

CLIENT ALERT

2022 Year in Review: SEC Rules and Proposals and Other Changes Impacting Registered Investment Companies and their Investment Advisers

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2022 saw an increased number of new and amended rules adopted by the Securities and Exchange Commission (the “SEC”), as well as various proposed SEC rules and other changes, that impact registered investment companies (“Registered Funds”) and their investment advisers. In addition, compliance dates of certain previously adopted SEC rules occurred in 2022. Further, the State of Delaware enacted statutory amendments that apply to Delaware statutory trusts that are listed, registered closed-end investment companies and business development companies (“BDCs”). The below table provides a summary of such rules and laws and other notable regulatory initiatives, along with useful hyperlinks to related materials. In addition, though not covered by the below table, Registered Funds and their investment advisers should be aware of certain rules proposed by the SEC in 2022 relating to market structure and market participants, including broker-dealers.

**2022 Year in Review:
SEC Rules and Proposals and Other Changes Impacting Registered Investment Companies
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<u>SEC Rules and Amendments with Compliance Dates in 2022 and Other Notable Items</u>		
Topic/Date	Summary	Hyperlink(s)
<p>Compliance Date: New Rule for Fund of Funds Arrangements</p> <p>January 19, 2022</p>	<p>The SEC adopted new Rule 12d1-4 under the Investment Company Act of 1940 (the “1940 Act”) to permit Registered Funds and BDCs to acquire shares of other Registered Funds and BDCs in excess of the limits of Sections 12(d)(1)(A), (B) and (C) of the 1940 Act, subject to certain conditions.</p> <p>The SEC rescinded Rule 12d1-2 as well as most exemptive orders granting relief from Section 12(d)(1)(A), (B), (C) and (G) of the 1940 Act. The SEC also withdrew staff no-action letters that fall within the scope of Rule 12d1-4.</p> <p>The SEC amended Form N-CEN to require funds to report whether they relied on Rule 12d1-4 or the statutory exception in Section 12(d)(1)(G) of the 1940 Act during the applicable reporting period.</p>	<p>Willkie Client Alert</p> <p>Adopting Release</p> <p>IM Information Update on withdrawn no-action letters</p>
<p>SEC’s Division of Examinations Releases its 2022 Examination Priorities</p> <p>March 30, 2022</p>	<p>The SEC’s Division of Examinations released its 2022 examination priorities, which includes environmental, social and governance (“ESG”) investing; standards of conduct, including Regulation Best Interest, fiduciary duty and Form CRS; information security and operational resiliency; and emerging technologies and crypto-assets.</p> <p>The priorities also include specific examination topics for registered investment advisers and Registered Funds under the Investment Adviser and Investment Company Examination Program.</p>	<p>Willkie Client Alert</p> <p>Examination Priorities</p>
<p>Compliance Date: Derivatives Rule for Registered Funds and BDCs</p> <p>August 19, 2022</p>	<p>The SEC rescinded the 1979 General Statement of Policy (Release 10666) effective August 19, 2022. New Rule 18f-4 under the 1940 Act permits Registered Funds (other than money market funds) and BDCs to enter into derivatives and certain other leveraged transactions notwithstanding the restrictions under Section 18 of the 1940 Act subject to certain conditions, including:</p> <ul style="list-style-type: none"> • implementation of a Derivatives Risk Management Program (the “Program”); and • compliance with an outer limit on fund leverage risk based on value-at-risk (“VaR”). <p>Rule 18f-4 provides an exemption from the Program and VaR test requirements provided that the fund (i) has derivatives exposure limited to 10% of its net assets, excluding certain currency and interest rate hedging transactions; and (ii) adopts and implements written policies and procedures reasonably designed to manage its derivatives risks.</p> <p>Leveraged/inverse funds are generally subject to Rule 18f-4 which effectively limits leveraged or inverse funds’ targeted daily return to</p>	<p>Willkie Client Alert</p> <p>Adopting Release</p>

