Simpson Thacher

Registered Funds Regulatory Update

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Litigation

U.S. Supreme Court Affirms SEC's Power to Obtain Disgorgement

The U.S. Supreme Court recently reviewed a 2025 Ninth Circuit decision affirming the SEC's authority to obtain a $2.3 million disgorgement penalty in a civil-enforcement action. The Supreme Court's decision resolves a circuit split between the Second Circuit and the Ninth and First Circuits regarding the standard for awarding disgorgement as a form of equitable relief. Specifically, the question presented was whether the SEC may seek disgorgement in civil-enforcement actions without a demonstration that investors suffered actual financial loss, or pecuniary harm. The case marks the third time in the past decade that the Supreme Court has examined the SEC's authority to seek disgorgement. The Supreme Court last addressed the SEC's disgorgement authority in *Liu v. SEC* in 2020, when it held that disgorgement should not exceed a wrongdoer's net profits and must be awarded for victims, but left unresolved whether victims must be identified and whether they must have suffered financial harm to support a disgorgement award.

Subsequently in 2023, the Second Circuit, in *SEC v. Govil*, applied *Liu* and held that disgorgement, as an equitable remedy, requires a finding that investors suffered pecuniary harm. In *Govil*, the Second Circuit quoted *Liu* to emphasize the point that "'disgorgement must be 'awarded for victims,' and 'a defrauded investor is not a 'victim' for equitable purposes if he suffered no pecuniary harm.'"

In contrast, the Ninth Circuit, in *Sriptech v. SEC*, explicitly rejected the Second Circuit's rationale as "[un]persua[sive]," and instead joined the First Circuit in holding that a showing of pecuniary harm is not a statutory "precondition" to disgorgement. While the Ninth Circuit agreed with the Second Circuit in so far as requiring a "victim" for the imposition of equitable disgorgement, it diverged on the basis of the meaning of "victim" in this context. The Ninth Circuit reasoned that requiring pecuniary harm would be inconsistent with disgorgement at common law, which requires interference with "the claimant's legally protected interests," rather than proof of loss, and that the Second Circuit's proposed approach improperly "ignores the fundamental distinction between compensatory damages, which are designed to compensate [a victim for losses], and restitution, which is designed to deprive the wrongdoer of his ill-gotten gains." By contrast in *Govil*, the Second Circuit determined a victim is "one who suffers pecuniary harm from the securities fraud"—highlighting *Liu*'s references to disgorgement as a tool to "restore the status quo" and "return … funds to victims," which the Second Circuit reasoned "presupposes pecuniary harm." The Second Circuit added that disgorgement without pecuniary harm to investors "does not aim to restore the status quo at all," but rather would "'confer [] a windfall on those who received the benefit of the bargain,' contrary to *Liu*'s command to 'bring disgorgement within equitable bounds.'"

The Circuit split has significant practical implications for SEC enforcement. As the petition noted, in fiscal year 2024, the SEC collected $6.1 billion in disgorgement, of which approximately $345 million (less than 6% of that total) was returned to investors, far exceeding the $2.1 billion in civil penalties collected by the SEC during the same period. The amount also far exceeded the aggregate $2.7 billion in disgorgement paid to investors since October 2020.

Under the Ninth Circuit's approach, supported by the SEC, disgorgement would be available regardless of whether investors actually lost money, because disgorgement post-*Liu* is a "profits-focused remedy" that "rests on the principle that a wrongdoer should not 'make a profit out of his wrong.'" By contrast, the Second Circuit's ruling requires the SEC to establish investor losses before seeking that remedy.

Following oral argument, the Supreme Court, on June 4, 2026, affirmed the Ninth Circuit and unanimously held that the SEC need not prove that investors suffered actual financial (pecuniary) loss to obtain a disgorgement award in an enforcement action. Writing for the Court, Justice Neil Gorsuch explained that disgorgement in SEC cases is aimed at stripping wrongdoers of ill-gotten gains for the benefit of investors, and neither the text of the statutes nor *Liu* imposes a separate requirement to show out-of-pocket losses by victims. The decision preserves the SEC's ability to seek disgorgement even where losses are difficult to quantify, so long as the award is properly tailored to unjust enrichment and directed to investors.

Sripetch v. SEC, No. 25-466, 601 U.S. ___ (June 4, 2026).

SEC v. Sripetch, 154 F. 4th 980 (9th Cir. 2025).

SEC v. Govil, 86 F.4th 89 (2d Cir. 2023).

SEC Enforcement

SEC Announces Enforcement Results for Fiscal Year 2025

On April 7, 2026, the SEC announced its enforcement results for fiscal year 2025, which ended on September 30, 2025. During fiscal year 2025, the SEC filed 456 total enforcement actions, down from the 583 actions filed in the 2024 fiscal year, and obtained orders for $17.9 billion in financial remedies, up from $8.2 billion obtained in the 2024 fiscal year. The $17.9 billion in aggregate financial remedies consisted of $10.8 billion in disgorgement and prejudgment interest, and $7.2 billion in civil penalties. The SEC also obtained orders barring 119 individuals from serving as officers and directors of public companies.

The SEC distributed approximately $262 million to harmed investors and issued whistleblower awards totaling approximately $60 million, down from nearly $255 million in the previous year. The SEC reported that it received a record 53,753 tips, complaints, and referrals in total in fiscal year 2025, nearly 19% more than in the prior fiscal year.

The SEC described fiscal year 2025 as a unique period of transition and stated that the current Commission has recentered the enforcement program on investor protection and market integrity. The SEC highlighted actions involving offering frauds, market manipulation, insider trading, issuer disclosure violations, and breaches of fiduciary duty by investment advisers. Notably, the SEC focused on protecting the interests of retail investors, who may be particularly vulnerable to securities fraud, while prioritizing identifying and remedying fraudulent conduct. The enforcement actions brought or settled by the SEC in fiscal year 2025 included, for example:

- **Individual accountability.** Approximately two-thirds of standalone actions filed in fiscal year 2025 involved charges against one or more individual bad actors, a 27% year-over-year increase, and nearly nine out of every 10 standalone actions filed under SEC Acting Chair Mark Uyeda and SEC Chair Paul Atkins involved individual charges.

- **Retail investor fraud and investor harm.** The SEC noted actions addressing conduct involving fraudsters who targeted veterans, seniors, and members of religious communities, including actions involving alleged losses of approximately $400 million from approximately 2,700 investors and more than $140 million from approximately 300 investors.

- **Market integrity and disclosure cases.** The SEC highlighted actions involving market manipulation, insider trading, issuer disclosure violations, and breaches of fiduciary duty by investment advisers, including actions against Allarity Therapeutics, Inc. for alleged disclosure failures and Vanguard Advisers, Inc. for allegedly failing to adequately disclose conflicts of interest.

- **Emerging technologies and cross-border misconduct.** In February 2025, the SEC announced the Cyber and Emerging Technologies Unit to combat misconduct involving blockchain technology, AI, account takeovers, cybersecurity, and other areas, and in September 2025, the SEC formed the Cross-Border Task Force to address threats posed by fraudsters located abroad.

- **Cooperation, remediation, and case selection.** The SEC stated that, as a result of self-policing, self-reporting, remediation, and cooperation, the Division recommended reduced civil penalties or declined to recommend enforcement actions in certain matters; the release also noted the current Commission's resolution of prior cases that it viewed as not sufficiently grounded in the federal securities laws.

The monetary relief reported for the fiscal year 2025 was attributable in significant part to judgments entered against Robert Allen Stanford and other defendants in the SEC's long-running litigation arising out of an $8 billion Ponzi scheme, in which the monetary relief obtained totaled $1.4 billion in disgorgement and prejudgment interest, as well as $1.3 billion in civil penalties. The SEC also highlighted trial victories, including a jury verdict against Massachusetts-based investment adviser Jeffrey Cutter and Cutter Financial Group, LLC for violations of Section 206(2) of the Advisers Act and a jury verdict against Steven M. Gallagher for securities fraud and manipulative trading in connection with an alleged scheme to manipulate stocks using Twitter.

The SEC framed fiscal year 2025 as a reset away from volume-driven enforcement statistics and toward cases that provide meaningful investor protection and strengthen market integrity. The release emphasized that future enforcement priorities and results will be linked to the Commission's and the Division's core mandate, including standing up to fraud in its many forms, addressing fraudulent and manipulative conduct through appropriate remediation, and repaying investor losses when harmed.

SEC Press Release, *SEC Announces Enforcement Results for Fiscal Year 2025* (Apr. 7, 2026), available at: https://www.sec.gov/newsroom/press-releases/2026-34.

SEC Rulemaking

SEC Announces 2026 Regulatory Agenda

On July 7, 2026, the SEC's Office of Information and Regulatory Affairs released the SEC's 2026 Regulatory Agenda, which outlines the Division of Investment Management's key regulatory priorities and anticipated timing. SEC Chair Paul Atkins noted that the Agenda reflects the SEC's focus on (i) embracing innovation and new technology; (ii) reversing the decline of public companies and revitalizing public markets; and (iii) ensuring a regulatory framework that is transparent, accessible, and safeguarded. The Agenda indicates that the SEC currently intends to propose the following noteworthy proposals in July 2026:

- rules governing the offer and sale of crypto assets, potentially including certain exemptions and safe harbors, intended to clarify the regulatory framework applicable to crypto assets and provide greater certainty to the market;
- amendments to the broker-dealer financial responsibility rules, including amendments addressing the application of these rules to crypto assets; and
- amendments to account for the trading of crypto assets on alternative trading systems and national securities exchanges.

The SEC also intends to propose the following noteworthy proposals in October 2026:

- rule amendments and/or new rules under the Advisers Act and the 1940 Act designed to facilitate retail investor exposure to private markets through registered investment companies and to expand the categories of clients to which investment advisers may charge performance-based fees;
- rule amendments intended to simplify the "pathways" companies use to privately raise capital, including potential amendments to the definition of "accredited investor" in Rule 501 of Regulation D;
- amendments to Rule 17a-7 under the 1940 Act to expand the availability of the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons;
- rule amendments or new rules under the Advisers Act and the 1940 Act to modernize the custody framework, including to address custody of crypto assets;
- amendments to Rule 206(4)-5 under the Advisers Act prohibiting investment adviser pay-to-play practices, intended to address identified compliance burdens;

- amendments to the recordkeeping rules applicable to investment advisers and broker-dealers;
- rules governing the electronic delivery of information required to be delivered under the federal securities laws, intended to modernize the SEC's approach to electronic communications and reduce the costs associated with paper delivery;
- rule amendments intended to rationalize disclosure practices to facilitate disclosure of material information by companies and to improve shareholder access to that information;
- rule amendments intended to modernize the requirements of Exchange Act Rule 14a-8, which grants shareholders the right to submit proposals for a vote at company meetings, to reduce compliance burdens for registrants and reflect developments since the rule was last amended;
- rule amendments intended to modernize the rules governing the proxy solicitation process, including certain filing and procedural requirements relating to proxy solicitations and shareholder meetings, to reduce costs and compliance burdens;
- new exemptive rule under the 1940 Act to allow registered investment companies to lend securities using an affiliated lending agent that is compensated based on a share of the revenue derived by the securities lending transactions, subject to certain conditions; and
- rules addressing the regulatory status of "finders" for purposes of Section 15(a) of the Exchange Act.

Paul Atkins, SEC Chair, *Statement on the 2026 Regulatory Agenda* (July 7, 2026), available at: https://www.sec.gov/newsroom/speeches-statements/atkins-statement-2026-regulatory-agenda-070726.

Agency Rule List - 2026 (July 7, 2026), available at: https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=DF18DEC037C6B7413A2711AFEFB3C495C59E06BFCDE7E1BE46A6C4146A2687B824ADE53473DD4A3583D506204D82DFD751C6.

SEC Proposes to Rescind Climate-Related Disclosure Rules

On May 29, 2026, the SEC proposed rescinding in their entirety the disclosure requirements adopted under the Securities Act and the Exchange Act that would have required public companies to disclose certain climate-related risks in registration statements and annual reports. Those requirements, originally adopted in March 2024 under former SEC Chair Gary Gensler, were stayed by the Commission in April 2024 pending judicial review and never implemented.

The SEC proposed to rescind the climate-related disclosure rules in their entirety on the grounds that the rules "exceed the statutory limits on the Commission's disclosure authority." The SEC also identified several independent policy reasons to rescind the rules, including that the rules: (i) are unnecessary and inconsistent with a registrant-specific, materiality-based approach to disclosure; (ii) extend beyond the policy objectives of the federal securities laws; (iii) impose substantial costs that are not justified by the potential informational benefits to certain investors; and (iv) are inconsistent with the SEC's policy objectives of facilitating capital formation and promoting public company status. The SEC estimates that rescission of the rules will result in approximately $4.9 billion in annualized cost savings across all affected registrants over a ten-year period.

In an accompanying statement, SEC Chair Atkins characterized the rescission as a central component of his broader agenda to realign the Commission's disclosure requirements with its statutory authority. SEC Chair Atkins stated that "SEC disclosure obligations should comply with the Commission's statutory authority, be guided by materiality as the North Star, avoid the practical effect of dictating corporate behavior, and be imposed only when the expected benefits justify the likely costs and burdens." Similarly, SEC Commissioner Mark Uyeda described the climate-related disclosure rules as rules "to influence how a business operates hidden under a cloak of disclosure," asserting that the federal securities laws "were never intended to be an amorphous tool to elicit environmental and social policy changes."

Public comments on the proposed rescission of such climate-related disclosure rules are due August 3, 2026.

Rescission of Climate-Related Disclosure Rules, SEC Release Nos. 33-11421; 34-105572; File No. S7-2026-19 (May 29, 2026), available at: https://www.sec.gov/files/rules/proposed/2026/33-11421.pdf.

Paul S. Atkins, SEC Chair, *Statement on Proposing Release for Rescission of Climate-Related Disclosure Rules* (May 29, 2026), available at: https://www.sec.gov/newsroom/speeches-statements/atkins-statement-rescission-climate-related-disclosure-rules-052926.

Mark T. Uyeda, SEC Commissioner, *Statement of Commissioner Mark T. Uyeda on the Rescission of Climate-Related Disclosure Rules* (May 29, 2026), available at: https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-rescission-climate-related-disclosure-rules-052926.

SEC and CFTC Jointly Propose Amendments to Reduce Private Fund Reporting Burdens

On April 20, 2026, the SEC and CFTC jointly proposed amendments to Form PF that are intended to reduce the reporting burdens on private fund advisers while preserving the collection of information the agencies deem necessary and appropriate for investor protection purposes. Form PF is a confidential reporting form applicable to certain SEC-registered investment advisers to private funds, including advisers that are also registered with the CFTC as commodity pool operators or commodity trading advisers. According to the agencies, prior rounds of rulemaking rendered the form unduly complex and costly for many firms to complete, without yielding data of commensurate regulatory utility. SEC Chair Atkins stated that the earlier requirements distracted advisers "from their core investment functions, often without a commensurate benefit to regulators' use of the collected data."

The proposed amendments would increase the threshold for advisers required to file Form PF from those managing $150 million in private fund assets to those managing $1 billion, which is estimated to eliminate the filing obligations for approximately half of the advisers currently required to file Form PF. The proposal further estimates that, even with the higher threshold, Form PF would continue to capture information concerning more than 90% of the gross assets of private funds reported by advisers. In addition, the proposal would eliminate certain reporting obligations for smaller hedge fund advisers by increasing the threshold for large hedge fund adviser status—which triggers more detailed quarterly reporting—from $1.5 billion to $10 billion in hedge fund assets under management. This change is estimated to eliminate certain reporting obligations for approximately two-thirds of the advisers that currently report as large hedge fund advisers.

Beyond narrowing the scope of filers, the proposal also streamlines the reporting requirements. For private equity fund advisers, the proposal would eliminate quarterly event reporting in its entirety. For large hedge fund advisers that remain within scope, it would remove or simplify a number of granular disclosure requirements, including certain counterparty exposure tables, performance volatility metrics, and obligations to "look through" fund structures in order to report indirect holdings. In addition, the proposal would afford hedge fund advisers the full 72-hour filing period for urgent event reports, rather than requiring such reports to be filed "as soon as practicable."

Public comments on the proposed amendments were due June 23, 2026.

Form PF; Reporting Requirements for All Filers, SEC Release No. IA-6959; File No. S7-2026-13 (Apr. 20, 2026), available at: https://www.sec.gov/files/rules/proposed/2026/ia-6959.pdf.

SEC Remarks

Woodcock Emphasizes "Back to Basics" Enforcement

In a recent speech at the Managed Funds Association Legal & Compliance 2026 Conference, David Woodcock, the newly appointed Director of the SEC's Division of Enforcement, delivered his first public remarks and outlined a "back to basics" enforcement philosophy aligned with SEC Chair Atkins' agenda. He explained that the Division is "deliberately shift[ing] toward[s] an emphasis on quality over quantity," focusing its resources on matters involving genuine investor harm rather than technical violations. He further identified the Division's principal enforcement priorities as breaches of fiduciary duty by investment advisers—including the misappropriation of client assets, misleading disclosures regarding investment strategies, undisclosed fees and expenses, fraudulent valuations, and conflicts of interest—as well as financial reporting fraud, offering fraud, insider trading, and market manipulation.

Woodcock devoted particular attention to private funds, highlighting risks related to valuation, fees, conflicts of interest, and liquidity and investor suitability. With respect to private credit, he noted that the SEC is "monitoring the situation" regarding portfolio stresses across the sector, suggesting that the Division may already be tracking specific strategies in which markdowns or liquidity issues could expose prior valuation concerns. He also announced the reinstatement of the Retail Fraud Working Group to focus on cases involving systemic harm to retail investors and strengthen coordination with state and federal partners and reaffirmed the Division's commitment to the Cross-Border Task Force, which will investigate cross-border matters, including potential violations of the U.S. federal securities laws related to foreign-based companies.

On cooperation and self-reporting, Director Woodcock drew a clear distinction between honest mistakes and fraud, stating that the Commission "is not focused" on prosecuting the former where no investor harm has resulted. He stated that firms that self-report, cooperate fully, and undertake appropriate remediation will be treated differently from those that conceal misconduct or obstruct an investigation, and encouraged early and candid engagement with the Division.

David Woodcock, SEC Division of Enforcement Director, *Remarks at the MFA Legal & Compliance 2026 Conference* (May 13, 2026), available at: https://www.sec.gov/newsroom/speeches-statements/woodcock-remarks-mfa-legal-compliance-2026-conference-051326.

