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Investment Services Regulatory Update

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New and Proposed Rules

SEC Proposes Increases to Small Entity Asset Thresholds for Funds and Advisers

On January 7, 2026, the SEC proposed amendments to the rules that define which registered investment companies and business development companies (funds) and investment advisers qualify as "small entities" for purposes of the Regulatory Flexibility Act (the RFA). If adopted, the amendments would raise the current asset-based thresholds that apply to funds and advisers and require adjustments to those thresholds for inflation every ten years. In its release, the SEC explained that the proposal is designed to capture the types and numbers of funds and advisers the SEC currently considers "small," taking into account the substantial growth in net assets and assets under management since the applicable rules were last updated in 1998.

Under the RFA, the SEC is required to determine if a proposed or final rulemaking is likely to have a "significant economic impact on a substantial number of small entities." Unless the SEC certifies that the rulemaking will not have such an impact, the SEC must conduct a regulatory flexibility analysis in connection with both the proposed and final rulemaking stages. By right-sizing the "small entity" asset thresholds, the SEC expects the proposal will improve its analyses of potential regulatory impacts faced by small entities so that it may consider adapting its rulemakings accordingly.

With respect to funds, the proposal would raise the small entity threshold set forth in Rule 0-10 under the Investment Company Act of 1940 from $50 million to $10 billion in net assets, applicable to a fund together with other related funds. The proposal would also replace the term "group of related investment companies" in Rule 0-10 with the term "family of investment companies," as that term is used in Form N-CEN, for purposes of aggregating the net assets of related funds, thereby enabling the SEC to rely on Form N-CEN information for its RFA analyses. With respect to advisers, the proposal would raise certain small entity thresholds set forth in Rule 0-7 under the Investment Advisers Act of 1940 from $25 million to $1 billion in assets under management, applicable to an adviser and separately to its control persons. Additionally, the proposal would provide that the SEC issue an order every ten years to adjust the small entity thresholds for inflation.

Comments on the proposal are due by March 13, 2026. The SEC's proposing release is available here, a related press release is available here and a related fact sheet is available here.

SEC Further Extends Relief from Compliance with New Short Sale Reporting and Securities Lending Disclosure Requirements

On December 3, 2025, the SEC issued an order extending, for an additional two years, exemptive relief from compliance with the short sale disclosure requirements of new Rule 13f-2 under the Securities Exchange Act of 1934, and related reporting requirements on new Form SHO, as well as the securities lending disclosure requirements of new Rule 10c-1a under the Exchange Act (the Rules).

The SEC adopted the Rules in October 2023. Rule 13f-2 requires institutional investment managers to file confidential monthly reports with the SEC on Form SHO regarding certain short sale activity and positions for which a manager exercises investment discretion. Rule 10c-1a requires "covered persons" to report certain details regarding securities lending transactions to a registered national securities association (RNSA) and that the RNSA make publicly available, subject to certain confidentiality requirements, certain information it receives on reported securities loans. In February 2025, the SEC issued a one-year exemption from compliance with Rule 13f-2 and the related reporting on Form SHO, resulting in a compliance deadline of January 2, 2026. In July 2025, the SEC granted exemptive relief from compliance with the reporting requirement under Rule 10c-1a until September 28, 2026, and the requirement for the RNSA to publicly report certain information regarding securities loans until March 29, 2027. In August 2025, following a challenge to the Rules by industry groups, the U.S. Court of Appeals for the Fifth Circuit remanded the Rules to the SEC to allow it to consider and quantify the cumulative economic impact of the Rules.

In granting the latest exemptions, the SEC stated that the exemptions were "necessary in the public interest and consistent with the protection of investors" and will allow the SEC time to respond to the Fifth Circuit's opinion "and take any further appropriate actions, which may include proposing amendments to the Rules." The exemption from compliance with Rule 13f-2 and Form SHO reporting now ends on January 2, 2028, with Form SHO filings due within 14 calendar days after the end of January 2028 (i.e., February 14, 2028). The exemption from compliance with the reporting requirement under Rule 10c-1a now ends on September 28, 2028, with the requirement for the RNSA to publicly report certain information regarding securities loans extended until March 29, 2029.

The SEC's order is available here.

