

Investment Management Legal and Regulatory Update

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LATEST DEVELOPMENTS

SEC Proposes Long-Awaited E-Delivery Approach

The SEC recently proposed Regulation E-Delivery, which would allow “covered entities” to deliver “covered information” to “covered recipients” electronically without first obtaining affirmative consent. Covered information, in general, would be defined as any information required to be delivered to a covered recipient under the Federal securities laws. This would include, for example, fund prospectuses and shareholder reports, proxy statements, Form ADV Part 2 firm brochures and brochure supplements, Form CRS, and trade confirmations. Covered entities would include any person that has an obligation to deliver covered information to a covered recipient under the Federal securities laws, such as investment companies, investment advisers and broker-dealers. Covered recipients would include any current or prospective customer, client, investor, security holder, counterparty, or similar recipient of information.

If adopted, Regulation E-Delivery would permit, but not require, covered entities to use e-delivery as the default method of delivery for covered information, subject to certain conditions. Covered recipients may opt out of default e-delivery and also receive paper copies of covered information on request.

Regardless of whether a covered entity chooses to use e-delivery as the default method of delivery, a covered entity would be able to rely on the proposed rule to satisfy its delivery obligation for covered information electronically where: (1) the covered recipient has provided an electronic address; (2) the covered entity has provided a prominent disclosure to the covered recipient that it will send covered information to such electronic address; and (3) the covered recipient has not opted out of e-delivery.

Under the proposed rule, a covered entity could use two methods of e-delivery depending on whether the covered information includes personal financial information (PFI). For covered information that does not include PFI, a covered entity could use “direct delivery” to deliver covered information directly to a covered recipient’s electronic address. For example, the covered information could be attached to or included in the body of an email. For covered information that includes PFI, a covered entity would be required to deliver a statement of availability to the covered recipient’s electronic address which includes, among other items, a website address that would require the use of a process reasonably designed to safeguard the PFI, and that would lead the covered recipient directly to the covered information immediately after completing such process.

No matter which method of e-delivery is used, the delivery of covered information would need to include a prominent statement explaining the process to: (1) obtain a paper version of covered information, upon request, as well as the covered entity’s obligation to provide a paper copy of covered information free of charge; (2) opt out of e-delivery at any time; and (3) update one’s

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice and does not create an attorney-client relationship. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

electronic address, free of charge. Other requirements addressed in the proposed rule include timing of delivery, website availability of required disclosures and reports, and processes for mitigating failed e-delivery.

For covered recipients receiving documents in paper format as of the rule's effective date, the proposal would establish a separate transition process. A covered entity generally would be required to send an initial paper notice at least 180 days before transitioning the recipient to default e-delivery and a follow-up paper notice 30 days before the transition. The follow-up paper notice would not be required if, after receiving the initial notice, the recipient updates or confirms an electronic address without opting out or elects to continue receiving documents in paper format.

SEC Chairman Atkins praised the rule proposal as a meaningful advancement toward aligning the securities rules and regulations with the needs of today's markets. He stated that the proposed e-delivery approach would substantially reduce paper, printing and postage costs and allow the financial services industry to harness technology for the benefit of everyday American investors.

The Commission has solicited comments on particular aspects of the proposed e-delivery approach, including whether an "access-equals-delivery" approach based on the type of covered recipient and/or the type of covered information would be appropriate. The comment period closed on September 21, 2026, and no further action has been taken as of the publication of this article.

Godfrey & Kahn's Take: The proposed rule is a welcome modernization of the decades-old approach to delivering required information to investors. Covered entities considering default e-delivery should evaluate whether their systems, vendor arrangements and compliance programs can satisfy the proposed requirements regarding electronic addresses, investor preferences, failed deliveries and the protection of personal financial information.

