

# Investment Management Update

February – March 2025

ROPES & GRAY

**In This Issue:** The following summarizes recent legal developments of note affecting the mutual fund/investment management industry:

2025 Investment Management Conference .....	1
SEC Notices Simplified Co-Investment Relief: A Sigh of Some Relief for Regulated Funds and Their Affiliates .....	1
Ropes & Gray Participates in Initiative to Modernize the 1940 Act .....	2
Preparing for ETFs as a Share Class .....	2
SEC Extends Compliance Date of Amended Form N-PORT and Monthly Form N-PORT Requirements; Form N-CEN Amendments Unaffected.....	2
Acting Chairman Uyeda's Remarks at ICI Conference .....	2
SEC Staff Publishes New Guidance on When Shareholder Engagement on ESG and Other Matters Requires Schedule 13D Filings .....	4
SEC Issues No-Action Letter Clarifying Rule 506(c) Accredited Investor Verification – Also Impacts 1940 Act-Only Registered Funds and Privately Placed BDCs.....	5
SEC Grants Multiple Share Class Exemptive Relief to Privately Placed BDCs .....	5
<b>REGULATORY PRIORITIES CORNER</b>	
Upcoming Compliance Dates .....	6
Deferred Compliance Dates .....	6
SEC Adds New Marketing Compliance FAQs.....	7
SEC Hosts Roundtable on Artificial Intelligence in the Financial Industry .....	7
EDGAR Next Transition Begins .....	8
SEC Votes to End Defense of Operating Company Climate Disclosure Rules .....	8
<b>ADDITIONAL ROPES &amp; GRAY ALERT SINCE OUR DECEMBER – JANUARY IM UPDATE</b>	
FinCEN Significantly Narrows Corporate Transparency Act Reporting Requirements .....	8

## 2025 Investment Management Conference

April 17, 2025

The 2025 ICI Investment Management Conference was noteworthy for the change in tone from the SEC officials in attendance, including Acting Chairman Mark Uyeda, as well as Division of Investment Management (“IM”) Director Natasha Greiner, who suggested that there has been a shift in the dynamic within the industry following the November election and that engagement with the industry is increasing. Sarah ten Siethoff, Associate Director of IM’s Rulemaking Office, noted that the SEC staff was particularly interested in innovative proposals aimed at increasing investor access to financial markets. Among conference participants, the sense of optimism was palpable, with many looking forward to working with the SEC staff to reinvigorate the exemptive-relief process. [Read more.](#)

## SEC Notices Simplified Co-Investment Relief: A Sigh of Some Relief for Regulated Funds and Their Affiliates

April 16, 2025

On April 3, 2025, the SEC filed a notice of intent to grant FS Credit Opportunities Corp. et al.’s (“FS”) amended application for an order permitting certain business development companies (“BDCs”) and closed-end management investment companies (“Closed-End Funds,” and, together with BDCs, “Regulated Funds”) to participate in co-investment joint transactions with affiliated funds and accounts that are otherwise prohibited by Sections 17(d) and 57(a)(4) of the 1940 Act and Rule 17d-1 thereunder (the “New Relief”). The New Relief streamlines the requirements of standard existing co-investment exemptive orders granted by the SEC and expands the scope of the relief in certain important respects, marking a meaningful shift from the existing framework. Unless the SEC receives a request for a hearing during the 25-day public comment period, the SEC will grant FS’s exemptive order. [Read more.](#)

## Ropes & Gray Participates in Initiative to Modernize the 1940 Act

March 18, 2025

On March 17, 2025, the Investment Company Institute (the “ICI”) published a [paper](#) setting forth various recommendations for ways to modernize the legal and regulatory framework applicable to investment companies registered or regulated under the 1940 Act.

