UNITED STATES

DETAILED ASSESSMENT OF IMPLEMENTATION SELF-ASSESSMENT

IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION

September 5, 2019

Prepared By
U.S. Securities and Exchange Commission

This self-assessment was prepared by the staff of the U.S. Securities and Exchange Commission for purposes of the IMF's Financial Sector Assessment Program of the United States and is non-binding, informal, and summary in nature. The responses contained herein express the views of the staff of the Commission and are not rules, regulations, interpretations, or statements of the Commission, which has neither approved nor disapproved the responses.

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I. INTRODUCTION

Jurisdiction:	United States of America
Authority:	Securities and Exchange Commission
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1. This self-assessment questionnaire has been prepared in reference to the Methodology to assess the implementation of the IOSCO Objectives and Principles of Securities Regulation approved by IOSCO.

2. The questionnaire covers a subset of Principles deemed relevant for the scope of the 2020 United States FSAP exercise comprising Principles 1, 2, 3, 6, 7, 9, 24-28, 29-32 (with respect specifically to market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues) and 33-37.

3. Section II provides guidance that should be taken into account when preparing the responses to the questionnaire that is particularly important for the IMF to initiate the assessment of the efficiency of supervision. Please pay particular attention to the fact that the scope of the IOSCO assessment extends beyond the primary securities regulator, if other authorities are responsible for regulating, supervising and/or enforcing any elements covered by the Principles.

4. As described in the following section III, the authorities are requested to provide detailed answers for the identified subset of Principles.

5. In your answers to the questions, please describe the content of your regulatory framework in detail and include precise references to the relevant laws, regulations and guidelines. Please also provide us with links to/PDF copies of them.

II. ADDITIONAL GUIDANCE

A self-assessment constitutes a critical input in the FSAP work. It provides the authorities' own evaluation of the extent to which the jurisdiction is compliant with the IOSCO Objectives and Principles of Securities Regulation. A recurrent challenge for the IMF missions has been to receive a sufficient information to determine whether the legal and regulatory framework described in the corresponding principle has been implemented in practice. The table below lists the most frequent cases where additional information has been requested in the past with respect to the above-identified subset of Principles, so that the authorities can take it into consideration when preparing the responses. The provision of this information should facilitate a more effective and efficient onsite mission work and meetings with the authorities.

Number of the Principle and Question	**Useful information to include under the response to the corresponding Principle/Question**
1, Question 2(a)	• Please ensure that your description identifies any possible division of responsibilities in the regulation and supervision of securities markets, activities and participants on the basis of the type of security, market participant (e.g. bank vs. securities dealer/broker) between the various statutory and self-regulatory authorities. Please note that the IOSCO assessment covers also banks' securities activities, and if more than one authority is responsible for the supervision of such activities, the discussion of Principles 1-5 should cover all those authorities. In such case, you are also expected to include information on the responsibilities and activities of all those authorities in all relevant Principles (particularly 29-32).
1, Question 2(b)	• Do other types of financial institutions offer securities like products (such as CIS-like insurance products or deposit instruments that mimic CISs/return based on market performance, etc.)? • If so, how are these other products regulated with respect to disclosure, suitability for the client, etc.? • Is the regulation that is applied equivalent to that which applies to equivalent securities products?
1, Question 2(d)	• Reference to any MoUs between the domestic authorities and the areas that they cover. If possible include copies. • Reference to any committees between the domestic authorities, with indication of frequency of meetings, and types of issues discussed in the past.
3, Question 2	• Information on the budget development of the relevant regulatory authorities, including source(s) of funding (for the last three years and any budgets or estimates available for the upcoming years).

3, Question 3	• Information on number of staff dedicated to securities markets regulation and supervision, if possible with a break down by main functions (licensing, supervision of intermediaries, market surveillance, enforcement), as well as by profession. • Information on average years of experience of staff at different levels of the organization, staff turnover, and competitiveness of the salaries vis-à-vis private sector
7, Question 1	• What information does the regulator have about securities activities in the jurisdiction, including about activities that are not subject to regulation? • Is this information complete, up to date and accurate? • What kind of analysis/review is done on this information?
9, Question 2	• Details on the SRO's supervision of its members, including on- and off-site examinations and enforcement activities over the past 3-5 years.
9, Question 3	• Detailed information on the regulator's oversight program in all entities that qualify as SROs as per Principle 9, including both off-site reporting and on-site inspections. With regards to the latter, include information on the cycle of inspections and their scope/coverage.
24, Question 1(a)	• Describe the regulation of CIS only sold to sophisticated investors (non-retail or wholesale funds) and how it differs from the regulation of retail funds.
24, Question 1(b)	• Cover in your response all entities involved in the operation of a CIS, including the fund management company, asset manager, fund administrator, custodian etc.
24, Questions 8 and 9	• For the periodic inspection plan of CIS operators, custodians and CIS: number of inspections carried out, with a break down by type of firm, and by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the criteria used to select firms and on the frequency and scope of inspections. • Thematic inspections: number and themes. It is important that information be included on the way the themes are selected. • Number of sanctions imposed on fund managers during the last three years, if possible with a break down by type of misconduct

26, Questions 6, 7 and 9	• Information on the system, if any, to review the CIS offering documents, for example whether all offering documents are reviewed or just a sample, and if only a sample, what are criteria to select the documents that will be reviewed. Similar type of information should be provided for the review of periodic reports and other disclosure documents. If such review is carried out by the exchanges or a SRO, please provide the corresponding information based on what the exchanges or SRO do. • Information on the number of offering documents filed with the regulator in the last three years. • Number of sanctions imposed on CIS operators and others involved in the preparation of CIS disclosure documents or advertisements, if possible with a break down by type of misconduct.
28, Question 1	• Does the jurisdiction have a definition of hedge fund? If so, please provide it.
28, Question 8	• Number of inspections carried out in hedge fund managers/ advisers and/ or hedge funds (if applicable), by type of inspection (due to regular program, and due to complaint/cause). It is important that information be included on the criteria used to select firms and on the frequency and scope of inspections.
31, Question 25	• For the periodic inspection plan of intermediaries: number of inspections carried out, with a break down by type of intermediary, and by type of inspection (due to regular program, and due to complaint/cause. It is important that information be included on the criteria used to select firms and on the frequency and scope of inspections. • Thematic inspections: number and themes. It is important that information be included on the way the themes are selected. • Number of sanctions imposed on market intermediaries during the last three years, if possible with a break down by type of misconduct.
32, Question 3(d)	• Is there a compensation fund for investors or a settlement/default fund at a clearing house? • What losses are covered? • Who is covered?
32, Question 4	• If applicable, concrete examples of how the regulator has dealt with a failure of a market intermediary.
34, Question 1	• Information on the oversight of exchanges and trading platforms, including both off site reporting and on-site inspections. For the latter, please include information on the frequency and scope of inspections.

36, Questions 2 and 3	• Information on administrative/ civil sanctions imposed during the last three years on major misconducts, such as market manipulation and insider trading. • Information on criminal sanctions imposed for major offenses, such as insider trading and market manipulation.

III. DETAILED QUESTIONNAIRE

The following questions have been developed by IOSCO as a tool to assess the level of implementation of the IOSCO Objectives and Principles of Securities Regulation. To answer them, the authorities should have as a reference the preamble, scope and explanatory notes included in the IOSCO Methodology, in connection with each Principle. **The questionnaire below covers the subset of Principles deemed relevant for the scope of the 2020 United States FSAP exercise.**

Principle 1	**The responsibilities of the Regulator should be clear and objectively stated.**
Key Questions	
1.	Are the regulator's responsibilities, powers and authority:
	(a) Clearly defined and objectively set out, preferably in law, and in the case of powers and authority, enforceable?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As noted in SEC staff's 2014 self-assessment, the United States (U.S.) Securities and Exchange Commission (SEC or the Commission) is an independent agency of the U.S. government established pursuant to the Securities Exchange Act of 1934 (Exchange Act).[1] The SEC's responsibilities, powers, and authority are set forth primarily in the following federal statutes: the Securities Act of 1933 (Securities Act),[2] the Exchange Act, the Trust Indenture Act of 1939 (Trust Indenture Act),[3] the Investment Company Act of 1940 (Investment Company Act),[4] and the Investment Advisers Act of 1940 (Advisers Act).[5] The SEC's powers and authority also extend to cases involving public companies arising under Chapters 9 and 11 of the U.S. Bankruptcy Code.[6]

Since 1940, various other laws have been promulgated to further define the SEC's responsibilities, powers, and authority, including: the Sarbanes-Oxley Act of 2002 (Sarbanes-

1 See http://www.sec.gov/about/laws/sea34.pdf.

2 See http://www.sec.gov/about/laws/sa33.pdf.

3 See http://www.sec.gov/about/laws/tia39.pdf.

4 See http://www.sec.gov/about/laws/ica40.pdf.

5 See http://www.sec.gov/about/laws/iaa40.pdf.

6 See 11 U.S.C. §§ 101-12, 301-08, 321-33, 341-51, 361-66, 501-11, 521-28, 541-62, 701-07, 721-27, 741-53, 761-67, 781-84, 901-04, 921-30, 1101-16, 1121-29, 1141-46, 1161-74, 1201-08, 1221-31, 1301-08, 1321-30, 1502-32.

Oxley Act),[7] the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act),[8] and the Jumpstart Our Business Startups Act of 2012 (JOBS Act).[9]

In addition, since SEC staff's 2014 self-assessment, other laws have been promulgated to further define the SEC's responsibilities, powers, and authority, including: the Fixing America's Surface Transportation Act of 2015 (FAST Act),[10] the SEC Small Business Advocate Act of 2016,[11] the Fair Access to Investment Research Act of 2017,[12] and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018.[13]

SEC Mission, Responsibilities, and Enforceability

As noted in SEC staff's 2014 self-assessment, the SEC's mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.[14] The SEC works with Congress, other executive branch agencies, self-regulatory organizations (SROs) (which comprise securities exchanges, clearing agencies, the Financial Industry Regulatory Authority (FINRA), and the Municipal Securities Rulemaking Board (MSRB)), accounting and auditing standards setters, state securities regulators, law enforcement officials, and many other organizations in support of the agency's mission. Among other things, it is the Commission's responsibility to:

- interpret and enforce the federal securities laws;
- issue new rules and amend existing rules;
- oversee the inspection of brokers, dealers, investment advisers, municipal advisors, transfer agents, clearing agencies, credit rating agencies (CRAs) registered as nationally recognized statistical rating organizations (NRSROs), and SROs;
- oversee private regulatory organizations in the securities, accounting, and auditing fields; and
- coordinate U.S. securities regulation with federal, state, and foreign authorities.

7 See http://www.sec.gov/about/laws/soa2002.pdf.

8 See http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

9 See http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

10 See https://www.congress.gov/114/plaws/publ94/PLAW-114publ94.pdf.

11 See https://www.congress.gov/114/plaws/publ284/PLAW-114publ284.pdf.

12 See https://www.congress.gov/115/plaws/publ66/PLAW-115publ66.pdf.

13 See https://www.congress.gov/115/bills/s2155/BILLS-115s2155enr.pdf.

14 See https://www.sec.gov/Article/whatwedo.html.

As noted in SEC staff's 2014 self-assessment, the laws administered by the SEC provide for the following: (i) public disclosure of pertinent facts concerning public offerings of securities, securities listed on national exchanges, and certain securities traded in the over-the-counter (OTC) markets; (ii) disclosure requirements in the soliciting of proxies for meetings of security holders by certain companies; (iii) regulation of the trading in securities on national securities exchanges and in OTC markets; (iv) investigation of securities fraud, manipulation, and other federal securities law violations, and the imposition and enforcement of legal sanctions for such violations; (v) registration and the regulation of certain activities of brokers, dealers, investment advisers, NRSROs, and municipal advisors; (vi) supervision of the activities of mutual funds and other investment companies;[15] (vii) administration of statutory standards governing protective and other provisions of trust indentures under which debt securities are sold to the public; (viii) protection of the interests of public investors involved in bankruptcy cases involving the adjustment of debts of a municipality; and (ix) administrative remedies and sanctions, injunctive and other remedies, civil money penalties, and criminal prosecution.[16]

As an update to SEC staff's 2014 self-assessment, as of December 31, 2018, the SEC oversaw:

- approximately 13,000 investment advisers;
- approximately 20,000 investment companies;
- approximately 3,700 broker-dealers;
- approximately 550 municipal advisors;
- approximately 330 transfer agents;
- 22 securities exchanges;
- 10 CRAs registered as NRSROs; and
- 7 clearing agencies.

The SEC also oversees the Public Company Accounting Oversight Board (PCAOB), FINRA, MSRB, Securities Investor Protection Corporation (SIPC), and the Financial Accounting

[15] This document references a variety of different investment vehicles. For ease of reference, a "mutual fund," also known as an "open-end fund," issues redeemable securities and continuously pools money from investors and invests the money in stocks, bonds, money market instruments, other securities, or cash. A "closed-end fund" generally does not continuously offer its shares for sale but instead sells a fixed number of shares at one time that trade at market-determined prices on a national securities exchange. An "exchange-traded fund," or "ETF," is a type of exchange-traded product that possesses characteristics of both mutual funds and closed-end funds. A "money market fund" is a type of mutual fund regulated pursuant to Rule 2a-7 under the Investment Company Act.

[16] See 17 C.F.R. § 200.1. The SEC is responsible for non-criminal enforcement of the federal securities laws. The SEC has the authority to refer criminal cases to federal and state criminal law enforcement authorities.

Standards Board (FASB). In addition, the SEC is responsible for reviewing the disclosures and financial statements of companies that file periodic and current reports, of which nearly 7,000 filed an annual report last year. The responsibilities for this oversight are set out in the statutes described above and in regulations promulgated by the Commission under those statutes.

SEC Structure and Governance

As noted in SEC staff's 2014 self-assessment, the SEC consists of five Commissioners appointed by the President and confirmed by the Senate to serve for a term of five years. By law, no more than three of the Commissioners may belong to the same political party. The SEC Chair is designated by the President.[17]

Since SEC staff's 2014 self-assessment, the SEC's functional responsibilities are now organized into five Divisions and 25 Offices, each of which is headquartered in Washington, D.C. The SEC also has 11 Regional Offices, which are comprised primarily of SEC staff from the Division of Enforcement (Enforcement) and the Office of Compliance, Inspections and Examinations (OCIE), the latter of which oversees the majority of the SEC's examination programs. As of the end of fiscal year (FY) 2018,[18] the SEC had approximately 4,450 employees.

As noted in SEC staff's 2014 self-assessment, the SEC has rules regarding its organization, program management and the disposition of Commission business.[19] The SEC also has established Rules of Practice that govern proceedings before the Commission under the statutes it administers.[20]

(b) If the regulator can interpret its authority, are the criteria for interpretation clear and transparent?

No significant update from SEC staff's 2014 self-assessment in response to Principle 1, Question 1(b).

(c) Is the interpretative process transparent enough to preclude situations in which an abuse of discretion can occur?

No significant update from SEC staff's 2014 self-assessment in response to Principle 1, Question 1(c).

2. When more than one regulator is responsible for securities regulation:

(a) Where responsibility is divided among regulators, is legislation designed to

[17] See Section 1 of Reorganization Plan No. 10 of 1950, available at http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5a-node84-leaf114&num=0&edition=prelim.

[18] The SEC's fiscal year ends on September 30.

[19] See 17 C.F.R. PART 200.

[20] See 17 C.F.R. PART 201.

avoid regulatory differences or gaps?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As noted in SEC staff's 2014 self-assessment, only the SEC has the authority to administer and enforce the federal securities laws (see response to Principle 1, Question 1(a), above). Where responsibility is divided among the SEC and other regulators, legislation is generally designed to avoid regulatory differences or gaps. Aspects of certain types of products, transactions and functions of financial institutions may also be subject to the authority of more than one regulator. For example:

SROs

As noted in SEC staff's 2014 self-assessment, Congress has vested in the Commission the power to supervise SROs as a matter of public interest and has provided the Commission with several tools to oversee SROs.[21] For example, exchanges, clearing agencies, and national securities associations must register with the Commission, and SROs must file their rule changes with the Commission. In addition, the Commission has the authority to inspect and examine SROs (for more information regarding SROs and the SEC's oversight, see responses to Principle 9 questions, below).

Banks and Bank Holding Companies

As noted in SEC staff's 2014 self-assessment, under applicable federal banking statutes, the Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) have regulatory authority over bank holding companies and banks, which can be affiliated with broker-dealers and asset management entities regulated by the SEC. The federal banking statutes generally do not limit the SEC's authority over such affiliates under the federal securities laws, and the SEC and banking regulators coordinate on the regulation of financial institutions that comprise entities subject to different regulations. In addition, some activities conducted by banks that would be regulated by the SEC if conducted by another type of market participant are either excluded or exempt from SEC regulation in light of regulation by the banking regulators.[22] Absent an exemption, bank holding companies that issue securities must register the transactions under the Securities Act, become subject to the Exchange Act reporting requirements for at least the fiscal year during which a Securities Act registration statement became effective, and are subject to the liability provisions of the federal securities laws. Banks and bank holding companies that register securities under the Exchange Act are subject to the Exchange Act reporting requirements and the Exchange Act liability provisions.

Enforcement Authority

21 See S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, II (1975).

22 See Exemptions for Banks – Regulation R, Release No. 34–56502 (Sep. 24, 2007), available at http://www.sec.gov/rules/final/2007/34-56502fr.pdf.

As noted in SEC staff's 2014 self-assessment, the SEC is responsible for non-criminal enforcement of the federal securities laws. The SEC has the authority to refer criminal cases to federal law enforcement authorities and state criminal law enforcement authorities. The SEC also regularly coordinates its efforts with domestic and foreign law enforcement partners, including coordination on parallel criminal investigations conducted by the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), among others.

OTC Derivatives

As noted in SEC staff's 2014 self-assessment, the 2008 financial crisis highlighted significant issues in the OTC derivatives markets, which had experienced dramatic growth in the years leading up to the crisis and are capable of affecting significant sectors of the U.S. economy. The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the U.S. by improving accountability and transparency in the financial system, including in connection with swaps and security-based swaps (SBS).

As noted in SEC staff's 2014 self-assessment, Title VII of the Dodd-Frank Act provides for a comprehensive regulatory framework for swaps and SBS. Under this framework, the Commodity Futures Trading Commission (CFTC) regulates swaps, while the SEC regulates SBS, and the SEC and CFTC jointly regulate mixed swaps. This framework encompasses the registration and comprehensive regulation of dealers and major participants, as well as requirements related to clearing, trade execution, regulatory reporting, and public dissemination of anonymized trade data.

In its implementation of the Title VII framework for SBS, SEC staff has consulted and coordinated regularly with the CFTC. In addition, the staffs of both agencies continue to work together to find ways to further harmonize the regulatory regimes for SBS and swaps.[23] As a part of these efforts, the SEC and CFTC in 2018 updated and enhanced their Memorandum of Understanding (MOU). The new MOU includes updates to address the regulatory regime for SBS and swaps, make the MOU more relevant in the current market environment and help ensure continued coordination and information sharing between the SEC and CFTC.[24]

Municipal Securities Dealers

[23] See Joint Statement on CFTC-SEC Portfolio Margining Harmonization Efforts, available at https://www.sec.gov/news/public-statement/joint-statement-cftc-sec-portfolio-margining-harmonization-efforts. See also Joint Statement on the IDI Exception to the Swap Dealer Definition, available at https://www.sec.gov/news/public-statement/joint-statement-sec-and-cftc-swap-dealer-definition; SEC Issues Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, available at https://www.sec.gov/news/press-release/2018-249.

[24] See SEC and CFTC Announce Approval of New MOU, available at https://www.sec.gov/news/press-release/2018-114.

As noted in SEC staff's 2014 self-assessment, the Securities Acts Amendments of 1975[25] required firms transacting business in municipal securities to register with the SEC as broker-dealers, required banks dealing in municipal securities to register as municipal securities dealers, and gave the SEC broad rulemaking and enforcement authority over such broker-dealers and municipal securities dealers.[26] Therefore, a person who engages in the activities of a broker[27] or dealer[28] in municipal securities, and does not satisfy an exception from the registration provisions of the Exchange Act must register with the SEC as a broker-dealer and must join an SRO such as FINRA.

A bank transacting business in municipal securities, however, is excluded from the general Exchange Act definitions of broker and dealer.[29] A bank can be a municipal securities dealer because the term is defined to include "any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise."[30] A bank that is a municipal securities dealer is required to register with the SEC.[31]

All broker-dealers and municipal securities dealers that engage in municipal securities transactions also must register with the MSRB[32] and may not act in contravention of its rules.[33] The MSRB rules, among other things, establish appropriate standards for broker-dealers and municipal securities dealers and are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade.[34]

The current statutory framework clearly establishes the regulatory responsibilities of each regulator and is designed to prevent regulatory differences or gaps. While the MSRB does not have the authority to enforce its rules, the Exchange Act designates the institutions responsible for overseeing compliance with the provisions in the Exchange Act relating to

25 See Securities Acts Amendments of 1975, Pub. L. No. 94-29, 89 Stat. 131 (1975).

26 See, *e.g.*, Exchange Act Sections 15(c)(1), 15(c)(2); 17(a); 17(b), 15B(c)(1), and 21(a)(1). Enforcement activities regarding municipal securities dealers must be coordinated by the SEC, FINRA and the appropriate bank regulatory agency. See Exchange Act Sections 15B(c)(6)(A), 15B(c)(6)(B), and 17(c).

27 See Exchange Act Section 3(a)(4) (defining "broker" as "any person engaged in the business of effecting transactions in securities for the account of others").

28 See Exchange Act Section 3(a)(5) (defining "dealer" as "any person engaged in the business of buying and selling securities … for such person's own account through a broker or otherwise").

29 Banks are excepted from the definitions of "broker" and "dealer" with respect to transactions in municipal securities. See Exchange Act Sections 3(a)(4)(B) and 3(a)(5)(C).

30 See Exchange Act Section 3(a)(30).

31 See Exchange Act Section 15B.

32 The Securities Act Amendments of 1975 created the MSRB, an SRO subject to SEC oversight, and granted it authority to promulgate rules governing the sale of municipal securities by broker-dealers and municipal securities dealers. See Exchange Act Section 15B(b).

33 See MSRB Rule A-12.

34 See Exchange Act Section 15B(b)(2)(C).

municipal securities and the rules of the MSRB.[35] The SEC has broad inspection and enforcement authority over broker-dealers and municipal securities dealers that engage in municipal securities transactions.[36] In addition, broker-dealers and municipal securities dealers are subject to regulations adopted by the SEC, including those regulations adopted to define and prevent fraud.[37]

FINRA has inspection and enforcement responsibility over its broker-dealer members and federal bank regulators have this responsibility for municipal securities dealers that are banks under their respective jurisdictions.[38] Currently, in addition to the SEC and FINRA, the FDIC, the Federal Reserve, and the OCC all play a role in the enforcement of MSRB rules.[39] The MSRB, in turn, facilitates the enforcement efforts of these agencies through regulatory coordination and enforcement support programs, which provide the agencies with market information and reports of potential violations as they become known and consultation concerning its rules.

Federal Versus State Securities Regulation

The division of responsibility between federal and state regulation of certain securities activities is set forth in the federal securities laws. For example, investment advisers with less than $100 million in assets under management generally are not required to register with the SEC as investment advisers but are subject to state regulation. As another example, an offering of securities must be registered separately under the Securities Act and applicable state securities laws, unless an exemption from registration is available. In addition, Section 18 of the Securities Act creates a class of "covered securities" that preempts state securities law registration requirements.

35 See Exchange Act Section 15B(c)(5).

36 See generally Exchange Act Sections 15B and 17(b).

37 See Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Release No. 33-7049; 34-33741 (Mar. 9, 1994), available at https://www.sec.gov/rules/interp/1994/33-7049.pdf. See also Exchange Act Sections 15(c)(1) and (2).

38 See Exchange Act Sections 15B(c) and 17(c).

39 See Exchange Act Section 15B(c)(7), which provides that the periodic examination of regulated entities shall be conducted by (i) a registered securities association in the case of dealers that are members of the registered securities association, (ii) the appropriate regulatory agency (bank regulators) in the case of dealers that are not members of a registered securities association, and (iii) the SEC, or its designee, in the case of municipal advisors.

Since SEC staff's 2014 self-assessment, the Commission has amended Regulation A[40] and adopted Regulation Crowdfunding,[41] both of which include transactions that preempt state law registration and qualification requirements under Section 18 of the Securities Act. In addition, the Commission expanded the intrastate exemption framework for securities offerings made solely within a single state to permit intrastate offerings by an issuer incorporated out-of-state, if the issuer is a resident of and doing business in the state where the offering is made and sales are made only to residents of that state.[42] Similar to the previously existing intrastate offering exemption,[43] offerings under the new intrastate offering exemption are not required to be registered pursuant to the provisions of the Securities Act but are subject to state regulation.[44]

Other Areas

In addition to those areas described above, and as discussed in SEC staff's 2014 self-assessment, the SEC shares responsibility with other regulators with respect to certain other areas such as variable annuities and government-sponsored enterprises. The SEC also shares responsibility with the Federal Reserve with respect to certain systemically important financial market utilities (see response to Principle 6, Question 1(a)(i), below, for more information on the Financial Stability Oversight Council (FSOC)).[45]

(b) Is substantially the same type of conduct and product generally subject to consistent regulatory requirements?

No significant update from SEC staff's 2014 self-assessment in response to Principle 1, Question 2(b).

[40] See Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A), Release Nos. 33-9741; 34-74578; 39-2501 (Mar. 25, 2015), available at https://www.sec.gov/rules/final/2015/33-9741.pdf. See also Securities Act Section 18(b)(4)(D). Regulation A is an exemption available to U.S. and Canadian companies for public offerings of securities up to $50 million in any 12-month period. See also Amendments to Regulation A, Release No. 33-10591 (Dec. 19, 2018), available at https://www.sec.gov/rules/final/2018/33-10591.pdf.

[41] See Crowdfunding, Release Nos. 33-9974; 34-76324 (Oct. 30, 2015), available at https://www.sec.gov/rules/final/2015/33-9974.pdf. See also Securities Act Section 18(b)(4)(C). Regulation Crowdfunding is an exemption available to U.S. companies for public offerings of securities up to $1.07 million in any 12-month period that are sold online through a registered intermediary.

[42] See Exemptions to Facilitate Intrastate and Regional Securities Offerings, Release Nos. 33-10238; 34-79161 (Oct. 26, 2016), available at https://www.sec.gov/rules/final/2016/33-10238.pdf.

[43] See Securities Act Rule 147.

[44] See *supra* note 41.

[45] FSOC recently issued proposed interpretive guidance which would replace its existing interpretive guidance on nonbank financial company determinations. The proposed guidance describes the approach the FSOC intends to take in prioritizing its work to identify and address potential risks to financial stability in the U.S. using an activities-based approach and enhancing the analytical rigor and transparency in the processes FSOC intends to follow if it were to consider making a determination to subject a nonbank financial company to supervision by the Federal Reserve. See https://home.treasury.gov/system/files/261/Notice-of-Proposed-Interpretive-Guidance.pdf.

However, SEC staff notes that in the "Additional Guidance" section of this questionnaire, the IMF requested that SEC staff include in its response to Principle 1, Question 2(b) an answer to the following additional questions from the IMF:

- Do other types of financial institutions offer securities like products (such as CIS-like insurance products or deposit instruments that mimic CISs/return based on market performance, etc.)?
- If so, how are these other products regulated with respect to disclosure, suitability for the client, etc.?
- Is the regulation that is applied equivalent to that which applies to equivalent securities products?

In response, SEC staff provides the following information relating to CIS-like insurance products or deposit instruments that mimic CISs/return based on market performance, etc.

Variable Annuities and Index Annuities

Insurance companies may issue variable annuities, which are contracts that generally provide for accumulation of the purchaser's payment, followed by payment of the accumulated value to the purchaser either as a lump sum or as a series of payments. The value of the variable annuity fluctuates with the market performance of the underlying investments, which are typically mutual funds. Variable annuities are CIS-like insurance products and are securities that are subject to SEC jurisdiction with respect to disclosure and other matters. The contracts, as well as the underlying funds, are generally required to be registered as investment companies under the Investment Company Act, and the offering of their securities must be registered under the Securities Act. Like other securities, variable annuities are subject to sales practice regulation, such as the suitability requirements of FINRA. In short, variable annuities are securities and are therefore subject to securities regulation.

Insurance companies may also issue index annuities. Index annuities provide a return that is computed based on the return of a market index, such as the Standard & Poor's 500 Composite Stock Price Index. The insurer also undertakes to provide a minimum value to the purchaser. Section 989J of the Dodd-Frank Act exempts indexed annuities from the SEC's jurisdiction if they meet the conditions of the statute. These requirements include that the annuity meets certain state laws providing for principal protection and minimum interest. They also include that the annuity is issued in a state that has adopted minimum suitability requirements in the sales of annuities or that the issuing insurance company has adopted such requirements.[46] The status under the federal securities laws of index annuities that are not entitled to the exemption would be determined on a case-by-case basis. An index annuity determined to be a security would be subject to the federal securities laws.

[46] See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010).

Collective Investment Trusts

Trust companies and banks maintain pooled trust accounts on behalf of certain investors, commonly referred to as "collective investment trusts." Collective investment trusts are regulated by the banking regulators, and generally may rely on a statutory exclusion from being regulated as investment companies under the Investment Company Act.[47]

(c) Are responsible authorities required to cooperate and communicate in areas of shared responsibility?

No significant update from SEC staff's 2014 self-assessment in response to Principle 1, Question 2(c).

(d) Are there arrangements for cooperation and communication between responsible regulators through appropriate channels and are cooperation and communication occurring between responsible regulators without significant limitations?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As noted in SEC staff's 2014 self-assessment, the Commission places great emphasis on building and maintaining close partnerships with other entities across various regulatory and market segments and national boundaries. The SEC works closely with other regulatory and enforcement authorities through a variety of arrangements, including interagency MOUs, and through groups such as the FSOC, the International Organization of Securities Commissions (IOSCO), and the Financial Stability Board (FSB). The Commission also frequently engages in bilateral cooperation with other international, national, or state authorities on specific rulemaking activities, regulatory initiatives, examinations and enforcement investigations and cases.

In addition to statutory provisions facilitating the sharing of information with other regulators, there are a variety of formal and informal mechanisms by which domestic regulators with responsibility over a particular activity effectively cooperate and communicate information relevant to their respective missions.

As noted in SEC staff's 2014 self-assessment, SEC Divisions and Offices collaborate with other regulatory entities to oversee the financial markets. For example:

[47] See, e.g., Investment Company Act Section 3(c)(11). In relevant part, Section 3(c)(11) excludes from the definition of investment company, among other things, any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under Section 401 of the Internal Revenue Code of 1986; or any governmental plan described in Section 3(a)(2)(C) of the Securities Act of 1933; or any collective trust fund maintained by a bank consisting solely of assets of one or more of such trusts, governmental plans, or church plans, companies or accounts that are excluded from the definition of investment company under Section 3(c)(14) of the Investment Company Act.

- SEC staff consults and coordinates routinely with staff from the U.S. Department of the Treasury (Treasury), the Federal Reserve, other banking regulators, the CFTC, and foreign regulators. These activities include the designation of registered clearing agencies, ongoing supervision of clearing agencies, transition periods in the SBS "push-out" rules in Section 716 of the Dodd-Frank Act, and the implementation of the Volcker Rule,[48] among other initiatives.

- SEC staff organizes and participates in discussions with international regulators of the globally-active CRAs through quarterly meetings of supervisory colleges, as well as bilateral and other multilateral discussions. The supervisory colleges were formed to enhance communication among CRA regulators globally with respect to examinations of the relevant CRAs.

- The SEC and FINRA regularly communicate to discuss strategic initiatives, examination coordination, risk assessment efforts, rulemaking issues, and industry risks. This type of collaboration is ultimately intended to make oversight of broker-dealers more effective and efficient and to improve compliance within the industry.

- The SEC regularly coordinates its efforts with domestic and foreign law enforcement partners, including coordination on parallel criminal investigations conducted by DOJ and the FBI, among others. One example is the Southern District of Florida Securities and Investment Fraud Initiative, an initiative designed to combat securities and investment fraud and protect the interests of the investing public, which has resulted in charges against over 200 individuals and orders for more than $2.5 billion in restitution. The SEC also promotes the development of broader information-sharing arrangements and efforts to secure the proceeds of fraud in order to successfully prosecute cross-border violations in areas such as offering frauds, market abuse, insider trading, and Foreign Corrupt Practices Act of 1977 (FCPA)[49] cases.

- SEC staff works with other regulators to issue joint alerts and bulletins, including an SEC-CFTC investor alert on binary options, an SEC-FINRA alert on pump-and-dump stock schemes, and an SEC-FINRA bulletin on pension and settlement income streams. SEC staff in OCIE collaborates with various federal agencies on Financial Literacy and Education Commission initiatives and partners with interested federal agencies on joint investor alerts and bulletins.

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[48] For example, the Commission, the federal banking regulators (i.e., the Federal Reserve, OCC, and the FDIC), and the CFTC adopted a common rule under Section 13 of the Bank Holding Company Act to restrict banking entities – including banks and their affiliated broker-dealers and investment advisers – from engaging in proprietary trading, sponsoring hedge funds and private equity funds, or investing in such funds. The common rule (also known as the Volcker Rule) includes exemptions for certain permitted activities, including market making-related activities and risk-mitigating hedging. The requirements of the common rule generally apply consistently to similar conduct and products. See 17 CFR 255 (please note that each aforementioned agency responsible for implementing the Volcker Rule has codified the rule in its part of the Code of Federal Regulations resulting in five different citations; the reference provided here is the SEC's citation).

[49] See 15 U.S.C. § 78dd-1, *et seq*.

- SEC staff consults and coordinates with the MSRB, FINRA, the Internal Revenue Service (IRS), and banking regulators with respect to municipal securities issues on an ongoing basis.

- In 2018, the SEC established the Strategic Hub for Innovation and Financial Technology (FinHub).[50] Among its other functions, the FinHub serves as a liaison to other domestic and international regulators regarding emerging technologies in financial, regulatory, and supervisory systems (see response to Principle 6, Question 4, below, for more information on the FinHub).

In addition, domestic regulators frequently enter into information and regulatory cooperation arrangements for certain products and activities, as described below.

MOUs with Other Federal Regulators

As noted in SEC staff's 2014 self-assessment, the Commission has entered into arrangements with various federal regulators that provide for the cooperation and communication of information between and among the relevant authorities on subjects relating to, among other things, credit default swaps, novel derivative products and security futures products. Since then, the Commission has entered into several new arrangements related to private funds, novel derivative products and financial technology. For example,

- SEC staff previously identified an MOU between the SEC and the Federal Reserve that facilitates the agencies' sharing of information and cooperation across a number of important areas of common interest, including anti-money laundering (AML), bank brokerage activities under the Gramm-Leach-Bliley Act of 1999 (GLBA), clearance and settlement in the banking and securities industries, and the regulation of transfer agents. Since then, the SEC and the Federal Reserve have entered into a second MOU,[51] under which the SEC shares data contained in, or derived from filings with the SEC on the "Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors" (Form PF), subject to conditions designed to protect the confidentiality of this information consistent with section 204(b)(10) of the Advisers Act. This Form contains information regarding private funds (e.g., hedge funds, private equity funds, and other private funds) reported by certain SEC-registered investment advisers) (see response to Principle 6, Question 1(a)(i), below, for additional information on Form PF).

[50] See https://www.sec.gov/news/press-release/2018-240.

[51] See U.S. Securities and Exchange Commission Annual Staff Report Relating to the Use of Form PF Data (Dec. 14, 2018) at 1 and 9, available at https://www.sec.gov/files/2018-form-pf-report-to-congress.pdf

- In 2018, the SEC and the CFTC entered into an MOU to help facilitate continued coordination and information sharing between the two agencies.[52] The MOU updated and enhanced the MOU described in SEC staff's 2014 self-assessment to make it more relevant in the current market environment and promote efficiency in rulemaking, regulatory oversight, and enforcement. The MOU continues a regulatory liaison between the agencies, and facilitates the discussion and coordination of regulatory action, as well as information exchange and data sharing regarding issues of common regulatory interest.

Although not mentioned in SEC staff's 2014 self-assessment, the SEC also entered into an MOU in 2011 with the FSOC and its voting and non-voting members, including (among others) the U.S. Treasury, Federal Reserve, CFTC, FDIC, OCC, Consumer Financial Protection Bureau (CFPB), Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), and Office of Financial Research (OFR) that governs information sharing and the protection of non-public information obtained from or shared among the parties in connection with or related to the functions and activities of FSOC and OFR.[53]

Through the above mechanisms and others, the SEC coordinates and communicates with other authorities with respect to areas of shared regulatory responsibilities without significant limitations. Please also refer to response to Principle 1, Question 2(a), above.

[52] See SEC and CFTC Announce Approval of New MOU, available at https://www.sec.gov/news/press-release/2018-114. The MOU is available at https://www.cftc.gov/sites/default/files/2018-06/CFTC_MOU_InformationSharing062818.pdf.

[53] See SEC's Controls Over Sensitive/Nonpublic Information Collected and Exchanged With the Financial Stability Oversight Council and Office of Financial Research, available at https://www.sec.gov/files/509.pdf. See also Audit of the Financial Stability Oversight Council's Controls over Non-public Information, available at https://www.fdicoig.gov/sites/default/files/publications/Audit%20of%20the%20Financial%20Stability%20Oversight%20Council%27s%20Controls%20over%20Non-public%20Information.pdf.