Treasury Department and IRS Issue Final Regulations Exempting Non-RIC Funds from Stock Repurchase Excise Tax

As discussed in an article published by attorneys in Vedder's Tax group, the Inflation Reduction Act of 2022 imposed a 1 percent excise tax on certain repurchases of publicly traded corporate stock made after December 31, 2022. The statute exempts repurchases made by a "regulated investment company" (RIC) or a "real estate investment trust" (REIT), as those terms are defined under the Internal Revenue. Investment companies that do not elect or that do not qualify to be treated as a RIC under the Code, typically due to their receipt of non-qualifying income (commonly known as "bad income"), did not fall within the scope of the exception.

Effective November 24, 2025, the U.S. Treasury Department and the Internal Revenue Service issued final regulations that extended the excise tax exemption available to RICs and REITs to also include investment companies that have not elected to be treated as a RIC and are either (i) an "open-end company" as defined under the Investment Company Act of 1940, or (ii) a "closed-end company" as defined under the Investment Company Act and where the repurchase occurs as part of a periodic repurchase offer made pursuant to Rule 23c-3 under the Investment Company Act (i.e., an interval fund). In the adopting release containing the final regulations, the Treasury Department and the IRS stated that "certain non-RIC funds are obligated to redeem shares at the demand of a shareholder and, therefore, are limited in their ability to use stock repurchases for other purposes, such as artificially increasing share value."

The adopting release containing the final regulations is available here.

Guidance and Other Developments

CFTC Provides Registration Relief to Private Fund Industry

The Market Participants Division of the CFTC on December 19, 2025 issued CFTC Letter No. 25-50 providing that it will not recommend enforcement action against an investment adviser registered with the SEC that operates a commodity pool offered solely to investors who are "qualified eligible persons" (QEPs)[1] where such investment adviser either does not register or withdraws its registration with the CFTC as a commodity pool operator (CPO). The Letter essentially reinstates the exemption from CPO registration which was formerly codified in CFTC Rule 4.13(a)(4), which was rescinded in 2012.

We anticipate that the Letter will be helpful to SEC-registered private funds managers that were required to register with the CFTC and become members of the National Futures Association after the recission of CFTC Rule 4.13(a)(4) in 2012 because their investment activities do not conform to the de minimis limitations under CFTC Rule 4.13(a)(3).

The CPO registration relief provided in the Letter is applied on a pool-by-pool basis and is available where:

- the CPO is an investment adviser registered with the SEC;[2]
- the interests in the commodity pool are exempt from registration with the SEC and are not offered to the general public in the United States;
- the interests in the commodity pool are only offered to investors the CPO reasonably believes are QEPs;
- the CPO files a Form PF with the SEC with respect to the commodity pool; and
- the CPO files a notice of exemption from registration via email to mpdnoaction@cftc.gov

With another component accommodative to the industry, the Letter provides that any CPO choosing to deregister in reliance on the Letter would not be subject to CFTC Rule 4.13(e), which generally requires that a CPO withdrawing its CFTC registration offer commodity pool investors a right to fully redeem at the time of deregistration. The full Letter is available here.

[1]The standard for a QEP is set forth in detail in 17 CFR 4.7(a)(6) and generally includes "qualified purchasers" (as defined in Section 2(a)(51)(A) of the Investment Company Act of 1940).

[2]Because registration with the SEC as an investment adviser is a requirement, private fund investment advisers that operate as exempt reporting advisers would not qualify for the registration relief.

SEC Staff's Latest Marketing Rule Risk Alert Highlights Observations Regarding Testimonials and Endorsements and Third-Party Ratings

On December 16, 2025, the SEC's Division of Examinations issued its latest risk alert regarding Rule 206(4)-1 under the Investment Advisers Act of 1940, known as the Marketing Rule. Following the examination staff's September 2022, June 2023 and April 2024 risk alerts regarding the staff's areas of emphasis in, and observations from, examinations of investment advisers' compliance with the Marketing Rule, this risk alert addresses the staff's observations regarding investment adviser compliance with the "Testimonials and Endorsements Provisions" (Rule 206(4)-1(b)) and the "Third-Party Ratings Provisions" (Rule 206(4)-1(c)) of the Marketing Rule.

Testimonials and Endorsements Provisions. The Marketing Rule prohibits the use of compensated testimonials and endorsements (i.e., promoters) in advertising unless the adviser satisfies certain disclosure and oversight requirements. The most common issue the examinations staff observed with the use of endorsements and testimonials was that the required disclosures were not provided at the time the testimonial or endorsement was initially disseminated. Other staff observations discussed in the risk alert include advertisements that contained testimonials or endorsements that did not provide one or more of the required clear and prominent disclosures, or that provided the disclosures but not in a clear and prominent manner, and compensation provided to promoters who were not eligible to receive compensation under the Marketing Rule.

