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WELCOME

K&L Gates Asset Management and Investment Funds Conference

Boston | November 9, 2023

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AGENDA

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Global Discussion on the European Long-Term Investment Funds Regime

Moderator:

- Todd Gibson, Partner - K&L Gates

Speaker:

- Des Fullam, Chief Regulatory & Solutions Officer - Carne Group
- Gayle Bowen, Partner - K&L Gates

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Transformation: Opportunities in an Uncertain Future

Speaker:

- Michael Caccese, Chairman and Lead Practice Area Leader
  Asset Management and Investment Funds – K&L Gates

AGENDA

- A Turning Point
- Disruption
- Adaptation
- Opportunities
- Conclusion

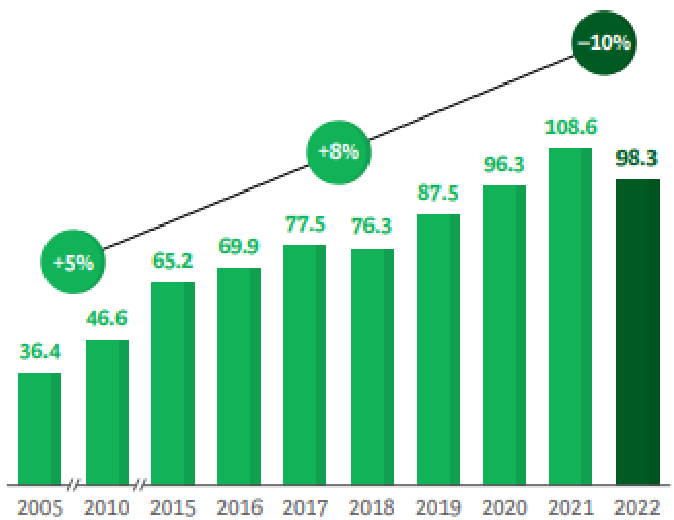
A TURNING POINT

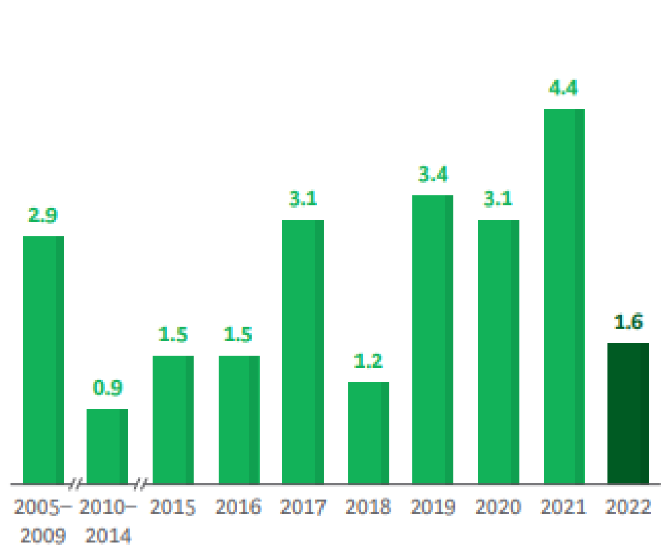
CATALYST FOR CHANGE

- Previous decade of unprecedented global equity growth established unprecedented industry growth in:
  - AUM
  - Products
  - Strategies
  - Participants
  - Regulatory Oversight
- The need for transformation:
  - Rising interest rates led to the second-largest single-year decrease in global AUM since 2005
  - Out performing the market is increasingly difficult
  - Fee compression combined with rising costs
  - Declining profits / increased expenses

GLOBAL AUM

In 2022, Global AUM Fell to 2020's Level by $10 trillion, and the Net Flow Rate was the Lowest Since 2018, below 3%





Sources: BCG's Global Asset Management Market Sizing, 2023; BCG's Global Asset Management Benchmarking Database, 2023.

Note: Market sizing was performed on assets sourced from each region and professionally managed in exchange for management fees. (See Appendix 2.) The market sizing included the captive AuM of insurance groups and pension funds that were delegated to asset management entities in exchange for fees paid. Globally, 44 markets were assessed (including offshore AuM, which was not covered in any region). For all countries where the currency is not the US dollar, the end-of-year 2022 exchange rate was applied to all years to synchronize current and historic data. Values differ from those in prior studies because of exchange rate fluctuations, a revised methodology, and changes in source data. Net flow analysis used a benchmarking study of 74 leading asset managers that represented $62 trillion in AuM, or about 63% of global AuM.

DISRUPTION AND ADAPTATION

DISRUPTION

- Market performance responsible for 90% of revenue growth since 2006
- Higher interest rates and market uncertainty exacerbated the challenges
    - Government liquidity has dried up

DISRUPTION

- Active regulatory regimes in all key financial markets
  - ESG, Private Funds, ELTIF (European Longterm Investment Funds), Cyber and Digital Assets, AI - all the regulators have been busy
- The registered funds landscape has changed due to a shift to passive funds, downward fee pressures and various technology and demographic shifts which have impacted investment products, distribution and consequently regulations*

*PWC Summer 2023

DISRUPTION

- Since 2010, average fees have declined by more than 15% **
    - Market performance offset fee pressure, but that is changing
    - Costs are rising (personnel, technology, AI, compliance, operations)
    - Firms will need to reduce their cost base by at least 20% to maintain historical levels of profitability.
        - Achieving profitable growth of 10% requires cutting costs by 20% and diversifying so that 30% of revenues comes from higher-margin products
- Passive assets and funds
    - In the US the share of net flows into passive ETFs and other passive products reached 90% market appreciation**
        - 2022 passive net inflow of $0.5 trillion; Active Managed Funds net out flow of $1.0 trillion
    - Globally it is different. In Asia and Europe they hold only 21% and 20%. This is due in Asia to active managers being better able to deliver better-than-average market returns. In Europe passive assets are expected to grow more quickly with regulatory changes as one factor* (e.g., eliminating inducement)

