GODFREY & KAHN

July 2026

Investment Management Legal and Regulatory Update

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LATEST DEVELOPMENTS

SEC Regulatory Agenda Spotlights E-Delivery, Custody, Books and Records, Pay to Play and Affiliated Transactions

The SEC recently released its 2026 regulatory agenda, previewing rule proposals that may be on the horizon for advisers and funds. In a statement accompanying the new agenda, Chairman Paul Atkins stated that rulemaking will be guided by the SEC's renewed focus on its core mission of protecting investors and facilitating capital formation while "advancing our regulatory framework to reflect the realities of today's operating environment – embracing innovation and new technology."

The agenda indicates that the Division of Investment Management is considering recommending the following, among other potential rulemaking:

- proposed new rules to enable the use of electronic delivery for required communications to investors. On July 16, 2026, the SEC proposed Regulation E-Delivery;
- amendments to the custody rules under the Advisers Act and the Investment Company Act to clarify the rules for the custody of crypto assets and to make other modernizing changes;
- amendments to Rule 204-2 (the books and records rule) under the Advisers Act to address compliance burdens associated with electronic communications and to reflect technological advancements. The Investment Adviser Association commented on updates to the books and records rule, noting that "The IAA strongly supports modernizing this rule, particularly in light of the recent off-channel communications enforcement actions and the rapid evolution of communications technologies, including AI;"
- amendments to the pay to play rule under the Advisers Act to reduce compliance obligations;
- amendments to Rule 17a-7 under the Investment Company Act to expand the ability of investment companies to engage in transactions with affiliates; and
- amendments or new rules under the Advisers Act and the Investment Company Act to facilitate retail investor exposure to private markets, which could include allowing advisers to charge performance fees to an expanded set of clients.

Godfrey & Kahn's Take: The updated agenda provides insight into the SEC's current priorities and reflects a focus on reducing compliance burdens and increasing flexibility for advisers and funds. Amendments to the books and records rule, rules facilitating the electronic delivery of documents and rulemaking restoring the ability of fixed income funds to participate in Rule 17a-7 transactions would be welcomed by many market participants.

Sources: Statement on the 2026 Regulatory Agenda, SEC Chairman Paul S. Atkins Statement (July 7, 2026), available here; Agency Rule List, SEC (2026), available here; 2026 Regulatory Agendas Published - Inclusion of E-Delivery, Pay to Play, and Recordkeeping Reflect Key IAA Priorities, Investment Adviser Association (July 7, 2026), available here.

SEC Releases 2025 Enforcement Results and Names David Woodcock as Director of the Division of Enforcement

The SEC appointed David Woodcock as the Director of the Division of Enforcement, effective May 4, 2026. Mr. Woodcock replaced Margaret Ryan, who left the SEC in March after serving six months in the role. Mr. Woodcock was a partner at a Washington D.C.-based law firm prior to rejoining the SEC. He was formerly employed by the SEC as Director of the Fort Worth Regional Office from 2011 to 2015.

Mr. Woodcock's early public remarks provide some insight into his priorities for the Division of Enforcement. Speaking at the Managed Funds Association's Legal & Compliance conference, he addressed the decline in the number of enforcement actions in recent years stating, "this Commission has deliberately shifted toward an emphasis on quality over quantity, and I fully support that direction." He further indicated an emphasis on prosecuting the most harmful misconduct, citing recent cases involving Ponzi schemes, misleading financial reporting and insider trading.

Chairman Atkins has continued to express a similar view regarding the SEC's enforcement approach. In recent remarks at the Economic Club of New York, Mr. Atkins stated that the SEC intends to conduct a "thorough review" of its enforcement processes consistent with its broader efforts to end "regulation by enforcement."

The fiscal year ended September 30, 2025 covered SEC enforcement actions under both the prior and new leadership. In announcing the 2025 enforcement results, the SEC reinforced its prioritization of cases involving investor protection (focusing on direct harm to investors) in contrast to actions under the previous administration. The release specifically cited the "flaws" of cases involving books and records violations for off-channel communications in recent years, which generated $2.3 billion in penalties.

During fiscal 2025, the SEC obtained approximately $1.4 billion in disgorgement and prejudgment interest and $1.3 billion in civil penalties, not including judgments obtained in a large Ponzi scheme. In contrast, in fiscal 2024, the SEC obtained $6.1 billion in disgorgement and prejudgment interest (the highest amount on record), and $2.1 billion in civil penalties (the second-highest amount on record).