Third-Party Rating Provisions. The Marketing Rule prohibits the use of third-party ratings in advertisements unless the adviser has a reasonable belief that the questionnaire or survey used in the preparation of the third-party rating is structured to allow for favorable and unfavorable responses and is not designed to produce a predetermined result, and the advertisement must contain certain clear and prominent disclosures required under the Marketing Rule. The examinations staff observed that some advisers had not developed policies and procedures or taken other steps to maintain compliance with the "reasonable belief" requirement with respect to the use of third-party ratings. Other staff observations discussed in the risk alert include advertisements that included third-party ratings without providing some or all of the required clear and prominent disclosures.

In sharing its observations, the SEC staff encouraged investment advisers "to reflect upon their own practices, policies and procedures and to implement any appropriate modifications to their training, supervisory, oversight, and compliance programs." With the risk alert, the SEC staff signals its continued focus on advertising practices of investment advisers.

The risk alert is available here.

President Trump Issues Executive Order Regarding Proxy Advisors

On December 11, 2025, President Trump issued an executive order with the stated purpose of increasing oversight and public confidence in the proxy advisor industry. The order cites as its focus proxy advisers' alleged advancement of "diversity, equity, and inclusion" (DEI) and "environmental, social, and governance" (ESG) agendas. The order directs the Chairs of the SEC and the CFTC, and the Secretary of Labor, to review and revise applicable regulations, guidance and other directives, and to conduct investigations and examinations consistent with the purpose of the order.

The executive order directs the SEC Chairman to review, and consider revising or rescinding, rules, regulations, guidance, bulletins and memoranda relating to proxy advisers and shareholder proposals (e.g., Rule 14a-8 under the Securities Exchange Act of 1934) that are inconsistent with the stated purpose of the order, especially to the extent they implicate DEI and ESG policies. The order also directs the SEC Chairman to, among other things, assess whether to require proxy advisors whose activities fall within the scope of the Investment Advisers Act of 1940 and the rules promulgated thereunder to register as investment advisers; consider requiring proxy advisors to provide increased transparency relating to their recommendations, methodology and conflicts of interest, especially regarding DEI and ESG factors; and direct SEC staff to examine whether registered investment advisers' engagement of proxy advisers for advice on non-pecuniary investment factors, including DEI and ESG, is inconsistent with their fiduciary duties.

The executive order directs the FTC Chairman to determine if there is a "probable link" between the conduct underlying State-level antitrust investigations into proxy advisors and violations of Federal antitrust law, and to investigate whether proxy advisors engage in unfair competition or unfair or deceptive acts or practices.

The executive order also directs the Secretary of Labor to revise regulations and guidance regarding the fiduciary status of proxy advisors and other individuals who advise others who manage the voting rights belonging to shares that are held by retirement plans covered under the Employee Retirement Income Security Act of 1974 (ERISA). The order further directs the Secretary to assess "whether proxy advisors act solely in the financial interests of plan participants and the extent to which any of their practices undermine the pecuniary value of the assets of ERISA plans" and to enhance transparency relating to the use of proxy advisors, particularly in relation to DEI and ESG practices.

The executive order is available here and a related fact sheet is available here.

SEC Division of Investment Management Director Delivers Remarks Outlining Division Agenda

On December 2, 2025, at a meeting of the American Bar Association's Federal Regulation of Securities Committee's Private Funds Subcommittee and Investment Advisers and Investment Companies

Subcommittee, Brian Daly, Director of the SEC's Division of Investment Management, delivered remarks in which he discussed the Division's agenda, as well as its regulatory approach. Director Daly distilled the Division's agenda into four themes: (1) an overall deregulatory effort; (2) modernization initiatives; (3) democratization of alternative asset investments; and (4) promotion of artificial intelligence.

Deregulation. Director Daly discussed how deregulation and regulatory restraint can "unlock value," citing as examples the 2019 adoption of the ETF Rule (Rule 6c-11 under the Investment Company Act of 1940) and the subsequent growth of the exchange-traded fund marketplace, as well as the SEC's recent ETF share class exemptive orders. He also highlighted the success of the SEC's "lighter-touch" regulatory regime for private funds in promoting the development of new investment structures.

