Ropes & Gray's Investment Management Update January – February 2026

Table of Contents

The following summarizes recent legal developments of note affecting the investment management industry:

SEC Restates Form N-PORT Compliance Date and Proposes Form N-PORT Amendments

Background. Funds use Form N-PORT to report information about their portfolio holdings and related risk metrics to the SEC. In August 2024, the SEC issued a release[1] containing form and rule amendments (the "2024 Amendments") requiring funds to file their Form N-PORT reports on a monthly (instead of quarterly) basis. The 2024 Amendments also provided that all monthly reports will be disclosed by the SEC 60 days after month end.

- The 2024 Amendments are currently being challenged in a lawsuit before the U.S. Court of Appeals for the Fifth Circuit in *Registered Funds Association v. SEC*.[2] Among other things, the Registered Funds Association asserts that, in the case of actively managed funds, "portfolio-holding information can reveal much about the fund's confidential, research-driven investment strategies" and "[m]ore frequent disclosure of such information will effectively force these funds to publicize their strategies for free."
- In April 2025, the SEC issued a release delaying the compliance date of the 2024 Amendments two years to November 17, 2027 for larger registered fund complexes, defined as those with net assets of $1 billion or more as of the end of their most recent fiscal year, and to May 18, 2028 for smaller registered fund complexes. The SEC noted that it was extending the 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 2025 executive order

[1] The August 2024 release is described in a Ropes & Gray Alert.
[2] Registered Funds Association v. SEC, Case No. 24-60550 (5th Cir. 2024).

titled "Regulatory Freeze Pending Review"] and take any further appropriate actions, which may include proposed amendments to Form N-PORT." The lawsuit brought by the Registered Funds Association was stayed by the Court while the SEC reviews the 2024 Amendments and considers potential changes.

Recent Developments. On February 18, 2026, the SEC issued a release stating that the compliance dates for the reporting requirements added to Form N-PORT when the SEC adopted amendments to Rule 35d-1 under the 1940 Act (the "Names Rule") are extended to November 17, 2027 for registered fund complexes with net assets of $10 billion or more (instead of $1 billion) as of the end of their most recent fiscal year, and to May 18, 2028, for smaller registered fund complexes.

On February 18, 2026, the SEC also issued a proposing release containing amendments to Rule 30b1-9 and Form N-PORT (the "Proposals") that, if adopted, would (i) provide funds with an additional 15 days to file monthly reports of portfolio-related information on Form N-PORT relative to the 30-day filing requirement in the 2024 Amendments and restore the quarterly publication frequency that existed prior to the 2024 Amendments, and (ii) eliminate the Names Rule-related reporting requirements from Form N-PORT.

- The Proposals would also narrow the scope of information collected on portfolio risk metrics and returns and eliminate certain information concerning non-derivatives payoff profiles and convertible bonds, as well as information arising from a single holding that has multiple liquidity classifications. Additionally, the Proposals would require a fund with an ETF share class to separately report information on the ETF share class's net assets and shareholder flows and require all funds to provide additional identifying information, such as ticker symbols, to help data users use the reported information more efficiently.

Below is a comparison of the Proposals relative to the existing requirements and the 2024 Amendments, as applicable (changes indicated in bold).

A. Changes to Filing Deadlines and Publication Frequency

	Requirements Prior to 2024 Amendments	2024 Amendments	The Proposals
Filing Timeframe	Reports for each month in a registered fund's fiscal quarter must be filed no later than 60 days after the end of the relevant fiscal quarter	Reports for each month must be filed no later than **30** days after the end of the relevant month	Reports for each month must be filed no later than **45 days** after the end of the relevant month
Publication Frequency	Information reported for the third month of a registered fund's fiscal quarter will be made public upon filing (*i.e.*, no later than 60 days after fiscal quarter end)	Information reported for **each month** made public **60 days after month end**	Information reported for the **third month** of a fund's fiscal quarter made public **60 days after fiscal quarter end**

