securityholders) by avoiding the costs and uncertainty resulting from an automatic stay in the event that a petition for review is filed pursuant to Rule 430 by a person aggrieved by an action taken pursuant to delegated authority, or the Commission reviews the action on its own initiative under Rule 431. The amendments do not preclude an aggrieved party from filing a petition for Commission review of an action taken by delegated authority, or a member of the Commission from bringing such an action before the full Commission.

In light of this, we do not believe the amendments will have a substantial economic impact, including an effect on efficiency, competition, or capital formation. Further, we do not believe that the amendments would impose substantial new burdens on private parties or have significant impacts on competition for purposes of section 23(a)(2) of the Exchange Act.

Statutory Authority

These technical amendments are being adopted pursuant to statutory authority granted to the Commission under sections 4A and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

Text of Amendments

For the reasons stated in the preamble, the Commission is amending title 17, Chapter II of the Code of Federal Regulations as follows:

PART 201—RULES OF PRACTICE

Subpart D—Rules of Practice

■ 1. The authority citation for part 201, subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78*o*–10(b)(6), 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

■ 2. Amend § 201.431 by revising paragraphs (e)(1) and (2) and adding paragraph (e)(3) to read as follows:

§ 201.431 Commission consideration of actions made pursuant to delegated authority.

* * * * *

(e) * * *

(1) To grant a stay of action by the Commission or a self-regulatory organization as authorized by 17 CFR 200.30–14(h)(5) and (6);

(2) To commence a subpoena enforcement proceeding as authorized by 17 CFR 200.30–4(a)(10); or

(3) To determine the effectiveness of a registration statement, or a post-effective amendment thereto, or the qualification of an offering statement, or a post-qualification amendment thereto, as authorized by 17 CFR 200.30–1(a)(1), 200.30–1(a)(5), 200.30–1(b)(2), 200.30–1(f)(1) and 200.30–1(f)(6), or 17 CFR 200.30–5(b), 200.30–5(c)(3), 200.30–5(c)(4), and 200.30–5(c)(6).

* * * * *

By the Commission.

Dated: September 17, 2025.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025–18237 Filed 9–18–25; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 231 and 241

[Release No. 33–11389; 34–103988]

RIN 3235–AN55

Acceleration of Effectiveness of Registration Statements of Issuers With Certain Mandatory Arbitration Provisions

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; Policy statement.

SUMMARY: The Securities and Exchange Commission (''Commission'') is issuing this statement to inform the public that the presence of a provision requiring arbitration of investor claims arising under the Federal securities laws will not impact decisions regarding whether to accelerate the effectiveness of a registration statement. Accordingly, when making such decisions, the staff will focus on the adequacy of the registration statement's disclosures, including disclosure regarding the arbitration provision.

DATES: *Effective date:* September 19, 2025.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the issuer files with the Commission. For general questions about this statement, contact John Fieldsend, Special Counsel, at (202) 551–3430, Division of Corporation Finance, or Anna Sandor, Senior Counsel, or Yoon Choo, Senior Counsel, at (202) 551–6787, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

This statement concerns requests to accelerate the effective date of registration statements filed under the Securities Act of 1933 (''Securities Act'') [1] by issuers with a mandatory arbitration provision for investor claims arising under the Federal securities laws [2] (''issuer-investor mandatory arbitration provision'').[3] As discussed in further detail in section II.C. there have been a number of developments involving the U.S. Supreme Court's (''Supreme Court'' or ''Court'') interpretation and application of the Federal Arbitration Act of 1925 (''FAA''

[1] 15 U.S.C. 77a *et seq.*

[2] As used in this statement, the phrase ''Federal securities laws'' includes the Federal securities statutes and any rules and regulations issued thereunder, whereas the phrase ''Federal securities statutes'' includes only the relevant statutes.

[3] Issuer-investor mandatory arbitration provisions may be contained in an issuer's articles or certificate of incorporation or bylaws. They may also be contained in indentures, limited partnership agreements, declarations of trust or trust agreements, American depositary receipts deposit agreements, or elsewhere. The use of the term ''issuer-investor mandatory arbitration provision'' is not meant to preclude (or foreclose) the possibility that issuers may seek to include other entities or persons related to, or connected with, the issuer within the scope of the arbitration provision. Relatedly, although we refer to issuer-investor mandatory arbitration provisions throughout as bilateral, it is possible that the issuer-investor mandatory arbitration provision may require investors to arbitrate certain claims involving parties other than the issuer.

or ''Arbitration Act'') [4] that inform such acceleration requests. In addition, as discussed in further detail in Section II.B., potential uncertainty exists regarding the intersection of the FAA and state law. For example, Delaware recently amended its General Corporation Law in a way that may prohibit certificates of incorporation or bylaws from including an issuer-investor mandatory arbitration provision.[5] Other states may adopt different approaches on this issue. Notwithstanding these developments and potential uncertainty, the Commission has not spoken publicly on this topic even though, during the registration process, issuers have on occasion sought to include such a provision in their Securities Act registration statements.[6]

In order to provide issuers with greater certainty concerning the Commission's approach to requests to accelerate the effective date of a registration statement disclosing an issuer-investor mandatory arbitration provision, we are issuing this policy statement. For the reasons explained in this statement, we have determined that the presence of an issuer-investor mandatory arbitration provision [7] will not impact decisions whether to accelerate the effectiveness of a registration statement under the Securities Act.[8] Accordingly, when considering acceleration requests pursuant to Securities Act section 8(a) [9] and Rule 461 thereunder,[10] the staff will focus on the adequacy of the registration statement's disclosures, including disclosure regarding issuer-investor mandatory arbitration provisions.[11]