*PWC Summer 2023 ** Boston Consulting Group May 2023

DISRUPTION

- Accelerating Fee Compression
  - Price now is a likely element of investment decision
- Since 2010, average fees declined 15%+
  - Clients will pay for strong performance, but
  - Less than 50% of AUM generated from products with above market performance

DISRUPTION

- Fewer successful new products
  - 75% of Mutual Fund and ETF AUM came through funds with more than ten years of existence
  - Less than 40% of all funds launched in past ten years are still in existence

- **Declining profits**
  - 2022 net revenues declined by 11% v. 2021
    - North America ↓32%
    - Europe ↓13% (less decline in net revenues)

ADAPTATION

- Consolidation of funds and firms
  - Almost three quarters of asset managers are considering strategic consolidation with another asset manager*
  - The top ten traditional asset managers are taking control of half of all mutual fund AUM
- Diversification of products and geographic coverage
  - Alternatives
    - 50 Alternative Additions (acquisitions, mergers, lift outs, build internally) to Top 30 traditional asset managers since 2018
    - $20 trillion of AUM of total $98 trillion of total AUM in 2022
    - 50%+ of top global 2022 revenues
- For firms aiming to enter the alternatives market, there are four primary pathways:**
  - Build
  - Buy multiple firms and use an affiliate or boutique structure
  - Buy an alternatives firm and operate it independently
  - Establish partnerships

*PWC Summer 2023 ** Boston Consulting Group May 2023

ADAPTATION

- Shift to Private Markets: Alternatives boom
  - Private markets are the bright spot - $190b in revenue
    - Growth driven by private debt and private equity both estimated to grow by 9% and 10% over the next five years*
  - Retailization of Alternatives
    - Retail investment in alternatives increases profitability. The fees tend to be higher because retail investors lack the scale that allows institutional investors to pay steeply discounted fees (Vanguard, Fidelity, Schwab, Apollo, KKR Liquid Funds)
  - Room for growth
  - High fees
  - Locks up investors
  - Additional assets class allocation
  - Acquisition opportunities
  - Infinite flexibility in designing strategies and specialization

* Boston Consulting Group – May 2023

ADAPTATION

- What does ESG look like now:
  - Asset managers offering funds in more than one country are accustomed to adapting to different regulatory requirements
  - The challenges presented by the global regulation of ESG investing strategies is presenting a particularly arduous burden
  - Goal is universal: Ensuring that investors receive accurate information about what asset managers - and the funds they manage - are actually doing and that ESG characteristics of an investment product are not overstated
  - K&L Gates ESG Global Review

*PWC Summer 2023

OPPORTUNITIES

OPPORTUNITIES

Alternatives Create Significant Growth Opportunities for Traditional Asset Managers

$3T+	Alternative and private market AuM	**~90%**	Share of firms bringing private equity, real estate, and private debt products to market
15%–20%	Estimated five-year CAGR of alternative and private market AuM, on average	**~60%**	Share of firms bringing hedge fund strategies to market
8%–12%	Share of a firm's total AuM in alternative and private market products	**~50%**	Share of firms bringing liquid alternatives to market
50+	Number of acquisitions made to expand alternatives capabilities	**~30%**	Share of firms with fintech or other distribution partnerships

Sources: Company websites; investor presentations; investor transcripts; Preqin; Pensions & Investments; BCG analysis.

Note: All figures are based on a benchmarking exercise using a sample set of 30 traditional asset managers that have launched alternatives and private market offerings. Their AuM of more than $3 trillion includes alternative funds of funds and secondary fund assets.

Boston Consulting Group May 2023

INVESTMENT VEHICLES

- The worlds largest PE firms are pivoting away from buyouts into private credit and infrastructure and creating an alternative to traditional banks. (FT Sept 24 2023)
  - Private Equity
  - Infrastructure
  - Real Estate
  - Healthcare
  - Credit/Debt
    - Credit funds are the "fastest growing part of the alternative markets" Jose Feliciano, Clearlake Capital
  - Continuation funds and secondaries (creates liquidity)
    - 70% of mid-market sponsors launched continuation funds equivalent to 50% or more than the size of the flagship fund
    - The private equity secondaries market reached more than $100 billion last year
  - Interval / Tender Offer
  - BDC