During fiscal 2025, the SEC received a record number of tips, complaints and referrals, totaling 53,753, a nearly 19% increase compared to fiscal 2024. The release discussed complaints and orders brought by the SEC to protect retail investors, including complaints against individual wrongdoers, noting a 27% year-over-year increase in standalone actions against such wrongdoers. There were a total of 99 enforcement actions against advisers and investment companies, comprising 22% of the total enforcement actions during the fiscal year. The SEC also discussed actions against market manipulation and abusive trading practices. With regard to crypto assets, the SEC's enforcement actions focused on the misuse of new technologies to commit fraud or mislead investors.

Godfrey & Kahn's Take: The Division of Enforcement is likely to continue focusing on cases involving clear investor harm, fraud, market integrity concerns and misconduct by individual actors. With Director Woodcock's emphasis on "quality over quantity," we expect fewer enforcement actions overall but continued scrutiny of practices involving potential harm to retail investors.

Sources: SEC Announces Enforcement Results for Fiscal Year 2025, SEC Press Release No. 2026-34 (Apr. 7, 2026), available here; FY25 Enforcement Statistics, Addendum to Division of Enforcement Press Release No. 2026-23, available here; SEC Appoints David Woodcock as Director of the Division of Enforcement, SEC Press Release No. 2026-35 (Apr. 8, 2026), available here; SEC Announces Enforcement Results for Fiscal Year 2024, SEC Press Release No. 2024-186 (Nov. 22, 2024), available here; Remarks at the Economic Club of New York, SEC Chairman Paul S. Atkins Speech (June 30, 2026), available here.

SEC and CFTC Interpret Application of Federal Securities Laws to Crypto Assets

The SEC recently released an interpretation that clarifies the application of the federal securities laws to crypto assets. The SEC issued the interpretation in light of input from market participants requesting greater clarity regarding the regulatory framework, concerns about past enforcement actions against issuers of crypto assets and the work of the SEC's Crypto Task Force. The CFTC joined the interpretation to provide guidance in analyzing crypto assets that are covered by the Commodity Exchange Act.

Background

The SEC and federal courts have generally looked to the "Howey test," which the U.S. Supreme Court used to define an investment contract in 1946, to assess whether crypto assets are securities subject to the federal securities laws. The Howey test considers the economic characteristics of an investment, including whether there is an expectation of profits from the managerial efforts of others. In 2019, SEC staff released guidance on the application of the Howey test to crypto assets, which has been superseded by the new interpretation.

The Interpretation

The new interpretation provides a classification system for crypto assets, addresses how non-security crypto assets may become investment contracts and clarifies the application of the federal securities laws to specific crypto assets. The interpretation classifies "crypto assets into five categories based on their characteristics, uses, and functions" and whether they are securities or not. The SEC noted that given the rapid transformation of the crypto markets, new assets may not fit within these categories or may fall within multiple categories.

Not Securities:

- Digital commodities such as Bitcoin and Ether. Digital commodities are like commodities generally and derive value from the crypto system rather than the efforts of others.
- Digital collectibles, which are crypto assets designed to be collected or used to "represent or convey rights to artwork, music, videos, trading cards, in-game items or digital representations or references to internet memes, characters, current events, or trends." Digital collectibles such as meme coins are like physical collectibles and are valued based on supply and demand.
- Digital tools, which are crypto assets with practical applications, including memberships, tickets, credentials, identity badges or title instruments.

The guidance notes that any non-security crypto asset can become subject to the securities laws when offered in the form of an investment contract.

Securities:

- Digital securities, which are financial instruments that are tokenized or otherwise digitized as a crypto asset (e.g., tokenized debt instruments that represent corporate bonds).

May or May Not Be Securities:

- Stablecoins, which are crypto assets "designed to maintain a stable value relative to a reference asset," such as the U.S. dollar.
  - The recently enacted GENIUS Act addressed payment stablecoins, which are excluded from the definition of security.
  - Certain other covered stablecoins are excluded from the definition of security.

The interpretation also discusses how non-security crypto assets may become subject to an investment contract, such as when the issuer markets the transaction as an investment in a common enterprise with a reasonable expectation of profits.

The interpretation became effective March 23, 2026, and is open for comment. The SEC requested public comment on the interpretation and may further refine its views on crypto assets in the future.