Principle 2	**The Regulator should be operationally independent and accountable in the exercise of its powers and functions.**
Key Questions	
Independence	
1.	Does the regulator have the ability to operate on a day-to-day basis without:
	(a) External political interference?
No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 1(a).	
	(b) Interference from commercial or other sectoral interests?
No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 1(b).	
2.	Where particular matters of regulatory policy require consultation with, or even approval by, a government minister or other authority:
	(a) Is the consultation process established by law?
No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 2(a).	
	(b) Do the circumstances, in which consultation is required, exclude decision making on day-to-day technical matters?
No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 2(b).	
	(c) Are the circumstances in which such consultation or approval is required or permitted clear and the process sufficiently transparent, or the failure to observe procedures and the regulatory decision or outcome subject to sufficient review, to safeguard its integrity?
No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 2(c).	
3.	Does the regulator have a stable and continuous source of funding sufficient to meet its regulatory and operational needs?
[Self-contained answer; no need to consult SEC staff's 2014 self-assessment] As noted in SEC staff's 2014 self-assessment, the SEC's budget request is part of the federal budget that is prepared by the President and submitted to Congress. Each year, the SEC prepares a budget estimate, which it forwards to the Office of Management and Budget	

(OMB). This document outlines the major program areas of the SEC and estimates the resources (including SEC staff and expenses such as salary, facilities, information technology (IT), cybersecurity, and other supplies) needed to operate them. The SEC's budget is part of the budget request that the President typically submits to Congress in February for the fiscal year that begins the following October.[54]

Funding for the SEC is made through an annual appropriation from Congress. Any amount appropriated to the agency is offset by private sector securities transaction fees, which are periodically adjusted and assessed on national securities exchanges and national securities associations in accordance with Section 31 of the Exchange Act. As such, the SEC's funding is designed to be deficit-neutral.

The SEC also has a reserve fund, which can, under certain circumstances, be used for the agency's expenses. The SEC has dedicated the reserve fund to large, multi-year, mission-critical IT programs and projects. The SEC can use up to $100 million, assuming sufficient budget authority, from the reserve fund in a given year. The funding is provided by deposits of up to $50 million per year in securities registration fees, with the remaining registration fees going to the U.S. Treasury.

4.	Are the regulator, the head and members of the governing body of the regulator, as well as its staff, accorded adequate legal protection for the *bona fide* discharge of their governmental, regulatory and administrative functions and powers?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 4.

5.	Are the head and governing board of the regulator subject to mechanisms intended to protect independence, such as: procedures for appointment; terms of office; and criteria for removal?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 5.

Accountability

6.	With reference to the system of accountability for the regulator's use of its powers and resources:
	(a) Is the regulator accountable to the legislature or another government body on an ongoing basis?

[54] The SEC's current and past budget requests are available on the SEC's website at http://www.sec.gov/about/secreports.shtml. See also Chairman Clayton's Testimony before the Financial Services and General Government Subcommittee of the U.S. Senate Committee on Appropriations (May 8, 2019), available at https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-us-senate-committee and Chairman Clayton's Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Dec. 11, 2018), available at https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0.

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 6(a).

(b) Is the regulator required to be transparent in its way of operating and use of resources and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 6(b).

(c) Is the regulator's receipt and use of funds subject to review or audit?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 6(c).

7. Are there means for natural or legal persons adversely affected by a regulator's decisions or exercise of administrative authority ultimately to seek review in a court, specifically:

(a) Does the regulator have to provide written reasons for its material decisions?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 7(a).

(b) Does the decision-making process for such decisions include sufficient procedural protections to be meaningful?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As noted in SEC staff's 2014 self-assessment, the U.S. Constitution requires administrative agencies, such as the SEC, to conduct their proceedings with due process. Section 554 of the Administrative Procedure Act (APA)[55] specifically requires the SEC to permit interested parties a hearing to submit facts and argument. Hearings in SEC-instituted administrative proceedings are heard before the Commission or, if the Commission so orders, a hearing officer.[56] A hearing officer may be an administrative law judge (ALJ), a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or another person duly authorized to preside.[57]

Since SEC staff's 2014 self-assessment, the U.S. Supreme Court ruled that SEC ALJs are officers of the United States who must be appointed by the President, a court of law, or the

55 See 5 U.S.C. Subchapter II.

56 See SEC Rule of Practice 110.

57 See SEC Rule of Practice 101(a)(5).

Commission, as head of a department.[58] Prior to the Supreme Court's ruling, the SEC ratified the appointments of its ALJs who were selected by SEC staff.[59] Following the ruling, the SEC issued an order reiterating its approval of the appointments of the ALJs under the Constitution.[60] The SEC also ordered that in any pending administrative proceeding pending before an ALJ or pending before the Commission, the respondents be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter.[61] The SEC remanded proceedings that were then pending before the Commission and vacated any prior opinions the Commission had issued in those proceedings.[62]

(c) Are affected persons permitted to make representations prior to such a decision being taken by a regulator in appropriate cases?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 7(c).

(d) Are all such decisions taken by the regulator subject to a sufficient, independent review process, ultimately including judicial review?

No significant update from SEC staff's 2014 self-assessment in response to Principle 2, Question 7(d).

8. Where accountability is through the government or some other external agency, is confidential and commercially sensitive information subject to appropriate safeguards to prevent inappropriate use or disclosure?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As noted in SEC staff's 2014 self-assessment, the Securities Act, Exchange Act and Advisers Act all contain statutory provisions that are designed to safeguard the confidentiality of information obtained in the course of examinations or investigations. The SEC has also adopted rules under the Securities Act and the Exchange Act to permit requests for confidential treatment of certain information. In addition, the SEC's rules include restrictions on sharing non-public information. For example, Rule 24c-1 under the Exchange Act provides that the SEC may provide nonpublic information in its possession to certain entities, including other domestic and foreign governmental entities, but only if it receives appropriate assurances of confidentiality. Moreover, the SEC has procedures in place

58 See Lucia v. SEC 138 S. Ct. 2044 (2018).

59 See In re: Pending Administrative Proceedings, Release Nos. 33-10440; 34-82178; IA-4816; IC-32929 (Nov. 30, 2017), available at https://www.sec.gov/litigation/opinions/2017/33-10440.pdf.

60 See In re: Pending Administrative Proceedings, Release Nos. 33-10536; 34- 83907; 40-4993; 40-33211 (Aug. 22, 2018), available at https://www.sec.gov/litigation/opinions/2018/33-10536.pdf.

61 Id.

62 Id.

designed to ensure that assurances of confidentiality are obtained either through an MOU or access request letters, among other processes. The terms and conditions of the SEC's MOUs with domestic and/or foreign authorities are designed to satisfy the requirement for confidentiality assurances. Furthermore, SEC staff has written procedures addressing the manner in which information sharing is to occur with other regulatory authorities and both foreign and domestic law enforcement.

Freedom of Information Act

In addition, as noted in SEC staff's 2014 self-assessment, the United States has laws related to protecting certain information provided by regulated entities and issuers who are subject to SEC reporting requirements and are required to make public filings with the SEC. The Freedom of Information Act (FOIA) governs public access to certain types of documents.[63] FOIA also enables the public to obtain access to agency records unless the record falls under an exemption from the general disclosure requirement. The exemptions protect from disclosure: (i) documents that relate solely to an agency's internal personnel rules and practices; (ii) trade secrets and confidential commercial or financial information; (iii) deliberative or otherwise privileged intra-agency or inter-agency memoranda or letters; (iv) law enforcement records the disclosure of which would interfere with law enforcement proceedings; and (v) records related to examinations. The SEC has also promulgated a confidential treatment regulation that, among other things, permits persons who have submitted records containing trade secrets or confidential commercial or financial information to the SEC to object to their disclosure in response to a FOIA request.[64]

As noted in SEC staff's 2014 self-assessment, the SEC's FOIA Office responds to requests for records under FOIA and requests for confidential treatment by submitters of records. These responses may be appealed, pursuant to a delegation of authority from the Commission, to the SEC's Office of the General Counsel (OGC), which may grant or deny appeals, or may release records in the exercise of discretion.[65] OGC may also refer appealed matters in appropriate cases to the Commission for its review.

IOSCO Administrative Arrangement

In 2019, the SEC entered into the IOSCO Administrative Arrangement (AA) for the transfer of personal data between European Economic Area (EEA) and non-EEA IOSCO members. The AA supplements existing memoranda of understanding by setting out safeguards that authorities use to protect personal data. The European Data Protection Board issued an opinion in February 2019,[66] noting that the AA ensures appropriate safeguards when personal data will be transferred on the basis of the AA to public bodies in third countries not covered by a European Commission adequacy decision.

63 See 5 U.S.C. § 552.

64 See 17 C.F.R § 200.83.

65 See 17 C.F.R. § 200.80(d)(6).

66 See https://edpb.europa.eu/sites/edpb/files/files/file1/2019-02-12-opinion_2019-4_art.60_esma_en.pdf.

Cybersecurity

The SEC also devotes substantial resources and attention to cybersecurity, including the protection of personally identifying information (PII) (see response to Principle 7, Question 2, below, for additional information).

Following the 2016 intrusion into the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system,[67] the SEC pursued various reviews of the EDGAR system and the SEC's information technology systems more broadly,[68] increasing its investments in tools, technologies, and services to protect the security of the agency's network, systems, and sensitive data.[69]

During FY 2019, the SEC continued efforts to enhance its information security and privacy programs pursuant to the Federal Information Security Modernization Act of 2014 and other applicable requirements. The agency continued to prioritize compliance with emerging security directives and initiatives from OMB and the Cybersecurity and Infrastructure Security Agency within the Department of Homeland Security. The SEC made progress toward implementing the National Institute of Standards and Technology Cybersecurity Framework pursuant to Executive Order 13800, focusing on the agency's High Value Assets. The SEC hired its first Chief Risk Officer to coordinate the SEC's continued efforts to identify, monitor, and mitigate key risks facing the Commission and serve as a key adviser on other matters related to enterprise risks and controls. The SEC also hired a new Senior Advisor for Cybersecurity Policy who will continue efforts across the agency to address cybersecurity policy matters, engage with external stakeholders, and help enhance the SEC's mechanisms for addressing cyber-related risks.

67 See https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20.

68 See, e.g., Chairman Clayton's Testimony on Examining the SEC's Agenda, Operation, and Budget (Oct. 4, 2017), available at https://www.sec.gov/news/testimony/testimony-examining-secs-agenda-operation-and-budget; Chairman Clayton's Testimony before the Financial Services and General Government Subcommittee of the Senate Committee on Appropriations (Jun. 5, 2018), available at https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-senate-committee; Chairman Clayton's Testimony on Oversight of the U.S. Securities and Exchange Commission (Jun. 21, 2018), available at https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission; Chairman Clayton's Testimony on Oversight of the U.S. Securities and Exchange Commission (Dec. 11, 2018), available at https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0; Fiscal Year 2018 Agency Financial Report, available at https://www.sec.gov/files/sec-2018-agency-financial-report.pdf.

69 See https://www.sec.gov/files/sec-2017-agency-financial-report.pdf.

Principle 3	**The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.**
Key Questions	
1.	Are the powers and authorities of the regulator sufficient, taking into account the nature of a jurisdiction's markets and a full assessment of these Principles to meet the responsibilities of the regulator(s) to which they are assigned?
No significant update from SEC staff's 2014 self-assessment in response to Principle 3, Question 1.	
2.	With regard to funding:
(a)	Is the regulator's funding adequate to permit it to fulfil its responsibilities, taking into account the size, complexity and types of functions subject to its regulation, supervision or oversight?
No significant update from SEC staff's 2014 self-assessment in response to Principle 3, Question 2(a).	
(b)	Can the regulator affect the operational allocation of resources once funded?
No significant update from SEC staff's 2014 self-assessment in response to Principle 3, Question 2(b).	
3.	Does the level of resources recognize the difficulty of attracting and retaining experienced and skilled staff?
[Self-contained answer; no need to consult SEC staff's 2014 self-assessment] Yes. As noted in SEC staff's 2014 self-assessment, the SEC strives to maintain an organizational climate in which high-performing employees wish to remain with the SEC. Although turnover can fluctuate based on a variety of factors, including the health of the economy and the number of outside job opportunities available for SEC staff, the agency aims to keep its turnover rate relatively low, below 8% per year. Since SEC staff's 2014 self-assessment, the SEC has experienced annual turnover rates that average less than 6%, which is below the overall federal sector turnover rate. The SEC continues to make a concerted effort to recruit and hire employees with the skill sets required to fulfill mission requirements. Additionally, the SEC continues to implement enhanced employee benefits, market-based pay structure, multiple day telework, flexible work schedules, and pay-for-performance, all of which are designed to encourage skilled staff to remain.[70]	

[70] For more information regarding SEC staff, please see the most recent Agency Financial Report, available at https://www.sec.gov/reports-and-publications/annual-reports/sec-2018-agency-financial-report.

4.	Does the regulator ensure that its staff receives adequate ongoing training?
No significant update from SEC staff's 2014 self-assessment in response to Principle 3, Question 4.	
5.	Does the regulator have policies and governance practices to perform its functions and exercise its powers effectively?
No significant update from SEC staff's 2014 self-assessment in response to Principle 3, Question 5.	
6.	Does the regulator play an active role in promoting education in the interest of protecting investors?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. As part of its mission to protect investors, the SEC promotes informed investment decision-making through education initiatives aimed at providing Main Street investors with a better understanding of our capital markets and the opportunities and risks associated with the array of investment choices presented to them. The SEC's Office of Investor Education and Advocacy (OIEA) spearheads these efforts by communicating daily with investors, responding to their complaints and inquiries, and providing educational programs and materials. In 2018, for example, OIEA conducted over 150 in-person investor education events focused toward various segments of the population, including senior citizens, military personnel, younger investors, and affinity groups. In addition to in-person education events, the SEC has developed informative, innovative, and accessible educational initiatives.

The SEC uses a variety of channels to alert investors of potential indicators of fraud. For example, in 2018, OIEA created a website to educate the public about emerging risks involving potential initial coin offering (ICO) scams and demonstrate how easy it is for bad actors to engineer this type of fraud— HoweyCoins.com.[71] This mock website promoted a fictional ICO and was created in-house, very quickly, with few resources. It attracted over 100,000 people within its first week.

Since SEC staff's 2014 self-assessment, OIEA has also published a variety of investor alerts and bulletins to warn Main Street investors about other possible schemes, including celebrity endorsements, self-directed individual retirement accounts, the risks in using credit cards to purchase an investment, and the potential harm and annoyance resulting from sharing their personal contact information with online investment promoters.[72]

71 See https://www.sec.gov/news/press-release/2018-88.

72 See https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins.

The SEC also continues to promote its national public service campaign, "Before You Invest, Investor.gov." This initiative encourages investors to research the background of their investment professional. In May 2018, the SEC supplemented this information service with a new online search tool, the SEC Action Lookup for Individuals (SALI).[73] This tool enables investors to find out if the individual or firm he or she is dealing with has been sanctioned as a result of SEC action.

Most recently, the SEC launched a video series for retail investors. In these videos, SEC Chairman Clayton shares his personal notes on investing. For example, these videos have discussed compounding, diversification, fees, costs and taxes, and how to avoid fraud.[74] Since the 2014 self-assessment, a new Office of the Advocate for Small Business Capital Formation (OASB) was created pursuant to the SEC Small Business Advocate Act of 2016, focused on advocating for solutions to issues faced by small businesses and their investors from start-ups all the way to companies with a public float under $250 million. In addition, OASB is working to develop educational outreach materials that help small businesses and their investors better navigate the current rules and engage in the rulemaking process. A recent example is OASB's initiative to simplify and highlight pertinent rulemakings that impact small businesses in quick videos that are designed to reach broad audiences of businesses and investors.[75]

73 See https://www.sec.gov/litigations/sec-action-look-up.

74 See https://www.sec.gov/page/investment-tips-chairman-jay-clayton.

75 See https://www.sec.gov/page/oasb-videos.

Principle 6	**The Regulator should have or contribute to a process to identify, monitor, mitigate and manage systemic risk, appropriate to its mandate.**
Key Questions	
1.	
(a)	Does the regulator have clear responsibilities in:
(i)	identifying, monitoring, mitigating and appropriately managing systemic risks related to securities markets; and [This is a new question for the 2020 FSAP]

The SEC has a three-part statutory mission: to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.

In fulfilling this mission, the SEC actively identifies, monitors, and responds to risks related to the securities markets, including systemic risks. Described further below are several of the regulatory programs and initiatives that the SEC and its staff have implemented and are pursuing in this area.

Additionally, in recognition of the SEC's important role and function in identifying, monitoring, and responding to market risks, in March 2019, the SEC Chairman created a new position, the Senior Counsel and Policy Advisor for Market and Activities-Based Risk.[76] This senior officer position is responsible for managing and coordinating the agency's efforts to identify, monitor and respond to market risks—including activities-based risks—affecting the U.S. capital markets. In addition, the SEC Chairman has created a Chief Risk Officer position. This senior officer position is responsible for coordinating the SEC's continued efforts to identify, monitor, and mitigate key operational and programmatic risks facing the Commission. The Chief Risk Officer also serves as a key adviser on other matters related to enterprise risks and controls.

Relevant SEC and SEC Staff Programs and Initiatives

The SEC and its staff have implemented and advanced numerous regulatory programs and initiatives aimed at identifying, monitoring and responding to risks related to the securities markets, including systemic risks. Highlighted below are a cross-section of examples of the Commission and SEC staff programs and initiatives related to such risks.

Division of Economic and Risk Analysis

The SEC's Division of Economic and Risk Analysis (DERA) plays an important role in the Commission's work relating to systemic risk issues. DERA was created in September 2009 to integrate financial economics and rigorous data analytics into the core mission of the SEC. DERA is involved across the entire range of SEC activities, including policy-making, rule-making, enforcement, and examination. As the agency's "think tank," DERA relies on a

[76] See SEC Names Jeffrey Dinwoodie Senior Counsel and Policy Advisor for Market and Activities-Based Risk (Mar. 25, 2019), available at https://www.sec.gov/news/press-release/2019-41.

variety of academic disciplines, quantitative and non-quantitative approaches, and knowledge of market institutions and practices to help the Commission approach complex matters in a fresh light. DERA also assists in the Commission's efforts to identify, analyze, and respond to risks and trends, including those associated with new financial products and strategies. Through the range and nature of its activities, DERA serves the critical function of promoting collaborative efforts throughout the agency and breaking through silos that might otherwise limit the impact of the agency's institutional expertise.

DERA activities include:

- providing detailed, high-quality economic and statistical analyses, and specific subject-matter expertise to the Commission and other Divisions and Offices;
- identifying and analyzing issues, trends, and innovations in the marketplace;
- developing customized, analytic tools and analyses to proactively detect market risks indicative of possible violations of the Federal securities laws (using data, DERA staff create analytic programs designed to detect patterns identifying risks, enabling Commission divisions and offices to deploy scarce resources targeting possible misconduct);
- working with outside experts in academia and industry to strengthen the Commission’s foundation of market knowledge;
- managing and analyzing public and private data to support relevant initiatives and projects; and
- creating knowledge through high-quality research and publication in peer-reviewed journals.

DERA also organizes, hosts and contributes thought leadership to seminars, conferences, and round-tables relating to market risk and regulation issues. For example:

- In coordination with the Lehigh University’s Center for Financial Services, the University of Maryland’s Center for Financial Policy, and the CFA Institute, DERA hosts an Annual Conference on Financial Market Regulation;
- DERA organizes an annual “Quant Congress” aimed at discussing possible application of the latest machine learning technologies to the securities markets and SEC’s registrant space; and
- DERA participates in technical exchange meetings with other securities market regulators to discuss the latest advances in applied and advanced analytics as they pertain to regulatory, surveillance and policy applications for securities and financial market regulating agencies.

Division of Trading and Markets

The Division of Trading and Markets' (TM) Office of Analytics and Research (OAR) has a frontline role in identifying, monitoring, mitigating, and appropriately managing systemic risks related to securities markets. OAR's market monitoring program has dedicated staff responsible for reviewing and analyzing a wide range of public and regulatory information, data, and alerting tools to identify issues, trends, and events that may affect the fair, orderly, and efficient operations of markets. OAR's market monitoring program communicates information and analysis in a variety of means including periodic notifications, ad hoc alerts, and dashboard type tools. OAR's market monitoring team also plays a key role in coordinating SEC responses to issues impacting markets overseen by the SEC.

Following significant market disruptions or as circumstances warrant, information assembled by OAR's market monitoring team may be prioritized for more in-depth forensic research and analysis by OAR's applied research program to assess potential impacts, identify additional risks, and formulate potential policy responses. In addition, OAR's applied research program provides specialized subject matter expertise and quantitative analysis on issues related to the structure and functioning of securities markets. This research, which is typically based on empirical analysis of complex, regulatory data, often informs the development of new automated market monitoring tools that are incorporated into OAR's market monitoring program.

Addressing the Integrity of the Securities Markets

A key focus of the SEC in recent years has been monitoring and responding to increasing use of technology in our securities markets and episodes of increased market volatility—and the effects that these trends have on investors and our capital markets generally. In the past decade, the SEC has undertaken a multi-step approach in this area. Key regulatory responses include, among others:

- Market Access Rule. As described in SEC staff's 2014 self-assessment, in November 2010, the SEC adopted Rule 15c3-5 – Risk Management Controls for Brokers or Dealers with Market Access, commonly known as the "Market Access Rule," to curb individual and systemic risks related to market access by broker-dealers and their customers.[77] Rule 15c3-5 applies to broker-dealers with access to trading securities by virtue of being an exchange member, an alternative trading system (ATS) subscriber, or an ATS operator with non-broker-dealer subscribers. Broker-dealers with such market access are required to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to: (i) systematically limit the financial exposure of the broker or dealer and its customer that could arise as a result of market access, and (ii) ensure compliance with all regulatory requirements that are applicable in connection with market access. Specifically, the risk management controls and

[77] See Risk Management Controls for Brokers or Dealers with Market Access, Release No. 34-63241 (Nov. 3, 2010), available at https://www.sec.gov/rules/final/2010/34-63241.pdf.

supervisory procedures are required to be reasonably designed to: (i) prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous; (ii) prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis; and (iii) prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and ensure appropriate surveillance personnel receive immediate post-trade execution reports.

- Regulation Systems Compliance and Integrity (SCI). In SEC staff's 2014 self-assessment, SEC staff noted that the Commission had proposed Regulation SCI, which was designed to enhance market stability by ensuring technological adequacy of market participants. In 2014, the SEC adopted Regulation SCI.[78] As adopted, Regulation SCI imposes requirements on certain key market participants intended to reduce the occurrence of systems issues, improve resiliency when systems problems occur, and enhance the SEC's oversight and enforcement of securities market technology infrastructure. Regulation SCI applies to, among other entities, stock and options exchanges, clearing agencies, disseminators of consolidated market data (known as plan processors), and certain alternative trading systems (ATSs) (together referred to as "SCI entities"). The rule requires these SCI entities to have written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act.

  In addition, Regulation SCI requires these entities to take corrective action with respect to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions), notify the SEC of such events, and disseminate information about certain SCI events to affected members or participants (and, for certain major SCI events, to all members or participants of the SCI entity). Moreover, Regulation SCI requires SCI entities to conduct a review of their systems by objective, qualified personnel at least annually, submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the SEC, and maintain certain books and records. It also requires SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities.

- Approval of the SROs' Limit-Up Limit-Down Plan (LULD). As noted in SEC staff's 2014 self-assessment, in May 2012, the SEC approved a National Market System (NMS) plan - known as LULD plan - proposed by SROs to address extraordinary

[78] See 17 C.F.R. §242.1000-1007. See also Regulation Systems Compliance and Integrity, Release No. 34-73639 (Nov. 19, 2014), available at https://www.sec.gov/rules/final/2014/34-73639.pdf.

volatility in individual securities.[79] At that time, the LULD plan was implemented on a pilot basis. In April 2019, the SEC approved an amendment to make the LULD plan permanent.[80] The LULD plan creates a market-wide limit up-limit down mechanism to address extraordinary volatility in individual NMS securities, which can undermine the integrity of the securities market. The LULD Plan provides for market-wide, single-stock price bands designed to prevent trades in individual NMS stocks from occurring outside of specified price bands while allowing trading to continue if a price move is only temporary.

- Approval of the SROs' Market-wide Circuit Breakers. As noted in SEC staff's 2014 self-assessment, in May 2012, the SEC also approved SRO rules establishing market-wide circuit breakers. Such circuit breakers at the securities and futures markets provide for brief, coordinated, cross-market trading halts during a securities market decline. Market-wide trading halts are implemented if the market declines below specified levels (currently based on S&P 500). These circuit breakers are applicable to all NMS securities and contain three different "triggers" with associated lengths of trading halts, which may also vary depending on time of day. Circuit breaker thresholds will be recalculated at the beginning of each trading session based on the closing value of the S&P 500 index from the previous session.

- Consolidated Audit Trail (CAT). As noted in SEC staff's 2014 self-assessment, in 2012, the SEC adopted Rule 613 under the Exchange Act to require the national securities exchanges and FINRA to establish a market-wide CAT to significantly enhance regulators' ability to monitor and analyze trading activity.[81] Among other things, the rule required the self-regulatory organizations (SROs) to jointly submit a plan – called an NMS plan – to create, implement and maintain CAT (CAT NMS Plan). The rule specified the type of data to be collected and when the data is to be reported to a central repository. In November 2016, the SEC approved the CAT NMS Plan.[82] The CAT NMS Plan requires that the plan processor chosen by the SROs build a central

[79] See Joint Industry Plans; Order Approving, on a Pilot Basis, the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., Release No. 34-67091 (May 31, 2012), available at https://www.sec.gov/rules/sro/nms/2012/34-67091.pdf.

[80] See Joint Industry Plan; Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc., Release No. 34-85623 (Apr. 11, 2019), available at https://www.sec.gov/rules/sro/nms/2019/34-85623.pdf. .

[81] See 17 C.F.R. 242.613. See also Consolidated Audit Trail, Release No. 34-67457 (July 18, 2012), available at https://www.sec.gov/rules/final/2012/34-67457.pdf.

[82] See Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-79318 (Nov. 15, 2016), available at https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.

repository that will receive, consolidate, and retain the trade and order data reported as part of the CAT. For more information on the CAT, please see Principle 33, Question 6(b), below.

Broker Dealer Financial Responsibility

As discussed in SEC staff's 2014 self-assessment, with respect to broker-dealers, the SEC has developed rules and processes designed to monitor, mitigate, and appropriately manage risk (systemic and otherwise). TM is responsible for overseeing broker-dealers and administers the SEC's financial responsibility rules governing broker-dealers.[83] These rules are designed to help ensure that broker-dealers operate with a level of capital that is sufficient to protect the broker-dealer's counterparties and customers in the event that the broker-dealer fails. In this regard, the SEC's financial responsibility rules are intended to help ensure that customer assets are available for return to customers if a broker-dealer fails. Furthermore, the SEC's financial responsibility rules for broker-dealers are designed to help minimize the impact of the failure of a broker-dealer on counterparties and customers and are designed to minimize the systemic risk and follow-on effects to the financial system that may be associated with the failure of any broker-dealer, including any large broker-dealer that may be part of a large financial firm.

TM has a staff of quantitative and analytical experts to evaluate risk measurements used by broker-dealers and other financial regulators. This expert staff also participates in the ongoing supervision of certain large broker-dealers, also known as alternative net capital (ANC) broker-dealers, that may be approved to use value-at-risk (VAR) models to compute deductions for market or credit risk in lieu of standardized "haircuts" as provided in the SEC's net capital rule, or that are owned by a holding company supervised by the SEC pursuant to Section 17(h) of the Exchange Act. Such oversight includes regular meetings with the broker-dealers' senior risk managers as well as those persons at the broker-dealers responsible for, among other things, internal audit, price verification results, and the management of the firm's balance sheet. TM's broker-dealer office also has an inspection unit that augments monitoring efforts with testing of broker-dealers' controls. In conducting all of its work, TM's broker-dealer office staff regularly collaborates with staff at other U.S. regulators, such as the Federal Reserve, and international colleagues, such as the U.K. Prudential Regulatory Authority and Germany's BaFin. Such collaboration helps ensure that regulatory efforts are coordinated to the maximum possible extent.

Oversight of Financial Market Utilities

[83] The term "financial responsibility rules" generally refers to the following SEC Exchange Act rules governing broker-dealers: Rule 15c3-1 (net capital), Rule 15c2-1 (hypothecation of customer securities); Rule 15c3-3 (customer protection), Rule 17a-3 (required books and records), Rule 17a-4 (recordkeeping and record retention), Rule 17a-5 (financial reporting), Rule 17a-11 (notices), and 17a-13 (quarterly securities count). See 17 C.F.R. 240.15c2-1; 17 C.F.R. 240.15c3-3; 17 C.F.R. 240.17a-3; 17 C.F.R. 240.17a-4; 17 C.F.R. 240.17a-5; 17 C.F.R. 240.17a-11; 17 C.F.R. 240.17a-13.

Financial market utilities (FMUs)[84] provide the essential infrastructure to clear and settle payments and other financial transactions upon which the financial markets and the broader economy rely to function effectively.

As noted in SEC staff's 2014 self-assessment, as part of its supervisory activities, SEC staff closely monitors the operations and financial risk management of each clearing agency, including their respective stress testing programs. In the United States, the clearance and settlement of securities transactions generally occur through several registered central counterparties (CCPs) and registered central securities depositories (CSDs), which operate independently from exchanges or trading systems and are registered with the SEC as clearing agencies under the Exchange Act.

In October 2012, the SEC adopted rules establishing standards for the risk management and operation of all SEC-registered clearing agencies. The rule requires a review of margin requirements and related risk-based models and parameters (including stress testing) on at least a monthly basis.[85]

As noted in SEC staff's 2014 self-assessment, the SEC adopted in 2012 Rule 17Ad-22 – Clearing Agency Standards – (a) through (d) under the Exchange Act to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies. Since then, in 2016, the SEC adopted Rule 17Ad-22(e) under the Exchange Act.[86] Rule 17Ad-22(e) built on the existing framework for clearing agencies by establishing new requirements for certain clearing agencies referred to as "covered clearing agencies"[87] (the covered clearing agency standards are described in more detail in the response to the Principle 37, Question 1(a), below). In developing Rule 17Ad–22(e), the SEC considered the Committee on Payments and Market Infrastructures (CPMI)-IOSCO Principles for Financial Market Infrastructures (PFMI). Specifically, the SEC stated that the Commission believes that the requirements applicable to clearing agencies set forth in the Exchange Act and the rules thereunder, including Rule 17Ad-22(e), are consistent with the standards set forth in the PFMI.[88]

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84 Section 803(6)(A) of the Dodd-Frank Act defines a "financial market utility" as "any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person." 12 U.S.C. § 5462(6)(A).

85 See, *e.g.*, 17 C.F.R. 240.17Ad-22(B)(2).

86 See 17 C.F.R. § 240.17Ad-22(e).

87 See Standards for Covered Clearing Agencies, Release No. 34-78961 (Sep. 28, 2016), available at https://www.sec.gov/rules/final/2016/34-78961.pdf.

88 See Standards for Covered Clearing Agencies, Release No. 34-78961 (Sep. 28, 2016), available at https://www.sec.gov/rules/final/2016/34-78961.pdf (". . . the Commission believes that the requirements applicable to clearing agencies set forth in the Exchange Act and the rules thereunder, including the rules adopted today, are consistent with the standards set forth in the PFMI.").

Rule 17Ad-22(e) establishes requirements for covered clearing agencies in the areas of general organization, financial risk management, settlement, CSDs and exchange-of-value settlement systems, default management, business and operational risk management, access, efficiency, and transparency.

Finally, as noted in SEC staff's 2014 self-assessment, the Dodd-Frank Act provided the SEC with additional authority over FMUs for which it is the supervisory agency and that the FSOC designates as systemically important. In July 2012, FSOC designated eight FMUs as systemically important, including four for which the SEC acts as the supervisory agency.

The Dodd-Frank Act provides a framework for an enhanced supervisory regime for these designated FMUs. It permits the SEC to prescribe regulations for risk management and operations and also directs the SEC to consider relevant international standards and existing prudential requirements for the designated FMUs it supervises. The SEC is also required to examine these FMUs annually.[89] FRB staff also participates in developing the scope and methodology of examinations of CCPs that are designated FMUs, and may participate (in practice, does participate) with CFTC or SEC staff in all examinations.

The Dodd-Frank Act also establishes a process for a designated FMU to submit to the SEC, with a copy to the Federal Reserve, advance notices identifying changes to its rules, procedures, or operations that could materially affect the nature or level of risk presented by the FMU. In June 2012, the SEC adopted rules that establish procedures for how it will address these advance notices. The SEC has considered a significant number of such notices since those rules were adopted.

OTC Derivatives

As noted in SEC staff's 2014 self-assessment, the Dodd-Frank Act established a new oversight regime for the OTC derivatives marketplace. Title VII of the Dodd-Frank Act requires the SEC to regulate "security-based swaps," or SBS, the CFTC to regulate swaps and the SEC and CFTC jointly to regulate mixed swaps. This regime encompasses the registration and comprehensive regulation of dealers and major participants, as well as requirements related to clearing, trade execution, regulatory reporting, and public dissemination of anonymized trade data.

Since SEC staff's 2014 self-assessment, the SEC has continued to implement its regulatory framework for SBS consistent with Title VII of the Dodd-Frank Act. In particular, since 2014, the SEC has adopted rules and guidance regarding (i) capital and margin requirements for SBS dealers (SBSDs) and major SBS participants (described in more detail in response to Principle 31, Question 6(b), below) and segregation requirements for SBSDs (described in

89 See Dodd-Frank § 807, 12 U.S.C. § 5466.

more detail in response to Principle 31, Question 12, below);[90] (ii) reporting of SBS to data repositories (described in more detail in response to Principle 33, Question 6(d), below),[91] (iii) registration of SBS data repositories (described in more detail in response to Principle 33, Question 6(d), below),[92] (iv) authorities' access to SBS data held in SEC-registered data repositories,[93] (v) registration of SBSDs and major SBS participants (described in more detail in response to Principle 29, Question 8, below),[94] (vi) business conduct standards for SBSDs and major SBS participants (described in more detail in response to Principle 31, Question 6, below),[95] (vii) trade acknowledgment and verification of SBS transactions (described in more detail in response to Principle 31, Question 4, below),[96] (viii) an application process for SBSDs and major SBS participants to allow statutorily disqualified persons to effect or be involved in effecting SBS trades,[97] and (ix) treatment of certain communications involving SBS.[98] The Commission also has adopted cross-border rules and guidance regarding registration thresholds for SBSDs and major SBS participants and the application of the Title VII framework to cross-border transactions.[99]

Investment Management

[90] See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

[91] See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf, amended by Release No. 34-78321 (Jul. 14, 2016), available at https://www.sec.gov/rules/final/2016/34-78321.pdf.

[92] See Security-Based Swap Data Repository Registration, Duties, and Core Principles, Release No. 34-74246 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74246.pdf.

[93] See Access to Data Obtained by Security-Based Swap Data Repositories, Release No. 34-78716 (Aug. 29, 2016), available at https://www.sec.gov/rules/final/2016/34-78716.pdf.

[94] See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-75611 (Aug. 5, 2015), available at https://www.sec.gov/rules/final/2015/34-75611.pdf.

[95] See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-77617 (Apr. 16, 2016), available at https://www.sec.gov/rules/final/2016/34-77617.pdf.

[96] See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Release No. 34-78011 (Jun. 8, 2016), available at https://www.sec.gov/rules/final/2016/34-78011.pdf.

[97] See Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps, Release No. 34-84858 (Dec. 19, 2018), available at https://www.sec.gov/rules/final/2018/34-84858.pdf.

[98] See Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants, Release No. 33-10450 (Jan. 5, 2018), available at https://www.sec.gov/rules/final/2018/33-10450.pdf.

[99] See Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception, Release No. 34-77104 (Feb. 10, 2016), available at https://www.sec.gov/rules/final/2016/34-77104.pdf.

As noted in SEC staff's 2014 self-assessment, the SEC collects data about the activities of the entities it oversees. For example, the SEC is responsible for overseeing investment companies, including mutual funds, exchange-traded funds (ETFs), and hedge funds, and the activities of registered investment advisers. SEC rules require investment companies and registered investment advisers to provide data that facilitate the SEC's monitoring of the asset management industry in several key areas.

- Form "Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers" (Form ADV). Registered investment advisers must report information about their investment management business, including (among other things) certain information about private funds under management and separately managed accounts;[100]

- Form "Monthly Schedule of Portfolio Holdings of Money Market Funds" (Form N-MFP). Money market funds must report monthly portfolio holdings and certain other information;[101] and

- Form PF. SEC-registered investment advisers with at least $150 million in private fund assets under management must report certain data about their private funds confidentially;[102]

Since SEC staff's 2014 self-assessment, the Commission has adopted new reporting requirements that will provide SEC staff with additional data that may be used for, among other purposes, monitoring and identifying risks that could be systemic.

- Form "Monthly Portfolio Investments Report" (Form N-PORT). In 2016, the SEC adopted rules and a form that require most registered investment companies, including mutual funds other than money market funds, ETFs, and closed-end funds, to report quarterly public and monthly non-public portfolio holdings and other information, each quarter, such as the fund's assets and liabilities, risk metrics, information regarding monthly returns, and flow information);[103] and

- Form "Annual Report for Registered Investment Companies" (Form N-CEN).[104] In 2016, the SEC adopted rules and a form that require most registered investment

100 See Form ADV, available at https://www.sec.gov/files/formadv.pdf. Note that this form must be updated annually. In addition, this form must be updated promptly (i.e. in addition to the annual updates) if, among other things, certain information previously provided becomes materially inaccurate or otherwise changes.

101 See Form N-MFP, available at https://www.sec.gov/files/formn-mfp.pdf.

102 See Form PF, available at https://www.sec.gov/files/formpf.pdf. Please see SEC staff's 2014 self-assessment in response to Principle 6, Question 3 for additional information regarding Form PF.

103 See Form N-PORT, available at https://www.sec.gov/files/formn-port.pdf; see also Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Release No. IC-33384 (Mar. 6, 2019), available at https://www.sec.gov/rules/interim/2019/ic-33384.pdf.