SEC Staff Guidance

SEC Issues Risk Alert on Investment Adviser Disclosure of Economic Conflicts of Interest

On June 9, 2026, the Staff of the SEC's Division of Examinations published a Risk Alert summarizing examination observations regarding SEC-registered investment advisers' fiduciary obligations around economic conflicts of interest. The Risk Alert reiterates that, as fiduciaries, advisers must either eliminate conflicts of interest or provide full and fair disclosure of conflicts that might incline them, consciously or unconsciously, to render advice that is not disinterested. The Staff stated that the Alert is intended to help advisers develop effective compliance programs and disclosures addressing economic conflicts.

The Staff identified recurring issues in five areas:

- **Cash management recommendations:** Advisers received revenue from client cash sweep or other cash management arrangements, sometimes involving affiliates, without fully and fairly disclosing revenue sharing, incentives, fees, expenses, or lower-cost alternatives.
- **Other revenue opportunities:** Advisers failed to disclose or adequately explain economic benefits tied to recommendations, including mutual fund share-class compensation, custodial credits, transaction markups, margin-related compensation, termination fees, and other adviser or affiliate benefits.
- **Form ADV fee and conflict disclosures:** The Staff observed compensation-related misstatements and omissions in Form ADV Part 2A brochures, including disclosures that were incomplete, misleading, outdated, or inconsistent with actual business practices.
- **Fees deviating from agreements or disclosures:** Advisers charged fees inconsistent with advisory agreements or disclosures, including billing for services no longer provided, failing to refund prepaid fees after termination, or not confirming that terminated accounts were no longer charged.
- **Compliance program deficiencies:** Adviser policies and procedures often did not adequately address fee billing practices, fee calculation accuracy, refunds and rebates, cash management arrangements, or other economic conflicts specific to the adviser's business model.

The Risk Alert emphasizes that advisers should identify all direct and indirect economic benefits, ensure disclosures reflect actual practices rather than hypothetical conflicts, and implement tailored controls to test fee billing and conflict disclosures on an ongoing basis.

Examinations Observations of Investment Adviser Obligations Related to Economic Conflicts of Interest (June 9, 2026), available at: https://www.sec.gov/files/observations-ia-obligations-related-economic-conflicts-interest-060926.pdf.

Industry Developments

SEC Forms Retail Fraud Working Group

The SEC recently announced the creation of a new Retail Fraud Working Group within the Division of Enforcement. The Working Group is expected to draw on personnel and resources from across the Commission to investigate and pursue fraud and other misconduct involving retail investors. The SEC identified several categories of conduct within the Working Group's remit, including offering fraud, pump-and-dump activity, market manipulation, and breaches of duty-of-care by investment advisers and broker-dealers. The announcement also stated that, in coordination with the SEC's Office of Investor Education and Assistance, the Working Group will engage in educational outreach to retail investors.

SEC Chair Atkins described the initiative as reflecting the Commission's commitment to protecting investors from fraud and as "a return to the core values and principles of the enforcement program." David Woodcock, Director of the SEC's Division of Enforcement, similarly emphasized that the Working Group would focus on generating cases, coordinating with other regulators, and using technology-driven detection methods. The Retail Fraud Working Group will be led by the SEC Division of Enforcement's Deputy Director (West) and Assistance Director of the Asset Management Unit.

SEC Press Release, *SEC Forms New Retail Fraud Working Group* (July 7, 2026), available at: https://www.sec.gov/newsroom/press-releases/2026-63-sec-forms-new-retail-fraud-working-group.

FASB Proposes Amendments to Valuing Restricted Stock Holdings

On July 1, 2026, the Financial Accounting Standards Board (FASB) proposed a rule change that would affect the manner in which investment companies determine the fair value of an equity security subject to a contractual restriction prohibiting its sale. The proposal responds to concerns expressed by industry participants that the current accounting framework may overstate the value of such restricted holdings because it does not reflect the discount a market participant would apply to stock that cannot be resold immediately.

Under guidance issued in June 2022, investment companies are required to value restricted stock at the same price as freely tradable stock of the same issuer, effectively disregarding the restriction altogether. As a result, an investment company holding shares that cannot be sold for six months reports the same value as a fund holding identical shares without any such restriction. The new proposal would alter this approach for investment companies by requiring them to apply a discount that reflects the impact of the sale restriction when valuing those holdings.

In addition, the proposal would require investment companies to disclose separately the amount of any discount applied as a result of sale restrictions, thereby providing investors with greater transparency regarding the valuation of these holdings. FASB believes these revisions would make investment company financial reporting more useful by aligning fair value measurements with the value market participants would place on those shares.

Early adoption would be permitted. The proposal is significant for fund managers and asset management firms holding pre-IPO or lock-up shares, as it could result in lower reported net asset values for positions subject to resale restrictions—with downstream effects on performance reporting, management fee calculations, and investor allocation decisions.

Stakeholder comments on the proposed rule change were due on July 17, 2026.

FASB News, *FASB Seeks Public Comment on Proposal to Improve Investment Company Fair Value Reporting* (July 1, 2026), available at: https://www.fasb.org/news-and-meetings/in-the-news/fasb-seeks-public-comment-on-proposal-to-improve-investment-company-fair-value-reporting-424892.

SEC Requests Public Comment on Novel ETFs

The SEC recently requested public comments on exchange-traded funds that invest in innovative asset classes or pursue novel investment strategies. The SEC framed the request as part of a broader effort to support ETF innovation while protecting investors, promoting fair, orderly, and efficient markets, and facilitating capital formation. Among other things, the request seeks public comment as to whether:

- certain novel ETFs should be treated as "investment companies" as defined under the 1940 Act when their principal investment strategy involves assets that may not be securities. In particular, the SEC asks whether a novel ETF would satisfy the 1940 Act's "subjective test," which examines whether an issuer is, holds itself out as, or proposes to be engaged primarily in the business of investing, reinvesting, or trading in securities. The SEC also asks whether it should continue applying the Tonopah factors, a five-factor test that the SEC developed for purposes of the subjective test, in this analysis, which are: (i) the issuer's historical development; (ii) its public representations of policy; (iii) the activities of officers and directors; (iv) the nature of present assets; and (v) the sources of its present income. The SEC also asks why a product principally investing in non-security assets would seek registration as an investment company rather than using another exchange-traded product structure.

- Rule 6c-11 under the 1940 Act, which permits ETFs meeting specified conditions to operate without obtaining individual exemptive relief, should be amended for novel ETFs, including whether new portfolio requirements, diversification or concentration limits, issuer-specific limits, asset-class exclusions, or strategy restrictions may be appropriate. The request ties these questions to the functioning of the ETF arbitrage mechanism, secondary market trading, investor protection, market surveillance, and broader structural or operational issues.

- the registration process under Securities Act Rule 485 should be modified for novel ETFs, including whether the current 75-day and 60-day automatic effectiveness periods should be extended, tolled, or subject to Commission-initiated delay.

Public comments for the request are due August 31, 2026.

SEC Request for Comment, *Request for Comment on Novel ETFs*, SEC Release No. 33-11426; 34-105808; IC-36228 (June 30, 2026), available at: https://www.sec.gov/files/rules/other/2026/33-11426.pdf.

SEC Approves 2% Monthly Repurchase Offer Structure for Interval Funds

On June 23, 2026, JPMorgan received SEC approval for exemptive relief permitting two of its interval funds to offer monthly repurchase offers of 2%. The SEC's relief permits the interval funds to depart from the interval-fund repurchase framework governed by Rule 23c-3 under the 1940 Act, which generally permits repurchase offers only on a quarterly, semiannual, or annual basis, with each repurchase offer limited to between 5% and 25% of a fund's outstanding shares. The relief also departs from prior SEC exemptive relief, which had permitted monthly repurchase offers of 5%.

Under the approved structure, each monthly offer must be for at least 2% of the fund's outstanding common shares, and the total amount offered over any three-month period must remain between 5% and 25% of the outstanding shares in accordance with Rule 23c-3. However, if a fund's assets are growing, this aggregate repurchase requirement may obligate the fund to offer more than 2% in a given month if the customary 2% repurchase offer would result in less than 5% of the fund's shares being offered for repurchase over a three-month period, based on the aggregate number of shares outstanding during that period.

By preserving Rule 23c-3's aggregate quarterly repurchase limits, the proposed relief would permit more frequent repurchase offers without undermining the structural safeguards that define the interval fund framework. The relief also reflects the SEC's continuing efforts to foster innovation in semi-liquid registered fund products, consistent with the broader regulatory trend of expanding retail investor access to private and alternative investment strategies. Notably, however, the relief granted applies only to the interval funds identified in the exemptive application. Accordingly, any other sponsors seeking to offer 2% monthly repurchase programs would need to seek their own exemptive relief.

In the Matter of JPMorgan Public and Private Credit Fund, et al., Release No. IC-36217 (June 23, 2026), available at: https://www.sec.gov/Archives/edgar/data/1363391/999999999726001096/filename1.pdf.

SEC Publishes Draft Strategic Plan Signaling Shift in Agency's Regulatory Philosophy

On June 2, 2026, the SEC published a Draft Strategic Plan for fiscal years 2026 through 2030, signaling a significant shift in the SEC's regulatory philosophy under SEC Chair Atkins. SEC Chair Atkins has characterized the plan as a return to the agency's core mission of protecting investors, maintaining fair and efficient markets, and facilitating capital formation—a deliberate departure from the prior administration's emphasis on expanding regulatory reach through new disclosure mandates and proactive enforcement.

The Draft Strategic Plan sets forth three principal goals. First, it seeks to renew the SEC's regulatory policy focus to support innovation, capital formation, market efficiency, and investor protection by promoting "clear, fit-for-purpose rules that foster responsible innovation and deter misconduct." A notable objective under this goal is establishing a coherent regulatory foundation for digital assets and distributed ledger technologies.

Second, the Plan aims to recalibrate the SEC's regulatory practices to emphasize greater stakeholder engagement and to return enforcement to Congress's original intent. Under this approach, the SEC would focus on policing violations of established law, such as fraud and market manipulation, rather than expanding its regulatory reach through ad hoc enforcement actions. Enforcement success would be measured by deterrence and enhanced market clarity, rather than by case volume or the amount of monetary penalties imposed. This goal also contemplates periodic retrospective reviews of existing rules, including those governing private fund reporting.

The third goal is to optimize operational efficiency through technology modernization, including overhauling EDGAR and responsibly integrating AI, and reforming employee performance management.

Public comments on the Plan were due on July 2, 2026.

SEC, *Draft Strategic Plan for Fiscal Years 2026-2030* (June 2, 2026), available at: https://www.sec.gov/files/draft-strategic-plan-fy26-fy30.pdf.

SEC Rescinds "No-Deny" Settlement Policy

On May 18, 2026, the SEC formally rescinded its policy—commonly referred to as the "no-deny" settlement policy—codified in Rule 202.5(e) of its informal rules of procedures, which for decades had prohibited companies and individuals settling enforcement actions from publicly denying the agency's allegations. Critics had characterized the policy as a "gag rule" because it effectively prevented settling parties from defending their reputations after paying fines or accepting other sanctions. Going forward, parties that settle with the SEC may publicly dispute the agency's allegations without risking rescission of their settlements.

Notably, the SEC also announced that it will not enforce existing no-deny provisions in previously executed settlements, thereby permitting parties who settled in the past to speak publicly about their cases. SEC Chair Atkins characterized the decision in constitutional terms, stating that "[s]peech critical of the government is an important part of the American tradition. This rescission ends the policy prohibiting such criticism by settling defendants."

The SEC retains full authority to require a settling party to admit wrongdoing as a condition of settlement, particularly in serious matters or those involving parallel criminal proceedings. The rescission simply eliminates the blanket prohibition on public denials and does not constrain the SEC's ability to seek admissions or negotiate other settlement terms.

SEC Press Release, *SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions* (May 18, 2026), available at: https://www.sec.gov/newsroom/press-releases/2026-45-sec-rescinds-policy-regarding-denials-settlements-enforcement-actions.

NASAA Approves Investment Advertising Rule Amendments

On May 4, 2026, the North American Securities Administrators Association (NASAA) announced that its members had voted to adopt amendments to four model rules governing investment adviser advertising. The amendments modernize state-level advertising standards and more closely align them with the SEC's federal marketing rule for SEC-registered investment advisers. The amendments were initially proposed for public comment in July 2025.

The amendments establish a model framework under which states may permit state-registered investment advisers to use testimonials, endorsements, ratings, and specific performance reporting, subject to defined regulatory specified guardrails. Previously, existing NASAA model rules explicitly prohibited the use of such marketing tools and did not specifically authorize performance advertising. The amendments now allow state-registered advisers to use marketing practices more closely aligned to those used by SEC-registered firms and require the advisers to update their policies and procedures to ensure that marketing materials, including testimonials, comply with new guidelines to prevent fraudulent or misleading communications.

The amendments relate to NASAA Model Rules concerning unethical business practices, prohibited conduct, and recordkeeping requirements.

NASAA News, *NASAA Modernizes Investment Adviser Advertising Rules to Align with Federal Standards* (May 4, 2026), available at: https://www.nasaa.org/81020/nasaa-modernizes-investment-adviser-advertising-rules/.

DOL Vacates the 2024 Retirement Security Rule

On March 18, 2026, the U.S. Department of Labor's Employee Benefits Security Administration announced the removal of the Biden Administration's 2024 "Retirement Security Rule: Definition of an Investment Advice Fiduciary" from the Code of Federal Regulations. The DOL took this action in response to final judgments issued by the U.S. District Courts for the Northern District of Texas and the Eastern District of Texas vacating the rule. The vacatur notice, published in the Federal Register, reflects the judicial resolution of the legal challenges to the 2024 rule and the related amendments to prohibited transaction exemptions, and restores ERISA's longstanding five-part test for determining whether a person is an investment advice fiduciary.

The 2024 Retirement Security Rule was the DOL's third attempt since 2010 to expand the definition of who constitutes a "fiduciary" when providing investment advice to retirement plans and individual retirement accounts. The rule would have extended ERISA fiduciary duties to cover certain one-time professional retirement investment recommendations—such as advising an employee to roll over a 401(k) into an IRA, recommending the purchase of an annuity, or advising on plan investment menu design—that had not previously triggered fiduciary status. Rather than relying on the traditional hallmarks of an ongoing advisory relationship, the rule focused on whether the advice was provided within the context of a trusted advice relationship. A similar rule finalized by the DOL in 2016 during the Obama administration was vacated in 2018 by the U.S. Court of Appeals for the Fifth Circuit on the ground that it exceeded the DOL's statutory authority. The Courts concluded that the 2024 rule suffered from many of the same legal deficiencies.

With the 2024 rule now vacated, the governing standard reverts to the DOL's original 1975 regulation, known as the "five-part test." Under this test, a person is deemed an investment advice fiduciary only if all five conditions are met: (i) the person renders advice to the ERISA plan or an IRA as to the value of securities or other property, or makes recommendations as to investing in, purchasing, or selling securities or other property; (ii) on a regular basis; (iii) pursuant to a mutual agreement or understanding; (iv) that such advice will serve as a primary basis for investment decisions; and (v) that the advice will be individualized based on the particular needs of the plan or IRA. Because each of these elements must be satisfied simultaneously, most one-time or episodic recommendations—such as a single rollover suggestion or a standalone annuity sale—do not satisfy the test and therefore do not carry ERISA fiduciary obligations.

This development is significant for registered funds because fund shares are distributed to retirement investors primarily through broker-dealers and financial advisors who make recommendations in connection with 401(k) rollovers, IRA contributions, and plan menu selections—the very transactions the vacated rule would have subjected to heightened fiduciary obligations. The vacatur therefore preserves the existing, less restrictive framework governing these distribution arrangements, including the compensation structures—such as revenue sharing, 12b-1 fees, and sales loads—that fund complexes and their intermediaries rely on to distribute fund shares to retirement investors.

In explaining the decision, Assistant Secretary of Labor for Employee Benefits Security Daniel Aronowitz stated that the 2024 rule "wrongly sought to impose ERISA fiduciary status on securities brokers and insurance agents when there was not a relationship of trust and confidence." The DOL further emphasized that the SEC and state regulators already oversee the activities of securities brokers and insurance agents, and that such oversight will continue. As a practical matter, this reflects the government's decision to defer to existing regulatory frameworks—such as the SEC's Regulation Best Interest—rather than superimpose additional ERISA fiduciary obligations on top of one-time retirement investment recommendations, including rollovers and annuity purchases.

The DOL stated that it does not currently intend to engage in notice-and-comment rulemaking on this topic and remains focused on its core mission of "redoubling its efforts to make employer-based U.S. retirement plans the strongest and most innovative in the world."

DOL News Release, *US Department of Labor Restores Long-Standing Investment Advice Rule After Pair of Court Decisions Vacate 2024 Retirement Security Rule* (Mar. 18, 2026), available at: https://www.dol.gov/newsroom/releases/ebsa/ebsa20260318.

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Memorandum

SEC Proposes to Greatly Enhance Electronic Delivery of Required Disclosures Under the Federal Securities Laws

July 22, 2026

Under SEC-Chairman Paul Atkins, the Securities and Exchange Commission has proposed a new set of rules that would permit electronic delivery as the default method of delivery for all required disclosures under the federal securities laws. [1] If adopted, this would mark a foundational and very welcome shift in how registered investment advisers, investment companies, business development companies, broker-dealers, transfer agents, and other regulated entities may deliver required disclosures to investors, clients, and other market participants. It would rescind decades of antiquated SEC guidance built when paper materials were the primary disclosure tool and we expect it to deliver significant cost savings across the industry. The SEC has requested comments on the proposed new set of rules on or before September 21, 2026.

Key Changes

	Current E-Delivery Framework	Proposed New E-Delivery Rules
Default delivery method	Paper is the effective default; a recipient must affirmatively opt in before a "covered entity" may rely on E-Delivery.	E-Delivery may be used as the default method, subject to a recipient's right to opt out and receive paper materials free of charge at any time.
Delivery methods	No generally applicable requirements for content, format, or manner of E-Delivery.	Two permitted methods: (i) direct E-Delivery of information to an electronic address, or (ii) E-Delivery of a statement of availability directing the recipient to a website.
Treatment of personal financial information	No specific requirement. [2]	Personal financial information may be electronically delivered only through a statement of availability, and access must be through a process reasonably designed to safeguard the information.
Failure identification and remediation	No specific requirement.	"Covered entities" must adopt and implement written policies and procedures reasonably designed to identify and remediate failed E-Delivery, with prescribed remediation steps.
Website availability	No specific requirements for website presentation, format, or duration of availability.	Websites must meet minimum timing, format, and retention requirements, including at least a one-year availability period for covered information generally and at least three years. for covered information containing personal financial information.