The paper – *Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection* – is the culmination of a multi-year review of potential reforms to the 1940 Act and the rules thereunder. Ropes & Gray was engaged by the ICI to advise on the review and collaborated closely with the ICI and its members on developing the list of recommendations. [Read more.](#)

## Preparing for ETFs as a Share Class

March 17, 2025

This Ropes & Gray white paper helps funds, advisers and fund boards prepare to take advantage of highly anticipated exemptive relief from the SEC permitting registered funds to offer both ETF and mutual fund share classes. The paper provides a legal and compliance roadmap for advisers and boards in their initial implementation of a combined share class structure and their ongoing monitoring of such a structure. [Read more.](#)

## SEC Extends Compliance Date of Amended Form N-PORT and Monthly Form N-PORT Requirements; Form N-CEN Amendments Unaffected

A Ropes & Gray [Alert](#) described the 2024 SEC release containing form and rule amendments requiring new information on Forms N-PORT and N-CEN, as well as requiring funds to file Form N-PORT reports more frequently and within a shorter period. Fund complexes with aggregate fund net assets of at least \$1 billion were required to comply with the Form N-PORT amendments for reports filed on or after November 17, 2025. For Form N-CEN, all funds are required to comply with the Form N-CEN amendments for reports filed on or after November 17, 2025.

On April 16, 2025, the SEC issued a [release](#) extending the compliance date of the Form N-PORT form and rule amendments by two years to **November 17, 2027**. The SEC noted that it was “extending the effective and compliance dates of the amendments to Form N-PORT to provide time for the Commission to complete its review in accordance with [President Trump’s January 20, 2025 executive order titled “[Regulatory Freeze Pending Review](#)”] and take any further appropriate actions, which may include proposed amendments to Form N-PORT.” However, the release does not affect the compliance date for the Form N-CEN amendments, which remains **November 17, 2025**.

## Acting Chairman Uyeda’s Remarks at ICI Conference

The SEC’s Acting Chairman, Mark T. Uyeda, delivered the [keynote remarks](#) on March 17, 2025, the first full day of the ICI’s annual investment management conference.

Looking forward to the new administration, Acting Chairman Uyeda recalled learning to respect the SEC staff from Dick Phillips. He noted that his experience as an SEC staffer and as a commissioner has prepared him for the role of Acting Chairman. He explained that while the structure of the SEC delegates much of the work on rulemaking to the SEC staff, the commissioners still have to vote.

**Blueprint for SEC Rulemaking Processes.** Referring to his background on the staff, Acting Chairman Uyeda believes he has a unique perspective into the rulemaking process. As an example of effective rulemaking, he pointed to the summary prospectus rule. In contrast, he noted that the last four years have seen too many “rulemaking shortcuts, often taken in the name of expediency” that have “returned to haunt the Commission in subsequent litigation.” He explained his goal is to develop a rulemaking blueprint to restore normal rulemaking practices and to ensure compliance with the Administrative Procedures Act. This means providing adequate time for notice and comment, adding that the recent practice of having only 30-45 days for comment rather than the traditional 60 days or more is a significant deviation from past SEC practices, especially when there are dense, lengthy and contain numerous rule proposals – such as the swing pricing rule – that represent fundamental changes to how the industry operates. Moreover, he stated, providing thoughtful comments on rule proposals is “nearly impossible when the Commission asks for public comment on multiple proposals affecting the same stakeholders at the same time.” He explained that he is looking to “set forth a blueprint for restoring the SEC’s rulemaking processes to the ‘gold standard’ among regulatory agencies.”

The Acting Chairman recommended that, when “confronted with a comment file revealing the need for additional input” the SEC should re-propose rules where appropriate or, in some circumstances, reopen comment file for a rule proposal, especially where there are changed conditions in the markets. He then elaborated on the necessary elements of the rulemaking blueprint, which he titled “A Framework for Getting ‘Back to Basics’ on Rulemaking Processes.” Specifically:

- The SEC’s rulemaking blueprint should return to basic steps to help ensure that “each rulemaking proposal is as well-reasoned as possible.” Thus, all SEC rulemaking actions should “begin with an identification of the rule’s purpose” to explain what problem the SEC is trying to solve, and whether it is “squarely within its statutory authority to engage in rulemaking to solve that problem.”
- Public engagement, Acting Chairman Uyeda stated, is important in determining “if there is a problem to solve in the first place, and if so, the range of potential solutions.” He highlighted, as the simplest form of engagement,

a meeting between stakeholders and the SEC staff or commissioners. In addition, some topics especially benefit from public roundtables, in which “stakeholders having the opportunity to engage not just with us, but with each other.” He added that SEC “requests for information, concept releases, and advance notices of proposed rulemaking are additional means for obtaining feedback.” As an aside, Acting Chairman Uyeda noted that he “would like to explore . . . how funds can trim their summary prospectuses to the 3-4 pages the Commission originally envisioned, from the bloated 12-15 pages often seen today.”