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	<p>200% of the return (or inverse of the return) of the fund's underlying index, subject to certain exceptions.</p> <p>Rule 18f-4 permits a fund to enter into reverse repurchase agreements and similar financing transactions, as well as "unfunded commitments" to make certain loans or investments, subject to certain conditions. It also permits funds (including money market funds) to invest in securities on a when-issued or forward-settling basis, or with a non-standard settlement cycle, subject to conditions.</p> <p>Rule 18f-4 also provides for new reporting requirements under Forms N-PORT and N-CEN, as well as new recordkeeping requirements.</p>	
<p>Compliance Date: Fair Valuation Rule for Registered Funds and BDCs</p> <p>September 8, 2022</p>	<p>New Rule 2a-5 under the 1940 Act establishes requirements for determining fair value in good faith for purposes of the 1940 Act, including periodically assessing and managing material risks associated with fair value determinations, selecting, applying and testing fair value methodologies, and overseeing and evaluating any pricing services used. Specifically, it permits boards to determine fair value or, subject to board oversight and certain other conditions, to designate the fair valuation determination to a "valuation designee," subject to additional conditions.</p> <p>Rule 2a-5 also provides a definition for when market quotations are "readily available" for purposes of Section 2(a)(41) of the 1940 Act as "only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date, provided that a quotation will not be readily available if it is not reliable." This definition limits securities for which market quotations are readily available to "level 1" securities under the framework established for the purposes of U.S. Generally Accepted Accounting Principles by ASC Topic 820.5. This definition applies to all provisions of the 1940 Act and rules thereunder that use this term, including Rule 17a-7 under the 1940 Act, thereby limiting funds' ability to engage in cross-trades of securities in certain asset classes, particularly many types of fixed income securities.</p>	<p>Willkie Client Alert</p> <p>Adopting Release</p>
<p>Increased Registration Fee for Registration of Securities</p> <p>October 1, 2022</p>	<p>Effective October 1, 2022, a new fee rate of \$110.20 (increased from \$92.70) per million dollars is applicable to the registration of securities under Section 6(b) of the Securities Act of 1933 (the "Securities Act"), the repurchase of securities under Section 13(e) of the Securities Exchange Act of 1934 (the "Exchange Act"), and proxy solicitations and statements in corporate control transactions under Section 14(g) of the Exchange Act.</p>	<p>SEC Issues First Fee Rate Advisory for Fiscal Year 2023</p>

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<p>Compliance Date: Marketing Rule for Investment Advisers November 4, 2022</p>	<p>The SEC updated rules that govern investment adviser marketing, creating a single rule that replaces both the previous advertising and cash solicitation rules (the “Marketing Rule”). The definition of “advertisement” is significantly broadened to include both traditional advertising and compensated testimonials and endorsements. A set of seven principles-based general prohibitions applies to all advertisements.</p> <p>The Marketing Rule does not apply to advertisements concerning Registered Funds or BDCs.</p>	<p>Willkie Client Alert Willkie Client Alert – Compliance Date Adopting Release Examinations Focused on the New Investment Adviser Marketing Rule</p>

<u>SEC Rules and Amendments Adopted in 2022</u>		
Topic/Date	Summary	Hyperlink(s)
<p>Final Rule: Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F July 3, 2023 Compliance Date <i>(6 months after the January 3, 2023 effective date)</i></p>	<p>The SEC adopted rules and form amendments to require the electronic filing or submission of:</p> <ul style="list-style-type: none"> • applications for orders under the Investment Advisers Act of 1940 on EDGAR; • confidential treatment requests for Form 13F filings on EDGAR; and • Form ADV-NR (through the IARD system). <p>The amendments also include certain technical amendments to Form 13F to enhance the information reported on the form.</p>	<p>Adopting Release</p>

