful and accessible.
- Blizzard acknowledged the thousands of comments expressing security concerns around looming effective dates of the investment company reporting modernization rule. She noted that SEC Chairman, Jay Clayton, had emphasized that the SEC would not accept data from funds unless it was confident it could do so securely.
- Blizzard noted that the previously proposed rules on adviser business continuity and transition plans, which were dropped from the Regulatory Agenda, had been a focus of the prior SEC Chair, Mary Jo White.
- Blizzard also indicated that the Division was actively working with the Office of the Chief Accountant on rulemaking to update the so-called auditor independence "loan rule" that has impacted fund audit committees and their accountants in recent years.

Also discussed at length at the ICI conference, and included on the SEC's short-term Regulatory Agenda, was the DOL fiduciary rule and a potential rule proposal from the SEC on standards of conduct for personalized investment advice.

OCIE Examination Priorities

Jane Jarcho, Deputy Director of the National Exam Program of the SEC's Office of Compliance Inspections and Examinations ("OCIE"), spoke at the ICI conference about enforcement priorities under Chairman Clayton. Jarcho said that in the coming year OCIE would:

- "follow the money" and keep robo-advisers as a top priority;
- pay close attention to multi-branch advisers, less liquid products, electronic messaging platforms and ETFs in danger of being closed to investors;
- continue its investigation of adviser share class recommendations, focusing on funds and broker/dealer firms;
- assess the suitability of products being sold to different types of retirement plans; and
- monitor firms and representatives asked to leave intermediary distribution platforms.

Jarcho also indicated that OCIE's money market exams were largely complete and not expected to be a 2018 priority, while cybersecurity, particularly issues around acquired firms and merging systems, was likely to be an OCIE priority in the coming year and beyond.

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