- Acting Chairman Uyeda highlighted two additional steps in the SEC’s decision-making following the identification of a problem. First, he said, “is the proposed regulation likely to be effective or ineffective?” Second, “is the proposed regulation likely to be costly or not costly?” He underscored that the SEC “should strive for regulations that are both effective and not costly” and that “engagement with our stakeholders, as well as a robust comment period,” are helpful to the SEC and its staff in weighing “the question of whether a proposal will likely be effective.” Here, he noted, a “proper economic analysis will help . . . distinguish between approaches that are effective and efficient, versus those that are effective but costly.”
- Acting Chairman Uyeda highlighted that the SEC rulemaking blueprint needs to prioritize effective and cost-efficient regulations that respect the limits of the SEC’s statutory authority. He noted that there is also a need to update procedures and the analyses of legal and compliance cost estimates. As an example, he noted that the “small entity” regulations have not been updated for 25 years, adding that \$50 million is too low for defining such entities. He stated that using this “framework for analysis, the Commission could consider options that include withdrawing or re-proposing existing rule proposals,” citing as examples existing rule proposals, including “those addressing the safeguarding of advisory client assets, outsourcing by investment advisers, ESG disclosures for funds and advisers, and digital engagement practices.”
- With respect to recently adopted rules, Acting Chairman Uyeda stated that “consideration should be given as to whether changed circumstances weigh in favor of taking a pause.” He noted that the SEC is “reviewing and considering further action on whether certain rules that the Commission has adopted, but which are not yet effective, is appropriate.” He observed that some rules have been challenged in court, including the recently adopted Form N-PORT reporting requirements. Additionally, the SEC “could consider extending or delaying the compliance dates for recently. . . adopted rules” and added that the SEC staff is considering recommending that the SEC “extend the effective date for the recent amendments to Form N-PORT.”
- Finally, concerning future rulemaking, Acting Chairman Uyeda emphasized that the SEC “should act like a super-sized freighter, not a speed boat – and that means returning to a smoother regulatory course than

the rapid changes that have been promulgated over the last four years.”

**Capital Raising and Investor Protection.** While noting that the SEC’s Division of Enforcement “has a crucial mission to root out fraudulent actors from our markets and to take remedial action,” Acting Chairman Uyeda stated that “enforcement is not the sole tool of the Commission in order to achieve regulatory compliance.” He said that when “there are areas where we observe compliance inconsistencies, we should remind firms of their obligations in order to flag common issues and, in the case of new requirements, ensure a smooth transition.” As examples, the Acting Chairman cited the recent Accounting and Disclosure Information publications titled *Website Posting Requirements* and *Tailored Shareholder Report Common Issues* as examples of such publications issued by staff in the Division of Investment Management.

- The Acting Chairman added that the SEC should also “periodically consider whether our Enforcement resources are being appropriately deployed in keeping with our investor protection mandate.” He noted that he was particularly concerned about fraud targeting seniors and, more generally, that “[p]rotecting seniors is a priority of the Commission, and this work ranges from enforcement, public education and outreach, and the development of regulatory policy.”

**Facilitating Innovation and Retirement Savings.** In the final portion of his remarks, Acting Chairman Uyeda focused on the question “how can we be more flexible in our regulatory approach to facilitate appropriate innovation?” He noted that the SEC should be asking how innovation can best serve the interests of American investors given the particular challenges they face today. However, Acting Chairman Uyeda stated, the “last four years have been marked by an inflexible approach to innovation” and observed that while the ETF market has “grown enormously in the last 20 years . . . for every three ETFs launched in the last ten years, one has shut down.” This “shows the natural process of experimentation, and market forces of supply and demand at play.” Acting Chairman Uyeda said that he keeps this in mind as an example of “the truly exciting things we can accomplish for investors if we embrace product innovation.”