[1] Electronic Delivery of Information Under the Federal Securities Laws, Release Nos. 33-11430; 34-105921; 39-2564; IA-6980; IC-36252 (July 16, 2026). File No. S7-2026-25 (the "Proposal").

[2] Under Regulation S-P, covered institutions are required to develop, implement, and maintain written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer information.

Background

Under the SEC's existing framework, E-Delivery of required regulatory documents has been permitted for decades under SEC interpretive guidance issued in 1995, 1996, and 2000, together with the E-SIGN Act enacted in 2000.[3] In 1995, the SEC first articulated a framework under which E-Delivery could satisfy a statutory delivery requirement if the sender provided adequate notice, the recipient had adequate access to the electronic medium, and the sender had evidence that the information was actually delivered, with recipient consent typically used to establish the third factor.[4] Later in 1996, the SEC extended and refined that notice-access-evidence framework,[5] and again in 2000 in a release addressing E-Delivery in the context of the proxy rules and other SEC requirements.[6] Under current guidance, paper remains the default delivery method; a covered entity, which includes registered investment advisers, investment companies, business development companies, broker-dealers, transfer agents, corporate issuers, indenture trustees/obligors and others with statutory delivery requirements, generally may not rely on E-Delivery unless the recipient has affirmatively consented to it, whether through express opt-in consent or another form of evidence of delivery contemplated by the guidance.

The SEC staff has observed that, in the decades following the publication of the current guidance, a number of the examples in the guidance have become technologically outdated.[7] For example, the current guidance addresses consent to delivery using a floppy disk. Further, the SEC's Office of the Investor Advocate conducted testing involving 5,497 participants, of whom 4,295 identified as investors, and found that roughly 63% preferred some form of E-Delivery even for documents containing personal financial information or "PFI".[8] In light of the outdated guidance, and the growing preference for E-Delivery as the default, the Proposal aims to modernize the disclosure delivery framework under the federal securities laws.

Practical Considerations

Any covered entity that intends to use default E-Delivery will need: (1) E-Delivery Disclosure (as defined herein) that meets the standards outlined in the Proposal, (2) form communications for both direct E-Delivery and statement-of-availability communications calibrated to whether the covered information contains PFI, (3) a safeguarding process for any website through which PFI will be accessed, and (4) written policies and procedures reasonably designed to identify and remediate failed E-Delivery. Further, covered entities that want to convert existing clients or investors from paper to E-Delivery, rather than simply applying the new default to new clients

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[3] Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) (the "1995 Guidance"); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9, 1996) (the "1996 Guidance"). Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) (the "2000 Guidance"). The Proposal provides for a two-year transition period before full rescission of the 1995 Guidance and 1996 Guidance during which covered entities may continue to rely on the prior framework or the new framework set out in the Proposal.

[4] *See* 1995 Guidance supra note 3.

[5] *See* 1996 Guidance supra note 3.

[6] *See* 2000 Guidance supra note 3.

[7] *See* 1995 Guidance supra note 3.

[8] Proposal at Section I.B, citing SEC Office of the Investor Advocate investor testing results.

or investors going forward, will need to be mindful of the 180-day initial notice and 30-day follow-up notice requirements. Fund complexes that currently rely on Rule 30e-3 under the Investment Company Act of 1940 (the "1940 Act"), as well as entities that maintain shareholder list systems built around mailing addresses for proxy and information statement notices and tender offer materials that want to rely on the Proposal will need to conduct outreach to shareholders to obtain electronic addresses. SEC Commissioner Mark T. Uyeda expressed concern regarding the implementation feasibility of the Proposal, noting that "regulatory disclosures often reach investors through a chain of intermediaries, and there is considerable operational infrastructure involved in getting a document from the initial financial entity to the end-user investor."[9] Commissioner Uyeda welcomed comments on the operational infrastructure aspects of the Proposal and whether it is workable.

In practice, many investment advisers, including private fund advisers, already E-Deliver a substantial portion of their client communications today, after first obtaining an investor's affirmative consent under the current guidance. If the Proposal is adopted, E-Delivery could become the default method for delivering covered information. For registered funds, the potential cost savings are expected to be significant. The SEC estimates that reliance on the Proposal would yield total aggregate annual savings in paper, printing, and postage costs of approximately $463 million across covered entities, net of approximately $511 million in one-time initial compliance costs and $209 million in recurring annual compliance costs (after the first year).[10] If adopted, reliance on the new E-Delivery framework is optional, and covered entities that prefer the certainty of an existing opt-in consent model may continue to operate on that basis after the rule takes effect.

The Proposal: Key Elements of Regulation E-Delivery

The Proposal would permit, but not require, a covered entity to treat E-Delivery as the default method of satisfying its delivery obligations under the federal securities laws, without first obtaining a recipient's affirmative consent, so long as the recipient retains a continuing right to opt out and to receive paper free of charge at any time. Reliance on the Proposal would be voluntary in both directions: an entity may continue to operate under an opt-in consent model if it prefers, and a recipient who prefers paper may continue to receive it.

SCOPE: COVERED ENTITIES, COVERED RECIPIENTS, AND COVERED INFORMATION

The Proposal applies broadly to:

[9] Mark T. Uyeda, Commissioner, SEC, Statement on Proposed Regulation E-Delivery (July 16, 2026), available here.

[10] Proposal at Section III.C (estimates assume that 95% of covered entities will rely on the Proposal and that 95% of current recipients transition to electronic delivery).

- **"Covered entities"** which includes registered investment advisers, investment companies, business development companies, broker-dealers, transfer agents, corporate issuers, and other entities with statutory delivery requirements;[11]
- **"Covered recipients"** which encompasses current or prospective customers, clients, investors, security holders, counterparties, or similar recipients of a covered entity's delivery obligations;[12] and
- **"Covered information"** which is defined expansively as any information a covered entity is required to deliver to a covered recipient under the federal securities laws. The definition, however, carves out information that must be filed with or made public through the SEC without being delivered to particular recipients (such as disclosures required to be made public under Regulation FD), as well as certain other information.[13]

The following sets out a non-exhaustive list of examples of covered information for registered investment advisers, registered investment companies, business development companies, broker-dealers, issuers and certain other third parties:

Covered Entity	Examples of Covered Information
Registered Investment Advisers	Form ADV Part 2 brochures and brochure supplements; Form CRS client relationship summaries; marketing and testimonial disclosures; agency cross transaction disclosures; custody rule account statement notices; data breach notices; privacy notices
Registered Investment Companies and Business Development Companies	Shareholder reports; prospectuses and summary prospectuses; proxy materials and information statements; tender offer materials; interval fund repurchase notifications under Rule 23c-3 under the 1940 Act; Section 19(a) notices pursuant to Rule 19a-1 under the 1940 Act; data breach notices; privacy notices
Broker-Dealers	Trade confirmations; Regulation Best Interest disclosures; Form CRS client relationship summaries, quarterly free credit balance notices; disclosure of credit terms of margin loans; privacy notices; Regulation S-AM disclosures
Issuers and Certain Third Parties	Issuer prospectuses, issuer annual reports to security holders; proxy statements and information statements; tender offer statements and solicitation/recommendation statements

TWO PERMITTED E-DELIVERY METHODS

1. **Direct E-Delivery:** A covered entity may deliver covered information that does not include personal financial information directly to a covered recipient's electronic address. The direct E-Delivery must include a prominent statement alerting the covered recipient that covered information is available, which identifies the covered information and the covered entity; a brief description of the covered information; the covered entity's obligation to provide a paper copy of covered information free of charge, upon request; the ability

[11] Proposed Rule § 303.101 (definition of "covered entity").

[12] Proposed Rule § 303.101 (definition of "covered recipient").

[13] Proposed Rule § 303.101 (definition of "covered information").

to opt out of E-Delivery at any time and receive all or a subset of covered information in paper format, free of charge, following an opt-out election; the ability to update one's electronic address free of charge (including, if applicable, an explanation of how to change the type of electronic address that will be used for E-Delivery, such as email or mobile phone number); and the process for a covered recipient to request paper copies, opt out of E-Delivery, and update one's electronic address, which at a minimum must direct a covered recipient to a website through which one can make these requests and updates.

2. **Statement of Availability**: A covered entity may instead deliver a "statement of availability," an electronic communication that directs the recipient to a website where the covered information can be accessed. A covered entity must use the statement of availability method, rather than direct E-Delivery, whenever the covered information contains PFI. The Proposal defines PFI consistently with how it is defined under the current guidance (*i.e.*, information specific to a covered recipient's personal financial matters), and the term includes information such as account balances, holdings, or transaction details.[14] A statement of availability must include: (i) a prominent statement alerting the covered recipient that covered information is available, which identifies the covered information and the covered entity; (ii) a brief description of the covered information (that, as applicable, identifies whether the covered information may require action by the covered recipient within a fixed time frame to exercise certain rights, and whether the covered information is delivered by a person delivering on behalf of the covered entity); (iii) a website address where the covered information is available; (iv) a statement that covered information made available on a website may be superseded by subsequent versions; and (v) a prominent statement describing the covered entity's obligation to provide a paper copy free of charge upon request, the ability to opt out of E-Delivery at any time and receive all or a subset of covered information in paper format free of charge, the ability to update one's electronic address free of charge, and the process for making these requests, which at a minimum must direct the covered recipient to a website through which one can make these requests and updates. Where the covered information contains PFI, the process is required to be reasonably designed to safeguard the PFI (*e.g.*, use of passwords) and lead the recipient directly to the covered information immediately after the recipient completes such process.[15]

DISCLOSURE OF E-DELIVERY

To rely on the E-Delivery framework outlined in the Proposal, a covered entity would need to provide covered recipients with a *clear and conspicuous* disclosure ("E-Delivery Disclosure") describing the types of covered information that will be delivered electronically and how to opt out of E-Delivery. As applicable, the E-Delivery Disclosure would need to state whether a covered recipient's request for paper or to opt out of E-Delivery could result in restrictions or termination of the covered recipient's relationship with the covered entity. The E-Delivery Disclosure is meant to help ensure that covered recipients who provide an electronic address to receive covered

[14] Proposed Rule § 303.102(c); Proposed Rule § 303.101 (definition of "personal financial information").

[15] Proposed Rule § 303.102(c)(1), setting out the required content of a statement of availability.

information are aware of how the covered entity intends to use the electronic address in communicating with the covered recipient and to inform the covered recipient of the specific items of covered information that will be electronically delivered using the covered recipient's electronic address.

SAFEGUARDING, OPT-OUT, AND ADDRESS-UPDATE RIGHTS

The Proposal preserves several investor protections that mirror the current guidance. For example, the Proposal would require a covered entity, free of charge, to send one paper copy of any electronically delivered covered information upon a recipient's request, using U.S. first-class mail or another reasonably prompt means, within three business days of the request and within the covered entity's applicable record-retention period (or, if none applies, the preceding two years); to honor a recipient's opt-out of E-Delivery as to all or a subset of covered information at any time, promptly upon request; and to permit a recipient to update the electronic address, or the type of address (*e.g.*, switching between an email address and a mobile number), on file at any time, free of charge.[16]

WEBSITE AVAILABILITY REQUIREMENTS

The Proposal imposes requirements for covered information delivered through a statement of availability. For example, a covered entity would need to make the covered information available no later than the applicable delivery date and keep it available for at least three years if the information contains PFI, or one year if it does not, unless another provision of the federal securities laws specifies a different retention period. The website must present the information in a format that is convenient for both online reading and printing and that permits permanent, free retention by the recipient, and, where the information contains PFI, access must be restricted through a process reasonably designed to safeguard the PFI.[17] A temporary outage would not itself constitute a violation if the covered entity has adopted and implemented written policies and procedures reasonably designed to ensure continued website availability and if the covered entity takes prompt action to ensure that the covered information becomes available as soon as practicable once it becomes aware, or reasonably should have become aware, of the disruption.[18]

POLICIES AND PROCEDURES TO IDENTIFY AND REMEDIATE E-DELIVERY FAILURES

The Proposal requires every covered entity relying on E-Delivery to adopt and implement written policies and procedures reasonably designed to identify failed electronic deliveries, such as bounced emails or invalid electronic addresses, and to promptly take reasonable remediation steps, either by obtaining a valid electronic address from the recipient or by delivering the information in paper form until a valid address is obtained. The Proposal is careful

[16] Proposed Rule § 303.102(f)-(g).

[17] Proposed Rule § 303.103(a)-(d).

[18] Proposed Rule § 303.103(e).

to note that this requirement is aimed at actual delivery failures and is not intended to require covered entities to monitor open rates, clickthrough rates, or other measures of recipient engagement.[19]

TRANSITIONING EXISTING PAPER RECIPIENTS – 180- AND 30-DAY NOTICES

A covered entity that wishes to move an existing paper recipient onto default E-Delivery must follow a transition process. The entity must first send a paper "initial notice" at least **180** days before the transition, followed by a paper "follow-up notice" at least **30** days before the transition date. The initial notice must be sent separately from other communications and must describe the categories of covered information that will move to E-Delivery, disclose the electronic address the entity intends to use, disclose the recipient's rights to opt out, to update the address on file, and to receive paper copies free of charge, and provide a toll-free telephone number and website through which the recipient can exercise those rights.[20] The follow-up notice would need to comply with the direct E-Delivery and statement of availability requirements outlined above. If a recipient responds to either notice by confirming or updating an electronic address, the entity may begin E-Delivery immediately, without waiting out the balance of the 180-day period and without sending the follow-up notice; if the recipient opts out in response to the initial notice, no follow-up notice is required.

As discussed further below under Practical Considerations, one key transition challenge is that many covered entities, including registered investment companies relying on Rule 30e-3 under the 1940 Act, as well as entities that maintain shareholder list systems built around mailing addresses for proxy and information statement notices and tender offer materials have not historically been required to collect recipients' electronic addresses, which the Proposal's default E-Delivery framework generally requires.[21]

E-SIGN ACT EXEMPTION

Because the consumer consent provisions of the federal E-SIGN Act would otherwise stand in tension with a default, opt-out E-Delivery model, the SEC is proposing to exercise its exemptive authority under Section 104(d)(1) of the E-SIGN Act to exempt any covered information delivered under the Proposal from those consent requirements.[22]

STATUS OF THE CURRENT E-DELIVERY FRAMEWORK

The 1995 Guidance, which first established the notice-access-evidence-of-delivery framework, and the 1996 Guidance, which extended that framework to broker-dealers, transfer agents, and investment advisers, would both

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[19] Proposed Rule § 303.102(h); Proposal at Section II.B.9 (discussing scope of the failure-identification requirement).

[20] Proposed Rule § 303.104(c).

[21] Proposal at Section II.F.1, and Question 125 (inviting comment on transition difficulties, including whether smaller funds require a longer compliance period).

[22] 15 U.S.C. § 7001 et seq.; Proposal at Section II.E, invoking the SEC's exemptive authority under Section 104(d)(1) of the E-SIGN Act. As the Proposal notes, covered entities have historically interpreted the E-SIGN Act to require a covered entity to seek to obtain or confirm the covered recipient's affirmative consent to E-Delivery via email or other electronic means and that the covered recipient respond in kind.

be rescinded in their entirety upon adoption of the Proposal (albeit with a two-year transition period before the rescission is effective). The SEC would, however, reaffirm certain principles from the rescinded guidance if the Proposal is adopted, including the "envelope theory"—the principle that a document enclosed alongside a required delivery is itself deemed delivered. Most of the 2000 Guidance, which addressed E-Delivery in the context of the proxy rules and other SEC requirements, would be retained.

RESCISSION OF RULE 30E-3

The Proposal would rescind Rule 30e-3 under the 1940 Act, which since 2018 has permitted certain funds to satisfy their shareholder report delivery obligations by posting the report online and mailing recipients a paper notice, such as a postcard, informing them of its availability.[23] If the Proposal is adopted, closed-end funds and business development companies that currently rely on Rule 30e-3 would no longer need to mail that paper notice, and open-end funds[24] would likewise be able to deliver shareholder reports electronically as a default matter, in each case once the applicable E-Delivery conditions are satisfied.

AMENDMENTS TO REQUIREMENTS FOR THE DISSEMINATION OF PROXY, TENDER OFFER AND OTHER MATERIALS

The Proposal also sets out proposed amendments to Regulations 14A and 14C and Rule 14d-5 under the Securities Exchange Act of 1934 (the "Exchange Act"), which address the delivery and website availability of proxy materials, information statements for actions without proxy solicitation (*e.g.*, written consents), and the dissemination of third-party tender offer materials through stockholder lists and security position listings, respectively. Under the current "notice and access" guidance, a registrant soliciting proxies may satisfy its delivery obligation by sending a paper "Notice of Internet Availability of Proxy Materials" at least 40 calendar days before the meeting date, while posting the proxy statement, annual report, and proxy card on a publicly accessible website through the conclusion of the meeting; shareholders may request paper copies at no charge within three business days. An analogous internet-availability model applies to information statements under Regulation 14C, which must be sent to entitled holders at least 20 calendar days before the meeting or action date.

Under the Proposal, these separate notice-and-access and paper-mailing regimes would be replaced by the Proposal's general framework—meaning covered entities could deliver proxy materials and information statements by direct delivery to an electronic address or through a statement of availability, subject to the Proposal's guidelines regarding content, timing, and website-availability requirements. The Proposal would

[23] 17 C.F.R. § 270.30e-3, adopted in Optional Internet Availability of Investment Company Shareholder Reports, Investment Company Act Release No. 33115 (June 22, 2018).

[24] The SEC narrowed Rule 30e-3's scope in 2022 when it adopted the "Tailored Shareholder Reports" rules, excluding funds that file on Form N-1A, meaning open-end mutual funds and exchange-traded funds, from Rule 30e-3's coverage. As a result, open-end funds are currently required to deliver shareholder reports to shareholders and are not permitted to only provide notice of such reports. Rule 30e-3 today applies only to closed-end management investment companies and business development companies that file on Form N-2, and to certain insurance company separate accounts filing on Form N-3 that have shareholder report obligations under Rule 30e-1 under the 1940 Act. *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds, Investment Company Act Release No. 34731 (Oct. 26, 2022).

eliminate the current 40-calendar-day deadline for the "Notice of Internet Availability of Proxy Materials" and would instead require that proxy materials be delivered electronically no later than the date required under the federal securities laws, with the practical deadline for a routine annual meeting generally established by applicable state corporate laws. The 20-calendar day deadline for information statements under Rule 14c-2 under the Exchange Act, by contrast, would continue to apply as a substantive delivery deadline under the federal securities laws.

