

## Investment Management Legal and Regulatory Update

**Godfrey & Kahn Investment Management Team Members Responsible for this Update:**

**Thomas A. Bausch**

414.287.9386

[tbausch@gklaw.com](mailto:tbausch@gklaw.com)

**Christopher M. Cahlamer**

414.287.9338

[ccahlamer@gklaw.com](mailto:ccahlamer@gklaw.com)

**Ellen R. Drought**

414.287.9517

[edrought@gklaw.com](mailto:edrought@gklaw.com)

**Kathryne E. Keough**

414.287.9272

[kkeough@gklaw.com](mailto:kkeough@gklaw.com)

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### LATEST DEVELOPMENTS

#### SEC Issues Notice on ETF Share Class Relief

On September 29, 2025, the SEC issued a notice to DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP (the DFA Applicants) regarding the DFA Applicants' request for exemptive relief to offer registered investment companies with one share class that operates as an exchange-traded fund and one or more mutual fund share classes that are not exchange-traded. The DFA Applicants filed the initial application for exemptive relief on July 13, 2023, and subsequently filed three amended applications, with the most recent amended application filed on September 26, 2025. The DFA Applicants' request includes various conditions, including the implementation of a multiple class plan, reporting by the investment adviser, governance provisions (including findings by the board of directors and board approval and oversight), compliance with Rule 6c-11 and monitoring of potential conflicts and cross subsidization between the share classes.

The notice from the SEC indicates that an order granting the relief will be issued unless the SEC orders a hearing. Interested persons can request a hearing until 15 days after the notice is published in the federal register. In a statement issued by SEC Commissioner Mark Uyeda, Commissioner Uyeda stated: "Let us be clear: this notice reflects the Commission's preliminary determination to grant exemptive relief, subject to public comment and the opportunity for a hearing. It is not the final word—but it is a meaningful step."

*Godfrey & Kahn's Take:* Advisers interested in offering a fund with both an exchange-traded share class and one or more mutual fund share classes should review the most recent amended application filed by the DFA Applicants to understand the conditions and the oversight requirements required to ensure that such funds are operating to the benefit of shareholders of each class. Furthermore, based on our participation in a related call held by the SEC with industry applicants, advisers should note that other fund companies seeking ETF share class exemptive relief will face a lengthier review process if they file an application that is not substantially identical to the DFA Applicants' most recent amended application.

*Sources:* DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP, Third Amended and Restated Application Pursuant to Section 6(c) of the Investment Company Act of 1940, As Amended (Sept. 26, 2025), available [here](#); DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP, Notice of an Application under Section 6(c) of the Investment Company Act of 1940 (Sept. 29, 2025), available [here](#); A Return to Principles: Statement on ETF Share Class Relief, SEC Chairman Statement (Sept. 29, 2025), available [here](#).

#### President Trump Signs Executive Order Broadening Access to Alternative Investments in Retirement Accounts

On August 7, 2025, President Trump signed an executive order broadening access to alternative asset investments in 401(k) and other employer-

sponsored defined-contribution retirement plans. The order defines “alternative assets” to include equity, debt, or other financial instruments that are not publicly traded; real estate interests; actively-managed investment vehicles investing in digital assets; and commodities investments. The order requires the Department of Labor (DOL) to re-examine its guidance related to a fiduciary’s duties under the Employee Retirement Income Security Act of 1974, as amended (ERISA), in connection with making available to plan participants an asset allocation fund that includes investments in alternative assets. The order also instructs the DOL to clarify its position on alternative assets and the appropriate fiduciary process in offering asset allocation funds containing alternative assets under ERISA, proposing rules, regulations or guidance, as appropriate. The order further instructs the SEC to consider ways to facilitate access to investments in alternative assets by participants in participant-directed defined-contribution retirement savings plans, which may include a review of existing SEC regulations and guidance related to accredited investor and qualified purchaser status. The SEC and the DOL are instructed to take such steps within 180 days of the date of the order.

*Godfrey & Kahn’s Take:* Plan fiduciaries are encouraged to stay informed of any new regulations or guidance issued by the SEC or the DOL as they assess alternative asset investments for potential inclusion as investment options in 401(k) and other retirement plans. As it relates to retail investors, the SEC Investor Advisory Committee recently noted that, in its view, the “optimal way” to access alternative assets is to invest through an investment company registered under the Investment Company Act.

