

SEC's Proposed Custody Rule Changes And What They Mean

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Article provides an in-depth look at the Securities and Exchange Commission's (SEC) recent proposed changes to Rule 206(4)-2, also known as the Custody Rule, under the Investment Advisers Act of 1940 (Advisers Act). The proposed amendments redesignate the Custody Rule as new Rule 223-1 under the Advisers Act (the Safeguarding Rule) and seeks to address and enhance "how investment advisers safeguard client assets ... [in light of] changes in technology, advisory services, and custodial practices."

The Safeguarding Rule represents a potentially fundamental shift in how, and the extent to which, investment advisers select and transact in certain types of client assets. This article examines solely the following key proposed changes and discusses related practical considerations for investment advisers who are registered or otherwise required to register under the Advisers Act and other relevant market participants:

- expanding the scope of the Custody Rule beyond "funds and securities" to include "other positions held in the client's account;"
- revising and expanding the definition of "custody" to include discretionary authority;
- including new requirements governing the relationship between advisers and qualified custodians; and
- modifying the privately offered securities exception to limit the exception's availability to only those situations that are "truly warranted."

["SEC's Proposed Custody Rule Changes And What They Mean,"](#) *Law360*, March 20, 2023

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