Sources: *Electronic Delivery of Information Under the Federal Securities Laws, SEC Proposed Rule Release No. 33-11430 (July 16, 2026), available [here](#); Statement on Regulation E-Delivery, SEC Chairman Paul S. Atkins Statement (July 16, 2026), available [here](#); SEC Proposes New E-Delivery Approach to Make Information More Readily Accessible and Useful for Investors, SEC Press Release No. 2026-67 (July 16, 2026), available [here](#).*

SEC Proposes Rescission of Pay-to-Play Rule

In early September, the SEC proposed to rescind Rule 206(4)-5 under the Advisers Act (the pay-to-play rule). The SEC adopted the pay-to-play rule in 2010 to address pay-to-play practices involving investment advisers and government entities. The pay-to-play rule generally prohibits an adviser from receiving compensation for advisory services provided to a government entity for two years after the adviser or one of its "covered associates" makes a political contribution to certain elected officials or candidates who can influence the award of advisory business. There are several exceptions to the rule, including for covered associates who make aggregate contributions of up to \$350 per election to candidates for whom the covered associate is entitled to vote.

In the proposing release, the SEC emphasized several consequences of the pay-to-play rule:

- Disproportionate monetary losses associated with the two-year ban that are triggered by relatively small contributions;
- Limited remedial provisions outside of the SEC exemptive order process;
- Restrictions on advisers' hiring and promotion practices because of individuals' contributions;
- Limitations on the number of advisers available to public pension plans;
- Interpretive difficulties in determining which covered associates and government officials to which the restrictions apply;
- Lack of inflation adjustments to the dollar amounts applicable to the pay-to-play rule's various exceptions; and
- Advisers prohibiting contributions outright, which may chill political speech protected by the First Amendment.

While the SEC has proposed to rescind the pay-to-play rule in its entirety, the SEC noted in the proposing release

that the goals of the rule may be better achieved by existing legal requirements applicable to advisers. These include advisers' compliance programs and codes of ethics, as well as federal fiduciary and anti-fraud obligations. If the proposed rescission is adopted, advisers could reassess and tailor their political contribution policies to their particular risks, subject to these continuing obligations. The rescission would also eliminate the pay-to-play rule's related recordkeeping requirements.

The comment period closes on November 9, 2026.

Godfrey & Kahn's Take: If adopted, the proposed rescission would eliminate the existing prescriptive requirements of the pay-to-play rule in favor of a more principles-based framework with respect to political contributions. The rescission would not eliminate advisers' obligations to address conflicts and fraudulent practices associated with political contributions. Advisers should continue to monitor their compliance with the pay-to-play rule until the SEC takes further action.

Sources: *Political Contributions by Certain Investment Advisers, SEC Proposed Rule Release No. 1A-6994 (Sept. 3, 2026)*, available [here](#); *Rescission of Political Contribution Rule for Investment Advisers, SEC Fact Sheet (Sept. 3, 2026)*, available [here](#); *Statement on Proposal to Rescind "Pay-to-Play" Rule, SEC Chairman Paul S. Atkins Statement (Sept. 3, 2026)*, available [here](#).

SEC Proposes Rescission of Shareholder Proposal Rule and Proxy Process Reforms

On September 16, 2026, the SEC proposed to rescind Rule 14a-8 under the Exchange Act and amend Rule 14a-4 under the Exchange Act. In a separate proposal issued the same day, the SEC proposed four additional amendments intended to modernize the proxy solicitation process.

Section 14(a) of the Exchange Act authorizes the SEC to regulate proxy solicitations and makes it unlawful to solicit a proxy in contravention of SEC rules. Rule 14a-8 currently addresses when a company must include a shareholder proposal in its proxy statement and the procedures a shareholder must follow. A shareholder proposal is a recommendation or requirement that a company or its board take action that the shareholder intends to present at a shareholder meeting.