104 See Form N-CEN, available at https://www.sec.gov/files/formn-cen.pdf.

companies, including mutual funds, closed-end funds, unit investment trusts (UITs), and ETFs, to report certain census-like information on an annual basis, including information about their securities lending activities and any provision of financial support[105] and, for ETFs, information about their authorized participants and creation/redemption activities.[106]

The SEC also has staff dedicated to analyzing the data collected from investment management firms. The response to Principle 6, Question 2 in SEC staff's 2014 self-assessment included a discussion of the Division of Investment Management's (IM) Risk and Examinations Office (REO), established in 2012, which has been renamed the "Analytics Office." The Analytics Office includes quantitative analysis experts who manage, monitor, and analyze data collected from registrants together with other industry and market data. The Analytics Office also includes examination staff and industry experts who work together with these quantitative analysts to provide ongoing financial and risk analysis of the asset management industry, gather and analyze operational information directly from asset management industry participants, and otherwise maintain industry knowledge and technical expertise relating to the asset management industry. These activities inform the SEC's perspective on the asset management industry, the role of registered investment companies and private funds in broader financial markets, and how markets and geopolitical events may affect the asset management industry.

For example, SEC staff's analysis of data from Forms N-MFP and PF informed the Commission's understanding of the effects of its money market reform implementation and SEC rulemaking and other initiatives to promote effective liquidity risk management by registered investment companies. The Analytics Office also supports the SEC's participation in the FSOC in connection with asset management activities. SEC staff also uses data collected from firms to assist the SEC in efficiently allocating its examination and enforcement resources by helping staff to prioritize particular firms for inspections and examinations and to identify outliers for specific areas of interest, such as identifying firms holding complex products that are at increased risk of valuation manipulation.

105 Form N-CEN asks whether an affiliated person, promoter, or principal underwriter of the registrant or an affiliated person of such person provided any form of financial support to the registrant during the reporting period. Form N-CEN defines "a provision of financial support" to include any (i) capital contribution; (ii) purchase of a security from a money market fund in reliance on rule 17a-9 under the Investment Company Act; (iii) purchase of any defaulted or devalued security at fair value reasonably intended to increase of stabilize the value or liquidity of the registrant's portfolio; (iv) execution of letter of credit or letter of indemnity; (v) capital support agreement (whether or not the registrant ultimately received support); (vi) performance guarantee; or (vii) other similar action reasonably intended to increase or stabilize the value or liquidity of the registrant's portfolio. Form N-CEN further provides that "a provision of financial support" does not include any (i) routine waiver of fees or reimbursement of registrant's expenses; (ii) routine inter-fund lending; (iii) routine inter-fund purchases of registrant's shares; or (iv) action that would qualify as financial support that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the registrant's portfolio.

106 Forms N-PORT and N-CEN improved SEC data collection in two ways, first, by updating and enhancing the content of the data collected and, second, by requiring data to be submitted in a structured XML data format rather than in unstructured text files.

The Analytics Office has developed various analytical tools to use industry data, including data collected from registrants on, for example, Forms ADV, PF, N-MFP, and the recently implemented Forms N-CEN and N-PORT, in support of monitoring registered investment advisers, registered investment companies, and private funds, consistent with systems and controls designed to protect the confidentiality of information provided by registrants where required by applicable law or SEC rules. These tools enhance SEC staff's ability to assess large volumes of data and streamline analysis of the data by automating certain analytical processes. Relevant to monitoring and assessing systemic risk, these analytical tools have enhanced SEC staff's ability to gather and analyze operational information directly from participants in the asset management industry, to gain insight into developing market risks, understand the effects of macroeconomic developments, and identify particular funds or advisers that may require additional monitoring. Specifically, the Analytics Office works to:

- identify registered investment companies and private funds based on one or more areas of policy interest, such as type of investment strategy, types of portfolio investments, securities lending activities, extent of leverage, and use of financial support;
- monitor changes and trends in the asset management industry, such as trends in exposures, asset composition, and trading activity;
- identify "outliers" among investment companies and private funds based on, for example, performance, investment exposures, and liquidity; and
- empirically test claims made in the financial press or other public sources relating to the asset management industry.

The Analytics Office's use of Form PF illustrates how the SEC harnesses data to identify trends and develop analyses that deepen SEC staff's understanding of private funds, private fund advisers and the markets in which they participate. The data set resulting from Form PF has provided SEC staff with a better perspective of the trading strategies and other activities of private funds, and of how private funds and their advisers may be affected by market and geopolitical events. Through this analysis, SEC staff may consider persistent questions and test perceptions – and in some cases, misconceptions – about the activities of private funds and the effects of these activities in the markets the SEC regulates. For example, SEC staff uses Form PF data to assess funds' use of borrowing and leverage, liquidity trends (including portfolio, investor and financing liquidity), funds' use of certain strategies such as high frequency trading, and how private fund advisers use risk management tools such as stress tests and VaR reporting. SEC staff also analyzes Form PF data to determine how private funds and private fund advisers might be affected by market and geopolitical events. Information from Form PF is also used to assess the potential impact of rulemaking proposals and analyze impacts of rulemaking on markets and market participants, including, for example, the effects of money market reform implementation. The Analytics Office also

issues a quarterly public report, "Private Funds Statistics", which provides analyses of aggregated Form PF data, including information about industry trends.[107]

With regard to money market funds, as noted in SEC staff's 2014 self-assessment, in July 2014, the SEC adopted amendments to the rules that govern money market mutual funds (MMFs). The amendments made structural and operational reforms to address money market funds' susceptibility to heavy redemptions in times of stress, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving, as much as possible, their benefits.[108]

With regard to liquidity, since SEC staff's 2014 self-assessment, the SEC has adopted rules and enhanced data collection designed to promote effective liquidity risk management throughout the open-end fund industry, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders.[109] For additional information regarding liquidity risk management, please see response to Principle 24, Question 24(h), below.

In addition, Form "Current Report Open-end Management Investment Company Liquidity" (Form N-LIQUID) requires funds to confidentially notify the SEC when the fund's level of illiquid investments that are assets exceeds 15% of its net assets or when its highly liquid investments fall below a certain minimum for more than a specified period of time, which assists SEC staff in monitoring the reporting fund and other funds that may have comparable liquidity characteristics and could be similarly affected by market events.[110] Form N-LIQUID was adopted in October 2016, along with Investment Company Act rules 22e-4 and 30b1-10, in order to address trends, such as shorter settlement periods, open-end fund growth, and more complex markets, and provide investors with increased protection regarding how liquidity in their open-end funds is managed, thereby reducing the risk that funds will be unable to meet redemption or other legal obligations, and mitigating dilution of the interests of fund shareholders. These reforms also were intended to give investors better information to make investment decisions, and to give the SEC better information to conduct comprehensive monitoring and oversight of an ever-evolving fund industry.[111]

SEC Participation in the FSOC and Interagency Coordination on Market Risk Issues

The SEC also plays an active and important role in the FSOC.

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107 SEC quarterly private funds statistics are available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml.

108 See Money Market Fund Reform, Release Nos. 33-9616, IA-3879; IC-31166; (Jul. 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf.

109 See Liquidity Risk Management Programs, Release Nos. 33- 10233; IC- 32315 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10233.pdf; See also Investment Company Act rule 22e-4.

110 See Form N-LIQUID, available at https://www.sec.gov/files/formn-liquid.pdf.

111 See Liquidity Risk Management Programs, Release Nos. 33- 10233; IC- 32315 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10233.pdf; See also ICA rules 22e-4, 30b1-10; and Form N-LIQUID, available at https://www.sec.gov/files/formn-liquid.pdf.

By way of background, in response to the financial crisis of 2007 to 2009, the United States Congress established FSOC to bring together the United States financial regulatory community to identify and respond to emerging threats to financial stability. The statutory purposes of FSOC are: (i) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (ii) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the government will shield them from losses in the event of failure; and (iii) to respond to emerging threats to the stability of the U.S. financial system.

The Chairman of the SEC is one of ten voting members of FSOC. In addition to voting on proposed FSOC actions, the SEC Chairman actively contributes to FSOC deliberations and the development of FSOC's priorities and agenda.

SEC staff across the agency also participates in and contribute to the work of FSOC in several ways. For example, SEC staff provides substantive assistance to Treasury staff in the development of FSOC's annual report. SEC staff also participate in FSOC's staff-led committees, including the:

- FSOC's Systemic Risk Committee, which serves as a forum for FSOC member agency staff to identify and analyze potential risks.
- Regulation and Resolution Committee, which supports FSOC in its duties to identify potential gaps in regulation that could pose risks to U.S. financial stability.
- FMU Committee, which supports FSOC's work in monitoring and evaluating risks relating to FMUs and their activities.

The SEC Chairman also participates in the Presidential Working Group on financial markets, an inter-agency group that focuses on risk and economic issues.

Separate from formal working groups, the SEC staff regularly participates in conference calls and meetings with other regulators to share information, observations and analysis on market trends, dynamics and risks.

(ii) contributing to processes in relation to other financial markets. [This is a new question for the 2020 FSAP]

Yes. The SEC contributes to processes in relation to other financial markets. The SEC works closely with other regulatory and enforcement authorities through a variety of arrangements, including MOUs (see response to Principle 1, Question 2(d), above), and through groups such as the FSOC (as noted in response to Principle 6, Question 1(a), above), IOSCO, and the FSB (as noted in response to Principle 6, Question 3(b), below).

(b) Is there a clear definition of systemic risk within the jurisdiction?

[This is a new question for the 2020 FSAP]
No. "Systemic risk" is not defined in any of the SEC's primary governing statutes (i.e., in the Securities Exchange Act of 1934, Securities Act of 1933, Investment Advisers Act of 1940, the Investment Company Act of 1940), or in the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 nor is the term defined in the SEC's regulations.
2. Does the regulator have, or contribute to a regulatory process (which may be focused on the securities market or be cross-sectoral) through formalized arrangements to identify, monitor, mitigate and appropriately manage systemic risk, according to the complexity of the regulator's market consistent with its mandate and authority?
Yes. Please refer to response to Principle 1, Question 2(d) and Principle 6, Question 1, above, as well as SEC staff's 2014 self-assessment in response to Principle 6, Question 3.
3.
(a) Is there an effective information sharing framework in place with other regulators and supervisors within the jurisdiction covering systemic risks, which is supported by formal cooperation or institutional arrangements?
Yes. There is an effective information-sharing framework in place between the SEC and other regulators and supervisors within the jurisdiction covering systemic risks, which is supported by formal cooperation or institutional arrangements. Please see response to Principle 1, Question 2(d), and Principle 6, Question 1, above, as well as SEC staff's 2014 self-assessment in response to Principle 6, Question 3.
(b) Does the regulator communicate information and data about identified systemic risk(s) with regulators in other jurisdictions under established procedures or arrangements and/or supported by bilateral and/or multilateral memoranda of understanding (MoUs)?
Yes. As noted in SEC staff's 2014 self-assessment response to Principle 6, Question 3, the SEC has developed, and continues to develop, arrangements to facilitate communication and cooperation with foreign regulators on supervisory issues, including those that might have systemic implications.[112] MOUs for supervisory cooperation establish clear mechanisms for consultation, cooperation, and exchange of supervisory information, supported by safeguards for confidential or non-public information. These MOUs reduce the need to address supervisory information sharing on an *ad hoc* basis.

[112] See https://www.sec.gov/about/offices/oia/oia_regcooperation.shtml. For a complete list of the SEC's MOUs for supervisory cooperation, see Cooperative Arrangements with Foreign Regulators, available at http://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml.

The SEC's MOUs for supervisory cooperation enhance the SEC staff's ability to share information about regulated entities, such as investment advisers, broker-dealers, NRSROs, exchanges, and clearing agencies. Such information may include routine supervisory information and other information regulators need to monitor risk concentrations, identify emerging systemic risks, and better understand a globally active entity's compliance culture. These MOUs also facilitate the ability of the SEC and its counterparts to conduct onsite examinations of SEC-registered entities located outside the U.S.

The SEC has entered into MOUs that cover information sharing and cooperation related to, among other things, the registration of firms with both the SEC and a foreign authority; the affiliates of a financial group with headquarters in either regulator's jurisdiction; the oversight of markets in the United States and a foreign jurisdiction affiliated through a common ownership structure; and the sharing of nonpublic issuer-specific information relating to the application of International Financial Reporting Standards (IFRS). These MOUs are consistent with IOSCO's *Principles for Cross-Border Cooperation*, published in May 2010.[113]

SEC staff also participates in supervisory colleges for certain complex global financial institutions. These colleges create a framework for ongoing dialogue and cooperation among multiple financial authorities with a view to enhancing the risk assessment of internationally active entities and to supporting effective supervision of such entities. The SEC also cooperates with its counterparts on supervisory matters on an *ad hoc* basis and engages in bilateral and multilateral consultations with counterpart regulators to discuss issues of general regulatory concern that exist at a higher, more market-wide level.

In addition, the SEC is a member of the FSB and the SEC Chairman serves as the SEC's representative to the FSB's Plenary and Steering Committee. Other Commissioners and SEC staff are members of various FSB standing committees and working groups. In those roles, the SEC Chairman, Commissioners, and SEC staff substantially contribute to the FSB's ongoing monitoring and assessment of vulnerabilities affecting the global financial system, in particular with regard to securities market developments and their implications for regulatory policy. Most notably, SEC staff has been actively engaged in recent years in work relating to non-bank financial intermediation and emerging financial technologies. One of the Commissioners also serves as the SEC's representative on the FSB's Standing Committee on Assessment of Vulnerabilities (SCAV), which focuses on macro-financial related vulnerabilities and risks arising from structural weaknesses in the financial system (such as misaligned incentives, amplification mechanisms, or other forms of potential market stress).

The SEC Chairman and staff also engage in discussions about potential systemic risks through participation in the IOSCO Board, committees and working groups. A number of IOSCO projects seek to assist members with identifying the appropriate tools, data, and information needed to identify, monitor and mitigate systemic and emerging risks in their jurisdictions. These projects typically engage SEC staff across the agency. The SEC Chief Economist serves as the SEC's representative on IOSCO's Committee on Emerging Risk,

[113] See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD322.pdf.

which serves as a forum for IOSCO members to exchange views on emerging risk.

As noted in response to Principle 6, Question 1, above, in March 2019, the SEC announced the appointment of a Senior Counsel and Policy Advisor for Market and Activities-Based Risk. The Senior Counsel and Policy Advisor serves as Chairman Clayton's Deputy Representative to FSOC and as a primary liaison with respect to these matters to other federal agencies and international organizations.

4. Does the regulator have appropriately skilled human and adequate technical resources to support effective risk arrangements?
[This is a new question for the 2020 FSAP]

Yes. The SEC's 2018 – 2022 Strategic Plan[114] includes initiatives that support continued investment in our human capital, modernization of key information technology systems, and strengthening the agency's cybersecurity and enterprise risk management. In fact, the agency recently hired a Chief Risk Officer who will help coordinate its enterprise risk management efforts across the agency and promote a culture that emphasizes the importance of data security and operational resilience throughout SEC Divisions and Offices.[115]

To stay abreast of market knowledge and trends, expand its capability to perform high quality economic and statistical analysis, and develop and leverage analytic tools that sort through market and disclosure data to detect risks, the agency's staffing strategy is focused on recruiting and retaining highly qualified and highly accomplished professionals who understand the various risks within and throughout the financial industry. Additionally, the SEC offers a robust training program that allows our staff to stay current with market trends and developments. SEC staff also routinely participates in industry and professional conferences where they interact with their counterparts in the financial and securities industry and with other regulators.

Human Resources

Examples of the SEC's human resources in place to support effective risk arrangements include:

- Senior Counsel and Policy Advisor for Market and Activities-Based Risk. Senior officer responsible for managing and coordinating the agency's efforts to identify, monitor and respond to market risks—including activities-based risks—affecting the U.S. capital markets. Serves as Chairman's Deputy Representative to the FSOC and as a primary liaison with respect to these matters to other federal regulatory agencies and international organizations.

114 Available at https://www.sec.gov/reports-and-publications/strategic-plan/reports-strategic-plan-2018-2022.

115 See SEC Names Gabriel Benincasa As Its First Chief Risk Officer (Feb. 28, 2019), available at https://www.sec.gov/news/press-release/2019-24.

- Senior Advisor to the Chairman for Cybersecurity Policy. Senior advisor responsible for leading efforts across SEC Divisions and Offices to manage cybersecurity priorities, strengthen cyber incident response planning and enhance threat intelligence capabilities. Also responsible for coordinating cybersecurity policy efforts across federal financial regulators, enhancing the SEC's ability to assess cyber-related market risks and improving the SEC's cybersecurity posture.

- Chief Risk Officer. Responsible for coordinating the agency's continued efforts to identify, monitor, and mitigate key risks facing the Commission. The Chief Risk Officer also serves as a key adviser on other matters related to enterprise risks and controls.

- TM's Office of Risk Supervision (ORS). SEC staff in this office participates in a variety of ongoing monitoring reviews focused on clearing agency risk frameworks and processes. As part of this process, SEC staff reviews a clearing agency's governance framework, which may include: compliance processes; internal audit findings and resolution; board of directors' interaction; and risk management framework, including new products/initiative review and approvals, margin methodology, back-testing and stress-testing procedures, risk monitoring practices, model governance practices, and sizing and allocation of total financial resources.

- TM's Office of Analytics and Research (OAR). SEC staff in this office apply specialized subject matter expertise and quantitative analytical skills to the monitoring of markets, the analysis of significant market disruptions, and the conduct of market structure research aimed at identifying risks and potential policy responses.

- IM's Analytics Office. SEC staff in this office coordinates with other SEC Divisions and Offices to analyze, share expertise, and foster enhanced monitoring of the asset management industry. SEC staff's work has recently been enhanced by new data collection requirements for investment advisers and funds, as well as development of quantitative data analysis tools. See response to Principle 6, Question 1(a)(i), above, for additional information on the Analytics Office.

- OCIE's Office of Risk and Strategy (ORS). ORS was established in 2016 to consolidate and streamline OCIE's risk assessment, market surveillance, large firm monitoring and quantitative analysis teams, and provide operational risk management and organizational strategy for OCIE's examination program. ORS is responsible for supporting OCIE's risk-based and data-driven processes through the identification of risks and emerging issues in the financial markets. It also supports OCIE's exam targeting and selection efforts, resource allocation, and investment in quantitative-based examination initiatives. The following teams are within ORS:

    - OCIE's Quantitative Analytics Unit (QAU). OCIE's QAU is staffed by financial engineers who employ quantitative techniques and modeling to focus on areas that pose substantial risk, such as potential fraud and market

abuse. QAU's expertise provides valuable support to the SEC's examinations of investment advisers and investment companies by providing analysis of large data sets and by creating and deploying customized data-analytic tools.

- OCIE's Risk Analysis Examination (RAE) Team. The RAE team uses technology to conduct examinations of some of the nation's largest broker-dealers, in particular clearing firms. By analyzing transactions cleared by firms over several years, RAE has identified possible problematic behavior across multiple firms, including, among other things, unsuitable recommendations, misrepresentations, inadequate supervision, churning, reverse churning, and load waivers.[116]

- OCIE's Office of Risk Assessment and Surveillance (RAS). SEC staff in this office aggregates and analyzes data from SEC filings from registrants and individuals to identify activity that may warrant examination. This office has led the development and implementation of predictive risk models, dashboards to enhance the analysis and visual display of data, and technology to perform text analytics on certain registrant filings.

- OCIE's Large Firm Monitoring Program (LFM). LFM has an ongoing engagement with select large firms and through this engagement keeps abreast of both firm-specific and industry-wide business, risk, and control issues and themes. The insights gained through these efforts are used to support the overall risk-based examination selection and scoping process used by OCIE. LFM focuses on certain large and complex firms that could pose significant risk to the various markets and to their customers due to their size, complexity, and connectivity with other large firms and financial institutions.

- OCIE's Technology Control Program (TCP). In 2014, OCIE created the TCP, which conducts examinations of entities covered by Regulation SCI, discussed in Question 6(a)(i), above, to evaluate, among other things, whether they have effectively implemented and enforced written policies and procedures required by Regulation SCI. TCP's Cyberwatch program conducts monitoring and analysis of SCI events reported by SCI entities. In addition to its responsibilities under Regulation SCI, TCP staff also conducts technology focused examinations of non-SCI entities, and offers technical assistance to other OCIE examination programs on other technology-related issues that may arise during their examinations.

- DERA's Office of Risk Assessment (ORA). In 2014, DERA created its Office of Risk Assessment (ORA), which provides data-driven risk assessment tools and models to enhance a wide range of SEC activities. ORA supports supervisory, surveillance, and

[116] See https://www.sec.gov/news/testimony/testimony-04-21-16.html.

investigative programs related to corporate issuers, broker-dealers, investment advisers, and number of OTC securities markets.

- Enforcement's Center for Risk and Quantitative Analytics (CRQA). SEC staff in this office focuses on developing and using data, technology, and analytics to proactively identify potential securities law violations and support Enforcement investigations, the Tips, Complaints and Referrals (TCR) and Suspicious Activity Report (SAR) review programs, and initiatives.

- Enforcement's Cyber Unit and the Retail Strategy Task Force. In 2017, Enforcement announced two new initiatives to build on its ongoing efforts to address cyber-based threats and protect retail investors.[117] The Cyber Unit focuses on cyber-related trading schemes and abusive practices, dark web-related conduct, cybersecurity and related internal controls of regulated entities and large market participants, digital currencies and initial coin offerings, and issuer disclosure of cybersecurity risks and events. Furthermore, the Retail Strategy Task Force is charged with developing proactive, targeted initiatives to identify misconduct impacting retail investors, leveraging data analytics and technology.

- Corporation Finance's Office of Risk and Strategy. SEC staff in this office focuses on the division's risk management and develops risk-based approaches to the Division's regulatory practices, primarily relating to disclosure reviews.

- Strategic Hub for Innovation and Financial Technology (FinHub). In 2018, the SEC launched FinHub as a platform for SEC staff to acquire and disseminate information and engage with industry and the public on innovative ideas and technological developments on FinTech-related issues and initiatives, such as distributed ledger technology and digital assets, automated investment advice, digital marketplace financing, and artificial intelligence/machine learning.[118] Staff from across the SEC's Divisions and Offices contributes to the work of the FinHub. Relatedly, in 2018, the SEC named an Associate Director in the Division of Corporation Finance as the Senior Advisor for Digital Assets and Innovation to coordinate efforts across SEC Divisions and Offices regarding the application of U.S. securities laws to emerging digital asset technologies and innovations, including initial coin offerings and digital assets.[119]

Technical Resources

SEC also has technical resources to support effective risk arrangements. Some of those resources include:

117 See https://www.sec.gov/news/press-release/2017-176.

118 See https://www.sec.gov/finhub.

119 See https://www.sec.gov/news/press-release/2018-102.

- DERA's Broker-Dealer Risk Assessment (BDRA) model. DERA's BDRA is currently being used by OCIE's National Examination Program (NEP) as part of its exam candidate selection process. The framework provided by the BDRA helps to prioritize the examination of approximately 3,700 registered broker-dealers and to focus OCIE's resources to firms with higher risk profiles by detecting broker-dealers' aberrational performance against their peers along multiple risk factors.

- Market Information Data and Analytics System (MIDAS). SEC staff's 2014 self-assessment included a discussion of the then-fairly newly implemented Market Information Data and Analytics System (MIDAS).[120] The system provides the SEC with near real-time access to all of the data feeds made available to market participants by the exchanges, thus providing the SEC with the ability to see the market in the same manner as the most sophisticated market participants. The SEC has also invested heavily in the development of monitoring applications that provide insight into the health and function of U.S. equities markets.

- IM Analytics Office Tools. See response to Principle 6, Question 1(a)(i), above, for a description of technical resources developed and used by the Analytics Office in support of monitoring and assessing risk of CISs and CIS operators. In addition, IM staff has developed Monitoring and Analytics Graphical User Interface (MAGIC) for CISs. MAGIC enables the IM staff to quickly put together data sets and to analyze CISs in a variety of ways, such as the ability to compare a particular CIS's portfolio to its strategy or how a particular CIS's holdings are aligned with its investment restrictions. IM staff can also use this tool to run custom queries across thousands of open-end and closed-end funds. For example, IM staff can quickly identify which CISs may have exposure to certain assets (e.g., cryptocurrencies). In particular, MAGIC's capabilities provide staff with powerful tools to evaluate registered investment company disclosures and to evaluate possible trends.

120 See https://www.sec.gov/marketstructure/midas.html#.XMrZ8re6NEY.

Principle 7	**The Regulator should have or contribute to a process to review the perimeter of regulation regularly.**

Key Questions

1. Does the regulator have or participate in a process, to identify and assess whether its regulatory requirements and framework adequately addresses risks posed by products, markets, market participants and activities to investor protection, fair, efficient and transparent markets and the reduction of systemic risk?

General

Yes. The SEC has broad statutory authority to adopt new rules and to update rules. The SEC uses this authority to identify and assess whether its regulatory requirements and framework adequately address risks posed by products, markets, market participants and activities to investor protection, fair, efficient and transparent markets and the reduction of systemic risk and address risks and concerns related to the securities markets. SEC staff is continually reviewing and assessing the SEC's regulatory requirements and framework in order to assure the SEC is effectively addressing these risks.

One of the key principles for Chairman Clayton's chairmanship is that the Commission should continually strive to identify and monitor emerging risks and issues, including developments in other areas that affect the securities markets. The Commission must then continually evaluate whether it should adjust its regulatory approach to respond to this ever-changing risk landscape.

SEC staff works closely with fellow regulators, as well as colleagues across the Commission, to proactively identify, monitor and respond to risks and developments. Through both formal and informal processes, the SEC reviews the scope of its regulatory framework. These processes include, among others:

- proactive evaluations of risks identified through examinations and enforcement actions, followed by appropriate revisions of SEC rules or the issuance of guidance;
- implementation review programs to monitor and assess the efficacy of new rules as they are put in place and their impact on the market;
- "post-mortem" identification and implementation of measures to remedy risks highlighted by market events;
- review of existing regulations retrospectively as part of studies of broad substantive program areas;
- consideration of suggestions to review existing rules through various types of communications, ranging from formal petitions for rulemaking to informal correspondence from investors, investor and industry groups, Congress, fellow regulators, the bar, and the public; and

- establishment of standing working groups or programs to assess and recommend measures to identify evolving risks within an industry or market.

SEC Cross-Functional Programs

Specific examples of these working groups and programs that the SEC uses to assess and recommend measures to identify evolving risks with an industry or market are listed below.

- Fixed Income Market Structure Advisory Committee. Responsible for providing advice to the Commission on the efficiency and resiliency of the corporate bond and municipal securities markets and identifying opportunities for regulatory improvements. The Committee is comprised of a diverse group of outside experts, including individuals representing the views of retail and institutional investors, small and large issuers, trading venues, dealers, and self-regulatory organizations, among others.

- Investor Advisor Committee. Responsible for advising the Commission on regulatory priorities; the regulation of securities products, trading strategies, fee structures, and the effectiveness of disclosure; and on initiatives to protect investor interests and to promote investor confidence and the integrity of the securities marketplace. The Committee, which was established by the Dodd-Frank Act, is comprised of the SEC's Investor Advocate and a diverse group of outside experts, including academics, investor and consumer advocates, and market participants, among others.

- Small Business Capital Formation Advisory Committee. Responsible for advising the Commission on rules, regulations and policy matters relating to small businesses, including smaller public companies. The Committee, which was established by the SEC Small Business Advocate Act of 2016, is comprised of the SEC's Advocate for Small Business Capital Formation and a diverse group of outside experts, including individuals representing the views of investors, companies, and professional advisors for companies and participants in the marketplace, among others.

- FinHub. As noted in Principle 6, Question 4, above, in 2018, the SEC launched the FinHub as a platform for SEC staff to acquire and disseminate information and engage with industry and the public on innovative ideas and technological developments on FinTech-related issues and initiatives, such as distributed ledger technology and digital assets, automated investment advice, digital marketplace financing, and artificial intelligence/machine learning.[121] In addition, the SEC named an Associate Director in the Division of Corporation Finance as the Senior Advisor for Digital Assets and Innovation to coordinate efforts across SEC Divisions and Offices regarding the application of U.S. securities laws to emerging digital asset technologies and innovations, including initial coin offerings and digital assets.

Trading and Markets

[121] See https://www.sec.gov/finhub.

- Office of Market Supervision (OMS). TM has dedicated staff in OMS to the review of exchange proposals to list and trade new exchange-traded products. In 2018, the SEC and the CFTC updated and enhanced their existing MOU to enhance coordination. The MOU is discussed in more detail in response to Principle 1, Question 2(a), above.

- Crisis Management Groups. SEC staff from TM participates in Crisis Management Groups with other U.S. and foreign financial regulators for the oversight of large cross-border financial entities. These crisis management groups establish bilateral and multilateral contacts and formal and informal dialogue focused on the development of a framework for early intervention triggers around recovery efforts and resolution planning.

- MIDAS. As discussed in response to Principle 6, Question 4, above, SEC staff uses MIDAS to conduct sophisticated, fast analysis of market events, support policy questions, and conduct exams and investigations, all of which can be relevant to determining whether the SEC's regulatory requirements and framework adequately address risks.

- CAT: As discussed in response to Principle 6, Question 1, above, and Principle 33, Question 6(b), the SEC approved the CAT NMS Plan on November 15, 2016. CAT was intended to create a system that provides regulators with more timely access to a sufficiently comprehensive set of trading data, enabling regulators to more efficiently and effectively reconstruct market events, monitor market behavior, and identify and investigate misconduct.

Investment Management

- IM staff has and participates in a number of processes for the purpose of identifying and assessing whether its regulations adequately address risk. For example, IM staff seeks to identify and assesses risks posed by activities, products, and market participants through its Analytics Office (see response to Principle 6, Question 1(a)(i) for a detailed description of the Analytics Office and its role in identifying, monitoring, and assessing risks associated within the asset management industry.) In addition, IM staff's review of disclosure filings and its participation in inter-agency and inter-governmental workstreams contribute to its ability to identify and assess these types of risks, and its policymaking initiatives regularly involve an assessment of, and a means of gathering, information concerning, whether the Commission's regulatory requirements and framework adequately addresses risks posed by products, markets, market participants, and activities.

Office of Compliance Inspections and Examinations

- Examination Priorities. As noted in SEC staff's 2014 self-assessment in the introduction to the response to Principle 12, OCIE has published its examination priorities annually since 2013 to educate and inform registrants of particular areas of examination focus

and to provide such entities an opportunity to evaluate their compliance systems and remediate any issues identified before they might be selected for examination.[122] The Priorities Memorandum's objective is to focus OCIE's resources on those activities (principally examinations) that are expected to best support the achievement of OCIE's mission to improve compliance, prevent fraud, monitor risk, and inform policy, all of which also align with the SEC's mission. The key areas of focus and risk themes for a given year are developed collaboratively by senior management from OCIE's twelve offices, as well as by senior representatives of other SEC Divisions and Offices, based on an assessment of a range of factors including, for example:

- news and other information sources, such as industry publications;
- information reported by registrants in required SEC filings;
- comments and tips received directly from investors and registrants;
- communications with other U.S. and international regulators and agencies; and
- information gathered through OCIE's and other regulators' examinations.

2. Does the regulator have formalized arrangement and/or a process to review, when there is evidence of changing circumstances, its past regulatory policy decisions on products, markets, entities, market participants or activities, especially decisions to exempt, and take measures as appropriate?

Yes. As noted in response to Principle 7, Question 2 in SEC staff's 2014 self-assessment, and as explained above, the SEC has processes to review when there is evidence of changing circumstances, its past regulatory policy decisions on products, markets, entities, market participants or activities, especially decisions to exempt, and take measures as appropriate. The SEC continuously examines its rules and policy guidance to address changing circumstances, including new market developments and opportunities for regulatory arbitrage.

Exemptive Authority

With respect to exemption decisions, the SEC has general exemptive authority under certain of its governing statutes that allows the SEC to exempt a person, security, or transaction from various securities laws and regulations. This broad authority helps the SEC respond to changes in the markets, including advancing technology and internationalization. Due to the nature of this relief, requests for exemptions bring new information to staff regarding changes in the markets. SEC staff also reviews compliance with previously granted exemptive orders in order to help the SEC better assess the extent to which the conditions of the applicable exemptive orders are functioning as intended. SEC staff's observations have also enabled the SEC to

[122] The National Examination Program Examination Priorities for 2019 are available at https://www.sec.gov/files/OCIE%202019%20Priorities.pdf.

consider whether to engage in rulemaking in particular areas (e.g., exchange-traded funds[123] and funds that invest in other funds)[124] to codify exemptive orders, such that funds are not required to apply individually for exemptive relief but may rely on the applicable exemptive rule.

Regulatory Flexibility Act

As noted in response to Principle 7, Question 2 in SEC staff's 2014 self-assessment, the SEC also has formal processes to review existing regulatory policies. For example, under the Regulatory Flexibility Act (RFA), U.S. agencies are required to review regulations that have a significant economic impact upon a substantial number of small entities within 10 years of the publication of such rules.

The purpose of the RFA review is to determine whether such rules should be continued without change, or should be amended or rescinded to minimize any significant economic impact of the rules upon a substantial number of small entities. The RFA sets forth specific considerations that must be addressed in the review of regulations, including: the continued need for the rule; the nature of comments from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates, or conflicts with other rules; the length of time since the rule has been evaluated; and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Investor Advisory Committee

As noted in response to Principle 7, Question 2 in SEC staff's 2014 self-assessment, Section 911 of the Dodd-Frank Act established the Investor Advisory Committee to advise the SEC on regulatory priorities; regulation of securities products, trading strategies, fee structures, and effectiveness of disclosure; and initiatives that protect investor interests and promote investor confidence and the integrity of the securities marketplace. The Dodd-Frank Act authorizes the committee to submit findings and recommendations for review and consideration by the SEC.

Advisory Committee on Small Business Capital Formation

The SEC Small Business Advocate Act of 2016 established the Advisory Committee on Small Business Capital Formation, which is designed to provide a formal mechanism for the Commission to receive advice and recommendations on Commission rules, regulations and policy matters relating to small businesses, including smaller public companies.

Public Comment

[123] See Exchange-Traded Funds, Release Nos. 33-10515, IC-33140 (proposed Jun. 28, 2018), available at https://www.sec.gov/rules/proposed/2018/33-10515.pdf; See also 83 Fed. Reg. 37332 (Jul. 31, 2018).

[124] See Funds of Funds Arrangements, Release Nos. 33-10590, IC-33329 (proposed Dec. 19, 2018), available at https://www.sec.gov/rules/proposed/2018/33-10590.pdf; See also 84 Fed. Reg. 1286 (Feb. 1, 2019).

As noted in SEC staff's 2014 self-assessment, the SEC welcomes and receives comments from the public regarding the operation of its rules. Through these various processes, SEC staff is continually reviewing existing regulations and working to improve the SEC's regulations.

In addition, every division and office within the SEC has responsibility for monitoring existing, evolving and new markets, market processes, market participants, and financial products. Examples of the SEC and staff responses to changing circumstances in the securities markets follow.

FinHub

Please see response to Principle 6, Question 4, above, for a discussion of the SEC's FinHub.

Division of Investment Management

- IM staff utilizes the policymaking process to review its past regulatory policy decisions and take appropriate measures. For instance, one of IM's priorities is modernizing the regulatory framework for the asset management industry. Specifically, IM staff has been reviewing existing policies and approaches and assessing whether they are (or remain) efficient, effective, and appropriate; whether they take into account advancements in technology, business, and investor relationships; and whether they have unintended consequences and costs. IM's recent actions as part of this modernization initiative have focused on, for example, ETFs,[125] covered investment fund research reports,[126] offering modernization for closed-end CISs and BDCs,[127] use of derivatives by CISs (and BDCs),[128] CIS board responsibilities , and CIS liquidity risk management framework and disclosure:[129]

- Ongoing Risk Monitoring. IM staff's risk monitoring includes regular outreach to industry participants to gain insight into developing market risks and understand the

[125] See Exchange-Traded Funds, Release Nos. 33-10515, IC-33140 (proposed Jun. 28, 2018), available at https://www.sec.gov/rules/proposed/2018/33-10515.pdf.

[126] See Covered Investment Fund Research Report, Release Nos. 33-10580; 34-84710; IC-33311 (Nov. 30, 2018); available at https://www.sec.gov/rules/final/2018/33-10580.pdf (note that this SEC action was based on Congressional directive from the Fair Access to Investment Research Act of 2017, Pub. L. 115-66, 131 Stat. 1196 (2017)).

[127] See Securities Offering Reform for Closed-End Investment Companies, Release Nos. 33-10619;34-85382; IC-33427 (Mar. 20, 2019); available at https://www.sec.gov/rules/proposed/2019/33-10619.pdf (note that this SEC action was based on Congressional directive from the Small Business Credit Availability Act Pub. L. No. 115–141, 132 Stat. 348 (2018) and the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. No. 115–174, 132 Stat. 1296 (2018)).

[128] See Agency Rule List – Fall 2018, 3235-AL60, SEC (Use of Derivatives by Registered Investment Companies and Business Development Companies), available at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235.

[129] See Investment Company Liquidity Risk Management Programs, Release Nos. 33-10233; IC- 32315 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10233.pdf.

effects of macroeconomic developments. This includes ad-hoc outreach to asset management firms regarding specific emerging risks or market events. For example, IM staff may contact asset management firms to understand the effects of significant market events or newly implemented regulations or to gather information to support consideration of policy initiatives. IM staff also seeks to maintain regular contact with asset management firms to gain more general insight into developing asset management trends and new risks by engaging with firms' senior managers and CISs boards, including by in-person meetings. Such meetings may encompass discussions of range of topics, as relevant to each particular firm's business, such as key business risks and general regulatory issues, the firm's growth strategy and any associated risks; and the firm's approach to operational and investment risk management, including the fund board and senior management engagement in effective risk oversight.