Under current Rules 14a-7 and 14d-5 under the Exchange Act, a registrant must, upon request, either mail a requesting party's or bidder's materials to security holders or furnish shareholder lists with names, mailing addresses, and security positions. The Proposal would amend both rules to require that furnished lists include "all addresses"—including electronic addresses—and where an issuer cannot supply complete electronic address information, the fallback would be to distribute materials on the requesting party's or bidder's behalf rather than furnish a partial list.

The Proposal does not seek to amend Rule 13e-4(e) under the Exchange Act governing issuer tender offers (including tender offers by business development companies and tender offer funds) because the SEC believes the existing language of Rule 13e-4(e), which permits dissemination by "mailing or otherwise furnishing" tender offer materials, is already broad enough to encompass electronic delivery.[25] Issuer tender offer materials would nonetheless constitute covered information under the Proposal and could be delivered electronically in reliance on the Proposal.

Beyond shareholder reports and proxy-related materials, registered funds are required to deliver a number of other documents to shareholders under the federal securities laws that would constitute covered information under the Proposal's broad definition. This includes, but is not limited to, prospectuses and summary prospectuses, interval fund repurchase offer notifications sent pursuant to Rule 23c-3(b)(1) under the 1940 Act and Section 19(a) return-of-capital notices. As the proposed framework would set out its own content, timing, and website-availability requirements applicable across all covered information, the SEC stated that, if adopted, retaining a separate notice-and-access regime would be unnecessary and could cause shareholder confusion.

[25] *See* Proposal at n.396 and accompanying text.

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U.S. Supreme Court Rules That There Is No Implied Private Right of Action to Rescind Contracts That Allegedly Violate the Investment Company Act

June 12, 2026

In an important ruling for the registered fund industry, the Supreme Court on June 11, 2026 ruled by a 6-3 majority that Section 47(b) of the Investment Company Act of 1940 ("ICA") does not provide investors with a private right of action to rescind contracts that allegedly violate the ICA. *FS Credit Opps. Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345, 2026 U.S. LEXIS 2466 (June 11, 2026). Noting that "Congress, not the judiciary, decides who may enforce the law," and that Congress designated the SEC as the ICA's primary enforcer, the Court held that no implied private right of action for rescission could be read into the statute. The decision will be welcomed by regulated fund complexes that have been targeted by lawsuits like this one, which will now be barred, although the ruling does not address other litigation strategies employed by professional arbitrageurs.

Background and Procedural History

The case before the Court, *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, was brought by Saba against 16 registered closed-end funds in which it invested that were organized under Maryland law. The funds had opted into Maryland's Control Share Acquisition Act ("MCSAA"), which restricts an investor who holds more than 10% of a fund's shares from voting shares above that threshold unless approved by a two-thirds vote of other shareholders. Saba argued that the voting restriction violates Section 18(i) of the ICA, which requires that "[e]xcept … as otherwise required by law, every share of stock … shall be a voting stock and have equal voting rights with every other outstanding voting stock." Because the funds' bylaws adopting MCSAA's voting restrictions are contracts, Saba argued that it could sue in federal court to rescind them under Section 47(b) of the ICA, which provides that "a court may not deny rescission" of contracts that violate the ICA "at the instance of any party" unless denial of rescission would be more equitable.

The district court agreed with Saba's arguments, ordering rescission of the funds' bylaws that adopted MCSAA, and the Second Circuit affirmed. On the question of whether a federal court could entertain a private right of action for rescission of a fund's bylaws, the lower courts relied on an earlier Second Circuit ruling (*Oxford University Bank v. Lansuppe Feeder, LLC*) that held that Section 47(b) presupposes a private right of action for rescission of contracts that violate the ICA. Two other Circuit Courts of Appeal had reached the opposite conclusion. The Supreme Court took the case to resolve the Circuit split and on December 10, 2025 heard arguments on the sole question presented: Does Section 47(b) of the ICA provide a private right of action?

The Supreme Court's Ruling

Writing for the majority, Justice Barrett explained that the Supreme Court's prior willingness to imply private rights of action based only on an assessment of whether doing so would serve the statute's purpose was a relic of the past and that, over the last few decades, the Court has steadily moved toward a much more rigorous approach that examines whether a statute's text and structure implicitly provides for a private right of action. That more modern approach has resulted in far fewer instances in which the Court has found an implied private right of action.

Applying that approach here, the majority reasoned that neither the text nor the structure of the statute supported Saba's contention that Section 47(b) of the ICA provides a private right of action. As to its text, the Court noted that the statute does not include "rights-creating language." Addressing the statute's direction that courts "may not deny rescission" of ICA-violating contracts unless equity suggests otherwise, the Court explained that this only guides courts in granting relief in cases where a viable claim is already before the court; the language itself "does not create a cause of action." In other words, private litigants must plead and prove an independent cause of action—Section 47(b) does not supply a cause of action to litigants that do not already have a viable claim.

Next, the Court reviewed the ICA's structure, which it found led to the same conclusion as the text. Specifically, the ICA's designation of the SEC as the primary enforcer, which can bring claims for injunctive relief or civil monetary penalties, "supports the conclusion that private parties generally cannot enforce the ICA." In addition, two *express* private rights of action exist in the ICA—private litigants can sue investment advisers for allegedly excessive compensation and can sue issuers to recover short-swing profits. The existence of those two express private rights of action reinforced the Court's conclusion that "'when Congress wished to provide a private … remedy' to enforce the ICA, 'it knew how to do so and did so expressly.'" Those structural factors reinforced the lack of a private right of action for rescission of contracts under Section 47(b).

Having found that the text and structure of Section 47(b) did not support a private right of action, the Court addressed and rejected other arguments advanced by Saba. This included Saba's reliance on the Court's 1979 decision in the Transamerica case that found an implied private right of action under Section 215 of the Investment Advisers Act of 1940 ("IAA"), which provides that contracts violating the IAA "shall be void." The Court reasoned that the statutes are differently worded and that *Transamerica* does not dictate the same result under the ICA.

In dissent, Justice Jackson (joined by Justice Sotomayor and, in part, by Justice Kagan) contended that the text, structure, statutory history, and legislative history of the ICA all support recognition of a private right of action, adopting Saba's arguments on those points. The majority rejected the dissent's reliance on legislative history, pointing out that the history did not necessarily support the dissent's reading and that, in any event, "[w]e are governed by laws, not by the intentions of legislators" and that "[t]he judicial task is to read words, not minds."

Key Takeaways for Registered Fund Professionals

The Supreme Court's ruling will be rightly viewed as a victory by the regulated fund industry and a loss by investors who seek to arbitrage closed-end fund discounts. Key takeaways include that:

- The ruling conclusively forecloses private claims under the ICA that lack an express private right of action.
    - This provides important certainty to advisers and funds that they can look at the body of law developed by the SEC over more than 80 years under the ICA and be confident in their business arrangements and compliance with the law.
    - This includes foreclosing all federal claims by investors challenging control share bylaws and other provisions of funds' constituent documents as contracts that allegedly violate the ICA.
    - Importantly, it also forecloses the principal avenue by which professional arbitrageurs have sought to use the federal courts to pressure closed-end funds into transactions that benefit their short term profit agenda at the expense of the long term returns and investment programs that the vast majority of closed-end fund investors sought by investing in a closed-end fund.
- Private claims for excessive fees under Section 36(b) and for short-swing profits under Section 30(h) remain untouched by the ruling, because the ICA expressly grants investors the right to sue. On Section 36(b), this ruling confirms that plaintiffs must hew to the established framework of Section 36(b) claims and not seek to pursue what are fundamentally excessive fee claims through other less tested and more disruptive avenues. This is critical because the fund industry has built its governance framework around the appropriateness of advisory fees under the Section 36(b) framework that has been developed over decades.
- SEC enforcement actions are also unaffected, because the ICA gives the SEC broad enforcement powers and this ruling only addresses the rights of private litigants. As to the specific claim here, the underlying decisions of the Second Circuit and district court are void, thereby reverting the state of play to the SEC staff's current position (following its 2020 withdrawal of the *Boulder* letter) on how control share statutes can be used appropriately under the ICA—i.e., that closed-end funds opting into state control share statutes do not automatically violate Section 18(i) of the ICA. That said, the underlying decisions of the district court and the Second Circuit will remain in the public domain and could be persuasive to a court that is properly presented with the issue.
    - Notably, the decision does not vacate a prior decision in the U.S. District Court for the District of Maryland, *Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust*, which had the effect of allowing a closed-end fund organized in Maryland to remain opted in to the MCSAA notwithstanding a counterclaim alleging that opting into the MCSAA violated Section 18(i) of the ICA.

- Closed-end funds organized as Massachusetts business trusts, however, remain subject to a recent decision by a Massachusetts state court, *Eaton Vance Senior Income Trust v. Saba Capital Master Fund, Ltd.* (Mass. Super. Ct., Jan. 21, 2023), that declared the adoption of control share bylaws by those Massachusetts closed-end funds to violate Section 18(i) of the ICA.

- There is currently no case law in Delaware related to the control share provisions applicable to regulated closed-end funds organized as Delaware statutory trusts, which are automatically subject to control share provisions by statute—in other words, the Delaware control share statute is an opt-out statute rather than an opt-in statute like the MCSAA applicable to Maryland corporations at issue here and in the *Lola Brown* case.

- The ruling does not address the availability of state law claims that professional arbitrageurs have brought, or may bring, against regulated funds based on alleged violations of state law, e.g., for breach of fiduciary duty; common law fraud; state securities law claims; or state corporation/trust law claims.

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SEC Proposes Blue Sky Preemption and Shelf Registration Reform Significantly Impacting Non-Traded BDCs, REITs and Registered Closed-End Funds

May 27, 2026

The Securities and Exchange Commission ("**SEC**") recently proposed the most significant amendments to the registered offering framework in over 20 years, intended to facilitate capital formation in the public securities markets. The proposed amendments to its registered offering rules (the "**Proposal**")[26] would preempt state securities law registration and qualification requirements for all offerings registered under the Securities Act of 1933, as amended (the "**Securities Act**"), significantly expand access to shelf offerings and extend certain registration and offering communication flexibilities that are currently only applicable to "well-known seasoned issuers" ("**WKSIs**") to a broader group of issuers, in addition to other reforms. The Proposal is one of two rulemakings, the other being the Filer Status Proposal,[27] proposed on May 19, 2026 as a continuation of Chairman Paul Atkins's "Make IPOs Great Again" agenda.[28]

The Proposal is a product of Chairman Atkins's broader effort to reinvigorate U.S. public capital markets, which he has advanced through a series of policy addresses and rulemakings since taking office. Chairman Atkins has repeatedly pointed to the approximately 40 percent decline in U.S. public company listings since the mid-1990s—from more than 7,800 exchange-listed companies to roughly 4,761 as of September 2025—as evidence that the regulatory framework has become an impediment to, rather than a facilitator of, capital formation. At SEC Speaks in March 2026, he characterized decades of "accretive rulemaking" as producing a "compliance labyrinth" that

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[26] Sec. & Exch. Comm'n, Proposed Rule, Registered Offering Reform, Securities Act Release No. 33-11418, Exchange Act Release No. 34-105513, Investment Company Act Release No. IC-36160, File No. S7-2026-17, https://www.sec.gov/files/rules/proposed/2026/33-11418.pdf (accessed May 20, 2026).

[27] Sec. & Exch. Comm'n, Proposed Rule, Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Securities Act Release No. 33-11419, Exchange Act Release No. 34-105515, File No. S7-2026-18, https://www.sec.gov/files/rules/proposed/2026/33-11419.pdf (accessed May 20, 2026). (The Filer Status Proposal, among other things, would increase the public float threshold for becoming a large accelerated filer from $700 million to $2 billion and simplify the public reporting filer status framework to include only large accelerated filers, non-accelerated filers and a new sub-category for small non-accelerated filers. Non-accelerated filers would benefit from the disclosure scaling and other accommodations currently afforded to smaller reporting companies and emerging growth companies. The Filer Status Proposal would also permit BDCs that qualify as non-accelerated filers to access scaled financial statement requirements under a new proposed Rule 3-19 of Regulation S-X and the ability to defer adoption of certain new or revised financial accounting standards.)

For further details on these two rulemakings, please see our memoranda "*SEC Proposes Significant Reforms to Registered Offering Framework*" and "*SEC Proposes Significant Amendments to Filer Status and Disclosure Requirements*."

[28] See Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-on-proposing-releases-for-enhancement-of-emerging-growth-company-accommodations-and-simplification-of-filer-status-for-reporting-companies-and-registered-offering-reform-051926 (accessed May 20, 2026).

urgently requires modernization.[29] The Proposal operationalizes this theme in the registered offering context, providing much-needed regulatory updates for business development companies ("**BDCs**"), registered closed-end investment companies ("**registered CEFs**" and, collectively with BDCs, "**affected funds**") and non-traded REITs by broadening access to shelf registration, extending communication flexibilities to more issuers and eliminating duplicative state-by-state compliance burdens.

Key Implications for BDCs, REITs and Registered Closed-End Funds

Preemption of State Securities Laws. The Proposal preempts state securities law registration and qualification requirements ("**blue sky**" laws) for all offerings registered under the Securities Act by defining "qualified purchaser"[30] under Section 18(b)(3) of the Securities Act to include all purchasers in an offering registered under the Securities Act.[31] Note that the qualified purchaser definition in the Securities Act is different from, and unrelated to, the definition of "qualified purchaser" under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"). For registered offerings, such preemption currently applies only where the securities being offered and sold are listed or approved for listing on a national securities exchange, or to offerings of securities issued by investment companies registered under the Investment Company Act.[32]

In a welcome update, this aspect of the Proposal would particularly benefit non-traded BDCs, non-traded REITs, and other issuers of unlisted securities in offerings registered under the Securities Act. Currently, these issuers must register their offerings with the SEC, which itself involves significant legal, accounting and filing costs and, because their securities are not listed on a national securities exchange and they are not investment companies registered under the Investment Company Act,[33] separately comply with the registration or qualification requirements of each state in which they intend to offer and sell securities. Practically, this often means registering the offering with every state to satisfy the demands of distribution partners.

This state-by-state process requires issuers to retain specialized blue sky counsel, prepare and file separate applications in numerous jurisdictions, pay state-level filing fees and respond to substantive review comments from individual state regulators. These comments can, and often will, conflict with one another, with guidance from the SEC staff or with federal securities law requirements, and can also interfere with other states' regulation

[29] See Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Prepared Remarks at SEC Speaks (Mar. 19, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-sec-speaks-031926-prepared-remarks-sec-speaks (accessed May 20, 2026).

[30] See Registered Offering Reform Proposal, *supra* note 1, at n. 437 ("The proposed new definition of 'qualified purchaser' under Section 18(b)(3) of the Securities Act does not relate to or affect the definition of the term 'qualified purchaser' under Section 2(a)(51) of the Investment Company Act and the rules thereunder.")

[31] Section 18(b)(3) of the Securities Act provides, "A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing the rule, the Commission may define the term 'qualified purchaser' differently with respect to different categories of securities, consistent with the public interest and the protection of investors." A "covered security" is the term used in the Securities Act to denote a security for which blue sky preemption applies. The term "qualified purchaser" would be added to Rule 146.

[32] Securities issued in private offerings pursuant to Regulation D under the Securities Act are also preempted from blue sky laws.

[33] BDCs elect to be regulated under the Investment Company Act's provisions governing BDCs; they do not "register" as investment companies under Section 8 of the Investment Company Act.

of the corporate affairs of entities organized in their jurisdictions. Because non-traded products conduct continuous offerings, this state qualification process must be repeated periodically. Follow-on qualification reviews can force existing products, which were previously cleared in those states, to make disruptive changes to their structure, operations, governance or offerings. The cumulative effect is higher cost, greater complexity, and longer timelines to bring registered offerings of unlisted securities to market and to maintain those offerings. This also places non-traded products at a competitive disadvantage relative to products offered privately under Regulation D of the Securities Act, or to investment companies registered under the Investment Company Act. The Proposal will remove a roadblock to companies conducting an offering registered under the Securities Act and is consistent with Chairman Atkins's intent for more companies to "go and stay public."[34]

In addition, as a part of a registered offering under the Securities Act, offering materials are commonly published on the internet to communicate with potential investors across state lines, which would, under the present regime, implicate state securities laws. The Proposal would solve this dilemma by facilitating multi-state communication in registered offerings and is consistent with legislative intent to "eliminate the costs and burdens of duplicative and unnecessary regulation by, as a general rule, designating the Federal government as the exclusive regulator of national offerings of securities."[35] If adopted, this change would allow non-traded BDCs, non-traded REITs and other issuers of unlisted securities to conduct registered offerings without the added expense and delay of a multi-state registration process, while continuing to benefit from the protections afforded to investors by the federal securities laws (including the Investment Company Act with respect to non-traded BDCs).

Easier Access to "Shelf" Registration; New Issuer Categories. The Proposal would eliminate several of the existing eligibility requirements of Form S-3, most notably all of the transaction requirements (including the $75 million public float threshold[36]) and the requirement that an issuer have been subject to reporting under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**") for at least 12 months. An issuer that is Form S-3 eligible is permitted to conduct shelf offerings (*i.e.*, primary offerings made on a delayed basis), which allows issuers to register securities offerings prior to conducting a specific offering and once the SEC declares the "shelf" registration statement effective then conduct one or more offerings without waiting for further SEC staff action. This expanded eligibility would permit more issuers—particularly smaller companies and companies that recently went public—to conduct "shelf" offerings. This change addresses Chairman Atkins's concern, voiced at the Small Business Capital Formation Advisory Committee meeting in April 2026, that the current "baby shelf" rules for Form S-3 are "unnecessarily complex and overly restrictive, making it difficult for smaller companies to raise the necessary capital quickly."[37]

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[34] Chairman Atkins Statement, *supra* note 3.

[35] Registered Offering Reform, *supra* note 1 at 186, n. 453.

