SEC Zeroes in on Modernization in 2020

The US Securities and Exchange Commission was created in 1934 in the wake of the 1929 Wall Street crash and many of its rules from that period have largely stood the test of time. However, due to significant market changes, the SEC has recently been pushing for modernization. Here's a closer look at the areas they will zero in on in 2020.

ETF RULES

In September, the SEC passed perhaps one of the most anticipated ETF regulations to date: the so-called "ETF Rule." The ETF Rule (formally known as Rule 6c-11) represents a seismic shift for both incumbent and prospective ETF issuers, with impacts spanning much of the ETF ecosystem. In another boost to the industry, in December the regulator for the first time approved a new wave of semi-transparent active ETFs.

REGULATION BEST INTEREST

Taking effect in June 2020, Regulation Best Interest requires broker-dealers to only recommend financial products to their customers that are in their customers best interests and to clearly identify any potential conflicts of interest or financial incentives they may have with those products.

UPDATED CUSTODY RULE

In recent years, the SEC has felt compelled to release a plethora of FAQs on the "Custody Rule" (Rule 206(4)-2) to address market innovations that are not adequately addressed in the existing ruleset. These innovations range from new asset classes like crypto-assets and non-delivery versus payment (DVP) securities, to the types of entities who may act as qualified custodians. Rather than continue this dynamic alignment process forever, similar to ETFs, it is highly likely that the SEC will look to revamp the rule entirely to address these topics.

DERIVATIVES DRAFT RULE 2.0

In late November, the SEC voted to propose amendments to the existing derivatives rule that would establish new criteria for funds to follow when using derivatives. Though the new draft is similar to the SEC's 2015 proposal, there are a handful of critical changes. They're expected to release the final ruleset following and based on the current comment period.

PROXY VOTING RULES

The proposed proxy voting changes are now subject to a public comment period which remains open for 60 days from publication. That means interested parties have until mid-January 2020 to submit comments, and it appears that a vocal and robust public debate on the various changes will ensue.

ADVERTISING RULES

The SEC's advertising rules have remained largely unchanged since 1961. But in November, proposals to amend the rules received unanimous approval from all five commissioners. The proposals now go through a public comment period prior to implementation, which is set for November 2020.

"ACCREDITED INVESTOR" REDEFINED

The definition of "Accredited Investor" has remained unchanged since 1933, but we expect 2020 to be the year that changes. The updates will likely aim to allow "retail" investors greater access to hedge funds, private equity, and venture capital funds. This is a big growth opportunity for US alternatives, but there has been some push back in the industry by those who don't believe retail investors should be allowed to invest in risky and less liquid asset classes, partially for their own protection.

2020

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