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ALERT MEMORANDUM

The SEC's Ambitious Deregulatory Rulemaking Agenda Through the Lens of Private Fund Sponsors

July 22, 2026

In July 2026, the U.S. Securities and Exchange Commission (the SEC) published its semi-annual regulatory agenda (the Agenda) under Chair Paul Atkins, signaling a sweeping deregulatory pivot with considerable implications for private fund sponsors. The Agenda includes several new proposed rulemaking items that could have significant effects on private fund sponsors, which could include:

- Changes to the definition of accredited investor (e.g., knowledge exams, more categories of qualifications), flexibility on investments by non-accredited investors, and other private placement reforms.
- Expanded ability of registered funds to invest in private funds.
- Amendments to the Custody Rule to address crypto assets, as well as potentially other areas of the Rule long found problematic by the industry (such as stub audits and audits of end of life funds).
- Reductions to the burdens of the Pay-to-Play Rule (including potentially moving away from a strict liability standard to require evidence of quid pro quo).
- Amendments to the Recordkeeping Rule to address "off channel communication" issues.
- Regulatory clarity for finders to allow them to receive transaction-based compensation.
- Re-proposal of the AML rule for investment advisers that is more accurately tailored to the differing risks of different advisers.

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While the ambition is unmistakable, the volume of initiatives raises legitimate questions about execution: it would seem unlikely that the SEC staff will be able to propose all of these rules in the Summer and Fall of 2026 as the Agenda suggests. This memorandum examines each item, speculates on possible changes, and identifies the relevance to private fund sponsors.

I. Opening the Gates: Accredited Investor and Exempt Offering Reform

Division of Corporate Finance	*Fall 2026*
Propose rule amendments to facilitate capital formation and simplify the pathways for raising capital for, and investor access to, private businesses, including potential amendments to the definition of accredited investor.	

Background. The existing exempt offering framework — Regulation D (Rules 504, 506(b), 506(c)), Regulation A/A+, Regulation Crowdfunding, and Rule 144A — was last comprehensively updated in November 2020, when the SEC adopted amendments to harmonize, simplify, and improve the exempt offering framework. In March 2020, the SEC amended Rule 501(a) to add certain professional certifications and designations (knowledgeable employees of private funds, etc.) to the accredited investor definition, but the core income/net worth thresholds ($200,000/$300,000 income, $1 million net worth) for accredited investor status have not been adjusted since they were initially set in 1982.

Possible changes.

- **Changes to accredited investor definition.** Possible changes that have received support from Chair Atkins and/or other Commissioners include: (i) a knowledge-based exam (possibly administered by FINRA) and (ii) adding new categories of professional designations (e.g., CFA, CFP, CPA).
- **More flexibility for non-accredited investor access.** There have been suggestions to move away from the "all or nothing" approach for Regulation D (*i.e.*, accredited investor can invest any amount in anything, non-accredited investor cannot invest) and instead to consider a "sliding scale approach" that would permit a non-accredited investor to invest a small amount in private placements (*e.g.*, up to 10% annually of annual income, up to 10% in aggregate of net worth or value of investor's securities investments).
- **Regulation D relief.** Possible increases to offering limits under Rule 504, relaxation of general solicitation restrictions under 506(b), and simplification of the integration framework.

Significance for fund sponsors. An expanded accredited investor definition and increased flexibility for non-accredited investors would meaningfully broaden the addressable investor base for private funds that rely on Section 3(c)(1) of the Investment Company Act of 1940 (the Investment Company Act) (*i.e.*, those with fewer than 100 investors) or real estate or other funds that can rely on either Section 3(a)(1) or Section 3(c)(5)(C) of the Investment Company Act (which face asset limitations but not investor limitations). It will be less significant for private funds relying on Section 3(c)(7) of the Investment Company given the higher threshold for "qualified purchaser" (and the fact that "knowledgeable employees" were added to the definition of "accredited investor" in the last round of amendments).

II. Retailization 2.0: Expanding Registered Fund Access to Private Markets

Division of Investment Management	*Fall 2026*
Propose amendments to existing rules and/or propose new rules under the Investment Advisers Act of 1940 (the Advisers Act) and the Investment Company Act to better facilitate retail investor exposure to private markets through registered investment companies and to allow investment	

advisers to charge performance fees to an expanded set of clients.

Background. Under current law, registered investment companies face significant constraints on investing in illiquid/private assets — principally the 15% illiquid investment limit for open-end funds (Rule 22e-4), restrictions on affiliated transactions, and leverage limits under Section 18. The Advisers Act's Section 205(a)(1) generally prohibits performance-based compensation except for "qualified clients" — recently updated to be $1.4 million under management or a net worth above $2.7 million. This Advisers Act prohibition means that charging carried interest or performance fees to registered funds is prohibited.