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<p>Final Rule: Modernization of Disclosure Framework for Mutual Funds and ETFs and Advertising Rules for Investment Companies</p> <p>July 24, 2024 Compliance Date <i>(18 months after the January 24, 2023 effective date, other than for amendments to Rule 156 under the Securities Act)</i></p> <p>January 24, 2023 Compliance Date <i>(for amendments to Rule 156 under the Securities Act)</i></p>	<p>The SEC adopted rule and form amendments intended to modernize the manner in which open-end funds make information available to investors, including by requiring open-end funds to:</p> <ul style="list-style-type: none"> • provide shareholders “concise and visually engaging” annual and semi-annual reports that highlight information that is particularly important for retail shareholders to monitor their investments on an ongoing basis (i.e., fund expenses, performance, portfolio holdings), with an estimated length of three to four pages; • make available, on Form N-CSR and online, information that investors and financial professionals would use in conducting a more in-depth analysis of their investments (including a fund’s schedule of investments, financial statements, financial highlights, and other items); and • send the new streamlined shareholder reports to shareholders. Open-end funds will no longer be able to rely on Rule 30e-3 under the 1940 Act to provide only notice of such reports. Rule 30e-3 will, however, still be available for closed-end funds and management companies that offer variable annuity contracts. <p>Additionally, the amendments require that investment company advertisements providing fee or expense figures for the investment company include certain standardized fee and expense figures. These amendments will apply to all investment companies that are subject to the SEC’s advertising rules, including mutual funds, exchange-traded funds (“ETFs”), registered closed-end funds, and BDCs. The SEC also adopted amendments to Rule 156 under the Securities Act that address when representations regarding fees or expenses may be deemed misleading.</p>	<p>Willkie Client Alert</p> <p>Adopting Release</p>
<p>Final Rule: Proxy Voting and Say-on-Pay Voting Disclosure Requirements for Registered Funds and Institutional Investment Managers</p> <p>July 1, 2024 Compliance Date</p>	<p>The SEC adopted rule and form amendments intended to enhance the information Registered Funds currently report on Form N-PX about their proxy votes, and which will also require institutional investment managers (i.e., those that exercise investment discretion over securities with an aggregate value of at least \$100 million) to report on Form N-PX how they voted proxies relating to certain executive compensation matters (“say-on-pay”), consistent with the Dodd-Frank Wall Street and Consumer Protection Act. The rule permits joint reporting of say-on-pay votes by managers, or by managers and funds, under certain circumstances to avoid duplicative reporting.</p> <p>Managers and funds will be required to file their first reports on amended Form N-PX by August 31, 2024, with these reports covering the period July 1, 2023 to June 30, 2024.</p>	<p>Willkie Client Alert</p> <p>Adopting Release</p>

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<p>Final Rule: Amendments to Modernize Rule 10b5-1 Insider Trading Plans and Related Disclosures</p> <p>February 27, 2023 Compliance Date <i>(for Rule 10b5-1 amendments)</i></p> <p>April 1, 2023 Compliance Date <i>(for the amendments to Forms 4 and 5 and the new periodic and proxy reporting requirements)</i></p>	<p>The SEC adopted amendments to Rule 10b5-1 under the Exchange Act and new related disclosure requirements. In particular, the amendments:</p> <ul style="list-style-type: none"> • add new conditions to the availability of the affirmative defense under Rule 10b5-1(c)(1), including, for persons other than issuers, cooling-off periods, certification requirements, and restrictions on overlapping and single-trade Rule 10b5-1 plans; • require filers of Forms 4 and 5 to identify transactions made pursuant to a Rule 10b5-1 plan; • require disclosures of gifts of securities of Form 4, rather than Form 5; and • solely with respect to BDCs, among other items, create new disclosure requirements relating to: <ul style="list-style-type: none"> ○ insider trading policies and the adoption, modification and termination of trading arrangements by issuers, officers and directors; and ○ equity and similar types of awards made to executives and directors and company policies regarding grants made close in time to an issuer's disclosure of material nonpublic information. 	<p>Willkie Client Alert</p> <p>Adopting Release</p>
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<u>SEC Rules and Amendments Proposed in 2022</u>		
Topic	Summary	Hyperlink(s)
<p>Proposed Rule: Amendments to Money Market Fund Rules</p>	<p>The SEC proposed amendments in December 2021 to Rule 2a-7 under the 1940 Act (the rule governing money market funds) and other rules thereunder, as well as related reporting and disclosure requirements. If adopted, the proposed amendments would:</p> <ul style="list-style-type: none"> • eliminate the liquidity fee and redemption gate provisions of Rule 2a-7; • require institutional prime and institutional tax-exempt money market funds to implement swing pricing policies and procedures to adjust a fund's current net asset value ("NAV") per share by a swing factor when the fund has net redemptions; • increase the minimum daily liquid asset and weekly liquid asset requirements from 10% and 30% to 25% and 50%, respectively; • expand government and retail money market funds' obligations to confirm that they can fulfill shareholder transactions if they convert to a "floating" share price (e.g., in the event of a negative interest rate environment); • specify how money market funds calculate weighted average maturity and weighted average life; and 	<p>Willkie Client Alert</p> <p>December 15, 2021 Proposing Release</p> <p>* SEC Fall 2022 Agenda (3235-AM80) plans for a final rule in 2023.</p>

