

SEC Approves Series of Final and Proposed Rules in Line with Stated Priorities

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by Cam C. Hoang

The SEC held a very busy open meeting yesterday, voting on the following final and proposed rules:

- **Adoption of amendments to modernize the definition of “smaller reporting company,” which was established in 2008. See our previous discussion of the amendments.**
- **Adoption of amendments to require the use of the Inline XBRL format in certain filings, which were proposed in 2017 and have been under study for many years.** The amendments require the use of the Inline eXtensible Business Reporting Language (“XBRL”) format for the submission of operating company financial statement information and fund risk/return summary information and make related changes. Inline XBRL involves embedding XBRL data directly into the filing so that the disclosure document is both human-readable and machine-readable.
 - Phase-in for operating companies:
 - Large accelerated filers that use U.S. GAAP will be required to comply beginning with fiscal periods ending on or after June 15, 2019.
 - Accelerated filers that use U.S. GAAP will be required to comply beginning with fiscal periods ending on or after June 15, 2020.
 - All other filers will be required to comply beginning with fiscal periods ending on or after June 15, 2021.
 - Filers will be required to comply beginning with their first Form 10-Q filed for a fiscal period ending on or after the applicable compliance date.

The requirement for operating companies and funds to post XBRL data on their websites will be eliminated upon the effective date of the amendments.

- **A proposal that would permit certain exchange-traded funds to operate without first obtaining a fund-specific exemptive order from the Commission, which is a process that has not changed since the first ETF was approved in 1992.**
- **Adoption of amendments related to disclosures of liquidity risk management**

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for open-end funds, which were proposed earlier this year.

- **A proposal to amend rules that govern the Commission's whistleblower program. It has been seven years since these rules were adopted.** The Commission is seeking public comment and data on a broad range of issues relating to the whistleblower program, and will then consider further action on the proposal, which includes provisions:
- Allowing awards based on deferred prosecution agreements and non-prosecution agreements entered into by the DOJ or a state AG in a criminal case, or a settlement agreement entered into by the Commission.
- Providing the Commission with flexibility to increase awards on smaller actions, while decreasing larger awards. In the Wall Street Journal, Stephen Kohn, executive director of the National Whistleblower Center, criticized the proposal, saying that scaling back payouts is tantamount to "killing the goose that lays the golden egg." The Commission would have discretion to increase awards that could yield a payout of less than \$2 million, and establish awards for enforcement actions that do not currently qualify as covered actions because they do not meet the more than \$1 million threshold requirement. Meanwhile, the Commission would have discretion to reduce larger awards, though in no event would awards be adjusted below \$30 million, and awards would still be subject to the 10% statutory minimum. The SEC's related Fact Sheet notes that 40% of funds paid out by the Commission to whistleblowers have been paid out in only three awards.
- Eliminating potential double recoveries under the current definition of "related action."
- Modifying Rule 21F-2 to comport with the Supreme Court's holding in Digital Realty Trust, Inc. v. Somers, where the Court held that whistleblower provisions of the Exchange Act require that a person report a possible securities law violation to the Commission in order to qualify for protection against employment retaliation under that Rule.
- Increasing the efficiency of the claims review process.
- Clarifying and enhancing certain policies and procedures and issuing interpretive guidance to help clarify the meaning of "independent analysis" as that term is defined in Exchange Act Rule 21F-4 and utilized in award applications.

An archived webcast of the meeting will be available on [sec.gov](https://www.sec.gov)