White Collar Defense & Investigations Update

September 2025

SEC Issues Updated Regulatory Flexibility Agenda

On September 4 the Securities and Exchange Commission (SEC) issued its updated Regulatory Flexibility Agenda ("Agenda"), its first new Agenda in the second Trump administration. SEC Chair Paul S. Atkins called it "a new day" at the agency and said that the priorities listed in the Agenda signify a "renewed focus on supporting innovation, capital formation, market efficiency, and investor protection."

The Agenda's list of rulemakings, each at various stages of the process, offers the first real insight into where regulated entities and individuals should focus compliance efforts, as well as the SEC's likely investigative and enforcement actions in the coming years.

Key Rulemaking Initiatives

The Agenda includes nearly two dozen rulemakings, covering a range of topics from crypto assets to capital formation modernization, many of which are characterized as "deregulatory," suggesting turnabout from the agency's priorities in the last few years. Notable proposals and future initiatives include:

Cryptocurrency

- Efforts to clarify and update the regulatory framework for cryptocurrency, including potential exemptions and safe harbors applicable to these assets.
- Amendments to Exchange Act rules to address the trading of crypto assets on alternative trading systems and national securities exchanges.
- Amendments to modernize and account for crypto assets, including regulations for custody of advisory client and fund assets; broker-dealer net capital, customer protection, and recordkeeping rules; and regulations applicable to transfer agents and their use of distributed ledger technology.

Reporting and Disclosure

- "Rationaliz[ing] disclosure practices" to streamline existing requirements.
- Amending Form N-PORT to address portfolio information "disclosure burdens" on registered investment companies.
- Updating the definition of "small entity" under the Regulatory Flexibility Act, including asset-based thresholds for investment advisers and companies.

Capital Formation and Market Access

- Amending Rule 144 to increase the availability of the safe harbor for public resale of restricted or control securities.
- Revising the shelf registration process to reduce compliance burdens.
- Expanding accommodations and simplifying filer status categorizations for emerging growth companies.
- Updating the Exempt Offering Pathways to simplify capital-raising for private companies.
- Obtaining public comment on possible regulatory changes to facilitate registered offerings of asset-backed securities and improve securitization markets.

Market Oversight and Investor Protection

- Establishing standards to promote interoperability of financial regulatory data across federal agencies as required by the Financial Data Transparency Act.
- Possible amendments regarding the scope of and exceptions to the term "dealer."
- Possible amendments to Rules 611, 17a-7, 14a-8, and 15c2-11 to reduce compliance burdens, further market efficiency and expand existing exemptions.

- Issuing a final rule requiring investment advisers, as "financial institutions" under the Bank Secrecy Act, to implement reasonable procedures to verify customer identities.

Significant Changes

The Agenda signals a move toward modernization and deregulation in most areas, reducing existing disclosure and compliance burdens while looking to implement a market-driven crypto oversight regime. This reflects the administration's broader *de*regulatory focus as well as its support for establishing a robust, but regulated, digital asset marketplace.

The most significant implication is the SEC's oversight of crypto markets. Implementing regulatory changes to create market structure and bring clarity to how market participants sell, trade, hold, record, and report crypto asset activities will effect a sea change in the industry. This will have consequences both for the value of these assets as markets react to new rules and for the institutions dealing in crypto assets as they assess new compliance requirements and weigh the costs and benefits of such activities. Brokers, dealers, traders, holders, and anyone else dealing in crypto should be prepared to alter actions to comply with potential SEC oversight, as enforcement based on the new rules will surely proceed apace.

Issuers and other registrants will also feel the effects of the SEC's deregulation, simplified compliance, and more accessible capital formation proposals. Many of the SEC's proposed rules look to remove requirements or exempt activities from regulation, overall reducing compliance burdens for registrants. In the same vein, the SEC has abandoned items like requirements for corporate board diversity, disclosure of ESG investment practices, and certain disclosures relating to human capital management. Therefore, issuers and regulated entities should have a decreased burden in many areas that had been a sharp focus of SEC examination and enforcement priorities in years past.

This does not mean that compliance programs should be dismantled. Rather, they should be augmented to address new market structures, new or different reporting and disclosure obligations, and expanded exemptions, and existing programs should be refreshed to ensure they continue to meet the rules and regulations that are likely unaffected by this new Agenda.

Deregulation and simplification of SEC regulations is also no answer to shareholders, account holders, self-regulatory organizations, or state regulators. They may still attempt to assert civil claims or take regulatory action, seeking redress where the SEC's rulemaking and enforcement efforts offer none. Issuers and registrants should remain vigilant and continue to invest in strong compliance plans to meet the challenges of the day, whether in defense of an SEC investigation or a private lawsuit.

Conclusion

The SEC's Agenda indicates where the agency is likely headed, but it offers no guarantees. The timing and ultimate outcome of these rulemakings remain subject to the SEC's rulemaking process and public input. Counsel can assist in ensuring regulatory compliance while the SEC's rules remain in flux in these key markets and compliance areas.

FOR MORE INFORMATION

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