II. Discussion

A. Acceleration of a Registration Statement's Effectiveness

Section 5 of the Securities Act requires that a registration statement must be in effect as to a security before an issuer may sell it.[12] Section 8(a) provides that a Securities Act registration statement becomes effective automatically 20 calendar days after it is filed. Securities Act Rule 473(a) [13] permits an issuer to include a ''delaying amendment'' on the front page of a registration statement that extends the effective date to: (1) 20 calendar days after the issuer complies with Rule 473(b); [14] or (2) an indefinite period that will end when the Commission grants the issuer's request to accelerate the effective date of the registration statement. The issuer may submit a request for acceleration under Rule 461 specifying when it wants the registration statement declared effective. The staff, acting pursuant to its delegated authority, will accelerate the effective date of a registration statement if it meets the criteria under section 8(a) and Rule 461.[15]

The section 8(a) criteria are primarily focused on ensuring complete and adequate disclosure of material information to the public. Additionally, the criteria require consideration of ''the public interest and the protection of investors.'' [16] Courts have considered the scope of the public interest and investor protection standard in the context of the Federal securities laws and determined that, when applying this standard, it is only permissible to consider those matters over which the Commission has authority under the Federal securities laws.[17]

B. The Arbitration Act and Issuer-Investor Mandatory Arbitration Provisions

During the registration process, issuers have on occasion asked whether the presence of an issuer-investor mandatory arbitration provision would impact acceleration of the effectiveness of their registration statement.[18] An issuer-investor mandatory arbitration provision may implicate the Arbitration Act, which establishes a ''liberal Federal policy favoring arbitration agreements.'' [19] Section 2 of the statute, which is the FAA's principal substantive provision, provides in pertinent part that ''[a] written provision in . . . a contract evidencing a

[4] 9 U.S.C. 1 through 16. The Arbitration Act was enacted prior to the enactment of all of the Federal securities statutes.

[5] *See* 8 Del. Code Ann. Tit. 8, Section 115(c) (2025) (effective Aug. 1, 2025). Specifically, new paragraph (c) in section 115 permits the certificate of incorporation or bylaws to prescribe a forum or venue for certain claims that are not internal corporate claims but only if a stockholder may bring such claims in at least one *court* in the State of Delaware that has jurisdiction over such claims. This statement expresses no view on whether this or any other state law provision is consistent with the FAA.

[6] *See, e.g.,* Amendment to Registration Statement on Form S–1, The Carlyle Group L.P., File No. 333–176685 (Jan. 10, 2012).

[7] Conditions or restrictions that are part of the issuer-investor mandatory arbitration provision that may impact investors' substantive rights under the Federal securities laws are outside the scope of this statement.

[8] We would also apply this conclusion to decisions whether to: (i) accelerate the effectiveness of registration statements filed under the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C. 78a *et seq.;* (ii) declare effective post-effective amendments to registration statements; and (iii) qualify an offering statement or a post-qualification amendment under 17 CFR 230.251 *et seq.* (''Regulation A''). Moreover, our conclusion that the Federal securities statutes do not override the FAA in the context of issuer-investor mandatory arbitration provisions is not limited to this context. This same conclusion also applies, for example, if an Exchange Act reporting issuer were to amend its bylaws or corporate charter to adopt an issuer-investor mandatory arbitration provision.

[9] 15 U.S.C. 77h(a) (''section 8(a)'').

[10] 17 CFR 230.461 (''Rule 461'').

[11] Section 4A of the Exchange Act gives the Commission the authority to delegate its functions to a division of the Commission. *See* 15 U.S.C. 78d–1(a). The Commission retains a discretionary right to review any division use of delegated authority. *See* 15 U.S.C. 78d–1(b). The Director of the Division of Corporation Finance possesses delegated authority to accelerate effectiveness of a registration statement under the Securities Act and the Exchange Act, declare effective post-effective amendments to registration statements, and to qualify an offering statement and an amendment to an offering statement under Regulation A. *See* 17 CFR 200.30–1. The Director of the Division of Investment Management possesses similar delegated authority to accelerate effectiveness of a registration statement under the Securities Act and the Exchange Act and declare effective post-effective amendments to registration statements. *See* 17 CFR 200.30–5. Throughout this statement, any statements about the Division of Corporation Finance or the Division of Investment Management declining to accelerate effectiveness of a registration statement mean declining to use their delegated authority to accelerate effectiveness.

[12] 15 U.S.C. 77e(a).

[13] 17 CFR 230.473(a).

[14] 17 CFR 230.473(b).

[15] Certain Securities Act registration statements become effective automatically upon filing with the Commission and do not require acceleration. *See, e.g.,* 17 CFR 230.462.

[16] *See* section 8(a) and Rule 461(b).

[17] *See Business Roundtable* v. *SEC,* 905 F.2d 406, 412 (D.C. Cir. 1990) (''*Business Roundtable*'') (holding that the Commission could not rely on the statutory mandate to ''protect investors and the public interest'' to take regulatory action that would ''overturn or at least impinge severely on the tradition of state regulation of corporate law'') and *id.* at 413–14 (citation modified) (explaining that statutory language about the ''public interest'' ''must be limited to 'the purposes Congress had in mind when it enacted the legislation,' '' and such language cannot be read to permit the Commission to regulate areas that Congress has not assigned to the agency (quoting *NAACP* v. *FPC,* 425 U.S. 662, 670 (1976) (''*NAACP*''')). *See generally FCC* v. *Consumers' Research,* 145 S.Ct. 2482, 2503 (2025) (explaining that the Supreme Court has ''long held that the words 'public interest' in a regulatory statute do not encompass the general public welfare but rather take meaning from the purposes of the regulatory legislation'' (citation modified)); *NAACP,* 425 U.S. at 670 (rejecting the argument that the Federal Power Commission's broad ''public interest'' mandate authorized it to promulgate rules prohibiting its regulated entities from engaging in discriminatory employment practices generally). Similar limitations apply to the ''protection of investors'' language in section 8(a). *See generally Davis* v. *Mich. Dept. of Treasury,* 489 U.S. 803, 809 (1989) (explaining that ''statutory language cannot be construed in a vacuum,'' but rather ''the words of a statute must be read in their context and with a view to their place in the overall statutory scheme'').