Modernization. Director Daly emphasized the importance of updating SEC rules in areas where the underlying policy goals remain valid but the rule requirements have become outdated. In particular, he highlighted rules related to custody of assets and recordkeeping—both areas that featured in the SEC's Spring 2025 regulatory agenda—remarking on the introduction of digital assets and developments in communications technology since those rules were adopted.

Democratization. Director Daly also commented on the "democratization" of retail investment options, noting President Trump's August 2025 Executive Order aimed at expanding access to alternative investments within ERISA retirement plans, including 401(k) plans. In this regard, Director Daly advised not to expect a comprehensive rulemaking to transform the regulation of private funds, for example, noting that the Division will instead seek to implement "targeted actions" to expand options for retail investors. He highlighted the Division's August 2025 guidance on registered closed-end funds' investments in private funds as one such example.

Artificial Intelligence. Finally, Director Daly discussed the importance of AI, noting the SEC's desire to "enable, support and regulate [it] thoughtfully." He highlighted that while AI has the potential to transform disclosure and the investor experience, it also raises new regulatory questions and concerns.

The transcript of Director Daly's remarks is available here.

SEC Staff Issues 2026 Examination Priorities

On November 17, 2025, the staff of the SEC's Division of Examinations released its examination priorities for fiscal year 2026. The release highlights areas of focus for various regulated entities, including, among others, investment companies, investment advisers and broker-dealers.

Investment Companies

Examinations of investment companies will continue to focus on compliance programs, disclosures, filings and governance practices. In particular, the staff noted a focus on fund fees and expenses and related fee waivers and expense reimbursements. The staff also noted a focus on portfolio management practices and disclosures for consistency regarding investment strategies or approaches and for consistency with the amended Names Rule (Rule 35d-1 under the Investment Company Act of 1940) following the compliance date. The staff also highlighted additional areas of interest, including funds with complex strategies or significant less-liquid or illiquid holdings (e.g., closed-end funds) and related issues regarding valuation and conflicts of interest, funds with novel strategies or investments (e.g., funds with leverage), and operational and compliance issues arising in connection with fund mergers.

Investment Advisers

Examinations of investment advisers will continue to focus on advisers' adherence to their fiduciary duties of care and loyalty. The staff highlighted a focus on investment products with alternative investments (e.g., private credit and private funds), investment products with complex investments (e.g., ETFs with less liquid strategies, option-based ETFs, and leveraged and/or inverse ETFs) and higher cost investment products. The staff will also focus on investment recommendations for consistency with product disclosures and client profiles, emphasizing recommendations to retirement savers and older investors, advisers managing private funds and products sensitive to market volatility. In addition, the staff stated that it remains focused on advisers' compliance programs, including the core areas of

marketing, valuation, trading, portfolio management, disclosure and filings, and custody. Additional areas identified include implementation and enforcement of policies and procedures and whether disclosures address fee-related conflicts.

Broker-Dealers

The staff stated that it will continue to examine broker-dealer compliance with financial responsibilities rules, including the net capital rule and the customer protection rule, and will review firms' operational resilience programs and risk management controls. The staff also highlighted a continued focus on broker-dealer equity and fixed income trading practices, including best execution, pricing and valuation of illiquid investments, and disclosures regarding order routing and order execution information. Additionally, the staff will continue to examine sales practices, including Regulation Best Interest compliance. In this regard, the staff identified several areas of particular interest including, among others, complex or tax advantaged products, ETFs with illiquid investments such as private equity or private credit, municipal securities, private placements, structured products, and products representing growth areas for retail investment.

Risk Areas Impacting Various Market Participants

With respect to various market participants, the SEC staff highlighted examination priorities regarding information security and operational resiliency, including cybersecurity and compliance with Regulations S-ID and S-P, noting the recent amendments to Regulation S-P. The staff remains focused on the use of artificial intelligence and other emerging financial technologies and related disclosures and controls. The Regulation Systems Compliance and Integrity (SCI) framework for oversight of the U.S. securities markets' technology infrastructure, as well as anti-money laundering, also remain examination priorities.

The Division of Examinations' 2026 examination priorities are available here and a related press release is available here.

Investment Services Group Members

With significant experience in all matters related to design, organization and distribution of investment products, Vedder Price can assist with all aspects of investment company and investment adviser securities regulations, compliance issues, derivatives and financial product transactions, and ERISA and tax inquiries. Our highly experienced team has extensive knowledge in structural, operational and regulatory areas, coupled with a dedication to quality, responsive and efficient service.

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