Godfrey & Kahn's Take: The new interpretation provides greater regulatory certainty, which in turn should facilitate continued growth in crypto assets. Asset managers and issuers should carefully evaluate crypto assets and transactions involving crypto assets in light of the interpretation.

Sources: SEC Clarifies the Application of Federal Securities Laws to Crypto Assets, SEC Press Release No. 2026-30 (Mar. 17, 2026), available here; Application of Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, SEC Fact Sheet (Mar. 17, 2026), available here; Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets, SEC Final Rule Release No. 33-11412 (Mar. 23, 2026), available here; SEC v. W.J. Howey Co., 328 U.S. 293 (1946); Framework for "Investment Contract" Analysis of Digital Assets (Withdrawn), SEC Guidance (last updated Mar. 20, 2026), available here; Statement on Tokenized Securities, SEC Statement (Jan. 28, 2026), available here.

Supreme Court Rejects Private Right of Action Under Investment Company Act for Contractual Disputes

The U.S. Supreme Court recently held that plaintiffs do not have an implied private right of action under Section 47(b) of the Investment Company Act. Section 47(b) provides that a contract in violation of the Investment Company Act is unenforceable and is subject to rescission by a court.

In *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.,* an activist investor held shares in closed-end funds incorporated in Maryland, which are subject to the Maryland Control Share Acquisition Act. The funds had adopted control share resolutions opting into state law provisions that limit voting rights for shareholders holding a disproportionate number of shares. The investor sought to buy a controlling interest in the funds to enact governance changes but was barred by the control share resolutions. The investor sued, arguing that the resolutions should be rescinded for violating Section 18(i) of the Investment Company Act, which requires each share of stock issued by a fund to be voting stock with equal voting rights.

In a 6-3 decision, the Court held that Section 47(b) does not imply a private right of action because a statute must use "rights-creating language" and Congress did not expressly authorize private parties to enforce the statute.

Godfrey & Kahn's Take: The decision is a win for funds as it will limit shareholder challenges brought under Section 47(b). However, other avenues for litigation remain, including Section 36(b) claims regarding excessive advisory fees.

Source: FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd., 608 U.S. _ (2026), available here.

LATEST DEVELOPMENTS: ADVISERS

SEC Risk Alert – Investment Adviser Obligations Related to Economic Conflicts of Interest

The SEC Division of Examinations (Examinations) published a risk alert in June 2026 summarizing staff observations related to adviser economic conflicts of interest, such as conflicts related to compensation, revenue and other economic benefits. The risk alert is intended to help advisers develop effective compliance programs and enhance their disclosures to clients.

Examination Observations

The risk alert summarizes various deficiencies observed by Examinations' staff, including the following:

Incomplete or Misleading Disclosure

- Advisers that recommended programs that automatically invested clients' uninvested cash into interest-bearing accounts, received revenue from the cash management arrangements and failed to disclose those arrangements to clients.
- Inaccurate disclosure related to revenue sharing arrangements with clearing broker-dealers and custodians, including revenue advisers received based on client cash balances held with custodians and economic incentives to recommend certain cash sweep vehicles.
- Statements that advisers "may" receive revenue for client cash balances held in cash sweep programs rather than disclosing that advisers received revenue from such programs.

- Advisers failing to disclose fees and expenses of cash management programs and how fees could impact investment returns.
- Failures to disclose that selected fund share classes were higher cost and generated revenue sharing for advisers when lower-cost share class alternatives were available.
- Inaccurate disclosure relating to advisers receiving credits for custodial and clearing relationships, as well as the assessment of additional fees and expenses to clients that were not charged by clearing broker-dealers, including markups on clearing brokers' fees.
- Material conflicts of interest created through compensation agreements with financial industry affiliates and broker recommendation factors were not properly disclosed in the Form ADV brochure.

Fee Practices Inconsistent with Advisory Agreements and Disclosure

- Fee calculation inconsistencies, including:
  - charging asset-based advisory fees on holdings specifically excluded from fee billing calculations pursuant to advisory agreements;
  - prorating advisory fees during billing periods when advisory agreements and disclosures to clients did not address fee proration;
  - charging incorrect fees to clients by not householding accounts for fee rate breakpoints; and
  - not rebating transaction fees even though advisory agreements specifically stated that clients would not incur any fees for such transactions.
- Failures to refund fees to clients who were billed in advance and terminated their advisory agreements early.