- IM's Analytics Office. IM's Analytics Office participates in regulation reviews, through managing, monitoring, and analyzing data that informs industry trends, including data submitted by asset managers and Collective Investment Schemes (CISs) in regulatory filings. Examples are the Analytics Office's monthly review and analysis of money market fund data reported on Form N-MFP and its quarterly public report of aggregated private funds data reported on Form PF. The Analytics Office anticipates performing similar analysis of registered investment company data reported on Form N-CEN and N-PORT as more data becomes available over time as a result of recently adopted rules. See Principle 6, Question 1(a)(i), above, for additional information on IM's Analytics Office.

Division of Trading and Markets

- Section 19 reviews. SEC staff in TM actively engages in the rule filing review process in place for SROs, which is governed by Section 19 of the Exchange Act and Rule 19b-4 thereunder. Specifically, all registered clearing agencies, as SROs, are required to file with the SEC copies of any proposed rule or any proposed change in, addition to, or deletion of the clearing agency's rules. The SEC staff reviews all proposed rule changes and the SEC publishes them for comment.[130]

- Advance Notice Reviews. Pursuant to Section 806(e)(1)(A) of the Clearing Supervision Act, a clearing agency designated as systemically important must file a 60 day advance notice of changes to its rules, procedures, or operations that could materially affect the nature or level of risk presented by it (Advance Notice). Advance Notices are required for the implementation of any proposed change to a clearing agency's rules if it could materially affect the nature or level of risks presented by the entity. The SEC considers Advance Notices and determines whether to object to the proposal, as further described in Section 806(e). As part of its consideration of an Advance Notice, the SEC generally considers the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. For purposes of this requirement, the phrase "materially

[130] Certain limited types of proposed SRO rule changes may be immediately effective upon filing with the SEC. See generally 15 U.S.C. 78s(b) (governing the SRO rule filing process).

affect the nature or level of risks presented" is defined in Exchange Act Rule 19b–4(n)(2)(i) to mean the existence of a "reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the designated clearing agency." This definition was designed to include all changes that would affect the risk management functions performed by the clearing agency that are related to systemic risk, as well as changes that could affect the clearing agency's ability to continue to perform its core clearance and settlement functions because the Commission stated that it believes that such changes could materially affect the nature or level of risk presented by the clearing agency.[131] To help designated clearing agencies determine whether an Advance Notice is required, Exchange Act Rule 19b– 4(n)(2)(ii) includes a list of categories of changes to rules, procedures or operations that the Commission believes could materially affect the nature or level of risks presented by a designated clearing agency. The list of such changes includes, but is not limited to, changes that materially affect participant and product eligibility, daily or intraday settlement procedures, default procedures, system safeguards, governance, or financial resources of the designated clearing agency. The Commission stated that it believes that changes in these areas pertain to core functions of a clearing agency and, as a result, may affect the ability of a designated clearing agency to manage its risks appropriately and to continue to conduct systemically important clearance and settlement services.[132]

Division of Enforcement

- Specialized Units and Task Forces. Enforcement considers changes and developments in the marketplace in its role of pursuing violations of the securities laws. Enforcement deploys and redeploys staff to meet new and evolving challenges, for example, by establishing Specialized Units and Task Forces with expertise and knowledge in programmatically important areas. By redeploying staff in this manner, Enforcement is able to timely respond to emerging areas of risk identified through a number of information sources including: Enforcement's investigative and market surveillance activities; coordination with criminal authorities, other regulators, and SROs; tips and complaints submitted by the public; and referrals from other Divisions and Offices of the SEC.

Office of Credit Ratings (OCR)

- Examinations and Monitoring. OCR is required by statute to conduct an examination of each CRA registered as a NRSRO at least annually, covering eight specific review areas. OCR staff conducts risk assessments within the eight review areas to prioritize resources on areas of greatest risk and identify areas for enhanced focus, such as

131 See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-67286 (Jun. 28, 2012), available at https://www.sec.gov/rules/final/2012/34-67286.pdf.

132 Id.

cybersecurity and information technology. OCR staff also monitors trends and developments affecting the credit rating industry. OCR staff may meet with NRSROs and a variety of other market participants, including investors, issuers, regulators, and industry organizations. OCR uses the information obtained through its monitoring efforts to inform risk-assessment, exam scoping, and OCR's policy recommendations to the Commission.

Office of Compliance Inspections and Examinations

- OCIE carries out the SEC's examination authority through examinations or inspections (collectively, "examinations") of securities firms registered with the SEC, including, among others, broker-dealers, municipal securities dealers, clearing agencies, transfer agents, investment advisers, investment companies, and municipal advisors (collectively, "registrants"). OCIE examines and oversees the SROs, which use a number of automated surveillance techniques to monitor trading activity on the exchange(s). In carrying out these responsibilities, OCIE uses a risk-based approach for selecting which firms, areas, and issues to examine and draws on a variety of resources, including its staff's specialized knowledge, risk analytics, and advanced technology, to target its resources most efficiently on the areas that pose the highest risk to investors, the markets, or capital formation.

- Digital Assets. As the number of financial market activities related to the offer, sale, and trading of cryptocurrencies, coins, and tokens that are securities (collectively, Digital Assets) has rapidly grown, OCIE has made examining for Digital Assets a priority. Given the significant growth and risks presented in this market, OCIE is monitoring the offer and sale, trading, and management of digital assets and where the products are securities, examining for regulatory compliance. OCIE has taken steps to identify market participants who are offering, selling, trading, and managing these products. For firms actively engaged in the Digital Asset market, OCIE is conducting examinations focused on, among other things, portfolio management of digital assets, trading, safety of client funds and assets, pricing of client portfolios, compliance, and internal controls.

Division of Corporation Finance

- The Division of Corporation Finance organizes its selective review program by industry in order to be able to closely monitor changing circumstances and take action as appropriate during the course of the review of disclosures by public companies. The Division has a long-standing policy of making the filing review correspondence publicly available after the completion of a review, which allows the public to assess the effectiveness of the Division's disclosure reviews. Further, the Division continually assesses how to promote the agency's mission to facilitate capital formation, exemplified by the Division's 2017 expansion of the nonpublic review process for draft registration statements. The Division also assesses the Commission's rules and disclosure requirements and makes recommendations to the Commission to change

	rules when appropriate. Any rule proposal is subject to a formal process providing for public notice and comment.
3.	Does the regulator participate in a process (with other financial system supervisors and regulators if appropriate) which reviews unregulated products, markets, market participants and activities, including the potential for regulatory arbitrage, in order to promote investor protection and fair, efficient and transparent markets and reduce systemic risks?
Yes. Please refer to response to Principle 6, Question 1, above.	
4.	Does the regulator seek legislative or other changes when it identifies a regulatory weakness or risk to investor protection, market fairness, efficiency and transparency that requires legislative or other changes?
Yes. As noted in response to Principle 7, Question 4 in SEC staff's 2014 self-assessment, the SEC seeks legislative changes when it identifies a regulatory weakness or risk to investor protection, market fairness, efficiency, and transparency that requires legislative or other changes. SEC staff monitors and assesses developments in existing, evolving, and new markets; market processes; market participants; and financial products. Based on information and observations the staff collects through these efforts, the SEC publicly reports to Congress and may make recommendations to, or requests of, Congress regarding the SEC's authority. In addition, any person may request that the Commission issue, amend or repeal a rule of general application. Petitions must contain the text or substance of any proposed rule or amendment or specify the rule or portion of a rule requested to be repealed. Persons submitting petitions must also include a statement of their interest and/or reasons for requesting Commission action. All petitions are forwarded to the appropriate office or division of the Commission for consideration and recommendation.	

Principle 9	**Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.**
Key Questions	
Authorization or Delegation Subject to Oversight	
1.	As a condition to authorization, does the legislation or the regulator require the SRO to demonstrate that it:
	(a) Has the capacity to carry out the purposes of its governing laws, regulations and SRO rules consistent with the responsibility of the SRO, and to enforce compliance by its members and associated persons subject to its laws, regulations and rules?
Under the U.S. regulatory framework and for purposes of SEC staff's self-assessment response, SROs include national securities exchanges, registered securities associations (like FINRA), and registered clearing agencies.[133] Otherwise, there has been no significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 2(a).	
	(b) Treats all members of the SRO, applicants for membership and similarly situated market participants subject to its rules in a fair and consistent manner?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 2(b).	
	(c) Develops rules that are designed to set standards for its members and to promote investor protection?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 2(c).	
	(d) Submits to the regulator its rules and any amendments thereto, for review and/or approval, as the regulator deems appropriate, and ensures that the rules of the SRO are consistent with the public policy requirements established by the regulator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 2(d).	
	(e) Cooperates with the regulator and other domestic SROs to investigate and

[133] See Exchange Act Section 3(a)(26), 15 U.S.C. §78(c)(a)(26). The Municipal Securities Rulemaking Board is also included for purposes of sections 19(b), 19(c), and 23(b) of the Exchange Act.

enforce applicable laws, regulations and rules?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 2(e).
2. Does the SRO:
(a) Have statutory delegation or other formal recognition from the regulator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 3(a).
(b) Have MoUs or other arrangements in place to secure cooperation between it and the regulator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 3(b).
(c) Have its own rules which are enforced and whose non-compliance is appropriately sanctioned?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 3(c).
(d) Where applicable, e.g., a mutualized organization, assures a fair representation of members in selection of its board of directors and administration of its affairs?
No significant update since SEC staff's 2014 self-assessment in response to Principle 9, Question 3(d).
(e) Avoid rules that may create anti-competitive situations as defined in the Explanatory Note?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 3(e).
(f) Avoid using the oversight role to allow any market participant unfairly to gain an advantage in the market?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 3(f).
Oversight
3. Does the regulator:
(a) Have in place an effective ongoing oversight program of the SRO, which may

include:

(i) inspection of the SRO;

See SEC staff's 2014 self-assessment in response to Principle 9, Question 4(a)(i) for a general overview of SRO examinations.

FINRA

Since SEC staff's 2014 self-assessment, OCIE reorganized its examination program in FY 2016. As part of this reorganization, OCIE established the FINRA and Securities Industry Oversight (FSIO) program, which has examination teams dedicated solely to examinations of FINRA, the MSRB, and FINRA oversight examinations.

FSIO conducts risk-based programmatic inspections of FINRA and the MSRB as described in response to Principle 9, Question 4(a)(i), below. In addition, FSIO is now responsible for conducting the oversight examinations that are described in SEC staff's 2014 self-assessment in response to Principle 10, Question 1(b) in the third paragraph under the heading "SEC Examinations of SROs" and on page 128 of Principle 9 under the "Additional IMF Question". FSIO conducts two types of FINRA oversight examinations:

- standalone oversight examinations, which are reviews of specific examinations that FINRA conducted of its member firms; and

- thematic oversight examinations, which are a series of oversight examinations that evaluate FINRA's review of a particular regulatory area or an investment product across a number of FINRA member firms.

The process to evaluate risk and prioritize areas of focus in inspections of FINRA that is described in the last full paragraph of page 128 of Principle 9 in the SEC staff's 2014 self-assessment as a new process to be used for future risk-scoping purposes is currently in use by FSIO. In addition, the monitoring described as being conducted by OCIE's dedicated SRO examination program is now conducted by FSIO.

In developing its risk-based plan for providing oversight of FINRA and the MSRB, FSIO uses the following sources:

- risk assessment of FINRA that includes consideration of the areas specified in Section 964 of Dodd-Frank Act;

- identification of FINRA examinations as oversight examination candidates either for standalone review of the adequacy of a single FINRA examination comprehensively or in response to a particular risk identified, or for a thematic review of several underlying exams for the same or similar risks or issues;

- observations from FSIO staff dedicated to the monitoring and risk assessment of FINRA; and

- regular meetings with FINRA and other Commission divisions and offices to discuss risks, regulation, and business.

Other SROs

See SEC staff's 2014 self-assessment in response to Principle 9, Question 4(a)(i) for a discussion of other SRO examinations. These exams are now conducted by OCIE's Broker-Dealer Exchange (BDX) group. In addition, recent risk areas identified since SEC staff's 2014 self-assessment for examination of exchanges include: the regulatory funding of exchanges; surveillance programs; governance of the consolidated data plans; internal audit functions; systems outages, errors and integrity; and various exchange specific incidents that OCIE determined warranted examination.

The chart below reflects the frequency of SRO examinations (including FINRA oversight examinations):

FY	Number of Examinations
2016	68
2017	115
2018	186

The chart below reflects the frequency of TCP examinations of SCI entities, which includes FINRA and other SROs:

FY	Number of Examinations
2016	61
2017	70
2018	67

(ii) periodic reviews;

As described in SEC staff's 2014 self-assessment in response to Principle 9, Question 4(a)(i), OCIE monitors FINRA to assist in OCIE's risk-scoping activities. As part of its monitoring, FSIO may review FINRA's program areas, including its examination and enforcement programs, and its internal audit program.

See response to Principle 6, Question 4, above, for an overview of TCP. In addition to ensuring compliance with Regulation SCI, TCP examination staff will focus on, among other things, controls relating to software development life cycles and related governance procedures, effectiveness of internal audit programs, inventory management, and threat management capabilities.

(iii) reporting requirements;

No significant update from SEC staff's 2014 self-assessment in response to Principle 9,

Question 4(a)(iii).
(iv) review and revocation of SRO governing laws, regulations, and rules; and
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 4(a)(iv).
(v) the monitoring of continuing compliance with the conditions of authorization or delegation.
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 4(a)(v).
(b) Retain full authority to inquire into matters affecting the investors or the market?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 4(b).
(c) Take over or support an SRO's responsibilities where the powers of an SRO are inadequate for inquiring into or addressing particular misconduct or allegations of misconduct or where a conflict of interest necessitates it?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 4(c).
Professional Standards similar to those Expected of a Regulator
4. Does the regulator, the law or other applicable regulation require the SRO to follow similar professional standards of behaviour as would be expected of a regulator:
(a) On matters relating to confidentiality and procedural fairness?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 5(a).
(b) On the appropriate use of information obtained in the course of the SRO's exercise of its powers and discharge of its responsibilities?
No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 5(b).
Conflicts of Interest
5. Does the regulator, the law or other applicable regulation assure that potential conflicts of interest at the SRO are avoided or appropriately managed?

No significant update from SEC staff's 2014 self-assessment in response to Principle 9, Question 6.

Principle 24	**The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.**
Key Questions	
Eligibility Criteria	
1.	Does the regulatory system set standards for the eligibility of those who wish to:
	(a) Market a CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 1(a).	
	(b) Operate a CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 1(b).	
2.	Do the eligibility criteria for a CIS operator include the following:
	(a) Honesty and integrity of the operator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 2(a).	
	(b) Having appropriate and sufficient human and technical resources to ensure that is capable of carrying out the necessary functions of a CIS operator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 2(b).	
	(c) Financial capacity of the CIS or the CIS operator that would allow the launching and operation of the CIS in appropriate conditions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 2(c).	
	(d) Ability to perform specific powers and duties?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 2(d).	
	(e) Having, or employing, appropriate identification, monitoring and management of risks, based on, among other things, the size, the complexity and the risk profile of the CIS?
Since SEC staff's 2014 self-assessment in response to Principle 24, Question 2(e), the SEC has adopted liquidity risk management requirements for CISs. For additional information, see	

response to Principle 24, Question 14(h), below.
(f) Having internal controls and compliance arrangements sufficient to ensure it can carry out its business diligently, effectively, honestly and fairly?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 2(f).
3. Does the regulatory system provide for effective mechanisms to assess compliance with the criteria referred to in Questions 2(a) to 2(f)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 3.
4. Does the regulatory system set standards for the CIS governance seeking to ensure that CIS are organized and operated in the interests of CIS investors, and not in the interests of CIS connected persons?
As a supplement to SEC staff's 2014 self-assessment response to Principle 24, Question 4, SEC staff notes that the Investment Company Act expressly states that a purpose of the Act is to mitigate and, so far as possible, eliminate conflicts of interest between the interests of CIS investors and the interests of CIS affiliates. In this regard, the Investment Company Act states that the national public interest and the interest of investors are adversely affected when, among other things, CISs are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, CIS operators, depositors, or other affiliated persons.[134] In addition, in June 2019, the Commission issued an interpretation reaffirming and in some cases clarifying an adviser's fiduciary duty to its clients (including CISs), including the adviser's duty of care and duty of loyalty (2019 Interpretation).[135] The duty of loyalty requires that an adviser not subordinate its clients' interests to its own.
5. Does the authorization/registration of CIS take into account the possible need for international cooperation in the case of CIS marketed across jurisdictions or where promoters, managers or custodians are located in several different jurisdictions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 5. For information about the SEC's international cooperation, please see responses to Principle 1, Question 1(d) and Principle 6, Question 3.
Supervision and Ongoing Monitoring

134 See Investment Company Act Section 1(b)(2).

135 See Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Release No. IA-5248 (Jun. 5, 2019), available at https://www.sec.gov/rules/interp/2019/ia-5248.pdf.

6.	Is the regulator responsible for monitoring ongoing compliance with the standards applicable to CIS and CIS operators? In particular, does the regulator have clear responsibilities and powers with respect to:
	(a) Registration or authorization of a CIS?
Yes. As a supplement to SEC staff's 2014 self-assessment in response to Principle 24, Question 6(a), SEC staff notes that the SEC rescinded Form N-SAR.[136] Form N-SAR had been used by a CIS since 1985 to report census-type information and was replaced with Form N-CEN.[137] The SEC made this change to Form N-CEN in order to improve the quality and utility of information reported and replace items that were outdated with those of greater relevance.[138] Additionally, Form N-CEN is filed in a structured format that increases the usability of the information. Like Form N-SAR, Form N-CEN requires that CISs file a copy of the independent public accountant's report on internal controls.	
	(b) Inspections to ensure compliance by CIS operators?
Yes. As a supplement to SEC staff's 2014 self-assessment in response to Principle 24, Question 6(b), OCIE notes that its examination program is a risk-based program, with emphasis placed on the registrants and practices that pose the greatest potential risk of securities law violations that can harm investors and the markets.	
	(c) Investigation of suspected breaches?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 6(c).	
	(d) Remedial action in the event of breach or default?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 6(d).	
7.	Does the ongoing monitoring involve a review of reports submitted to the regulator with regard to CIS and entities involved in the operation of a CIS (CIS operators, custodians, etc.) on a routine basis or on a risk-assessment basis?
Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 24, Question 7, in order to assure the prompt and orderly processing of CISs' filings, SEC staff conducts a risk based review of reports submitted to the regulator by a CIS.	

136 Form N-SAR was referenced in the 2014 self-assessment at notes 707 and 708 and the accompanying text.

137 See Investment Company Reporting Modernization, Release Nos. 33-10231; 34-79095; IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf.

138 Id.

As a supplement to the 2014 response, SEC staff notes that in 2016, the SEC adopted new rules that require CISs to regularly submit additional information to the SEC on Forms N-PORT and N-CEN, and to submit information on Form N-LIQUID when certain conditions are met (see Principle 6, Question 1(a)(i)). Data collected from these filings help enable staff to better understand industry trends, inform policy, and assist with OCIE's examination program. Additionally, IM's Analytics Office has developed various analytical tools to use data collected from these recently implemented forms, as well as from Forms ADV, PF, and N-MFP, to assist in monitoring registered investment advisers (i.e., CIS operators), CISs, and private funds, consistent with systems and controls designed to protect the confidentiality of information provided by registrants where required by applicable law or SEC rules.

Moreover, since 2014, the SEC has added more staff with quantitative backgrounds to routinely monitor and analyze CIS industry and market data, and provide ongoing financial and risk analysis of the CIS industry. For additional details, see response to Principle 6, Question 4.

8. Does the ongoing monitoring involve, where appropriate, performance of on-site inspections of entities involved in operating CIS (CIS operators, custodians, etc.)?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

Yes. OCIE examines entities involved in operating CISs by performing onsite examinations or inspections of CISs and their operators. In many cases, examinations are conducted in conjunction with an examination of the CIS's operator, because CIS operators often perform recordkeeping and operational duties, and may perform custodial services for the CIS. The scope of examinations of CISs is tailored to the activities of the CIS and its compliance risks. In formulating the observations of the examination, the examiners may consult with other staff, including supervisory staff and staff in relevant Offices and Divisions, to ensure that their observations are consistent with SEC rules, regulations, and interpretations.

Since 2014, the SEC has continued to work to increase examination coverage of registered investment advisers (e.g., CIS operators). For example, in FY16, OCIE transitioned some resources from other parts of the examination program to the investment adviser/investment company program with a goal of increasing the size of the investment adviser/investment company program. SEC staff examined 11% of investment advisers in FY 2016 and 15% of investment advisers in FY. In FY18, SEC staff examined 17% of investment advisers while the number of registered investment advisers increased by approximately 5% from the previous fiscal year.

The chart below reflects OCIE's examinations of fund complexes in fiscal years 2016, 2017, and 2018:

	FY16	FY17	FY18
Number of exams	184	95	138
Percentage of fund complexes examined	17%	11%	15%

The chart below reflects OCIE's examinations of investment advisers in fiscal years 2016, 2017, and 2018:

	FY16	FY17	FY18
Number of exams	1,447	2,114	2,312
Percentage of investment advisers examined	11%	15%	17%

The chart below reflects OCIE's examinations that resulted from tips, complaints, and referrals:

FY16	FY17	FY18
191	177	211

OCIE uses a risk-based approach in selecting firms, areas, and issues to examine and draws on a variety of resources, including its staff's specialized knowledge, risk analytics, and advanced technology, to target its resources most efficiently on the areas that pose the highest risk to investors, the markets, or capital formation.

As part of its compliance oversight, OCIE may also conduct risk-targeted initiatives, in which OCIE typically focuses on a particular practice area among a number of CISs and operators. Recent thematic initiatives have focused on CISs and/or operators that fall into one or more of the following categories:

- index funds that tract custom-built indexes;
- smaller ETFs and/or ETFs with little secondary market trading volume;
- mutual funds with higher allocations to certain securitized assets;
- funds with aberrational underperformance relative to their peer groups;
- advisers relatively new to managing mutual funds; and
- advisers with practices or business models that may create increased risks of inadequately disclosed fees, expenses, or other charges.[139]

9. Do the regulatory authorities proactively perform investigative activities in order to identify suspected breaches with respect to entities involved in the operation of a CIS?

As noted in SEC staff's 2014 self-assessment response to Principle 24, Question 9, SEC staff conducts investigations of CISs, their operators, and other entities involved in the operation

[139] OCIE Risk Alert, Risk-Based Examination Initiatives Focused on Registered Investment Companies (Nov. 8, 2018), available at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20RIC%20Initiatives_0.pdf; National Examination Program Examination Priorities for 2019, available at https://www.sec.gov/files/OCIE%202019%20Priorities.pdf

of a CIS when it has reason to believe that a violation of the federal securities laws is about to occur or has already occurred. As a result of these investigations, during the past three years (i.e., 2016 – 2018), there were 30 cases in which sanctions were imposed on CIS operators for breaches (e.g., misrepresentations, improper valuation, affiliated transactions).

10. Is the operator of a CIS subject to a general and continuing obligation to report to the regulatory authority or investors, either prior to or after the event, any information relating to: material changes in its management or organization, or in the by-laws of the CIS, or the CIS operator?

As a supplement to SEC staff's 2014 self-assessment in response to Principle 24, Question 10, SEC staff notes that Form N-CEN requires that CISs provide copies of all material amendments to the CIS's charter, by-laws or other similar organizational documents that occurred during the relevant reporting period.

11. Does the regulatory system assign clear responsibilities for maintaining records on the organization and business of the CIS operator? Does the regulatory system provide for the keeping of books and records in relation to transactions involving CIS assets, and all transactions in CIS shares or units or interests?

No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 11.

Conflicts of Interest and operational conduct

12. Are there provisions:

(a) To prohibit, restrict or manage (including, if appropriate, by disclosure) certain conduct likely to give rise to conflicts of interest between a CIS and its operators or their associates or connected parties?

No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 12(a).

However, as a supplement to that response, the 2019 Interpretation clarifies that under its fiduciary duty of loyalty, a CIS operator must not subordinate its clients' interests to its own interest. It must make full and fair disclosure to its clients of all material facts relating to the advisory relationship and must eliminate or at least expose through full and fair disclosure all conflicts of interest which might incline a CIS operator – consciously or unconsciously – to render advice which was not disinterested so that the client can provide informed consent. While such disclosure and informed consent prevent the presence of those material facts or conflicts themselves from violating the adviser's fiduciary duty, such disclosure and consent do not themselves satisfy the adviser's duty to act in the client's best interest. In addition, in cases where the CIS operator cannot fully and fairly disclose a conflict of interest to a client such that the client can provide informed consent, the CIS operator should either eliminate the conflict or adequately mitigate the conflict such that full and fair disclosure and informed consent are possible. A CIS operator is also prohibited from overreaching or taking unfair advantage of a client's trust.

(b) To require a CIS operator to seek to minimize potential conflicts of interest and ensure that any conflicts that do arise are identified and properly managed by taking appropriate actions (including, where appropriate, through disclosure) so that the interests of investors are not adversely affected?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 12(b). However, as a supplement to that response, see also the supplement to Question 12(a), above.
13.
(a) Does the regulatory system require the CIS operator to comply with operational conduct standards?
As noted in SEC staff's 2014 self-assessment in response to Principle 24, Question 13(a) and (b), the CIS operator has a fiduciary duty to its clients, including the CIS. As a supplement to that response, the 2019 Interpretation reaffirms and in some cases clarifies certain aspects of a CIS operator's fiduciary duties to its clients, including providing the Commission's view regarding the CIS operator's duty of care, which includes duties to (i) provide advice that is suitable for and in the best interest of its clients, (ii) seek best execution of client transactions, and (iii) provide advice and monitoring over the course of the CIS operator's provision of advisory services to its clients. In order to provide best interest advice, an adviser must have a reasonable understanding of the client's objectives, which would include, for institutional clients, an understanding of the investment mandate.
(b) In particular, is the CIS operator required to act in the best interest of investors and in accordance with the principle of fair treatment?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Questions 13(a) and (b).
14. Does the regulatory system address the regulatory issues associated with:
(a) Best execution?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(a). However, as a supplement to the 2014 response, the 2019 Interpretation clarifies that, when seeking best execution of a CIS's transactions, a CIS operator should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the CIS operator and should periodically and systematically evaluate the execution it is receiving.

(b) Appropriate trading and timely allocation of transactions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(b). However, as a supplement to that response, the 2019 Interpretation clarifies that, among other things, a CIS operator, when allocating investment opportunities among eligible clients (which could include CISs), must eliminate or at least expose through full and fair disclosure the conflicts associated with its allocation policies, including how the CIS operator will allocate investment opportunities, such that a client can provide informed consent. The CIS operator's allocation practices must not prevent it from providing advice that is in the best interest of its clients.
(c) Churning?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(c).
(d) Related party transactions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(d).
(e) Underwriting arrangements?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(e).
(f) Due diligence in the selection of investments?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(f). However, as a supplement to that response, the 2019 Interpretation clarifies that, among other things, CIS operators should develop a reasonable understanding of the client's (such as a CIS) investment guidelines and objectives, and must have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives. The CIS operator must also conduct a reasonable investigation into the investment sufficient not to base its advice on materially inaccurate or incomplete information.
(g) Fees and expenses, in order to ensure that no unauthorized charges or expenses are levied against a CIS, or CIS investors, and that: commission rebates; soft commission arrangements; and inducements, do not conflict with the CIS operator's duty to act in the best interest of investors?

No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 14(g).

(h) Requirements for CIS operators or CIS to establish and implement sound liquidity risk management processes taking into account normal and stress market conditions?
[This is a new question for the 2020 FSAP]

Yes. Rule 22e-4 under the Investment Company Act requires open-end CISs, including open-end ETFs but not including money market funds, to establish a written liquidity risk management program.[140] Specifically, Rule 22e-4 requires a CIS to assess, manage, and periodically review (with such review occurring no less frequently than annually) its liquidity risk, based on the following factors as applicable: (i) investment strategy and liquidity of portfolio investments during both normal and reasonably foreseeable stressed conditions (including whether the investment strategy is appropriate for an open-end CIS, the extent to which the strategy involves a relatively concentrated portfolio or large positions in particular issuers, and the use of borrowings for investment purposes and derivatives); (ii) short-term and long-term cash flow projections during both normal and reasonably foreseeable stressed conditions; and (iii) holdings of cash and cash equivalents, as well as borrowing arrangements and other funding sources. In addition to these factors, an ETF also must consider, as applicable: (i) the relationship between the ETF's portfolio liquidity and the way in which, and the prices and spreads at which, ETF shares trade, including the efficiency of the arbitrage function and the level of active participation by market participants (including authorized participants); and (ii) the effect of the composition of baskets[141] on the overall liquidity of the ETF's portfolio. A CIS may incorporate other considerations, in addition to the above factors, in evaluating its liquidity risk. In addition, this requirement is principles-based, and thus each CIS may develop and adopt procedures to review the CIS's liquidity risk tailored as appropriate to reflect the CIS's particular facts and circumstances.

Rule 22e-4 also requires several additional elements as part of a CIS's liquidity risk management program.

- First, a CIS is required to classify each of the investments in its portfolio. The

[140] See Investment Company Liquidity Risk Management Programs, Release Nos. 33-10233, IC-32315 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10233.pdf; Investment Company Act Rule 22e-4. Since 2016, the SEC has permitted open-end CISs (except money market funds or ETFs) to use "swing pricing," which is the process of adjusting a CIS's net asset value per share to pass on to purchasing or redeeming shareholders certain of the costs associated with their trading activity. It is designed to protect existing shareholders from dilution associated with shareholder purchases and redemptions and serves as another tool to help funds manage liquidity risks. While money market funds are open-end CISs, money market funds are excluded from the scope of Rule 22e-4 because, based on the historical redemption patterns of money market fund investors and the characteristics of the assets held by money market funds, they are already subject to extensive and stringent requirements concerning the liquidity of their portfolio assets and to broad liquidity related disclosure and reporting requirements. See Investment Company Act rule 2a-7.

[141] ETFs are generally structured so that an authorized participant will purchase or redeem a creation unit with a "portfolio deposit," which is a basket of assets (and sometimes cash) that generally reflects the composition of the ETF's portfolio.

classification must be based on the number of days in which the CIS reasonably expects the investment would be convertible to cash in current market conditions without significantly changing the market value of the investment, and the determination must take into account the market depth of the investment.

- Second, a CIS is required to determine a minimum percentage of its net assets that must be invested in highly liquid investments, defined as cash or investments that are reasonably expected to be converted to cash within three business days without significantly changing the market value of the investment. The CIS also is required to implement policies and procedures for responding to a highly liquid investment minimum shortfall, which must include board reporting in the event of a shortfall.

- Third, a CIS is not permitted to purchase additional illiquid investments if more than 15 percent of its net assets are illiquid assets. If a CIS breaches the 15 percent limit, the occurrence must be reported to the board, along with an explanation of how the CIS plans to bring its illiquid investments back within the limit within a reasonable period of time, and if it is not resolved within 30 days, the board must assess whether the plan presented to it is in the best interest of the CIS. In this regard, a CIS must also confidentially notify the SEC, on Form N-LIQUID, when its level of illiquid investments[142] exceeds 15 percent of its net assets or when its highly liquid investments fall below the CIS's minimum percentage for highly liquid investments for more than seven consecutive calendar days.

- Fourth, a CIS's board, including a majority of the CIS's independent directors, is required to approve the CIS's liquidity risk management program and the designation of the CIS's operator, a CIS officer, or CIS officers[143] to administer the program. The CIS's board also is required to review, at least annually, a written report on the adequacy of the program and the effectiveness of its implementation.

Delegation

15. Does the regulatory system provide for a clear indication of circumstances under which delegation is allowed and is there prohibition of systematic and complete delegation of core functions of the CIS operator to the extent that there is a transformation, gradual or otherwise, into an empty box?

No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 15.

16. If delegation is permitted, is the delegation done in such a way so as not to deprive the investor of the means of identifying the company legally responsible for the delegated functions? In particular:

142 An investment is considered illiquid if the fund reasonably expects that an investment cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment.

143 These officers could not be solely the portfolio managers of the CIS.

(a)	Is the CIS operator responsible for the actions or omissions, as though they were its own, of any party, to whom it delegates a function, including compliance with the rules of conduct and other operating conditions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 16(a).	
(b)	Does the regulatory system require the CIS operator to retain adequate capacity and resources and have in place suitable processes to monitor the activity of the delegate and evaluate the performance of the delegate?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 16(b).	
(c)	Can the CIS operator terminate the delegation and make alternative arrangements for the performance of the delegated function where appropriate?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 16(c).	
(d)	Are there requirements for disclosure to investors in relation to the delegation arrangements and the identity of the delegates?
Yes. As a supplement to SEC staff's 2014 self-assessment in response to Principle 24, Question 16(d), SEC staff notes that a CIS may seek exemptive relief from the SEC to permit investment advisers (i.e., CIS operators), subject to board approval, to retain sub-advisers (and materially amend existing subadvisory agreements) without obtaining shareholder approval required under Section 15(a) of the Investment Company Act. In the event that a new sub-adviser is retained, the identity of the new sub-advisers must be disclosed in the CIS's registration statement. Additionally, this relief is contingent, among other things, upon appropriate disclosure being provided to CIS shareholders. The relief requires that the prospectus for each subadvised CIS will disclose the existence, substance, and effect of any order granted pursuant to an application for relief. Each prospectus must also prominently disclose that the CIS operator has the ultimate responsibility, subject to oversight by the Board, to oversee the sub-advisers and recommend their hiring, termination and replacement. Finally, each subadvised CIS must disclose certain aggregate fee disclosure in its registration statement.	
(e)	Does the regulatory system allow the regulator to take appropriate actions in case of delegations which may give rise to a conflict of interest between the delegate and the investors?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 16(e).	

17.	If delegation is permitted, is the delegation done in such a way so as not to jeopardize the ability of the regulator to effectively access data related to the delegated functions, either directly through the delegate(s) or through the CIS operator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 24, Question 17.	

Principle 25	**The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.**
Key Questions	
Legal Form/Investors' Rights	
1.	Does the regulatory system provide for requirements as to the legal form and structure of CIS that delineates the interests of participants and their related rights?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 1.	
2.	Does the regulatory system provide that the legal form and structure of a CIS, as well as the implications thereof for the nature of risks associated with the CIS, be disclosed to investors in such a way that they are not dependent upon the discretion of the CIS operator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 2.	
3.	Is there a regulatory authority responsible for ensuring that the form and structure requirements are observed?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 3.	
4.	Does the regulatory system provide that where material changes are made to investor rights that do not require prior approval from investors, notice is given to them before the changes take effect?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 4.	
5.	Does the regulatory system provide that where material changes are made to investor rights, notice is given to the relevant regulatory authority?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 5.	
6.	Does the regulator have powers aimed at ensuring that any restrictions on type, or level, of investment, or borrowing, are being complied with?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 6.	
Separation of Assets/Safekeeping	

7.	Does the regulatory system require adequate segregation of CIS assets from the assets of the CIS operator and its managers or other entities?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 7.	
8.	Does the regulatory system provide for either of the following requirements governing the safekeeping of CIS assets:
	(a) the obligation to entrust the assets to custodians and/or depositaries that are in appropriate circumstances independent; or
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 8(a).	
	(b) special legal or regulatory safeguards in cases where the functions of custodian and/or depositary are performed by the same legal entity as is responsible for investment functions (or related entities).
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 8(b).	
9.	Does the regulatory system provide for adequate protection of client assets from losses or insolvency of the CIS operator, and the obligation that, where third party custodians are used, client assets are identified as such to any such custodian and equivalent protection is afforded to the client assets, including when the custodian has entrusted all or some of the assets in its safekeeping to a third party?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 8(c).	
10.	Does the regulatory system adequately provide for an orderly winding up of CIS business, if needed?
No significant update from SEC staff's 2014 self-assessment in response to Principle 25, Question 9.	

Principle 26	**Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.**
Key Questions	
1.	Does the regulatory system require that all matters material to the valuation of a CIS are disclosed to investors and potential investors on a timely basis?
As a supplement to SEC staff's 2014 self-assessment in response to Principle 26, Question 1, SEC staff notes that a CIS that chooses to utilize swing pricing (as discussed in response to Principle 27, Question 7(b), below) must provide an explanation of the CIS's use of swing pricing in its registration statement.	
2.	Does the regulatory system require that the information referred to in Question 1 above be disclosed to investors and potential investors in an easy to understand format and language having regard to the type of investor?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 2.	
3.	Does the regulatory system require the use of standard formats for disclosure of offering documents and periodic reports to investors?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 3.	
4.	Does the regulatory system include a general disclosure obligation to allow investors, and potential investors, to evaluate the suitability of the CIS for that investor or potential investor?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 4.	
5.	Does the regulatory system specifically require that the offering documents, or other publicly available information, include the following:
	(a) The date of issuance of the offering document?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(a).	
	(b) Information concerning the legal constitution of the CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(b).	

(c) The rights of investors in the CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(c).
(d) Information on the operator and its principals?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(d).
(e) Information on the methodology of asset valuation?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(e).
(f) Procedures for purchase, redemption and pricing of units/shares?
Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 26, Question 5(f), offering documents for open-end CISs, closed-end CISs, and UITs are all required to disclose procedures for purchase, redemption, and pricing. Additionally, an ETF, which was not specifically addressed in SEC staff's 2014 self-assessment, must identify on the cover page of its prospectus the principal U.S. market upon which the ETF shares are traded.[144]
(g) Relevant, audited financial information concerning the CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(g).
(h) Information on the custodial arrangements (if any)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(h).
(i) The investment policy(ies) of the CIS?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(i).
(j) Information on the risks involved in achieving the investment objectives?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(j).