[18] The timing of when an issuer requests acceleration is often tied to market conditions, and the inability to predict with certainty whether the staff would exercise its delegated authority or have the matter considered by the Commission poses challenges for issuers.

[19] *CompuCredit Corp.* v. *Greenwood,* 565 U.S. 95, 98 (2012) (''*CompuCredit Corp.*'') (quoting *Moses H. Cone Mem'l Hosp.* v. *Mercury Constr. Corp.,* 460 U.S. 1, 24 (1983)).

transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable.'' [20]

Whether the FAA may apply to an issuer-investor mandatory arbitration provision turns in the first instance on whether there is a valid and enforceable written agreement to arbitrate.[21] Assuming it is written, whether an agreement to arbitrate is valid and enforceable is generally determined based on ''the contract law of the state governing the agreement.'' [22] However, a state law that ''target[s] the enforceability of [mandatory] arbitration agreements either by name or by more subtle methods, such as by 'interfering with fundamental attributes of arbitration' '' may be preempted by the Arbitration Act.[23] The applicability of the FAA to a particular issuer-investor mandatory arbitration provision is a legal matter implicating the intersection of a Federal statute that Congress did not authorize the Commission to administer, and the unique laws of the state or other jurisdiction governing the provision.[24] Accordingly, we do not consider it within the Commission's purview to conclude whether any particular issuer-investor mandatory arbitration provision is enforceable for purposes of the FAA.

[20] 9 U.S.C. 2.

[21] *Galloway* v. *Santander Consumer USA, Inc.,* 819 F.3d 79, 89 (4th Cir. 2016) (explaining that ''application of the FAA requires demonstration of . . . a written agreement that includes an arbitration provision which purports to cover the dispute'' (citation modified)). Courts have not interpreted the FAA to require ''written agreements'' to be signed. *See, e.g., Seawright* v. *Am. Gen. Fin. Servs., Inc.,* 507 F.3d 967, 978 & n.5 (6th Cir. 2007) (explaining that ''arbitration agreements under the FAA need to be written, but not necessarily *signed*'' (emphasis in original)); *Caley* v. *Gulfstream Aero. Corp.,* 428 F.3d 1359, 1369 (11th Cir. 2005) (''*Gulfstream Aero. Corp.*'') (''We readily conclude that no signature is needed to satisfy the FAA's written agreement requirement.''); *Tinder* v. *Pinkerton Sec.,* 305 F.3d 728, 736 (7th Cir. 2002) (explaining that although ''the FAA requires arbitration agreements to be written, it does not require them to be signed''); *Valero Refining, Inc.* v. *M/T Lauberhorn,* 813 F.2d 60, 64 (5th Cir. 1987) (''We note also that section three of the Act does not require that a charter party be signed in order to enforce an arbitration agreement contained within it.''); *McAllister Bros., Inc.* v. *A&S Transp. Co.,* 621 F.2d 519, 524 (2d Cir. 1980) (explaining that ''a party may be bound by an agreement to arbitrate even in the absence of a signature''); *Medical Development Corp.* v. *Indus. Molding Corp.,* 479 F.2d 345, 348 (10th Cir. 1973) (''it [is] not necessary that there be a simple integrated writing or that a party sign the writing containing the arbitration clause.'').

[22] *Banks* v. *Mitsubishi Motors Credit of Am., Inc.,* 435 F.3d 538, 540 (5th Cir. 2005); *see, e.g., Memmer* v. *United Wholesale Mortg., LLC,* 135 F.4th 398, 404 (6th Cir. 2025) (''Whether the parties entered a valid agreement to arbitrate is a question of state contract law.''); *Marshall* v. *Georgetown Mem'l Hosp.,* 112 F.4th 211, 218 (4th Cir. 2024) (''Whether an agreement to arbitrate was formed is a question of ordinary state contract law principles.'' (quoting *Rowland* v. *Sandy Morris Fin. & Estate Planning Servs., LLC,* 993 F.3d 253, 258 (4th Cir. 2021)) (citation modified)); *Rodgers-Rouzier* v. *Am. Queen Steamboat Operating Co., LLC,* 104 F.4th 978, 991 (7th Cir. 2024) (''An arbitration agreement is just a type of contract, and the FAA does not itself provide a substantive law governing the formation or general interpretation of contracts, so ordinary state contract law always fills in crucial gaps in any arbitration agreement.''); *Meyer* v. *Uber Techs., Inc.,* 868 F.3d 66, 74 (2d Cir. 2017) (''State law principles of contract formation govern the arbitrability question.'' (quoting *Nicosia* v. *Amazon.com, Inc.,* 834 F.3d 220, 231 (2d Cir. 2016))); *Donaldson Co., Inc.* v. *Burroughs Diesel, Inc.,* 581 F.3d 726, 731 (8th Cir. 2009) (explaining that ''state contract law governs the threshold question of whether an enforceable arbitration agreement exists between litigants''); *Gulfstream Aerospace Corp.,* 428 F.3d at 1368 (''[I]n determining whether a binding agreement arose between the parties, courts apply the contract law of the particular state that governs the formation of contracts.''). The FAA also contemplates that in some instances mandatory arbitration agreements may be governed by the laws of a foreign jurisdiction. *See generally* 9 U.S.C. 202 (addressing arbitration agreements that may implicate foreign jurisdictions).

