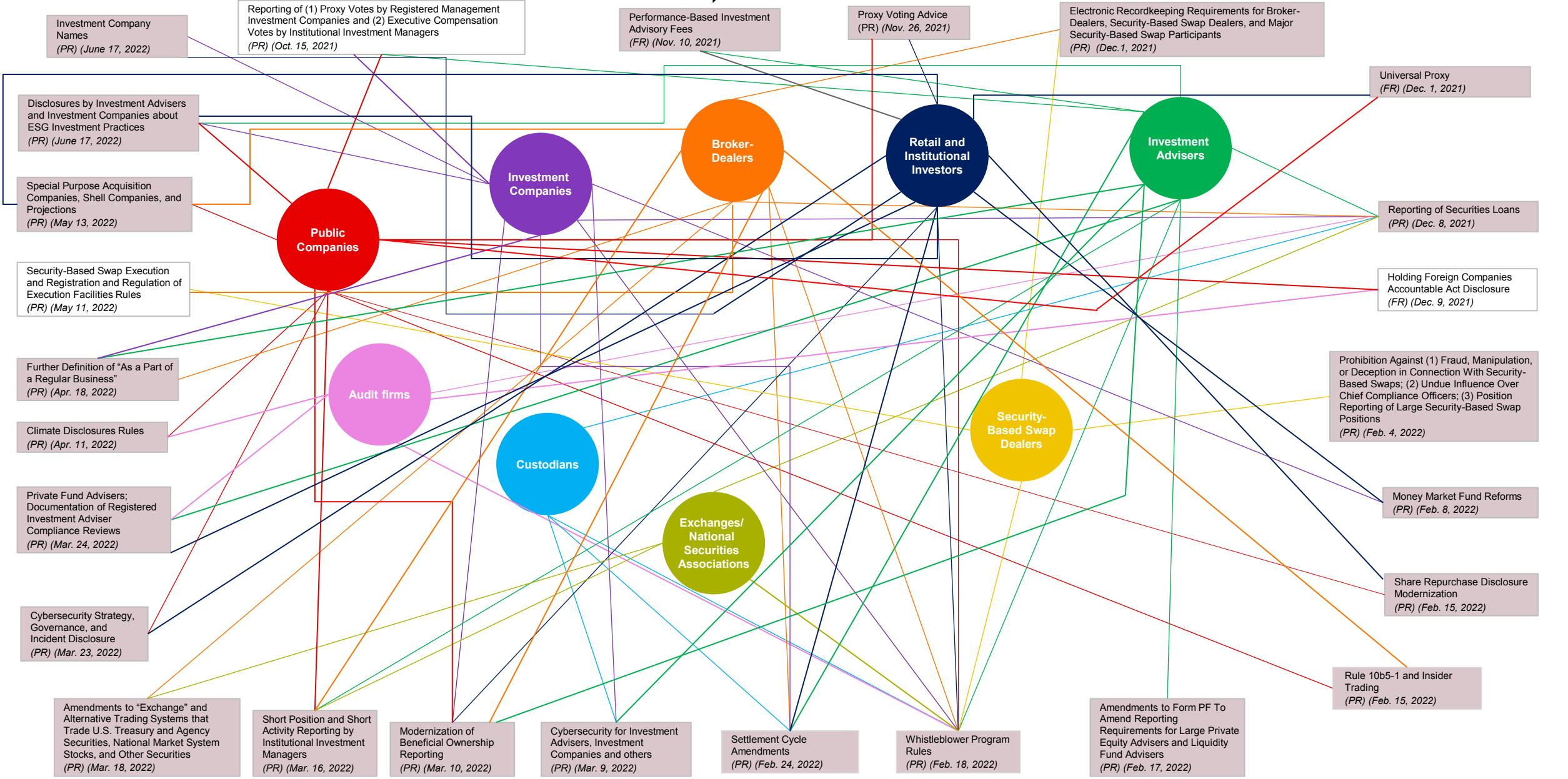


# Regulatory Incidence of SEC Proposed & Final Rulemakings (Gensler Chairmanship, April 17, 2021 through July 10, 2022)

*Substantive rulemaking activity presented clockwise in chronological order*

Rule not mandated by statute



## The Unprecedented Incidence of SEC Proposed and Final Rulemakings

July 15, 2022

The Committee on Capital Markets Regulation (the “**Committee**”) today released its first in a series of visual diagrams designed to track the unprecedented scale and complexity of recent rulemaking activity by the U.S. Securities & Exchange Commission (the “**SEC**”).