[36] SEC rules provide that an issuer's public float is the aggregate market value of such issuer's outstanding voting and non-voting common equity held by non-affiliates.

[37] See Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Remarks at Small Business Capital Formation Advisory Committee Meeting (Apr. 28, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-042826-remarks-small-business-capital-formation-advisory-committee-meeting (accessed May 20, 2026).

The Proposal would also replace the current WKSI framework[38] for domestic issuers with two new categories:

- "Eligible Listed Issuers" ("**ELIs**"): issuers that (i) meet Form S-3's proposed registrant requirements and (ii) have at least one class of common equity listed on a national securities exchange; and
- "Seasoned Eligible Listed Issuers" ("**SELIs**"): ELIs that have been subject to reporting requirements under the Exchange Act for at least 12 calendar months.[39]

The Proposal would continue to prohibit affected funds from using Form S-3 since affected funds register their securities offerings on Form N-2. Today, an affected fund can use a streamlined version of Form N-2 ("**Short-Form N-2**"), which works much like Form S-3 and permits affected funds to have a "shelf" and conduct one or more offerings when market conditions are favorable, but such affected fund must have a public float of $75 million or more (and satisfy other eligibility criteria including the one-year seasoning requirement). Under the Proposal, the public float requirement and the one-year seasoning requirement would both be eliminated for a Short-Form N-2 (just as they are for Form S-3). However, unlike companies using Form S-3, the Proposal adds an exchange listing requirement for an affected fund to use a Short-Form N-2, which means unlisted affected funds (such as non-traded BDCs) cannot use a Short-Form N-2 for any of their securities offerings. This is detrimental to affected funds relative both to ordinary corporate issuers that can use Form S-3 under the Proposal (which do not need to be exchange listed) and to the current regulatory framework where an unlisted affected fund may be able to use a Short-Form N-2 when it can satisfy a transaction requirement other than the public float. These disadvantages are somewhat surprising given the SEC's statement that the "proposed amendments would build on amendments the Commission adopted in 2020, as directed by Congress, that streamlined the registration process for affected funds in parity with operating companies."[40]

The Proposal rationalizes excluding unlisted affected funds from "shelf" eligibility by asserting that they do not need it because they already have an existing framework under Securities Act Rule 486 to maintain their continuous registered offerings. Rule 486 generally permits an unlisted affected fund, which include tender offer funds, unlisted interval funds and non-traded BDCs, to file post-effective amendments (or new registration statements for limited purposes) that either go effective automatically 60 days after filing or immediately upon filing, depending on the purpose for which the filing is made. However, as noted above and further described below, this rationalization appears to have failed to take account of all the ways in which affected funds—listed and unlisted—can and have used the parity with operating companies that Congress and the SEC have afforded them.

Under current staff interpretations, non-traded REITs otherwise required to use Form S-11 are permitted to file on Form S-3 if they meet Form S-3's eligibility requirements and provide the disclosures specified in Items 13

[38] A "WKSI," as defined in Rule 405, is an issuer that meets all the registrant requirements of Form S-3 or Form N-2, as applicable, and either (i) has a public float of at least $700 million or (ii) has issued in the last three years at least $1 billion aggregate principal amount of registered non-convertible securities, other than common equity, in primary offerings for cash.

[39] ELI and SELI status would be determined on a periodic "determination date," consistent with current WKSI practice.

[40] Registered Offering Reform, *supra* note 1 at 152-53.

through 16 of Form S-11.[41] The SEC has requested comments on whether to codify that staff interpretation and whether any additional real estate-related disclosures should be required in Form S-3 for these issuers.[42] In this regard, non-traded REITs would achieve parity under the Proposal with ordinary corporate issuers for Form S-3 eligibility, and the present state of the Proposal achieves this with the elimination of the public float requirement for Form S-3 eligibility. As explained above, however, the same parity is not afforded to non-traded BDCs under the Proposal.

Benefits for New Issuer Categories: ELI and SELI. The Proposal makes benefits currently only available to WKSIs, which the SEC refers to as "**Enhanced Registration and Communication Benefits**" (which includes additional offering and communication flexibilities such as automatic shelf registration, pre-filing and post-filing communication flexibility, the ability to omit certain information from a base prospectus and pay-as-you-go fee payments), available instead to significantly more issuers that qualify as ELIs or SELIs, but only SELIs would be eligible for automatic shelf registration.

Exchange-listed affected funds that qualify as ELIs would gain access to the Enhanced Registration and Communication Benefits currently reserved for WKSIs. This means these funds would be able to:

- communicate more freely about potential offerings before and after filing a registration statement;
- omit certain information (such as the plan of distribution and description of securities) from the registration statement at the time of filing;
- register additional classes of securities through a streamlined post-effective amendment process; and
- defer payment of registration fees until the time a "shelf takedown" occurs, rather than paying upfront.

SELI affected funds (those that are exchange-listed and have been filing Exchange Act reports for at least 12 months) also would gain access to automatic shelf registration without meeting the previously required $700 million in public float requirement or one of the other transaction requirements, meaning their registration statements would become effective immediately upon filing without requiring the SEC staff to review the registration statement and declare it effective.

Notably, certain unlisted affected funds (*e.g.*, non-traded BDCs) that were previously able to qualify as a WKSI due to transaction requirements that do not require a public float would not qualify as an ELI or SELI under the Proposal, as further discussed below under "Missed Opportunities for Efficiency."

Streamlined Updates via Forward Incorporation. All ELI affected funds (which do not include non-traded BDCs or non-traded REITs) would be permitted to forward incorporate by reference on Form N-2. This means that

[41] Such disclosures required by Form S-11 include, among others, information relating to the investment policies of the registrant, certain descriptions of the registrant's real estate, certain operating data of the registrant and the tax treatment of the registrant.

[42] *Id.* at 95, Request for Comment #38.

once an ELI affected fund's registration statement is effective, it would be automatically updated by such ELI affected fund's subsequent Exchange Act filings (such as current reports on Form 8-K and periodic reports on Form 10-K or Form 10-Q), eliminating the need to file post-effective amendments or supplements to the prospectus in most cases.

Once again, certain unlisted affected funds (*e.g.*, non-traded BDCs) would not benefit from this Proposal, even though similarly situated operating companies would receive this benefit, as discussed below under "Missed Opportunities for Efficiency."

Free Writing Prospectus ("FWP") Rules Not Extended. The Proposal would remove references to affected funds from Rules 164 and 433 (the free writing prospectus rules). The SEC concluded that Rule 482, which is specifically tailored to affected funds and includes provisions governing disclosure of fees and expenses, already provides affected funds with the communication tools they need. Accordingly, if adopted, BDCs and registered CEFs would no longer be able to rely on FWPs and would instead only be able to use Rule 482 communications. In the Proposal the SEC indicated that it believes affected funds do not need to utilize Rule 164 or Rule 433[43] and has requested comments on whether Rule 433 would provide any advantages to affected funds that Rule 482 does not provide.[44]

Other Proposed Amendments. The Proposal would also: (i) expand forward incorporation by reference on Form S-1 to all Exchange Act reporting companies;[45] (ii) permit an issuer that was not yet required to file a Form 10-K to incorporate by reference into Form S-1 or Form S-3 the information required by Form 10 included in a previous Securities Act or Exchange Act filing; (iii) amend Rule 482 to permit broad-based advertising for registered index-linked annuities and registered market value adjustment annuities; (iv) revise Rule 473 to eliminate the need for issuers to include a delaying amendment in their registration statements, such that registration statements would be deemed delayed unless the issuer affirmatively opts for automatic effectiveness; and (v) update Rule 139b to simplify and broaden the safe harbor for broker-dealer publications or distributions of covered investment fund research reports to remove the minimum public float requirement in the rule.

Missed Opportunities for Improved Efficiency

While the Proposal represents meaningful progress, several aspects of the current framework remain unchanged

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[43] *Id.* at 163 ("Affected funds may utilize Rule 482, which permits registered investment companies, including affected funds, to use advertisements or other sales materials without the requirement that such communications be accompanied or preceded by a section 10 prospectus. Unlike Rule 164 and Rule 433, however, Rule 482 includes provisions that are tailored to the unique characteristics of registered investment companies (*e.g.*, provisions governing disclosure of the fee and expense figures). Accordingly, we believe that affected funds do not need to utilize Rule 164 or Rule 433 and are proposing to remove references to affected funds in those rules.")

[44] *Id.* at 165, Request for Comment #92.

[45] As discussed above, the Proposal would permit only ELI affected funds to forward incorporate by reference on Form N-2; it does not extend forward incorporation by reference to unlisted vehicles such as non-traded BDCs. Non-traded affected funds would also not be able to use the backward incorporation by reference that Short-Form N-2 permits for affected fund eligible to use Short-Form N-2. The SEC has specifically requested comments on whether unlisted affected funds relying on Rule 486 should be permitted to forward incorporate certain Exchange Act and Investment Company Act reports into their prospectus to avoid post-effective amendments. See Registered Offering Reform, *supra* note 1 at 165-166, Request for Comment #96.

and continue to create inefficiencies that are inconsistent with the Proposal's stated goal of facilitating capital formation. Fund sponsors should consider whether to submit comments on these topics, as the SEC has specifically solicited feedback on a number of them.

Rule 486 and Short-Form N-2. The SEC asserts in the Proposal that the Rule 486 framework "continues to offer unlisted affected funds with a comparable offering framework to that which would be afforded to exchange-listed affected funds under the proposed amendments."[46] However, under Rule 486(a), material amendments to an unlisted affected fund's registration statement do not become effective until 60 days after filing, a significant delay compared to the near immediate effectiveness available to exchange-listed affected funds using Short-Form N-2 with forward incorporation by reference. In addition, under the Proposal forward incorporation by reference on Form N-2 will only be available to ELI affected funds. Those funds relying on Rule 486 cannot forward incorporate by reference Exchange Act and Investment Company Act reports into their prospectus, requiring these funds to file repeated prospectus supplements and post-effective amendments to keep their registration statement current. The SEC has requested comments as to whether the SEC should "permit unlisted affected funds relying on Rule 486 to forward incorporate certain Exchange Act and Investment Company Act reports into their prospectus, allowing these funds to avoid the need to file post-effective amendments in many cases?"[47] We believe the answer is clearly yes.

In addition, under the Proposal the ability to defer registration fees and pay on a "pay-as-you-go" basis at the time of a "shelf takedown" would be available to ELI affected funds, but not to unlisted affected funds relying on Rule 486. The SEC has separately requested comment on whether additional categories of issuers, such as tender offer funds, should be permitted to pay registration fees on an annual net basis under Rule 24f-2 (similar to mutual funds and interval funds). Extending pay-as-you-go or annual net fee payment to a broader group of unlisted affected funds would reduce upfront costs and align fee payment with actual capital-raising activity.[48]

Unlisted Affected Funds Do Not Receive Proportional Benefits Under the Proposal. Many non-traded BDCs and other unlisted affected funds raise a significant portion of their capital through debt issuances. Many of these funds will typically issue notes in reliance on Rule 144A under the Securities Act and subsequently conduct a back-end bond exchange offer registered under the Securities Act to afford bondholders the benefits of holding registered debt securities. This process is costly and time consuming, involves separate offering documents, observing a waiting period and filing a new registration statement for the exchange offer that is subject to the SEC review process.

Currently, certain unlisted affected funds have an alternative pathway to file a "shelf" registration statement on Short-Form N-2 to more efficiently offer debt securities, but only if such affected fund has outstanding at least

[46] Registered Offering Reform, *supra* note 1 at 164.

[47] *Id.* at 166, Request for Comment #96. See also *id.* at 166-167, Request for Comment #97.

[48] *Id.* at 166, Request for Comment #95.

$750 million of non-convertible securities (other than common equity) in primary offerings registered under the Securities Act. Additionally, certain unlisted affected funds, such as large non-traded BDCs and other unlisted issuers that are prolific debt issuers, have access to an alternative pathway to qualify as a WKSI: an affected fund is currently able to qualify as a WKSI without listing its equity securities on an exchange if it has issued at least $1 billion in aggregate principal amount of non-convertible securities (other than common equity) in primary offerings registered under the Securities Act over the prior three years.

The SEC not only did not propose amendments to address this structural inefficiency for unlisted affected funds described above, but also removed these transaction requirements under which certain non-traded BDCs and other issuers could currently qualify for a Short-Form N-2 and as a WKSI and therefore could qualify for the Enhanced Registration and Communication Benefits. Under the Proposal, both ELI and SELI status (the only categories of issuers that would qualify to file registration statements on Short-Form N-2 and Enhanced Registration and Communication Benefits, which are currently benefits afforded to WKSIs) require the issuer to have at least one class of common equity listed on a national securities exchange. The elimination of the registered debt pathway to qualify for Short-Form N-2 eligibility and the Enhanced Registration and Communication Benefits means that these issuers, despite having demonstrated substantial market access and a robust reporting history, would lose access to the Enhanced Registration and Communication Benefits they currently enjoy, in opposition to the stated goals of the Proposal. The SEC has requested comments on whether to provide a transition period for such unlisted issuers, but has not asked whether these issuers should be permitted to continue to qualify for the benefits of the Enhanced Registration and Communication Benefits on a permanent basis.[49] In this respect, the Proposal has not only missed the opportunity to increase market efficiency, but would effectively reduce the efficiency available within the existing framework for unlisted affected funds to use Short-Form N-2 or qualify as a WKSI.

Conclusion

The Proposal presents a mixed picture for affected funds, particularly for unlisted affected funds such as non-traded BDCs and non-traded REITs. The proposed preemption of state securities laws should be lauded because it would eliminate duplicative compliance burdens and reduce costs for issuers of unlisted securities conducting registered offerings. However, the Proposal's other benefits are distributed unevenly. Exchange-listed affected funds stand to gain meaningfully from expanded ELI and SELI eligibility and the associated Enhanced Registration and Communication Benefits, while unlisted affected funds—particularly non-traded BDCs—would not only fail to receive proportional benefits but would affirmatively lose access to Short-Form N-2 eligibility and WKSI status that certain of these issuers currently enjoy. This outcome is difficult to reconcile with the Proposal's stated objective of facilitating capital formation and the SEC's prior commitment to regulatory parity between affected funds and operating companies.

Fund sponsors—particularly those managing non-traded BDCs and other unlisted affected funds—should evaluate whether to submit comments during the 60-day comment period advocating for, among other things, retention of

[49] *Id.* at 131, Request for Comment #63.

existing pathways (such as the registered debt transaction requirement for WKSI and Short-Form N-2 eligibility) and extension of forward incorporation by reference to unlisted affected funds presently relying on Rule 486. As Chairman Atkins stated in connection with these proposals, the Proposal and the Filer Status Proposal "are just the beginning and will work in tandem to lay the groundwork for the remainder of my Make IPOs Great Again agenda." [50] Accordingly, market participants should anticipate further rulemakings aimed at modernizing disclosure requirements and facilitating capital formation. The direction of travel, toward simplification, cost reduction, and broader access to the public capital markets, is expected to remain a consistent theme, and stakeholders who engage constructively in the comment process for the Proposal can help shape the contours of the broader reform agenda.

The public comment period will remain open until July 27, 2026.

[50] Chairman Atkins Statement, *supra* note 3.

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SEC Proposes Significant Reforms to Registered Offering Framework

May 26, 2026

On May 19, 2026, the Securities and Exchange Commission proposed the most significant amendments to the registered offering framework in over 20 years, intended to facilitate capital formation in the public securities markets.[51, 52] The proposed amendments would make Form S-3 and the ability to conduct shelf offerings available to significantly more issuers, extend certain benefits currently reserved for well-known seasoned issuers ("WKSIs") to a broader set of issuers, modernize Form S-1 and preempt state securities law registration and qualification requirements for all registered offerings, in addition to other reforms.

Broadened Form S-3 Eligibility. The proposed amendments would eliminate several of the existing eligibility requirements of Form S-3, most notably the requirement that an issuer have been subject to reporting under the Securities Exchange Act of 1934 for at least 12 months, the requirement that an issuer have at least $75 million in public float to register an unlimited amount of securities, the absence of certain failures to make payments and defaults and all of the form's transaction requirements.

As a result, any issuer that meets the proposed registrant requirements—principally, the retained requirements that it is current and timely in its Exchange Act reporting—would be eligible to use Form S-3 for any primary or secondary offering, including shelf offerings and at-the-market offerings. Under the proposed amendments, an issuer would immediately become eligible to use Form S-3 upon having a class of securities registered under Section 12(b) or (g), or becoming subject to Section 15(d), of the Exchange Act. An issuer that has not yet been required to file a Form 10-K would need to incorporate by reference a Securities Act or Exchange Act filing that contains Form 10 information (*i.e.*, information that is required by Form 10 to register under the Exchange Act each class of securities that the Form S-3 is registering). The proposed amendments would, however, prohibit certain categories of higher-risk issuers from using Form S-3, including blank check companies, shell companies, penny stock issuers and other "ineligible issuers" as defined in Rule 405.

The SEC has also proposed to add a dispensation to the instructions of Form S-3 to allow an issuer to remain Form S-3 eligible if they have no more than one untimely filing during a 12-month lookback period and the late filing was made within seven calendar days of the original due date.

New Issuer Categories and Enhanced Registration and Communication Benefits. Under the proposed framework, the WKSI definition for domestic issuers will be eliminated and replaced by two new categories of

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[51] Sec. & Exch. Comm'n, Proposed Rule, Registered Offering Reform, Securities Act Release No. 33-11418, Exchange Act Release No. 34-105513, Investment Company Act Release No. IC-36160, available here. See Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026), available here.

[52] Concurrently, the SEC proposed to simplify the filer status framework for Exchange Act reporting companies by consolidating the existing filer categories. For further details on the proposed filer status framework, please see our memorandum *SEC Proposes Significant Amendments to Filer Status and Disclosure Requirements*.

issuers: Eligible Listed Issuer ("ELI") and Seasoned Eligible Listed Issuer ("SELI"). The amendments will extend certain benefits currently available only to WKSIs and certain other seasoned issuers to a significantly broader pool of issuers consisting of:

3. Form S-3 eligible issuers,
4. ELIs—issuers that meet Form S-3's proposed registrant requirements and have at least one class of common equity securities that are listed on a national securities exchange, and
5. SELIs—ELIs that have been subject to the Exchange Act's reporting requirements for at least 12 calendar months preceding the relevant measurement date.

