

# What the SEC's New Strategic Plan Means for the Financial Industry and Investors

## Corporate News: A Legal Update

By Daniel Spungen on September 7, 2022

On August 24, the Securities and Exchange Commission (SEC) released a draft of its strategic plan for 2022 – 2026, outlining its key initiatives for the next four years.

The SEC's mission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Its strategic plan is intended to further that mission by laying out goals that will guide its policy and decision making.

The SEC identified the following goals for 2022 – 2026:

- Protect working families against fraud, manipulation, and misconduct;
- Develop and implement a robust regulatory framework that keeps pace with evolving markets, business models, and technologies; and
- Support a skilled workforce that is diverse, equitable, inclusive, and is fully equipped to advance agency objectives.

### Investor Protection

The SEC is focused on protecting working families by protecting the retail investor. This area of focus is not a surprise, as the “rise of the retail investor” has been frequently discussed over the past year. The SEC is taking the position that this group is most in need of additional protection.

The SEC plans on using a more modern, analytical approach to protecting investors by upgrading its technological capabilities. Throughout the strategic plan, the SEC emphasizes the need to enhance its technological resources so that it can be proactive in its regulatory approach.

In addition, the SEC wants to modernize the design, delivery, and content of disclosures so investors can easily access and comprehend disclosures by issuers. This can be extremely beneficial for investors, but would likely require some heavy lifting by issuers to adopt new disclosures.

Finally, the SEC specifically mentions protecting against “failures to act in retail customers’ best interests when making a recommendation”. This language tracks Regulation Best Interest (Reg BI), which became effective on September 10, 2019 and established a “best interest” standard of conduct for broker-dealers when making a recommendation to retail customers. It is expected that the SEC will focus on enforcing Reg BI over the next four years, now that broker-dealers have had adequate time to adjust their practices.

### Regulatory Framework

The SEC is aware of the role technology has played in evolving capital markets. Technology and evolving markets have helped move more assets into private markets, foreign markets, and new financial instruments. By developing and implementing regulatory frameworks to cover evolving markets, the SEC hopes to increase transparency and protection in these markets.

The movement into private markets is not new. The increased availability of offering exemptions and rising income means that more money can be raised through different offering mechanisms from a larger pool of accredited investors. The private markets should continue to grow, and with that comes increased review from the SEC.

The mention of globalization of financial markets and new technologies is likely related to the regulation of crypto assets. Chairman Gensler has stated in the past that bitcoin is a commodity which would not be under the SEC’s jurisdiction. Other crypto assets, however, “have the key attributes of a security” according to Chairman Gensler. For proponents of crypto assets, it should be viewed as a positive that the SEC is looking to develop a regulatory framework to account for the new products and not try to fit these new products into already existent regulatory frameworks.

### SEC Workforce

The SEC aims to develop a workforce with the right mix of skills, experience, and expertise to further its mission. In order to get to that point, it will emphasize, diversity, equity, and inclusion in its hiring and retention process. Bringing together staff with diverse backgrounds will lead to a more collaborative environment and new ideas.

### Key Takeaways

- Disclosure documents across the board may need to be reviewed and changed to serve as more useful documents for investors.
- Reg BI and the “best interests” standard for broker-dealers will be an area of focus.
- The SEC may take a more proactive approach in private markets.

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- Crypto assets and new technologies will be scrutinized, and regulatory frameworks may be developed to handle new financial products.
- Modernization of the SEC's technology will likely be a priority in the next 4 years.

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