The Committee’s “**Rulemaking Incidence Diagram**” depicts proposed and final SEC rulemaking actions taken under SEC Chairman Gary Gensler, as well as the market participants affected by each rulemaking, including public companies, audit firms, investment companies, broker-dealers, investment advisers, security-based swap dealers, exchanges, custodians, and retail and institutional investors. The Committee’s next release will map the tangled interrelationships between the new requirements, such as how proposed reforms to the settlement cycle would affect proposed reforms to securities lending and *vice versa*.

The Rulemaking Incidence Diagram represents the overall impact on U.S. capital markets from the SEC’s recent rulemaking agenda, showing that the SEC has proposed or finalized 26 substantive rulemakings over the compressed timeframe of the approximately 15 months following Chairman Gensler’s confirmation on April 27, 2021 through July 10, 2022. Of these rulemakings, 23 were not required by congressional statute, meaning that the overwhelming majority of the SEC’s rulemaking agenda has been voluntarily undertaken. Moreover, the SEC’s most recently published Regulatory Flexibility Agenda sets forth an ambitious slate of new additional proposed rulemaking activity to come, including rules on pay versus performance, corporate board diversity, disclosure of payments by resource extraction issuers, human capital management disclosure, universal proxy access, equity market structure modernization, and a host of other substantive areas.

The Rulemaking Incidence Diagram demonstrates the impact of the SEC’s rulemaking agenda on each type of market participant. For example, 11 new rulemakings apply to public companies and 10 apply to investment companies. The diagram further shows that a single rulemaking typically affects multiple market participants. For example, settlement cycle amendments result in new or modified obligations for, at a minimum, broker-dealers, custodians, investment companies, investment advisers, and retail and institutional investors.

The Committee has also compared the overall incidence of rulemaking under Chairman Gensler to the rulemaking agenda over the comparable time period for each of the past three chairmanships, including those of Mary L. Schapiro, Mary Jo White, and Walter “Jay” Clayton. As set forth in **Table 1**, this recent SEC rulemaking activity outstrips the comparable periods of prior administrations. Gensler has thus far overseen the issuance of 23 substantive notices of proposed rulemaking. By contrast, over the comparable periods of their terms, Schapiro, White, and Clayton issued 12, 8, and 8 substantive notices of proposed rulemaking, respectively.

The SEC’s recent rulemaking activity exceeds Schapiro’s rulemaking activity despite the fact that she was sworn into office in January 2009, immediately after the 2008 financial crisis and many of her regulatory actions were in direct response to the ongoing crisis. Similarly, Gensler’s

rulemaking activity exceeds that of White, although White was statutorily tasked with implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the Jumpstart Our Business Startups Act of 2012.

**Table 1**  
**Substantive Proposed and Final Rulemakings by Recent SEC Chairs**  
**(first 450 days of term)**

<b>SEC Chair</b>	<b>Covered Dates</b>	<b>Proposed Rules</b>	<b>Final Rules</b>	<b>Total Substantive Rulemakings</b>	<b>Number of Statutorily Mandated Rules</b>
Gensler	April 17, 2021 to July 10, 2022	23	3	26	3 (12%)
Clayton	May 4, 2017 to July 27, 2018	8	3	11	1 (9.1%)
White	April 10, 2013 to July 3, 2014	8	9	17	13 (77%)
Schapiro	January 27, 2009 to April 21, 2010	12	11	23	3 (13%)

Hal S. Scott, President of the Committee and Emeritus Nomura Professor of International Financial Systems at Harvard Law School, commented: “Owing to the scale and furious pace of the SEC’s rulemaking agenda, there is a substantial risk that the SEC has not fully considered the overall impact of these reforms on U.S. capital markets and specific types of market participants. The SEC should significantly slow its pace and allow substantial time to process the myriad and diverse comments it is receiving on these proposals. There is no crisis in our capital markets requiring this unprecedented scale of change.”