To use Rule 14a-8, a shareholder generally must continuously hold at least \$2,000 of the company's voting securities for three years, \$15,000 for two years, or \$25,000 for one year. The shareholder also must satisfy procedural requirements, including stating an intention to hold the required securities through the meeting date and providing dates and times when the shareholder is available to meet with the company. Rule 14a-8 also limits the number and length of proposals, sets submission deadlines, and identifies circumstances in which a company may exclude a proposal. If adopted, the proposed rescission would eliminate the federal rule requiring companies to include qualifying shareholder proposals in their proxy materials. The treatment of shareholder proposals instead would be governed by state law and, where state law permits, company governing documents.

In addition to the proposal to rescind Rule 14a-8, the SEC proposed amendments to Rule 14a-4(c) that would expand the circumstances in which a company could exercise discretionary voting authority over proposals presented at a shareholder meeting but omitted from its proxy materials. At the same time, shareholders would be able to prevent the company from exercising that authority with respect to their shares. The separate proxy-modernization proposal would: (i) eliminate the requirement to deliver a separate annual report to security holders; (ii) eliminate the 20-business day delivery deadline when a proxy statement or prospectus incorporates information by reference; (iii) eliminate the requirement and ability to submit notices of exempt solicitation; and (iv) shorten the minimum broker-search period from 20 business days to five business days.

The proposing release states that the SEC has "substituted its own judgment for which proposals are proper under State law" and that Rule 14a-8 has become a "de facto Federal standard for shareholder voting rights." SEC Chairman Atkins stated that rescission of the rule "would help ensure that states are able to fully exercise their longstanding authority over shareholder proposals" and directed companies and shareholders to state law and, where permitted, company governing documents for the applicable shareholder proposal framework.

The proposal was published in the Federal Register on September 21, 2026, with comments due November 20, 2026.

Godfrey & Kahn's Take: If adopted, the rescission of Rule 14a-8 could materially change the shareholder proposal process. Boards should continue to monitor the proposed rescission, evaluate how applicable state law and governing documents would operate in the absence of Rule 14a-8, and follow the SEC's related proxy reform initiatives.

Sources: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4, SEC Proposed Rule Release No. 34-106383 (Sept. 16, 2026), available [here](#); SEC Proposes Rescission of Shareholder Proposal Rule and Reforms to Proxy Solicitation Process, SEC Press Release 2026-89 (Sept. 16, 2026), available [here](#); Statement on Proposals to Rescind Rule 14a-8, Amend Rule 14a-4, and Modernize Proxy Solicitation, SEC Chairman Paul S. Atkins Statement (Sept. 16, 2026), available [here](#).

SEC Announces Examination Handbook

On October 1, 2026, the SEC's Division of Examinations released a new examination handbook titled "The SEC Exam Handbook: A Practical Guide on Process and Engagement," replacing and expanding upon the Division's existing examination brochure. In a statement accompanying the release, SEC Chairman Atkins stated that the new handbook "clarifies the examination process, offering regulated entities greater insight into what to expect during an exam and establishing clear expectations."

The new handbook provides a roadmap for the SEC examination process, along with practical guidance for registrants undergoing examinations, opportunities to provide feedback to the Division, and additional online resources. The handbook addresses several key components of the examination process, including:

- Candidate selection, including the Division's risk-based selection framework;
- Examination announcements and pre-examination planning;
- Initial and supplemental information requests to registrants and third parties;
- Interviews, including potential on-site visits; and
- Exit conferences, examination outcomes and registrant responses.

The handbook also describes the Division's examination staffing process, consultations with other SEC divisions, information sharing and safeguarding procedures, and confidentiality policies. Importantly, the handbook provides additional clarity regarding examination procedures and timelines. For example, SEC staff generally allows two weeks for responses to initial information requests, typically requests written responses to deficiency letters within 30 days, and strives to provide any additional comments within 60 days after receiving a registrant's response.

Godfrey & Kahn's Take: The new examination handbook reflects the SEC's recent commitment to greater transparency and collaboration with market participants throughout the examination process. Although the handbook does not establish new substantive compliance obligations, it provides useful guidance regarding examination procedures and expectations. Registrants should familiarize themselves with the handbook and consider incorporating its guidance into their examination preparation and response procedures, particularly regarding document production, communications with SEC staff, and responding to examination findings.

