# SEC Regulatory Outlook 2025 – Registrants

January 2025

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# I. Introduction

This paper provides an overview of recent standard-setting activity by the SEC's Division of Corporation Finance, reminders on newly effective rules, updates on the SEC's regulatory agenda, and 2024 disclosure focus areas.

On November 21, 2024, SEC Chairman Gary Gensler announced he will step down on January 20, 2025, ending a three-and-a-half-year regime that saw the rise of cryptocurrency, recovery from a global pandemic, and record bank failures. During his tenure, the SEC modernized trading conventions, including T+1 settlement and centralizing Treasury clearing. Several final rules and proposals were challenged in court for exceeding the SEC's scope of authority. A day later, Democratic Commissioner Jaime Lizarraga announced his intention to step down on January 17, 2025, two years ahead of his term's scheduled end in 2027. His replacement also will require Senate approval. This will leave only Democratic Commissioner Caroline Crenshaw and Republican Commissioners Hester Peirce and Mark Uyeda to lead the agency. Under SEC quorum rules, a three-member commission can only advance a regulation if all the commissioners participate in a vote to do so unless there's a recusal or disqualification.

In presidential election years, any regulations passed within the previous 60 legislative days are subject to the *Congressional Review Act* (CRA) and could be overturned. The Division of Corporation Finance has not issued any final rules since the climate disclosure rule in March 2024, which has already been stayed. Unraveling existing rules outside the CRA is not a fast process. Once a new chair is named and confirmed, a majority of the five-person commission is required for any proposal and final rules, which also are subject to the *Administrative Procedure Act*. The SEC chair sets the enforcement agenda and could instruct SEC staff not to pursue cases for certain rules. The SEC chair also can stop agency lawyers from defending existing legal challenges in court. In addition, Congress could attach a rider to legislative funding to the SEC prohibiting the agency from enforcing certain rules.

While several final rules are being challenged in court, the SEC continues to bring enforcement actions based on existing disclosure rules in Regulation S-K and Regulation S-X for both cybersecurity breaches and climate disclosures.

**Forvis Mazars will continue to monitor these enforcement actions and legal developments.**

# II. Comment Letter Trends

### Changes in SEC Comment Letters by Market Capitalization


(a) Data as of August 23, 2024. The count of comment letters for 2024 will increase as reviews are finalized. Letters are disseminated within 20 days of close of review.

**Top Comment Letter Areas**

| Specific Area | 2024 | | | 2023 | | | 2022 | | |
|---|---|---|---|---|---|---|---|---|---|
| | Rank | Count | Percent | Rank | Count | Percent | Rank | Count | Percent |
| Management Discussion & Analysis | 1 | 125 | 29% | 2 | 175 | 29% | 1 | 112 | 39% |
| Risk Factors | 2 | 122 | 28% | 1 | 249 | 41% | 3 | 45 | 16% |
| Non-GAAP Measures | 3 | 95 | 22% | 3 | 112 | 19% | 2 | 81 | 29% |
| Acquisitions, Mergers, & Business Combinations | 4 | 48 | 11% | 4 | 94 | 16% | 6 | 36 | 13% |
| Internal Control (404) Over Financial Reporting | 5 | 44 | 10% | 5 | 67 | 11% | 4 | 45 | 16% |
| Revenue Recognition | 6 | 41 | 9% | 6 | 63 | 10% | 8 | 26 | 9% |

# III. Enforcement Actions

## Cyber Disclosures

In October, the SEC charged four current and former public companies with making materially misleading disclosures on cybersecurity risks and intrusions. The charges stemmed from a March 2020 data breach at a third-party software company. A software update inadvertently introduced a malware virus to more than 18,000 public and private organizations and governments. The virus also spread to the software user's customers and partners.

Once the four companies became aware of the breach, they negligently minimized the cybersecurity incident in public disclosures. One company described its risks from cybersecurity events as hypothetical despite knowing that it had experienced two intrusions from the March 2020 attack. These materially misleading disclosures resulted partly from the company's deficient disclosure controls. The second company noted that a limited number of email messages were impacted when at least 145 files in its cloud file-sharing environment were accessed. The third company knew of the intrusion but described the attack and risks from them in generic terms. The fourth company minimized the attack by failing to disclose the nature of the code the threat actor exfiltrated and the number of encrypted credentials the threat actor accessed.