Inadequate Compliance Programs

- Failures to implement procedures regarding accurate billing practices that are consistent with fiduciary obligations, advisory agreements and disclosures, such as:
  - failures to address all types of billing arrangements applicable to clients, such as prepaid fees, fee reductions and margin;
  - policies and procedures that were inconsistent with disclosures and signed client agreements; and
  - inadequate controls for monitoring billing calculations for accuracy.

Godfrey & Kahn's Take: The risk alert reaffirms the SEC's focus on investor protection concerns. The risk alert also indicates that advisory fees and conflicts of interest each remain a core examination priority. Advisers should review their fee and expense practices, procedures and client agreements for consistency and adequacy of disclosure in light of the new guidance.

Source: Examinations Observations of Investment Adviser Obligations Related to Economic Conflicts of Interest, SEC Division of Examinations Risk Alert (June 9, 2026), available here.

LATEST DEVELOPMENTS: FUNDS

SEC Investment Advisory Committee Approves Fund Proxy Voting Recommendations

The SEC's Investment Advisory Committee met on June 4, 2026 to consider recommendations proposed by a subcommittee regarding proxy voting modernization for open-end funds. The Committee's work is part of ongoing efforts by the industry to implement proxy reform for registered funds.

The recommendations identify challenges with the current proxy voting framework, including:

- the rising cost of proxy campaigns;
- difficulties in communicating with retail shareholders due to intermediary relationships; and
- burdensome quorum and voting thresholds, resulting in repeated meeting adjournments.

The report noted that "the proxy framework was designed for a voting environment supported by mail, landline telephones and broker discretionary voting, which historically helped funds reach quorum," and cited ICI data that the cost of 145 proxy campaigns held from 2012 to 2019 totaled $373 million, with a single recent campaign costing $111 million. An ICI analysis from March 2026 estimates the cost of 362 special proxy campaigns from 2020 through 2025 to be between $621 million and $1.06 billion. In light of these challenges, the Committee recommended a series of steps to improve the proxy voting system.

Key Recommendations

- *Opt-In Retail Voting (highest priority).* To encourage shareholder participation and increase vote responses, the Committee proposed opt-in voting programs for retail investors, similar to the program permitted under the *Exxon Mobil Corporation* no action letter for public companies. Retail voters would have the option to provide standing voting instructions to their financial intermediary for all matters except for contested director elections and other non-routine matters.
- *Medium-Term Actions.* The Committee recommended the following reforms through SEC rulemaking and other actions.
    - Considering a lower quorum requirement (e.g., 33 1/3%) paired with a higher affirmative vote requirement (e.g., 75%).
    - Permitting approval by the fund's board of directors without the need for shareholder approval for certain topics, such as changes in diversification status or fundamental policies, provided shareholders are given at least 60 days' advance notice of the board-approved changes.
    - Allowing fund boards to appoint additional new independent directors without the need for shareholder approval.

The Committee encouraged appropriate investor protections to accompany the above actions, such as allowing relief only for funds comprised of at least 75% independent directors.

- *Long-Term Actions.*
    - Rulemaking to allow direct communication between issuers and shareholders on proxy campaigns, including for "objecting beneficial owners."
    - Changing NYSE proxy processing fees and proxy vendor requirements to increase competition and lower fees.
    - Allowing shorter proxy statements and the use of digital tools to make the documents more investor friendly.
    - A comprehensive review by the SEC and its staff of the shareholder governance model to evaluate if more full-scale changes need to be made.

Proxy reform is also a high priority for industry advocates such as the ICI, which outlined observations on the proxy voting system and suggested areas for improvement in a 2025 letter to the SEC and a 2026 analysis on proxy voting campaigns. The Committee's recommendations address many of the issues identified by the ICI.

As of the date of this publication, the SEC has not acted on the recommendations.

Godfrey & Kahn's Take: The proposals reflect widespread interest in reducing the costs and logistical challenges associated with proxy campaigns and shareholder voting requirements. If adopted, the recommendations could significantly impact fund governance and significantly reduce costs and the operational burdens of proxy solicitations. Given the complexity of the proxy system and the SEC's other priorities, we do not expect any changes in the near future.