All Form S-3 eligible issuers would gain access to certain baseline benefits, including:

- the ability of broker-dealers to publish issuer-specific research reports under Rule 139 without such reports constituting an "offer,"
- the ability to omit the identities of selling security holders and amounts of securities to be registered on their behalf from a resale registration statement in reliance on Rule 430B(b), and
- the ability to use a free writing prospectus without it being accompanied or preceded by a prospectus under Rule 433.

An ELI would, among other things, be:

- eligible to rely on Rules 163 and 163A to make pre-filing offers,
- permitted to omit certain information from the base prospectus at the time of effectiveness under Rule 430B(a),
- permitted to register additional securities or classes of securities through a post-effective amendment under Rule 413, and
- permitted to pay registration fees on a "pay-as-you-go" basis under Rules 456(b) and 457(r).

A SELI would also be able to file an automatic shelf registration statement under Rule 462. The SEC's proposed amendments would permit majority-owned subsidiaries of ELIs and SELIs to avail themselves of these enhanced registration and communications benefits under the same general circumstances in which majority-owned subsidiaries of WKSIs may currently do so.

Incorporation by Reference in Form S-1. The proposed amendments would expand the ability to incorporate information by reference into Form S-1 to all issuers that are current in their Exchange Act reporting. In addition, the amendments would eliminate the current requirement that an issuer must file a Form 10-K for its most recently completed fiscal year to be permitted to "backwards incorporate" by reference and instead would require the issuer to incorporate by reference a Securities Act or Exchange Act filing that contains Form 10 information. More importantly, the proposed amendments would extend "forward incorporation" by reference into Form S-1 to all eligible issuers, whereas this benefit is currently available only to smaller reporting companies.

Preemption of State Securities Law Requirements. The proposed amendments would preempt state securities law registration and qualification requirements for all registered offerings by defining "qualified purchaser" under Section 18(b)(3) of the Securities Act to include any person to whom securities are offered or sold in a registered offering. Currently, federal preemption applies to, among other categories, (1) registered offerings of securities listed or approved for listing on a national securities exchange and (2) securities of the same issuer that are equal in seniority or senior to such listed securities. With this change, the costs and delays associated with complying with numerous states' registration and qualification requirements for registered offerings of securities of issuers without a class of listed securities would be virtually eliminated.

Other Modernizing Amendments. Additional proposed amendments include permitting broad-based advertising for registered non-variable annuity insurance products, eliminating the need for issuers to include a "delaying amendment" on the facing page of a registration statement and removing certain income-based conditions in Regulation S-X relating to grace periods for certain financial statements of smaller reporting companies.

The amendments also make conforming changes to the registration, communication and offering process for business development companies and registered closed-end investment companies on Form N-2, effectively broadening access to shelf offerings and the enhanced registration and communication benefits.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

Please click here to read our memorandum addressing the implications of the proposed reforms for registered funds and other private wealth products, including related structuring, regulatory and offering considerations.

SEC Proposes Significant Amendments to Filer Status and Disclosure Requirements

May 26, 2026

On May 19, 2026, the Securities and Exchange Commission released proposed amendments to the filer status framework for SEC reporting companies that would simplify reporting and disclosure requirements and reduce burdens on most reporting companies.[53, 54] The proposal is part of Chairman Paul Atkins's "Make IPOs Great Again" agenda to incentivize companies to go and stay public.[55]

The proposal simplifies the current framework from five, sometimes overlapping, filer statuses (Large Accelerated Filer, Accelerated Filer, Non-Accelerated Filer, Smaller Reporting Company and Emerging Growth Company)—to a two-tier structure consisting of Large Accelerated Filers (LAFs) and Non-Accelerated Filers (NAFs), with a subcategory of Small Non-Accelerated Filers (SNFs) for the smallest registrants. A registrant's status as an LAF, NAF or SNF would depend on the registrant's public float and how long it has been subject to SEC reporting requirements under the Securities Exchange Act of 1934.

- **Large Accelerated Filer.** Under the proposed rule, a LAF is defined as a registrant that (1) has a public float of at least $2 billion (increased from the current threshold of $700 million) for each of the two prior fiscal years and (2) has been subject to the Exchange Act reporting requirements for at least 60 consecutive full calendar months, determined as of the last day of its fiscal year.
    - ***Public Float.*** Under the proposed rules, the determination of public float is calculated by multiplying (i) the aggregate worldwide shares of the registrant's voting and non-voting common equity held by non-affiliates as of the last day of the issuer's second fiscal quarter by (ii) the average price of the registrant's common equity over the last 10 trading days of the registrant's second fiscal quarter.
    - ***Seasoning Period.*** A registrant will not become an LAF unless it has been subject to the Exchange Act reporting requirements for at least 60 consecutive full calendar months (an increase from twelve months). As a result of this proposed five-year on-ramp, new registrants will be able to delay compliance with respect to various disclosure requirements, accelerated reporting

[53] Sec. & Exch. Comm'n, Proposed Rule, Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, Securities Act Release No. 33-11419, Exchange Act Release No. 34-105515, File No. S7-2026-18, available here.

[54] Concurrently, the SEC proposed to reform the registered offering process by making shelf offerings available to more issuers, and extending certain benefits currently reserved for well-known seasoned issuers to a broader set of issuers, among other proposals. For further details on the proposed reform of the registered offering process, please see our memorandum "*SEC Proposes Significant Reforms to Registered Offering Framework*".

[55] *See* Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Statement on Proposing Releases for Enhancement of Emerging Growth Company Accommodations and Simplification of Filer Status for Reporting Companies, and Registered Offering Reform (May 19, 2026), available here.

deadlines and auditor attestations on management's assessment over the effectiveness of internal control over financing reporting (ICFR), regardless of their public float.

LAFs remain subject to the same reporting deadlines that currently apply to larger accelerated filers of 60 days for their Form 10-K annual reports and 40 days for their Form 10-Q quarterly reports (or semiannual reports on Form 10-S, if the SEC's recently proposed semiannual reporting rule is adopted).

If the proposed rule is adopted, the SEC estimates that approximately 19.2% of public companies would be LAFs, compared to 35.4% currently.

- **Non-Accelerated Filer.** The proposed amendments replace the current framework where a non-LAF registrant may hold multiple filer statuses simultaneously, which involve overlapping but distinct obligations and accommodations, with a single streamlined NAF category. The default status for any registrant would be a NAF until it meets the conditions for becoming a LAF.

  Under the proposed rule, NAFs would benefit from the same accommodations that are currently available only to SRCs and EGCs. Importantly, NAFs would be able to take advantage of:

  - More limited description of business pursuant to Item 101 of Regulation S-K;
  - Two instead of three years of audited financial statements in annual reports and registration statements and Management's Discussion and Analysis;
  - Two instead of three years of summary compensation table information pursuant to Item 402 of Regulation S-K; and
  - Executive compensation disclosure for three instead of five named executive officers.

  In addition, NAFs would be able to exclude the following disclosures, among others:

  - Risk factor disclosure in Forms 10-K and 10-Q;
  - Performance graph disclosure pursuant to Item 201(e) of Regulation S-K;
  - Supplemental financial information pursuant to Item 302(a) of Regulation S-K;
  - Quantitative and qualitative disclosures about market risk pursuant to Item 305 of Regulation S-K;
  - Certain executive compensation disclosures, including (1) compensation discussion and analysis, (2) compensation policies and practices related to risk management, (3) pay ratio disclosure, (4) golden parachute disclosure, (5) pay versus performance disclosure and (6) specified executive compensation disclosure tables, including the grants of plan-based awards table, the pension benefits table, the option exercise and stock vested table and the non-qualified deferred compensation table pursuant to Item 402 of Regulation S-K;
  - Audit committee financial expert disclosure in a company's first year;

    - Policies and procedures for the review, approval or ratification of related person transactions pursuant to Item 404(b) of Regulation S-K; and
    - Disclosure relating to Compensation Committee Interlocks and Insider Participation pursuant to Item 407(e) of Regulation S-K.

  In addition, NAFs would be exempt from the ICFR auditor attestation requirement and the requirement to conduct shareholder advisory votes on executive compensation (*i.e.*, say-on-pay, say-on-frequency and golden parachute votes).

  Under the proposed rule, NAFs must provide "such further material information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading" to address any material information that may not be explicitly contemplated under the reduced disclosure requirements. In addition, NAFs would be required to disclose any material unresolved staff comments in their annual reports.

  NAFs would be required to file their annual reports on Form 10-K within 90 days of the end of their fiscal year and their quarterly reports on Form 10-Q (or semiannual reports on Form 10-S, if the SEC's recently proposed semiannual reporting rule is adopted) within 45 days of the end of fiscal quarter or semiannual period, as applicable.

- **Small Non-Accelerated Filer.** The proposed rule contemplates SNFs to be a subcategory of NAFs with reporting total assets of $35 million or less as of the end of an issuer's two most recent second fiscal quarters. Under the proposed rule, SNFs would be subject to an extended 120-day deadline for annual reports on Form 10-K and 50 days for quarterly reports on Form 10-Q and semiannual reports on Form 10-S.

Pursuant to the proposed rule, registrants would only transition into or out of LAF status after being above or below, respectively, the $2 billion public float threshold for two consecutive years. The transition to LAF or NAF status would begin with the Form 10-K for the fiscal year in which the filer status was determined (*e.g.*, if a registrant qualifies for LAF status at the end of fiscal year 2029 based on public float as of the second quarter of fiscal year 2029, the LAF requirements would only apply beginning with the filing of the Form 10-K for fiscal year 2029, filed in 2030). Similarly, registrants would only transition into or out of SNF status after being above or below, respectively, the $35 million reporting total assets threshold as of the end of its two most recent second fiscal quarters.

If the proposed rule is adopted, the SEC estimates that approximately 80.8% of public companies would be NAFs, compared to 64.6% currently.

The public comment period will remain open for 60 days following publication of the proposal in the Federal Register.

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SEC Raises Qualified Client Thresholds: Implications for Registered Funds and Private Funds

May 22, 2026

The U.S. Securities and Exchange Commission ("SEC") issued an order on April 28, 2026 making inflation-adjusted increases to the dollar amount thresholds for meeting the definition of "qualified client" in Rule 205-3 under the Investment Advisers Act of 1940 (the "Advisers Act").[56] These are ordinary course threshold increases made pursuant to the SEC's obligation under Section 418 of the Dodd-Frank Act to adjust the QC thresholds every five years. The new thresholds apply prospectively to contractual relationships entered into on or after the order's June 29, 2026 effective date and do not generally apply retroactively to contractual relationships entered into prior to this date, subject to Rule 205-3's transition provision.

To qualify as a QC on or after June 29, 2026, a natural person or company must, immediately prior to entering into an investment advisory contract (or, with respect to the assets under management threshold, immediately after entering into an investment advisory contract):

- have at least $1.4 million of assets under management with the adviser;
- have a net worth[57] of more than $2.7 million;
- be a "qualified purchaser" as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940 (the "Company Act"); or

[56] Section 205(a)(1) of the Advisers Act generally prohibits registered investment advisers from charging compensation based on capital gains or capital appreciation (a "performance fee"). Rule 205-3 provides an exemption from this prohibition where a client is a "qualified client" as defined in the rule (a "QC"), which confers QC status on clients that meet either an assets-under-management test or a net worth test, or that otherwise qualify as a qualified purchaser or a "knowledgeable employee" of the adviser. Additionally, Section 205(b)(4) exempts investment advisory contracts between registered investment advisers and funds exempt from the definition of "investment company" under Section 3(c)(7) of the Company Act.

Certain advisory contracts between registered investment advisers and registered investment companies provide for the payment of a performance fee on net profits or another formulation that includes capital gains and/or appreciation. For a registered investment company to pay a performance fee, each investor in such fund (and the fund itself) must meet the requirements for QC status. See Rule 205-3(b). Investment advisory contracts with a "business development company," as defined in Section 2(a)(48) of the Company Act, can include a performance fee limited to 20% of realized capital gains computed net of all realized capital losses and unrealized capital depreciation in accordance with Section 205(b)(3) of the Advisers Act without limiting their investors to QCs.

Because qualified purchaser and knowledgeable employee status independently satisfy the QC definition, a performance fee-paying fund's exposure to the new dollar thresholds depends on its investor base. Funds that principally admit investors who qualify under those non-dollar categories may see limited impact. Funds that underwrite eligibility using the dollar-based tests should expect a narrower pool of eligible investors for post-effective-date subscriptions and transfers.

[57] In the case of a client who is a natural person, "net worth" for purposes of the Rule includes assets held jointly with a spouse but excludes the value of such natural person's primary residence and indebtedness secured by such residence.

- hold an executive officer or similar senior role within the investment adviser or serve the adviser as an employee who regularly participates in investment activities.[58]

Key Timing Note: For performance fee-paying registered funds that issue shares on a monthly basis as of the first business day of the month, the new thresholds will apply to purchases of shares starting with the July 1, 2026 subscription date.

Dollar Amount Threshold Increases

Test	Prior amount	New amount	Effective date
Assets under management with the adviser	$1,100,000	$1,400,000	June 29, 2026
Net worth	$2,200,000	$2,700,000	June 29, 2026

Implications for Registered Investment Companies (RICs)

MONTHLY SUBSCRIPTION OPERATIONS AND TRANSFER-AGENT COORDINATION FOR JULY SUBSCRIPTIONS

Performance fee-paying funds with monthly subscription cycles should coordinate now with their transfer agents and administrators to apply the new thresholds to July 1st subscriptions.[59] Advisers may apply the current, lower thresholds to June 1st subscriptions, but should take steps now to align intake controls and cut-offs so that July 1st subscriptions are underwritten to the updated amounts.

PROSPECTUS SUPPLEMENTS, SUBSCRIPTION DOCUMENTS, COMPLIANCE MANUAL AND INVESTOR MATERIAL UPDATES

Funds relying on the QC exemption (typically, tender offer closed-end funds with monthly subscriptions) should supplement their prospectuses and SAIs (as needed) to incorporate the higher thresholds and refresh subscription agreements, transfer documents, and qualification questionnaires so that such intake materials match the updated amounts.

[58] Rule 205-3(d)(1)(iii) under the Advisers Act defines QCs to include any natural person who, immediately prior to entering into the investment advisory contract, is: (1) an executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or (2) an employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months. We note that while this definition bears a close resemblance to the definition of "knowledgeable employee" in Company Act Rule 3c-5(a)(4), the two definitions diverge to some extent (most notably, the Rule 3c-5 definition explicitly scopes in advisory board members).

[59] This is because subscriptions that settle on or after June 29, 2026 will be subject to the higher thresholds even if subscription documents were executed before June 29. Conversely, subscriptions that settle prior to June 29, 2026 are subject to the current, lower thresholds.

Where possible, funds should also consider replacing hard-coded dollar references in compliance manuals and investor materials with a reference to the "most recent Commission order" to reduce the need for updates in future cycles.

FOLLOW-ON INVESTMENTS AND EXISTING INVESTORS

Under Rule 205-3's transition provision, an advisory contract that met the Rule's requirements at the time it was entered into is not subject to the updated thresholds. Existing fund investors are not retroactively required to re-qualify, but subscriptions made by new investors to the fund on or after June 29, 2026, should be underwritten to the $1.4 million and $2.7 million standards and supported by investor certifications.

Implications for Private Funds

SECTION 3(C)(7) FUNDS

The threshold increases are not applicable to Section 3(c)(7) funds, which are exempt from the restriction on the charging of performance fees pursuant to Section 205(b)(4) of the Advisers Act. Sponsors and advisers should nevertheless identify any subscription documents that include QC representations and update them to reflect the new thresholds.

SECTION 3(C)(1) FUNDS

The threshold increases are applicable to investors in Section 3(c)(1) funds, which are not statutorily exempt from the performance fee restrictions under Section 205(a)(1) (unlike 3(c)(7) funds) and whose investors are not required to be qualified purchasers. Advisers should align closing calendars so that post-effective-date admissions and transfers[60] satisfy the $1.4 million and $2.7 million standards, and should obtain updated investor representations from investors whose subscriptions to the fund are accepted on or after the effective date.

COMPLIANCE POLICIES AND PROCEDURES AND OTHER MATERIALS

Advisers should review compliance manuals, qualification or suitability checklists, private placement memoranda, and training materials for references to the QC thresholds and update them to reflect the new thresholds as of the effective date. Again, to future-proof these materials, it may be advisable to replace fixed dollar references with a reference to the "most recent Commission order."

Conclusion

The SEC's order raises the QC thresholds to $1.4 million and $2.7 million, effective June 29, 2026. Registered funds that rely on Rule 205-3 should update prospectus and subscription materials, coordinate with transfer agents so that July subscriptions and later entries are underwritten to the new thresholds, and collect updated investor

[60] Note, however, that transfers of ownership interests made as gifts or bequests or transfers related to legal separation or divorce do not cause the transferee to "become a party" to the investment advisory contract and thus do not trigger the QC requirement.

certifications for post-effective-date entries. Private fund advisers should focus on any performance fee-paying Section 3(c)(1) vehicles they may advise, where the revised dollar tests apply to post-effective-date subscriptions and transfers, while Section 3(c)(7) funds should remain largely unaffected but remain alert to any materials that nevertheless reference the soon-to-be-outdated QC thresholds.

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SEC Proposes to Permit Public Companies to Report Semiannually

May 6, 2026

On May 5, 2026, the Securities and Exchange Commission proposed long-awaited rule and form amendments[61] that would give public companies the option of filing semiannual reports to meet their interim reporting obligations in lieu of the quarterly reports that are currently required. The proposal is part of Chairman Paul Atkins's "Make IPOs Great Again" agenda, and is expected to be part of a series of reforms intended to incentivize companies to "go and stay public."[62]

The proposed amendments to Exchange Act Rules 13a-13 and 15d-13 would allow public companies subject to the reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, to elect to file a single semiannual report on a new Form 10-S in lieu of three quarterly reports on Form 10-Q. Reporting companies that make this election would file one semiannual report on Form 10-S and one annual report on Form 10-K each fiscal year. Companies that do not make the election would continue to file quarterly and annual reports under the existing framework.