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*"Downplaying the extent of a material cybersecurity breach is a bad strategy," said Jorge G. Tenreiro, acting chief of the Crypto Assets and Cyber Unit, in an SEC press release. "In two of these cases, the relevant cybersecurity risk factors were framed hypothetically or generically when the companies knew the warned of risks had already materialized. The federal securities laws prohibit half-truths, and there is no exception for statements in risk-factor disclosures."*

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**Resources:**

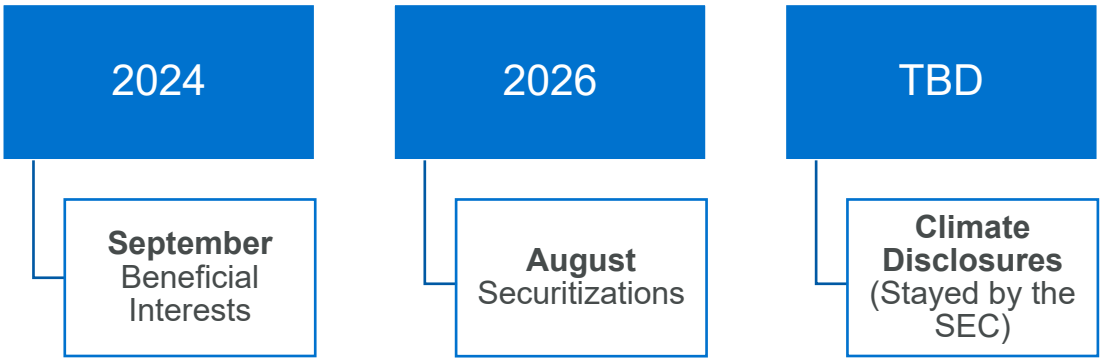
**Details on SEC's New Cybersecurity Disclosures**

**SEC's New Cyber Disclosure Rule: Answering Your Top Questions** (Webinar)

# IV. Regulatory Agenda

At the time of publication, the most recent document was the Spring 2024 Regulatory Agenda, released in July 2024. The Fall Regulatory Agenda was submitted in September 2024 before the election and Gensler's resignation announcement. The new SEC chair is likely to set different priorities.

# V. Final Rules – Newly Effective & on the Horizon




## 1. Beneficial Ownership

On October 10, 2023, the SEC issued a final rule modernizing beneficial ownership reporting rules. An investor with control intent files Schedule 13D, while exempt investors and investors without a control intent, such as qualified institutional investors and passive investors, file Schedule 13G. These rules were last updated in 1968 and 1977, respectively. Highlights include:

- Shortened deadlines for initial and amended Schedule 13D and 13G filings are as follows:
  - Schedule 13D – Cut the initial filing deadline once a 5% beneficial ownership interest is acquired to five business days (from 10 days) and the amendment[1] filing deadline to within two days.
  - Schedule 13G – For qualified institutional investors (QIIs), the initial filing deadline is now 45 days after the end of the **calendar quarter** in which the investor beneficially owns more than 5% of the covered class (up from 45 days after the end of a **calendar year**). For other Schedule 13G filers, *i.e.*, passive investors, the rule shortens the initial filing deadline from 10 days to five business days. For all Schedule 13G filers, an amendment must be filed 45 days after the **calendar quarter** in which a material change occurred rather than 45 days after the **calendar year** in which any change occurred. The rule also accelerates the Schedule 13G amendment obligations for QIIs and passive investors when their beneficial ownership exceeds 10% or increases or decreases by 5%.
- Disclosures on Schedule 13D must include interests in all derivative securities (including cash-settled derivative securities) that use the issuer's equity security as a reference security. (Currently, investors are considered beneficial owners of a security if they have voting and/or investment power and no one is included with a purely economic security interest, *e.g.*, cash-settle equity swaps.)
- Require that Schedule 13D and 13G filings use a structured, machine-readable data language.