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	<ul style="list-style-type: none"> amend certain disclosure requirements on Forms N-CR, N-MFP and N-1A. 	
Proposed Rule: Cybersecurity Rules and Amendments for Registered Investment Advisers, Registered Funds and BDCs	<p>The proposed rules and amendments related to cybersecurity risk management would require:</p> <ul style="list-style-type: none"> investment advisers and funds to adopt and implement written policies and procedures that are reasonably designed to address cybersecurity risks; investment advisers to report significant cybersecurity incidents, including those affecting clients that are funds, to the SEC on proposed Form ADV-C; and investment advisers and funds to provide clients and investors with disclosure related to cybersecurity risks and incidents. 	<p>Willkie Client Alert February 9, 2022 Proposing Release</p> <p>* SEC Fall 2022 Agenda (3235-AN08) plans for a final rule in 2023.</p>
Proposed Rule: Shortening the Standard Securities Settlement Cycle	<p>The SEC proposed rule changes intended to reduce risks in the clearance and settlement of securities, including by shortening the standard settlement cycle for most broker-dealer transactions in securities from two business days after the trade date (T+2) to one business day after the trade date (T+1).</p>	<p>Willkie Client Alert February 9, 2022 Proposing Release</p> <p>* SEC Fall 2022 Agenda (3235-AN02) plans for a final rule in 2023.</p>
Proposed Rule: Amendments to Modernize Beneficial Ownership Reporting	<p>The SEC proposed rule amendments governing beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act. The proposed amendments would:</p> <ul style="list-style-type: none"> revise the current deadlines for Schedule 13D and Schedule 13G filings; amend Rule 13d-3 to deem holders of certain cash-settled derivative securities as beneficial owners of the reference covered class; clarify and affirm the operation of Schedule 13D as applied to two or more persons that form a group under the Exchange Act; and set forth the circumstances under which two or more persons may communicate and consult with one another and engage with an issuer without becoming subject to regulation as a group with respect to the issuer's equity securities. 	<p>Willkie Client Alert February 10, 2022 Proposing Release</p> <p>* SEC Fall 2022 Agenda (3235-AM93) plans for a final rule in 2023.</p>

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<p>Proposed Rule: ESG Rules and Amendments for Investment Advisers and Investment Companies</p>	<p>The SEC’s proposed rule and form amendments would require Registered Funds, BDCs and registered and certain unregistered investment advisers to disclose information about how funds and advisers incorporate ESG factors into their investment strategies. Such proposals would, among other items:</p> <ul style="list-style-type: none"> • require additional specific disclosure requirements regarding ESG strategies in fund prospectuses, annual reports, and Form ADV, including qualitative and/or quantitative disclosures; • implement a layered, tabular disclosure approach for ESG funds; and • generally require certain environmentally focused funds to disclose the greenhouse gas emissions associated with their portfolio investments. The substance of the proposed disclosures varies based on whether a fund or adviser implements integration, ESG-focused, or impact strategies, as those terms are defined in the proposal. 	<p>Willkie Client Alert May 25, 2022 Proposing Release * SEC Fall 2022 Agenda (3235-AM96) plans for a final rule in 2023.</p>
<p>Proposed Rule: Amendments to 1940 Act “Names Rule”</p>	<p>The proposed amendments to Rule 35d-1 under the 1940 Act (the “Names Rule”) represent a substantial expansion of the scope of the application of the Names Rule. The proposed amendments would expand the scope of fund names required to have an 80% investment policy to include names with terms suggesting that the fund focuses in investments that have (or whose issuers have) particular characteristics. This would include fund names with terms such as “growth” or “value” or terms that suggest a fund’s investment decisions incorporate one or more ESG factors.</p> <p>The proposed amendments to the Names Rule and proposed amendments to registration forms would also require funds, among other items, to:</p> <ul style="list-style-type: none"> • define in their prospectuses the terms used in their respective names, including a criteria the fund uses to select the investments that the term describes; • maintain compliance with their 80% investment policy at all times except for temporary departures; • use the notional amount of a derivatives instrument, rather than its market value, for the purpose of determining a fund’s compliance with its 80% investment policy, and clarify that a fund may include certain derivatives used for hedging and other similar purposes in its 80% basket; and • (for unlisted closed-end funds and BDCs) make their 80% investment policy a fundamental policy (i.e., a policy that may not be changed without shareholder approval). 	<p>Willkie Client Alert May 25, 2022 Proposing Release * SEC Fall 2022 Agenda (3235-AM72) plans for a final rule in 2023.</p>

