Press Release

SEC Proposes Enhanced Safeguarding Rule for Registered Investment Advisers

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Washington D.C., Feb. 15, 2023 — The Securities and Exchange Commission today proposed 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 Commission's custody rule, under the Investment Advisers Act of 1940 and amend certain related recordkeeping and reporting obligations.

"I support this proposal because, in using important authorities Congress granted us after the financial crisis, it would help ensure that advisers don't inappropriately use, lose, or abuse investors' assets," said SEC Chair Gary Gensler. "In particular, Congress gave us authority to expand the advisers' custody rule to apply to all assets, not just funds or securities. Further, investors would benefit from the proposal's changes to enhance the protections that qualified custodians provide. Thus, through this expanded custody rule, investors working with advisers would receive the time-tested protections that they deserve for all of their assets, including crypto assets, consistent with what Congress envisioned."

The proposed rules would exercise Commission authority under section 411 of the Dodd-Frank Act by broadening the application of the current investment adviser custody rule beyond client funds and securities to include any client assets in an investment adviser's possession or when an investment adviser has authority to obtain possession of client assets. Like the current rule, the proposed rule would entrust safekeeping of client assets to qualified custodians, including, for example, certain banks or broker-dealers.

The proposed changes are intended to help ensure that qualified custodians provide certain standard custodial protections when maintaining an advisory client's assets. These protections are designed, among other things, to ensure client assets are properly segregated and held in accounts to protect the assets in the event of a qualified custodian bankruptcy or other insolvency. The proposed rule would also enhance protections for certain securities and physical assets that cannot be maintained by a qualified custodian. Additionally, the proposal retains the current requirement for an adviser with custody of client assets to obtain a surprise examination from an independent public accountant to verify client assets, but it would modify the audit provision to expand the availability of its use, enhance investor protection, and facilitate compliance.

Finally, the proposal would update and enhance related recordkeeping requirements for advisers and amend Form ADV to align reporting obligations with the proposed rule and to improve the accuracy of custody-related data available to the Commission, its staff, and the public.

The comment period on the proposal will remain open for 60 days following publication of the proposing release in the Federal Register.

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Related Materials

- Proposed Rule
- Fact Sheet