[23] *Epic Systems Corp.* v. *Lewis,* 584 U.S. 497, 508 (2018) (''*Epic Systems Corp.*'') (citation modified); *see also Volt Information Sciences, Inc.* v. *Board of Trustees of Leland Stanford Junior University,* 489 U.S. 468, 478 (1989) (''[T]he FAA pre-empts state laws which require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.''); *see also, e.g., Southland Corp.* v. *Keating,* 465 U.S. 1, 10–16 (finding preempted a state statute which rendered agreements to arbitrate certain franchise claims unenforceable); *Perry* v. *Thomas,* 482 U.S. 483, 490 (1987) (finding preempted a state statute which rendered unenforceable private agreements to arbitrate certain wage collection claims). While the Supreme Court has determined that state laws that target arbitration are preempted, section 2 of the FAA does include a narrow ''savings clause'' that ''permits arbitration agreements to be declared unenforceable 'upon such grounds as exist at law or in equity for the revocation of any contract.' '' *AT&T Mobility LLC* v. *Concepcion,* 563 U.S. 333, 339 (2011) (''*Concepcion*'') (quoting section 2 of the FAA). The Supreme Court has held that that this savings clause allows '' 'generally applicable contract defenses, such as fraud, duress, or unconscionability.' '' *Id.* (quoting *Doctor's Assocs., Inc.* v. *Casarotto,* 517 U.S. 681, 687 (1996)).

[24] To illustrate some of the potential complexities involved, consider Delaware corporate law. Corporate charters and bylaws would appear to constitute written agreements. *See, e.g., Centaur Partners, IV* v. *Nat'l Intergroup, Inc.,* 582 A.2d 923, 928 (Del. 1990) (citing cases) (''Corporate charters and by-laws are contracts among the shareholders of a corporation and the general rules of contract interpretation are held to apply.''). Thus, an arbitration provision in a Delaware corporate charter or bylaw may constitute a written agreement to arbitrate for purposes of the FAA. *But see* Manesh & Joseph A. Grundfest, *The Corporate Contract and Shareholder Arbitration,* 98 NYU L. Rev. 1106 (2023); Ann M. Lipton, *Manufactured Consent: The Problem of Arbitration Clauses in Corporate Charters and Bylaws,* 104 Geo. L.J. 583 (2016). 8 Del. Code Ann. Tit. 8, Section 115(c) (2025).

C. Effect of Supreme Court Case Law Developments Regarding the FAA on the Application of Section 8(a)'s ''Public Interest/Investor Protection'' Standard

Assuming the FAA applies to a particular issuer-investor mandatory arbitration provision, there is a separate question whether the Federal securities statutes override the FAA. In the past, the Federal securities statutes were thought to potentially override the FAA because issuer-investor mandatory arbitration provisions could be viewed as inconsistent with the Federal securities statutes in at least two respects: (1) issuer-investor mandatory arbitration provisions could violate the anti-waiver provisions of the Federal securities statutes by foreclosing a judicial forum; [25] and (2) such provisions could unduly impede the ability of investors to bring private actions to vindicate their rights under the Federal securities laws by foreclosing class action litigation in courts.

After considering the Supreme Court's jurisprudence relating to the FAA and analyzing case-law developments involving the intersection of the FAA and other Federal statutes, we have concluded that, in the context of issuer-investor mandatory arbitration provisions, the Federal securities statutes do not override the Arbitration Act's policy favoring enforcement of arbitration agreements. This conclusion follows from the fact that nothing in the text of the anti-waiver provisions or any other provision of the Federal securities statutes demonstrates a clearly expressed congressional intention to except issuer-investor mandatory arbitration provisions from the Arbitration Act's policy favoring arbitration. Because the Federal securities statutes do not override the Arbitration Act when it applies to the enforceability of an issuer-investor mandatory arbitration provision, the

[25] 15 U.S.C. 77n is the anti-waiver provision in the Securities Act (''section 14''). (''Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this title or of the rules and regulations of the Commission shall be void.''). 15 U.S.C. 78cc(a) is the anti-waiver provision in the Exchange Act (''section 29(a)'') (''Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or any rule or regulation thereunder, or any rule of a self-regulatory organization, shall be void.''). 15 U.S.C. 77aaaa (section 327 of the Trust Indenture Act of 1939 (''Trust Indenture Act''), 15 U.S.C. 77aaa *et seq.*); 15 U.S.C. 80a–46(a) (section 47(a) of the Investment Company Act of 1940 (''Investment Company Act''), 15 U.S.C. 80a–1 *et seq.*); and 15 U.S.C. 80b–15(a) (section 215(a) of the Investment Advisers Act of 1940 (''Investment Advisers Act''), 15 U.S.C. 80b–1 *et seq.*) contain similar anti-waiver provisions.

existence of such a provision is not within the ambit of appropriate considerations under section 8(a)'s public interest and investor protection standard and will not impact determinations whether to accelerate the effective date of a registration statement.[26]

1. Nothing in the Text of the Anti-Waiver Provisions or Any Other Provisions of the Federal Securities Statutes Could Be Construed as a Clearly Expressed Congressional Intention That the Arbitration Act Would Not Apply to Federal Securities Laws Claims

Applying current and relevant Supreme Court precedent, there is no basis to conclude that either the anti-waiver provisions or any other provision of the Federal securities statutes displaces the primacy of the Arbitration Act in the context of issuer-investor mandatory arbitration provisions.