Source: The SEC Exam Handbook: A Practical Guide on Process and Engagement (Oct. 1, 2026), available [here](#); SEC's Division of Examinations Announces New Exam Handbook, SEC Press Release No. 2026-99 (Oct. 1, 2026), available [here](#).

LATEST DEVELOPMENTS: FUNDS

SEC Provides Relief for ETF Concentration Limits

The SEC Division of Investment Management issued a no-action letter in response to a request from the Investment Company Institute (ICI) in which the Division indicated it would not recommend enforcement action if an ETF made certain further investments in an industry or group of industries while experiencing a non-volitional breach of its 25% industry concentration limit.

A registered fund is required to disclose its concentration policy in its registration statement, and a fund generally may not deviate from this policy without shareholder approval. Changes in market values often cause a fund's investments in a particular industry or group of industries to exceed 25% of its assets and there is long-standing guidance from

the SEC that such a passive, market-driven exceedance is allowed, but funds may not make further investments in such overrepresented industries. ICI noted in its letter that this guidance was developed in the context of “traditional funds” and does not address how an ETF should handle creation baskets during a “passive exceedance” given that it cannot control the timing of creations. In those situations, ETFs are often forced to refuse further creations or alter basket compositions, which may disadvantage fund shareholders. ICI argued that an ETF’s proportional exposure to the relevant industry remains unchanged by accepting a pro rata basket and does not reflect an investment decision by the ETF’s manager.

In response to ICI’s request, the SEC staff stated that it would not recommend enforcement action if, during a passive exceedance of its disclosed industry concentration policy, an ETF: (1) receives a pro rata creation basket that includes one or more investments in such industry; (2) uses cash received in lieu of a creation basket component, where such component represents an investment in such industry, to purchase the component security up to an amount consistent with a pro rata creation basket; or (3) receives a non-pro rata creation basket where the weighting of such industry is consistent with the weighting of the industry in a pro rata creation basket. The SEC staff confirmed that this relief applies to actively-managed and index-based ETFs but cautioned that any deviation from the facts or circumstances set forth in ICI’s letter may require a different conclusion.

Godfrey & Kahn’s Take: The no-action letter provides practical relief to ETFs experiencing involuntary breaches of the fund’s industry concentration limits and should allow for more flexibility in managing ETF creations and redemptions. ETF sponsors should review and revise their compliance policies and procedures governing concentration limits and creation baskets to reflect the conditions of the relief and ensure that reliance on the letter is appropriately documented.

Sources: Investment Company Institute Request for No-Action Relief (July 27, 2026), available [here](#); Response of the Office of Chief Counsel, Division of Investment Management, SEC Staff No-Action Letter (July 27, 2026), available [here](#).

LATEST DEVELOPMENTS: ADVISERS

SEC Risk Alert – Investment Adviser Annual Compliance Reviews

On September 14, 2026, the SEC Division of Examinations published a risk alert summarizing staff observations related to advisers’ annual reviews of their compliance programs. SEC-registered investment advisers must review, no less frequently than annually, the adequacy of their compliance policies and procedures and the effectiveness of their implementation. The risk alert is intended to help advisers identify ways to strengthen that process.

The risk alert describes deficiencies observed by the Division’s staff, including the following:

Untimely or Incomplete Annual Reviews

- Advisers had gaps in their annual reviews, such as skipping a year or allowing intervals of more than 12 months between reviews. In some cases, the extended interval was due to a business or personnel change, such as a Chief Compliance Officer departure.
- Instead of conducting an annual review, advisers treated training or annual attestations of personnel’s adherence to compliance policies and procedures as satisfying the annual review requirement.

Incomplete Procedures for Conducting Annual Reviews

- Advisers had policies requiring documentation, testing and validation as part of their annual reviews, but lacked procedures explaining how personnel should conduct the tests, evaluate the results or document the work performed.
- Advisers’ policies required annual assessment of specified practices, services and/or operations, but their annual review procedures omitted those topics and the reviews consequently did not address them.