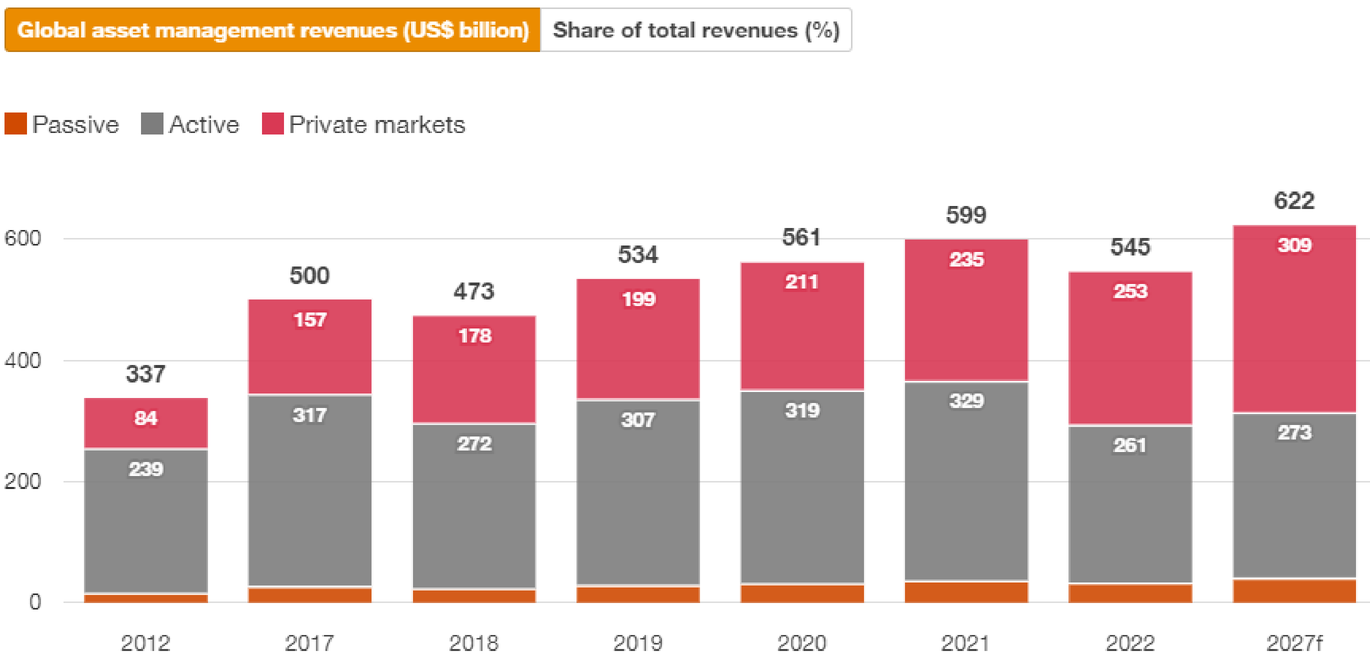
SOURCES OF CAPITAL

- Continued growth of retail investors including family offices
  - Global asset growth in the retail segment outpaced that of the institutional segment from 2012-2022* Regulatory reform and technology has democratized access to alternatives
  - Regulatory shifts such as the ELTIF along with the managed private equity funds, interval funds, non-traded REITs and others are opening up private markets to individual investors
  - The main customer base are HNW investors with investable assets of at least US$1 million. The dominance of the HNW segment is that their total assets to reach US$139.6 trillion by 2027*
- Technology has lowered costs which has increased access to retail investors
  - SMA (models)
  - Model indexing
  - Investment analysis tools
  - Tax harvesting
  - Robo advisers
  - Fractional shares

*PWC Summer 2023

A RESILIENT INDUSTRY

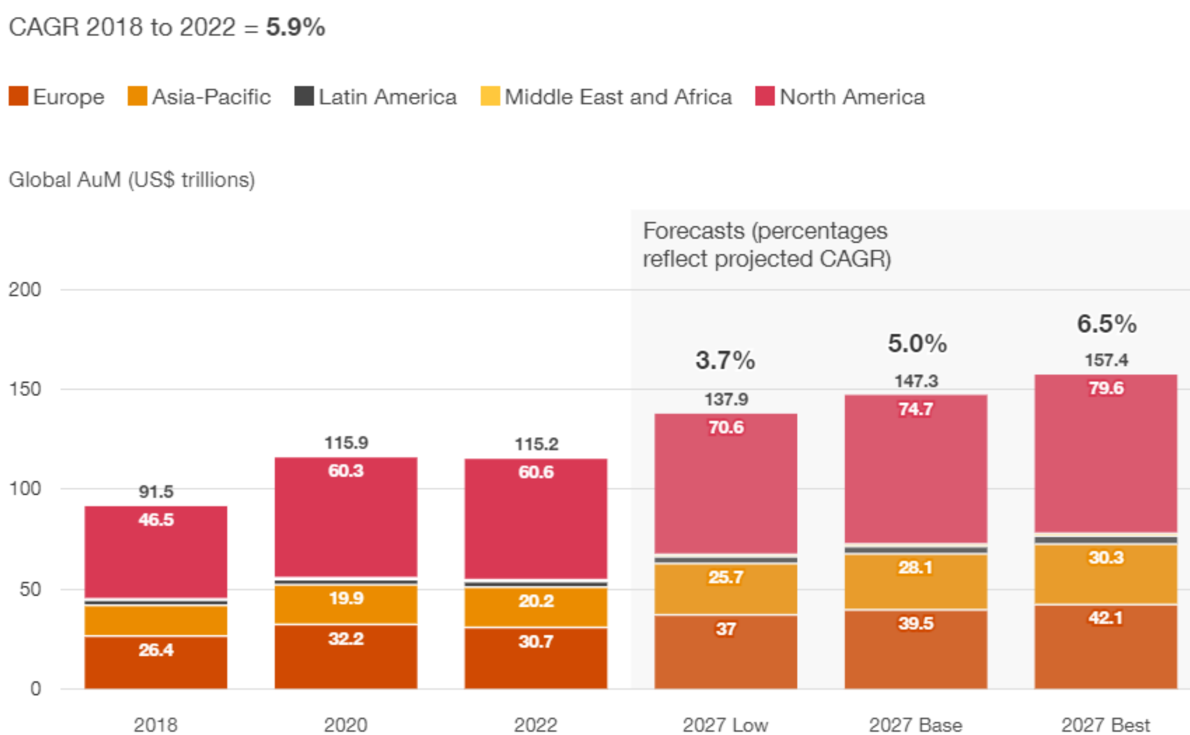
Global asset management revenues forecasted to top record highs by 2027



Note: Private markets revenue includes management fees and carried interest. Private markets excludes hedge funds.
Sources: PwC Global AWM & ESG Research Centre, Lipper, Preqin, Pitchbook

GLOBAL GROWTH

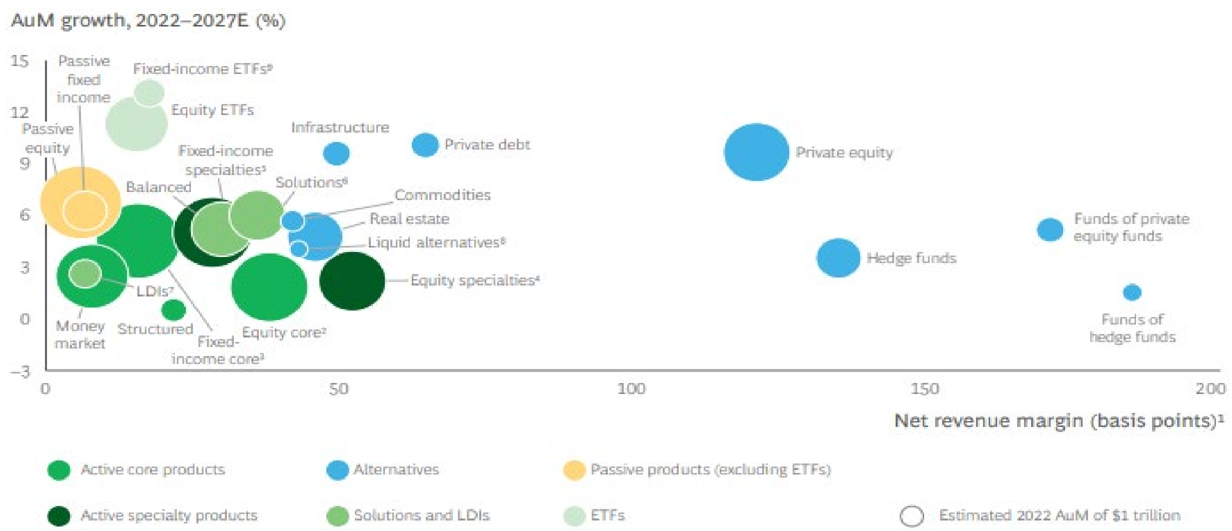
AUM growth rates in Asia-Pacific will be roughly 50% higher than North America by 2027