He added that, while innovation can come through rulemaking, he would be remiss not to mention the importance of the exemptive application process to innovation. We view this process “as a laboratory where we can review new ideas from market participants” that provides the opportunity “to consider the benefits of new products, as well as potential risks to investors and the market.”

- Acting Chairman Uyeda highlighted that ETFs started through the SEC’s exemptive application process, and eventually the SEC codified conditions applicable to ETFs that enabled them to operate without an exemptive order.

- However, he noted, the innovation of “funds offering both mutual fund and ETF share classes” has not as yet resulted in additional successful applications for this “ETF share class relief.” Accordingly, he stated, he has directed the SEC staff “to prioritize their careful review of the many applications filed for this relief.”

Acting Chairman Uyeda additionally noted the “challenge for the fund industry to explore is how products can be developed that help Americans who have saved in IRAs and 401(k)s successfully manage their finances in retirement.” He added that this “complex problem” requires not only the “best innovative minds in the industry to develop financial products that meet this need, but also collaboration between the SEC, Department of Labor, and state insurance regulators.” The SEC, he observed, should be committed “to coordinating closely with these parties as we consider the needs of investors and their retirement investments” and that he already has reached out to the new leadership at Department of Labor.

**Q&A with Eric Pan.** At the conclusion of his prepared remarks, Acting Chairman Uyeda sat with Eric Pan, President and Chief Executive Officer of the ICI, who agreed that a good process generally leads to good substance. Mr. Pan noted that there is significant optimism in the fund industry about the new version of the SEC, and inquired about where registered funds and their advisers stand in terms of priorities.

Acting Chairman Uyeda indicated that the SEC is trying to get many things right, including many things that were glossed over in the review process under the previous SEC. He noted that the staff would be undertaking a retrospective review of a variety of rules. He added that even with a robust rulemaking process, it is difficult to operationalize rule compliance. He indicated that the SEC has been talking to operational professionals who have indicated that numerous rules may need to be delayed in order to give adequate time for the industry to develop systems and processes to comply. In this regard, he pointed to the Treasury clearing rule and fund names rule as examples. He added that he has been working to set things up for Chairman Atkins’ anticipated Senate confirmation.

In response to a question from Mr. Pan, Acting Chairman Uyeda indicated that he expects ETF share class relief to be granted via exemptive order. He added that he hoped for progress in bringing retail investors access to private assets, especially in connection with long-term investment vehicles.

Mr. Pan asked Acting Chairman Uyeda how future generations will look back on the Uyeda/Atkins SEC. Acting Chairman Uyeda explained that the last four years were an outlier, and he expects a return to normalcy under Chairman Atkins. He added that there will be significant developments and improvements due to technological advances, and he looks forward to seeing improved outcomes for investors as a result.

## SEC Staff Publishes New Guidance on When Shareholder Engagement on ESG and Other Matters Requires Schedule 13D Filings

On February 11, 2025, the SEC staff updated its [guidance](#) regarding circumstances in which investors engaging with issuers on ESG and other matters can file a short-form Schedule 13G as a passive or institutional investor instead of a long-form Schedule 13D. The updated guidance is in the form of a significant revision to Question 103.11 and the publication of a new Question 103.12 of the SEC’s Compliance and Disclosure Interpretations on Section 13(d) and Section 13(g) of the Exchange Act.

The SEC staff’s prior guidance offered investors engaging on ESG topics greater freedom to file a Schedule 13G instead of Schedule 13D. Specifically, the prior guidance stated:

- “Generally, engagement with an issuer’s management on . . . social or public interest issues (such as environmental policies), without more, would not preclude a shareholder from filing on Schedule 13G so long as such engagement is not undertaken with the purpose or effect of changing or influencing control of the issuer and the shareholder is otherwise eligible to file on Schedule 13G.”
- “Engagement on corporate governance topics, such as removal of staggered boards, majority voting standards in director elections, and elimination of poison pill plans, without more, generally would not disqualify an otherwise eligible shareholder from filing on Schedule 13G if the discussion is being undertaken by the shareholder as part of a broad effort to promote its view of good corporate governance practices for all of its portfolio companies, rather than to facilitate a specific change in control in a particular company.”

