

The Joot logo features the word "joot" in a white, lowercase, sans-serif font with a registered trademark symbol, set against a pink background with a pattern of white circles.The FinTech Law logo features the words "FINTECH" in a small, pink, uppercase font above the word "Law" in a large, white, serif font, all contained within a black rectangular box with a pink border.

MONTHLY NEWSLETTER

NOVEMBER 2022

FinTech Law is an innovative, technology-driven law firm that provides legal and consulting services to startups, crypto-related and other technology companies, investment advisers, broker-dealers, private funds, registered funds, and other financial services companies. **Joot** is a fintech company that provides web-based technology and services to registered investment advisers, broker-dealers, and funds. Joot's clients include retail advisers, institutional managers, private fund managers, and mutual fund advisers.



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Highlights

Last month, we noted that most industry conversation centered around market volatility, the implementation of the SEC's **Rule 2a-5 (Valuation Rule)** and **Rule 18f-4 (Derivatives Rule)**, and continued uncertainty around the regulation of digital assets. Over the past 30+ days, not much has changed.

Equity and bond markets are still volatile. The SEC continues to propose new rules while recently passed ones take effect. And crypto is suffering from a GOT-style winter. Investors will need to be as hardy as the Starks to make it through this winter.

Most investment advisers have been focusing on the SEC's new **Rule 206(4)-1 (Advertising Rule)**, which took effect on **November 4, 2022**. Some firms were prepared for it, but many were not. The biggest issue has been the handling of performance advertising under the new rule. If you're an RIA that previously advertised hypothetical or model performance, then your world has changed substantially.

Other advisers and funds that participate in the crypto and digital asset markets are dealing with a constant stream of bad news, mostly tied to the FTX implosion. Countless articles have been written about the rapid rise and fall of the once crypto-darling, but the fact remains that much of the crypto industries woes could have been avoided with adequate corporate governance, which brings me to my final point. In the capital markets, trust matters.

Unfortunately, finance is mired by countless stories of fraud, negligence, and stupidity. Since the finance and fintech industries have a poor track record of self-policing, society has decided to build laws and regulators to ensure a minimum level of safety and transparency in our capital markets. Hence, the creation of the SEC and its proliferation of rules.

SEC rules can be cumbersome and increase the cost of entry or participation in the financial and fintech industries. Smaller firms often struggle to manage new rules and their child processes, not because of a lack of care or sophistication, although that is sometimes the case, but because of a lack of resources. Such costs can stifle innovation and have certainly caused our industry to become more concentrated.

But without meaningful corporate governance standards that are adopted by all market participants, we are left with regulators who impose blanket rules across a diverse industry. For those of us who continue to operate in these industries, we are forced to pay the price of other firms' mistakes and misdeeds, as each headline failure or fraud leads to increased regulation.

SEC

Regulatory Activity



SEC Staff Issues FAQ Relating to Adviser Consideration of DEI Factors

In early October, the SEC issued guidance affirming that an investment adviser may consider diversity, equity, and inclusion (DEI) factors when referring clients to other investment advisers, so long as the use of those DEI factors is consistent with the client's objectives, the scope of the relationship, and the adviser's disclosures.
(10/13/22)

New Amendments Modernize Fund Shareholder Reports and Promote New Information in Fund Advertisements

The SEC adopted a rule in late October to require mutual funds and exchange-traded funds to transit concise and visually engaging shareholder reports, highlighting key information for shareholders. Additionally, the amendments seek to promote transparent presentations of fees and expenses in advertisements produced by the investment companies, with the aim that representations of the fees and expenses are not materially misleading.
(10/26/22)



Proposed Rule Would Update Oversight and Disclosure Requirements for Outsourced Services

The SEC proposed a new rule and amendment under the Investment Advisers Act of 1940 to prevent RIAs from outsourcing select services and functions without conducting proper due diligence. In its statement, the SEC acknowledged that outsourcing can provide great benefits to both RIAs and their clients, but proper oversight must be conducted before engaging with these third parties in order to protect clients.
(10/26/22)

SEC Adopts Rules to Enhance Proxy Voting Disclosure by Registered Investment Funds and Require Disclosure of “Say-on-Pay” Votes for Institutional Investment Managers

The SEC has adopted rules to amend Form N-PX, to expand on the information reported regarding proxy votes, as well as require institutional investment managers to disclose how they voted on executive compensation matters. The change will be used to make proxy voting records easier to use and analyze, allowing investors a greater ability to monitor and compare funds. Additionally, by requiring managers to disclose how they voted regarding “say-on-pay” matters, the amendments fulfill a mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The form amendment and rule will be effective for votes occurring on or after July 1, 2023.

(11/2/22)



SEC Proposes Enhancements to Open-End Fund Liquidity Framework

The SEC voted to propose amendments to better prepare open-end funds for stressed conditions and to mitigate dilution of shareholders’ interests. The rule and form amendments would enhance how funds manage their liquidity risks, require mutual funds to implement liquidity management tools, and provide for more timely and detailed reporting of fund information.

(11/2/22)

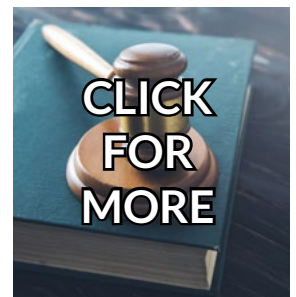
SEC

Enforcement Actions

SEC Announces Enforcement Results for FY22

The SEC announced its enforcement actions for the 2022 fiscal year. This year the SEC filed 760 enforcement actions that amounted to a 9% increase over the 2021 fiscal year. Most of these actions were “stand-alone” enforcement actions and ranged from “first-of-their-kind” actions to traditional securities law violations and charges.

(11/15/22)



Joot/FinTech Law

Blog Updates

Understanding the Regulatory Landscape of Crypto

As a part of FinTech Law & Joot's 2022 regtech blog series, Joot CEO & FinTech Managing Director Bo Howell breaks down and discusses the murky and intricate regulatory landscape of cryptocurrency and decentralized finance. This three part series looks at the landscape in both the United States and globally.

Read [Part 2](#) and [Part 3](#) here.

(11/15/22)