*Sources:* *Democratizing Access to Alternative Assets for 401(k) Investors*, White House Executive Order (Aug. 7, 2025), available [here](#); *Fact Sheet: President Donald J. Trump Democratizes Access to Alternative Assets for 401(k) Investors*, The White House (Aug. 7, 2025), available [here](#); *Recommendations of the Investor as Owner and Market Structure Subcommittees of the SEC Investor Advisory Committee: Retail Investor Access to Private Market Assets*, Executive Summary of Meeting of the SEC Investor Advisory Committee (Sept. 18, 2025), available [here](#).

## SEC Names Margaret Ryan as Director of the Office of Enforcement

The SEC announced the appointment of Judge Margaret “Meg” Ryan as the Director of the Division of Enforcement (Enforcement), effective September 2, 2025.

Ms. Ryan most recently served as a senior judge of the United States Court of Appeals for the Armed Forces. Prior to her tenure as a judge, she was a partner in private practice at two law firms. In the press release announcing her appointment, Ms. Ryan stated that she will work to ensure that Enforcement “is true to the SEC’s mission in taking action on behalf of investors harmed by those who break the securities laws and providing an effective deterrent against fraudulent and manipulative activities in our financial markets.”

*Godfrey & Kahn’s Take:* Ms. Ryan’s appointment represents a break from recent precedent in that, unlike her recent predecessors in the role of Director of Enforcement, Ms. Ryan does not have significant experience in securities law or financial crimes enforcement. As such, it is difficult to predict what to expect from her tenure as the Director of Enforcement.

*Source:* *SEC Names Judge Margaret Ryan as Director of the Division of Enforcement*, SEC Press Release 2025-108 (Aug. 21, 2025), available [here](#).

## SEC Spring 2025 Regulatory Agenda

The SEC published its Spring 2025 regulatory agenda. The agenda includes rule proposals relating to: crypto assets; amendments to Rule 17a-7 under the Investment Company Act intended to modernize the conditions for and expand the availability of the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons; amendments to Form N-PORT intended to address certain disclosure burdens; and amendments to the custody rules. An accompanying statement from Chairman Atkins stated that the agenda emphasizes the SEC’s “renewed focus on supporting innovation, capital formation, market efficiency and investor protection.” See the SEC’s full list of potential rulemaking in the “Agency Rule List” linked below.

*Sources:* *Agency Rule List*, Office of Information and Regulatory Affairs (Spring 2025), available [here](#); *Statement on the Spring 2025 Regulatory Agenda*, SEC Chairman Statement (Sept. 4, 2025), available [here](#).

## LATEST DEVELOPMENTS: FUNDS

### SEC Revises Stance on Registered Closed-End Funds Providing Retail Investors with Increased Access to Private Funds

On August 15, 2025, SEC staff in the Disclosure Review and Accounting Office of the Division of Investment Management issued an Accounting and Disclosure Information (ADI) guidance document (ADI 2025-16) revising a longstanding SEC position relating to registered closed-end funds not listed on an exchange that invest in private funds. Since the first such closed-end fund launched in 2002, the SEC staff has taken the position that closed-end funds that invest 15% or more of their assets in private funds should have initial investment minimums of at least \$25,000 and only be available to investors who qualify as “accredited investors” under Regulation D of the Securities Act of 1933. The SEC staff’s position was generally expressed through the comment review process for closed-end fund registration statements. The ADI indicates the SEC staff would no longer provide comments requesting closed-end fund registrants to either (1) include accredited investor status and minimum investment requirements or (2) limit its private fund investments to 15% of its assets.

In issuing this guidance, the SEC staff noted that federal securities laws offer regulatory protections to investors in closed-end funds including the investment adviser’s fiduciary duty and the protections of the Investment Company Act.

#### Closed-End Fund Disclosure

In the ADI, the SEC staff expressed the view that the registration statement for a closed-end fund that invests significantly in private funds should include full disclosure of the costs, strategies and risks applicable to the closed-end fund that will permit investors to make informed decisions. In particular, the SEC staff emphasized that such registration statements should clearly state:

- how the fees paid by investors will be impacted by investments in underlying private funds;
- the types of private funds that the closed-end fund will acquire, the strategies employed by such private funds, the risks associated with those investments, conflicts of interest, and liquidity considerations;
- that such private funds are not subject to the Investment Company Act; and
- any applicable risks relating to the liquidity of investments in private funds that have minimum holding periods or permit suspension of redemptions.