Possible changes.

1. **Loosened illiquidity limits.** The SEC may raise or restructure the 15% illiquidity cap for certain registered open-end funds to allow greater allocations to PE, VC, private credit, and real estate.
2. **Expanded ability to charge performance fees.** The "qualified client" threshold in Rule 205-3 may be lowered or restructured, potentially allowing advisers to charge performance-based fees (including carried interest) to a broader set of investors, possibly tied to a sophistication or experience test rather than a pure wealth test. These changes could track the expanded definition of "accredited investor." In addition, it could open the door for more registered funds to charge carried interest or other performance fees.
3. **Greater structural flexibility.** The Investor Advisory Committee suggested providing greater flexibility on co-investments under Section 17(d) of the Investment Company Act, greater repurchase opportunities under Rule 23c-3, allowing closed-end funds to offer multiple classes of shares without the need for specific exemptive relief, and allowing interval funds and tender offer funds to operate as series funds, in a manner similar to mutual funds and ETFs.
4. **New semi-liquid fund structures.** Potential creation of new regulatory categories or safe harbors for semi-liquid fund products that invest primarily in private assets.

Significance for fund sponsors. These proposals could accelerate the "retailization" of private markets, opening significant new capital channels for fund sponsors through registered fund wrappers and enabling sponsors to charge performance-based compensation to a wider investor base. When combined with the DOL Proposed Rule's safe harbor for 401(k) plan fiduciaries and the recent seed share no-action relief, the regulatory architecture for channeling retail and retirement capital into private markets is being constructed in real time. Notably, expanding the use of performance fees and carried interest structures would better align newer retail fund structures with those traditionally implemented in the private fund context, and potentially significantly expand the scope of retail investors who could invest in such retail fund products. In addition, any expansion of the use of performance fees to traditional mutual funds could encourage the launch of new actively-managed mutual funds, and potentially reinvigorate a structure that has become increasingly overshadowed by the ETF model in recent years.

III. Modernizing the Custody Rule

Division of Investment Management	*Fall 2026*
Propose amendments to existing rules and/or propose new rules under the Advisers Act and the Investment Company Act to improve and modernize the regulations around the custody of advisory client and fund assets, including to address in each case crypto assets.	

Background. The SEC proposed a significantly expanded "Safeguarding Rule" (proposed Rule 223-1) in February 2023 under Chair Gensler, which would have replaced the existing Custody Rule (Rule 206(4)-

2 under the Advisers Act) and broadened custody obligations to cover all client assets. That proposal drew extensive industry criticism for its breadth and compliance costs and was never adopted. Rather than the sweeping overhaul envisioned by the never-adopted Safeguarding Rule, the Commission is expected to pursue narrower, targeted amendments to the existing Custody Rule to address specific gaps, including, at minimum, with respect to the custody of digital assets. In 2019, prior to the Safeguarding Rule proposal, the SEC staff had solicited feedback from the public on the custody of digital assets as well as issues relating to securities that are solicited on a non-"delivery versus payment" (non-DVP) basis (e.g., loans).

Possible changes.

- **Crypto custody accommodations.** Introduction of a tailored regime for digital asset custody, potentially recognizing self-custody solutions, qualified crypto custodians, and multi-signature wallet arrangements as compliant custody methods.
- **Clarity for investment authority for non-DVP assets.** The SEC may provide clarity as to whether having discretionary investment authority over assets that are not settled on a non-DVP basis means having "custody" under the Custody Rule.
- **Remove requirement for stub audits**. The SEC had asked a question in the Safeguarding Rule process whether fund sponsors should have the ability to avoid so-called "stub audits" for periods of less than six months, so long as the first audit covered that period.
- **End-of-life fund relief.** More flexibility for fund sponsors to stop auditing funds at the end of their life (with a limited number of remaining investments) to reduce annual costs indirectly imposed on limited partners, particularly where the limited partners have agreed to such removal of an audit requirement in the fund governing documents or later by limited partner vote or LPAC approval.
- **Employee vehicle audit relief.** Removal of audit requirements for employee vehicles for which there is a reduced likelihood of misappropriation.
- **Single-asset co-investment fund exemption.** An exemption from the Custody Rule for single-asset co-investment funds that meet certain conditions (e.g., investor type/sophistication, investor approval, number/type of assets, and additional safeguards).
- **Surprise examination relief for pooled investment vehicles.** The Custody Rule currently makes it difficult for pooled investment vehicles to rely on the surprise examination approach by, among other things, requiring custody of uncertificated privately offered securities and custodian reporting of cash/securities movements to investors. Removing these hurdles could create a more cost-efficient approach to asset verification for smaller vehicles.

