

Notable Developments:

- **SEC Adopts Rule Amendments Regarding Covered Clearing Agency's Collection of Intraday Margin and Reliance on Substantive Inputs to Risk-Based Margin Model and Adopts New Rules to prescribe New Requirements for Covered Clearing Agency's Recovery and Wind-Down Plan**
- **SEC Division of Examinations Announces 2025 Priorities**
- **SEC Approves CBOE's Proposed Rule Change Permitting Listing and Trading of Options on Bitcoin ETFs**

SEC Enforcement:

- **SEC Charges Companies with Misleading Cyber Disclosures**
- **SEC Charges WisdomTree with Failing to Adhere to Its Own Investment Criteria**
- **SEC Charges RTX with Violating Foreign Corrupt Practices Act**

In Case You Missed It:

- **DOJ Charges an Individual for Hacking SEC's X Account**
- **Federal District Court Rules Missouri Can Not Impose Anti-ESG Disclosure Requirements on Broker-Dealer's Securities Recommendations or Investment Advisor's Advisory Services**

Notable Developments:

SEC Adopts Rule Amendments Regarding Covered Clearing Agency's Collection of Intraday Margin and Reliance on Substantive Inputs to Risk-Based Margin Model and Adopts New Rules to prescribe New Requirements for Covered Clearing Agency's Recovery and Wind-Down Plan

On October 25, 2024, the SEC [adopted](#) rule amendments and a new rule to improve covered clearing agency's risk management and resilience. The rule amendments require that a covered clearing agency that provides central counterparty services (1) has policies and procedures to establish a risk-based margin system that monitors intraday exposures on an

ongoing basis, (2) includes the authority and operational capacity to make intraday margin calls as frequently as circumstances warrant (whether by breaching a risk threshold or by elevated volatility), and (3) documents when the covered clearing agency determines not to make an intraday call pursuant to its written policies and procedures.

The rule amendments also require that a covered clearing agency that provides central counterparty services has policies and procedures to establish (1) a risk-based margin system that uses reliable sources of substantive inputs, uses procedures to address circumstances in which substantive inputs are not readily available or reliable (to ensure that the covered clearing agency can continue to meet its credit exposures to its participants), and that such procedures must include either the use of price data or substantive inputs from an alternate source or (2) a risk-based margin system that does not rely on substantive inputs that are unavailable or unreliable.

In addition, the SEC adopts a new rule to require a covered clearing agency to specify nine elements for its recovery and wind-down plan to address planning (e.g., the identification and use of scenarios, triggers, tools, staffing, and service providers); timing and implementation of the plans; and testing and board approval of the plans.

The compliance dates for the newly adopted amendments and rule include two phases: (1) each covered clearing agency is required to file the required proposed rule changes or advance notices to comply with these rules within 150 days after publication of these rules in the Federal Register and (2) each covered clearing agency's proposed rule changes are required to become effective in 390 days after publication of the newly adopted rules in the Federal Register.

SEC Division of Examinations Announces 2025 Priorities

On October 21, 2024, the SEC's Division of Examinations [released](#) its [2025 examination priorities](#). The new fiscal year's examinations will prioritize perennial and emerging risk areas, such as fiduciary duty, standards of conduct, cybersecurity, and artificial intelligence.

For fiscal year 2025, in addition to conducting examinations in core areas such as disclosures and governance practices, the Division of Examinations will also examine for compliance with new rules, the use of emerging technologies, and the soundness of controls intended to protect investor information, records, and assets.

While the priorities delineate the focus of examinations, the list of priorities is not meant to be an exhaustive list of all the areas the Division of Examinations will focus on in the upcoming year.

SEC Approves CBOE's Proposed Rule Change Permitting Listing and Trading of Options on Bitcoin ETFs

On October 18, 2024, the SEC [granted](#) Chicago Board of Exchange an approval of its proposed rule change to list and trade options on certain ETFs referencing Bitcoin. The rule proposal, originally submitted in August and subsequently amended in September and October, would allow CBOE to list and trade options on the ETFs Fidelity Wise Origin Bitcoin Fund and the ARK 21Shares Bitcoin ETF.

In its approval order, the SEC concluded that the rule change proposal is “designed to minimize the potential for manipulations or disruptions of the underlying market.” and granted the accelerated timetable due to (1) the narrow scope of the proposal, as it seeks to list and trade options referencing only two ETFs, (2) the proposal of new position and exercise limits for such options and the providing of justification and analysis for the proposed position and exercise limits, (3) the addition of surveillance procedures that will apply to the proposed options, and (4) the elimination of references to the applicability of certain position limit interpretations.

SEC Enforcement:

SEC Charges Companies with Misleading Cyber Disclosures

On October 22, 2024, the SEC [announced](#) its settled charges against four current and former public companies impacted by the compromise of SolarWinds' Orion software regarding their misleading cybersecurity risk and intrusion disclosures. Unisys Corp., Avaya Holdings Corp., Check Point Software Technologies Ltd, and Mimecast Limited were each named in the charges. Unisys was also charged with disclosure controls and procedures violations.