The new guidance takes a different approach. It provides:

“Generally, a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. A shareholder who goes beyond such a discussion, however, and exerts pressure on management to implement specific measures or changes to a policy may be ‘influencing’ control over the issuer. For example, Schedule 13G may be unavailable to a shareholder who:



- recommends that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditions its support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation; or
- discusses with management its voting policy on a particular topic and how the issuer fails to meet the shareholder's expectations on such topic, and, to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer's director nominees at the next director election unless management makes changes to align with the shareholder's expectations." (Emphases added).

## SEC Issues No-Action Letter Clarifying Rule 506(c) Accredited Investor Verification – Also Impacts 1940 Act-Only Registered Funds and Privately Placed BDCs

In a Ropes & Gray [Alert](#), we reported that, on March 12, 2025, the SEC Division of Corporate Finance issued a [no-action letter](#) (the "Letter") clarifying "reasonable steps" issuers can take to verify purchasers' accredited investor status, as required under Rule 506(c) of Regulation D under the Securities Act. The Letter provides an alternative path for compliance with Rule 506(c) and, therefore, additional flexibility for offering private fund products, as well as (i) privately placed funds registered under the 1940 Act only (e.g., some interval funds and tender offer funds) and (ii) privately placed BDCs (which elect to be regulated under the 1940 Act).

**Accredited Investors under Rule 506(c).** In general, Rule 506(c) permits issuers to broadly solicit and advertise an offering (including making public statements) without having to register the offering and sale under the Securities Act, provided that the issuer "take[s] reasonable steps to verify that purchasers of securities sold in any offering... are accredited investors." The rule includes a non-exclusive safe harbor pursuant to which an issuer will be deemed to have taken reasonable steps to verify accredited investor status if it uses certain specified methods that normally require the review of additional investor documentation or obtaining supplemental written confirmations from an investor's external advisers.

While some managers have been willing to undertake the additional verification steps (or hired third parties for these purposes), these steps are widely perceived as having had a chilling effect on more widespread adoption of, and reliance on, Rule 506(c).

**The Letter.** In the Letter, the SEC staff concurred that issuers may also satisfy the verification requirements of Rule 506(c) by relying on minimum investment amounts and related written representations from investors. Specifically, the Letter states that an issuer could reasonably conclude that it has taken reasonable steps to verify that purchasers of securities sold in a Rule 506(c) offering are accredited investors, which may include:

- **High Minimum Investment Amounts and Written Representations.** If a purchaser meets the high minimum investment threshold, it may be reasonable for the issuer to take fewer steps to verify the purchaser's accredited status, provided there are no facts indicating otherwise.
  - For natural persons, the issuer should require a minimum investment of at least \$200,000 and obtain written representations that the purchaser is an accredited investor, and that the minimum investment amount is not financed by a third party.
  - For legal entities accredited by total assets, the issuer should require a minimum investment of at least \$1,000,000 and obtain similar written representations as described above.
  - For entities accredited solely by all equity owners' accredited investor status, the issuer should require a minimum investment of at least (i) \$1,000,000 or (ii) \$200,000 for each equity owner if fewer than five natural persons.
- **No Actual Knowledge of Contrary Facts.** The issuer must not have any actual knowledge of facts indicating that a purchaser is not an accredited investor or that the investment is financed by a third party for the purpose of making the particular investment.

**Observations.** The new flexibility under Rule 506(c) provided by the Letter could ease compliance burdens associated with privately placed funds, including privately placed funds registered under the 1940 Act only and privately placed BDCs. Making Rule 506(c) more readily available gives managers (i) more freedom to streamline offering privately offered products in parallel to their Securities Act-registered funds, with easier access to fund documentation (combined website) and (ii) opportunities to present to investors the full breadth of a complex that combines Securities Act-registered funds and these privately placed products. It will also provide managers with more flexibility in how they communicate with prospective investors.

## SEC Grants Multiple Share Class Exemptive Relief to Privately Placed BDCs

**Background.** Section 18 of the 1940 Act prohibits any registered fund or BDC from issuing classes of common stock with varying fee structures (e.g., differentiated asset-based distribution or service fees) because such class differences are viewed as creating a class of senior securities.

