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Investment Services Regulatory Update

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Litigation Developments

SEC and Adviser/Broker-Dealer Agree to Settle Charges Alleging Failure to Disclose Conflicts of Interest with Respect to Revenue Sharing

On March 23, 2026, the U.S. District Court for the District of Massachusetts issued a final judgment with respect to an enforcement action originally filed by the SEC in 2019 in which the SEC alleged that a dually registered investment adviser and broker-dealer (the adviser) failed to disclose material conflicts of interest related to a revenue sharing agreement under which the adviser received revenue sharing payments from its clearing broker when the adviser invested client assets in certain classes of mutual funds.

In its 2019 complaint, the SEC alleged that the adviser failed to tell its clients that (i) in some instances mutual fund shares offered through a no transaction fee program offered by the broker had at least one lower-cost share class available for which the adviser received less or no revenue sharing payments, (ii) mutual fund investments were available that did not result in any revenue sharing payments to the adviser and (iii) the adviser received revenue sharing payments on certain mutual fund investments for which the adviser's broker charged a transaction fee. The SEC alleged that the adviser violated Section 206(2) of the Investment Advisers Act of 1940, which prohibits investment advisers from directly or indirectly engaging in any transaction, practice or course of business which operates as a fraud or deceit upon a client or prospective client, and Section 206(4) of the Advisers Act and Rule 206(4)-7 thereunder, which requires, among other things, that a registered investment adviser adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act and the rules thereunder by the adviser and its supervised persons.

In April 2023, the District Court granted the SEC's motion for summary judgment on both claims, and in March 2024 the District Court ordered the adviser to pay over $93 million in disgorgement, prejudgment interest and civil penalties. In April 2025, the U.S. Court of Appeals for the First Circuit vacated the $93 million judgment and remanded the case back to the District Court, finding that the materiality to a customer's investment decision of the omitted revenue sharing disclosure was a question of fact to be decided by a jury and not by the District Court on summary judgment.

The SEC and the adviser agreed to settle the matter and filed a joint motion for final judgment, which the District Court granted on March 23, 2026, in which the adviser, without admitting or denying the SEC's allegations, agreed to pay a $5 million civil penalty.

The final judgment was issued under the caption *Securities and Exchange Commission v. Commonwealth Equity Services, LLC d/b/a Commonwealth Financial Network*, No. 1:19-cv-11655.

Enforcement Developments

SEC Rescinds Long-Standing Policy on Denials of Settlements in Enforcement Actions

On May 18, 2026, the Securities and Exchange Commission (the SEC) announced that it had rescinded its long-standing "no-deny" policy, codified in Rule 202.5(e) of its informal rules of procedures, requiring defendants settling enforcement actions where a sanction is to be imposed to agree not to publicly deny the SEC's allegations against them. The SEC decided to rescind Rule 202.5(e) while it was awaiting determination on whether the U.S. Supreme Court would review a challenge to this very rule.

On June 1, 2026, attorneys in Vedder's Government Investigations & White Collar Defense group published an article discussing the SEC's rescission of the Rule, available here.

Highlights from American Law Institute's Accountants' Liability Conference 2026

The American Law Institute's annual Accountants' Liability conference was held on May 14 and 15, 2026, in Washington, D.C. The conference, now in its 36th year, was co-hosted by Junaid A. Zubairi, Chair of Vedder's Government Investigations and White Collar Defense group, and Veronica Callahan of Arnold & Porter LLP. The conference featured a wide variety of speakers, including regulators from the Securities and Exchange Commission (the SEC) and the Public Company Accounting Oversight Board (the PCAOB), in-house counsel, outside counsel, and consultants. The conference included panel discussions addressing current SEC and PCAOB initiatives, priorities, and enforcement trends for the year ahead. The conference speakers and panels also provided an update on litigation, regulatory, and practice developments in the accounting industry.

On May 21, 2026, attorneys in Vedder's Government Investigations & White Collar Defense group published an article discussing highlights from the conference, available here.