The ADI also provides the SEC staff’s views regarding amendments and supplements to registration statement disclosure to address the SEC’s new position. Specifically, the ADI notes that closed-end fund registrants that currently limit private fund exposure to 15% of assets and never imposed accredited investor or investment minimum limitations and now seek to remove the 15% limitation should file a post-effective amendment under Rule 486(a) subject to SEC staff review. In addition, closed-end fund registrants that currently invest or seek to invest more than 15% of their assets in private funds and have removed or seek to remove accredited investor or investment minimum limitations will need to evaluate the materiality of such cumulative changes to determine whether filing a post-effective amendment pursuant to Rule 486(a) or (b) under the 1933 Act or filing a prospectus supplement is appropriate.

*Godfrey & Kahn’s Take:* The SEC staff’s new position will permit closed-end funds that invest more than 15% of their assets in private funds to gain access to a retail investor group currently foreclosed to them. Before doing so, funds should consider the additional costs associated with a greater number of shareholders as well as the risks inherent with offering a fund with a potentially complex strategy to retail investors.

*Source:* ADI 2025-16 – Registered Closed-End Funds of Private Funds, SEC Division of Investment Management, Disclosure Review and Accounting Office (Aug. 15, 2025), available [here](#).

## LATEST DEVELOPMENTS: ADVISERS

### SEC and CFTC Extend Compliance Date for Amendments to Form PF

On September 17, 2025, the SEC and CFTC each voted to further extend the compliance date for investment advisers to comply with the amendments to Form PF from October 1, 2025, to October 1, 2026. Form PF is the confidential reporting form for certain SEC-registered investment advisers to private funds. The SEC's press release noted that this additional compliance extension will provide time for the SEC to complete a substantive review of Form PF to evaluate whether the amendments are consistent with the Trump Administration's deregulatory agenda and to take any further action, including potential new amendments to Form PF.

*Godfrey & Kahn's Take:* We encourage investment advisers to take a wait-and-see approach regarding the amendments to Form PF.

*Sources:* SEC Press Release 2025-119 (Sept. 17, 2025), available [here](#); Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers; Further Extension of Compliance Date, Federal Register 90 FR 45131 (Sept. 19, 2025), available [here](#).

### Extension of Effective Date of Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers (AML Rule)

On August 5, 2025, the Secretary of the U.S. Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), issued an exemptive order exempting investment advisers from the requirements of the AML Rule until January 1, 2028. The exemptive order extends the AML Rule's effective date for investment advisers, initially January 1, 2026, by two years. The exemptive order states that the effective date has been extended so the AML Rule may be reviewed to evaluate whether it is consistent with the Trump Administration's deregulatory agenda. The AML Rule subjects investment advisers to anti-money laundering/countering the financing of terrorism (AML/CFT) program requirements of the Bank Secrecy Act (BSA). Under the final rule, registered investment advisers and exempt reporting advisers are "financial institutions" under the BSA, subjecting them to various AML requirements.

*Godfrey & Kahn's Take:* Investment advisers that are in the process of revisions to their policies and procedures should consider a wait-and-see approach for further guidance on the requirements of the AML Rule.

*Sources:* Exemptive Relief Order to Delay the Effective Date of the Investment Adviser Rule, FinCEN Exemptive Relief Order (Aug. 5, 2025), available [here](#); Treasury Announces Postponement and Reopening of Investment Adviser Rule, U.S. Dept. of the Treasury Press Release (July 21, 2025), available [here](#); Financial Crimes Enforcement Network: Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, Federal Register 89 FR 72156 (Sept. 4, 2024), available [here](#).

## LITIGATION/ENFORCEMENT ACTIONS

### SEC Drops Liquidity Rule Case, Including Charges Against Independent Board Members

On July 11, 2025, the SEC announced it had filed a joint stipulation with defendants Pinnacle Advisors, LLC (Pinnacle), two of Pinnacle's officers and two mutual fund independent board members to dismiss with prejudice the SEC's first-ever civil enforcement action seeking to enforce Rule 22e-4 under the Investment Company Act (the Liquidity Rule). In the suit, the SEC had alleged that there was no reasonable basis to support the classification of a mutual fund's holdings in a particular company as "less liquid" and that there were a number of factors indicating that such holdings should have been classified as "illiquid" under the Liquidity Rule. The suit was noteworthy because it was the first brought by the SEC under the Liquidity Rule and for its inclusion of the independent board members as defendants.