For many decades, the anti-waiver provision set forth in section 14 was understood to prohibit issuer-investor mandatory arbitration provisions relating to Federal securities law claims. In a 1953 decision involving the enforceability of an arbitration agreement between a brokerage firm and its customers, the Supreme Court held that ''the right to select the judicial forum is the kind of 'provision' that cannot be waived under [section] 14 of the Securities Act.'' [27] In reaching this conclusion, the Court agreed with the firm's customer (who purchased the securities at issue in the dispute) that ''the purpose of Congress [in enacting the anti-waiver provision] was to assure that sellers could not maneuver buyers into a position that might weaken their ability to recover under the Securities Act.'' [28] The Court expressed the view that, ''[w]hile a buyer and seller of securities, under some circumstances, may deal at arm's length on equal terms, it is clear that the Securities Act was drafted with an eye to the disadvantages under which buyers labor. Issuers of and dealers in securities have better opportunities to investigate and appraise the prospective earnings and business plans affecting securities than buyers. It is therefore reasonable for Congress to put buyers of securities covered by that [Securities] Act on a different basis from other purchasers'' who are otherwise subject to the terms of the FAA.[29]

But in a pair of decisions in the late 1980s, the Supreme Court took a different course.[30] The first of these was a 1987 decision in which the Court considered whether the anti-waiver provision in section 29(a) precludes enforcement of an arbitration agreement between a broker-dealer and its customer. Even though the text of the Exchange Act's anti-waiver provision is substantively identical to the Securities Act's provision, the Court held that it does not prohibit the enforcement of arbitration agreements.[31] The Court explained that by its terms the provision declares void only an agreement that waives ''compliance with any provision of'' the Exchange Act, which the Court read to prohibit only waiver of the act's *substantive obligations*.[32] Based on that understanding, the Court concluded that the anti-waiver provision does not render unenforceable agreements that waive section 27 of the Exchange Act,[33] which confers Federal courts with exclusive subject matter jurisdiction over violations of that Act, because this jurisdictional provision does not impose any statutory duties.[34]

Two years later, in another dispute involving a brokerage firm and its customer, the Court reconsidered whether the anti-waiver provision in section 14 precludes the enforcement of mandatory arbitration arrangements. Based on the text of the anti-waiver provision, the Court held that section 14 applies only to the substantive provisions of the Securities Act, not to its jurisdictional or procedural provisions.[35] Further, the Court explained that its prior holding in 1953 reflected a judicial hostility to arbitration that it has since abandoned:

> Once the outmoded presumption of disfavoring arbitration proceedings is set to one side, it becomes clear that the right to select the judicial forum and the wider choice of courts are not such essential features of the Securities Act that [section] 14 is properly construed to bar any waiver of these provisions. Nor are they so critical that they cannot be waived under the rationale that the Securities Act was intended to place buyers of securities on an equal footing with sellers.[36]

The Court also explained that ''[t]o the extent that [its prior decision] rested on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complainants, it has fallen far out of step with our current strong endorsement of the Federal statutes favoring this method of resolving disputes.'' [37] The Court concluded that ''resort to the arbitration process does not inherently undermine any of the substantive rights afforded to petitioners under the Securities Act.'' [38]

Although these two Supreme Court decisions applying the anti-waiver provisions did not involve the precise issue of issuer-investor mandatory arbitration provisions, we discern no reason to believe that any different result should follow.[39] Accordingly, we

[26] *See supra* note 17 (citing *Business Roundtable*).

[27] *Wilko* v. *Swan,* 346 U.S. 427, 434–35 (1953) (''*Wilko*'') (*overruled by Rodriguez de Quijas* v. *Shearson/American Express, Inc.,* 490 U.S. 477 (1989) (''*Rodriguez*'')).

[28] *Id.* at 432.

[29] *Id.* at 435.

[30] *See Rodriguez,* 490 U.S. at 485–86 and *Shearson/American Express, Inc.* v. *McMahon,* 482 U.S. 220, 228–38 (1987) (''*McMahon*'').

[31] *McMahon,* 482 U.S. at 228–29. The case involved a fraud claim under section 10(b) of the Exchange Act that a customer had brought against a broker-dealer. 15 U.S.C. 78j(b). The arbitration proceeding was administered by a self-regulatory organization (''SRO''). *See* 15 U.S.C. 78c(a)(26) (Exchange Act section 3(a)(26)). The Commission filed an *amicus curiae* brief with the Supreme Court arguing that the anti-waiver provisions of the Federal securities statutes did not preclude enforcement of the arbitration agreement between the brokerage firm and its customer because of the Commission's regulatory oversight over SRO arbitration procedures under section 19 of the Exchange Act (''section 19''). 15 U.S.C. 78s. The *amicus* brief urged the Supreme Court to adopt the position that a separate analysis would be required in situations where the Commission lacked statutory oversight authority.

[32] *McMahon,* 482 U.S. at 228–29.

[33] 15 U.S.C. 78aa.

[34] *McMahon,* 482 U.S. at 228.

[35] *Rodriguez,* 490 U.S. at 482.

[36] *Id.* at 481.

[37] *Id.*

[38] *Id.* 485–86.

[39] In rejecting *Wilko*'s negative assumptions regarding arbitration, the *McMahon* and *Rodriguez* decisions relied on the enhanced oversight of the SROs' arbitration processes (through greater authority over SRO rules) that the Commission obtained as a result of certain amendments to section 19 in 1975. *See McMahon,* 482 U.S. at 233–34 (''Since the 1975 amendments to [section] 19 of the Exchange Act . . . the Commission has had expansive power to ensure the adequacy of the arbitration procedures employed by the SROs. No proposed rule change may take effect unless the SEC finds that the proposed rule is consistent with the requirements of the Exchange Act, 15 U.S.C. [section] 78s(b)(2); and the Commission has the power, on its own initiative, to 'abrogate, add to, and delete from' any SRO rule if it finds such changes necessary or appropriate to further the objectives of the Act, 15 U.S.C. [section] 78s(c).'') and *id.* at 233 (stating that ''[e]ven if *Wilko*'s assumptions regarding arbitration were valid at the time *Wilko* was decided, most certainly they do not hold true today for arbitration procedures subject to the SEC's oversight authority''). *See also Rodriguez,* 490 U.S. at 483 (referencing the Commission's ''authority to oversee and to regulate [SRO-administered] arbitration procedures'' in support of its rejection of *Wilko*'s aversion to arbitration as an appropriate forum to entertain claims arising under the Securities Act). We recognize that the broker-dealer arbitration arrangements at issue in *McMahon* and *Rodriguez* were administered by SROs, which would not be the case with issuer-investor mandatory arbitration provisions. Nonetheless, we do not understand either *McMahon* or *Rodriguez* to require that the Commission have supervisory authority over the particular arbitration process employed in order for

believe that the inability to proceed in a judicial forum as a result of an issuer-investor mandatory arbitration provision would not violate the anti-waiver provisions of the Federal securities statutes.

