

Gensler Warns of Increased SEC Requirements for Private Funds

By **Robert A. Johnston Jr.**, **Rachel Maimin**, **Kathleen A. McGee**, **Scott H. Moss**, and **Bernadette L. Darcy**

On May 25, 2023, Gary Gensler, Chairperson of the U.S. Securities and Exchange Commission (SEC), **spoke** at an Investment Company Institute leadership conference and discussed SEC proposals that address potential instability in money market funds and open-end funds, illustrating the SEC's increased focus in this space. Gensler mentioned SEC proposals involving:

Money Market Funds:

- Prevent money market funds from restricting redemptions in times of financial stress
- Enhance liquidity requirements
- Provide swing pricing and liquidity fee alternatives, which would only apply to institutional prime and tax-exempt money market funds.

Open-End Funds:

- Update the 2016 liquidity rule to establish minimum standards for liquidity classifications (to prevent funds from overestimating investment liquidity)
- Create pricing alternatives within the framework of swing pricing or liquidity fees with the goal that redeeming shareholders bear appropriate costs associated with redemptions
- "Shorten the lag" between when investors' orders are placed and when the fund receives those orders.

Although these are just proposals now, it is worthwhile to consider how implementation of the most significant and likely proposals may proceed—for instance, the liquidity requirement—

and ensure that your fund is ready if the proposals become requirements.

Gensler further noted that some investment funds are not overseen by the SEC. Gensler said that he is in talks with banking regulators to address regulatory gaps in overseeing such funds, which include short-term investment funds and collective investment funds. These funds are managed by bank trust departments or for certain tax-qualified retirement funds and are exempt from SEC oversight. However, Gensler appears to be pushing banking regulators to adopt similar regulations as those discussed above on these types of funds.

If you have questions about the SEC's proposals and how they might be implemented, please contact Rachel Maimin, Scott Moss, Kathleen McGee, Rob Johnston, or your regular Lowenstein Sandler contact.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

ROBERT A. JOHNSTON JR.

Partner

T: 212.419.5898 / 202.549.5948

rjohnston@lowenstein.com

RACHEL MAIMIN

Partner

T: 212.419.5876

rmaimin@lowenstein.com

KATHLEEN A. MCGEE

Partner

T: 646.414.6831

kmcgee@lowenstein.com

SCOTT H. MOSS

Partner

Chair, Fund Regulatory & Compliance

T: 646.414.6874

smoss@lowenstein.com

BERNADETTE L. DARCY

Associate

T: 862.926.6576

bdarcy@lowenstein.com

NEW YORK

PALO ALTO

NEW JERSEY

UTAH

WASHINGTON, D.C.

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