Sources: Fund Proxy Voting – Challenges, Costs, and the Pathways to Modernization, SEC Investor Advisory Committee Recommendations (June 4, 2026), available here; Factors to Consider in Future Proxy-Related Rulemaking or Guidance, Investment Company Institute Comment Letter to SEC Chairman Paul S. Atkins (Sept. 17, 2025), available here; Confronting the Growing Burden of Fund Proxy Campaigns: Analysis of Recent Fund Campaigns and Policy Solutions, Investment Company Institute (Mar. 2026), available here; Exxon Mobil Corporation, SEC No-Action Letter (Sept. 15, 2025), available here.

RECENT RULE PROPOSALS

SEC and CFTC Propose Amendments to Form PF

The SEC and CFTC recently proposed additional amendments to Form PF, a confidential SEC filing for certain registered advisers to private funds. The SEC and CFTC previously adopted amendments to Form PF in 2024 that expanded the reporting for private fund and hedge fund advisers, with a compliance date of October 1, 2026. The SEC then extended the compliance dates for the 2024 amendments in light of directives from President Trump to consider the regulatory burdens of new rulemaking.

Following a comprehensive review of Form PF, the SEC and CFTC have proposed new amendments intended to reduce the regulatory burdens and compliance costs associated with Form PF reporting. Among other changes, the proposed amendments would raise the filing threshold and streamline reporting requirements.

Proposed Threshold Increases

Currently, Form PF requires advisers with at least $150 million in private fund assets under management to file Form PF. The proposed amendments would increase that threshold to $1 billion in private fund assets under management. For large hedge fund advisers, the amendments would increase the applicable threshold from $1.5 billion to $10 billion in hedge fund assets under management.

If adopted, these changes would eliminate the need for smaller advisers to file Form PF while concentrating reporting obligations on advisers that manage most of the private fund industry assets. The releases noted that 43% fewer advisers would file but only 2% less gross asset value would be reported if the amendments are adopted.

Proposed Reporting Changes

The proposal also includes the following changes:

- Eliminating the need for advisers to "look through" a fund's investments and allowing for the reporting of indirect exposures based on reasonable estimates;
- Reducing the scope of trading vehicles to be reported;
- Deleting a question about performance-related volatility information;
- Amendments to current reporting requirements for large hedge fund advisers; and
- Eliminating quarterly reporting requirements for private equity fund advisers.

The comment period for the new amendments closed on June 23, 2026.

Godfrey & Kahn's Take: The increase in the filing threshold for private fund advisers would significantly reduce the burdens of preparing and filing Form PF for smaller advisers. Advisers that may be affected by the revisions should continue to monitor developments closely given the uncertainty surrounding the implementation of the 2024 amendments and the SEC's inclusion of Form PF in the 2026 regulatory agenda.

Sources: SEC and CFTC Jointly Propose Amendments to Reduce Private Fund Reporting Burdens, SEC Press Release No. 2026-40 (Apr. 20, 2026), available here; Form PF; Reporting Requirements for All Filers, SEC Proposed Rule Release No. IA-6959 (Apr. 24, 2026), available here; SEC/CFTC Amendments to Form PF, SEC Fact Sheet (Feb. 8, 2024), available here; Proposed Amendments to Form PF, SEC Fact Sheet (Apr. 20, 2026), available here.

FinCEN Proposes AML Reform

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has proposed revisions to existing anti-money laundering and countering the financing of terrorism (AML/CFT) program rules that require financial institutions, including funds and broker-dealers, to establish and maintain effective AML/CFT programs. The proposed rule, "Anti-Money Laundering and Countering the Financing of Terrorism Programs," supersedes FinCEN's 2024 proposed AML/CFT program rule and would standardize program requirements and require financial institutions to incorporate risk assessment processes into AML programs.

Background

Since the enactment of the Bank Secrecy Act in 1970, Congress has enacted standards referred to as the "four pillars" of AML programs, which include the development of internal policies and procedures, the designation of a compliance officer, employee training programs and independent testing. Customer due diligence requirements were added as part of the USA PATRIOT Act of 2001.

The proposed rule would standardize the requirements for AML/CFT programs to be deemed effective. Under the proposed rule, a financial institution's program would be deemed effective if it both "establishes" and "maintains" the program.

What Does It Mean to Establish and Maintain an AML/CFT Program?

The minimum components to establish a program would include: (1) internal policies, procedures and controls (including risk assessment processes); (2) independent program testing; (3) a designated compliance officer located within the United States responsible for establishing and maintaining the program; and (4) ongoing employee training. These components are substantially similar to existing requirements, but the proposed rule would standardize the requirements through risk-based procedures that could incorporate artificial intelligence, blockchain monitoring or other emerging technologies.