- Prior to the adoption of 1940 Act Rule 18f-3, the SEC recognized in various exemptive orders that multiple classes of an open-end fund can be structured in a manner that addresses the concerns underlying Section 18's prohibition on the issuance of "senior securities." In 1995, the SEC adopted Rule 18f-3, which, in its current form, permits open-end funds to issue two or more classes of stock with different ongoing asset-based distribution or service fees, provided the rule's conditions are satisfied.
- The availability of multiple classes pursuant to Rule 18f-3 provides open-end fund investors a choice of how to pay for distribution and shareholder servicing, which can provide different benefits to different investors based on the size of investments (i.e., large investors may receive a cheaper share class) and the length of time that the investors intend to own the shares (longer-term investors might prefer a sales charge to higher ongoing distribution and servicing expenses). Investors also may choose the financial intermediary, if any, through which they purchase the shares, as well as the level of shareholder services to be provided. From the open-end fund's perspective, offering multiple classes (i) permits the fund tailor the distribution of its securities to various distribution channels and (ii) for a new open-end fund, provides the opportunity to achieve operational scale more promptly.

Rule 18f-3 does not apply to closed-end funds, including BDCs, and, consequently, closed-end funds may offer multiple classes of stock only if they first obtain exemptive relief from the SEC. The SEC has provided such relief to unlisted, continuously offered closed-end funds.<sup>1</sup> More recently, the SEC provided such relief to unlisted, continuously offered BDCs.<sup>2</sup> The exemptive relief provided to both types of continuously offered funds was conditioned upon, among other things, the funds' compliance with the provisions of Rule 18f-3, as if each fund were an open-end fund.

**Recent Orders.** In March, the SEC issued seven notices of its intent to grant multiple share class exemptive relief to privately placed BDCs,<sup>3</sup> and the SEC orders providing the requested relief followed in April.<sup>4</sup> In each of the applications underlying the orders, the applicants represented that offering multiple classes of stock with different loads and expenses would provide investors with enhanced investment options, while permitting the fund to access different distribution channels. The exemptive relief in each case is conditioned upon the BDCs complying with (i) the provisions of Rule 18f-3 and Rule 12b-1 (among other rules), as if each BDC were an open-end fund and (ii) the provisions regulating sales loads and distribution payments within FINRA Rule 2310 for funds conducting a public offering, as if a private offering by the BDC were a public offering under the rule, and such privately offered funds will make available to any distributor of its shares all the information to allow such distributor to prepare client account statements in compliance with FINRA Rule 2231.

**Observations.** The additional flexibility available to privately placed BDCs to tailor classes of shares to investors using different distribution channels should expand their marketability and reduce the time required for new privately

placed BDCs to attain operational scale. These BDCs will also likely similarly benefit from the SEC no-action letter, described above, regarding accredited investor verification under Securities Act Rule 506(c).

## REGULATORY PRIORITIES CORNER

The following brief updates exemplify trends and areas of current focus of relevant regulatory authorities:

### Upcoming Compliance Dates

The following is a reminder of the upcoming compliance dates of significant SEC rulemakings.

1. **Amended Form N-CEN.** As described above, all funds will be required to comply with the Form N-CEN amendments for reports filed on or after **November 17, 2025**. The related SEC release is summarized in a Ropes & Gray [Alert](#).
2. **Amended Regulation S-P Requirements.** The amendments to Regulation S-P require broker-dealers, registered investment companies (including business development companies), and registered investment advisers to adopt written policies and procedures creating an incident response program to deal with unauthorized access to customer information, including procedures for notifying persons affected by the incident within 30 days. The compliance date is **December 3, 2025**. The related SEC release is summarized in a Ropes & Gray [Alert](#).

### Deferred Compliance Dates

Since our prior [IM Update](#), the compliance dates of the following rulemakings were deferred:

1. **Form N-PORT Amendments.** As described above, the SEC issued a release extending the compliance date of the Form N-PORT form and rule amendments to **November 17, 2027**.
2. **Names Rule Amendments.** A Ropes & Gray [Alert](#) described a March 14, 2025 SEC release deferring the compliance date for amendments to Rule 35d-1 under the 1940 Act. Specifically, (i) for new funds, the release defers the compliance date to the effective date of the fund's initial registration statement **on or following June 11, 2026** and (ii) for existing funds, the release defers the fund's compliance date to the effective date of the fund's first "on-cycle" annual prospectus update filed **on or following June 11, 2026**.
3. **Treasury Repo Clearing Mandate.** On February 25, 2025, the SEC issued a [release](#) extending by one year the compliance dates for SEC rules that will have the effect of requiring market participants to submit for central clearance and settlement certain cash and repurchase transactions in U.S. Treasuries. The new compliance dates are **December 31, 2026 (for cash transactions) and June 30, 2027 (for repo transactions)**. The clearing mandate is expected to have a significant impact on U.S.