- **Election Mechanics.** The proposed amendments contemplate the inclusion of a check box on the cover page of Form 10-K through which reporting companies would opt each year to report quarterly or semiannually. Once a reporting company makes an election, it generally cannot be changed mid-fiscal year. For newly public companies, this check box would be added to their initial registration statement and checked (or not checked) in the same manner.
- **Form 10-S.** The new proposed Form 10-S largely mirrors the current Form 10-Q and would require the same narrative disclosures and financial information—including management's discussion and analysis of financial condition and results of operations, legal proceedings, risk factors and financial statements—but would cover a six-month period rather than a fiscal quarter. Financial statements would still be required to be prepared in accordance with U.S. GAAP and reviewed, but not audited, by an independent public accountant, and inline XBRL data tagging and officer certifications would also continue to be required. The filing deadline for Form 10-S would be the same that applies to Form 10-Q—*i.e.*, 40 days after the end of the first semiannual period for large accelerated and accelerated filers and 45 days for other registrants.
- **Conforming Amendments.** The proposed amendments include corresponding amendments to the financial statement requirements of Regulation S-X to facilitate semiannual reporting and to simplify and consolidate the rules regarding the age of financial statements in registration and proxy statements. The

[61] Sec. & Exch. Comm'n, Proposed Rule, Semiannual Reporting, Securities Act Release No. 33-11414, Exchange Act Release No. 34-105368, Investment Company Act Release No. IC-36140, https://www.sec.gov/files/rules/proposed/2026/33-11414.pdf (accessed May 6, 2026).

[62] *See* Paul S. Atkins, Chairman, Sec. & Exch. Comm'n, Statement on Proposing Release for Semiannual Reporting (May 5, 2026), https://www.sec.gov/newsroom/speeches-statements/atkins-statement-proposing-release-semiannual-reporting-050526.

- proposed amendments would also make technical amendments to numerous existing rules and forms that currently reference quarterly reporting to incorporate the optional semiannual reporting approach.

Reporting companies may have valid reasons to continue to file quarterly reports on Form 10-Q, including due to the expectations of investors and security analysts or to allow for more frequent open trading windows for directors and employees. Reporting companies with debt obligations may also be subject to quarterly debt covenant financial reporting. Reporting companies should evaluate whether to opt into semiannual reporting should the proposed amendments be adopted as proposed, including by considering the relative costs, in both time and expense, of preparing quarterly reports versus semiannual reports, the expectations of investors and analysts, the potential effects on trading dynamics and access to capital, obligations under debt covenants, the stage of their development, the nature of their business model, and other avenues of disclosure including earnings calls and current reports on Form 8-K. Reporting companies, auditors, underwriters and frequent issuers should also assess knock-on effects for processes surrounding registration statement filings, comfort letter practice, disclosure controls, earnings release cadence, insider trading policies and the related trading windows and investor relations strategy.

The public comment period will remain open for 60 days following publication of the proposing release in the Federal Register.

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The Advisers Act Pay-to-Play Rule: Timely Reminder for Investment Advisers

May 1, 2026

Investment advisers should periodically refresh their personnel on rules and policies governing political contributions, and—with the 2026 midterm election cycle now underway—this is an opportune time to do so.[63] This note focuses on the so-called "pay-to-play" rule in Rule 206(4)-5 of the Investment Advisers Act of 1940 (the "Pay-to-Play Rule" or the "Rule").[64]

Compliance with the Rule requires a fact-specific application of its technical requirements, and violations of the Rule are strict liability with very limited ability to cure infractions. Against the backdrop of perennial SEC examination and enforcement interest in this area, and heightened political campaign fundraising activity in connection with the midterms, this article is intended to serve as a reminder of the Pay-to-Play Rule's technical requirements and as a practical primer for compliance. While the Rule may be amended later this year, as discussed further below, until any such changes occur, investment advisers and their covered associates would be well-served to strictly comply with the letter of the current Rule (and seek any needed exemption from the SEC).

I. Overview of the Pay-to-Play Rule

At its core, the Pay-to-Play Rule is rooted in anti-fraud principles and is intended to prevent investment advisers from obtaining business from public pension plans or other government entities in exchange for political contributions or fundraising support.[65] In its current form, however, the Rule is prophylactic and applies broadly to contributions even in the absence of any actual or intended *quid pro quo*.

The Rule makes it unlawful for an investment adviser to provide investment advisory services for compensation to a state or local government entity within two years after the adviser or any of its covered associates make a political contribution above a de minimis amount to an official of such government entity, subject to certain limited exceptions.[66] Because the Rule imposes strict liability and applies to all political contributions regardless

[63] Investment advisers covered by the Rule include registered investment advisers, exempt reporting advisers, and investment advisers relying on an applicable registration exemption.

[64] *See* 17 CFR § 275.206(4)-5. Additionally, advisers should be aware that many state and local municipalities have their own pay-to-play rules and/or disclosure requirements that apply in addition to, not instead of, the Pay-to-Play Rule.

[65] *See* 17 U.S. Securities and Exchange Commission, Political Contributions by Certain Investment Advisers, Advisers Act Rel. No. 3043 (July 1, 2010) (hereinafter "Adopting Release") at 11, available here.

[66] *See* 17 CFR § 275.206(4)-5(a)(1). While not the focus of this note, the Rule also contains two other general prohibitions. *First*, the Rule prohibits investment advisers and their covered associates from providing or agreeing to provide, directly or indirectly, payment to any person to solicit a government entity for investment advisory services on behalf of such investment adviser unless such person is a regulated person or affiliated with the investment adviser. *Second*, the Rule prohibits investment advisers and their covered associates from coordinating or soliciting a person or political action committee (a "PAC") to make (i) any contribution to an official of a government entity to which the adviser is providing or seeking to provide investment advisory services or (ii) any payment to a political party of a state or locality where the investment adviser is providing or seeking to provide investment advisory services to a government entity. *See* 17 CFR § 275.206(4)-5(a)(2).

of intent, the SEC does not need to prove that the adviser or covered associate made the contribution with the intent of influencing the government entity to hire the investment adviser in order to establish a violation.

As a result, *any* political contribution (made for any purpose) above the de minimis amount will generally require the adviser to forgo performing investment advisory services for compensation to the relevant government entity for two years following the contribution. This "time out" on receiving compensation can be economically significant for the adviser. Failure to adhere to the two-year time out places the adviser in violation of the Rule, exposing it to potential SEC investigation, monetary fines, and reputational harm.

Notably, the Rule explicitly prohibits investment advisers and their covered associates from doing anything indirectly that, if done directly, would violate the Rule.[67]

II. Key Defined Terms in the Rule

The key terms used in the Rule are discussed below.

DEFINED TERM: "GOVERNMENT ENTITY"

The definition of "government entity" is broad and encompasses, among other things, state and local pension plans, which are frequent investors in private funds.

Specifically, under the Pay-to-Play Rule, a "government entity" is any state or political subdivision of a state; this includes (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a pool of assets sponsored or established by a state or political subdivision or any agency, authority or instrumentality thereof; (iii) a plan or program of a government entity; and (iv) officers, agents or employees of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity.[68] A government entity for the purposes of the Rule does not include federal entities.

DEFINED TERM: "OFFICIAL"

An "official" under the Rule can include various individuals with some level of responsibility for selecting investment advisers for a government entity. Whether a particular individual qualifies as an official under the Rule is a highly fact-dependent exercise that turns on the official's responsibilities within the relevant state or municipality.

Specifically, an "official" under the Rule is any person (including any election committee for the person) who was, at the time of the contribution, an incumbent, candidate or successful candidate for elective office of a government entity, if the office: (i) is directly or indirectly responsible for, or can influence the outcome of, the hiring of an

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[67] *See* 17 CFR § 275.206(4)-5(d).

[68] *See* 17 CFR § 275.206(4)-5(f)(5).

investment adviser by a government entity; or (ii) has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of an investment adviser by a government entity.[69]

An official will generally include any individual who sits on a board responsible for hiring investment advisers for state retirement plans, as well as those who appoint such individuals. Officials under the Pay-to-Play Rule may include mayors, governors, or treasurers to the extent they influence the selection of investment advisers for their city or state public pension plans. For example, the governor of Florida and the mayor of New York City are each currently an "official" under the Rule. The Rule's reference to "an incumbent, candidate or successful candidate" is broad and even captures contributions to *unsuccessful* candidates.

Another nuance contributing to the Rule's broad reach involves incumbent state or local officials running for federal office. Although federal officials are not covered by the Rule (because the definition of "government entity" under the Rule is limited to states and their political subdivisions), a contribution above the de minimis threshold to a candidate for federal office who is an *incumbent state or local official* could trigger the Rule's two-year time out.[70] Such situations have arisen recently, including when Minnesota Governor Tim Walz ran for Vice President and Florida Governor Ron DeSantis campaigned for President.

DEFINED TERM: "COVERED ASSOCIATE"

The Pay-to-Play Rule applies to political contributions made by an investment adviser or any of its "covered associates." Covered associates of an investment adviser include: (i) any general partner, managing member or executive officer, or other individual with similar status or function; (ii) any employee who solicits a government entity on behalf of the investment adviser and any person who directly or indirectly supervises such employee; and (iii) any political action committee controlled by the investment adviser or by any person described in (i) or (ii).[71]

While "covered associates" are typically a subset of an adviser's personnel, investment advisers often require pre-clearance and maintain records of political contributions made by all employees, rather than only covered associates. Advisers may find this approach more practical to administer given that determinations of who qualifies as a covered associate can be highly fact specific. Applying the policy to all employees also helps avoid inadvertent violations when a non-covered associate later transitions into a covered associate role.

As discussed further below, contributions by covered associates have a long reach: the Rule can apply to contributions made before an individual became a covered associate (via the Rule's look-back provision) and after an individual ceases to be a covered associate (via the Rule's look-forward provision).

[69] *See* 17 CFR § 275.206(4)-5(f)(6).

[70] *See* Adopting Release, at 45.

[71] *See* 17 CFR § 275.206(4)-5(f)(2).

DEFINED TERM: "CONTRIBUTION"

Contributions covered by the Rule include typical cash and other monetary donations, but it is worth noting that "contribution" is defined broadly to include anything of value (the dollar thresholds are discussed in the next section).

Specifically, "contribution" under the Rule includes any gift, subscription, loan, advance or deposit of money or anything of value made for: (i) the purpose of influencing any election for federal, state or local office; (ii) payment of debt incurred in connection with any such election; or (iii) transition or inaugural expenses of the successful candidate for state or local office.[72]

III. Broad Reach of the Rule

Several components of the Rule further contribute to its broad reach and draconian consequences.

ONLY DE MINIMIS AMOUNTS EXCLUDED

While the Rule contains an exception for de minimis amounts, the thresholds are truly de minimis.

Specifically, under the Rule's de minimis exception, a covered associate may contribute up to $350 in the aggregate per election to each official for whom the covered associate was entitled to vote at the time of the contribution, and up to $150 in the aggregate per election to each official for whom the covered associate was not entitled to vote at the time of the contribution.[73] Any amount above these thresholds is in scope, regardless of whether such amount would be considered material by any objective standard, and regardless of the contributor's intent in making the contribution.

LOOK-BACK PERIOD FOR CONTRIBUTIONS

Advisers should take note that the Rule can apply to contributions made by an individual before the individual became a covered associate of that adviser. The look-back aspect of the Rule is designed to prevent advisers from circumventing the Rule by influencing the adviser selection process through hiring persons who have made certain political contributions.[74]

Specifically, the Rule "looks back" to apply to contributions made to officials within two years of a person becoming a covered associate if the covered associate solicits government entities on behalf of the investment adviser, and otherwise within six months.[75] The two-year time out period begins on the date the contributing

[72] *See* 17 CFR § 275.206(4)-5(f)(1).

[73] *See* 17 CFR § 275.206(4)-5(b)(1).

[74] *See* Adopting Release, at 59.

[75] *See* 17 CFR § 275.206(4)-5(a)(1) and Adopting Release, at 58-59; 17 CFR § 275.206(4)-5(b)(2) and Adopting Release, at 60-61.

individual becomes a covered associate and continues until two years have elapsed from the date of the contribution.[76]

An individual who was not a covered associate at the time of a contribution may have been employed elsewhere or may have been employed at the adviser in a non-covered associate role. In either case, the contribution can trigger the Rule's two-year time out on providing advisory services for compensation to the applicable government entity even where the contribution was made up to two years (or six months, as applicable) before the individual became a covered associate at the adviser.[77]

LOOK-FORWARD PERIOD FOR CONTRIBUTIONS

In addition to the look-back provision, the Rule also "looks forward" with respect to contributions by covered associates who cease to qualify as such. The look-forward aspect of the Rule is intended to prevent investment advisers from channeling political contributions through departing employees.[78]

In other words, the covered associate's employer at the time of the contribution remains subject to the Rule's prohibition on receipt of compensation for the *entire two-year period*, even if the individual leaves the firm or otherwise ceases to qualify as a covered associate during that period.[79]

Advisers should remind retiring employees and partners of their continuing obligations under the Rule and related policies. Advisers should also evaluate situations in which senior personnel step back from day-to-day operations but continue to have advisory responsibilities, to determine whether they remain covered associates following the change—and, if so, to remind them of their pay-to-play compliance obligations.

EXTREMELY LIMITED ABILITY TO REMEDIATE

Beyond the de minimis exception, it is currently exceptionally difficult for investment advisers to remediate after an impermissible contribution that triggers the two-year time out on receipt of compensation. This is the case even where the contribution was arguably not material and even where the adviser self-identifies the contribution that inadvertently exceeded the de minimis threshold (subject to the limited exception described below).

The Rule does include a limited exception for certain returned contributions. Specifically, the Rule's prohibitions do not apply if (i) the investment adviser discovers the triggering contribution within four months of the date it was made; (ii) the contribution did not exceed $350; and (iii) the contributor obtains a return of the contribution within 60 calendar days after the adviser discovers it.[80] This exception is further limited in that advisers are only

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[76] *See* 17 CFR § 275.206(4)-5(a)(1) and 17 CFR § 275.206(4)-5(b)(2).

[77] *See* Adopting Release, at 60-61.

[78] *See* Adopting Release, at 59, n. 206.

[79] *See* Adopting Release, at 59, n. 206.

[80] *See* 17 CFR § 275.206(4)-5(b)(3)(i)(A)-(C).

entitled to a set number of returned-contributions exceptions per calendar year (two or three, depending on the adviser's number of employees), and an adviser may not rely on this exception more than once per covered associate.[81]

The limited ability to remediate after-the-fact underscores the importance of ensuring that all political contributions by an adviser and its covered associates comply with the Rule before being made. Common compliance practices include firm-wide trainings, pre-clearance for all political contributions, and periodic email reminders regarding the Rule.

SEEKING AN EXEMPTION

The Rule also contemplates a process by which an adviser may seek a formal exemption from the SEC. Upon application, the SEC may conditionally or unconditionally exempt an investment adviser from the Rule's prohibitions.[82] To make such determination, the SEC will consider, among other factors: (i) whether the exemption is in the public interest; (ii) whether the investment adviser had reasonably designed policies and procedures in place before the contribution was made, lacked actual knowledge of the contribution when it occurred, took steps to secure a return of the contribution after learning of it, and adopted any appropriate remedial or preventive measures; (iii) whether the contributor was, at the time of the contribution, a covered associate, employee of the adviser, or seeking employment at the time the contribution was made; (iv) the timing and amount of the contribution; (v) the nature of the election (*e.g.*, federal, state or local); and (vi) the contributor's apparent intent or motive in making the contribution.[83]

Advisers may consider requesting an exemption where they believe they satisfy the applicable factors. Given the desire of the presently constituted SEC to update the Rule, it is possible, in the meantime, that exemptions will be sought and granted with increasing frequency (and a number of exemptions have already been granted under this administration).[84]

IV. Mitigating SEC Examination and Enforcement Risk

The Pay-to-Play Rule is a perennial focus area of SEC examinations and enforcement investigations.

In examinations, SEC staff may request political contribution pre-clearance records, lists of political contributions made during the examination period, and related documentation. Exam staff may also focus on certain political contributions that may appear on an adviser's log of compliance exceptions, as typically requested during examinations.

[81] *See* 17 CFR § 275.206(4)-5(b)(3)(ii)-(iii).

[82] *See* 17 CFR § 275.206(4)-5(e).

[83] *See* 17 CFR § 275.206(4)-5(e)(1)-(6).

[84] *See* Advisers Act Release No. 6937 (Jan. 8, 2026) and Advisers Act Release No. 6938 (Jan. 8, 2026).

The SEC has brought more than 20 enforcement actions against investment advisers under the Rule since 2014 (the Rule was adopted in 2010). Because liability under the Rule generally does not require proof of bad intent, these cases are relatively straightforward for the SEC to pursue. The settlements discussed below illustrate the consequences of even technical violations of the Rule.

The SEC from time to time conducts "sweeps" focused on compliance with the Rule, in both examinations and enforcement. Following its 2022 pay-to-play sweep, the SEC settled charges with four investment advisers for continuing to receive advisory fees from government entities after covered associates made contributions to elected officials or candidates for elected office.[85] In all four cases, the campaign contributions made by covered associates did not exceed $1,000, and the resulting civil penalties ranged from $45,000 to $95,000.[86] Notably, the relevant government entities tied to such contributions were already limited partners in funds managed by the advisers at the time the contributions were made (*i.e.*, they had already made a decision to invest with the adviser).[87] Additionally, in two of the cases, the covered associates attempted to obtain returns of their contributions.[88] Two of the cases also involved contributions made to candidates who were not ultimately elected.[89] There was no evidence that any of the contributing individuals intended to influence elected officials to hire an investment adviser.[90] Notwithstanding these various mitigating circumstances (*e.g.*, low-dollar contributions, pre-existing investor relationships, etc.), the SEC pursued public settlements and imposed civil penalties in response to these technical violations.

In an even more recent case, in 2024, the SEC found that an investment adviser violated the Rule by continuing to receive compensation for investment advisory services after a covered associate made a political contribution months *prior* to the covered associate being employed by the investment adviser, relying on the Rule's look-back provision.[91] In this case, an individual made a $7,150 campaign contribution to a government official and was subsequently hired as a covered associate by an investment adviser (over six months after the contribution was made).[92] Upon being hired by the adviser, the individual sought and obtained a return of the contribution, but the investment adviser continued to provide investment advisory services for compensation to a state retirement fund in which the government official's office appointed five members of the investment board. Notwithstanding that

[85] Press Release, U.S. Securities and Exchange Commission, *SEC Charges Four Investment Advisers for Pay-to-Play Violations Involving Campaign Contributions* (Sept. 15, 2022), available here.