Sources: PwC Global AWM & ESG Research Centre, Refinitiv Lipper, Preqin

GROWTH OF ETFS AND ALTERNATIVES

ETFs and Select Alternative Products are Expected to Lead Growth Through 2027.



Sources: BCG's Global Asset Management Market Sizing Database, 2023; BCG's Global Asset Management Benchmarking Database, 2023; Institutional Shareholder Services Market Intelligence's Simfund; Pensions & Investments; Investment Company Institute; Preqin; HFR; INREV; BCG analysis.

[1]Management fees net of distribution costs.

[2]Includes actively managed developed-market large-cap equity products.

[3]Includes actively managed developed-market government and corporate debt.

[4]Includes global equities, emerging-market equities, developed-market small caps and midcaps, and themes.

[5]Includes emerging markets, high-yield, flexible, and inflation-linked products.

[6]Includes target-date funds, target maturity products, and outsourced chief investment officer.

[7]LDI = liability-driven Investment.

[8]Includes absolute return, long and short, market neutral, and trading-oriented mutual funds.

[9]EFT = exchange-traded fund.

CONCLUSION

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Turning Point

Uncertainty makes it hard to see the woods through the trees, but scarcities will create opportunities

Transformation

Next few years will require the industry to address significant change

Growth and Opportunity

Markets will recover:
Diversification
Private Funds: Alternatives
Digital transformation and AI

Worldwide, the amount of liquid assets for advisers to salivate over is expected to rise to $230trn by 2030, from $130trn today. Much of that will be fueled by younger customers and those in Asia.*

***The Economist*, October 7, 2023

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ESG Considerations for Funds and Advisers

Moderator:

- Cal Gilmartin, Partner, K&L Gates

Speakers:

- Wendy Cromwell, Vice Chair and Head of Sustainable Investment – Wellington Management
- Stephanie Henwood-Darts, Head of Commercial Development – JTC Group
- Lance Dial, Partner – K&L Gates

WHAT'S GOING ON?

- Proposed SEC ESG disclosure rules;
  - Public Issuers: Climate Risk
  - Mutual Funds and Advisers: Enhanced ESG disclosure
    - Integration Funds, ESG Focused Funds, Impact Funds
- SEC Enforcement:
  - BNY; Goldman Sachs; DWS
- The States!
  - Concern that state assets are being used to promote ESG goals instead of providing investment returns.

SEC PROPOSAL: ESG DISCLOSURE AND REPORTING FOR INVESTMENT ADVISERS

- The SEC's proposal would require investment advisers to include specific disclosures in their Form ADV, Part 2A regarding:
  - Their ESG strategy;
  - The criteria and methodology used to evaluate, select or exclude investments based on ESG factors;
  - Material relationships with any related person ESG consultants or other service providers; and
  - Proxy voting.
- Comparable disclosure and reporting requirements would apply in connection with separately managed accounts, private funds and wrap fee programs.