B. Elimination of Certain Names Rule and Other Items

	Existing Requirement	Proposed Requirement
Information for a fund that is required to adopt an 80% investment policy under the Names Rule	1. Definitions of the terms used in a fund's name 2. The value of the fund's 80% basket, as a percentage of the value of the fund's assets (as those terms are defined in the Names Rule) 3. Whether each investment in the fund's portfolio is within the fund's 80% basket	**None**
Payoff profile for non-derivatives	Indicate payoff profile among the following categories (long, short, N/A)	**None**
Convertible securities information	Report conversion ratio and delta (if applicable)	**None**
Multiple liquidity classifications	If attributing multiple liquidity classifications to a single holding, indicate which of three possible circumstances is applicable	**None**

C. Other Proposed Amendments to Form N-PORT

1. Portfolio Level Risk Metrics

	Existing Requirement	Proposed Requirement
Funds required to report	The average value of the fund's debt securities positions for the previous 3 months, in the aggregate, exceeds **25%** of the fund's NAV	The average value of the fund's debt securities positions for the previous 3 months, in the aggregate, exceeds **50%** of the fund's NAV
Interest rate risk metrics	Report both **DV01 and DV100**[3] Report DV100 **separately for each currency** for which the fund had a value of 1% or more of the fund's NAV	Report **DV100 only** Report DV100 **aggregated across all currencies** for which the fund had a value of 1% or more of the fund's NAV
Credit spread risk metrics	Report **separately** for investment grade and non-investment grade exposures	**Aggregate** investment grade and non-investment grade exposures

2. Return Information

	Existing Requirement	Proposed Requirement
Reporting by multiple class funds	Report separately for **each class**	Report for a **single** representative class
Calculating returns	Calculate in accordance with methodologies outlined in applicable registration form	Calculate in accordance with methodologies outlined in applicable registration form, except **do not deduct sales loads and redemption fees**
Reporting net realized gain (loss) and net change in unrealized appreciation (depreciation) attributable to derivatives	Report separately by asset category and, **within each asset category, further report by type of derivative instrument**	Report separately **by asset category only**
Period of return information covered in each report (same change also made for flow information)	**One month**	Each of the preceding **three months**, in light of the proposed quarterly publication frequency

3. Assets/Flows of ETF Share Classes and Additional Identifier Information for all Funds

	Existing Requirement	Proposed Requirement
Separate information reported for ETF share classes	None	Report net assets and flow information separately for the ETF share class, as well as the class's ticker
All funds – ticker and certain class-level information, as applicable	Report **class identification numbers** in connection with reporting class-level returns	Report **ticker symbol** by registrant, and for each class of a registrant or series, as applicable, as well as **class names and class identification numbers**

[3] DV01 reflects the change in (dollar) value of a fund's portfolio resulting from a 1 basis point change in interest rates, while DV100 reflects the (dollar) change in value from a 100 basis point change in interest rates.

Requests for Comment. The SEC requests comment on a broad range of specific questions regarding the Proposals. Comments should be received by the SEC no later than April 24, 2026.

SEC Proposes Amendments to the "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers

On January 7, 2026, the SEC published a release (the "Release") proposing to amend the rules under the 1940 Act and under the Advisers Act that define the terms "small business" and "small organization" for purposes of the Regulatory Flexibility Act (the "RFA"). The proposed amendments, if adopted, would increase the asset-based thresholds used in those definitions. The Release also proposes a mechanism for future periodic inflation adjustments of these asset-based thresholds. The press release that accompanied the Release stated that the Release's proposals are "designed to help the Commission better tailor its analyses to address the specific regulatory challenges that these small entities face and consider adapting its rulemaking accordingly."

More on the RFA. In general, the RFA requires the SEC to conduct an initial regulatory flexibility analysis (an "IRFA") in connection with a proposed rule and a final regulatory flexibility analysis (a "FRFA") in connection with a final rule. Each IRFA is required to include a description of the reasons why action by the SEC is being considered and a description of and, where feasible, an estimate of the number of, small entities to which the proposed rule would apply, as well as a description of any significant alternatives to the proposed rule for small entities. An FRFA is intended to complement the corresponding IRFA and requires the SEC to include, among other items, a description of the steps the SEC has taken to minimize the significant economic impact on small entities.