144 See Form N-1A, Item 1(a)(2), available at https://www.sec.gov/files/formn-1a.pdf.

(k)	The appointment of any external administrator or investment managers or advisers who have a significant and independent role in relation to the CIS (including delegates)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 5(k).	
(l)	Fees and charges in relation to the CIS, in a way that enables investors to understand their nature, structure and impact on the CIS' performance?
Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 26, Question 5(l), there are specific requirements that the CIS offering document include the fees and charges of an open-end CIS, closed-end CIS, or UIT in a way that enables investors to understand their nature, structure, and impact on the CIS's performance. An ETF, which was not specifically addressed in SEC staff's 2014 self-assessment, must also disclose that investors may pay brokerage commissions on their purchases and sales of ETF shares.[145] Additionally, while an open-end CIS was already required to disclose certain fee information in its Statement of Additional Information (SAI), an open-end CIS must now also disclose in its SAI income and fees from securities lending, and the fees paid to securities lending agents in the prior fiscal year.[146]	
6.	Does the regulatory authority have the power to hold back, or intervene, with regard to offering documents? For example, are there regulatory actions available in the event that the information is inaccurate, misleading or false, or does not satisfy the filing/approval requirements?
Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 26, Question 6, various regulations authorize the SEC to, among other things, hold back or intervene in an offering if an offering document is found to be unsatisfactory.[147] Pursuant to those regulations, during the past three years (i.e., 2016-2018), sanctions were imposed in 25 SEC actions against CIS operators and others involved in the preparation of CIS disclosure documents or advertisements. These sanctions pertained to misstatements or misrepresentations in CIS registration statements, shareholder reports, other periodic filings, and advertisements. Please also see the response to Principle 24, Question 7 for information regarding the number of offering documents filed by CISs during the past three years. Please also see the response to Principle 24, Question 7 for information regarding the number of offering documents filed by CISs during the past three years.	

145 See Form N-1A, Item 3, available at https://www.sec.gov/files/formn-1a.pdf.

146 See Investment Company Reporting Modernization, Release Nos. 33-10231; 34-79095; IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf. See also Form N-1A, Item 21(i).

147 In response to the additional guidance for Principle 26, Questions 6, 7, and 9, SEC staff notes that during the past three years (i.e., 2016-2018) there were 170,257 offering documents filed by CISs.

7.	Does the regulatory system cover advertising material outside of the offering documents? In particular, does it prohibit inaccurate, false or misleading advertising? Are there regulatory actions available to the regulator with regard to advertising material outside of the offering document?

Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 26, Question 7, a CIS may use brochures or advertisements and may market through various media, such as television, radio, internet, billboards, and newspapers, and all marketing materials are subject to the anti-fraud provisions of the federal securities laws and are prohibited from containing material misstatements or omissions.[148] Where appropriate, the SEC brings actions seeking to impose sanctions to address violations of these provisions. As noted in Principle 26, Question 6 above, in the last three years (i.e., 2016-2018), the SEC has brought 25 enforcement actions imposing sanctions against CIS operators and others involved in the preparation of CIS disclosure documents or advertisements.

Pursuant to recently enacted legislation,[149] the SEC adopted rules that permit a broker dealer that is not affiliated with a CIS to publish or distribute research reports about that CIS (covered investment fund research reports) in reliance on Rule 139b of the Securities Act.[150] Rule 139b imposes conditions that include restrictions on the issuers to which the research may relate, as well as requirements that such reports be published in the regular course of business. These conditions vary depending on whether a research report covers a specific issuer or a substantial number of issuers in an industry or sub-industry. There are heightened requirements for issuer specific research reports (a research report covering a specific CIS), as compared to industry research reports (covering a substantial number of CISs). The antifraud provisions of the federal securities laws, as well as certain "standardized" performance information requirements, apply to covered investment fund research reports.

8.	Does the regulatory system require that the offering documents be kept up to date to take account of any material changes affecting the CIS?

No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 8.

9.	Does the regulatory system require a report to be prepared in respect of a CIS's activities either on an annual, semi-annual or other periodic basis?

Please note that the response below updates the response from SEC staff's 2014 self-assessment in response to Principle 26, Question 9 regarding Form N-SAR and Form N-Q and

148 See Securities Act Section 17(a); Exchange Act Section 10(b).

149 See Fair Access to Investment Research Act of 2017, Pub. L. 115-66, 131 Stat. 1196 (2017), available at https://www.congress.gov/115/plaws/publ66/PLAW-115publ66.pdf.

150 See Covered Investment Fund Research Reports, Release Nos. 33-10580, 34-84710, IC-33311 (Nov. 30, 2018), available at https://www.sec.gov/rules/final/2018/33-10580.pdf; See also Investment Company Act Rule 139b.

adds material about Form N-MFP.

Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 26, Question 9, rules under the Investment Company Act required a CIS to file with the SEC a semi-annual report on Form N-SAR, which contained information that could be used by the SEC to aid in monitoring a CIS's operations and to obtain necessary compliance information. In 2016, and as previously noted (see e.g., response to Principle 24, Question 6(a)), the SEC issued a final rule that rescinded Form N-SAR and, adopted Form N-CEN, which instead requires a CIS to file an annual, rather than semi-annual report.[151] Money market funds are required to file Form N-MFP to publicly report monthly portfolio holdings information.[152]

SEC staff's 2014 self-assessment in response to Principle 26, Question 9 also noted that the Investment Company Act required open-end and closed-end CISs to file a quarterly report on Form N-Q that generally disclosed the composition of a CIS's portfolio on a delayed basis. In 2016, the SEC issued a final rule that rescinded Form N-Q and adopted Form N-PORT, which open-end and closed-ends CISs must use to report portfolio holdings information and information related to liquidity, derivatives, securities lending, purchases and redemptions, and counterparty exposure. Form N-PORT is filed quarterly.[153] As noted previously, the SEC made these changes to, among other things, improve the information that the SEC receives from investment companies and assist the SEC, in its role as primary regulator of investment companies, to better fulfil its mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation.

10. Does the regulatory system require the timely distribution of periodic reports?

Yes. As noted in SEC staff's self-assessment in response to Principle 26, Question 10, section 30(e) of the Investment Company Act and Rule 30e-1 thereunder require CISs to transmit reports to shareholders (i.e., annual and semi-annual reports) within sixty days after the close of the period for which each report is made.

In 2018, the SEC adopted Rule 30e-3, which will permit (beginning January 1, 2021) a CIS to satisfy its obligation to transmit the annual and semi-annual shareholder reports by making them publicly accessible on a website, free of charge, and generally, sending shareholders a paper notice of each report's availability by mail.[154]

151 See Investment Company Reporting Modernization, Release Nos. 10231, 34-79095, IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf.

152 See Money Market Fund Reform, Release No. IC-29132 (Feb. 23, 2010), available at https://www.sec.gov/rules/final/2010/ic-29132.pdf.

153 See Investment Company Reporting Modernization, Release Nos. 33-10231; 34-79095; IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf; Amendments to the Timing Requirements for Filing Reports on Form N-PORT Release No. IC-33384 (Feb. 27, 2019), available at https://www.sec.gov/rules/interim/2019/ic-33384.pdf.

154 See Optional Internet Availability of Investment Company Shareholder Reports, Release No. 33-10506 (Jun. 5, 2018), https://www.sec.gov/rules/final/2018/33-10506.pdf; Investment Company Act Rule 30e-3.

11.	Does the regulatory system require that the accounts of a CIS be prepared in accordance with high quality, internationally acceptable accounting standards?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 11.	
12.	Does the regulator have powers to ensure that the stated investment policy or trading strategy, the authorized investments that the CIS is able to undertake, or any policy required by regulation is being followed?
No significant update from SEC staff's 2014 self-assessment in response to Principle 26, Question 12.	

Principle 27	**Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.**
Key Questions	
Asset Valuation	
1.	Are there specific regulatory requirements in respect of the valuation of CIS assets?
Yes. The regulations relating to the valuation of CIS portfolio securities are included in the Investment Company Act and SEC rules adopted thereunder.[155] As noted in SEC staff's 2014 self-assessment in response to Principle 27, Question 1, in general, these regulations provide that a CIS must value securities for which market quotations are readily available at their current market value and other securities and assets at fair value as determined in good faith by the board of directors of the CIS. As previously mentioned (see e.g., response to Principle 6, Question 1(a)(i), since SEC staff's 2014 self-assessment, the SEC adopted Form N-CEN (and rescinded Form N-SAR).[156] In general, while a CIS had already been required to disclose any material change in valuation methodologies, Form N-CEN also requires a CIS to report the asset type (category of asset class called for in Form N-PORT, such as, for example, short-term investment vehicles, repurchase agreements, equity, debt, or commodities) and type of investment affected by the material change.[157]	
2.	Are there regulatory requirements that the NAV of CIS be calculated:
	(a) On a regular basis?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 2(a).	
	(b) Each day that CIS units are purchased or redeemed? [This is a new question for the 2020 FSAP]
Yes. Section 22(c) of the Investment Company Act and Rule 22c-1 thereunder provide that shares in an open-end CIS or UIT generally may be purchased and redeemed only at a price based on the current NAV of such security, which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. In addition, Rule 22c-1 requires that an open-end CIS compute its NAV at least once daily from Monday through Friday.	
	(c) In accordance with high-quality, accepted accounting standards used on a

155 See Investment Company Act Sections 2(a)(41) and 22 and Rules 2a-4 and 22c-1.

156 See Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf.

157 See Form N-CEN, Item B.20; see also Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf.

consistent basis?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Questions 1 and 2(b).
3. Are there specific regulatory requirements in respect of the fair valuation of assets where market prices are not available?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 3.
4. Are there specific regulatory requirements where amortized cost accounting is permitted? [This is a new question for the 2020 FSAP]
Yes. Money market funds that qualify as "government money market funds" and "retail money market funds" are permitted to use the amortized cost method and/or penny rounding method of pricing to seek to maintain a stable share price.[158] A government money market fund is defined as any money market fund that invests 99.5% or more of its total assets in cash, government securities, and/or repurchase agreements that are collateralized solely by government securities or cash and meet certain other regulatory requirements with respect to value and custody. A retail money market fund is defined as a money market fund that has policies and procedures reasonably designed to limit all beneficial owners of the money market fund to natural persons. Additionally, all other U.S. registered investment companies may use amortized cost to value debt securities with remaining maturities of 60 days or less so long as the investment company's directors, in good faith, determine that the fair value of the debt securities is their amortized cost value, unless the particular circumstances warrant otherwise.
5. Are third parties (e.g., independent auditors) required to check the valuations of CIS assets?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 4.
6. Where MMFs display a stable NAV, does the regulatory system include measures that are designed to reduce the specific risks associated with their stable NAV feature and reinforce their resilience and their ability to face significant redemptions? [This is a new question for the 2020 FSAP]
Yes. Retail money market funds can maintain a stable NAV and are subject to liquidity fees

[158] See Money Market Fund Reform, Release Nos. 33-9616, IA-3879; IC-31166; (Jul. 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf; Amendments to Form PF, Release Nos. 33-9616, IA-3879, IC-31166 (July 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf.

and redemption gates.[159] Government money market funds can also maintain a stable NAV but are not subject to the fees and gates provisions, although they can voluntarily opt into them.

Under these requirements, if a money market fund's level of "weekly liquid assets" falls below 30 percent of its total assets, the fund's board is allowed to impose a liquidity fee of up to two percent on all redemptions or temporarily suspend redemptions (gate) subject to certain limitations. If the money market fund's level of "weekly liquid assets" falls below 10 percent, the fund must impose a liquidity fee of one percent on all redemptions, unless its board determines that not doing so is in the best interest of the fund.

In addition, all money market funds are subject to disclosure and reporting requirements regarding asset liquidity, shareholder inflows and outflows, portfolio holdings, and the imposition of fees and gates, among other issues. Money market funds are also generally subject to enhanced portfolio diversification and stress testing requirements relative to other funds.

Pricing and Redemption Issues

7. Does the regulatory system:

(a) Require the basis upon which investors may redeem units/shares to be made clear in the constituent documents and/or the prospectus?

No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 5(a).

(b) Provide for specific regulatory requirements in respect of the pricing upon redemption or subscription of units/shares in a CIS?

Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 27, Question 5(b), Investment Company Act Rule 22c-1 requires that sales and redemptions must be effected at the current NAV next computed after receipt of an order to purchase or sell, and Investment Company Act section 23 generally prohibits a closed-end CIS from selling its common stock at a price below current NAV.

Subsequent to SEC staff's 2014 self-assessment, the SEC amended Rule 22c-1, which now also permits open-end CISs (other than ETFs or money market funds) to use swing pricing (i.e., adjusting a CIS's net asset value to pass on to purchasing or redeeming shareholders certain of the costs associated with their trading activity to protect existing shareholders from dilution). The ability to use swing pricing is subject to certain disclosure and reporting requirements, policies, and procedures specifying how the CIS's "swing threshold"[160] is

159 Id.

160 A CIS's swing pricing policies and procedures must provide that the CIS is required to adjust its NAV once the level of net purchases or net redemptions from the CIS has exceeded a set, specified percentage of the CIS's net asset value known as the "swing threshold."

determined and to board approval of the policies and procedures and threshold (and any changes thereto).[161]
8. Does regulation ensure that the valuations made are fair and reliable?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 6.
9. Does regulation require the price of the CIS be disclosed or published on a regular basis to investors or prospective investors?
As noted in SEC staff's 2014 self-assessment in response to Principle 27, Question 7, while the federal securities laws do not require that the prices of a CIS be disclosed or published on a regular basis to investors other than in semi-annual reports, the price of a CIS is generally available in financial publications and websites, and it may also be available on the CIS's or CIS operator's website.[162] The response further noted that financial publications generally publish pricing information for open-end CISs on a daily basis and for closed-end CISs on a weekly basis. Additionally, and not noted in SEC staff's 2014 self-assessment, Item 8 of Form N-2 requires closed-end CISs to disclose certain historical share price data for exchange traded common stock they issue and financial publications also generally publish pricing information for exchange-traded closed-end CISs on a daily basis. Moreover, an ETF is required to disclose certain pricing information on its website, e.g., information relating to the ETF's NAV and its market closing prices. In addition, the applicable exchange on which the closed-end CIS and ETF are listed may also require additional pricing information.
10. Are there regulatory requirements, rules of practice, and/or rules addressing pricing errors? Are the relevant regulatory authorities able to enforce these rules?
Yes. In general, and as noted in SEC staff's 2014 self-assessment in response to Principle 27, Question 8, there are industry practices which exist for addressing pricing errors, and the SEC can bring an enforcement action if there is a violation of federal securities law regarding pricing errors. The response further noted that a CIS typically would not report pricing errors to the SEC unless the error is required to be reflected in its financial statements filed with the SEC. Since then, however, (and as previously noted) the SEC adopted Form N-CEN, which requires, among other things, that an open-end CIS indicate whether, during the reporting

161 See Investment Company Swing Pricing, Release Nos. 33-10234, IC-32316 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10234.pdf.

162 Under the 2014 Money Market Fund Reforms, as of April 2016, money market funds are required to disclose on the fund's website the fund's market-based price per share as of the end of the prior business day. See Money Market Fund Reform, Release Nos. 33-9616, IA-3879; IC-31166; (Jul. 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf; Amendments to Form PF, Release Nos. 33-9616, IA-3879, IC-31166 (Jul. 23, 2014), available at https://www.sec.gov/rules/final/2014/33-9616.pdf.

period, it made any payments, regardless of the source of the payment, to shareholders or reprocessed shareholder accounts as a result of an NAV error.[163]

The SEC has brought enforcement actions against CIS operators for violating, or causing a CIS to violate, SEC statutes, rules, and regulations: (i) prohibiting a CIS from selling, redeeming or purchasing redeemable securities except at a price based on the current net asset value of such security; (ii) prohibiting a CIS from postponing the date of payment or satisfaction upon redemption for more than seven days; and (iii) requiring policies and procedures reasonably designed to prevent such violations[164].

11.	Does the regulatory system address the general or exceptional circumstances in which there may be suspension, or deferral, of: routine valuation and pricing; or of regular redemption, of CIS units or shares?

No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 9.

12.	Does the regulator have the power to ensure compliance with the rules applicable to asset valuation, pricing and suspension of the redemption and subscriptions?

Yes. As a supplement to SEC staff's 2014 self-assessment in response to Principle 27, Question 10, SEC staff notes that the SEC has the power to ensure compliance with the rules applicable to suspension of redemptions and subscriptions, in addition to asset valuation and pricing, through examinations of its registrants and through enforcement actions.[165] OCIE typically reviews redemptions and redemption procedures during its examinations of CISs, CIS operators, and third-party administrators that perform certain operational and administrative functions for CISs.

OCIE has also conducted risk-targeted examinations focused on the conditions and responsive compliance controls of multiple CISs relating to liquidity risk, and redemptions. OCIE may also review certain CIS's policies and procedures related to liquidity risk management.

The SEC also enforces the statute and the rules thereunder applicable to asset valuation, pricing, and suspension of redemptions and subscriptions. For example, the SEC brought an enforcement action against a CIS operator for overstating the value of certain portfolio

163 See Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Oct. 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10231.pdf; See also Form N-CEN, Item B.22.

164 See In the Matter of Pacific Investment Management Company LLC, Release No. IC-32376 (Dec. 1, 2016), (settled action), available at https://www.sec.gov/litigation/admin/2016/ia-4577.pdf; In the Matter of Calvert Investment Management, Inc., Release No. IC-32321 (Oct. 18, 2016), (settled action), available at https://www.sec.gov/litigation/admin/2016/ia-4554.pdf.

165 Please also see SEC staff's self-assessment in response to Principle 27, Question 7(b) regarding rules applicable to redemptions and subscriptions.

securities, which caused the CIS to overstate its net asset value. The SEC charged the CIS operator with making materially misleading statements to the board of trustees for the CIS, for policies and procedures failures around pricing of securities, and for causing the CIS to execute transactions in redeemable securities at prices not based on the current net asset value. The CIS operator settled to the SEC charges, agreed to retain an independent compliance consultant to review policies and procedures around pricing and valuation, to pay $18.3 million in civil monetary penalties, and to disgorge $1.3 million of ill-gotten gain plus $198,179.04 in prejudgment interest.[166] The SEC also has brought other enforcement actions related to inappropriate valuation and described in SEC staff's 2014 self-assessment in response to Principle 27, Question 10.
13. Does the regulatory system require that the regulator:
(a) Be kept informed of any suspension or deferral of redemption rights?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 11(a).
(b) Have the authority to address situations where the CIS operator: is failing to honour redemptions; or is imposing a suspension of redemptions in a manner that is not consistent with the CIS constitutive documents and prospectus, or the contractual relationship between the CIS participants and the CIS operator; or is otherwise deemed to be in violation of national law?
No significant update from SEC staff's 2014 self-assessment in response to Principle 27, Question 11(b).

166 See In the Matter of Pacific Investment Management Company LLC, Release No. IC-32376 (Dec. 1, 2016), (settled action), available at https://www.sec.gov/litigation/admin/2016/ia-4577.pdf.

Principle 28	**Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.**
Key Questions	
Registration/Authorization of Hedge Fund Managers/Advisers and/or, where relevant, the Hedge Fund	
1.	Does the regulatory system set standards for:
	(a) The registration/authorization and the regulation of those who wish to operate hedge funds (managers/advisers)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 1(a).	
	(b) And/or the registration of the fund?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 1(b).	
2.	Does the regulatory system specify the information contemplated by Key Issue 2 that must be provided to the regulator at the time of the registration/authorization?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 2.	
Standards for Internal Organization and Operational Conduct	
3.	Does the regulatory system set (in view of the risk posed) standards for internal organization and operational conduct to be observed, on an on-going basis, by the hedge fund manager/adviser, including appropriate risk management and protection, and segregation of client money and assets?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 3.	
Conflicts of Interest and Other Conduct of Business Rules	
4.	Does the regulatory system set standards for hedge fund managers/advisers to appropriately manage conflicts of interest, and provide full disclosure and transparency to the regulator and investors (including potential investors) about such conflicts and how they manage them?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 4.	
Disclosure to the Regulator and to Investors	
5.	Is the regulator able to obtain from hedge fund managers/advisers appropriate information about their operations and about the funds that they manage that allow it to assess the risks that hedge funds pose to systemic stability?

No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 5.

6. Does the regulatory system, in view of the risks posed, set standards for the proper disclosure by hedge fund managers/advisers, or by the hedge fund, to investors?

No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 6.

Prudential regulation

7. Are hedge fund managers/advisers, which are required to register, subject to appropriate ongoing prudential requirements that reflect the risks they pose?

[Self-contained answer; no need to consult SEC staff's 2014 self-assessment]

FSOC may subject certain nonbank financial companies to oversight by the Federal Reserve and additional prudential standards if it determines that they could pose a threat to the financial stability of the U.S. To date, FSOC has not determined that any hedge funds or hedge fund advisers should be subject to Federal Reserve oversight or additional prudential standards. Additionally, FSOC recently proposed interpretative guidance that would implement an activities-based approach to its monitoring activities, including leveraging the expertise of existing regulators in pursuing the implementation of actions to address potential risks. SEC staff also notes that Form PF, which is required to be filed by SEC-registered investment advisers with at least $150 million in private fund assets under management, provides data that is useful to FSOC and the SEC, in part, in monitoring hedge funds.

Supervision and enforcement

8.

(a) Does the regulatory system provide for ongoing supervision of the hedge fund managers/advisers which are required to register?

(b) Does the regulator have the power to access and inspect the hedge fund managers/advisers and their records and/or the hedge funds?

(c) Does the regulator have the authority to enforce against wrongdoers?

Yes. As noted in SEC staff's 2014 self-assessment in response to Principle 28, Question 8, in general, the SEC's supervision of hedge fund managers is primarily performed by OCIE through a risk-based examination process, with emphasis placed on the highest risk firms and activities at any point in time.

For example, in 2018, OCIE launched a series of examinations related to hedge fund advisers that focused, in part, on the side-by-side management of mutual funds and hedge funds.[167]

[167] See Risk-Based Examination Initiatives Focused on Registered Investment Companies, OCIE Risk Alert (Nov. 8, 2018), available at https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20RIC%20Initiatives_0.pdf.

One focus of the initiative is to examine hedge fund advisers that provide advice to both mutual funds and hedge funds, particularly when managed pursuant to similar strategies and/or by the same portfolio managers, which may present certain risks to retail investors. For more information on OCIE's examinations of investment advisers, including examination coverage, please see the response to Principle 24, Question 8. The SEC has broad authority to bring enforcement actions against hedge funds and/or hedge fund managers who violate the federal securities laws. The SEC has brought numerous recent enforcement actions against hedge fund advisers for a variety of misconduct, including false and misleading statements,[168] misappropriation or misuse of fund assets,[169] unregistered fund offerings,[170] prohibited transactions,[171] improper valuation of fund assets,[172] and misallocation of fees and expenses.[173]	
9.	Subject to appropriate confidentiality safeguards and national law restrictions, from the point of view of supervision and enforcement, does the regulator have the power to:
	(a) Collect where necessary relevant information from hedge fund managers/advisers and/or hedge funds (and through cooperation with other domestic regulators from hedge fund counterparties) also on behalf of a foreign regulator?

168 See, e.g., SEC v. Goldsky Asset Management, LLC and Kenneth Grace, Action No. 18-civ-08870 (S.D.N.Y.) (filed Sept. 28, 2018), (settled action), available at https://www.sec.gov/litigation/litreleases/2018/lr24291.htm; In the Matter of Cecil Gregory Earls and Thomas R. Caggiano, Release No. 33-Release No. 10546 (Sept. 14, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/33-10546.pdf; In the Matter of VSS Fund Management LLC and Jeffrey T. Stevenson, Release No. IA-5001 (Sept. 7, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ia-5001.pdf; In the Matter of Lyxor Asset Management, Inc., Release No. IA-4932 (Jun. 4, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ia-4932.pdf; In the Matter of Aberon Capital Management, LLC and Joseph Krigsfeld, Release No. IA-4914 (May 24, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ia-4914.pdf.

169 See, e.g. In the Matter of Corinthian Capital Group, LLC, Peter B. Van Raalte and David G. Tahan, Release No. IA-5229 (May 6, 2019), (settled action), available at https://www.sec.gov/litigation/admin/2019/ia-5229.pdf; SEC v. Abraaj Investment Management Limited, and Arif Naqvi, Action No. 19-civ-03244 (S.D.N.Y.) (filed Apr. 11, 2019), available at https://www.sec.gov/litigation/litreleases/2019/lr24449.htm; SEC v. Michael B. Rothenberg, et al., Action No. 18-civ-05080 (N.D.Cal.) (filed Aug. 20, 2018), available at https://www.sec.gov/litigation/litreleases/2018/lr24367.htm.

170 See, e.g., In the Matter of Mutual Coin Fund LLC and Usman Majeed, Release No. 33-10624 (Apr. 1, 2019), (settled action), available at https://www.sec.gov/litigation/admin/2019/33-10624.pdf; In the Matter of CoinAlpha Advisors LLC, Release No. 33-10582 (Dec. 7, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/33-10582.pdf; Crypto Asset Management, LP and Timothy Enneking, Release No. 33-10544 (Sep. 11, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/33-10544.pdf.

171 See, e.g., In the Matter of Cushing Asset Management, L.P., Release No. IC-33226 (Sep. 14, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ic-33226.pdf; In the Matter of Ophrys, LLC, Rel. No. IA-5041 (Sep. 21, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ia-5041.pdf.

172 See, e.g., SEC v. Premium Point Investments LP, et al., 18-civ-04145 (S.D.N.Y.) (filed May 9, 2018), available at https://www.sec.gov/litigation/litreleases/2018/lr24138.htm).

173 See, e.g., NB Alternatives Advisers LLC, Release No. IA-5079 (Dec. 17, 2018), (settled action), available at https://www.sec.gov/litigation/admin/2018/ia-5079.pdf).

No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 9(a).
(b) Exchange information on a timely and ongoing basis, as deemed appropriate, with other relevant regulators on internationally active hedge funds that may pose systemic or other significant risks?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 9(b).
10. Is the securities' regulator able to obtain from the hedge fund operator/adviser – if necessary working with other regulators – non-public reporting of information on the hedge funds' exposure to counterparties, (which may include prime brokers, banks or OTC derivative counterparties)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 28, Question 10.

Principle 29	**Regulation should provide for minimum entry standards for market intermediaries.**

Key Questions (please answer with respect to market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues)

Given the scope of coverage of market intermediaries set forth by the IMF for Principles 29-32 ("market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues"), SEC staff's responses to these Principles are generally focused on updates to the relevant market access and trading venue rules that apply to market intermediaries. These updates discuss market intermediaries that are subject to either: (i) Exchange Act Rule 15c3-5 – Risk Management Controls for Brokers or Dealers with Market Access; or (ii) Regulation ATS. As described in more detail below, these updates apply to broker-dealers subject to Rule 15c3-5 or alternative trading systems subject to Regulation ATS, and not, for example, investment advisers.

- Rule 15c3-5 applies to broker-dealers with access to trading securities on an exchange or ATS as a result of being an exchange member, an ATS subscriber, or an ATS operator with non-broker-dealer subscribers. Rule 15c3-5 (Risk Management Controls for Brokers or Dealers with Market Access) was adopted in 2010 and described in detail in response to Principle 6, Question 1 and Principle 31, Question 7 in SEC staff's 2014 self-assessment. There have been no significant updates to the Market Access Rule since that time.

- Under Regulation ATS, an entity that falls within the definition of an exchange may register as an exchange, or as a broker-dealer and comply with Regulation ATS. If the entity chooses to register as an exchange, it must meet all requisite statutory and regulatory obligations discussed above applicable to exchanges. If an entity chooses to be an ATS, it must register as a broker-dealer, fulfil all of the registration requirements (as described in SEC staff's response to Principle 9, Question 1(a) in its 2014 self-assessment), be a member of a national securities association (e.g., FINRA), and comply with certain reporting and record-keeping requirements set forth under Regulation ATS. Further requirements relating to Regulation ATS are described in response to Principle 33 in SEC staff's 2014 self-assessment. Since then, the SEC has adopted a number of amendments relating to Regulation ATS, which are described in more detail in response to Principle 33.

In the questions that follow, SEC staff has provided significant updates regarding the market intermediaries that are subject to Rule 15c3-5 and Regulation ATS to the extent it is relevant to the key question. The requirements under Rule 15c3-5 and Regulation ATS apply to broker-dealers, which are subject to the broker-dealer licensing requirements described in SEC staff's 2014 self-assessment in response to Principle 29, Question 1.

In the case of first tier direct access clients, the registered broker-dealer providing direct access is required under Rule 15c3-5 to establish, document, and maintain a system of risk

management controls and supervisory procedures that, among other things, are reasonably designed to: (i) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (ii) ensure compliance with all regulatory requirements that are applicable in connection with market access. Accordingly, any updated information in SEC staff's response is limited to intermediaries that are registered broker-dealers.
Authorization
1. Does the jurisdiction require that, as a condition of operating a securities business, the market intermediaries (as defined above) are licensed?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 1.
2. Are there minimum standards or criteria that all applicants for licensing must meet before a licence is granted (or denied) that are clear and publicly available, which:
(a) Are fair and equitable for similarly situated market intermediaries?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 2(a).
(b) Are consistently applied?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 2(b).
(c) Include an initial capital requirement, as applicable?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 2(c).
(d) Include a comprehensive assessment of the applicant and all those in a position to control, or materially influence, the applicant, which requires a demonstration of appropriate knowledge, business conduct, resources, skills, ethical attitude (including a consideration of past conduct)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 2(d).
(e) Include an assessment of the sufficiency of internal organization and risk management and supervisory systems in place, including relevant written policies and procedures, which enable ongoing monitoring as to whether the minimum standards are still met?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 2(e).

3. Does the regulator, or the SRO subject to the regulator's oversight, have in place processes and resources to effectively carry out a review of applications for licence?
Yes. To the extent these processes apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 3. Below is updated information on the examination program. OCIE may conduct inspections of FINRA's membership application program regarding whether FINRA has appropriately granted membership only to firms that meet all of the applicable requirements and to help ensure FINRA has not granted membership to firms that are statutorily disqualified from membership. This type of review would have previously been done through district office inspections as noted in SEC staff's 2014 self-assessment. See response to Principle 33, Question 1, below, for information on filings made under Regulation ATS.
Authority of Regulator
4. Does the relevant authority have the power to:
(a) Refuse licensing, subject only to administrative or judicial review, if authorization requirements have not been met?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 4(a).
(b) Withdraw, suspend or apply a condition to a licence where a change in control or other change results in a failure to meet relevant requirements on an ongoing basis?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 4(b).
(c) Take effective steps to prevent the employment of persons (or seek the removal of persons) who have committed securities violations or who are otherwise unsuitable, so that they cannot continue to engage in intermediary activities, even if these persons are not separately licensed market intermediaries, if they can have a material influence on the firm?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 4(c).
Ongoing Requirements
5. Are market intermediaries required: to update periodically relevant information with respect to their licence; and to report immediately to the regulator (or licensing

authority) material changes in the circumstances affecting the conditions of the licence?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 5.
6. Is the following relevant information about licensed market intermediaries available to the public:
(a) The existence of a licence, its category and status?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 6(a).
(b) The scope of permitted activities and the identity of senior management and names of other authorized individuals who act in the name of the intermediary?
No significant update from SEC staff's 2014 self-assessment in response to Principle 29, Question 6(b).
Investment Advisers
7. Does the regulatory scheme for investment advisers require that, as applicable:
(a) If an investment adviser deals on behalf of clients, the capital and other operational controls (explained in Principles 29 to 32) applicable to other market intermediaries also should apply to the adviser?
Please note that this question is not applicable to broker-dealers that provide market access or operate an ATS.
(b) If the investment adviser does not deal but is permitted to have custody of client assets, regulation provides for the protection of client assets, including segregation and periodic or risk-based inspections (either by the regulator or an independent third party) and capital and organizational requirements as explained under Principles 29 to 32?
Please note that this question is not applicable to broker-dealers that provide market access or operate an ATS.
(c) In the case of both (a) and (b), as well as investment advisers who manage client portfolios without dealing on behalf of clients or holding client assets, does regulation impose relevant requirements that cover recordkeeping, disclosure and conflicts of interest as explained in Principle 31?
Please note that this question is not applicable to broker-dealers that provide market access or operate an ATS.

Derivatives Market Intermediaries
8. In jurisdictions where DMIs are treated separately from market intermediaries, as explained in the Scope Section, does the regulatory system require that DMIs be subject to registration or licensing, recognizing that in certain limited circumstances full application of requirements and standards may not be appropriate for certain types of entities? [This is a new question for the 2020 FSAP]

Please note that the following information applies to security-based swap dealers only in their capacity as such, and does not apply where such entities deal in other derivatives products or in their capacity as a broker-dealer that provides market access or operates an ATS.

Yes. Section 15F of the Exchange Act prohibits any person from acting as a security-based swap dealer (SBSD) without being registered with the SEC.[174] In 2015, the SEC adopted rules and forms to establish a registration process for these entities.[175] Although the rules are currently in effect, the compliance date for SBSD registration is 18 months after the later of: (i) the effective date of final rules establishing recordkeeping and reporting requirements for SBSDs or (ii) the effective date of final rules that the SEC adopts addressing the cross-border application of certain security-based swap requirements.[176]

The registration rules for SBSDs provide a process by which SBSDs may apply for registration with the SEC.

- Form "Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants" (Form SBSE). Registration form for stand-alone security-based swap dealers. Similar to Form BD, Form SBSE requests extensive information about the background of the applicant, including the type of business in which it proposes to engage, the identity of the applicant's direct and indirect owners, and other control persons including executive officers, and whether the applicant or any of its control affiliates has been subject to certain criminal prosecutions, regulatory actions, or civil actions;[177]

174 See Section 15F(a) of the Exchange Act. The term "security-based swap dealer" includes persons who engage in specified dealing and market-making activities involving security-based swaps. The SEC and CFTC, in consultation with the Federal Reserve, adopted new rules and interpretive guidance to further define the term "security-based swap dealer" and other related terms. See Exchange Act Rules 3a71-1 and 3a71-2.

175 See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-75611 (Aug. 5, 2015), available at https://www.sec.gov/rules/final/2015/34-75611.pdf.

176 See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

177 See Form SBSE, available at https://www.sec.gov/files/form-sbse.pdf.

- Form "Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant" (Form SBSE-A). Registration form for security-based swap dealers already registered with the CFTC as a swap dealer;[178] and

- Form "Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers" (Form SBSE-BD). Registration form for security-based swap dealers already registered with the Commission as a broker-dealer.[179]

Based on the information provided in a completed application, the SEC will either grant registration or begin proceedings to determine whether it should deny registration. SBSDs have an ongoing requirement to promptly update their Forms SBSE, SBSE-A, or SBSE-BD, as applicable, when the information on the form becomes inaccurate.

178 See Form SBSE-A, available at https://www.sec.gov/files/formsbse-a.pdf.

179 See Form SBSE-BD, available at https://www.sec.gov/files/formsbse-bd.pdf.

Principle 30	**There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.**

Key Questions (please answer with respect to market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues)

Please see applicable SEC staff response regarding the scope for Principle 29, above.

1. Are there initial and ongoing minimum capital requirements for market intermediaries? Are there also liquidity standards? Do the capital and liquidity standards address solvency?

As noted above in SEC staff responses to Principles 6 and 29, on June 21, 2019, the Commission adopted rules that, among other things, increase the minimum net capital requirements for broker-dealers that use internal models to compute net capital (ANC broker-dealers).[180] For example, under these rules, ANC broker-dealers will be subject to: (i) minimum tentative net capital requirements (tentative net capital equals net capital before deducting market and credit risk charges) of $5 billion and (ii) a minimum net capital requirement that is the greater of a fixed-dollar amount of $1 billion and an amount equal to 2% of the firm's exposures to its SBS customers, plus the existing ratio-based minimum net capital requirements in Rule 15c3-1 (either the 15-to-1 aggregate indebtedness ratio or the 2% of customer debit items ratio).

The SEC also increased the early warning notification requirement that requires an ANC broker-dealer to provide notification to the SEC if the firm's tentative net capital falls below $6 billion. With respect to applying credit risk charges, the SEC also modified the existing portfolio concentration charge for ANC broker-dealers so that firms must take a capital charge equal to the aggregate amount of uncollateralized current exposures across all counterparties arising from derivatives transactions that exceed 10% of the firm's tentative net capital (a reduction from 50% of the firm's tentative net capital). The 10% cap was designed to limit the amount of a firm's capital base that comprises unsecured receivables. These assets generally are illiquid and cannot be readily converted to cash, particularly in a time of market stress. Permitting additional unsecured receivables to be allowable assets for capital purposes could substantially impair the firm's liquidity and ability to withstand a financial shock. In 2015, FINRA also published Regulatory Notice 15-33 (http://www.finra.org/sites/default/files/Regulatory-Notice_15-33.pdf) which provides guidance on liquidity risk management practices directed to firms that hold inventory positions or clear and carry customer transactions. In the notice, FINRA noted that it expects that each firm would, among other things, rigorously evaluate its liquidity needs related to

180 See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

both market wide stress and idiosyncratic stresses; develop contingency plans for addressing those risks so that the firm will have sufficient liquidity to operate after the stress occurs while continuing to protect all customer assets; and conduct stress tests and other reviews to evaluate the effectiveness of the contingency plans.
2. Are the capital adequacy requirements structured to result in capital addressed to the full range of risks to which market intermediaries are subject (e.g., market, credit, liquidity and operational risks)?
Yes. As discussed in SEC staff's 2014 self-assessment in response to Principle 30, Question 1 and Principle 31, Question 1, Exchange Act Rule 15c3-1 (commonly referred to as the Net Capital Rule) sets forth many of the capital requirements for broker-dealers. The Net Capital Rule, in conjunction with the other broker-dealer financial responsibility rules, has continued to facilitate prudent operation of broker-dealers since SEC staff's 2014 self-assessment. As noted above in the response to Principle 30, Question 1, the SEC recently adopted changes to rules applicable to ANC broker-dealers that, among other things, increase the minimum net capital requirements. However, to the extent these rules apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 2. In addition, SEC staff would like to note the following updated information regarding recent SIPC activity: According to the 2018 SIPC Annual Report,[181] since its inception in 1971,[182] SIPC has initiated customer protection proceedings for only 330 broker-dealers, representing less than 1% of the approximately 40,000 broker-dealers that have been SIPC members during the last 48 years. Over the last 10-year period, the annual average number of new cases per year was 0.8.
3. Are capital adequacy requirements sensitive to the quantum of risks undertaken; that is, does required capital increase as risk increases (e.g., in the event of large market moves)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 3.
4. Are capital standards designed to allow an intermediary to absorb some losses, and to wind down its business over a relatively short period without loss to its clients or disrupting the orderly functioning of the markets?