[86] *See* 17 CFR § 275.206(4)-5(b)(3)(i)(A)-(C); Advisers Act Release No. 6126 (Sept. 15, 2022) (imposing a civil penalty of $95,000 related to a campaign contribution of $1,000); Advisers Act Release No. 6127 (Sept. 15, 2022) (imposing a civil penalty of $45,000 related to a $1,000 contribution); Advisers Act Release No. 6128 (Sept 15, 2022) (imposing a civil penalty of $95,000 related to a $1,000 contribution); and Advisers Act Release No. 6129 (Sept. 15, 2022) (imposing a civil penalty of $70,000 related to campaign contributions of $400 and $1,000).

[87] *See* Advisers Act Release No. 6126; Advisers Act Release No. 6127; Advisers Act Release No. 6128; and Advisers Act Release No. 6129.

[88] *See* Advisers Act Release No. 6126 and Advisers Act Release No. 6128. In both cases, the Rule's limited exception for returned contributions did not apply. *See* Rule 206(4)-5(b)(3).

[89] *See* Advisers Act Release No. 6128 and Advisers Act Release No. 6129.

[90] *See* Advisers Act Release No. 6126; Advisers Act Release No. 6127; Advisers Act Release No. 6128; and Advisers Act Release No. 6129.

[91] *See* Advisers Act Release No. 6662 (Aug. 19, 2024).

[92] *See* Advisers Act Release No. 6662.

the covered associate made the contribution prior to employment with the adviser and obtained a full return of the contribution, and that the state retirement fund was already invested in the investment adviser's fund at the time of the contribution, the SEC imposed a $95,000 civil penalty against the investment adviser for violations of the Pay-to-Play Rule.[93] As stated in the Order, the Rule "does not require a showing of *quid pro quo* or actual intent to influence an elected official or candidate."[94]

In light of SEC focus on political contributions, investment advisers should take active steps to prevent any potential violations of the Rule (and take steps to remediate when necessary). For example, advisers may choose to conduct mock exams, test compliance procedures, send reminders to covered associates, or periodically require attestations by covered associates as to whether any political contributions have been made. Many investment advisers may also choose to impose pre-clearance requirements on all political contributions made by employees. As with any policy, advisers should exercise caution with any substantive policy provisions that are broader than the requirements in the Rule, as a policy violation, even in the absence of an underlying violation of the Rule, is potential for the SEC to pursue a Rule 206(4)-7 violation.

V. Potential Rule Amendment

Amendments to the Pay-to-Play Rule may be forthcoming. As reported, at the 2026 SIFMA Compliance and Legal conference in March of this year, SEC Chairman Paul Atkins indicated that the SEC is likely to loosen the current Rule, stating that it is currently a "trap for the unwary" and that the SEC plans to address it later this year.[95] This sentiment follows years of Commissioner Hester Peirce voicing her opinion of the current Rule, in one statement referring to the Rule as "an exceedingly blunt instrument."[96] No formal amendments to the Rule have yet been proposed, but industry participants remain hopeful that changes could be coming soon.

VI. Conclusion

As campaigning for the 2026 midterm elections begins to pick up, investment advisers need to understand the nuances of the Pay-to-Play Rule and should remain vigilant regarding campaign contributions. Advisers should remind employees to comply with the Rule, other applicable pay-to-play rules, and related internal policies.

Additionally, this election season and beyond, advisers should stay apprised of other developing areas of social and regulatory interest, such as event contracts and prediction markets tied to election results or other political outcomes. Advisers may take this opportunity to consider their policies in light of the growth of prediction markets.

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93 *See* Advisers Act Release No. 6662.

94 *See* Advisers Act Release No. 6662.

95 *See* Jessica Corso, *SEC's Atkins Promises Changes to Adviser Pay-To-Play Rule*, Law360 (Mar. 23, 2026), available here.

96 *See* Statement, Commissioner Hester M. Peirce, U.S. Securities and Exchange Commission, *Laudable Ends, Poorly Pursued: Statement Regarding Recent Pay-to-Play Rule Settlements* (Sept. 15, 2022) available here.

Advisers should also monitor ongoing industry advocacy regarding the Pay-to-Play Rule itself and whether it will result in any changes to the Rule. Although change could be coming, for now, the current Rule stands—advisers should strive for strict compliance, remediate when needed, and consider seeking exemptions as appropriate.

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SEC Watch: Monthly Takeaways for Asset Managers

July 2, 2026

Commissioner Peirce's Farewell Address: Changes to Rule 206(4)-8 Incoming?

Summary: Looking ahead to her November departure from the SEC, Commissioner Hester Peirce delivered what might be described as a farewell address to the U.S. Chamber of Commerce Capital Markets Summit. The speech lauded the strength of the U.S. capital markets and emphasized that "one of the reasons our capital markets work so well is that government generally does not meddle with them." Expounding on this point, Peirce highlighted areas where she believes the Commission has recently taken steps to act "within the boundaries that the Constitution and Congress drew for it," including ending the Commission's "No Deny" policy and proposed amendments to Form PF. But Peirce warned that the "Commission has more work to do," including with respect to the Commission's authority under Section 206(4) of the Advisers Act. Peirce noted that the "best reading" of Section 206(4) is that it "prohibits knowing or intentional misconduct, not merely negligent conduct." In that spirit, Peirce said that despite her earlier support for enforcement actions based on negligent violations of Rule 206(4)-8, which broadly prohibits advisers from making false or misleading statements to or otherwise defrauding fund investors, she has "come to agree" with Chairman Atkins who, in 2007 at the time of adoption, disagreed with a negligence standard for the rule.

Takeaway: Peirce's speech repeated what has become the hallmark of the Atkins Commission: a more restrained SEC that seeks to act within the strict bounds of its statutory mandate. Questioning whether a violation of Rule 206(4)-8 merely requires a finding of negligence could have implications for future enforcement actions, and suggests the Atkins Commission—with Peirce or perhaps her replacement—may begin to require knowledge or intent to sustain an enforcement action.

Best Practice Tip: For now, a violation of Rule 206(4)-8 still only requires a negligence standard, so advisers should continue to maintain their existing policies and procedures to ensure compliance with the rule. We will stay tuned for any indication that the Commission intends to move away from the negligence standard in future enforcement actions.

SEC and CFTC Seek Public Comment to Harmonize Rules for Classification of Securities-Based Swaps

Summary: On June 18, the SEC and CFTC issued a joint request for public comment to clarify and harmonize derivatives product definitions, including the classification of securities-based swaps. The joint request for comment builds on the SEC and CFTC's April 2026 joint announcement that they had entered into a Memorandum of Understanding to "guide coordination and collaboration between the two agencies." Of interest, the joint request notes that: "market participants are raising questions about whether certain event contracts are swaps, SBS, or mixed swaps, or types of instruments that fall within statutory exclusions from the 'swap' definition" and goes on to specifically ask: "What types of event contracts or other innovative products or product structures that may touch on the regulatory interests of both Commissions have raised interpretative questions for market participants, and how should those questions be resolved?"

Takeaway: The joint request for public comment suggests that the SEC-CFTC MOU from earlier this year might have teeth and that the agencies are indeed looking for opportunities to harmonize their rulesets. With respect to event contracts, we anticipate that the agencies will issue guidance further clarifying how to determine whether and under what circumstances an event contract that is related to a corporate issuer (or a group of corporate issuers) might be considered a security-based swap, in which case the contract would be subject to the SEC's jurisdiction (rather than the CFTC's jurisdiction) and all the enforcement tools that come with it, including probes concerning securities-based insider trading.

Best Practice Tip: Stay tuned for updates on any developments coming out of the request for public comment in future editions of SEC Watch.

Humphrey's Executor Overruled

Summary: On June 29, the Supreme Court handed down its decision in *Trump v. Slaughter*. The case arose out of President Trump's firing of former FTC Commissioners Rebecca Slaughter and Alvaro Bedoya without cause. The FTC's authorizing statute states that FTC Commissioners may be removed only "for inefficiency, neglect of duty, or malfeasance in office"—in other words, for cause. Slaughter sued, seeking reinstatement of her position. The Supreme Court ruled in favor of President Trump, holding that the FTC's for cause removal provision violated the Constitution by impeding the President's removal power. In so ruling, the Supreme Court overruled its decision in *Humphrey's Executor v. United States*, which had considered the FTC's for cause removal clause and ruled against President Roosevelt, who had fired an FTC Commissioner without cause. The Supreme Court had reasoned that because FTC Commissioners' duties did not require the use of executive power, the Commissioners need only answer to Congress and the courts. In rejecting *Humphrey's Executor*, the Supreme Court declined to define what is included in the "executive power," leaving open the possibility that some positions created by Congress may not come with executive power.

Takeaway: While the SEC's authorizing statute is silent on whether Commissioners may only be removed for cause, a for cause removal protection has previously been presumed. The Supreme Court's decision in *Slaughter* has eliminated that presumed protection, allowing removal of SEC Commissioners by the President at-will and without cause.

Best Practice Tip: Time will tell what impact the *Slaughter* decision will have on the SEC. Presumably—as has been the case with the FTC since the firing of Slaughter and Bedoya—Presidents could fire Commissioners from the opposing party upon taking office and not appoint replacements, allowing for one-party control. The net effect may be even greater policy gyrations from administration to administration that could create challenges for market participants seeking a predictable regulatory environment.

SEC Hiring Update

The SEC posted a number of new job openings this month, including in the Enforcement Division's Complex Financial Instruments Unit and Asset Management Unit. These postings suggest some backfilling after last year's spate of departures. The increased headcount will eventually lead to increased investigative activity.

June 11, 2026

No More "No Deny" Provisions for Settling SEC Respondents

Summary: The SEC rescinded Rule 202.5(e), which had codified the SEC rule requiring settling parties to agree that they would not publicly deny the SEC's allegations. The change brings the SEC in line with the majority of federal agencies, including the CFTC which announced a similar change in early June. New language reflecting the change is already appearing in SEC orders.

- Notably, the SEC's rescission of Rule 202.5(e) was retroactive, and the Commission will not enforce existing "no deny" provisions that have already been entered, and will take no action for breaches of such provisions.

Takeaway: The absence of "no deny" provisions in SEC settlement orders may lead to quicker settlements but could also come with some costs. For example, the ability for settling parties to deny the SEC's allegations could result in more detailed factual findings if the SEC seeks to bolster the credibility of its orders in anticipation of a public denial.

Best Practice Tip: SEC orders must be approved by the Commissioners, and the current Commission is likely to continue the historical practice of restrained, negotiated charging documents. Time will tell if future Commissions will direct Staff to negotiate more comprehensive orders in the face of potential public denial; in either event, developing a careful, proactive media and investor strategy to capitalize on this important change is now more important than ever for firms facing SEC action.

Spotlight on Sensible Trade Allocation Practices

Summary: The SEC announced settled charges against a registered investment adviser in an order that found that the adviser did not take reasonable steps to detect and prevent its former co-CIO's alleged cherry-picking scheme. At the end of 2024, the DOJ and SEC announced charges against the RIA's former co-CIO for a cherry-picking scheme that allegedly disproportionately allocated hundreds of millions of dollars in trades with net realized and unrealized first-day gains to favored accounts and hundreds of millions of dollars in trades with net realized and unrealized first-day losses to disfavored accounts. The SEC's recent order found that despite knowing that the former co-CIO's trading and allocation practices were different than other portfolio managers at the firm, the adviser did not take reasonable steps to detect and prevent the conduct. The SEC's order charged the RIA with violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, as well as failure to supervise under Section 203(e)(6). Without admitting the SEC's findings, the RIA agreed to pay a $100 million civil penalty.

Takeaway: The settlement underscores the need for advisers to adopt and implement reasonable trade allocation policies and procedures that avoid, where possible, the passage of time before allocation decisions are made. The settlement also illustrates the risks of consolidating allocation discretion in a single person without sufficient compliance oversight.

Best Practice Tip: Advisers should review their trade allocation policies and procedures and take steps to pressure test them to confirm that practices are aligned with expectations. Advisers should also consider additional training around trade allocation policies, particularly with respect to portfolio managers who may be vested with allocation responsibilities.

David Woodcock's Inaugural Speech as Enforcement Director

Summary: In his first public remarks, delivered on May 14 at the annual MFA Conference, Enforcement Director David Woodcock struck a deliberately measured tone, noting that the Enforcement Division will hew closely to its traditional priorities, while taking care to note that the Division remains intensely focused on conduct in the private funds sector; his full remarks in that regard bear quoting: "*the private fund space is also always subject to close attention. Private investment markets and efforts to broaden access to retail investors can be quite positive, but we must, and will, remain vigilant. We are attuned to potential risks relating to liquidity, fees, valuations, and conflicts of interest—not only at the private fund adviser level but throughout the distribution chain. Firms must ensure their representatives understand the products they sell and the investment profiles, risk tolerance, and liquidity needs of their clients.*"

Takeaway: Notwithstanding widespread commentary on the perceived shrinking footprint of SEC Enforcement, Woodcock's remarks reflect a clear intent to cast a vigilant eye across the asset management sector, with particular focus on the array of potential issues that can accompany the sale of alternative investment products to retail investors.

Best Practice Tip: Woodcock laid out a concise roadmap of where advisers should be focused, with an emphasis on continuously ensuring that policies and procedures are up to date with respect to liquidity management, fee and expense calculation and allocation, valuation, conflicts of interest and the distribution of products into retail channels.

May 14, 2026

SEC Division Directors David Woodcock (Enforcement), Keith Cassidy (Exams), and Brian Daly (Investment Management) all spoke Wednesday at the annual Managed Funds Association conference in New York. While the topics covered were wide ranging, three key issues came up repeatedly: private credit, retail investors, and AI.

Private Credit

Director Woodcock specifically called out private credit, noting "stresses in some portfolios" and that the Division is monitoring the situation. Later in the day, Exams Director Keith Cassidy noted that the Division of Examinations is focused on private credit and has been for some time. Both Directors' remarks are consistent with our Asset Management Regulatory and Enforcement team's experience where SEC Staff have been asking questions, particularly around valuation and liquidity, for many months.

Retail Fraud Working Group

Enforcement Director Woodcock announced that the Division is reinstituting the Retail Fraud Working Group, which was initially created in 2017 under SEC Chairman Jay Clayton and then-branded as the Retail Strategy Task Force. This action is consistent with the SEC's overall reorientation to focus on misconduct affecting retail investors. If past is prologue, the Working Group is likely to focus on financial conflicts of interest that could be seen as disadvantaging retail investors and benefiting advisers, particularly in connection with fees and expenses. Given the increase in retail investor assets in traditional private fund strategies in recent years, managers of those strategies will want to watch closely for additional details about the focus areas for the reconstituted working group.

AI Task Force

Finally, Examinations Director Keith Cassidy spoke briefly about that Division's use of AI in connection with examinations. Cassidy said the use "could be transformational." While it may take some time, we expect the SEC to seek to leverage use of AI to maintain examinations coverage and increase examinations efficiency. This is likely to be particularly important given the reduction in headcount over the last year.

May 11, 2026

Private Credit Scrutiny Intensifies

Summary: In recent weeks, Chairman Atkins has made several statements regarding the private credit industry. Specifically, in his remarks at the Economic Club of Washington, Chairman Atkins stated in no uncertain terms that "opacity in th[e] space can be an issue" and "valuation, transparency, and credit quality are key. That higher fees and less liquidity must be taken into account regarding the appropriateness of an investment." In addition, Chairman Atkins recently confirmed publicly what those in the space have seen in recent months: the Commission is actively looking into firms in the industry, through both increased examination and enforcement activity.

- This represents a marked departure from Chairman Atkins' prior statements in which he pushed back on the notion that private credit poses a threat to the market; specifically Chairman Atkins has opined that private credit ***does not pose systemic risk***, and instead, private credit investors "have to be willing to take a loss" and "[i]f you cannot take the heat, get out of the kitchen."

Takeaway: Viewed in the aggregate with recent media attention on the private credit industry, specifically firms' reporting and valuation practices, the spotlight on private credit is likely to continue.

Best Practice Tip: Private credit advisers should take proactive steps to get their house in order. We suggest reviewing and updating internal policies and procedures, in particular those involving valuation and investor reporting.

SEC Proposes Long-Expected Changes to Form PF

Summary: On April 20, 2026, the SEC and CFTC jointly proposed amendments to Form PF that would significantly reduce reporting burdens for private fund advisers. Among other notable changes, the proposal would raise the general filing threshold from $150 million to $1 billion in private fund AUM and increase the large hedge fund adviser threshold from $1.5 billion to $10 billion in hedge fund AUM—which has the potential to reduce the number of large hedge fund adviser filers by 65%.

- In addition, the reporting requirements would be materially less burdensome. For example, the proposal would eliminate Section 6 event reporting for private equity fund advisers (covering adviser-led secondaries and GP removal events) and narrow Section 5 current reporting obligations for large hedge fund advisers. Additionally, the proposal narrows the scope of trading vehicle reporting, relaxes the look-through requirement for indirect exposures, and eliminates certain duplicative reporting items for large hedge fund advisers.

- Finally, the proposal seeks comment from those that invest in the private credit space on whether enhanced reporting requirements should be introduced for private credit funds.

Takeaway: The proposal reflects the Atkins-led SEC's effort to streamline Form PF and is further evidence of the Commission's efforts to reduce compliance burdens. The proposal stands in marked contrast to the multiple rounds of amendments adopted under former Chair Gensler.

Best Practice Tip: During this transition period, advisers should take advantage of the time to review existing Form PF compliance programs, and assess what changes could be made to strengthen them. In addition, consider participating in the comment process—particularly those advisers to private credit funds.

Lessons to Be Learned From Insider Trading Bust

Summary: On May 6, the U.S. Attorney's Office for the District of Massachusetts and SEC announced parallel actions charging individuals in a decade-long insider trading scheme that generated millions of dollars in illicit profits. The DOJ charged 30 individuals and the SEC charged 21, including corporate attorneys and other financial professionals. The defendants are alleged to have stolen and traded on confidential information related to M&A deals from several major law firms. Specifically, the corporate attorney defendants are alleged to have accessed confidential documents through their law firms' internal document management systems and then passed tips to a network of traders and intermediaries in exchange for kickbacks.

Takeaway: In any professional environment—including at asset managers—where MNPI is by definition regularly discussed and documented, information security protocols—including controls on who can see what and with what permissions—are critically important.

Best Practice Tip: This case is a good reminder to revisit current MNPI and information barrier protocols and look for opportunities to strengthen policies and procedures.

For further information regarding the SEC Watch, please contact a member of the Simpson Thacher Asset Management Regulatory and Enforcement Team»