Financial institutions would also be required to establish, maintain and update risk assessment processes to evaluate and review money laundering and terrorism financing risks. Financial institutions would be expressly required to direct more resources and attention to higher-risk customers and activities. A financial institution must "maintain" the program by effectively implementing the program. In the proposing release, FinCEN set forth the following examples of failures in implementation:

- internal policies, procedures, and controls that are not being performed or not being performed on a consistent, regular, and timely basis (e.g., consistently ignored warnings or red flags);
- gaps in risk assessment processes that resulted in the program missing higher money laundering risks (e.g., systems that failed to capture necessary transactions); and
- deficiencies in the risk assessment processes that hamper the mitigation of money laundering or terrorist financing risks.

What Else Would the Proposed Rule Require?

The proposed rule would retain existing requirements for independent audits that test AML/CFT programs but would clarify that tests should be based on objective criteria designed to assess financial institutions' effective establishment and implementation of AML/CFT programs in accordance with their risk assessment processes. The proposed rule would provide flexibility in who conducts the audit while maintaining the requirement that testing be independent. The release notes that "financial institutions that do not employ outside auditors or consultants or that do not have internal audit departments may comply with this requirement by using staff who are not involved in the function being tested."

While the proposed rule would require an institution's AML/CFT compliance officer to be located within the United States and accessible to FinCEN, the proposing release clarifies that personnel performing AML/CFT functions can be located outside the United States. The proposed rule would make several technical and clarifying changes to existing program rules.

The comment period closed on June 9, 2026.

Godfrey & Kahn's Take: The proposed rule demonstrates a continued regulatory focus on anti-money laundering concerns, notwithstanding the deregulatory emphasis in other areas of government. Advisers and funds should continue to monitor developments in this area, particularly as FinCEN revisits AML rulemaking for advisers.

Source: Anti-Money Laundering and Countering the Financing of Terrorism Programs, Federal Register Proposed Rule 91 FR 18704 (Apr. 10, 2026), available here.

DOL Proposes Creation of an ERISA Safe Harbor for Investment Alternatives

In March 2026, the U.S. Department of Labor's Employee Benefits Security Administration (DOL) proposed regulatory amendments that would clarify plan fiduciaries' duty of prudence and create a safe harbor under the Employee Retirement Income Security Act of 1974 (ERISA) with respect to selecting investment alternatives for participant-directed individual account plans. The proposed rule, "Fiduciary Duties in Selecting Designated Investment Alternatives," is intended to implement President Trump's August 2025 executive order, "Democratizing Access to Alternative Assets for 401(k) Investors," and follows the administration's broader efforts to increase access to alternative assets, including private equity, private credit and real estate, in retirement accounts.

Section 404(a)(1)(B) of ERISA requires plan fiduciaries to discharge their duties with care, skill, prudence and diligence. Under the existing Investment Duties regulation framework, a plan fiduciary may satisfy its duty of prudence by giving appropriate consideration to the facts and circumstances that the fiduciary knows or should know are relevant to a particular investment. The proposed rule would build on the existing framework by identifying six relevant factors for ERISA plan fiduciaries to consider when selecting investment alternatives consistent with their duty of prudence.

The proposed rule also provides twenty detailed examples illustrating the application of those factors to different scenarios, many of which address alternative investments. In particular, the factors would require plan fiduciaries to consider whether an investment is expected to enhance performance, whether its fees and expenses are reasonable, whether it provides sufficient liquidity, the availability of reliable valuation metrics and appropriate performance benchmarks, and whether the plan fiduciary has appropriately considered or sought advice from a qualified adviser regarding the complexity of the investment.

The proposing release for the 2026 Amendments was published in the Federal Register on March 31, 2026. The comment period closed on June 1, 2026.

Godfrey & Kahn's Take: While plans have invested in alternative investments for years, the proposed rule could provide additional assurance to plan fiduciaries considering exposure to alternative assets. If adopted, the proposed rule may create additional opportunities for advisers offering alternative investment strategies and products.

Sources: Fiduciary Duties in Selecting Designated Investment Alternatives, Federal Register Proposed Rule 91 FR 16088 (Mar. 31, 2026), available here; Democratizing Access to Alternative Assets for 401(k) Investors, Executive Order (Aug. 7, 2025), available here.