[181] See SIPC, 2018 Annual Report (Apr. 30, 2019), available at https://www.sipc.org/media/annual-reports/2018-annual-report.pdf.

[182] SIPC (Securities Investor Protection Corporation) was created under SIPA (Securities Investor Protection Act of 1970) as a non-profit membership corporation. SIPA affords certain protections against loss to customers resulting from broker-dealer failures.

No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 4.
5. Are relevant market intermediaries required to maintain records such that capital levels can be readily determined at any time?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 5.
6. Are the detail, format, frequency and timeliness of reporting to the regulator, and/or the SRO, sufficient to reveal a significant deterioration in the capital adequacy position of market intermediaries?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 6.
7. Is the financial position of the intermediary subject to audit by independent auditors to provide additional assurance that the financial position reflects the risk that the market intermediary undertakes?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 7.
8. Does the regulator:
(a) Regularly review market intermediaries' capital levels?
To the extent these rules apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 8(a). With regard to examinations, as an update to SEC staff's 2014 self-assessment, OCIE continues to uses a risk-based approach for selecting which firms, areas, and issues to examine and draws on a variety of resources, including its staff's specialized knowledge, risk analytics, and advanced technology to target its resources most efficiently on the areas that pose the highest risk to investors, the markets, or capital formation. Similarly, FINRA's Member Supervision Department is responsible for conducting routine firm examinations and for cause reviews. The Member Supervision program is risk-based with regard to both the frequency of examination as well as the scope of the examination. All firms are monitored on an ongoing basis and are assessed formally on an annual basis to determine which firms pose higher risk and warrant a firm examination.
(b) Take appropriate action when these reviews indicate material deficiencies?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 8(b).

9.
(a) Does the regulator have specific authority to impose: restrictions on a market intermediary's regulated business activities; and more stringent capital monitoring and/or reporting requirements, if a market intermediary's capital deteriorates so as to endanger its capacity to fulfil its obligations or when it falls below minimum requirements?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 9(a).
(b) Is there evidence that the regulator exercises this authority?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 9(b).
10. Does the prudential framework address risks from outside the regulated entity, for example, from unlicensed affiliates and off-balance sheet affiliates?
No significant update from SEC staff's 2014 self-assessment in response to Principle 30, Question 10.

Principle 31	**Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.**

Key Questions (please answer with respect to market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues)

Please see applicable SEC staff response regarding the scope for Principle 29 above.

Management and Supervision

1. With regards to a market intermediary's internal organization, does the regulatory framework require the following to be considered:

(a) An appropriate management and organization structure, including in relation to activities that have been outsourced?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 1(a).

(b) Adequate internal controls?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 1(b).

(c) Management that is required to bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the whole firm?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 1(c).

2. Does the regulatory framework require market intermediaries: to provide all relevant information about the business in a timely, readily accessible way; and to regularly report to management? Is such information subject to procedures intended to maintain its security, availability, reliability and integrity?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 2.

3. Does the regulatory framework require a market intermediary to be subject to an objective, periodic evaluation of its internal controls and risk management processes?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31,

Question 3.
Organizational requirements
4. Does the regulatory framework include the assessment of a market intermediary's compliance function, taking into account the market intermediary's size and business? When the regulator becomes aware of deficiencies are steps taken to require market intermediaries to improve their compliance function?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 4.
5. Does the regulatory framework require a market intermediary to establish and maintain appropriate systems of client protection, risk management and internal and operational controls, including policies, procedures, and controls relating to all aspects of its day-to-day business intended reasonably to ensure:
(a) The integrity of the firm's dealing practices, including the treatment of all clients in a fair, honest and professional manner?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 5(a).
(b) Appropriate segregation of key duties and functions, particularly those duties and functions which, when performed by the same individual, may result in undetected errors, or may be susceptible to abuses, which expose the firm, or its clients, to inappropriate risks?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 5 (b).
6. With respect to DMIs specifically:
Please note that the following questions apply to security-based swap dealers only in their capacity as such, and do not apply to other derivatives products or to broker-dealers that provide market access or operate an ATS.
(a) Does the regulatory framework require DMIs to be subject to business conduct standards, tailored, as appropriate, for the OTC derivatives market? [This is a new question for the 2020 FSAP]
Yes. In 2016, pursuant to Section 15F of the Securities Exchange Act of 1934, the SEC adopted Rules 15Fh-1 through 15Fh-6, which impose business conduct standards on SBSDs.[183] Although the rules are now effective, compliance is not required until entities are

[183] See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-77617 (Apr. 14, 2016), available at https://www.sec.gov/rules/final/2016/34-

required to register as SBSDs.

The rules require SBSDs to comply with a range of provisions designed to enhance transparency, facilitate informed customer decision-making, and heighten standards of professional conduct. For example, SBSDs are required to deal fairly with potential counterparties by communicating in a fair and balanced manner, disclosing material information about the security-based swap, including material risks, characteristics, incentives and conflicts of interest, and adhering to other professional standards of conduct. Additional requirements apply for dealings with special entities, which include municipalities, pension plans, endowments, and similar entities.

(b) Does the regulatory framework require DMIs to have risk management systems and organization to properly identify and manage their OTC derivatives related business risks?
[This is a new question for the 2020 FSAP]

Yes. Exchange Act Rule 15Fh-3(h) requires SBSDs to establish and maintain a system to supervise, and to diligently supervise, its business and the activities of its associated persons. Additionally, Exchange Act Rule 15Fk-1 requires SBSDs to designate a Chief Compliance Officer (CCO) on its registration form. The CCO must report directly to the board of directors or the senior officer of the SBSD and is responsible for a number of duties, including review of the SBSD's compliance with applicable business conduct requirements; taking reasonable steps to resolve material conflicts of interest; and preparing and signing an annual compliance report detailing the SBSD's policies and procedures, the SBSD's assessment of their effectiveness, areas for improvement, material non-compliance matters identified, and a description of the resources set aside for compliance. Although these rules are now effective, compliance is not required until entities are required to register as SBSDs.

In addition, the SEC has adopted rules establishing capital and margin requirements for SBSDs for which there is not a prudential regulator (non-bank SBSDs).[184] Non-bank SBSDs also registered as broker-dealers (other than registered OTC derivatives dealers) will be subject to the pre-existing requirements in the capital rules that apply to broker-dealers, as amended to account for security-based swap and swap activities of broker-dealers. All other non-bank SBSDs will be subject to similar capital requirements in new Rule 18a-1 under the Exchange Act. For more information on the capital rules that apply to broker-dealers, please see SEC staff's 2014 self-assessment in response to Principle 30.

Non-bank SBSDs also will be required to calculate both variation margin and initial margin in each account of a counterparty as of the close of business each day. Variation margin will be

77617.pdf. See also Commission Statement on Certain Provisions of Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Release No. 34-84511 (Oct. 31, 2018), available at https://www.sec.gov/rules/policy/2018/34-84511.pdf.

184 See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

calculated by marking the position to market and initial margin will be calculated by applying standardized haircuts or a margin model. Non-bank SBSDs will be required to collect initial margin and/or variation margin from counterparties to non-cleared security-based swap transactions if the margin calculations result in a requirement for the counterparty to post margin. Non-bank SBSDs will be required to deliver variation margin if the margin calculations result in a requirement to post collateral, but will not be required to deliver initial margin to counterparties (though the rules will not prohibit the parties from agreeing to exchange initial margin). The margin requirements have exceptions under which a non-bank SBSD need not collect variation and/or initial margin nor deliver variation margin under certain circumstances. Compliance with these new capital and margin rules will be required when entities are required to register as SBSDs.

As noted in the response to Principle 31, Question 12, below, the SEC also has adopted rules establishing segregation requirements for SBSDs.

Finally, Section 15F(f) of the Exchange Act requires SBSDs to make such reports as the SEC requires, including reports regarding such firms' transactions, positions, and financial condition.[185] The SEC has proposed rules to establish a reporting and notification program for SBSDs that would be modelled on the reporting rules that apply to broker-dealers.[186]

(c) Does the regulatory framework require DMIs to design supervisory policies and procedures to manage their OTC derivatives operations and the activities of their representatives?
[This is a new question for the 2020 FSAP]

Yes. Rule 15Fh-3(h) requires SBSDs to establish and maintain a system to supervise, and diligently supervise, the security-based swap business in which the SBSD is engaged and the activities of its associated persons. The system must be reasonably designed to prevent violations of applicable federal securities laws and the rules relating to its business as an SBSD. Rule 15Fh-3(h) further requires that this system adhere to a number of specific requirements, including procedures:

- for supervisory review of transactions;
- for supervisory review of incoming and outgoing written correspondence with counterparties or potential counterparties and internal written communications relating to the SBSD's business involving SBS; for periodic review of the SBS business (at least annually) that is reasonably designed to assist in detecting and preventing violations of federal securities laws and rules;
- to conduct a reasonable investigation regarding the good character, business repute,

185 See 15 U.S.C. § 78o-10(f).

186 See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Release No. 34-71958 (Apr. 17, 2014), available at https://www.sec.gov/rules/proposed/2014/34-71958.pdf.

qualifications, and experience of any potential associated person of the SBSD prior to that person's association with the firm;

- to consider whether to permit an associated person to establish or maintain a securities or commodities account or a trading relationship in the name of, or for the benefit of, such associated person at another firm, and if permitted, procedures to supervise the associated person's trading at such other firm;
- to maintain a description of the supervisory system;
- to prohibit an associated person who performs a supervisory function from supervising his or her own activities or reporting to, or having his or her compensation or continued employment determined by, a person or persons he or she is supervising, subject to certain exceptions based on firm size and organization;
- reasonably designed to prevent the supervisory system from being compromised due to conflicts of interest; and
- reasonably designed to comply with the duties set forth in section 15F(j) of the Exchange Act.

Although these rules are now effective, compliance is not required until entities are required to register as SBSDs.

(d) Does the regulatory framework require DMIs to retain OTC derivatives transaction records and be able to provide them in a timely, organized and readable manner? Does the record retention period for OTC derivatives transactions apply for a specified period after the transactions' termination, maturity or assignment?
[This is a new question for the 2020 FSAP]

Yes. The SEC has adopted rules requiring SBSDs to exchange trade acknowledgements and verifications with their SBS counterparties within prescribed deadlines.[187] Pursuant to Exchange Act Rule 15Fi-2, an SBSD must provide a trade acknowledgment through electronic means disclosing all the terms of a security-based swap transaction to its counterparty promptly, but in any event no later than the end of the first business day following the day of execution. Rule 15Fi-2 also requires an SBSD to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment, and to promptly verify the accuracy of, or otherwise dispute with its counterparty, the terms of a trade acknowledgment it receives. Although these rules are now effective, compliance is not required until entities are required to register as SBSDs.

[187] See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Release No. 34-78011 (Jun. 8, 2016), available at https://www.sec.gov/rules/final/2016/34-78011.pdf.

Furthermore, the SEC has proposed recordkeeping and reporting requirements for SBSDs that are based on the broker-dealer recordkeeping and reporting rules.[188] These proposed rules would require, among other things, SBSDs to maintain for at least six years (the first two years in an easily accessible place) the SBSD's ledgers of each security-based swap, including the reference security, index or obligor; the unique transaction identifier; whether the security-based swap is cleared; and, if cleared, identification of the clearing agency. The proposed rules also would require SBSDs to maintain for at least three years (the first two years in an easily accessible place) the SBSD's memoranda of each purchase or sale of a security-based swap for the account of the SBSD (including the price; type of security-based swap; reference security, index or obligor; date and time of execution; effective date; termination or maturity date; notional amount; unique transaction identifier; and unique counterparty identifier), each security-based swap trade acknowledgement and verification, and records of each security-based swap transaction that is not verified within five business days of execution.

7. Taking into account Principle 8, does the regulatory framework require a market intermediary:

(a) To endeavour to address a conflict of interest arising between its interests and those of its clients, or between its clients?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 6(a).

(b) Where the potential for conflicts arises:

(i) to have mechanisms in place to manage conflicts of interests that seek to ensure an unbiased decision making process and fair treatment of all its clients; and

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 6(b)(i).

(ii) consider further steps if the mechanisms identified in (a) prove inadequate, which may include disclosure of the conflict, internal rules of confidentiality, and declining to act where a conflict cannot be resolved?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 6(b)(ii).

188 See Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers, Exchange Act, Release No. 34-71958 (Apr. 17, 2014), available at https://www.sec.gov/rules/proposed/2014/34-71958.pdf. The broker-dealer recordkeeping and reporting rules are described in the response to Principle 31, Question 10, below, and in SEC staff's 2014 self-assessment in response to Principle 31, Questions 2 and 13.

8.	If DEA is allowed, does the regulatory framework require market intermediaries to use controls, including automated pre-trade controls, which can limit or prevent a DEA client from placing an order that exceeds the market intermediary's existing position or credit limits?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 7.	
Protection of clients	
9.	If a market intermediary has control of, or is otherwise responsible for, assets belonging to a client which it is required to safeguard, are there regulations that require proper protection for them (for example, segregation and identification of those assets) by the market intermediary? Do these measures facilitate the transfer of positions and assist in the orderly winding up in the event of financial insolvency and the return of client assets?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 8.	
10.	Does the regulatory framework require market intermediaries to maintain accurate and up-to-date records and accounts of client assets that readily establish the precise nature, amount, location and ownership status of client assets and the clients for whom the client assets are held? Does the regulatory framework require that the records be maintained in such a way that they may be used as an audit trail? [This is a new question for the 2020 FSAP]
Yes. The regulatory framework requires broker-dealers, including those with market access and operators of ATSs, to maintain accurate and up-to-date records and accounts of client assets that readily establish the precise nature, amount, location and ownership status of client assets and the clients for whom the client assets are held. Rule 17a-3 requires broker-dealers to "make and keep current" the records required by the rule, and later references a broker-dealer's responsibility that "books and records be accurately maintained and preserved" in accordance with the recordkeeping rules. The records that Rule 17a-3 requires broker-dealers to make and keep include records pertaining to client assets, including: • Blotters containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits. These records must show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. • A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions carried by the broker-dealer for the account of its customers showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count	

differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

- The SEC also subjects broker-dealers to its Customer Protection Rule, which requires that every broker-dealer obtain and maintain possession and control of customer securities, and maintain a separate customer reserve account that contains (at least) the net dollar amount of cash the broker-dealer owes to its customers.

- In addition, the Quarterly Count Rule requires a broker-dealer that maintains custody of securities (e.g., customer securities), on a quarterly basis, to physically examine and count the securities it holds, account for the securities that are subject to its control or direction but are not in its physical possession (e.g., securities held at a control location), verify the locations of securities under certain circumstances, and compare the results of the count and verification with its records.

- The regulatory framework requires that the records be maintained in such a way that they may be used as an audit trail. Rule 17a-4 requires the records required by Rule 17a-3 to be maintained for a period of years. For example, the blotters and securities record or ledger referenced above must be maintained for 6 years, the first 2 years in an easily accessible place.

In addition to the recordkeeping rules provided under Rule 17a-3, Regulation ATS also requires ATSs to make and keep certain records related to trading on the ATS and the ATS's subscribers. These ATS recordkeeping requirements are designed to help facilitate the construction and maintenance of an audit trail and to permit surveillance and examination to help ensure fair and orderly markets.

11. Where client assets are to be held or placed in a foreign jurisdiction and will be subject to the client asset protection and/or insolvency regimes of that foreign jurisdiction and not the home jurisdiction, does the regulatory framework require the intermediary to inform the clients of that fact? Does the regulatory framework require market intermediaries to provide any required disclosures of the relevant client asset protection regime(s) and arrangements and the consequent risks involved in writing, which is prepared in clear, plain, concise and understandable language and that avoids the use of legal or financial jargon that is not commonly understood?
[This is a new question for the 2020 FSAP]

Securities held outside of a broker-dealer are considered outside the broker-dealer's possession or control. However, securities that are in the custody of a foreign depository, foreign clearing agency, or foreign custodian bank are deemed to be in the broker-dealer's possession or control if the broker-dealer designates such foreign location to the SEC, and as a result, subject to the U.S. regulatory regime, including the customer protection rule (Rule 15c3-3 under the Exchange Act) described in more detail in SEC staff's 2014 self-assessment in response to Principle 30, Question 4. Other foreign locations are also deemed to be in the broker-dealer's possession or control upon application to the SEC if the SEC finds and

designates the foreign location to be adequate for the protection of customer securities. Further, SEC and FINRA rules require broker-dealers to make periodic counts, examinations, and verifications of their securities positions.[189] For example, among other things FINRA Rule 4522 requires that a carrying or clearing firm must receive position statements as frequently as good business practice requires, but no less than once per month, with respect to securities held by clearing corporations, other organizations or custodians.
12. With respect to DMIs specifically, for centrally cleared OTC derivatives transactions, does the regulatory framework require DMIs to segregate collateral belonging to clients from their own proprietary assets and employ an account structure that enables the efficient identification and segregation of positions and collateral belonging to DMI clients? [This is a new question for the 2020 FSAP]
Please note that the following question applies to security-based swap dealers only in their capacity as such, and does not apply to other derivatives products or to broker-dealers that provide market access or operate an ATS. Yes. Section 3E of the Exchange Act requires SBSDs to treat and deal with all customer money, securities, and property received to margin, guarantee, or secure a centrally cleared SBS as belonging to the customer.[190] The SEC has also adopted rules to establish segregation requirements for all SBSDs.[191] These segregation rules are modelled on the segregation rules that apply to broker-dealers.[192] Compliance with these segregation rules will be required when entities are required to register as SBSDs.
13. Does the regulatory framework require market intermediaries to provide for an efficient and effective mechanism to address investor complaints?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 9.
14. Does the regulatory framework require market intermediaries to identify, and verify, the client's identity using reliable, independent data, including persons who beneficially own or control securities?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 10.

189 See e.g., Rule 17a-13 under the Exchange Act and FINRA Rule 4522.

190 See 15 U.S.C. § 78o-5.

191 See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

192 The broker-dealer segregation rules are described in SEC staff's 2014 self-assessment in response to Principle 31, Question 8.

15. Does the regulatory framework require market intermediaries to obtain and retain information from a client about their circumstances and investment objectives relevant to the services to be provided?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 11.
16. Does the regulatory framework require a market intermediary to "know its customer" before providing specific advice to a client?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 12.
17. Does the regulatory system require that intermediaries, as defined in IOSCO's Report on Suitability Requirements with respect to the Distribution of Complex Financial Products adopt and apply appropriate policies and procedures to distinguish between retail and non-retail customers when distributing complex financial products? [This is a new question for the 2020 FSAP]
Yes. Broker-dealers generally have an obligation to recommend only those securities or investment strategies involving securities that are suitable for their customers.[193] The concept of suitability appears in specific SRO rules and has been interpreted by the courts as an obligation under the anti-fraud provisions of the federal securities laws.[194] , On June 5, 2019, the Commission adopted Regulation Best Interest, which requires broker-dealers to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.[195] Regulation Best Interest will enhance the broker-dealer standard of conduct beyond existing suitability obligations and make it clear that a broker-dealer may not put its financial interests ahead of the interests of a retail customer when making recommendations.[196] The Commission also adopted on June 5, 2019 a new Form CRS Relationship Summary, which will require registered investment advisers and broker-dealers to provide retail investors with simple, easy-to-understand information about the nature of their relationship with their

193 See FINRA Rule 2111.

194 The concept of suitability appears in specific SRO rules such as FINRA Rule 2111 and has been interpreted as an obligation under the anti-fraud provisions of the federal securities laws. For information regarding the suitability requirements, see SEC staff's 2014 self-assessment in response to Principle 31, Questions 11 and 18.

195 See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86031.pdf.

196 See Press Release, SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals (Jun. 5, 2019), available at https://www.sec.gov/news/press-release/2019-89.

financial professional.[197] Individually and collectively, these actions are designed to (i) enhance and clarify the standards of conduct applicable to broker-dealers and investment advisers, (ii) help retail investors better understand and compare the services offered and make an informed choice of the relationship best suited to their needs and circumstances, and (iii) foster greater consistency in the level of protections provided by each regime. We note, however, that suitability and Regulation Best Interest apply only to recommendations by the broker-dealer and its associated persons and would not apply in the absence of a recommendation, for instance where a broker-dealer provides market access or otherwise operates an ATS.

18. Does the regulatory framework require market intermediaries to keep records containing the above information for a reasonable number of years? Is the market intermediary required to maintain those books and records in such a way that allows the supervisor to be able to find all the relevant facts relating to a particular transaction?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 13. Please also see response to Principle 31, Question 17, above, regarding Regulation Best Interest and the new Form CRS Relationship Summary. For example, Regulation Best Interest, among other things, adopted amendments to Exchange Act Rules 17a-3 and 17a-4 to establish new record-making and recordkeeping requirements for broker-dealers with respect to certain information collected from or provided to retail customers. In general, these amendments would require, for each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided, a record of all information collected from and provided to the retail customer pursuant to Regulation Best Interest, as well as the identity of each natural person who is an associated person of a broker or dealer, if any, responsible for the account.[198] The new Form CRS Relationship Summary is also subject to the Commission's recordkeeping requirements. As noted above, the amendments adopted to Exchange Act Rules 17a-3 and 17a-4 will require broker-dealers (i) to create a record of the date on which each relationship summary was provided to each retail investor, including any relationship summary provided before such retail investor opens an account, and (ii) to maintain and preserve a copy of each version of the relationship summary as well as any other records required to made. Broker-dealers will be required to maintain these records in an easily accessible place until six years after such record or relationship summary is created. These records will facilitate the Commission's ability to inspect for and enforce compliance with the relationship summary

[197] See Form CRS Relationship Summary; Amendment to Form ADV, Release Nos. 34-86032; IA-5247 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86032.pdf. Also on June 5, 2019, the Commission adopted two separate interpretations under the Investment Advisers Act of 1940. See Commission Interpretation Regarding Standard of Conduct for Investment Adviser, Release No. IA-5248 (Jun. 5, 2019), available at https://www.sec.gov/rules/interp/2019/ia-5248.pdf; Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser, Release No. IA-5249 (Jun. 5, 2019), available at https://www.sec.gov/rules/interp/2019/ia-5249.pdf.

[198] See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86031.pdf.

requirements.[199]
19. Does the regulatory framework require market intermediaries to provide to the client a written contract of engagement or account agreement, or a written form of the general and specific conditions of doing business through the market intermediary?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 14.
20. Does the regulatory framework require a market intermediary to disclose, or make available, information to its client so that the client can make an informed investment decision?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 15. Please also see SEC staff's response to Principle 31, Question 17, above, regarding Regulation Best Interest and the new Form CRS Relationship Summary. For example, the disclosure obligation in Regulation Best Interest requires broker-dealers to make full and fair disclosure of all material facts relating to the scope and terms of the relationship with a retail customer, including the capacity in which they are acting with respect to a recommendation. The capacity disclosure requirement is designed to improve awareness among retail customers of the capacity in which their firm and/or financial professional acts when it makes recommendations so that a retail customer can more easily identify and understand their relationship.[200] Similarly, Form CRS is designed to (i) reduce retail investor confusion in the marketplace for brokerage and investment advisory services, (ii) assist retail investors with the process of deciding whether to engage, or to continue to engage, a particular firm or financial professional, and whether to establish, or to continue to maintain, an investment advisory or brokerage relationship.[201]
21. Does the regulatory framework require market intermediaries to provide a client with statements of account (including details on the client assets held for or on behalf of such a client) on a regular basis (at least annually) and reasonably promptly upon request?
No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 16.
22. Does the regulatory framework require market intermediaries to provide a client with information about any fees and commissions associated with the client's transactions?

[199] See Form CRS Relationship Summary; Amendment to Form ADV, Release Nos. 34-86032; IA-5247 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86032.pdf.

[200] See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86031.pdf.

[201] See Form CRS Relationship Summary; Amendment to Form ADV (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86032.pdf.

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 17. Please also see SEC staff's responses to Principle 31, Questions 17 and 20, above, regarding Regulation Best Interest and Form CRS Relationship Summary.

For example, Regulation Best Interest includes a disclosure obligation, requiring broker-dealers to disclose material facts about the relationship and recommendations, including specific disclosures about the capacity in which the broker is acting, fees, the type and scope of services provided, conflicts, limitations on services and products, and whether the broker-dealer provides monitoring services.[202]

In addition, under the new Form CRS Relationship Summary, a firm will be required to deliver a relationship summary to retail investors at the beginning of their relationship that summarizes information about services, fees and costs, conflicts of interest, legal standard of conduct, and whether or not the firm and its financial professionals have disciplinary history. For example, a Firm will need to summarize how its financial professionals are compensated (including cash and non-cash compensation) and the conflicts of interest those payments create. For example, the firm must, to the extent applicable, disclose whether financial professionals are compensated based on factors such as: the amount of client assets they service; the time and complexity required to meet a client's needs; the product sold (*i.e.*, differential compensation); product sales commissions; or revenue the firm earns from the financial professional's advisory services or recommendations.[203]

23. Does the regulatory regime require that disclosures of key information regarding collective investment schemes (CIS) to retail investors in their distribution prior to the point of sale be clear, accurate and not misleading to the target investor?
[This is a new question for the 2020 FSAP]

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 17. Please also see SEC staff's responses to Principle 31, Questions 17, 20, and 22 above, regarding Regulation Best Interest and Form CRS Relationship Summary.

For example, under Regulation Best Interest, the Commission stated that, with regard to mutual fund transactions and holdings, a broker-dealer might disclose broadly that it is compensated by funds out of product fees or by the funds' sponsors, and that such compensation gives it an incentive to recommend certain products over other products for which the broker-dealer receives less compensation; later, when a broker-dealer recommends a particular fund, it could provide more specific detail about compensation arrangements, for example revenue sharing associated with the fund family. In the alternative, so long as the material facts regarding the conflicts associated with a recommendation of a mutual fund were disclosed at the outset of the relationship, no further disclosure need be made at the time of recommendation; the rules are not requiring that information regarding conflicts be

[202] See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86031.pdf.

[203] See Form CRS Relationship Summary; Amendment to Form ADV, Release Nos. 34-86032; IA-5247 (Jun. 5, 2019), available at https://www.sec.gov/rules/final/2019/34-86032.pdf.

disclosed on a recommendation-by-recommendation basis.

In addition, under the new Form CRS Relationship Summary, a firm will be required to deliver a relationship summary to retail investors at the beginning of their relationship that provides simple, easy-to-understand information about the nature of their relationship with their financial professional. The relationship summary will have a standardized question-and-answer format to promote comparison by retail investors in a way that is distinct from existing disclosures. The relationship summary will permit the use of layered disclosure so that investors can more easily access additional information from the firm about these topics. A firm will deliver the relationship summary to existing retail investor clients and customers before or at the time firms open a new account that is different from the retail investor's existing account. By way of example, a firm will deliver the relationship summary when they, among other things, recommend or provide a new service or investment outside of a formal account (e.g., variable annuities or a first-time purchase of a direct-sold mutual fund through a "check and application" process).

24.	Does the regulatory framework require market intermediaries to act with due care and diligence in the best interests of its clients and their assets and in a way that helps preserve the integrity of the market?

No significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 18. Please also see SEC staff's responses to Principle 31, Questions 17, 20 and 23, above, regarding Regulation Best Interest and Form CRS Relationship Summary.

With regard to Enforcement activity, the SEC brought recent actions against market intermediaries whose conduct posed a risk to market integrity or who treated customers unfairly by making misrepresentations about their practices such as customer order routing or treatment of confidential customer information.[204]

[204] See, e.g., In the Matter of ITG Inc. and AlterNet Securities, Inc., Release No. 34-84548 (Nov. 7, 2018) (settled action against ITG and its affiliate for charges arising from ITG's misstatements and omissions about the operation of the firm's dark pool and ITG's failure to establish adequate safeguards and procedures to protect subscribers' confidential trading information), available at https://www.sec.gov/litigation/admin/2018/33-10572.pdf; In the Matter of Citigroup Global Markets, Inc. and Citi Order Routing and Execution, LLC, Release No. 34-84124 (Sept. 14, 2018) (settled action against Citigroup Global Markets Inc. for misleading users of a dark pool operated by one of its affiliates), available at https://www.sec.gov/litigation/admin/2018/33-10545.pdf.; In the Matter of Credit Suisse Securities (USA) LLC, Release No. 34-84314 (Sept. 28, 2018) (settled action involving material misrepresentations and omissions made in connection with Credit Suisse's now-closed Retail Execution Services business' handling of certain customer orders), available at https://www.sec.gov/litigation/admin/2018/33-10565.pdf.; In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Release No. IA-4944 (Jun. 19, 2018) (settled action against Merrill Lynch for misleading customers about how it handled their orders), available at https://www.sec.gov/litigation/admin/2018/33-10507.pdf.; In the Matter of Citadel Securities LLC, Release No. 34-79790 (Jan. 13, 2017) (settled action against Citadel for making misleading statements about the way a business unit that handled retail customer orders from other brokerage firms priced trades); available at https://www.sec.gov/litigation/admin/2017/33-10280.pdf.; In the Matter of Deutsche Bank Securities Inc., Release No. IA-4590 (Dec. 16, 2016) (settled action against Deutsche Bank for making misleading statements to clients about the performance of a core feature of its automated order router that primarily sent client orders to dark pools), available at https://www.sec.gov/litigation/admin/2016/33-10272.pdf. In 2018, the SEC also instituted an action against New York Stock Exchange and two affiliated

25. Can the regulator demonstrate that it has in place a supervision program, including internal processes that seek to monitor compliance by market intermediaries with these requirements?

To the extent these rules apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 31, Question 19.

For a discussion of the SEC's examination program, including its examination authority and process, please see SEC staff's 2014 self-assessment in response to Principle 31, Question 19. As an update to that response, OCIE has a risk-based examination approach with respect to the firms selected for examination, the areas of the firm examined, and the issues covered. Many of OCIE's exams focus on one or more of the following areas: internal controls, financial operations, supervision and sales practices, and anti-money laundering. Additional focus areas are highlighted in OCIE's annual examination priorities.[205]

OCIE continues to leverage data analysis to identify potentially problematic activities and firms, as well as to determine how best to scope those examinations of those activities and firms. OCIE also uses a risk-based strategy to set examination priorities that incorporate an analysis of the causes of investor harm and indicia of entity-level and market risk. For additional information on OCIE's risk-based approach, see SEC staff's 2014-self assessment in response to Principle 12, Question 1(b).

The chart below reflects OCIE's examinations in FY 2016, 2017, and 2018:

	FY16	**FY17**	**FY18**
Broker-Dealers	543	325	329
Transfer Agents	50	57	48
Clearing Agencies	7	14	12

The following chart reflects FINRA's examinations for the prior three years.

	FY16	**FY17**	**FY18**
Broker-Dealers	8,530	8,309	6,863

exchanges for various regulatory failures. See In the Matter of New York Stock Exchange, LLC., Release No. 34-82808 (Mar. 6, 2018) (settled action), available at https://www.sec.gov/litigation/admin/2018/33-10463.pdf. This 2018 action included the first charged violation of Regulation SCI, which is designed to strengthen the technology infrastructure and integrity of the U.S. securities markets. *Id.*

[205] The National Examination Program Examination Priorities for 2019, available at https://www.sec.gov/files/OCIE%202019%20Priorities.pdf.

In FY18, 48% of registered broker-dealers were examined by the SEC or a SRO.[206]

The chart below reflects the total number of OCIE's examinations that resulted from tips, complaints, and referrals:

FY16	FY17	FY18
191	177	211

Recent thematic reviews for market intermediaries include:

- Senior Investors.[207] In 2019, OCIE is conducting examinations that review how broker-dealers oversee their interactions with senior investors, including their ability to identify financial exploitation of seniors.

- Best Execution.[208] OCIE recently conducted focused reviews of broker-dealers' fixed income best execution obligations.

- Cybersecurity.[209] OCIE has launched several cybersecurity initiatives over the last several years to assess cyber risk at regulated entities. In 2019, OCIE will continue to prioritize cybersecurity in each of its five examination programs.

206 SEC FY 2018 Annual Performance Report, available at https://www.sec.gov/files/secfy20congbudgjust_0.pdf.

207 See The National Examination Program Examination Priorities for 2019, available at https://www.sec.gov/files/OCIE%202019%20Priorities.pdf

208 Id.

209 Id.

Principle 32	**There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.**
Key Questions (please answer with respect to market intermediaries that are direct participants in trading venues, providers of direct electronic access to such venues and/or first tier direct electronic access clients, and operators of trading venues)	
1.	Does the regulator have clear plans for dealing with the eventuality of a firm's failure, including a combination of activities: to restrain conduct; to ensure assets are properly managed; and to provide information to the market, as necessary?
No significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 1.	
2.	Are there early warning systems or other mechanisms in place to give the regulator notice of a potential default by a market intermediary, and time to address the problem and take corrective actions?
To the extent these rules apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 2. With regard to examinations, as an update to SEC staff's 2014 self-assessment, OCIE continues to uses a risk-based approach for selecting which firms, areas, and issues to examine and draws on a variety of resources, including its staff's specialized knowledge, risk analytics, and advanced technology to target its resources most efficiently on the areas that pose the highest risk to investors, the markets, or capital formation.	
3.	Does the regulator have the power to take appropriate actions: In particular, can it:
	(a) Restrict activities of the market intermediary with a view to minimizing damage and loss to investors?
No significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 3(a).	
	(b) Require the market intermediary to take specific actions, for example, moving client accounts to another market intermediary?
No significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 3(b).	
	(c) Request appointment of a monitor, receiver, curator or other administrator, or, in the absence of such power, can the regulator apply to the relevant authorities to take possession or control of the assets held by the market intermediary or by a third party on behalf of the intermediary?
No significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 3(c).	

(d) Apply other available measures intended to minimize client, counterparty and systemic risk in the event of intermediary failure, such as, client and settlement insurance schemes, or guarantee funds?
Yes. There is no significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 3(d). Please see below for updated information relating to SIPC, which was described in SEC staff's 2014 self-assessment. SIPC maintains a SIPC Fund. Generally, if a broker-dealer fails and is not able to meet its obligations to customers, then customer property held by the broker-dealer is returned to customers on a *pro rata* basis. If sufficient funds are not available at the firm to satisfy customer net equity claims, SIPC supplements the distribution, up to a ceiling of $500,000 per customer, including a maximum of $250,000 for cash claims. The SIPC Fund is funded by assessments from SIPC's members. Assessments in 2018 were $291,940,037.[210] SIPC currently assesses each member at the rate of .15% of net operating revenues from the broker-dealer's securities business. In addition, if the need arises, the SEC has the authority to lend SIPC up to $2.5 billion, which the SEC, in turn, would borrow from the U.S. Treasury. SIPC's 2018 Annual Report states that "[o]f the approximately 770,400 claims satisfied in completed or substantially completed cases as of December 31, 2018, a total of 356 were for cash and securities whose value was greater than the limits of protection afforded by SIPA. The 356 claims, a net decrease of three during 2018, represent less than one percent of all claims satisfied. The unsatisfied portion of claims, $49.7 million, decreased by $0.8 million in 2018. These remaining claims represent less than one percent of the total value of securities and cash distributed for accounts of customers in those cases."[211]
4. Can the regulator demonstrate that it has the power and practical ability to take these actions against a market intermediary?
The SEC has demonstrated its power and practical ability to take action where warranted against market intermediaries. For example, the SEC has charged broker-dealers for violations of the Customer Protection Rule, which is designed to safeguard the cash and securities of customers so that customer assets can be promptly returned if firms fail.[212] In addition, the Commission instituted an action against Merrill Lynch in 2016 for violations of

210 See SIPC, 2018 Annual Report (Apr. 30, 2019), available at https://www.sipc.org/media/annual-reports/2018-annual-report.pdf.

211 Id.

212 See In the Matter of Wedbush Securities Inc., Release No. IA-4852 (Feb. 5, 2018) (settled action), available at https://www.sec.gov/litigation/admin/2018/34-82630.pdf; In the Matter of Morgan Stanley & Co. LLC, Release No. 34-79606 (Dec. 20, 2016) (settled action), available at https://www.sec.gov/litigation/admin/2016/34-79606.pdf; In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp., Release No. 34-78141 (Jun. 23, 2016) (settled action), available at https://www.sec.gov/litigation/admin/2016/34-78141.pdf.

the Market Access Rule that caused disruptive market events that created systemic risk and posed a risk of harm to investors.[213]	
5.	Do the regulator's processes and procedures for addressing financial disruption include communication and cooperation with other regulators, both domestic and foreign, where appropriate, and is there evidence that contact arrangements are in place, and that such cooperation occurs?
To the extent these rules apply to broker-dealers that provide market access or operate an ATS, there is no significant update from SEC staff's 2014 self-assessment in response to Principle 32, Question 5.	

[213] See In the Matter of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Release No. IA-4536 (Sept. 26, 2016) (settled action), available at https://www.sec.gov/litigation/admin/2016/34-78929.pdf.

Principle 33	**The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.**

Key Questions

Exchanges or Trading Systems subject to Regulation

1. Does the establishment of an exchange or trading system require authorization?

Yes. In the United States, exchanges and ATSs are subject to extensive regulation, including a registration regime. Since SEC staff's 2014 self-assessment, the SEC has implemented key updates regarding Regulation ATS.

Alternative Trading Systems (ATSs)

In July 2018, the SEC adopted amendments to enhance operational transparency and regulatory oversight of ATSs that trade stocks listed on a national securities exchange (NMS stocks), including "dark pools."[214]

The amendments require an ATS that trades NMS stocks (NMS stock ATS) to file detailed public disclosures on new Form ATS-N. These disclosures include information regarding the manner in which the ATS operates, including, among other things, order types, execution and priority rules, segmentation of order flow, trading functionalities, fees, market data, and procedures related to the protection of subscriber confidentiality and fair access, as applicable. In addition, the Form ATS-N requires information about the ATS-related activities of the broker-dealer operator and its affiliates, including their trading on the ATS.