Significance for fund sponsors. We have little clarity as to whether these amendments will go further than the custody of digital assets. However, making further amendments with respect to stub audits, end-of-life funds, employee vehicles, and single-asset co-investment funds could yield meaningful cost savings for investors, without materially increasing the misappropriation risks.

IV. Reforming Pay-to-Play

Division of Investment Management	*Fall 2026*
Propose amendments to Rule 206(4)-5 under the Advisers Act, which prohibits investment adviser pay-to-play practices, to address identified compliance burdens.	

Background. Rule 206(4)-5, adopted in 2010, prohibits investment advisers from receiving compensation for advisory services from a government entity for two years after the adviser or certain of its executives make political contributions to officials who can influence the selection of the adviser. The characteristics of the Rule (including the strict liability standard, the low dollar thresholds, and the limited ability to cure) have created an increased risk of "foot faults", many of which have been the basis of SEC enforcement actions. The Rule has also been criticized for chilling legitimate political participation by individuals in the investment management industry. Given the criticism (and uncertain legal justification), it is notable that this Rule is not proposed to be outright rescinded.

Possible changes.

- **Move away from strict liability.** Earlier this year, Chair Atkins called the Pay-to-Play Rule a "trap for the unwary," which may suggest a move away from the strict liability standard. Commissioner Peirce has suggested in her objections to certain SEC enforcement actions that there should be a requirement of a finding of an actual quid pro quo.
- **Higher de minimis thresholds.** The \$350/\$150 contribution thresholds have not been adjusted since 2010 and may be increased.
- **Narrower "covered associates" definition.** The definition may be tightened to exclude personnel who do not have meaningful influence over the advisory relationship with government clients.
- **Shortened time-out and look-back periods.** The two-year time-out period may be reduced and/or look-backs prior to becoming a "covered associate" may be removed (which currently can chill hiring and promotions).
- **Self-cure and exemptive relief.** Possible creation of a broader exemption process for inadvertent violations and greater ability for advisers to cure self-discovered violations without going through the onerous and slow SEC exemptive process.

Significance for fund sponsors. For any manager with government pension or sovereign wealth fund LP relationships — which is to say, most institutional private fund sponsors — meaningful reform of the Pay-to-Play Rule could significantly reduce compliance costs and eliminate the chilling effect on employee political participation and hiring decisions.

V. Addressing Off-Channel Communications

Division of Investment Management	*Fall 2026*
Propose amendments to Rule 204-2 under the Advisers Act (the Recordkeeping Rule) to address the appropriate scope of and identified compliance burdens related to electronic communications and to account for certain technological developments since the rule was adopted.	

Background. In recent years, the SEC (under Chair Gensler) conducted a massive enforcement sweep related to "off-channel" communications — *i.e.*, the use of messaging apps (WhatsApp, Signal, iMessage, etc.) for business-related communications that were not captured by firms' official recordkeeping systems. The SEC collected over \$2 billion in penalties from broker-dealers and investment advisers for these violations between 2021 and 2025. Commissioners Peirce and Uyeda stated that the "industry-wide problem" of the use of off-channel communications is not a problem that can be solved through enforcement.

Likely direction:

- **Clarified scope.** The Recordkeeping Rule may be amended to more clearly define which electronic communications must be retained, potentially distinguishing between substantive business communications and incidental or personal messages and limiting the scope of which types of business communications are required to be maintained.

- **Technology-neutral framework.** Rather than specifying particular communication media, the rule may adopt a principles-based or technology-neutral approach.
- **Good-faith compliance safe harbors.** Possible safe harbors for firms that maintain robust compliance programs but experience occasional lapses, reducing the risk of disproportionate penalties.
- **Clarity on AI-generated transcripts.** The usage of AI to maintain transcripts has greatly expanded in recent years and creates uncertainty as to whether these transcripts are required books and records. Providing clarity on this issue would fit within the AI-friendliness of this Commission.

Significance for fund sponsors. This item addresses one of the most practically burdensome compliance areas of the last several years. Clear rules that distinguish between substantive business communications and personal or incidental messages, combined with good-faith compliance safe harbors, would provide welcome relief across the industry.

VI. Finders and AML

Regulatory Status of Finders. The Division of Trading and Markets is considering recommending that the Commission propose rules concerning the regulatory status of "finders" for purposes of Section 15(a) of the Securities Exchange Act of 1934 (the Exchange Act). A proposed rule is expected in Fall 2026. The regulatory treatment of "finders" — individuals who introduce investors to issuers in exchange for transaction-based compensation — has been a longstanding gap in the securities regulatory framework. The lack of clarity has created significant legal risk for private placement transactions, where issuers commonly engage informal intermediaries to help find investors.