ADDITIONAL DEVELOPMENTS

Defendants Can Deny SEC Allegations in Settlements

For over 50 years, the SEC has required defendants in enforcement actions to agree not to publicly deny allegations in SEC complaints or administrative orders before settling such actions. Known as the "no admit/no deny policy," the procedural rule was used by parties who chose to settle in order to bring closure to an enforcement action without the risks of litigation. The SEC rescinded the rule in May 2026 and will not enforce existing no-deny provisions in settlements.

The SEC concluded that the policy should be rescinded because of the limited benefits from the policy to the SEC and the public. The release quoted a Ninth Circuit decision discussing the competing interests in the prior policy: "a defendant who denies the SEC's allegations may well undermine confidence in the SEC's enforcement programs. But undermining confidence in the government is an inevitable result of our robust First Amendment protections for speech critical of the government." The SEC also noted that rescinding the policy aligns with the practices of other federal agencies and gives the SEC more flexibility to settle enforcement actions.

The new policy became effective May 21, 2026.

Godfrey & Kahn's Take: The rescission of the "no admit/no deny policy" is a welcome development for parties involved in SEC enforcement actions as it will allow greater freedom to discuss reasons for settlement.

Sources: SEC Rescinds Policy Regarding Denials of Settlements in Enforcement Actions, SEC Press Release No. 2026-45 (May 18, 2026), available here; Rescission of Policy Regarding Denials in Settlements of Enforcement Actions, SEC Final Rule Release No. 33-11417 (May 21, 2026), available here.

COMPLIANCE DATES FOR FINAL RULES

Final Rules	Compliance Dates
Investment Company Names Rule Amendments	Larger fund groups (net assets of $1 billion or more): June 11, 2026. Smaller fund groups (net assets of less than $1 billion): December 11, 2026. Note that the compliance dates specified above for existing funds are further modified based on the timing of a fund's first "on-cycle" annual updating amendment.
Form PF Amendments to Reporting Requirements	The compliance date for the amendments to Form PF is October 1, 2026.
Form N-PORT Reporting	The 2024 amendments to Form N-PORT are set to go effective November 17, 2027, with tiered compliance dates: Larger entities (funds that, together with other investment companies in the same "group of related investment companies" with net assets of $1 billion or more as of the end of the most recent fiscal year): November 17, 2027. Smaller entities (funds that, together with other investment companies in the same "group of related investment companies" with net assets of less than $1 billion as of the end of the most recent fiscal year): May 18, 2028. The recently proposed amendments to Form N-PORT reporting requirements would prescribe new compliance dates if adopted.
Form N-PORT Reporting (Investment Company Names Rule Amendments requirements)	Larger fund groups (funds that, together with other investment companies in the same "family of investment companies" with net assets of $10 billion or more as of the end of the most recent fiscal year): November 17, 2027. Smaller fund groups (funds that, together with other investment companies in the same "family of investment companies" with net assets of less than $10 billion as of the end of the most recent fiscal year): May 18, 2028. The asset thresholds for "larger fund groups" was increased to $10 billion for the Form N-PORT names rule requirements pending additional Form N-PORT rulemaking.

COMPLIANCE DATES FOR FINAL RULES

Final Rules	Compliance Dates
FinCEN Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers	As of January 1, 2028, advisers will be required to establish anti-money laundering/countering the financing of terrorism programs and file suspicious activity reports, among other requirements. In extending the compliance date to 2028, however, the Financial Crimes Enforcement Network said it will also review the adviser anti-money laundering rule "to ensure it strikes an appropriate balance between cost and benefit" and is consistent with the administration's deregulatory agenda.

STATUS OF PROPOSED RULES

Proposed Rules for Funds and Advisers	Status
Amendments to the "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers	Comments were due March 13, 2026. The SEC has not taken any further action as of the date of publication.
Form N-PORT Reporting Amendments (extending the filing deadline and retaining quarterly rather than monthly public portfolio disclosures, among other proposed revisions)	Comments were due April 24, 2026. The SEC has not taken any further action as of the date of publication.
Anti-Money Laundering and Countering the Financing of Terrorism Programs*	Comments were due June 9, 2026. FinCEN has not taken any further action as of the date of publication.
Form PF; Reporting Requirements for All Filers*	Comments were due June 23, 2026. The SEC has not taken any further action as of the date of publication.

**Discussion included in this Investment Management Update.*