In addition, the amendments make Form ATS-N disclosures publicly available on the SEC's website, which will allow market participants to make better-informed decisions about whether to do business with an ATS, as well as the order handling decisions made by their broker.[215]

The amendments also provide a process for the SEC to review Form ATS-N filings and, after notice and opportunity for hearing and upon certain findings, declare Form ATS-N filings ineffective.

Finally, additional data concerning ATS trading activity is available as a result of FINRA rules. Under FINRA Rules 6110 and 6610, FINRA publishes aggregate trade data for OTC

[214] See Regulation of NMS Stock Alternative Trading Systems, Release No. 34-83663 (Jul. 18, 2018), https://www.sec.gov/rules/final/2018/34-83663.pdf (adopting release). See also Regulation of NMS Stock Alternative Trading Systems, Release No. 34-84541 (Nov. 6, 2018), available at https://www.sec.gov/rules/final/2018/34-84541.pdf (making certain technical corrections to the adopting release).

[215] See Regulation of NMS Stock Alternative Trading Systems, Release No. 34-83663 (Jul. 18, 2018), available at https://www.sec.gov/rules/final/2018/34-83663.pdf (explaining, for example, that these disclosures will help market participants compare and evaluate NMS Stock ATSs and make better informed decisions about where to route their orders to achieve their trading or investment objectives, enhance execution quality, and improve efficiency and capital allocation).

transactions in equity securities, including aggregate data for transactions executed on ATSs and aggregate data for transactions executed outside of ATSs.[216]

2. Are there criteria for the authorization of exchange and trading system operators that:

(a) Require analysis and authorization of the market by a competent authority?

No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 2(a) with regard to exchanges or security-based swap execution facilities (SB SEFs). With regard to ATSs, the SEC adopted amendments to enhance operational transparency and regulatory oversight as noted in Principle 33, Question 1 above. These amendments require that an NMS stock ATS file new Form ATS-N. The disclosures are publicly available on the SEC's website.[217]

(b) Seek evidence of operational or other competence of the operator of an exchange or trading system?

Yes. Since SEC staff's 2014 self-assessment, the SEC has updated its oversight of SRO systems capacity, including through the adoption of Regulation SCI. Please see the discussion of Regulation SCI in response to Principle 6, Question 1(a)(i) for additional information and the description below. There is otherwise no significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 2(b).

Regulation SCI

Since SEC staff's 2014 self-assessment, specifically in November 2014, the SEC adopted Regulation SCI.[218] Regulation SCI imposes requirements on certain key market participants intended to reduce the occurrence of systems issues, improve resiliency when systems problems do occur, and enhance the SEC's oversight and enforcement of securities market technology infrastructure. Under the regulation, "SCI entities," a term which includes SROs (including stock and options exchanges, registered clearing agencies, FINRA and the MSRB), ATSs that trade NMS and non-NMS stocks exceeding specified volume thresholds, certain disseminators of consolidated market data (plan processors), and certain exempt clearing agencies must establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly

216 See FINRA Rules 6110 and 6610. Aggregate weekly data concerning trades executed on ATSs in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility is published on a two-week delayed basis, and aggregate information on trades executed on ATSs in all other NMS stocks and all OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis. Aggregate weekly data concerning trades executed outside of ATSs is published on a similar schedule, along with aggregate monthly data published on a one-month delay. In addition, FINRA publishes monthly aggregate ATS block trading statistics for transactions in NMS stocks on a one-month delay. See FINRA Rule 6110(c)(2).

217 See https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.

218 See Regulation Systems Compliance and Integrity, Release No. 34-73639 (Nov. 19, 2014), available at https://www.sec.gov/rules/final/2014/34-73639.pdf.

markets. Under the regulation, these entities are required to take corrective action with regards to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions) and notify the SEC of such events. SCI entities must also submit quarterly reports to the SEC regarding material changes to their SCI systems.

(c) Require the operator of an exchange or trading system that assumes principal, settlement, guarantee or performance risk, to comply with prudential and other requirements designed to reduce the risk of non-completion of transactions (e.g., mandatory margin assessment and collection, capital or financial resources, member contributions, guaranty fund, credit or position limits)?

As noted in response to Principle 6, Question 1(a)(i), above, exchanges and trading systems generally do not assume principal, settlement, guarantee or performance risk. Instead, the clearance and settlement of securities transactions generally occurs through several registered CCPs and a registered CSD, which operate separately from exchanges or trading systems and are registered with the SEC as clearing agencies under the Exchange Act.

Since the SEC staff's 2014 self-assessment, the SEC amended Rule 17Ad-22 by adopting Rule 17Ad-22(e) under the Exchange Act. Rule 17Ad-22(e) built on the existing framework for clearing agencies by establishing new requirements for certain clearing agencies referred to as "covered clearing agencies," which are defined as: (i) a clearing agency that is designated systemically important by the FSOC pursuant to the Dodd-Frank Act and for which the Commission is the supervisory agency; or (ii) a clearing agency involved in activities with a more complex risk profile, unless the CFTC is the clearing agency's supervisory agency.[219] In developing Rule 17Ad–22(e), the Commission considered, among other things, the relevant international standards, i.e., the Principles for Financial Market Infrastructures adopted by CPMI and IOSCO in April 2012. The covered clearing agency standards are described in more detail below in the response to Principle 37, Question 1(a).

Additionally, as an update to SEC staff's 2014 self-assessment in response to Principle 33, Question 2(c) in regard to the ongoing monitoring of clearing agencies, OCIE expects a clearing agency to respond in writing and address all issues and findings identified in the course of an examination. SEC staff may also re-examine certain areas to examine the adequacy of the clearing agency's corrective actions.

(d) Permit the regulator to impose ongoing conditions (as appropriate) on the operator of an authorized exchange or regulated trading system, such as the obligation to establish: rules; policies; and procedures, to prevent fraudulent behaviour, treat all members or participants fairly, and have the capacity to carry out the market's and the competent authority's obligations?

No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 2(d).

[219] See Standards for Covered Clearing Agencies, Release No. 34-78961 (Sept. 28, 2016), available at https://www.sec.gov/rules/final/2016/34-78961.pdf.

Supervision
3. Does regulation require an assessment of:
(a) The reliability of all arrangements made by the operator for the monitoring, surveillance and supervision of an exchange or trading system and its members or participants to ensure fairness, efficiency, transparency and investor protection, as well as compliance with securities legislation? The market's dispute resolution and appeal procedures or arrangements as appropriate, its technical systems standards and procedures related to operational failure, information on its recordkeeping system, reports of suspected breaches of law, arrangements for holding client funds and securities, if applicable, and information on how trades are cleared and settled?
Yes. In addition to the response to Principle 33, Question 3 in SEC staff's 2014 self-assessment, the SEC has implemented a number of changes to its rules. • As noted in response to Principle 6, Question 1(a)(i) and Principle 33, Question 1, above, in November 2014, the SEC adopted Regulation SCI, which requires certain entities including all SROs to establish written policies and procedures reasonably designed to ensure that their systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets. • As noted in response to Principle 6, Question 1(a)(i), above, in July 2012, the SEC adopted Rule 613 to create a comprehensive CAT that would allow regulators to efficiently and accurately track all activity throughout the U.S. markets in NMS securities.[220] • As described above, Regulation ATS requires an NMS stock ATS to file detailed public disclosures about its operations (see response to Principle 33, Question 1, above, for more information). With respect to TCP and SRO examinations, see response to Principle 6, Question 4 and Principle 9, Questions 3(a)(i)-(ii).
(b) Whether the trading venue has in place suitable trading control mechanisms (such as trading halts, volatility interruptions, limit-up/limit-down controls and other trading limitations) to deal with volatile market conditions? [This is a new question for the 2020 FSAP]

[220] See Consolidated Audit Trail, Release No. 34-67457 (Jul. 18, 2012), available at https://www.sec.gov/rules/final/2012/34-67457.pdf.

Yes. As noted in response to Principle 6, Question 1(a)(i), above, in April 2019, the SEC approved an amendment to make permanent the LULD Plan.[221] Please see the discussion above for more information.
(c) Assistance available to the regulator, in circumstances of potential trading disruption on the system?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 3(b).
(d) Whether the relevant market authority (i.e., the regulator or relevant SRO), the outsourcing market, and its auditors, have: access to the books and records of service providers relating to an exchange's outsourced activities; and the ability to obtain promptly, upon request, other information concerning activities that are relevant to regulatory oversight?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 3(c).
Securities and Commodity Derivatives and Market Participants
4. With respect to securities and commodity derivatives and market participants:
(a) Is the regulator informed of the types of financial products to be traded, and does it approve the rules governing the admission of the securities to trading or listing?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 4(a).
(b) Where applicable, does the regulator, or the market, take product design and trading conditions into account in order to admit a product for trading?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 4(b).
(c) Does the regulatory framework provide for fair access to the exchange, or trading system, through oversight of the related rules for participation?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 4(c).

[221] See Joint Industry Plan; Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc., Release No. 34-85623 (Apr. 11, 2019), available at https://www.sec.gov/rules/sro/nms/2019/34-85623.pdf. .

Fairness of Order Execution Procedures
5. With respect to order execution procedures:
(a) Are order routing procedures clearly disclosed to regulators and to market participants, applied fairly, and not inconsistent with relevant securities regulation (e.g., requirements with respect to precedence of client orders and prohibition of front running or trading ahead of customers)?
Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 33, Question 5(a), the SEC adopted amendments to Regulation ATS, which require the disclosure by NMS stock ATSs of information relating to ATS operations, as well as order types, execution and priority rules, among other things (see response to Principle 33, Question 1, above, for more information). In addition, in 2018, the SEC adopted amendments to Regulation NMS to require additional disclosures by broker-dealers to customers regarding the handling of their orders.[222] Rule 606(b)(3) under Regulation NMS will require broker-dealers to provide a customer, upon request, a report on the broker-dealer's handling of the customer's NMS stock orders submitted on a not held basis for the prior six months, divided into separate sections for a customer's directed orders and non-directed orders. This report will provide a more detailed, standardized, baseline set of disclosures that will help customers that submit not held orders to better understand how their orders are routed and handled by their broker-dealers. This report will help customers more effectively assess the impact of their broker-dealers' order routing decisions on the quality of their executions, including the risks of information leakage and potential conflicts of interest. As a part of the rule changes, the Commission also amended the existing Rule 606(b)(1) customer-specific reports to apply to orders in NMS stock that are submitted on a held basis. In addition, the Rule 606(b)(1) customer-specific reports will apply to orders in NMS stock that are submitted on a not held basis and for which the broker-dealer is not required to provide the customer a report under Rule 606(b)(3). The amendment is enhancing the existing requirement under Rule 606 that broker-dealers provide public quarterly reports on their routing of certain orders. For example, broker-dealers will be required to report routing information that includes a description of the terms of any payment for order flow.[223]
(b) Are execution rules disclosed to the regulator and to market participants, and consistently applied to all participants?
Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 33, Question 5(b), under the new amendments to Regulation ATS, information on the

222 See Disclosure of Order Handling Information, Release No. 34-84528 (Nov. 2, 2018), available at https://www.sec.gov/rules/final/2018/34-84528.pdf (adopting release). See also Disclosure of Order Handling Information, Release No. 34-85715 (Apr. 24, 2019), available at https://www.sec.gov/rules/final/2019/34-85714.pdf (extending the compliance date for certain requirements).

223 Id.

Form ATS-N is made publicly available on the SEC's website, which allows market participants to make better-informed decisions about whether to do business with the an ATS, as well as the order handling decisions made by their broker (see response to Principle 33, Question 1, above, for more information). In addition, the new order disclosure rules described in response to Principle 33, Question 5(a) above require broker-dealers to provide customers information regarding certain orders.
(c) Where applicable, does the regulator review the trade matching or execution algorithm of automated trading systems for fairness?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 5(c).
(d) Do all system users have equal opportunity to connect, and maintain the connection to, the electronic trading system and are differences in order execution response times disclosed by the system operator?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 5(d).
(e) Are there in place effective systems and controls reasonably designed to enable the management of risk with regard to fair and orderly trading including, in particular, automated pre-trade controls that enable intermediaries to implement appropriate risk limits?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 5(e).
Operational Information
6. With respect to trading information:
(a) Do similarly situated market participants have equitable access to market rules and operating procedures?
No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 6(a).
(b) Are adequate records (i.e., audit trails) available to reconstruct trading activity within a reasonable time?
Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response Principle 33, Question 6(b), the SEC approved the CAT NMS Plan in 2016.[224] The CAT NMS

[224] See Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Release No. 34-79318 (Nov. 15, 2016), available at https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf.

Plan requires that the plan processor chosen by the SROs build a central repository that will receive, consolidate, and retain the trade and order data reported as part of the CAT. The CAT NMS Plan applies to NMS securities, including options, as well as to over-the-counter equity securities. At the various stages in the lifecycle of an order—e.g., origination, routing, modification, cancellation, and execution—the SROs and broker-dealers must submit certain information about the order to the central repository.

The CAT NMS Plan provides that the SROs and the SEC will have access to the data contained in the central repository for regulatory and oversight purposes. The CAT NMS plan requires CAT data be stored in a way that allows regulators to perform complex queries, such as reconstructing market events and the status of order books at various time intervals. Regulators will have access to CAT data through both an online targeted query tool and user-defined direct queries and bulk extracts.

The CAT NMS Plan also establishes data security requirements regarding connectivity and data transfer, encryption, storage, access, breach management, and protection of personally identifiable information. For example, all CAT data must be encrypted both at-rest and in-flight and all data centers housing CAT systems must be certified by a qualified and unaffiliated third-party auditor.

As required by Rule 613, the CAT NMS Plan contains a framework for eliminating rules and systems that would be rendered duplicative by the CAT, including identification of such rules and systems. (See also response to Principle 6, Question 1(a)(i) for additional information on the CAT NMS Plan).

(c) Is the system capable of disclosing the types of information that it is designed to make available, and, conversely, of providing safeguards to preserve the confidentiality of other information, the disclosure of which is not intended?

No significant update from SEC staff's 2014 self-assessment in response to Principle 33, Question 6(c).

(d) Does the market provide member intermediaries with access to relevant pre- and post-trade information (on a real-time basis) to enable these intermediaries to implement appropriate monitoring and risk management controls?

Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 33, Question 6(d), the Commission finalized Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information (Regulation SBSR) under the Exchange Act in 2015.[225] Regulation SBSR sets forth the information that must be reported and publicly disseminated for each security-based swap transaction, assigns the reporting duties for security-based swap transactions, requires SDRs registered with the SEC to establish and

[225] See Regulation SBSR – Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf.

maintain policies and procedures for carrying out their duties under Regulation SBSR, and addresses the application of Regulation SBSR to certain cross-border transactions.

In July 2016, the SEC adopted amendments and guidance to Regulation SBSR designed to increase transparency in the security-based swap market.[226] Among other things, these rules:

- assign the reporting duties for platform-executed security-based swaps that will be submitted to clearing and for security-based swaps resulting from the clearing process;
- establish regulatory reporting and public dissemination requirements for certain cross-border security-based swaps; and
- prohibit registered swap data repositories (SDRs) from imposing fees or usage restrictions on the portions of security-based swap transaction data that Regulation SBSR requires them to publicly disseminate.

[226] See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Release No. 34-78321 (Jul. 14, 2016), available at https://www.sec.gov/rules/final/2016/34-78321.pdf.

Principle 34	**There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.**
Key Questions	
1. Does the regulatory system:	
(a) Include a program whereby the regulator or an SRO, which is subject to oversight by the regulator:	
(i) monitors day-to-day trading activity on the exchange or trading system (through a market surveillance program);	
(ii) monitors conduct of market intermediaries (through examinations of business operations); and	
(iii) collects and analyzes the information gathered through these activities?	

Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 34, Question 1(a)(i)-(iii) and as noted in response to Principle 6, Question 1(a)(i) and Principle 33, Question 6(b), above, the Commission approved the CAT NMS Plan, which requires the SROs to build a central repository that receives, consolidates, and retains trade and order data.

Since SEC staff's 2014 self-assessment, the SEC also adopted Regulation SCI to address systems capacity and integrity. For additional information on Regulation SCI, see response to Principle 6, Question 1(a)(i) and Principle 33, Question 2(b) above.

(b) Include regulatory oversight mechanisms to verify compliance by the exchange, or trading system, with its statutory or administrative responsibilities, particularly as they relate to the integrity of the markets, market surveillance, the monitoring of risks and the ability to respond to such risks?

Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 34, Question 1(b), the SEC adopted Regulation SCI to address systems capacity and integrity. For additional information on Regulation SCI, see response to Principle 6, Question 1(a)(i) and Principle 33, Question 2(b) above.

Additional information about SEC staff's oversight of exchanges and trading platforms, as well as data about recent exams conducted by SEC staff, is below.

Oversight of Exchanges and Trading Platforms

SEC staff has the authority to inspect exchanges and ATSs pursuant to its authority to conduct SRO inspections and broker-dealer examinations. OCIE further reviews trading systems through examinations of broker-dealers that operate as an ATS or as an Electronic Communications Network (ECN). Subject to the SEC's oversight, SROs have the frontline responsibility for overseeing daily trading activities and regulatory compliance on the exchanges. FINRA also has SRO obligations to oversee its members, including those members

that operate ATSs. Additionally, as discussed in response to Principle 6, Question 4 and Principle 9, Question 3(a)(ii), TCP conducts examinations of exchanges and certain ATSs.

With respect to surveillance, OCIE examiners conduct examinations of SROs and may review SROs' surveillance programs during examinations. When inspecting an SRO's surveillance program, SEC staff's objectives are to examine whether (i) the parameters of SRO automated surveillance systems are appropriately designed to generate alerts that identify potential instances of noncompliance with SRO rules and federal securities laws and (ii) the systems are effectively detecting such activity. OCIE begins by reviewing applicable SRO rules, a description of the parameters for the surveillance systems designed to monitor the markets for compliance with these rules, and logs of the alerts that these systems generated. OCIE staff then reviews this information to examine whether the system is appropriately designed to identify noncompliance and whether it is functioning as designed. If a surveillance pattern or surveillance program is believed to be ineffective, the examination team will inform the SRO during the exit conference of any issues and note it as a risk in the examination report. If the examination team identifies a potentially serious violation of the federal securities laws or of the SROs own procedures or if the problem persists at the SRO, the examination team may refer the matter to Enforcement.

In addition, in 2018, FINRA addressed ATS surveillance in its annual Regulatory and Examination Priorities Letter.[227] As registered broker-dealers and FINRA members, alternative trading systems are required to maintain supervisory systems that are reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules, including, for example, rules on disruptive or manipulative quoting and trading activity. FINRA will review alternative trading systems' supervisory systems in the context of reviews opened as a result of surveillance alerts related to potential manipulative activity occurring on or through an alternative trading system.

Scope of Examinations

See response to Principle 9, Question 3(a)(i)-(ii) for an overview of the scope of OCIE's examinations of exchanges.

Surveillance

The SROs use a number of automated surveillance techniques to monitor trading activity on the exchange(s) for which they provide regulatory oversight. These include techniques designed to detect various types of manipulative trading. Surveillance information gathered by each SRO is routinely shared with the SEC and between SROs for effective detection of possible breaches of the securities laws.

Surveillance of Equities Markets

[227] FINRA's 2018 Regulatory and Examination Priorities Letter, available at https://www.finra.org/industry/2018-regulatory-and-examination-priorities-letter.

FINRA has entered into Regulatory Service Agreements (RSAs) with all U.S. equity exchanges that allow it to operate a cross market equity surveillance program that will cover 100% of the U.S. exchange-listed equity market as of the third quarter in 2019 (FINRA currently covers more than 99% of the U.S. exchange-listed equity market). FINRA also conducts cross market surveillance for approximately 50% of the U.S. options market. Employing advanced technology, these programs collect and integrate trading data across exchanges and the over-the-counter market (including ATS activity) to detect potentially manipulative trading activity and violations of market compliance rules. In essence, FINRA's view is of one large, virtual market, instead of a disjointed patchwork of individual markets.

Surveillance of Options Markets

SROs that operate options markets also are responsible for monitoring trading activity on their exchanges. FINRA conducts surveillance, investigations, and examinations through RSAs and 17d-2 Agreements with certain options exchanges.

Cboe Exchange, Inc. (Cboe Options) is the largest U.S. options exchange. Cboe Options is a hybrid market, consisting of both floor-based and electronic trading activity. In 2017, CBOE Holdings, Inc., the former parent of Cboe Options and Cboe C2 Exchange, Inc. (C2 Options), a fully electronic options market, acquired BATS Global Markets, Inc. In addition to Cboe Options and C2 Options, the new parent company, Cboe Global Markets, Inc. also operates the four legacy BATS Global Markets' electronic exchanges, which were renamed Cboe BYX Exchange, Inc. (BYX Equities), Cboe BZX Exchange, Inc. (BZX Equities and BZX Options), Cboe EDGA Exchange, Inc. (EDGA Equities), and Cboe EDGX Exchange, Inc. (EDGX Equities and EDGX Options). Each Exchange operates as a separate SRO with its own set of rules. Cboe monitors trading activity on its hybrid marketplace and the electronic C2 exchange, as well as on Cboe BZX Exchange, Inc. and Cboe EDGX Exchange, Inc.

Frequency of Examinations

The chart below reflects OCIE's Market Oversight examinations in FY 2016, 2017, and 2018. (Market Oversight inspections include inspections of exchanges conducted by OCIE's Broker-Dealer and Exchange Group, as well as programmatic inspections and oversight exams of FINRA conducted by OCIE's FSIO Group):

Fiscal Year	Number of Examinations
2016	68
2017	115
2018	186

The chart below reflects the frequency of TCP examinations of SCI entities, which include exchanges and certain ATS:

Fiscal Year	Number of Examinations
2016	61
2017	70

2018	67

(c) Provide the regulator with adequate access to all pre-trade and post-trade information available to market participants?

Yes. Since SEC staff's 2014 self-assessment, the SEC has adopted a number of rules and amendments that apply to pre-trade and post-trade information.

- The SEC approved the CAT NMS Plan, which requires a central repository to be built that will receive, consolidate, and retain trade and order data reported as part of the CAT (see response to Principle 6, Question 1(a)(i) and Principle 33, Question 6(b).

- The SEC adopted Regulation SBSR, which sets forth the information that must be reported and publicly disseminated for each SBS transaction (see response to Principle 33, Question 6(d), above, for additional information on Regulation SBSR).

2. Does the regulatory framework require that amendments to the rules or requirements of the exchange, or trading system, must be provided to, or approved by, the regulator?

Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 34, Question 2, the SEC adopted amendments to Regulation ATS that requires NMS stock ATSs to file detailed public disclosures, including information on how the ATS operates. The amendments to Regulation ATS also require a NMS Stock ATS to notify the Commission of any changes in its operations by filing an amendment to its Form ATS initial operation report. Those ATSs must publicly disclose a brief summary of a material amendment upon filing, and after the Commission has had an opportunity to review the amendment, the material amendment would be made public.[228] For additional information on Regulation ATS, see response to Principle 33, Question 1 above.

3. When the regulator determines that the exchange, or trading system, is unable to comply with the conditions of its approval, or with securities law or regulation, is there a mechanism that permits the regulator to:

(a) Re-examine the exchange, or trading system, and impose a range of actions, such as restrictions or conditions on the market operator?

(b) Withdraw the exchange, or trading system, authorization?

Yes. In addition to the information provided under Principle 34, Questions 3(a) and (b) in SEC staff's 2014 self-assessment, the SEC has adopted amendments to Regulation ATS, which requires certain ATSs to file Form ATS-N containing detailed information about the ATS's operations. The amendments provide a process for the SEC to review these filings, and, after notice and opportunity for hearing and upon certain findings, declare Form ATS-N filings ineffective (see the response to Principle 33, Question 1, and Principle 34, Question 2, above,

[228] See Regulation of NMS Stock Alternative Trading Systems, Release No. 34-83663 (Jul. 18, 2018), https://www.sec.gov/rules/final/2018/34-83663.pdf (adopting release). See also Regulation of NMS Stock Alternative Trading Systems, Release No. 34-84541 (Nov. 6, 2018), available at https://www.sec.gov/rules/final/2018/34-84541.pdf (making certain technical corrections to the adopting release).

for additional information on Regulation ATS).

Principle 35 Regulation should promote transparency of trading.
Key Questions
1. Does the regulatory framework include:
(a) Requirements or arrangements for providing pre-trade (e.g., posting of orders) information to market participants?
No significant update from SEC staff's 2014 self-assessment in response to Principle 35, Question 1(a).
(b) Requirements or arrangements for providing post-trade information (e.g., last sale price and volume of transaction) to market participants on a timely basis?
Yes. In addition to the information provided in the SEC staff's 2014 self-assessment under Principle 35, Question 1(b), in connection with SBS, the SEC also adopted Regulation SBSR, which sets out specific information that must be reported in connection with SBS transactions (see response to Principle 33, Question 6(d) above for additional information on Regulation SBSR).
(c) Requirements or arrangements that information on completed transactions be provided on an equitable basis to all market participants?
No significant update from SEC staff's 2014 self-assessment in response to Principle 35, Question 1(c).
2. Where derogation from the objective of real-time transparency is permitted:
(a) Are the conditions clearly defined?
No significant update from SEC staff's 2014 self-assessment in response to Principle 35, Question 2(a).
(b) Does the market authority (being either, or both, the exchange operator and the regulator) have access to the complete information to be able to assess the need for derogation and, if necessary, to prescribe alternatives?
No significant update from SEC staff's 2014 self-assessment in response to Principle 35, Question 2(b).
(c) Does the regulator have access to adequate information to monitor the development of dark trading and dark orders?
In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 35, Question 2(c), the SEC approved the CAT NMS Plan, which requires the collection and consolidation of trade and order data (see response to Principle 6, Question 1(a)(i) and

Principle 33, Questions 6(b), above, for additional information on the CAT NMS Plan). In addition, the amendments to Regulation ATS require certain ATSs to file detailed disclosures with the SEC on Form ATS-N (see response to Principle 33, Question 1, above, for additional information on Regulation ATS).

Additional data concerning ATS and other OTC trading activity is available pursuant to FINRA rules. Under FINRA reporting rules, broker-dealers, including broker-dealers operating ATSs, are required to report OTC transactions in NMS stocks and OTC equity securities to FINRA.[229] Each individual ATS is required to use a unique market participant identifier (MPID), which can be used only for activity on the ATS, for reporting trades to FINRA.[230] FINRA aggregates the reported volume and trade count information for equity securities and makes it publicly available on its website.[231]

(d) Do transparent orders have priority over dark orders?

No significant update from SEC staff's 2014 self-assessment in response to Principle 35, Question 2(d).

(e) Do dark pools, and transparent markets that offer dark orders, provide market participants with sufficient information so that they are able to understand the manner in which their orders are handled and executed?

In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 35, Question 2(e), the SEC approved amendments to Regulation ATS that requires certain ATSs to file detailed disclosures with the SEC on Form ATS-N. The form is made publicly available on the SEC's website and allows market participants to make better-informed decisions about whether to do business with an ATS, as well as the order handling decisions by a broker-dealer. For additional information on Regulation ATS, see response to Principle 33, Question 1, above.

229 See FINRA Rule 6200, 6300A, 6300B and 6600 Series.

230 FINRA Rules 6160, 6170, 6480, and 6720 permit an ATS that trades both debt securities reported to FINRA's TRACE and equity securities reported to a FINRA equity reporting facility to use two MPIDs, rather than a single unique MPID, if each MPID is used exclusively for either debt or equity securities. See Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Reporting and Market Participant Identifier Requirements for Alternative Trading Systems, Release No. 34-71911, File No. SR–FINRA–2014–017 (Apr. 9, 2014), available at http://www.finra.org/sites/default/files/RuleFiling/p486184.pdf.

231 See FINRA Rules 6110 and 6610. Aggregate weekly data concerning trades executed on ATSs in NMS stocks in Tier 1 of the NMS Plan to Address Extraordinary Market Volatility is published on a two-week delayed basis, and aggregate information on trades executed on ATSs in all other NMS stocks and all OTC Equity Securities subject to FINRA trade reporting requirements on a four-week delayed basis. Aggregate weekly data concerning trades executed outside of ATSs is published on a similar schedule, along with aggregate monthly data published on a one-month delay. In addition, FINRA publishes monthly aggregate ATS block trading statistics for transactions in NMS stocks on a one-month delay. See FINRA Rule 6110(c)(2).

Principle 36	**Regulation should be designed to detect and deter manipulation and other unfair trading practices.**
Key Questions	
1.	Does the regulatory system prohibit the following with respect to products admitted to trading on authorized exchanges and regulated trading systems:
(a)	Market or price manipulation (or attempts at market or price manipulation)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 1(a).	
(b)	Misleading information?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 1(b).	
(c)	Insider trading?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 1(c).	
(d)	Front running?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 1(d).	
(e)	Other fraudulent or deceptive conduct and market abuses?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 1(e).	
2.	Does the regulatory approach to detect and deter such conduct include an effective and appropriate combination of mechanisms drawn from the following:
(a)	Direct surveillance, inspection, reporting, such as, for example:
(i)	securities listing, or product design requirements (where applicable);
(ii)	position limits;
(iii)	audit trail requirements;
(iv)	quotation display rules;
(v)	order handling rules;
(vi)	settlement price rules;
(vii)	market halts, complemented by enforcement of the law and trading rules; or
(viii)	power to obtain information on a market participant's positions in related OTC commodity derivatives and the underlying physical

commodity markets. [2(a)(viii) is a new item for the 2020 FSAP]
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 2(a)(i), (ii), (iii), (iv), (v), (vi), (vii) and (vii). Please note that question (viii) is not applicable to the SEC.
(b) Effective, proportionate and dissuasive sanctions for violations? In the case of exchange-traded commodity derivatives markets, does the relevant market authority have and use effective sanctioning powers to discipline its members or other authorized market participants and does it have powers to take action against non-members of the market or other market participants? [The second question is new for the 2020 FSAP]
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 2(b). Please note that the question related to commodity derivatives markets is not applicable to the SEC.
3. Are there arrangements in place for:
(a) The continuous collection and analysis of information concerning trading activities?
(b) Providing the results of such analysis to market and regulatory officials in a position to take remedial action if necessary?
(c) Monitoring the conduct of market intermediaries participating in the market(s)?
(d) Triggering further inquiry as to suspicious transactions or patterns of trading?
Yes. In addition to the information provided in SEC staff's 2014 self-assessment in response to Principle 36, Question 3, the SEC approved the CAT NMS Plan. As described above in response to Principle 6, Question 1(a)(i) and Principle 33, Question 6(b), the CAT NMS Plan calls for a plan processor chosen by the SROs to build a central repository to retain trade and order data reported as part of the CAT. See also response to Principle 9, Question 3(a)(i)-(iii), above, for additional information on the oversight of SROs.
4. If there is potential for domestic cross-market trading, are there:
(a) inspection;
(b) assistance; and
(c) information-sharing, requirements or arrangements in place to monitor and/or address domestic cross-market trading abuses?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 2(b).
5. If there are foreign linkages, substantial foreign participation, or cross listings, are there

cooperation arrangements with relevant foreign regulators, and/or markets, that address manipulation, or other abusive trading practices?
No significant update from SEC staff's 2014 self-assessment in response to Principle 36, Question 5.
6. Regarding market authorities responsible for the supervision of commodity derivatives markets only:
(a) Does the market authority have authority to access information on a routine and non-routine basis for regulated commodity derivatives markets as well as the power to obtain information on a market participant's positions in related OTC commodity derivatives and the underlying physical commodity markets? [This is a new question for the 2020 FSAP]
(b) Does the market authority collect information on a routine and regular basis on relevant on-exchange commodity derivatives transactions and does it have the capability to aggregate position holder information promptly in order to identify positions under common ownership and control? Reference should be made to the commodity derivatives principles for the type of information required [This is a new question for the 2020 FSAP]
(c) In respect of OTC commodity derivatives transactions and positions, has the market authority considered what information it should collect on a routine basis and what it should collect on an "as needed" basis [This is a new question for the 2020 FSAP]
Please note that these questions related to commodity derivatives markets are not applicable to the SEC.
7. Does the market authority have the organizational and technical capabilities to monitor effectively the trading venues it supervises, including the ability to identify market abuse and activities that may impact the fairness and orderliness of trading on such venues? [This is a new question for the 2020 FSAP]
Yes. See SEC staff's 2014 self-assessment response to Principle 36, Question 3 describing the arrangements in place for oversight of the securities markets. In addition, as described in response to Principle 6, Question 1(a)(i) and Principle 33, Question 6(b), the SEC approved the CAT NMS Plan which requires the plan processor to build a central repository that will receive, consolidate, and retain trade and order data reported as part of the CAT. The CAT NMS Plan provides that the SROs and the SEC will have access to the data contained in the central repository for regulatory and oversight purposes.
Principle 36: Additional Question Related to 36.2 and 36.3 above, for 2019 Assessment ** • **Information on administrative/ civil sanctions imposed during the last three years on major misconducts, such as market manipulation and insider trading.**

- **Information on criminal sanctions imposed for major offenses, such as insider trading and market manipulation.**

During the last three years (2016-2018), the SEC and US criminal authorities filed enforcement actions and obtained sanctions to address major misconducts, such as market manipulation and insider trading. Examples of cases in this area are described below. For additional information regarding major SEC Enforcement cases in 2016-2018, please refer to the Enforcement's Annual Reports for 2017 and 2018, and the Select SEC and Market Data for Fiscal Year 2016, each of which can be found on the SEC's website.[232] For additional information regarding criminal cases in 2016-2018, please refer to the website for the Department of Justice.[233]

- In 2016, the SEC charged three overseas traders with fraudulently trading on hacked nonpublic market-moving information stolen from two prominent New York-based law firms, illegally profiting by nearly $3 million. The SEC's complaint alleged that the traders executed a deceptive scheme to hack into the networks of the law firms and steal confidential information pertaining to firm clients that were considering mergers or acquisitions. After the defendants defaulted in the litigation, the court imposed sanctions against them including disgorgement of ill-gotten gains, prejudgment interest, and penalties equal to three times the amount of their respective ill-gotten gains.[234] The US Attorney's Office for the Southern District of New York filed related charges which, if proven could result in maximum sentences of 5-20 years imprisonment.[235]

- In 2017, the SEC filed an enforcement action against a trading firm based outside of the U.S., alleging it manipulated the U.S. markets hundreds of thousands of times, and charged a New York-based brokerage firm and its CEO for allegedly facilitating the fraud. After filing its complaint, the SEC obtained an emergency court order freezing the trading firm's assets held in its account at the brokerage firm as well as freezing and repatriating funds that the trading firm had transferred overseas.[236]

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232 See https://www.sec.gov/files/2017-03/secstats2016.pdf; https://www.sec.gov/files/enforcement-annual-report-2017.pdf; see also https://www.sec.gov/files/enforcement-annual-report-2018.pdf.

233 See https://www.justice.gov.

234 See SEC v. Iat Hong, et al., Litigation Release No. 23711 (Dec. 27, 2016), available at https://www.sec.gov/litigation/litreleases/2016/lr23711.htm; Litigation Release No. 23826 (May 9, 2017), available at https://www.sec.gov/litigation/litreleases/2017/lr23826.htm.

235 See Department of Justice Press Release 16-353 (Dec. 27, 2016), available at https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-arrest-macau-resident-and-unsealing-charges-against.

236 See SEC v. Lek Securities Corp. et al., Litigation Release No. 23776 (Mar. 10, 2017), available at https://www.sec.gov/litigation/litreleases/2017/lr23776.htm.

- In 2017, the SEC brought fraud charges against thirteen individuals allegedly involved in two Long Island, New York-based cold calling scams that defrauded more than one hundred elderly or unsophisticated victims out of more than $10 million through high-pressure sales tactics and misrepresentations about penny stocks.[237] Later, in 2018, the SEC filed additional charges, alleging that the CEO of an issuer, a boiler room and four related individuals engaged in a manipulation of the issuer's stock. The SEC sought sanctions in the cases, including permanent injunctions, disgorgement of ill-gotten gains with interest, civil penalties, and penny stock bars, as well as officer-and-director bars against three of the individuals. The U.S. Attorney's Office in the Eastern District of New York filed parallel criminal charges against sixteen participants in the fraud, eleven of whom pled guilty and await sentencing.[238]

- In 2018, the SEC brought an insider trading action against the CEO of a payment processing company, alleging that he shared confidential information about the potential acquisition of the company with his girlfriend and provided her with $1 million to purchase the company's stock. The SEC alleged that after the acquisition, the girlfriend sold the shares, realizing profits of more than $250,000. The SEC settled with the girlfriend, obtaining sanctions including an injunction, disgorgement of ill-gotten gain plus interest, and penalties. The SEC also partially settled with the CEO, obtaining an injunction and penalties with the court to determine whether to impose an officer-and-director bar at a later date. [239]

- In 2018, the SEC charged a credit ratings agency employee with allegedly tipping two friends about an acquisition he learned about through his work as a ratings analyst. The SEC also charged the two friends with allegedly trading on the illicit tips, which reaped them combined profits of nearly $300,000. In its action, the SEC sought disgorgement of ill-gotten gains, prejudgment interest, penalties, and injunctive relief.[240] In a parallel action, the U.S. Attorney's Office for the Southern District of New York filed an action seeking criminal sanctions against the three SEC defendants. Two of the defendants have pleaded guilty and one defendant was convicted following a jury trial.[241] While their precise sentencing will be determined by a court,

[237] See Litigation Release No. 23878 (Jul. 12, 2017), available at https://www.sec.gov/litigation/litreleases/2017/lr23878.htm; See also SEC Press Release No. 2017-124 (Jul. 12, 2017), available at https://www.sec.gov/news/press-release/2017-124.

