

Corporate & Financial Weekly Digest

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SEC Proposes New Marketing Rules for Target Date Retirement Funds

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The Securities and Exchange Commission has proposed amendments to multiple rules under the Securities Act of 1933 and the Investment Company Act of 1940 regarding the marketing of target date retirement funds. In general, a target date retirement fund is a fund designed to hold a diversified portfolio of assets that is automatically rebalanced among asset classes over time without the need for the investor to rebalance the assets.

Since their inception during the 1990s, target date retirement funds have exploded in popularity and are frequently an investment option offered under 401(k) retirement plans. This increased popularity, combined with market losses in 2008, has caused federal regulatory agencies to examine target date retirement funds more closely. For example, the Department of Labor and the SEC held a joint hearing in June 2009 regarding target date retirement funds. As part of its scrutiny, the SEC identified concerns with how such funds are marketed to investors and learned that investors often misunderstand how such funds operate. Consequently, the SEC has proposed rule changes to help alleviate misunderstandings and prevent misleading marketing materials.

If adopted, the proposed rule changes would generally:

- A. require a target date retirement fund to disclose what the fund's asset allocation will be on its target date immediately adjacent to the first use of the fund's name in marketing materials;
- B. require marketing materials for a target date retirement fund to include a table, chart or graph depicting the fund's asset allocation over time (in five-year increments), preceded by a statement explaining such table, chart or graph;
- C. require marketing materials that place a "more than insubstantial focus" on a target date retirement fund to include statements that advise an investor (1) to consider other factors besides the investor's age or retirement date when selecting a target date retirement fund (e.g., risk tolerance and personal circumstances), (2) that target date retirement funds do not guarantee an investment (i.e., the investor could incur losses), and (3) whether, and the extent to which, the fund managers can modify the intended asset allocations without shareholder approval; and

D. provide that a statement could be misleading (for purposes of rules prohibiting materially misleading sales literature) if it emphasizes a single factor (e.g., an investor's age or tax bracket) or represents that investing in the securities requires little or no monitoring by the investor. *Note: this change is not limited to target date retirement funds and would apply to all investment companies (e.g., mutual funds).*

The above rules will not be effective until the SEC adopts them, but it expects that, upon adoption, items A through C would be effective 90 days later, and item D would be effective immediately.

The proposed rules can be found [here](#).

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