Annual Reviews Inconsistent with Written Procedures

- Advisers did not follow procedures requiring a defined review period or scope, specified work papers, and particular tasks or tests.

Misalignment Between Compliance Program and Practices

- Advisers had not adopted policies and procedures addressing risk areas that were pivotal to their businesses.
- Annual reviews failed to identify instances in which written policies no longer aligned with the adviser's practices or regulatory obligations. Examples included custody procedures that did not ensure all accounts subject to surprise examination were identified to the independent public accountant, marketing procedures that had not been updated for the Advisers Act marketing rule, and regulatory-filing procedures that did not address Form CRS requirements for advisers with retail clients.

Documentation of Annual Reviews Not Maintained

- Advisers created documentation while testing and tracking compliance violations, but did not maintain that documentation in their books and records.

Failure to Take Corrective Action

- Advisers did not take corrective action after annual reviews identified issues and recommended changes to compliance policies, disclosures or business practices.

Godfrey & Kahn's Take: The risk alert underscores that the annual compliance review is not a check-the-box exercise. Advisers should ensure their review procedures are sufficiently detailed, address current business activities and risks, and are followed consistently. Advisers should also maintain supporting records and promptly remediate issues identified through the review.

Source: *Examinations Observations Regarding Investment Adviser Annual Compliance Reviews*, SEC Risk Alert (Sept. 14, 2026), available [here](#).

ENFORCEMENT ACTIONS

Rule 18f-4 and Affiliated Transaction Violations (Simplify Asset Management, Inc.)

On July 27, 2026, Simplify Asset Management, Inc. (Simplify), an SEC-registered investment adviser, agreed to pay \$400,000 to settle SEC charges alleging, among other things, that Simplify: (1) caused an affiliated trust to engage in prohibited affiliate transactions with a fund advised by Simplify; (2) failed to timely notify a fund's board and file required SEC reports after it exceeded permissible leverage thresholds set forth in Rule 18f-4 under the Investment Company Act; and (3) failed to provide contemporaneous notices to fund investors that fund distributions consisted of returns of capital.

The SEC found that Simplify caused a fund to violate Section 18(f)(1) of the Investment Company Act in connection with the fund's failure to satisfy the conditions of Rule 18f-4. Rule 18f-4 provides an exemption for funds to engage in derivatives transactions involving senior securities, provided that certain conditions are satisfied. Generally, funds relying on Rule 18f-4 must comply with limitations on leverage based on a relative value-at-risk (VaR) test that requires a fund not to exceed 200% of the VaR of a "designated reference portfolio." Funds must calculate their VaR and determine compliance with the applicable VaR test on a daily basis. If a fund exceeds the applicable threshold for five or more business days, certain board notification and SEC reporting requirements apply.

In this case, the SEC concluded that Simplify caused a fund to exceed its VaR threshold on two occasions, reaching as high as 291%. Because each breach lasted five or more business days, the fund was required to report the event on Form N-RN within one business day and Simplify was required to notify the fund's board within the applicable time frame. However, Simplify failed to timely notify the fund's board and file the required reports with the SEC.

The SEC also determined that Simplify caused a trust affiliated with Simplify to violate Section 17(a)(1) of the Investment Company Act. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling securities or other property to the investment company unless an exemption applies or SEC exemptive relief has been obtained. The trust held voting securities representing an ownership interest in Simplify, making the trust an affiliated person of Simplify. Because Simplify was the fund's investment adviser and therefore an affiliated person of the fund, the trust was a second-tier affiliate of the fund. The SEC found that Simplify caused the trust to violate Section 17(a)(1) by engaging in two prohibited in-kind subscription transactions with the fund without obtaining exemptive relief. Simplify had represented to the fund's board that the transactions were not affiliated transactions.