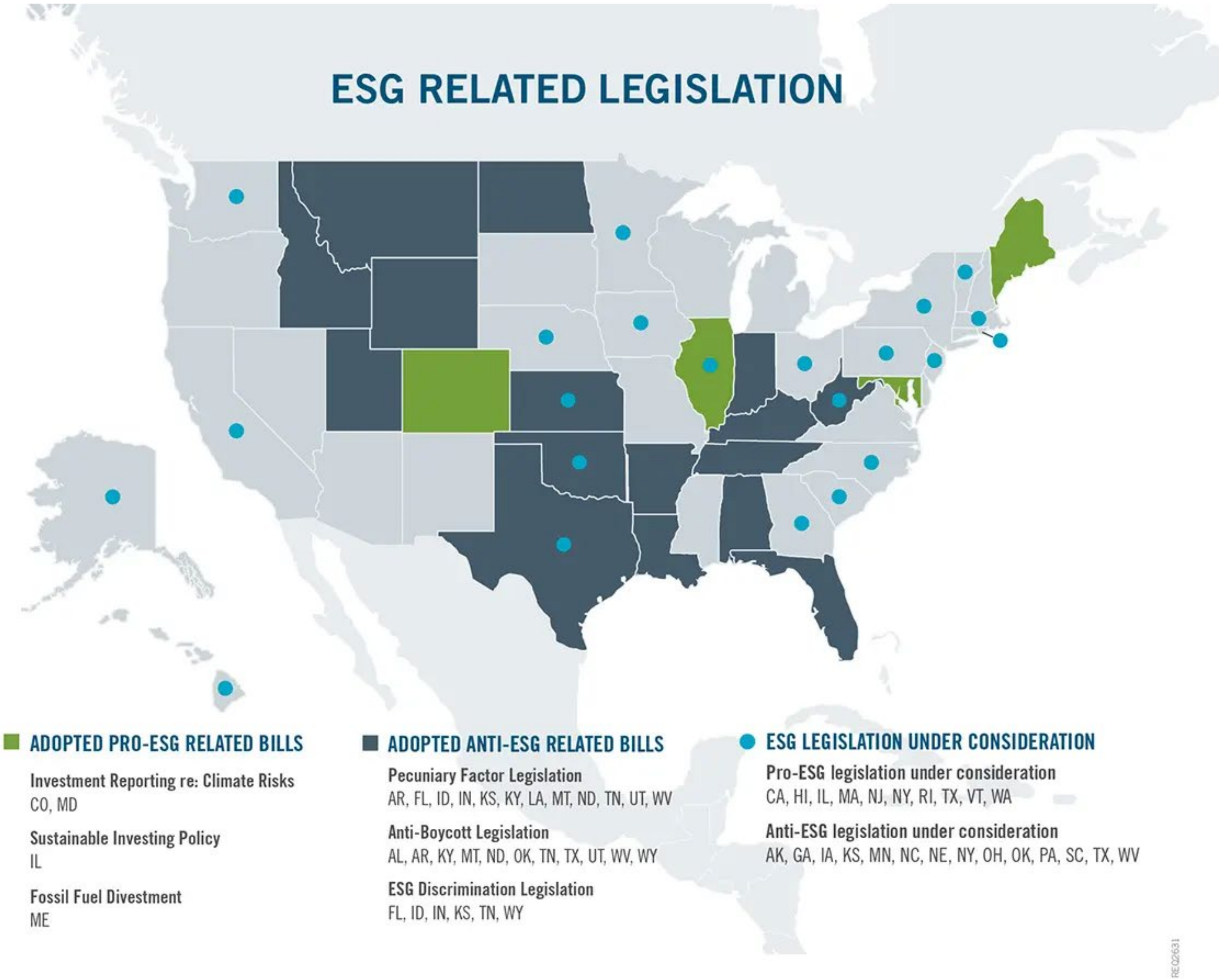
PROPOSED ESG REFORMS FOR FUNDS

- Proposed New ESG Taxonomy and Required Disclosures for funds

Type of Fund	Definition
Integration Funds	Funds that **"consider"** one or more ESG factors alongside non-ESG factors in their investment decision-making process, but where such ESG factors are not dispositive in the funds' investment decisions
ESG-Focused Funds	Funds that consider one or more ESG factors as significant or primary factors in selecting investments or in engagement with portfolio companies
Impact Funds	Subset of ESG-Focused Funds that seek to achieve one or more specific ESG impacts

- Funds would be subject to enhanced disclosure requirements for prospectuses and shareholder reports depending on the level of ESG focus

THE STATES!


ESG RELATED LEGISLATION
ADOPTED PRO-ESG RELATED BILLS
Investment Reporting re: Climate Risks
CO, MD
Sustainable Investing Policy
IL
Fossil Fuel Divestment
ME
ADOPTED ANTI-ESG RELATED BILLS
Pecuniary Factor Legislation
AR, FL, ID, IN, KS, KY, LA, MT, ND, TN, UT, WV
Anti-Boycott Legislation
AL, AR, KY, MT, ND, OK, TN, TX, UT, WV, WY
ESG Discrimination Legislation
FL, ID, IN, KS, TN, WY
ESG LEGISLATION UNDER CONSIDERATION
Pro-ESG legislation under consideration
CA, HI, IL, MA, NJ, NY, RI, TX, VT, WA
Anti-ESG legislation under consideration
AK, GA, IA, KS, MN, NC, NE, NY, OH, OK, PA, SC, TX, WV

THE STATES (AND NSMIA)

- 22 states have passed ESG-related legislation
  - 21 of those are "anti-ESG"
  - Generally relate to:
    - Who states can hire or
    - How state money must be managed
  - ESG regulation (MO and WY)
- State Executive Investigations / Inquiries
  - State AG Inquiry / State Treasurer Inquiry
  - Multi-State ESG examination (AL, KY, TN, MT and IN)
- SIFMA Lawsuit Against Missouri
  - NSMIA Issues

ESG ABROAD

- **European Union:** The Sustainable Finance Disclosure Regulation requires fund and asset managers to make certain prospectus, website and other disclosures regarding how sustainability is integrated.
- **United Kingdom:** The UK Financial Conduct Authority has set forth rules and guiding principles impacting asset managers that wish to make ESG-related claims.
- **Hong Kong:** The Hong Kong Securities and Futures Commission subjects funds that consider ESG or sustainability factors in their investment process to disclosure and reporting requirements.
- **Japan:** The Financial Services Agency of Japan requires asset managers to make certain disclosures and implement organization, operational and due diligence measures with respect to publicly offered ESG-focused investment trusts.
- **Others:** See K&L Gates Global ESG Survey

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Banking Through an AMIF Lens

Moderator:

- Grant Butler, Partner - K&L Gates

Speaker:

- Rob Seigal, Managing Director, Head of U.S. Bank Regulatory Legal - State Street Bank and Trust Company

Potential Government Shutdown

Speaker:

- Daniel Crowley, Partner - K&L Gates

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Current Developments in Private Funds

Moderator:

- Ken Holston, Partner - K&L Gates

Speakers:

- Kevin Prunty, Senior Managing Director - LongWater Opportunities
- Rick Lake, Founder - Narrative Alpha
- TJ Bright, Partner - K&L Gates

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Changing Regulatory Environment

Moderator:

- Mark Goshko, Partner - K&L Gates

Speakers:

- Christopher “Kit” Sechler, Chief Legal Officer - John Hancock Funds
- Charles Fievet, Assistant General Counsel - Loomis, Sayles & Company
- Pamela Grossetti, Partner - K&L Gates
- Clair Pagnano, Partner – K&L Gates

AGENDA

- Current State of the Regulatory Environment
- Past vs. Present
- Practical Implications
- Increased Fees and Increased Fee Pressure
- Questions

CURRENT STATE OF THE REGULATORY ENVIRONMENT

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC'S PROPOSED AND ADOPTED RULES

- Registered Funds:
  - Money Market Fund Rule (Adopted): Removed the ability to impose a redemption gate; delinked the implementation of a liquidity fee from Rule 2a-7's weekly liquid asset requirement; requires institutional money market funds to implement a liquidity fee in certain circumstances
  - Tailored Shareholder Reporting Rule (Adopted): Reformed shareholder reports for open-end mutual funds and ETFs registered on Form N-1A and advertisement rules for all registered investment companies
  - Names Rule (Adopted): Expanded the scope of terms under the Names Rule that require a fund to adopt an 80% policy
  - Derivatives Rule (Adopted): Permits funds to enter into derivatives transactions provided they adopt a derivatives risk management program and comply with an outer limit on fund leverage risked based on the value at risk
  - Valuation Rule (Adopted): Requires registered funds and business development companies with securities in their portfolios for which market quotations are readily available to value such securities at their market value and that all other securities will be valued in good faith by the fund's board of directors.