Moreover, in subsequent decisions, the Supreme Court has noted that, in any Federal statute enacted after the Arbitration Act, which would include each of the Federal securities statutes, there must be a ''clearly expressed congressional intention'' to override the act.[40] As the Court has explained, ''the intention must be 'clear and manifest,' ''[41] and while the Court has not gone so far as to require unambiguous statutory language overriding the Arbitration Act, the Court has explained that when Congress does not displace the FAA using unambiguous statutory language, there is a ''strong presumption'' that the FAA applies exclusively to any issues regarding the enforceability of the arbitration agreement, and the other Federal statute that gives rise to the underlying substantive claims has no relevance to any arbitration issues.[42]

In applying this standard, we can discern nothing in the Federal securities statutes that demonstrates a clear and manifest congressional intention to displace the FAA in the context of issuer-investor mandatory arbitration agreements. The absence of any clearly expressed congressional intent is particularly striking given that in 2010 Congress expressly granted the Commission rulemaking authority to limit, condition, or prohibit arbitration agreements between broker-dealers and their customers and comparable authority over arbitration agreements between, among others, investment advisers and their clients.[43]

2. Under Supreme Court Precedent, the FAA Is Not Displaced Merely Because Bilateral Arbitration May Undermine the Economic Incentive of Some Persons To Bring Private Federal Securities Law Claims

When considering section 8(a) and Rule 461's public interest and investor protection standard for accelerating the effectiveness of registration statements, a concern has been that issuer-investor mandatory arbitration provisions, which are presumed to be bilateral in nature,[44] could unduly impede the ability of investors to bring private actions to enforce the Federal securities laws by foreclosing class-wide proceedings.[45]

But in 2013, the Supreme Court rejected a nearly identical argument involving private claims under the Federal antitrust statutes. In *American Express Co.* v. *Italian Colors Restaurant,*[46] the Court held that the Arbitration Act requires the enforcement of a mandatory arbitration agreement for bilateral arbitration even though the plaintiff's cost of individually arbitrating the antitrust claims would exceed the potential recovery. In the Court's view, enforcement of the arbitration requirement would not ''contravene the policies of the antitrust laws'' because those laws ''do not guarantee an affordable procedural path to the vindication of every claim.''[47]

In support of this conclusion, the Court observed that nothing in the Federal antitrust statutes affords a right to bring a class action and, in fact, those statutes were enacted years before class actions were even authorized in Federal courts.[48] No person seeking to vindicate a claim under the Federal antitrust statutes in a bilateral arbitration proceeding that forecloses class-action or collective proceedings would, in the Court's view, be any worse off than a

an issuer-investor mandatory arbitration provision to be permissible under the Federal securities statutes. First, both decisions were grounded on the separate rationale that Federal policy strongly favors enforcement of arbitration agreements and that arbitration itself is a suitable means of resolving the kinds of commercial disputes arising under the Federal securities laws. Second, any such understanding would be inconsistent with subsequent Supreme Court decisions that, as discussed *infra,* establish a strong presumption that the Arbitration Act's policy favoring arbitration should control absent a clear and manifest statutory indication otherwise. Lastly, in the three decades since *McMahon* and *Rodriguez* were decided, no subsequent decision has referred to government oversight as a factor to consider in determining whether to enforce an arbitration agreement.

[40] *Epic Systems Corp.,* 584 U.S. at 510 (quoting *Vimar Seguros y Reaseguros, S.A.* v. *M/V Sky Reefer,* 515 U.S. 528, 533 (1995)).

[41] *Id.* at 510 (citations and internal quotation marks omitted); *see also id.* (admonishing that a party arguing that another Federal statute displaces the FAA's mandate bears a ''heavy burden'').

[42] *Id.* at 510–11 (citation modified) (citing *United States* v. *Fausto,* 484 U.S. 439, 452, 453 (1988)). *See, e.g., id.* at 517 (explaining that the Court has ''stressed that the absence of any specific statutory discussion of arbitration'' must be considered by courts to be ''an important and telling clue that Congress has not displaced the Arbitration Act'') and *CompuCredit Corp.,* 565 U.S. at 104 (explaining that, in contrast to clear statutory provisions that deal expressly with arbitration, it is ''unlikely'' that ''Congress would have sought to achieve the same result in the [statute at issue] through a combination of the nonwaiver provision'' and certain other statutory provisions that never expressly reference arbitration).

[43] *See* 15 U.S.C. 78*o*(*o*) (''section 15(*o*)'') (''Authority to Restrict Mandatory Pre-dispute Arbitration .—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.'') and 15 U.S.C. 80b–5(f) (''section 205(f)'') (''Authority to Restrict Mandatory Pre-dispute Arbitration.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws, the rules and regulations thereunder, or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.''). *See also* Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376, section 921 (amending the Exchange Act to add section 15(*o*) and amending the Investment Advisers Act to add section 205(f)).

[44] *See, e.g., Lamps Plus, Inc.* v. *Varela,* 587 U.S. 176 (2019).

