

Core Regulatory Forum Q2 2024 Updates

The Securities and Exchange Commission (**SEC**) faced multiple legal setbacks in the 2nd quarter of 2024, which counteracted recent rulemaking and limited the SEC's authority to bring fraud cases through administrative proceedings. Other July court decisions may similarly impact future SEC rulemaking and enforcement authority. As previously reported, in June 2024, the U.S. Court of Appeals for the Fifth Circuit issued its opinion that the SEC exceeded its statutory authority in adopting the Private Fund Rules, and the court vacated the entire final rulemaking. The decision raises concern as to whether the SEC will be found to have similarly exceeded its statutory authority with respect to other recent final rulemaking, and casts doubt on whether other significant rule proposals will be adopted, including the new Outsourced Service Provider and Predictive Data Analytics Rules, which rely on the same statutory authority as the Private Fund Rules, as well as amendments to the Safeguarding Rule (aka the "**Custody Rule**"), and potentially others.

In late June, the U.S. Supreme Court ruled that the SEC must bring all securities fraud enforcement to federal court when it seeks civil penalties, rather than try the cases in the agency's own administrative tribunals before administrative law judges (**ALJs**) because the Seventh Amendment entitles citizens to a jury trial for common law fraud. In a 6-3 ruling, the Court analyzed civil fraud as being similar enough to apply the Seventh Amendment's protections to enforcement matters brought by the SEC under Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Section 206 of the Investment Advisers Act of 1940, which are some of the federal securities laws from which the SEC derives its authority to regulate the markets and protect investors. This decision has been hailed by multiple law firms and former SEC enforcement staff members as a dramatic shift in SEC enforcement actions and could open the door for a series of appeals of prior fraud charges.

The SEC revamped its website (www.sec.gov) at the end of June to improve the site's functionality and user experience. The refined website improves mobile usability and accessibility and was informed by web traffic analytics and user feedback. The website now includes a "What's New" section that should allow users to quickly access new information posted by each of the SEC's Divisions and Offices. *Core* will continue to summarize SEC regulatory updates as posted on the SEC's website. However, for readers who are interested in following SEC updates directly, you can sign up for update emails at www.sec.gov/newsroom. We suggest focusing on information posted by the Divisions of Examinations, Enforcement, and Investment Management, under the Rules, Enforcement & Compliance section, as most relevant to *Core* clients.

Following are the Q2 2024 updates posted in the [Core Regulatory Forum](#):

Rulemaking Updates

- [American Privacy Rights Act of 2024 Proposed Rulemaking \(04/07/24\)](#)
- [ERISA Rule Amendments: DOL Fiduciary Rule and Amended QPAM Exemption \(04/23/24\)](#)
- [Customer Identification Program Requirements for Registered Investment Advisers and Exempt Reporting Advisers Proposed Rulemaking \(05/13/24\)](#)
- [Enhancements to Regulation S-P Final Rulemaking \(05/16/24\)](#)
- [Fifth Circuit Vacates Private Fund Rules Final Rulemaking \(06/05/24\)](#)

Enforcement Cases

- [RIA Charged with Failure to Maintain Electronic Communications \(04/03/24\)](#)
- [Shadow Theory Insider Trading Litigation in the Trial of Matthew Panuwat \(04/05/24\)](#)
- [Marketing Rule Violations Sweep \(04/12/24\)](#)
- [Geosyn Mining Crypto Asset Mining Fraud \(04/24/24\)](#)
- [Insider Trading in Dick's Sporting Goods \(05/10/24\)](#)
- [Hudson Valley & Founder Failure to Disclose Conflicts of Interest \(05/14/24\)](#)
- [Private Fund Manager Charged with False Statements & Undisclosed Conflicts \(05/29/24\)](#)
- [Trillium Capital Market Manipulation of Getty Images \(05/31/24\)](#)
- [JAG Capital Advisors Hedge Fund Fraud \(06/12/24\)](#)
- [R.R. Donnelley Charged with Cybersecurity Control Violations \(06/18/24\)](#)
- [Terraform and Dwon to Pay \\$4.5 Billion Following Crypto Fraud Verdict \(06/13/24\)](#)
- [Market Manipulation & Fraud by Public Company CEOs \(06/25/24\)](#)
- [Controller of Security Company Charged with Insider Trading \(06/25/24\)](#)
- [Supreme Court Declares Civil Penalties for Securities Fraud in SEC Administrative Proceedings Unconstitutional \(06/27/24\)](#)

Risk Alerts & Guidance

- [Marketing Rule Compliance Risk Alert \(04/17/24\)](#)
- [Broker-Dealer Examinations: Risk Assessment, Scoping, and Document Requests Risk Alert \(06/05/24\)](#)

The *Core* team continues to track and analyze regulatory developments and their impact on our private fund and other clients. Let us know if you have questions regarding any recent regulatory developments or their application to your firm.