Finally, the SEC found that Simplify caused a group of funds to violate Section 19(a) of the Investment Company Act by making distributions to shareholders from sources other than net income without providing required disclosure. Section 19(a) and Rule 19a-1 under the Investment Company Act prohibit investment companies from paying distributions from any source other than net income without providing contemporaneous written disclosure about the source of such distributions. The SEC alleged that Simplify caused the funds to make distributions that included returns of capital for multiple years but failed to provide the required disclosure to shareholders.

Godfrey & Kahn's Take: Despite the SEC's recent stance against "regulation by enforcement," this action demonstrates that the SEC is continuing to pursue violations of the Investment Company Act. Advisers should continue to monitor compliance with Rule 18f-4 and ensure that procedures address VaR exceedances, board notifications and SEC reporting, as well as requirements related to affiliated transactions and fund distribution notices.

Source: In the Matter of Simplify Asset Management, Inc., Release No. 36269 (July 27, 2026), available [here](#).

ADDITIONAL TOPICS

SEC Proposes New Crypto-Asset Offering Framework

The SEC proposed a rule that would create an offering framework for certain investment contracts involving crypto assets. The proposed rule would include "startup" and "fundraising" exemptions from Securities Act registration for certain issuers offering covered investment contracts that comply with the proposed rule. Generally, investment contracts are treated as securities because they involve arrangements where a person invests money in a common enterprise with a reasonable expectation of profits from the efforts of others. "Covered investment contracts" would include contracts or schemes in which crypto assets are the only assets subject to the investment contract and do not otherwise constitute securities. Once certain crypto assets cease to be subject to such contracts, the rule would provide them with a conditional safe harbor from the definition of "security" as it relates to investment contracts under Federal securities laws.

The proposed rule follows SEC commissioners' repeated statements that the SEC intends to evaluate new rules to address the unique aspects of crypto capital formation. The proposed rule also builds on SEC interpretive guidance issued on March 17, 2026, titled "Application of the Federal Securities Laws to Certain Crypto Assets and Certain Transactions Involving Crypto Assets." In that guidance, the SEC set forth a taxonomy for analyzing the securities-law status of crypto assets and indicated that certain crypto assets that cease to be subject to an investment contract may no longer fall within the definition of a "security." On October 1, 2026, the SEC separately proposed rules addressing the custody of crypto assets.

The comment period closes on October 20, 2026.

Godfrey & Kahn's Take: The proposal would create a tailored capital-raising framework for certain crypto-asset arrangements. It remains subject to the comment process, however, and market participants should not rely on any proposed exemption or safe harbor unless and until it is adopted and becomes effective. If adopted, its scope and conditions may differ materially from those currently proposed, including with respect to offering limits, disclosure and reporting requirements, and continuing anti-fraud and anti-manipulation obligations.

Sources: Regulation Crypto Assets, SEC Proposed Rule Release No. 33-11434 (Aug. 18, 2026), available [here](#); Regulation Crypto Assets, SEC Fact Sheet (Aug. 18, 2026), available [here](#); Statement on Regulation Crypto Assets: Fit-for-Purpose Exemptions for Crypto Market Innovation, SEC Chairman Paul S. Atkins Statement (Aug. 18, 2026), available [here](#); Filling the Regulatory Tank: Regulation Crypto Assets Proposing Release, SEC Commissioner Hester M. Peirce Statement (Aug. 18, 2026), available [here](#); Adviser and Regulated Fund Custody Rules; Crypto Custody Rules, SEC Proposed Rule Release No. IC-36353 (Oct. 1, 2026), available [here](#).

SEC Aligns Fund Governance Rule with Federal Court Decision

The SEC issued technical amendments in August 2026 to conform the text of Rule 0-1(a)(7) under the Investment Company Act to a longstanding federal court decision. The amendments reflect the court's vacatur of two fund governance requirements that the SEC adopted in July 2004. The court's vacatur became effective in July 2006 and reverted the affected governance standards to those in effect immediately before the adoption of the vacated requirements, but the Code of Federal Regulations had not been updated to reflect the court's action.