[238] See SEC v. Elite Stock Research, Inc. et al. (Nov. 15, 2018), available at https://www.sec.gov/news/press-release/2018-262; See also Former Broker-Dealer Pleads Guilty to Stock Manipulation (Dec. 14, 2018), available at https://www.justice.gov/usao-edny/pr/former-broker-dealer-pleads-guilty-stock-manipulation.

[239] See SEC v. Robert O. Carr and Katherine M. Hanratty, Action No. 3:18-cv-01135 (D. Conn.) (filed Sept. 28, 2018), (partially settled action), available at https://www.sec.gov/litigation/litreleases/2018/lr24191.htm; See also Litigation Release No. 24306 (Oct. 5, 2018), available at https://www.sec.gov/litigation/litreleases/2018/lr24306.htm.

[240] Litigation Release No. 24178 (Jun. 29, 2018), available at https://www.sec.gov/litigation/litreleases/2018/lr24178.htm.

[241] See Department of Justice Press Release 18-338 (Oct. 3, 2018), available at https://www.justice.gov/usao-sdny/pr/manhattan-hair-salon-owner-pleads-guilty-insider-trading; See also

the charges filed could carry a maximum sentence of five years in prison and a maximum fine of $250,000, or twice the gross gain or loss from the offense for the charge of conspiracy to commit securities fraud, and a maximum sentence of 20 years in prison and a maximum fine of $5 million, or twice the gross gain or loss from the offense for the charge of securities fraud.[242]

Department of Justice Press Release 19-104 (Mar. 29, 2019), available at https://www.justice.gov/usao-sdny/pr/manhattan-jeweler-pleads-guilty-insider-trading; See also Department of Justice Press Release 19-132 (Apr. 26, 2019), available at https://www.justice.gov/usao-sdny/pr/former-sp-analyst-convicted-insider-trading-schemes.

[242] See Three Men Arrested And Charged With Trading On Inside Information Misappropriated From A Credit Rating Agency, available at https://www.justice.gov/usao-sdny/pr/three-men-arrested-and-charged-trading-inside-information-misappropriated-credit-rating.

Principle 37	**Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.**

Key Questions

Monitoring of Large Exposures

1. Does the market authority have a mechanism in place that is intended to monitor and evaluate continuously the risk of open positions, or credit exposures, that are sufficiently large to expose a risk to the market, or to a clearing firm, that includes:

(a) Qualitative or quantitative, trigger levels appropriate to the market for the purpose of identifying large exposures (as defined by the market authority), continuous monitoring, and an evaluative process?

Yes. In addition to the information provided in SEC staff's 2014 self-assessment response under Principle 37, Question 1(a), the SEC adopted new requirements for certain clearing agencies referred to as covered clearing agencies and described above in the response to Principle 33, Question 2(c).

New Rule 17Ad-22(e) contains several provisions that govern how a CCP must measure and assess its liquidity and credit exposures to each clearing member and to any CCPs with which it has established a link. In particular, a CCP must have policies and procedures reasonably designed to do the following:

- maintain a sound risk management framework for comprehensively managing its risks including legal, credit, liquidity, operational, general business, investment, and custody;
- effectively identify, measure, monitor, and manage its credit exposures to participants and the credit exposures arising from payment, clearing, and settlement processes;
- cover its credit exposures to its participants by establishing a risk-based margin system. This system should be monitored by management on an ongoing basis and regularly reviewed, tested, and verified;
- effectively measure, monitor, and manage liquidity risks including those related to settlement and funding flows on an ongoing and timely basis, and to its use of intraday liquidity; and
- effectively measure, monitor, and manage risks related to any link it has with one or more other clearing agencies, financial market utilities, or trading markets.

(b) Access to information, if needed, on the size and beneficial ownership of positions held by direct customers of market intermediaries?

No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 1(b).

(c) The power to take appropriate action against a market participant that does not provide relevant information needed to evaluate an exposure (e.g., require liquidation of positions, increase margin requirements and/or revoke trading privileges)?
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 1(c).
(d) The general power to take appropriate action, such as to compel market participants carrying, or controlling, large positions to reduce their exposures or to post increased margin?
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 1(d).
2. Do arrangements, whether formal or informal, exist to enable markets and regulators to share information on large exposures of common market participants, or on related products:
(a) In the domestic jurisdiction?
Yes. In addition to the information provided in SEC staff's 2014 self-assessment response in response to Principle 37, Question 2, in 2018, the SEC and CFTC approved a MOU to help ensure continued coordination and information sharing between the two agencies. The MOU updated and enhanced the MOU described in SEC staff's 2014 self-assessment to adapt to market conditions and promote efficiency in rulemaking, regulatory oversight, and enforcement. For example, the new MOU specifically addresses the regulatory regime for swaps and security-based swaps. The MOU continues the permanent regulatory liaison between the agencies and facilitates discussion and coordination of regulatory action, information exchange and data sharing regarding issues of common regulatory interest.
(b) In other relevant jurisdictions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 2(a).
3. With respect to exchange-traded physical commodity derivatives markets, do relevant market authorities (i) require the reporting of large trader positions for the relevant on-exchange commodity derivatives contracts and (ii) publish the aggregate exposures of different classes of large traders, especially commercial and non-commercial participants, within the bounds of maintaining trader confidence? [This is a new question for the 2020 FSAP]
Please note that the questions related to commodity derivatives markets are not applicable to the SEC.

Default Procedures – Transparency and Effectiveness
4. Does a market authority make its default procedures available to market participants, including, specifically, information concerning:
(a) The general circumstances in which action may be taken?
(b) Who may take it?
(c) The scope of actions which may be taken.
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 3 with regard to broker-dealers. With regard to clearing agencies, in addition to the requirements described in SEC staff's 2014 self-assessment regarding clearing agencies, the SEC adopted new rules related to covered clearing agencies as described in more detail above in response to Principle 6, Question 1(a)(i) and Principle 37, Question 1(a). Specifically, Rule 17Ad-22(e)(13) provides that a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.
5. Do default procedures, and/or national law, permit markets, and/or the clearing and settlement system(s), to promptly isolate the problem of a failing firm by addressing its open proprietary positions, and positions it holds on behalf of customers; or otherwise protect customer funds and assets, from an intermediary's default under national law?
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 4 with regard to broker-dealers. With regard to clearing agencies, in addition to the requirements described in SEC staff's 2014 self-assessment regarding clearing agencies which are still in effect, the SEC has adopted new rules related to covered clearing agencies, including Rule 17Ad-22(e)(13) as described in more detail above under Principle 6, Question 1(a)(i) and Principle 37, Questions 1(a) and 4.
6. Is there a mechanism by which market authorities for related products can consult with each other in order to minimize the adverse effects of market disruptions?
No significant update from SEC staff's 2014 self-assessment in response to Principle 37, Question 5.
Short Selling on Equity Markets
7. Does the relevant market authority provide for:
(a) Controls which are appropriate to the equity market in question and that have as their goal: to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of equity markets including, at a minimum, a strict settlement of failed trades?

(b)	A reporting regime that provides timely short selling information to the market or, as a minimum requirement, to market authorities?
(c)	As part of an effective compliance and enforcement system (assessed under Principle 11): (i) measures that promote settlement discipline, including regular monitoring by the market authority of settlement failures; and (ii) surveillance of short selling activities. Any deficiency here should also be taken into account in the assessment of Principle 11.
(d)	Appropriate exceptions for certain types of transactions for efficient market functioning and development (such as, but not limited to, bona fide hedging, market making and arbitrage activities)?

Yes. In addition to the information provided in SEC staff's 2014 self-assessment response under Principle 37, Question 6, in March 2017, the SEC amended its rules to shorten the standard settlement cycle for most broker-dealer securities transactions by one business day (from T+3 to T+2).[243] Broker-dealers were required to comply with the amended rule by September 5, 2017. In connection with that amendment, the SEC also issued guidance clarifying the effect of the rule amendment on certain aspects of Regulation SHO. The SEC stated that the move to a T+2 standard settlement cycle reduced by one business day the time in which a clearing firm has to close out a fail to deliver position. Specifically, the Commission noted that, for a fail to deliver position resulting from a short sale the time frame was reduced from T+4 to T+3, and for a fail to deliver position resulting from a long sale or bona fide market making activity the time frame was reduced from T+6 to T+5 for broker-dealers.[244]

Addressing Risks in the Commodity Derivatives Markets

8.	Regarding authorities responsible for the supervision of exchange-traded physical commodity derivatives markets (e.g., either the market, a governmental regulator or an SRO) ("commodity derivatives market authorities)):	
	(a)	Does the relevant market authority have and use formal position management powers, including the power to set ex-ante position limits, particularly in the delivery month? [This is a new question for the 2020 FSAP]
	(b)	Does the relevant market authority have the powers to employ additional measures, as appropriate to address market disruption or the perceived threat of such disruption? [This is a new question for the 2020 FSAP]

Please note that the questions related to commodity derivatives markets are not applicable to the SEC.

Transactions in OTC Derivatives Markets

9.	Are standardized OTC derivatives contracts with a suitable degree of liquidity required

[243] See https://www.sec.gov/news/press-release/2017-68-0.

[244] See Securities Transaction Settlement Cycle, Release No. 34-80295 (Mar. 22, 2017), available at https://www.sec.gov/rules/final/2017/34-80295.pdf.

to be traded on "exchanges or electronic trading platforms" provided that a flexible approach encompassing a range of platforms that would qualify as "exchanges or electronic trading platforms" for OTC derivatives is taken? [This is a new question for the 2020 FSAP]
Yes. The Dodd-Frank Act requires any SBS that is required to be cleared[245] and made available to trade on a national securities exchange or a SB SEF[246] to be traded on a registered trading platform. SB SEFs must be registered with the SEC and comply with 14 Core Principles, as well as any other rule that the SEC may adopt that apply to SB SEFs.[247] The SEC has proposed, but not yet adopted, rules on the registration process for SB SEFs and for complying with the 14 Core Principles.[248]
10. Are the platforms which may qualify as exchanges or electronic trading platforms for mandatory OTC derivatives trading appropriately identified as such? [This is a new question for the 2020 FSAP]
Yes. As described in response to Principle 37, Question 9, above, any SBS that becomes subject to the mandatory trading requirement must be traded on either a national securities exchange or an SB SEF.
11. Are standardized OTC derivatives required to be cleared through CCPs? In particular, has the market authority a clear process in place for the determination that a product or set of products should be subject to a mandatory clearing obligation? [This is a new question for the 2020 FSAP]
Yes. An SBS must be cleared through a clearing agency if the SEC determines that the SBS, or any group, category, type, or class to which it belongs, must be cleared, unless an exemption applies.[249] The Exchange Act specifies the process that the SEC must use to determine which

245 See Section 3C(a) of the Exchange Act, 15 U.S.C. 78c-3(a). Pursuant to an "end-user exception," an SBS is not required to be cleared if one of the counterparties is not a financial entity, is using SBS to hedge or mitigate commercial risk and notifies the SEC how it generally meets its financial obligations associated with entering into non-cleared SBS. See Section 3C(g) of the Exchange Act, 15 U.S.C. 78c-3(g).

246 See Section 3C(h) of the Exchange Act, 15 U.S.C. 78c-3(h).

247 See Section 3D of the Exchange Act, 15 U.S.C. 78c-4. The 14 Core Principles for SB SEFs are set out in Section 3D(d) of the Exchange Act.

248 See Registration and Regulation of Securities-Based Swap Execution Facilities, Release No. 34-63825 (Feb. 2, 2011) (SB SEF Proposing Release), available at https://www.sec.gov/rules/proposed/2011/34-63825.pdf. See also https://www.sec.gov/news/press/2011/2011-35.htm.

249 See 15 U.S.C. 78c-3(a)-(b) Pursuant to an "end-user exception," an SBS is not required to be cleared if one of the counterparties is not a financial entity, is using SBS to hedge or mitigate commercial risk and notifies the SEC how it generally meets its financial obligations associated with entering into non-cleared SBS. See Section 3C(g) of the Exchange Act, 15 U.S.C. 78c-3(g). See also End-User Exception to Mandatory Clearing of

SBSs are subject to the mandatory clearing requirement, including identification of factors that the SEC must consider when making such a determination.[250]

In 2012, the SEC adopted rules to establish a process for submissions for review of SBSs for mandatory clearing and the procedure by which the SEC may stay the requirement that an SBS is subject to mandatory clearing while the clearing of the SBS is reviewed.[251] These rules require a clearing agency to file information with the SEC regarding any SBS - or any group, category, type, or class of security-based swaps - that a clearing agency plans to accept for clearing. The rules also describe the information that must accompany each submission so that the SEC will be able to determine whether the security-based swap should be subject to mandatory clearing. This information includes quantitative and qualitative information to assist the SEC in the assessment of the factors set forth under the Dodd-Frank Act, which the SEC is required to take into account in its review of the security-based swap submission.

The rules also specify how the clearing agency must notify its members about the submissions it makes, and requires clearing agencies to post their security-based swap submissions on their public websites within two business days.

12.	Is the determining authority able to consult with foreign authorities to minimize inconsistencies among different regulatory standards on non-centrally cleared OTC derivatives? [This is a new question for the 2020 FSAP]

Yes. As described in more detail in response to Principle 6, Question 3(b), above, the SEC has developed arrangements with foreign regulators to facilitate communication and cooperation on supervisory issues. SEC staff also participates in IOSCO's Committee on Derivatives, which has developed a global repository of central clearing requirements made by securities and derivatives market regulatory authorities. This repository serves allows authorities to share information about central clearing requirements with their counterparts in other jurisdictions, which may assist authorities in making mandatory clearing determinations that minimize the risk of overlap, duplication or gaps in requirements.

13.	Are all OTC derivatives transactions not cleared by CCPs subject to appropriate margining practices? [This is a new question for the 2020 FSAP]

Yes. The SEC has adopted rules establishing capital and variation margin and initial margin

Security-Based Swaps, Release No. 34-63556 (Dec. 15, 2010) (proposed rule governing this end-user exception), available at https://www.sec.gov/rules/proposed/2010/34-63556fr.pdf.

250 See Section 3C(b) of the Exchange Act, 15 U.S.C. 78c-3(b).

251 See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b-4 and Form 19b-4 Applicable to All Self-Regulatory Organizations, Release No. 34-67286 (Jun. 28, 2012), available at https://www.sec.gov/rules/final/2012/34-67286.pdf.

requirements for SBSDs for which there is not a prudential regulator (non-bank SBSDs), which are described in the response to Principle 31, Question 6(b), above.[252]

Non-bank SBSDs also will be required to monitor the risk of each account, and establish, maintain, and document procedures and guidelines for monitoring the risk. Compliance with these rules will be required when entities are required to register as SBSDs.

14. Are all financial firms and systemically important non-financial entities that engage in non-centrally cleared OTC derivatives required to exchange initial and variation margin as appropriate to the counterparty risks posed by such transactions?
[This is a new question for the 2020 FSAP]

Yes. SEC rules will require non-bank SBSDs and major security-based swap participants for which there is no prudential regulator (non-bank MSBSPs) to collect margin collateral from counterparties to non-cleared security-based swap transactions to cover current exposure and potential future exposure (i.e., variation and initial margin) unless an exception applies. These rules are described in more detail in the response to Principle 31, Question 6(b), above.

15. Where required by the authority, do financial entities and systemically important non-financial entities that engage in non-centrally cleared OTC derivatives employ risk mitigation techniques consistent with the standards set out by IOSCO in the report *Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives*?
[This is a new question for the 2020 FSAP]

The SEC has adopted or proposed rules consistent with all of IOSCO's risk mitigation standards for non-centrally cleared OTC derivatives. Below is a brief analysis of each of these risk mitigation standards as applied to the SEC's adopted and proposed rules.

- Standard 1 (Scope of Coverage): Each of the below-described adopted rules[253] apply, and proposed rules[254] would apply, to SEC-registered security-based swap dealers and major security-based swap participants (together, SBS Entities).

- Standard 2 (Trading Relationship Documentation): The SEC has proposed rules that would require each SBS Entity to establish, maintain and follow written policies and procedures reasonably designed to ensure that it executes written SBS trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing an SBS with such counterparty. This documentation would be required to include all terms governing the trading

252 See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Release No. 34-86175 (Jun. 21, 2019), available at https://www.sec.gov/rules/final/2019/34-86175.pdf.

253 See Trade Acknowledgment and Verification of Security-Based Swap Transactions, Release No. 34-78011 (Jun. 8, 2016), available at https://www.sec.gov/rules/final/2016/34-78011.pdf.

254 See Risk Mitigation Techniques for Uncleared Security-Based Swaps, Release No. 34-84861 (Dec. 19, 2018), available at https://www.sec.gov/rules/proposed/2018/34-84861.pdf.

relationship.

- Standard 3 (Trade Confirmation): The SEC has adopted rules that require each SBS Entity to provide trade acknowledgments disclosing all of the terms of each SBS purchased or sold by the SBS Entity. These trade acknowledgments must be provided promptly, but in any event by the end of the first business day following execution, and must be delivered through electronic means that provide reasonable assurance of delivery and a record of transmittal. These rules further require each SBS Entity to establish, maintain and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of each trade acknowledgment that it provides to a counterparty. Each SBS Entity must also promptly verify the accuracy of, or dispute with its counterparty, the terms of a trade acknowledgment that it receives from a counterparty.

- Standard 4 (Valuation with Counterparties): The SEC has proposed rules that would require each SBS Entity's written trading relationship documentation (referenced above in the description of Standard 2) with certain types of counterparties to include written documentation of the SBS valuation process. This valuation documentation must include the parties' agreement on the process for determining the value of each SBS at any time from execution to termination, maturity or expiration for the purposes of complying with applicable SEC margin and risk management requirements. This requirement applies to trading relationship documentation between SBS Entities; between an SBS Entity and a swap dealer, major swap participant, commodity pool, private fund, employee benefit plan, or person predominantly engaged in activities that are in the business of banking or that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956; or between an SBS Entity and any other counterparty that requests such valuation documentation.

- Standard 5 (Reconciliation): The SEC has proposed rules that would require each SBS Entity to engage in portfolio reconciliation with SBS Entity counterparties, no less frequently than each business day (for each portfolio that includes 500 or more SBS), weekly (for each portfolio that includes more than 50 but fewer than 500 SBS on a business day during any week), or quarterly (for each portfolio that includes no more than 50 SBS at any time during the calendar quarter). These proposed rules would further require each SBS Entity to establish, maintain and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all SBS in which its counterparty is not an SBS Entity, no less frequently than quarterly (for each portfolio that includes more than 100 SBS at any time during the calendar quarter) or annually (for each portfolio that includes no more than 100 SBS at any time during the calendar year).

- Standard 6 (Portfolio Compression): The SEC has proposed rules that would require each SBS Entity to establish, maintain and follow written policies and procedures regarding portfolio compression. For SBS portfolios with another SBS Entity, the proposed rules would require the policies and procedures to be reasonably designed to evaluate and, when appropriate, periodically engage in bilateral and multilateral

portfolio compression exercises and terminate each fully offsetting SBS with the SBS Entity counterparty in a timely fashion. For SBS portfolios with a counterparty that is not an SBS Entity, the proposed rules would require the policies and procedures to be reasonably designed to periodically terminate fully offsetting SBS and to engage in bilateral or multilateral portfolio compression exercises with the counterparty, when appropriate and to the extent requested by the counterparty.

- Standard 7 (Dispute Resolution): The SEC has proposed rules that address SBS Entities' resolution of disputes with their counterparties. For an SBS between SBS Entities, the proposed rules would require each SBS Entity to establish, maintain and follow written policies and procedures reasonably designed to resolve any valuation discrepancy as soon as possible, but in any event within five business days after identification of the discrepancy. The proposed rules also would require each SBS Entity to resolve immediately any discrepancy in a material term of an SBS with another SBS Entity. For an SBS between an SBS Entity and a counterparty that is not an SBS Entity, the proposed rules would require the SBS Entity to establish, maintain and follow written procedures reasonably designed to resolve any discrepancies in the valuation or material terms of an SBS. The proposed rules would not apply to valuation discrepancies of less than 10% of the higher valuation. Each SBS Entity would be required to notify the SEC and any applicable prudential regulator promptly of any SBS valuation dispute in excess of $20 million, at either the transaction or portfolio level, if not resolved within three business days (if the dispute is with a counterparty that is an SBS Entity) or five business days (if the dispute is with a counterparty that is not an SBS Entity).

- Standard 8 (Implementation): The rules described above under Standard 3 will apply to SBS Entities as of the registration compliance date applicable to SBS Entities. The comment period for the proposed rules described above under Standards 2, 4, 5, 6 and 7 expired on April 16, 2019, and the SEC is considering comments on those proposals.

- Standard 9 (Cross-Border Transactions): The SEC has adopted a substituted compliance regime for the rules described above under Standard 3. Similarly, the SEC has proposed a substituted compliance regime for the proposed rules described above under Standards 2, 4, 5, 6 and 7. If granted, substituted compliance would allow an SBS Entity that is not a U.S. person to comply with specified foreign requirements to satisfy corresponding requirements in SEC rules and related statutes.

16. Are OTC derivatives contracts required to be reported to TRs?
[This is a new question for the 2020 FSAP]

Yes. Regulation SBSR[255] requires each SBS (including life cycle events, and any adjustments due to life cycle events) to be reported to an SEC-registered security-based swap data repository. This regulation will come into force after both: (i) security-based swap dealers and major security-based swap participants are required to begin registering with the SEC,

[255] See Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf.

and (ii) at least one security-based swap data repository that can accept reports in the relevant asset class registers with the SEC. Compliance with Regulation SBSR is not yet required.

17. Are transaction-level data on OTC derivatives required to be reported to TRs, including at least transaction economics, counterparty information, underlier information, operational data and event data?
[This is a new question for the 2020 FSAP]

Yes. Regulation SBSR[256] requires each SBS transaction report to an SEC-registered security-based swap data repository to include the following information:

1. A unique product identifier, if available, or alternative product identifying information;
2. Date and time, to the second, of execution;
3. Price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any up-front payments;
4. Notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed;
5. If both sides of the SBS include an SEC-registered security-based swap dealer, an indication to that effect;
6. Whether the direct counterparties intend that the SBS will be submitted for central clearing. If yes, the name of the clearing agency. If no, whether the direct counterparties have invoked an end-user exception to mandatory central clearing, as well as a description of the settlement terms, including whether the SBS is cash-settled or physically settled, and the method for determining the settlement value;
7. If applicable, any flags pertaining to the transaction that are specified in the policies and procedures of the security-based swap data repository to which the transaction will be reported;
8. Unique identifiers for each counterparty or execution agent for the counterparty, as applicable;
9. Unique identifiers for the branch, broker, execution agent, trader and trading desk of the direct counterparty on the reporting side, as applicable;
10. If not provided as part of the unique product identifier, terms of any fixed or floating rate payments, or otherwise customized or non-standard payment streams, including the frequency and contingencies of such payments;

256 Id.

11. For non-centrally cleared transactions and transactions that will not be allocated after execution, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the SBS;

12. Any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction; and

13. Unique identifiers of the trading platform on which the SBS was executed and of the reporting broker, as applicable.

If the SBS arises from the allocation, termination, novation or assignment of one or more existing SBS, the unique transaction identifier(s) of the allocated, terminated, novated or assigned SBS(s) must be reported, except for clearing transactions that result from the netting or compression of other clearing transactions. Compliance with Regulation SBSR is not yet required.

18.	Does the market authority have sufficient and timely access to relevant data in order to carry out its respective mandate related to OTC derivatives? [This is a new question for the 2020 FSAP]

Yes. To be registered, and maintain registration, as a SBSDR, a SBSDR must provide direct electronic access to the SEC (or any designee of the SEC, including another registered entity).[257]

19.	Do reporting entities and counterparties have appropriate access to their own data stored with TRs? [This is a new question for the 2020 FSAP]

Yes. The SEC has a robust regulatory regime governing SBSDRs that addresses various factors involving access, privacy, operational integrity, and data accuracy and completeness. Transaction data is not yet required to be reported to SBSDRs as compliance with Regulation SBSR is not yet required.

Section 763(i) of the Dodd-Frank Act added Section 13(n) to the Exchange Act, which requires a SBSDR to register with the SEC and provides that, to be registered and maintain registration as a SBSDR, a SBSDR must comply with certain requirements and "core principles" described in Section 13(n) and any requirement that the SEC may impose by rule or regulation.[258] In 2015, the SEC adopted Exchange Act Rules 13n-1 through 13n-12 ("SDR rules"), which require a SBSDR to register with the SEC and comply with certain "duties and core principles."[259]

257 See Exchange Act Rule 13n-4(b)(5).

258 See Exchange Act Section 13(n), 15 U.S.C. 78m(n).

259 See Security-Based Swap Data Repository Registration, Duties, and Core Principles, Release No. 34-74246 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74246.pdf.

Among other requirements, the SDR rules require a SBSDR to collect and maintain accurate SBS data and make such data available to the SEC and other authorities so that relevant authorities will be better able to monitor the buildup and concentration of risk exposure in the SBS market. Concurrent with the SEC's adoption of the SDR rules in 2015, the SEC adopted Regulation SBSR,[260] which, among other things, provides for the reporting of SBS information to registered SBSDRs, and the public dissemination of SBS transaction, volume, and pricing information by registered SBSDRs. In addition, Regulation SBSR requires each registered SBSDR to register with the SEC as a securities information processor (SIP).

To be registered with the SEC as a SBSDR and maintain such registration, a SBSDR is required (absent an exemption) to comply with the requirements and core principles described in Exchange Act Section 13(n), as well as with any requirements that the SEC adopts by rule or regulation.[261] The SEC will consider the information reflected by the SBSDR applicant on its Form SDR, as well as any additional information obtained from the SBSDR applicant. Form SDR requires an applicant to provide information regarding, among other things, access to its services and data, including instances in which the applicant has prohibited or limited any person with respect to access to services offered or data maintained by the applicant; any specifications, qualifications, or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any SBSDR or SIP services offered or data maintained by the SBSDR applicant; any specifications, qualifications, or other criteria required of persons who supply SBS information to the SBSDR applicant for collection, maintenance, processing, preparing for distribution, and publication by the SBSDR applicant or of persons who seek to connect to or link with the SBSDR applicant; and the SBSDR applicant's policies and procedures to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the SBSDR applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.[262] The information regarding access to services and data will assist the SEC in determining, among other things, whether an SBSDR can comply with Rule 13n–4(c)(1), which relates to the core principle for market access to services and data. With respect to Item 33 of Form SDR (requiring an SDR to provide information regarding access to services and data, including any denials of such access), the SEC noted that due to an SBSDR's role as a central recordkeeping facility for SBSs, upon which the SEC and the public will rely for market-wide SBS data, the SEC should be informed of persons who have been granted access to an SBSDR's services and data, as well as instances in which an SBSDR prohibits or limits access to its services.[263]

260 See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf.

261 See Exchange Act Section 13(n)(3), 15 U.S.C. 78m(n)(3).

262 See Form SDR, Item 33, available at https://www.sec.gov/files/formsdr.pdf (as part of its SEC registration application materials, any changes to Form SDR must also be filed with the SEC during and after the registration phase).

263 See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf.

As Regulation SBSR Rule 909 requires a registered SBSDR to also register as a SIP, Exchange Act Section 11A(b)(5) would govern denials of access to all SDRs' services.[264]

Overall, this, and other information reflected on the Form SDR, will assist the SEC in understanding the basis for registration as well as the SBSDR applicant's track record in providing access to its services and data, technological reliability, and policies and procedures to comply with its statutory and regulatory obligations. Furthermore, the information requested in Form SDR will enable the SEC to assess whether the SBSDR applicant would be able to comply with the federal securities laws and the rules and regulations thereunder, and ultimately whether to grant or deny an application for registration.[265] With regard to appropriate access to data maintained in SBSDRs by reporting entities and counterparties, an SBSDR must implement several safeguards regarding access to data stored in the SBSDR. The relevant rule requirements are as follows:

(i) an SBSDR, with respect to those systems that support or are integrally related to the performance of its activities, must establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its systems provide adequate levels of capacity, integrity, resiliency, availability, and security[266];

(ii) an SBSDR must establish, monitor on an ongoing basis, and enforce clearly stated objective criteria that would permit fair, open, and not unreasonably discriminatory access to services offered and data maintained by the SBSDR as well as fair, open, and not unreasonably discriminatory participation by market participants, market infrastructures, venues from which data can be submitted to the SBSDR, and third party service providers that seek to connect to or link with the SBSDR[267];

(iii) an SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to review any prohibition or limitation of any person with respect to access to services offered, directly or indirectly, or data maintained by the SBSDR and to grant such person access to such services or data if such person has been discriminated against unfairly[268];

264 See id.; see also Exchange Act Section 11A(b)(5)(A)-(B), 15 U.S.C. 78k–1(b)(5) (A registered SIP must promptly file notice with the SEC if it, directly or indirectly, prohibits or limits any person in respect of access to its services, which may be subject to review by the SEC. If the SEC finds that (a) such limitation or prohibition is not consistent with Exchange Act Section 11A and the rules and regulations thereunder and that such person has been discriminated against unfairly or (b) the prohibition or limitation imposes any burden on competition not necessary or appropriate, it may set aside the prohibition or limitation and require the SIP to permit such person access to its services.).

265 Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information, Release No. 34-74244 (Feb. 11, 2015), available at https://www.sec.gov/rules/final/2015/34-74244.pdf.

266 See Exchange Act Rule 13n-6.

267 See Exchange Act Rule 13n-4(c)(1)(iii).

268 See Exchange Act Rule 13n-4(c)(1)(iv).

(iv) an SBSDR must confirm with both counterparties to the SBS the accuracy of the data that is submitted to it[269];

(v) an SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to satisfy itself that the transaction data that has been submitted to the SBSDR is complete and accurate[270];

(vi) an SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to calculate positions for all persons with open SBSs for which the SBSDR maintains records[271];

(vii) an SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to ensure that the transaction data and positions that it maintains are complete and accurate[272];

(viii) an SBSDR must establish procedures and provide facilities reasonably designed to effectively resolve disputes over the accuracy of the transaction data and positions that are recorded in the SBSDR[273]; and

(ix) an SBSDR must establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy of any and all SBS transaction information that the SBSDR receives from a security-based swap dealer, counterparty, or any registered entity.[274]

269 See Exchange Act Rule 13n-4(b).

270 See Exchange Act Rule 13n-5(b)(1)(iii).

271 See Exchange Act Rule 13n-5(b)(2).

272 See Exchange Act Rule 13n-5(b)(3).

273 See Exchange Act Rule 13n-5(b)(6).

274 See Exchange Act Rule 13n-9(b)(1).

IV. FREQUENTLY USED ABBREVIATIONS

Applicable Federal Statutes

Abbreviation	Complete Name
Advisers Act	Investment Advisers Act of 1940
APA	Administrative Procedure Act of 1946
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010
Exchange Act	Securities Exchange Act of 1934
FAST Act	Fixing America's Surface Transportation Act of 2015
FCPA	Foreign Corrupt Practices Act of 1977
FOIA	Freedom of Information Act of 1966
GLBA	Gramm-Leach-Bliley Act of 1999
Investment Company Act	Investment Company Act of 1940
JOBS Act	Jumpstart Our Business Startups Act of 2012
RFA	Regulatory Flexibility Act of 1980
SOX or Sarbanes-Oxley Act	Sarbanes-Oxley Act of 2002
Securities Act	Securities Act of 1933
SIPA	Securities Investor Protection Act of 1970
Trust Indenture Act	Trust Indenture Act of 1939

SEC Divisions, Offices and Analytical Tools

Abbreviation	Complete Name
CF	Division of Corporation Finance
➢ OCMT	Office of Capital Markets Trends
➢ ORS	Office of Risk and Strategy
DERA	Division of Economic and Risk Analysis
➢ ORA	Office of Risk Assessment
➢ BDRA	Broker-Dealer Risk Assessment Model
➢ CIRA	Corporate Issuer Risk Assessment Program
ENF or Enforcement	Division of Enforcement
➢ CRQA	Center for Risk and Quantitative Analytics
IM	Division of Investment Management
➢ MAGIC	Monitoring and Analytics Graphical User Interface
➢ REO/Analytics Office	Risk and Examinations Office – renamed the Analytics Office
OCIE	Office of Compliance, Inspections and Examinations
➢ ORS	Office of Risk and Strategy
➢ LFM	Office of Large Firm Monitoring
➢ QAU	Quantitative Analytics Unit
➢ RAS	Office of Risk Assessment and Surveillance
➢ RAE	Risk Analysis Examination Team
➢ TCP	Technology Control Program
OCR	Office of Credit Ratings
OIEA	Office of Investor Education and Advocacy
OGC	Office of the General Counsel
TM	Division of Trading and Markets
➢ OAR	Office of Analytics and Research
➢ OMS	Office of Market Supervision
➢ ORS	Office of Risk Supervision
➢ MIDAS	Market Information Data and Analytics System

SEC Forms

Abbreviation	Complete Name
Form ADV	Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers
Form ATS-N	Regulation of NMS Stock Alternative Trading Systems
Form CRS	Form CRS Relationship Summary
Form N-CEN	Annual Report for Registered Investment Companies
Form N-LIQUID	Current Report, Open-End Management Investment Company Liquidity
Form N-MFP	Monthly Schedule of Portfolio Holdings of Money Market Funds
Form N-PORT	Monthly Portfolio Investments Report
Form PF	Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors
Form SBSE	Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants
Form SBSE-A	Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered or Registering with the Commodity Futures Trading Commission as a Swap Dealer or Major Swap Participant
Form SBSE-BD	Application for Registration of Security-based Swap Dealers and Major Security-based Swap Participants that are Registered Broker-dealers
Form SDR	Application or Amendment to Application for Registration or Withdrawal from Registration As Security-based Swap Data Repository Under the Securities Exchange Act of 1934

Other Acronyms

Abbreviation	Complete Name
ALJ	Administrative Law Judge
AML	Anti-Money Laundering
ANC	Alternative Net Capital
ANC Broker-Dealer	Alternative Net Capital Broker-Dealer
ATS	Alternative Trading System
CAT	Consolidated Audit Trail
CBOE	Chicago Board Options Exchange
CCO	Chief Compliance Officer
CCP	Central Counterparty
CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
CIS	Collective Investment Scheme
CPMI	Committee on Payments and Market Infrastructures
CRA	Credit Rating Agency
CSD	Central Securities Depository
DOJ	Department of Justice
ECN	Electronic Communications Network
EDGAR	Electronic Data Gathering, Analysis, and Retrieval system
EEA	European Economic Area
ETF	Exchange-Traded Fund
FASB	Financial Accounting Standards Board
FBI	Federal Bureau of Investigation
FDIC	Federal Deposit Insurance Corporation
Federal Reserve	Board of Governors of the Federal Reserve
FHFA	Federal Housing Finance Agency
FINRA	Financial Industry Regulatory Authority
FY	Fiscal Year

FMU	Financial Market Utility
FSB	Financial Stability Board
FSOC	Financial Stability Oversight Council
ICO	Initial Coin Offering
IFRS	International Financial Reporting Standards
IOSCO	International Organization of Securities Commissions
IOSCO AA	IOSCO Administrative Arrangement
IRS	Internal Revenue Service
IT	Information Technology
LLC	Limited Liability Company
LULD	Limit-Up Limit-Down
MIDAS	Market Information Data and Analytics System
MMF	Money Market Fund
MOU	Memorandum of Understanding
MSRB	Municipal Securities Rulemaking Board
MSBSP	Major Security-Based Swap Participant
NASDAQ	National Association of Securities Dealers Automated Quotations
NAV	Net Asset Value
NCUA	National Credit Union Administration
NEP	National Examination Program
NMS	National Market System
NRSRO	Nationally Recognized Statistical Rating Organization
NYSE	New York Stock Exchange
OCC	Office of the Comptroller of the Currency
OFR	Office of Financial Research
OMB	Office of Management and Budget
OTC	Over-the-Counter
PCAOB	Public Company Accounting Oversight Board
PFMI.	Principles for Financial Market Infrastructures
PII	Personally Identifying Information

RSA	Regulatory Service Agreement
SAI	Statement of Additional Information
SALI	SEC Action Lookup for Individuals
SAR	Suspicious Activity Report
SBS	Security-Based Swaps
SBSD	Security-Based Swap Dealer
SBS Entities	SBSDs and MSBSPs, collectively
SB SEF	Security-Based Swap Execution Facility
SCI	Systems Compliance and Integrity
SDR	Swap Data Repository
SEC	Securities and Exchange Commission
SIPC	Securities Investor Protection Corporation
SIP	Securities Information Processor
SRO	Self-Regulatory Organization
TCP	Technology Control Program
TCR	Tip, Complaint, or Referral
Treasury	U.S. Department of the Treasury
UIT	Unit Investment Trust
VaR	Value-at-Risk

Select Rules and Regulations

Abbreviation	Complete Name
Regulation A	Exemption from Registration for Public Offerings
Regulation ATS	Regulation of NMS Stock Alternative Trading Systems
Regulation Best Interest	Regulation Best Interest - The Broker-Dealer Standard of Conduct
Regulation NMS	Regulation National Market System
Regulation SBSR	Reporting and Dissemination of Security-Based Swap Information
Regulation SCI	Regulation Systems Compliance and Integrity
Regulation SHO	Regulation of Short Sales
Rule 2a-7	Money Market Fund Reform
Rule 6c-11	Exchange-Traded Funds
Rule 12d1-4	Funds of Funds Arrangements
Rule 15c3-5	Risk Management Controls for Brokers or Dealers with Market Access (Market Access Rule)
Rule 15Fb1-1 to 15Fb6-2	Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants (Security-Based Swap Entity Registration)
Rule 15Fi-1 to 15Fi-2	Trade Acknowledgment and Verification of Security-Based Swap Transactions
Rule 17Ad-22	Standards for Covered Clearing Agencies
Rule 22e-4	Open-End Fund/Investment Company Liquidity Risk Management Programs
Rule 139b	Covered Investment Fund Research Reports
Rule 147 and 147A	Exemptions to Facilitate Intrastate and Regional Securities Offerings