[45] For completeness, we note that there were two different legal theories (both based on *dicta* in Supreme Court decisions from the 1980s) through which this policy concern could have provided a legal basis for concluding that issuer-investor arbitration agreements were prohibited under the Federal securities statutes. The first involved a potential application of the anti-waiver provisions that the Supreme Court did not consider in *McMahon* and *Rodriguez—i.e.,* whether undermining or effectively eliminating the economic incentive to pursue a Federal securities law violation would violate the anti-waiver provisions by in effect ''weakening'' investors' ability to vindicate their rights to recover under the securities laws. *See McMahon,* 482 U.S. at 230–31 (suggesting in *dicta* that the anti-waiver provision of the Exchange Act might preclude the enforcement of an arbitration requirement if it ''weakened'' the ability of those protected by the securities laws to ''vindicate'' their ability to recover). The other legal theory concerned the potential invocation of the ''effective vindication'' exception, which is a judge-made exception to the FAA's policy favoring arbitration agreements. *See Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 637 n. 19 (1985). This exception—which the Supreme Court has discussed only in *dicta*—would ''prevent prospective waiver of a party's right to pursue statutory remedies,'' *id.,* and could potentially have been used to argue that bilateral arbitration effectively denies injured investors a meaningful opportunity to seek a remedy by effectively eliminating their economic incentive to do so. As discussed above, however, the Supreme Court has now effectively foreclosed any argument that an arbitration agreement should not be enforced if, by precluding class-action relief, it would eliminate the economic incentive for many victims to seek relief for their private securities law claims.

[46] 570 U.S. 228 (2013) (''*Italian Colors*'').

[47] *Id.* at 233. When the decision speaks about an ''affordable procedural path,'' it appears to mean a procedural path that is worth pursuing financially given the potential monetary recovery. *See id.* at 231 (''In resisting the motion, respondents submitted a declaration from an economist who estimated that the cost of an expert analysis necessary to prove the antitrust claims would be 'at least several hundred thousand dollars, and might exceed $1 million,' while the maximum recovery for an individual plaintiff would be $12,850, or $38,549 when trebled.''); *id.* at 236 (''But the fact that it is not worth the expense involved in proving a statutory remedy does not constitute the elimination of the right to pursue that remedy.'') (emphasis excluded).

[48] *Id.* at 234. The Sherman Act, 15 U.S.C. 1–7, was enacted in 1890. The Clayton Act, 15 U.S.C. 12–27, and the Federal Trade Commission Act, 15 U.S.C. 41–58, were enacted in 1914.

person proceeding under those statutes when they were enacted because at that time there was no allowance for class or collective procedures.[49] Based on that historical perspective, the Court ultimately found no difficulty with enforcing the agreement for bilateral arbitration and concluded that the FAA controls.[50] As the Court explained, because nothing in the Federal antitrust statutes affords a right to vindicate one's private claims through class or collective actions, the ''contrary congressional command'' required by the Court's decisions to displace the Arbitration Act's policy favoring arbitration was lacking.[51]

Similar to the Court's findings with the Federal antitrust statutes, no provision in the Federal securities statutes ''guarantee[s] an affordable procedural path to the vindication of every claim.'' [52] Further, like the Federal antitrust statutes, the Federal securities statutes do not expressly include a right to proceed through class actions or collective actions. Finally, because the Securities Act and the Exchange Act (like the antitrust statutes at issue in *Italian Colors*) were enacted before class-action proceedings were permitted, it stands to reason that ''the individual suit'' based on claims under those acts that was considered adequate and consistent at the time those statutes were enacted remains so notwithstanding the advent of class-action litigation.[53] Accordingly, the potential for an issuer-investor mandatory arbitration provision to diminish, or even eliminate, the economic incentive for some investors to bring private claims under the Federal securities laws is not a sufficient basis to conclude that the Federal securities statutes displace the Arbitration Act's mandate.[54]

III. Conclusion

For the reasons discussed above, the Commission has determined that the presence of an issuer-investor mandatory arbitration provision will not impact decisions regarding whether to accelerate the effectiveness of a registration statement. While the discussion above focuses on the Court's application of the FAA, we acknowledge there may be instances in which the FAA does not apply, such as where there is no valid and enforceable written agreement for purposes of the FAA. Given that neither the Commission nor the staff is well-positioned to conclusively determine when the FAA applies,[55] and in light of the case-law developments discussed above, we believe that any relevant issues concerning an issuer-investor mandatory arbitration provision are best addressed through complete and adequate disclosure of material information in the registration statement. Accordingly, when considering acceleration requests pursuant to section 8(a) and Rule 461, the staff will focus on the adequacy of the registration statement's disclosures, including disclosure regarding issuer-investor mandatory arbitration provisions. Nothing in this statement should be understood to express any views on the specific terms of an arbitration provision, or whether arbitration provisions are appropriate or optimal for issuers or investors.

IV. Other Matters

Pursuant to the Congressional Review Act,[56] the Office of Information and Regulatory

Affairs has designated this policy statement as not a ''major rule,'' as defined by 5 U.S.C. 804(2). This statement is a significant regulatory action under Executive Order 12866, as amended, and has been reviewed by the Office of Management and Budget.

This statement does not impose any new rules, regulations, or other requirements on issuers, but could influence issuer behavior to the extent that an issuer did not previously have an issuer-investor mandatory arbitration provision. This is in part due to concerns about potential impacts on acceleration requests. After publication of this statement, it is possible that some issuers may adopt issuer-investor mandatory arbitration provisions, which could potentially deter or prevent some investors from filing civil actions arising under the Federal securities laws. For both issuers and investors, adoption of such provisions would likely impact the cost of resolving future investor claims for damages and the extent of any monetary or other relief that might be awarded in connection with such claims. However, it is difficult to estimate how many issuers are likely to adopt issuer-investor mandatory arbitration provisions, or the ultimate economic impact of any such provisions, if adopted.