SEC Announces Enforcement Results for 2025 and Appoints New Enforcement Director

On April 7, 2026, the Securities and Exchange Commission (the SEC) announced its enforcement results for the fiscal year 2025. The SEC's enforcement results discussed several areas of focus, including a reprioritization of its enforcement efforts, a greater emphasis on individual accountability, a focus on protecting vulnerable retail investors, the redeployment of personnel to focus on cyber, artificial intelligence and international matters, and the SEC's litigation victories. The next day, on April 8, 2026, the SEC announced attorney David Woodcock's appointment as the next Director of the Division of Enforcement, effective May 4, 2026.

On April 14, 2026, attorneys in Vedder's Government Investigations & White Collar Defense group published an article discussing the SEC's fiscal year 2025 enforcement results and key developments, available here.

New and Proposed Rules

SEC and CFTC Propose Significant Rollback of Form PF Reporting Requirements

On April 20, 2026, the Securities and Exchange Commission and the Commodity Futures Trading Commission jointly proposed amendments that would significantly narrow the scope of Form PF. The proposal is intended to reduce recent expansions that result in overly burdensome reporting requirements and partially unwinds the Biden administration's 2024 Form PF amendments.

Most notably, the proposal would increase the filing threshold from $150 million to $1 billion in private fund assets under management, a change that would eliminate Form PF obligations for nearly half of current filers. In addition, the threshold for large hedge fund advisers, a designation requiring quarterly reporting and enhanced filing requirements, would rise from $1.5 billion to $10 billion in hedge fund assets.

For advisers that remain subject to Form PF, the proposal would eliminate or scale back several requirements viewed as duplicative or of limited value. Key changes include the following:

- Elimination of quarterly event reporting for private equity fund advisers (such as GP removals, secondary transactions, and fund terminations)
- Removal of certain volatility calculations introduced in the 2024 rules
- Elimination of "look-through" reporting for indirect exposures and de minimis feeder fund interests
- Reduced identification requirements for trading vehicles
- Elimination of margin default event and collateral reporting for large hedge fund advisers

The proposal sets a 60-day public comment period and a 12-month transition period following adoption. While enhanced Form PF reporting adopted in 2024 is currently scheduled to take effect on October 1, 2026, the agencies indicated they will consider how any final amendments align with that compliance date.

The proposed regulation is available here and a related press release is available here.

FinCEN Proposes Rule to Reform AML/CFT Compliance Framework

On April 7, 2026, the U.S. Treasury Department's Financial Crimes Enforcement Network, known as FinCEN, issued a proposed rule designed to reform financial institutions' anti-money laundering (AML) and countering the financing of terrorism (CFT) programs under the Bank Secrecy Act. The proposed rule is part of the Treasury Department's efforts to modernize AML/CFT regulation and reduce compliance burdens. The proposal supersedes a previous proposal to revise AML/CFT program requirements published on July 3, 2024.

The proposed rule would require that financial institutions, including banks, mutual funds, broker-dealers, insurance companies and futures commission merchants, implement an AML/CFT framework that incorporates the following four core pillars:

- **Internal policies, procedures and controls.** A financial institution would be required to adopt and implement policies, procedures and controls reasonably designed to identify, assess and document the institution's AML/CFT risks. Under this pillar, the financial institution would further be required to mitigate AML/CFT risks in accordance with the institution's risk assessment process, which would include allocating appropriate attention and resources to "higher-risk" customers and activities. The requirement to conduct ongoing customer due diligence also would fall under this pillar.
- **Independent program testing.** The proposed rule would clarify that a financial institution must have an independent audit function that assesses whether the institution has effectively established and implemented an AML/CFT program that is consistent with its risk assessment process and has provided adequate resources to that program.
- **Designation of a U.S.-based compliance officer.** Among other things, the proposed rule would reflect the Bank Secrecy Act's requirement that financial institutions designate an officer to be responsible for establishing, implementing and overseeing day-to-day compliance with Bank

Secrecy Act requirements. The officer would have to be located in the United States and accessible to FinCEN and other federal regulators.

- **Ongoing employee training.** The proposed rule would adopt a standardized training requirement that implements the Bank Secrecy Act's statutory language for an ongoing employee training program. The requirement would provide flexibility to allow a financial institution to tailor the training program to its own internal controls, risk assessment results and regulatory requirements.

