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Safekeeping of Client Assets

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The Security and Exchange Commission (SEC) has been busier than ever with at least 53 proposed rules issued over the past two years and a lofty agenda ahead. Despite significant criticism from the industry and Congress, SEC Chair Gensler has continued to march through the rulemaking process, at times simultaneously proposing rules on complex topics with seemingly short, overlapping public comment periods. However, at least one of the SEC's recent proposals has been years in the making—12 years according to Chair Gensler's remarks at the SEC's February 15, 2023 open meeting. The SEC proposed a number of amendments to Rule 206(4)-2 (the custody rule) under the Investment Advisers Act of 1940, as amended (the Advisers Act) and proposed redesignating the custody rule as new rule 223-1 (the safeguarding rule or the proposed rule). The proposals are intended to recognize the evolution in products and services in the industry and to strengthen and clarify existing custody protections. Along with the proposed amendments to the existing custody rule provisions, the SEC proposed amendments to Form ADV and Rule 204-2 (the books and records rule) to improve its oversight and risk-assessment abilities.

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