According to the SEC's orders, the companies learned that the likely hacker behind the electronic intrusion into SolarWinds Orion had also accessed their systems without authorization, but each company had negligently minimized its respective cybersecurity incident in its public disclosures. In addition, the SEC's order finds that Unisys' materially misleading disclosures resulted in part from Unisys' deficient disclosure controls.

The SEC's orders find that each company violated certain applicable provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and related rules thereunder. Without admitting or denying the SEC's findings, each company agreed to cease and desist from future violations of the charged provisions and to pay civil penalties.

In [dissent](#), SEC Commissioners Pierce and Uyeda disagreed with the SEC's focus on the specifics of what should have been disclosed rather than evaluate whether what had been

disclosed was material to investors, claiming that the information the SEC concluded as material was, in fact, immaterial.

SEC Charges WisdomTree with Failing to Adhere to Its Own Investment Criteria

On October 21, 2024, the SEC [charged](#) New York-based investment adviser WisdomTree Asset Management Inc. with making misstatements and for compliance failures relating to the execution of an investment strategy that was marketed as incorporating environmental, social, and governance (ESG) factors.

According to the SEC's order, WisdomTree represented in prospectuses that the funds would not invest in companies involved in certain products or activities, including fossil fuels and tobacco. However, the SEC's order finds that certain funds controlled by WisdomTree invested in companies that were involved in fossil fuels and tobacco, including in coal mining and transportation, natural gas extraction and distribution, and retail sales of tobacco products. According to the SEC's order, WisdomTree used data from third-party vendors that did not screen out all companies involved in fossil fuel and tobacco-related activities. The SEC's order further finds that WisdomTree did not have any policies and procedures over the screening process to exclude such companies.

WisdomTree consented to the entry of the SEC's order finding that it violated the antifraud provisions of the Investment Advisers Act of 1940 and the Investment Company Act of 1940, and the compliance rule in the Investment Advisers Act.

SEC Charges RTX with Violating Foreign Corrupt Practices Act

On October 16, 2024, the SEC [announced](#) that RTX Corporation, a Virginia-based aerospace and defense company, [agreed](#) to resolve charges that it violated the Foreign Corrupt Practices Act (FCPA) in connection with payments made to assist in obtaining contracts with the Qatari military. RTX, formerly known as Raytheon Technologies Corp., was formed after the 2020 merger of Raytheon Company and United Technologies Corp.

According to the SEC's order, RTX used sham subcontracts with a supplier to pay bribes of nearly \$2 million to Qatari military from 2011 to 2017 to obtain Qatari military defense contracts. Additionally, the SEC's order finds that RTX paid more than \$30 million to a Qatari agent who had no prior background in military defense contracting. The order finds that RTX continued working with the agent even after numerous RTX employees raised concerns about risks of corruption.

The SEC's order finds that RTX violated the antibribery, internal accounting controls, and books and records provisions of the FCPA. RTX consented to the entry of the SEC's order requiring it to cease and desist from committing or causing any future violations and to pay

disgorgement, prejudgment interest and a civil penalty. As part of the resolution, RTX must retain an independent compliance monitor for three years.

In Case You Missed It:

DOJ Charges an Individual for Hacking SEC's X Account

On October 17, 2024, the Department of Justice [announced](#) charges against an individual for the January hacking of the SEC's social media account on X and for posting fraudulent statements.

According to the [indictment](#), Eric Council Jr. allegedly conspired with others to take control of the SEC's X account and, once obtained, falsely announced, under the name of SEC Chair Gary Gensler, the regulator's approval of ETFs on bitcoin. The DOJ alleges that the fraudulent post caused a significant spike in bitcoin prices, which subsequently dropped when the SEC reported the post was unauthorized.

The charges include conspiracy to commit aggravated identity theft and access device fraud. If convicted, Council Jr. faces a maximum penalty of five years in prison.

Federal District Court Rules Missouri Can Not Impose Anti-ESG Disclosure Requirements on Broker-Dealer's Securities Recommendations or Investment Advisor's Advisory Services

In August 2024, the US District Court for the Western District of Missouri [ruled](#) that Missouri state regulations imposing certain disclosure requirements on financial professionals were preempted by federal law and violated the First Amendment.

The Missouri regulations required that securities firms and professionals obtain a signature from Missouri investors on consent forms before incorporating a 'social objective' or other 'nonfinancial objective' into their securities recommendations or investment advice. SIFMA contended that the regulations violated the First Amendment by compelling financial professionals to make misleading statements about the effects of incorporating nonfinancial objectives into investment decisions. SIFMA further argued that the rules were preempted by the National Securities Markets Improvement Act of 1996 and ERISA.

The Court ruled that the Missouri regulations (1) imposed recordkeeping requirements beyond federal law, directly conflicting with NSMIA; (2) were unconstitutionally vague and infringed on First Amendment rights by requiring professionals to obtain consents using language that was both inaccurate and controversial; and (3) imposed undue burdens on financial professionals.

Consequently, the Court declared the state regulations preempted and unconstitutional.