The rule would likely be a finalized (and possibly expanded) version of the 2020 proposal creating a tiered conditional exemption for finders who engage in limited activities (introductions, general solicitation) in connection with exempt offerings under Regulation D. The rule would likely allow finders to receive transaction-based compensation without triggering broker-dealer registration, subject to conditions (e.g., disclosure requirements, limitations on the finder's activities). Finders would likely be prohibited from handling customer funds/securities, providing investment advice, or participating in negotiations.

A clear regulatory framework for finders would reduce legal risk for sponsors using intermediaries in fundraising — a common practice, especially among smaller and emerging managers. It also may provide clarity on the compensation of finders with respect to potential portfolio companies, which is particularly common in the venture capital space.

AML / Customer Identification Programs. FinCEN intends to reissue a joint notice of proposed rulemaking with the SEC implementing Section 326 of the USA PATRIOT Act with regard to customer identification program (CIP) requirements for certain investment advisers, replacing the previous proposal published on May 21, 2024. The re-proposal is expected in Fall 2026, and may include:

- A risk-based, tiered framework with different CIP requirements for different types of advisers (*e.g.*, advisers with direct client relationships vs. sub-advisers, large vs. small firms, U.S. vs. non-U.S., ERAs vs. RIAs).
- Exemptions or streamlined requirements for sub-advisers and advisers that manage only pooled vehicles (where the primary adviser or the fund itself conducts KYC/AML).
- The rule may permit advisers to rely on CIP performed by other regulated financial institutions (e.g., broker-dealers, banks) that already have CIP programs.

A tiered, risk-based approach — particularly one that reflects the smaller sizes of legal and compliance departments of investment advisers as compared to other types of financial institutions — would be a welcome change from the 2024 proposal's one-size-fits-all framework.

VII. Already-Proposed Items

Two items that have already been proposed also merit attention:

- **Form PF.** On April 20, 2026, the SEC and the Commodity Futures Trading Commission jointly proposed amendments to Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds, that would, among other things, (1) raise the threshold for all filers from $150 million to $1 billion, (2) raise the reporting threshold for "large hedge fund advisers" from $1.5 billion to $10 billion, (3) eliminate private equity quarterly event reporting, (4) simplify counterparty exposure reporting for large hedge fund advisers, and (5) make targeted amendments to large hedge fund adviser current reporting.
- **Small Entity Definitions.** The Commission proposed amendments to update its definitions of "small entity" for purposes of the Regulatory Flexibility Act, including amendments to Rule 0-7 under the Advisers Act and Rule 0-10 under the Investment Company Act to increase the asset-based thresholds used in the definitions of "small business" and "small organization," along with corresponding amendments to Form ADV.

VIII. Notable Omissions

Several items that have been the subject of industry discussion are not on the current Agenda:

- **Artificial Intelligence (AI)**. As in many other industries, investment advisers have begun using AI in a wide range of ways, many of which raise novel or at least differentiated regulatory and compliance issues. There are potential issues regarding (i) the adviser's fiduciary duty (particularly where the AI is used in the investment process), (ii) oversight of the use of AI (and employees' use of AI on personal devices), (iii) protection of material non-public information, privacy laws, and cybersecurity and (iv) recordkeeping (e.g., regarding transcripts and prompts). As reflected by this Agenda, the SEC is not expected to undertake a rulemaking process for this nascent technology.
- **Expanded qualifying investments for venture capital funds.** It has been suggested that the SEC consider expanding what constitutes a qualifying investment to include venture capital fund of funds investments. There have also been other legislative attempts to include other types of investments, such as secondaries.
- **Marketing Rule amendments.** Despite remaining a source of confusion and uncertainty in the industry, no amendments to the Marketing Rule appear on the Agenda and any additional clarity in the near term seems more likely to occur through FAQs.
- **Rule 206(4)-8 (Fraud by Advisers to Pooled Vehicles).** When he was Commissioner, Chair Atkins expressed his disagreement with the position that a violation of Rule 206(4)-8 did not require scienter — i.e., it includes both negligent conduct and intentional conduct. While there does not appear to be any suggestion that the SEC will adopt formal amendments, it is likely that SEC enforcement in the near term will reflect this concern.

IX. Looking Ahead

The Agenda is a statement of intent — an ambitious one. Given the volume of items targeted for Fall 2026, it is highly unlikely that all of the rules will be proposed on schedule. Furthermore, many of the issues that the Gensler SEC faced with respect to its own ambitious rulemaking agenda may also slow down the ability of Chair Atkins' SEC to turn all of these proposals into final rules.

That said, the directional signal is unmistakable: this Commission is pursuing a comprehensive, coordinated deregulatory program aimed at expanding access to private markets and reducing compliance burdens. The comment periods that will accompany each proposed rule will be critical opportunities for market participants to shape the substance of these reforms.

We will continue to monitor these developments closely and will publish additional analyses as proposed rules are released.

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