Treasury market structure and will require many fund groups to put in place new operational workflows and legal documentation. The SEC rules are summarized in a Ropes & Gray [Alert](#).

#### 4. Reporting Non-Cleared Bilateral Repo Transactions.

On March 21, 2025, the Treasury Department's Office of Financial Research (the "OFR") [announced](#) that it was extending by 90 days the compliance date for certain entities required by a new rule to report information about their non-centrally cleared bilateral repurchase ("NCCBR") transactions. The new compliance date is **June 30, 2025** for "Category 2" reporters whose compliance date otherwise would have been April 1, 2025. Adopted in May 2024, the new rule broadly requires daily reporting of certain NCCBR transactions by, among others, Category 2 entities, which are defined as U.S. financial companies with more than \$1 billion in assets or assets under management, whose average daily outstanding commitments to borrow cash and extend guarantees with respect to NCCBR transactions with counterparties that are not registered broker-dealers over all business days during the prior calendar quarter is at least \$10 billion. The OFR rule is summarized in a Ropes & Gray [Alert](#).

## SEC Adds New Marketing Compliance FAQs

On March 19, 2025, SEC staff [added](#) two new FAQs related to the adoption of amendments to Rule 206(4)-1 under the Advisers Act in December 2020 (the "Marketing Rule"). The new FAQs provide some welcome clarifications and relief on certain issues that have caused confusion for investment advisers concerning the presentation of (i) extracted performance (including single investment-level net returns) and (ii) certain portfolio or investment-specific characteristics (such as yield, attribution analyses or Sharpe ratio).

**Extracted Performance.** The first new FAQ clarifies that, where an adviser shows gross returns of an investment or group of investments in a private fund or other portfolio, the SEC staff will not recommend enforcement action if an adviser displays the gross performance of an extract in an advertisement without including corresponding net performance of the extract where (i) the extracted performance is clearly identified as gross performance, (ii) the extracted performance is accompanied by a presentation of the total portfolio's gross and net performance consistent with the requirements of the Marketing Rule, (iii) the gross and net performance of the total portfolio is presented with at least equal prominence to, and in a manner designed to facilitate comparison with, the extracted performance, and (iv) the gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the extracted performance is calculated.

- The SEC added that the extracted performance does not need to meet the requirements of Rule 206(4)-1(d)(2) (which requires one-year, five-year and ten-year periods for portfolios other than private funds) if the extracted performance presented as described above were calculated over a single, clearly disclosed period. In addition, the SEC clarified that the FAQ applies both to an extract from a portfolio and to an extract from a composite of all related portfolios.

**Portfolio or Investment Characteristics.** The second new FAQ clarifies that the SEC staff will not recommend enforcement where certain portfolio or investment characteristics (e.g., yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, Sharpe Ratios, Sortino Ratios and other similar metrics) are shown without a corresponding net characteristic (i.e., a characteristic calculated after the deduction of all fees and expenses) if (i) the gross characteristic is clearly identified as being calculated without the deduction of fees and expenses, (ii) the characteristic is accompanied by a presentation of the total portfolio's gross and net performance consistent with the requirements of the Marketing Rule, (iii) gross and net performance of the total portfolio is presented with at least equal prominence to, and in a manner designed to facilitate comparison with, the gross characteristic, and (iv) the gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the characteristic is calculated.

- The SEC added that the characteristic does not need to meet the requirements of Rule 206(4)-1(d)(2) (which requires one-year, five-year and ten-year periods for portfolios other than private funds) if the characteristic presented as described above were calculated over a single, clearly disclosed period.<sup>5</sup> The SEC declined to provide any guidance on whether such characteristics are, in fact, "performance" for purposes of 206(4)-1(d) (which has various requirements for performance, such as specific requirements for extracted, hypothetical and predecessor adviser performance).