Some issuers may choose not to include such provisions due to potential state law considerations or concern about potential negative reactions from shareholders and other investors. Actions or potential actions by others, including proxy voting advice businesses, stock exchanges, and institutional investors, can be expected to influence the number of issuers who adopt arbitration of issuer-investor claims arising under the Federal securities laws. Further, some issuers may already have issuer-investor mandatory arbitration provisions, irrespective of this statement. A number of other issuers may have no plans to register an offering or class of securities, and thus would not be affected by this statement.

Statutory Authority

The statement contained in this release is being adopted pursuant to the authority set forth in section 19 of the Securities Act and section 23 of the Exchange Act.

List of Subjects in 17 CFR Parts 231 and 241

Securities.

Text of Amendments

For the reasons set forth in the preamble, the Commission is amending title 17, chapter II of the Code of Federal Regulations as follows:

[49] *Italian Colors* 570 U.S. 228, at 236. (''The class-action waiver merely limits arbitration to the two contracting parties. It no more eliminates those parties' right to pursue their statutory remedy than did federal law before its adoption of the class action for legal relief in 1938.'') (internal citations omitted). *See also id.* at 236–37 (explaining that ''the individual suit that was considered adequate to assure 'effective vindication' of a federal right before adoption of class-action procedures did not suddenly become 'ineffective vindication' upon their adoption'').

[50] *Id.* at 234 (explaining that because the parties agreed to bilateral arbitration, ''it would be remarkable for a court to erase that expectation'').

[51] *Id.* at 232–33.

[52] *Id.* at 233.

[53] *See id.* at 236–37. This argument does not apply to claims under the Trust Indenture Act, Investment Company Act, or the Investment Advisers Act because those statutes were enacted after the Federal rules of civil procedure were amended to permit class-wide relief. Nonetheless, we believe that the FAA's mandate controls even if injured persons lack an economic incentive to pursue bilateral arbitration for claims under these statutes. Because these statutes do not afford an entitlement to class-wide relief and Congress did not provide such a right when it authorized class-wide procedures in Federal litigation, they lack a clear expression of a congressional intention to displace the FAA. *See id.* at 234 (explaining that ''congressional approval of Rule 23 [of the Federal Rules of Civil Procedure]'' does not ''establish an entitlement to class proceedings for the vindication of statutory rights'').

[54] The Supreme Court has instructed that the FAA's policy favoring arbitration agreements is not impacted even when the one party with superior bargaining power may have imposed the arbitration requirement. *See Concepcion,* 563 U.S. at 340–41.

[55] *See supra* notes 19–24 and accompanying text.

[56] 5 U.S.C. 801 *et seq.*

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 1. The authority for part 231 continues to read as follows:

Authority: 15 U.S.C. 77a *et seq.*

■ 2. Amend § 231 by adding an entry at the end of the table to read as follows:

Subject	Release No.	Date	**Federal Register** Vol. and page
* *	*	* *	* *
Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions.	33–11389	Sept. 17, 2025	[INSERT **FEDERAL REGISTER** DOCUMENT CITATION].

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. The authority for part 241 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.*

■ 4. Amend § 241 by adding an entry at the end of the table to read as follows:

Subject	Release No.	Date	**Federal Register** Vol. and page
* *	*	* *	* *
Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions.	34–103988	Sept. 17, 2025	[INSERT **FEDERAL REGISTER** DOCUMENT CITATION].

By the Commission.

Dated: September 17, 2025.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2025–18238 Filed 9–18–25; 8:45 am]

BILLING CODE 8011–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AF31

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 279

[Release No. IA–6919; File No. S7–22–22]

RIN 3235–AN13

Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers; Further Extension of Compliance Date

AGENCY: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rule; further extension of compliance date.

SUMMARY: The Commodity Futures Trading Commission (the ''CFTC'') and the Securities and Exchange Commission (the ''SEC'') (collectively, ''we'' or the ''Commissions'') are further extending the compliance date for the amendments to Form PF that were adopted on February 8, 2024, from October 1, 2025, to October 1, 2026. Form PF is the confidential reporting form for certain SEC-registered investment advisers to private funds, including those that also are registered with the CFTC as a commodity pool operator (a ''CPO'') or a commodity trading adviser (a ''CTA'').

DATES: As of September 19, 2025, the compliance date for the amendments to Form PF codified March 12, 2024, at 89 FR 17984, and delayed February 5, 2025 at 90 FR 90 FR 9007, and further delayed June 16, 2025 at 90 FR 25140, is further delayed until October 1, 2026.

FOR FURTHER INFORMATION CONTACT: *SEC:* Alexis Palascak and Daniel Levine, Senior Counsels; Adele Kittredge Murray, Private Funds Fellow; or Robert Holowka, Acting Assistant Director, Investment Adviser Regulation Office, at (202) 551–6787, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549. *CFTC:* Michael Ehrstein, Special Counsel, at (202) 418–6700, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: The Commissions are extending the compliance date of the Final Form PF under the Investment Advisers Act of 1940 (the ''Advisers Act'').[1]

Agency	Reference	CFR citation
CFTC & SEC ..	Form PF ..	17 CFR 279.9.

I. Discussion

On February 8, 2024, the Commissions adopted amendments to Form PF [17 CFR 279.9] [2] under the

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any section of the Advisers Act, we are referring to 15 U.S.C. 80b, in which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any section of these rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275], in which these rules are published.

[2] Congress enacted Sections 404 and 406 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act''), which require that private fund advisers file reports and specify certain types of information that should be subject to reporting and/or recordkeeping requirements. Public Law 111–203, 124 Stat. 1376

Continued