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC'S PROPOSED AND ADOPTED RULES

- Registered Funds (continued):
  - ESG Rule (Proposed): Would modify prospectus and shareholder report disclosure requirements that apply to all investment and business development companies registered under the 1940 Act and (further) amend the Names Rule to cover names that indicate ESG-related investment strategies
  - Liquidity, Swing Pricing, and Hard Close Rules (Proposed): Would require the adoption of swing pricing and a "hard close" by all open-end funds other than money market funds ETFs
- Private Funds
  - Private Funds Adviser Rules (Adopted): Introduced a disclosure- and consent-based framework for certain activities along with new audit and reporting requirements
  - Amendments to Form PF (Adopted): Requires (i) advisers with at least $1.5 billion in hedge fund AUM to report certain events as soon as practicable, (ii) quarterly reporting for private equity fund advisers with respect to adviser-led secondaries and certain investor elections, and (iii) advisers with at least $2 billion in private equity fund AUM to report a range of information on their annual updates to Form PF.
- Advisers Act
  - Service Provider Outsourcing Rule (Proposed): Would prohibit registered advisers from outsourcing certain services or functions without first meeting due diligence and monitoring requirements

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC'S PROPOSED AND ADOPTED RULES

- Advisers Act (continued):
  - Marketing Rule (Adopted): Combines the prior advertising and solicitation rules into a single marketing rule that replaces per se prohibitions with principles-based standards, permits testimonials and third-party ratings and creates a standardized, rules-based framework for performance advertising
  - Safeguarding Rule (Proposed): Would broaden the scope of client assets covered by the rule to include all client assets (not limited to funds and securities) and broaden the scope of activities to include discretionary authority to trade as conferring custody
  - Predictive Analytics Rule (Proposed): Would require advisers to identify conflicts of interest when using covered technology in interactions with investors and adopt written policies and procedures to eliminate or neutralize (rather than disclose or mitigate) such conflicts of interests
  - Cybersecurity Risk Management Rule (Proposed): Would require advisers and registered funds to adopt and implement policies and procedures to address cybersecurity risks and require reporting and disclosure of cybersecurity risks and incidents
  - ESG Rule (Proposed): Would require investment advisers to disclose with specificity their ESG investing approach by strategy, certain relationships with related persons and any ESG-related impacts on proxy voting

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC EXAMINATION PRIORITIES

- In a break from tradition, the SEC announced its examination priorities on 16 October 2023 to align with its own fiscal year
  - Exam priorities for this year include, among others:
  - Information Security & Operational Resiliency;
  - Crypto & Fin Tech; and
  - AML (new).
- Notably, the SEC dropped ESG issues from its FY 2024 examination priorities

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC EXAMINATION PRIORITIES

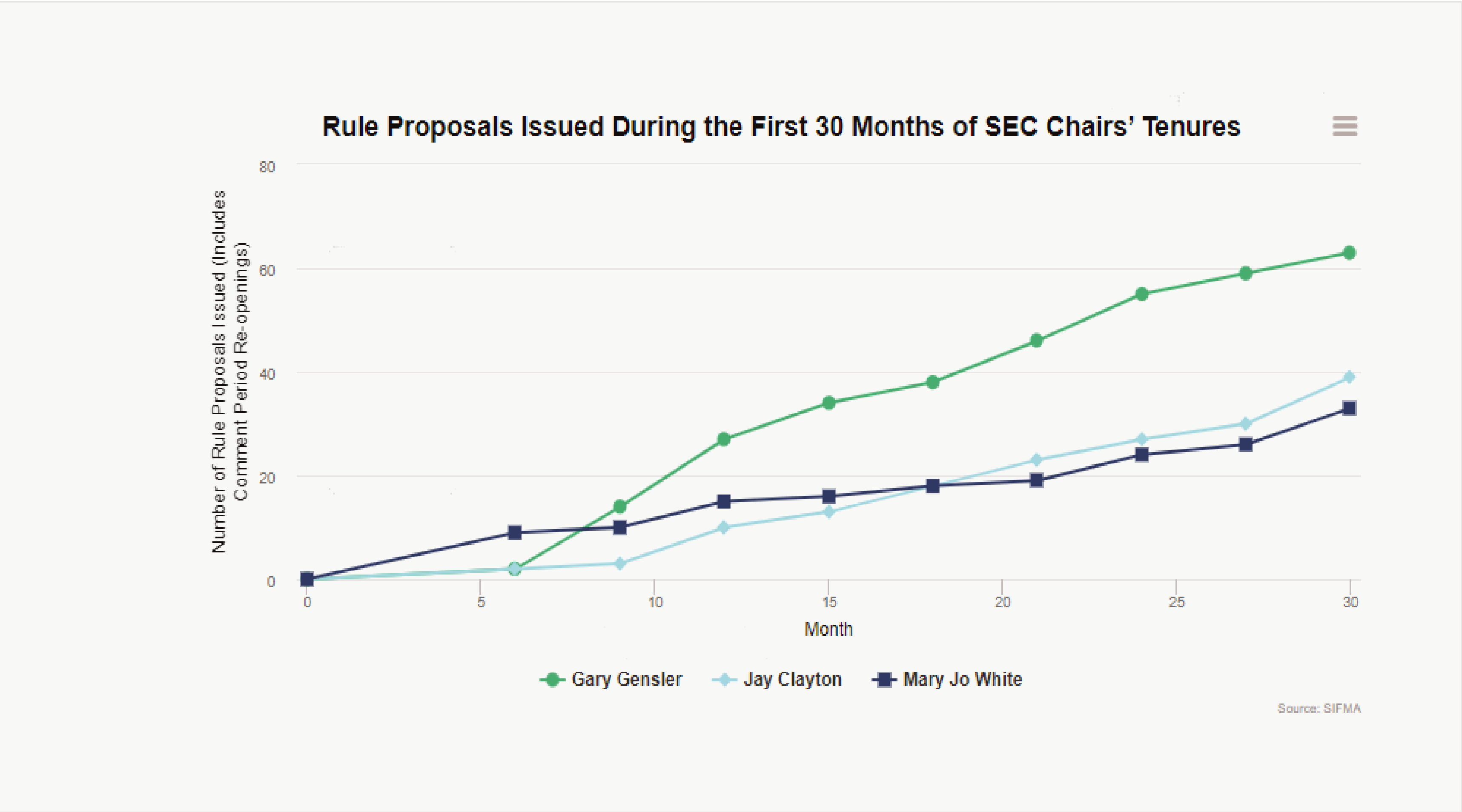
SEC Examination Priorities	
Investment Advisers	• Marketing practices, including compliance with the Marketing Rule; • compensation arrangements and reasonableness of fees; and • valuation of difficult-to-value assets; and investment advisers to private funds
Investment Companies	• Disclosures and reporting with a focus on mutual funds and ETFs; • board approval of advisory fees and advisory contracts; • calculation of fees and waivers; and • compliance with SEC exemptive orders.
Broker-Dealers	• Regulation Best Interest compliance; • Form CRS, the Net Capital Rule and the Customer Protection Rule; and • trading practices
Information Security & Operational Resiliency	• Review of cybersecurity policies and procedures, internal controls, oversight of vendors and responses to cyber-related incidents; • employee training programs concerning identity theft prevention and the protection of customer information; and • compliance with recently adopted rules shortening settlement cycle to one business day after trade date.
Crypto & Fin Tech	• Examination of automated tools and AI used in investment services space; and • procedures governing recommendations of crypto products and related discussions with retail customers
AML	• Examination of AML procedures and compliance with the Bank Secrecy Act and whether programs are tailored to the unique AML risks associated with the business model; and • focus on independent customer identification program, SAR filing obligations and OFAC compliance