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<p>Proposed Rule: Amendments to Shareholder Proposal Rule</p>	<p>The SEC proposed amendments to Rule 14a-8 under the Exchange Act that would modify three of the rule’s substantive bases for exclusion of a shareholder proposal. Specifically, under the proposed amendments:</p> <ul style="list-style-type: none"> • a company could only exclude a proposal under the “substantial implementation” exclusion (Rule 14a-8(i)(10)) if the company has implemented the “essential elements” of the proposal; • a company could only exclude a proposal under the “duplication” exclusion (Rule 14a-8(i)(11)) if another shareholder proposal previously submitted for the same shareholder meeting that will be included in the company’s proxy statement for the same meeting addresses the same subject matter and seeks the same objectives by the same means; and • the standard of what constitutes a resubmission under Rule 14a-8(i)(12) would be amended from a proposal that “addresses substantially the same subject matter” as a prior proposal to a proposal that “substantially duplicates” a prior proposal. 	<p>Willkie Client Alert July 13, 2022 Proposing Release * SEC Fall 2022 Agenda (3235-AM91) plans for a final rule in 2023.</p>
<p>Proposed Rule: Requiring Investment Advisers to Conduct Additional Oversight of Service Providers</p>	<p>The SEC has proposed to require SEC-registered investment advisers to conduct both documented due diligence before hiring, and continued oversight of, third-parties when outsourcing certain functions necessary to the adviser’s provision of investment advice. The proposal would require advisers to:</p> <ul style="list-style-type: none"> • conduct due diligence before outsourcing and to monitor service providers’ performance and reassess whether to retain them periodically; • make and/or keep books and records related to the due diligence and monitoring requirements; • amend Form ADV to collect census-type information about advisers’ use of service providers, including their relationship to the adviser and the type of services rendered; and • conduct due diligence and monitoring of third-party record keepers and to obtain reasonable assurances that they will meet certain standards of service. 	<p>Willkie Client Alert October 26, 2022 Proposing Release</p>
<p>Proposed Rule: Amendments to Liquidity Risk Management Programs and Adoption of Swing Pricing and Hard Close Requirements for Open-End Funds</p>	<p>The proposed amendments would amend Rules 22e-4 and 22c-1 under the 1940 Act and certain reporting and disclosure forms under the 1940 Act. Notably, the proposed amendments would:</p> <ul style="list-style-type: none"> • amend the liquidity classification framework for open-end funds, other than money market funds and in-kind ETFs, by: (i) eliminating the “less liquid” category under Rule 22e-4, which would likely result in more investments being categorized as illiquid investments and thus subject to Rule 22e-4’s 15% limit on illiquid investments; and (ii) replacing the reasonably anticipated trading size (RATS) standard for determining liquidity classifications with a set stressed trading size of 10%; 	<p>Willkie Client Alert November 2, 2022 Proposing Release</p>

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	<ul style="list-style-type: none">• require open-end funds, other than money market funds and in-kind ETFs, to maintain a “highly liquid investment minimum” of at least 10% of their net assets;• mandate the use of “swing pricing” for all registered open-end funds other than money market funds and ETFs, when they experience net redemptions of any size or net purchases in excess of 2% of net assets;• require mutual fund purchase and redemption orders to be received by the fund, its designated transfer agent or a registered clearing agency before the time the fund calculates its NAV in order to receive that day’s NAV; and• provide for more frequent and detailed reporting of information regarding liquidity classifications and the use of swing pricing.	
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Delaware Statutory Trust Act Amendments in 2022

Topic/Date	Summary	Hyperlinks
Delaware Control Beneficial Interest Acquisition Statutory Provisions for Listed Closed-End Funds and BDCs Organized as Statutory Trusts August 1, 2022	The Delaware Statutory Trust Act was amended, effective August 1, 2022, to include control share acquisition provisions for statutory trusts that are listed, registered closed-end funds and BDCs. The provisions limit voting rights of a person who acquires ownership of shares that are equal to or greater than certain specified percentages of the trust’s total voting power. Unlike the control share acquisition statutes of certain other states, the Delaware provisions automatically apply without action by the trustees of the statutory trust.	Willkie Client Alert Amendment to the Delaware Statutory Trust Act

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If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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