## 2. Conflicts of Interest – Securitization

On November 27, 2023, the SEC issued a final rule completing a Dodd-Frank Act mandate to prohibit conflicts of interest in securitizations. The rule covers an asset-backed security (ABS) and hybrid cash and synthetic ABS and applies to any

[1]Schedule 13G amendments are required if there is a material change in the information reported in a previous filing. Amendments also are required if beneficial ownership exceeds 10% or increases or decreases by more than 5%.

underwriter, placement agent, initial purchaser, or ABS sponsor. The rule prohibits a securitization participant from entering into a conflicted transaction for a period ending one year after the date of the first closing of the ABS's sale. Conflicted transactions are defined as follows:

- A transaction that is:
  - A short sale of the ABS.
  - The purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events with respect to the ABS.
  - The purchase or sale of any financial instrument (other than the relevant ABS) or entry into a transaction that is substantially the economic equivalent of a transaction described in the first two bullet points above, other than—for the avoidance of doubt—any transaction that only hedges general interest rate or currency exchange risk.
- Materiality – Is there a substantial likelihood a reasonable investor would consider the relevant transaction important to the investor's investment decision, including a decision whether to retain the ABS? There are certain exceptions for hedging and risk management.


## 3. Climate Disclosures for Registrants (Stayed)

On March 6, 2024, the SEC approved by a 3-to-2 vote a long-awaited final rule, *The Enhancement and Standardization of Climate-Related Disclosures for Investors*. The final rule requires information about a registrant's climate-related risks that materially impact or are reasonably likely to have a material impact on their strategy, results of operations, or financial condition. The rule would apply to all SEC reporting companies, even those with no publicly listed securities, and include business development companies, real estate investment trusts, and issuers of non-variable insurance contracts.

On April 5, 2024, the SEC stayed the rule to avoid regulatory uncertainty for companies that might have been subject to the rule as litigation proceeds. Forvis Mazars will continue to monitor these legal developments.

**Resources:**

SEC's Climate Disclosure Rule (Stayed)

Updated SEC Expectations on Climate Disclosures

# VI. Outstanding Proposals

## 1. Proposal – Financial Data Transparency

On August 2, 2024, the SEC and eight federal agencies jointly issued a proposal establishing technical standards for future data submissions fulfilling requirements of the *Financial Data Transparency Act of 2022* (FDTA). The proposal addresses only how data is to be submitted using common identifiers and open-source data standards; no new disclosures are required. The FDTA required each agency to independently adopt final data standards by December 2024; however, there are no penalties for not meeting these deadlines. Many of the mandates from the 2010 Dodd Frank Act were passed several years after the legislation's deadlines. Both the FDTA legislation and the SEC vote on the proposal had broad bipartisan support and this proposal is likely to move forward, but on a delayed basis after new SEC commissioners are appointed.

**Resource:** SEC's Joint Proposal Sets FDTA Data Standards

**Original Timeline (Subject to Change)**


One hundred eleven comment letters were received. Many asked for an extension on the 60-day comment period due to the extensive nature of the proposed changes. Municipal issuers universally opposed the proposal, citing federal overreach, the creation of an unfunded mandate, and the cost to small municipalities. Multiple commenters from the securities and banking industry disagreed with using FIGI and not CUISP or ISIN as the legal entity indication default.

## 2. Shareholder Proposal Exclusion (Rule 14a-8)

On July 13, 2022, the SEC voted 3-to-2 to issue a proposal to update three substantive bases for excluding a shareholder proposal from a company's proxy statement. The changes would restrict the grounds for excluding shareholder proposals. If adopted, this would most likely increase the number of shareholder proposals included in proxy materials.

Given the original vote and the new balance of incoming SEC commissioners, this proposal may not move forward.

**Resource:** Excluding Shareholder Proposals May Get Tougher With SEC Proposal

Sixty-two letters were received. Individual investors and shareholder advocate groups supported the amendments. Trade associations opposed the amendments, citing an increased number of minor or trivial proposals on proxy statements and arguing that not enough time has passed since the 2020 amendments to assess additional changes.

# Conclusion

The assurance team at Forvis Mazars delivers our extensive experience and skilled professionals to help align with your objectives. Our proactive approach includes candid and open communication to help address your financial reporting needs. At the end of the day, we know how important it is for you to be able to trust the numbers; our commitment to independence and objectivity helps provide the security and confidence you desire. Forvis Mazars works with hundreds of publicly traded companies to deliver assurance, tax, or consulting services within the U.S. and globally. For more information, visit forvismazars.us.

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