The proposed rule would require that financial institutions maintain written AML/CFT programs that are available upon request by FinCEN and other federal regulators. The proposal also would require that a financial institution's AML/CFT program be approved by the institution's board of directors, an equivalent governing body or appropriate senior management.

Under the proposal, if a financial institution has effectively established a program that conforms to the requirements summarized above, the institution generally would not be subject to an enforcement or a significant supervisory action, absent a significant or systemic failure to maintain the program. As proposed, federal banking supervisors would generally have to give FinCEN's director 30 days' advance written notice before initiating a significant supervisory action. When determining whether to pursue an enforcement or supervisory action (including a supervisory action proposed by a federal banking supervisor), FinCEN's director would consider, among other things, the adequacy of the financial institution's AML/CFT program, the extent to which the institution advances AML/CFT priorities by sharing information with appropriate authorities and whether the institution employs innovative tools such as artificial intelligence in the implementation of its AML/CFT program.

Comments on the proposed rule must be received by June 9, 2026.

Information about the proposed rule is available here.

Guidance and Other Developments

SEC Raises Qualified Client Thresholds Effective June 29, 2026

On April 28, 2026, the SEC increased the financial thresholds for "qualified client" status under Rule 205-3 of the Advisers Act. The change, which takes effect June 29, 2026, reflects the SEC's required five-year inflation adjustment and directly impacts when advisers can charge performance-based fees, including carried interest.

Pursuant to the updated rule, a client or private fund investor will qualify if they meet either of the following thresholds:

- $1.4 million in assets under management with the adviser (up from $1.1 million); or
- $2.7 million in net worth (up from $2.2 million), excluding the value of a primary residence (but including spousal assets).

The dollar amount test adjustments generally would not apply retroactively to subscriptions entered into prior to the effective date and qualified purchasers and certain knowledgeable employees will continue to be deemed qualified clients without regard to these dollar thresholds.

Next Steps

As a result of the increased thresholds, advisers should:

- amend subscription documents and other offering materials (in particular 3(c)(1) funds) to reference the increased threshold;
- amend any template client agreement (e.g., separately managed account agreements) that provides for performance fees to account for the increased threshold; and
- flag the increased threshold for investor relations/administration teams.

The order is available here.

SEC Expands Co-Investment Relief to Open-End Funds and Streamlines Board Approval Process for Affiliated Transactions

On April 27, 2026, the staff of the SEC's Division of Investment Management issued a no-action letter that (1) expanded the applicability of the streamlined co-investment relief process previously granted to closed-end funds and business development companies to also apply to open-end funds, and (2) streamlined the process for the boards of registered funds, including open-end funds, closed-end funds and BDCs, to approve co-investments.

The no-action letter allows open-end funds to invest alongside affiliated funds and other affiliated accounts in negotiated investments, subject to the existing 15% limitation on investments in illiquid securities. The no-action letter also permits a fund's board to delegate its responsibilities for approving co-investment transactions to a board committee.

The April 27, 2026 no-action letter automatically extends to existing "simplified" co-investment exemptive orders, as discussed below.

Extending Relief to Open-End Funds
The April 27, 2026 no-action letter continues the SEC's recent trend toward expanding retail investor access to alternative investments, which are generally less liquid than traditional asset classes. The Investment Company Act of 1940 generally prohibits registered open-end funds, closed-end funds and BDCs from participating in certain joint transactions, including co-investment transactions, with affiliates unless the SEC has issued an exemptive order allowing the transactions. The SEC generally has declined to issue exemptive orders providing co-investment relief to open-end funds.

On April 29, 2025, the SEC began issuing exemptive orders providing a more streamlined form of co-investment exemptive relief, referred to as "simplified" orders. The simplified orders have relaxed the administrative burdens applicable to the co-investment process for closed-end funds and BDCs, making it easier for alternative asset managers to manage portfolios in registered vehicles. The April 27, 2026 no-action letter extends the applicability of the simplified orders to open-end funds, allowing those funds to co-invest alongside affiliated fund and non-fund accounts.

Streamlining the Co-Investment Approval Process
The simplified orders require that certain co-investment transactions be pre-approved by a majority of a fund's directors who have no financial interest in the transaction, plan or arrangement and by a majority of the independent directors, which the relief refers to as a "required majority."

