

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 56 No. 12 June 28, 2023

SEC REGULATORY AND ENFORCEMENT DEVELOPMENTS: WHAT BOARDS OF DIRECTORS AND AUDIT COMMITTEES NEED TO KNOW

In this article, the authors discuss SEC regulatory and enforcement developments that should be top-of-mind for boards of directors and audit committees. They describe how SEC leadership is pairing the most ambitious rulemaking agenda in decades with an active enforcement docket, and how those two things sometimes operate to reinforce one another.

By Jennifer S. Leete, Elad Roisman, and Lisa M. Kohl *

Over the last year, the SEC has engaged in rulemaking at a frenetic pace while also bringing a significant number of enforcement actions, many of which relate to the subject of new proposed or final rules. In 2022 alone, the SEC voted on more than 40 rules, roughly 30 of which were new rule proposals.¹ The rulemaking activity is so significant that it even drew the attention of the SEC's Office of the Inspector General, which in its annual statement on the SEC's Management and Performance Challenges reported that some SEC managers raised concerns about risks and difficulties managing resources because of the increase in

rulemaking activities.² If the agency's own staff is having trouble keeping up with the pace of rulemaking, then surely it will be a significant challenge for boards of directors and audit committees to keep pace, given the competing demands on their time.

Nevertheless, keeping up with rulemaking developments will be essential, not just for the obvious reason that new rules must be followed, but also because rulemaking often goes hand-in-hand with enforcement and disclosure review priorities. This is evident in a number of recent enforcement actions that relate to the subject of new proposed or final rules, including topics

¹ Office of Information and Regulatory Affairs, *Office of Management and Budget Regulatory Flex Agenda* (January 2023), https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=E784004B7179D0CF16B65397A32EAC41CF37A3FA3A8FA370CF146938B89DEB92F810C80E78EF46E3429CE082F5EF33869696.

² SEC, *The Inspector General's Statement on the SEC's Management and Performance Challenges*, 3 (October 13, 2022), <https://www.sec.gov/files/inspector-generals-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>.

* JENNIFER S. LEETE and ELAD ROISMAN are partners and LISA M. KOHL is of counsel in the Washington, DC offices of Cravath, Swaine & Moore LLP. Mr. Roisman is admitted only in New York and Ms. Kohl is admitted only in Virginia. They are practicing under the supervision of D.C. Bar Members. The authors' e-mail addresses are jleete@cravath.com, eroisman@cravath.com, and lkohl@cravath.com.

INSIDE THIS ISSUE

- **END-OF-LIFE OPTIONS FOR EX-SPACS, Page 175**