## SEC Hosts Roundtable on Artificial Intelligence in the Financial Industry

On March 27, 2025, the SEC held its first roundtable discussion on AI in the financial industry, focusing on the risks, benefits, and governance of industry use of AI. The recorded webcasts of the event, including its panel discussions, are available on the SEC [AI Roundtable's webpage](#), which also includes the event's agenda and panelists' biographies.

## EDGAR Next Transition Begins

As described in a Ropes & Gray [Alert](#), on September 27, 2024, the SEC adopted rule and form amendments to enhance the security and account management of its EDGAR electronic filing system. The amendments, collectively referred to as “EDGAR Next,” are intended to address current security flaws in EDGAR access, especially the inability to trace filings by electronic filers to specific individuals and the lack of multifactor authentication. Under current rules, any individual in possession of a filer’s EDGAR access codes could file on behalf of the filer, even if unauthorized to do so.

The EDGAR Next transition period began March 24, 2025, and includes changes to access and manage filer accounts. These changes apply to all filers, including individuals and entities that make Section 13 or 16 filings. The changes do not take effect until **September 15, 2025**, meaning that, until then, filers will still be able to access their EDGAR accounts and file on EDGAR as they currently do. However, beginning September 15, filers that have not enrolled in EDGAR Next will be unable to file on EDGAR.

## SEC Votes to End Defense of Operating Company Climate Disclosure Rules

On March 27, 2025, the SEC [announced](#) that it was ending its defense of the rules applicable to public operating companies that would require disclosure of climate-related risks and greenhouse gas emissions. The rules, which the SEC adopted in March 2024, were challenged by states and private parties in litigation that was consolidated in the U.S. Court of Appeals for the Eighth Circuit. On the day of the announcement, the SEC staff sent a letter to the court stating that the SEC withdraws its defense of the rules and that SEC attorneys are no longer authorized to advance the arguments in the brief the SEC had filed.

## ADDITIONAL ROPES & GRAY ALERT SINCE OUR DECEMBER – JANUARY IM UPDATE

### FinCEN Significantly Narrows Corporate Transparency Act Reporting Requirements

March 24, 2025

On March 21, 2025, the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) published an interim final rule (the “March 21 Rule”) that:

- Narrows (significantly) the beneficial ownership information (“BOI”) reporting requirements of the Corporate Transparency Act (“CTA”); and
- Extends the CTA’s BOI reporting deadline for 30 days.

Comments on the March 21 Rule must be received on or before May 27, 2025. FinCEN intends to issue a final rule this year. [Read more.](#)

If you would like to learn more about the issues in this IM Update, please contact your usual Ropes & Gray attorney contacts.

<sup>1</sup> See, e.g., Coatue CTEK Fund, Rel. Nos. IC-35417 (Dec. 13, 2024) (notice) and IC-35443 (Jan. 8, 2025) (order).

<sup>2</sup> See, e.g., First Eagle Private Credit Fund, Rel. Nos. IC-35418 (Dec. 13, 2024) (notice) and IC-35444 (Jan. 10, 2025) (order).

<sup>3</sup> See, e.g., [Ares Core Infrastructure Fund](#), Rel. No. IC-35494 (March 12, 2025); [Antares Strategic Credit Fund](#), Rel. No. IC-35501 (March 14, 2025); [Jefferies Credit Management LLC](#), Rel. No. IC-35499 (March 14, 2025).

<sup>4</sup> See, e.g., [Ares Core Infrastructure Fund](#), Rel. No. IC-35523 (April 8, 2025); [Antares Strategic Credit Fund](#), Rel. No. IC-35528 (April 9, 2025); [Jefferies Credit Management LLC](#), Rel. No. IC-35527 (April 9, 2025).

<sup>5</sup> The SEC noted that the FAQ’s positions “do not apply to total return, time-weighted return, return on investment (RoI), internal rate of return (IRR), multiple on invested capital (MOIC), or Total Value to Paid in Capital (TVPI), regardless of how such metrics are labelled in the advertisement.”