CURRENT STATE OF THE REGULATORY ENVIRONMENT
SEC ENFORCEMENT

- SEC Chair Gary Gensler has offered a preview of the FY 2023 enforcement statistics:
  - 780 total actions filed (up from 760 in FY 2022), including more than 500 standalone actions
  - Judgments and orders totaled over $5 billion (down from $6.4 billion in FY 2022)
  - Over $925 million distributed to harmed investors
- While the FY 2023 enforcement statistics are not available yet, the FY 2022 categories of enforcement actions highlighted by the SEC may be informative. They include:
  - Financial fraud and issuer disclosure
  - Focus on gatekeeper (auditors, lawyers, transfer agents)
  - Crypto
  - Cybersecurity and compliance
  - ESG
  - Private Funds
  - Reg BI
  - Complex products
  - Adviser disclosures of conflicts of interest
  - Public finance abuse

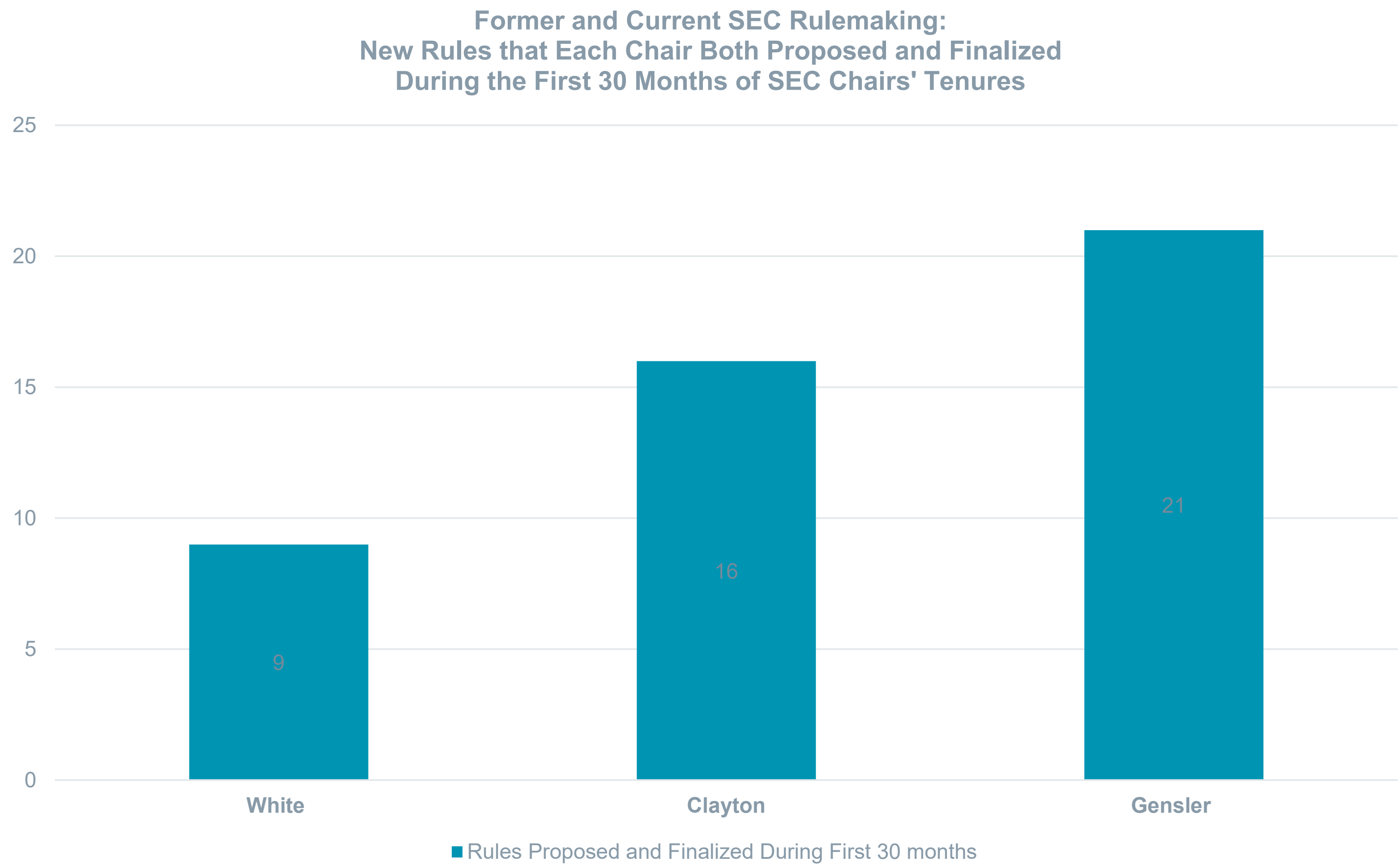
PAST VS. PRESENT

PAST VS. PRESENT



Source: SIFMA, "SEC Rulemaking Tracker": https://www.sifma.org/resources/general/sec-rulemaking-tracker/

PAST VS. PRESENT



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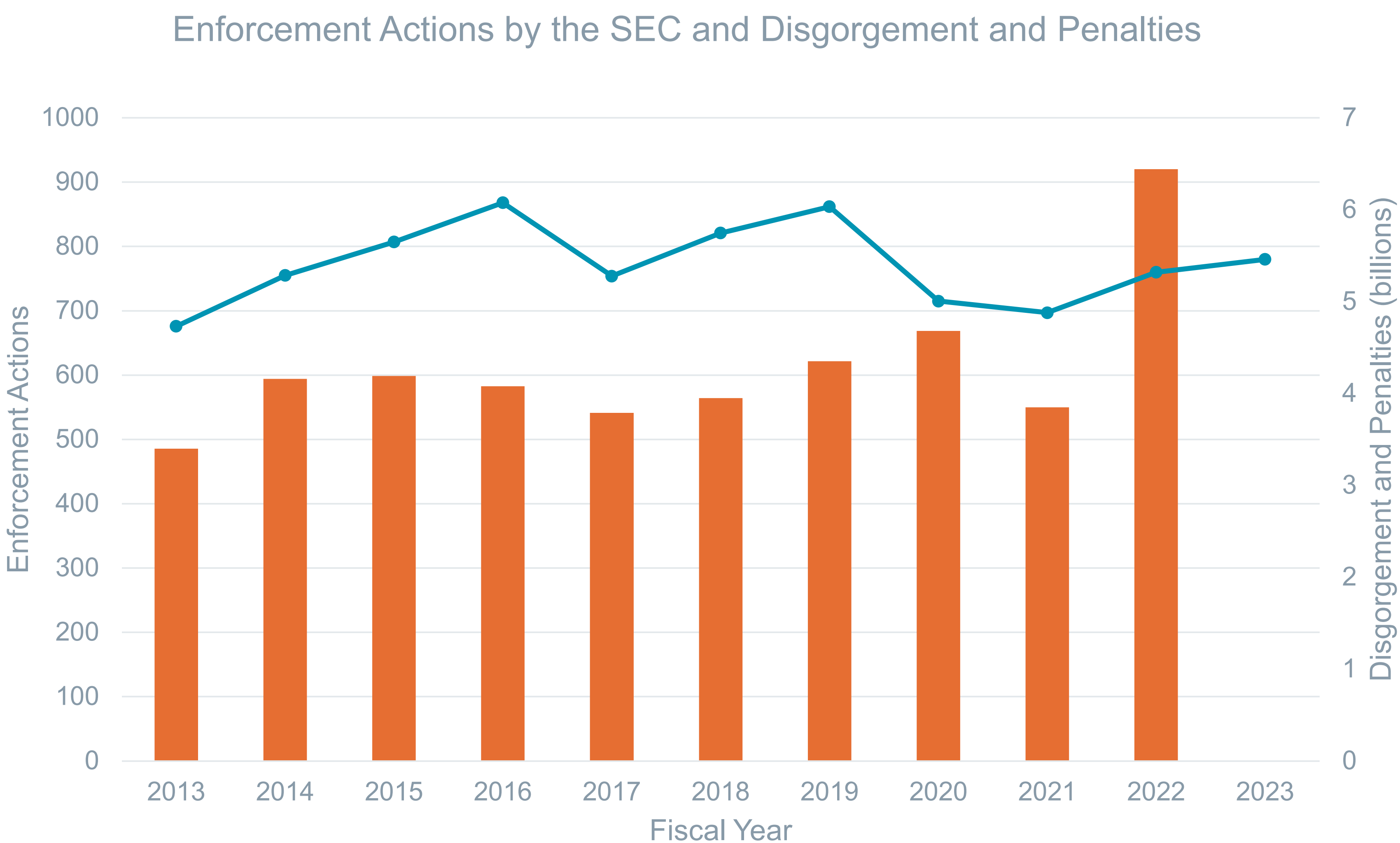

PRACTICAL IMPLICATIONS

PRACTICAL IMPLICATIONS

- In 2021, Bloomberg declared that Gary Gensler has set out "one of the most ambitious agendas in the SEC's 87-year history."
- To different degrees, each of the SEC's adopted and proposed rules may reduce liquidity, increase borrowing costs, increase investing costs, and alter the relationship between investors and advisers
- How has today's regulatory environment impacted your practice or firm on a practical level?
  - Formal and informal staff interactions
  - Contentious with industry participants and organizations I the Rules comment process
  - Litigation challenging regulatory actions

INCREASED FEES AND INCREASED FEE PRESSURE

PRACTICAL IMPLICATIONS

- Compliance with the additional regulation is expected to lead to increased costs for advisers, which in turn may lead to increased fees for investors
- This coincides with increased fee pressure from investors
- How does this dynamic impact the products that firms offer?
- What are the implications for the future?

Questions?


Thank You for Joining!

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