Prior to the 2004 amendments, Rule 0-1(a)(7) required, among other things, that registered fund boards have a majority of disinterested directors and was silent as to whether the board chair needed to be disinterested. In 2004, the SEC amended these standards to include seven governance requirements, including requirements that at least 75% of the directors be disinterested and that a disinterested director serve as board chair. These two requirements were vacated in 2006, while the other requirements of Rule 0-1(a)(7), as amended, remained unchanged. SEC Commissioner Uyeda released a statement supporting the technical amendments, noting that they reflect the SEC's commitment to sound regulatory principles.

Godfrey & Kahn's Take: The technical amendments eliminate potential confusion regarding the applicable fund governance standards. Although Rule 0-1(a)(7) requires only a majority of disinterested directors, fund boards may determine, based on their particular circumstances and governing documents, that a greater proportion of disinterested directors supports effective governance.

Sources: *Investment Company Governance Technical Amendments, SEC Final Rule Release No. IC-36282 (Aug. 6, 2026), available [here](#); Restoring Regulatory Clarity: Statement on Technical Amendments to Rule 0-1(a)(7), SEC Commissioner Mark T. Uyeda Statement (Aug. 4, 2026), available [here](#).*

SEC Invites Public Comment on Novel ETFs

The SEC recently requested public comments on regulatory considerations for ETFs that invest in innovative asset classes and strategies. Since the adoption of Rule 6c-11 under the Investment Company Act, the market for ETFs has grown rapidly, with the total number of ETFs now exceeding 4,600. Sponsors have sought to distinguish themselves in the market by launching products that provide exposure to crypto, commodities, single-stock, derivatives, event contract, private market, leveraged and other alternative investment strategies. However, market participants are raising additional questions as novel strategies continue to push the bounds of the existing regulatory framework.

The SEC's request focuses on several key topics, including:

- Whether a novel ETF can principally invest in non-security assets and still be regulated as an investment company, including when investing in securities of wholly-owned subsidiaries that principally invest in non-security assets;
- Restrictions on ETF portfolio strategies, such as minimum holdings, diversification requirements, or concentration limits to protect investors, support the functioning of ETF arbitrage and related secondary trading activities, and maintain efficient markets;
- Possible extensions to effective dates under Rule 485(a) of the Securities Act to address challenges in reviewing novel strategies and the circumstances in which the SEC can delay the effectiveness of a novel ETF;
- How SEC staff can engage earlier with sponsors to address potential issues before sponsors make a public filing;
- Whether ETFs that become effective but never launch should be automatically deregistered after a defined period;
- Heightened disclosure standards for certain novel ETF products; and
- Whether material investment strategy changes reflected in a Rule 485(a) filing should be subject to a 60-day or 75-day effective period.

The comment period closed on August 31, 2026.

Godfrey & Kahn's Take: Although the SEC has taken a greater interest in novel ETF strategies, it remains to be seen how the SEC will respond to public comments. SEC staff could provide additional guidance or initiate more formal rulemaking. Sponsors should continue to monitor this dialogue.

Source: Request for Comment on Novel ETFs, SEC Request for Comment Release No. 33-11426 (July 2, 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 July 1, 2027. Note that the compliance date was recently extended from October 1, 2026.
Form N-PORT Reporting	The 2024 amendments to Form N-PORT are scheduled to become 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 threshold 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.
Electronic Delivery of Information Under the Federal Securities Laws*	Comments were due September 21, 2026. The SEC has not taken any further action as of the date of publication.
Proposed Rescission of Political Contributions by Certain Investment Advisers (“Pay-to-Play” Rule)*	Comments are due November 9, 2026. The SEC has not taken any further action as of the date of publication.
Rescission of Rule 14a-8’s Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4*	Comments are due November 20, 2026. The SEC has not taken any further action as of the date of publication.

*Discussion included in this Investment Management Update.