Under the April 27, 2026 no-action letter, the required majority approval requirement may be met by delegating the board's responsibilities to a board committee. The committee must consist of at least three independent directors who have no financial interest in the relevant transaction. The committee also must provide to the full board at each regular meeting a report on all co-investment transactions approved by the committee between regular board meetings.

Scope of Relief
The April 27, 2026 no-action letter automatically extends to open-end funds co-investment relief granted under simplified orders noticed by the SEC before May 4, 2026. Applicants currently seeking a simplified order that has not yet been noticed, or those applying in the future, should consider including language in their applications to refer to the expanded relief contemplated by the April 27, 2026 no-action letter.

The April 27, 2026 no-action letter is available here.

SEC Grants Exemptive Relief and No-Action Relief from Exchange Act Requirements to Facilitate the Operation of Dual-Class ETFs

On March 17, 2026, the SEC granted exemptive relief from Section 11(d)(1) of the Securities Exchange Act of 1934, as amended, and Rules 10b-10 and 14e-5 thereunder, and the SEC staff issued no-action relief regarding Rules 15c1-5 and 15c1-6 under the Exchange Act. The exemptive relief and no-action relief together pave the way for the operation of dual-class ETFs (*i.e.*, a registered investment company that offers

a class of shares operating as an ETF and a class of shares operating as an open-end mutual fund), which the SEC began permitting in late 2025 pursuant to separate exemptive relief (dual-class ETF relief), by providing the same type of regulatory relief with respect to broker-dealers' trading of ETF shares that was granted for single-class ETFs in 2019 in conjunction with the SEC's adoption of Rule 6c-11 under the Investment Company Act of 1940, as amended (known as the ETF Rule).

Background

The 2019 exemptive relief for single-class ETFs is only available with respect to ETFs that rely on the ETF Rule, which, among other things, requires that the ETF's shares be listed on a national securities exchange and trade at market prices and that the ETF transact creation units with authorized participants. Because, unlike single-class ETFs, dual-class ETFs offer mutual fund shares that are not exchange-listed, do not trade at market prices and permit mutual fund class shareholders to exchange their shares for ETF shares through an exchange privilege, dual-class ETFs generally are not able to rely on the ETF Rule and the 2019 exemptive relief.

2026 Exemptive Relief

The 2026 exemptive relief generally extends the 2019 exemptive relief to broker-dealers' trading of dual-class ETF shares provided that (i) the dual-class ETF received dual-class ETF relief and that requires the ETF share class to operate in compliance with the ETF Rule (except that the mutual fund class shares will not be listed on a national securities exchange and the dual-class ETF may offer an exchange privilege), (ii) other than as provided for in the relief from Rule 14e-5, the ETF class must satisfy the diversification requirement set forth in the 2026 relief, (iii) the broker-dealer relying on the 2026 relief must meet certain conditions specific to each applicable Exchange Act provision, as set forth in the relief, and (iv) the 2026 relief does not apply to purchases or sales of ETF class shares of a dual-class ETF in the secondary market, except for limited exceptions.

2026 No-Action Relief

In conjunction with the 2026 exemptive relief, the SEC staff issued no-action relief with respect to the requirements of Rules 15c1-5 and 15c1-6 under the Exchange Act applicable to broker-dealers. The no-action relief permits broker-dealers to effect in-kind creation and redemption transactions involving ETF shares of a dual-class ETF for customers without providing disclosure about the broker-dealer's control relationship with an issuer or its participation or interest in a primary or secondary distribution of a component security, provided that (i) the dual-class ETF received dual-class ETF relief and that requires the ETF share class to operate in compliance with the ETF Rule (except that the mutual fund class shares will not be listed on a national securities exchange and the dual-class ETF may offer an exchange privilege), and (ii) the creation/redemption transactions will be effected subject to the terms and conditions set forth in the 2019 exemptive relief with respect to Rules 15c1-5 and 15c1-6 under the Exchange Act, including a condition requiring broker-dealers to provide any information to which a customer is entitled under Rules 15c1-5 or 15c1-6 upon request and to fulfill such requests in a timely manner.

The SEC's order is available here.

The SEC staff's no-action letter is available here.

Investment Services Group Members

With significant experience in all matters related to design, organization and distribution of investment products, Vedder 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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