The SEC litigation release accompanying the notice of the joint stipulation indicates that the dismissal was appropriate in the SEC's exercise of discretion and as a policy matter. The litigation release also notes that the dismissal does not necessarily reflect the SEC's position on any other case.

*Godfrey & Kahn's Take:* The dismissal may signal a more hands-off approach to the SEC's enforcement of the Liquidity Rule. It also demonstrates a change in the current regulatory and enforcement focus from that of the prior administration under Chair Gensler.

Sources: *SEC v. Pinnacle Advisors, LLC, et al.*, Case No. 5:23-cv-547 (FJS/ATB) (May 5, 2023), available [here](#); *Pinnacle Advisors, LLC; Robert F. Cuculich; Benjamin R. Quilty; Mark E. Wadach; and Lawton A. Williamson, SEC Litigation Release No. 26347* (July 11, 2025), available [here](#); *SEC vs. Pinnacle Advisors, LLC, et al.*, Case No. 5:23-cv-00547-FJS-MJK (July 11, 2025), available [here](#).

## Shareholders File Lawsuits Over Accounting Practices

Two class action lawsuits have been filed on behalf of shareholders of mutual funds sponsored by First Eagle Funds and JPMorgan Chase & Co. alleging false and misleading statements and material omissions in the applicable registration statements and prospectuses related to:

- accounting practices and treatment of accrued dividend income and capital gains from underlying fund portfolio holdings;
- inflated net asset value (NAV) calculations resulting from such accounting practices; and
- failures to disclose the risks of such accounting practices.

The shareholders allege that they incurred higher advisory fees and faced hidden tax liabilities as a result of such accounting practices. The plaintiffs in each suit are represented by the same law firm. Notably, the shareholders name the independent board members of the funds as defendants in the lawsuit against JP Morgan Chase & Co. While the initial complaint in the lawsuit against First Eagle Funds also named the independent board members as defendants, the named shareholder in that lawsuit voluntarily dismissed the claims against First Eagle's independent directors.

*Godfrey & Kahn's Take:* These lawsuits challenge long-standing and widely used mutual fund accounting practices. We do not recommend any changes in funds' current accounting practices unless these suits are proven to have traction.

Sources: *Morad, Elia et al. v. JPMorgan Trust I et al.*, Case No. 0154203/2025 (March 28, 2025), available [here](#); *Marianna Dandini v. First Eagle Funds, et al.*, Case No. N25C-05-224 (May 20, 2025); available [here](#); *Fund Directors Dropped from NAV Accounting Suit, Board IQ* (Oct. 7, 2025), available [here](#) (by subscription).



## COMPLIANCE DATES FOR FINAL RULES

Final Rules	Compliance Dates
Investment Company Names Rule Amendments	<p>Larger fund groups (net assets of \$1 billion or more): June 11, 2026.</p> <p>Smaller fund groups (net assets of less than \$1 billion): December 11, 2026.</p> <p>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.</p>
Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information	<p>Rule amendments were effective August 2, 2024, with tiered compliance dates:</p> <p>Larger entities (investment companies with net assets of \$1 billion or more, registered advisers with assets under management of \$1.5 billion or more, and broker-dealers and transfer agents that are not small entities under the Securities Exchange Act of 1934): December 3, 2025.</p> <p>Smaller entities (covered institutions who do not meet the "larger entity" thresholds): June 3, 2026.</p>
Form PF Amendments to Reporting Requirements*	The compliance date for the amendments to Form PF is October 1, 2026.
Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs	<p><b>Form N-PORT</b></p> <p>The final rule is effective November 17, 2027, with tiered compliance dates:</p> <p>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.</p> <p>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.</p> <p><b>Form N-CEN</b></p> <p>The effective and compliance date for the amendments to Form N-CEN is November 17, 2025.</p>
FinCEN Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*	The final rule is effective January 1, 2028.

\* Discussion included in this Regulatory Update