Current Definitions of Small Entity. In 1998, the SEC amended Rule 0-10 under the 1940 Act to provide that "small entity" means "an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less" (the "Fund Net Assets Threshold"). Thus, whether any individual fund is deemed a small entity depends upon the aggregate net assets of all funds within its "group of related investment companies."[4]

In the same 1998 release amending Rule 0-10, the SEC amended Rule 0-7 under the Advisers Act to provide that an investment adviser would be considered a small entity if it (i) has regulatory assets under management ("RAUM") of less than $25 million (the "RAUM Threshold"), (ii) did not have total assets of $5 million or more on the last day of the most recent fiscal year (the "Total Assets Threshold"), and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has RAUM of $25 million or more, or any person (other than a natural person) that has total assets of $5 million or more on the last day of the most recent fiscal year (the "Control Relationship Threshold").

Proposed Amendments to Asset-Based Thresholds. The Release would amend Rule 0-10 under the 1940 Act to (i) increase the Fund Net Assets Threshold from $50 million to $10 billion, and (ii) refer, for purposes of aggregating the net assets of related funds, to a "family of investment companies" as that term is used in Item B.5 of Form N-CEN rather than to a "group of related investment companies" as that term is used in the current rule.

- The Release states that the proposed Fund Net Assets Threshold of $10 billion "would capture approximately 80% of fund families resulting in approximately 22.9% of individual funds holding approximately 2.13% of aggregate average total net assets being deemed small entities."

The Release would also amend Rule 0-7 under the Advisers Act to increase the RAUM Threshold from $25 million to $1 billion and to similarly amend the RAUM portion of the Control Relationship Threshold by increasing it from $25 million to $1 billion. The Release would not change the $5 million Total Assets Threshold or the $5 million total assets portion within the Control Relationship Threshold, although the Release requests comments on whether these $5 million tests should be amended.

- The Release states that the combined effect of the proposed amendments to the RAUM Threshold and the Control Relationship Threshold would result in "approximately 70% of all advisers" meeting the revised RAUM Threshold and Control Relationship Threshold and, therefore, qualifying as small entities.

Additional Proposed Changes. In addition to the amended asset-based thresholds described above, the Release would amend Rule 0-10 under the 1940 Act and Rule 0-7 under the Advisers Act to create a mechanism for periodic future inflation adjustments to the asset-based thresholds within the rules' small entity definitions.

[4] See Rule 0-10(a)(1).

Requests for Comment. The Release requests comment on a broad range of specific questions within the Release. Comments should be received by the SEC no later than March 13, 2026.

SEC Staff Amends Fund Names Rule FAQs

In 2023, the SEC amended the Names Rule to expand the rule's 80% investment policy requirement to apply to any fund name containing terms that suggest the fund has a particular investment focus. On February 19, 2026, the staff of the SEC Division of Investment Management published four new FAQs and responses related to the implementation of the Names Rule. The four new FAQs and responses are described below with some Ropes & Gray observations.

1. **Changes to an Existing Non-Fundamental 80% Investment Policy**. The FAQs confirm that funds are not required to provide a 60-day notice to shareholders before the fund (i) makes a non-material change to an existing non-fundamental 80% investment policy solely to comply with the Names Rule or (ii) amends an existing non-fundamental 80% investment policy to make it more stringent in light of its name's treatment under the Names Rule. The staff reasoned that the circumstances described in (i) and (ii) do not implicate the concerns underlying the purpose of the 60-day notice requirement, which is to "ensure that when shareholders purchase shares in [a fund] based on its name, and with the expectation that it will follow the investment policy suggested by that name, they will have sufficient time to decide whether to redeem their shares in the event that the investment company decides to pursue a different investment policy."

   Note: A fund's determination regarding whether to send a 60-day notice to shareholders in connection with these types of changes may be subject to critique and, therefore, should be made after careful review of the fund's description of the existing non-fundamental investment policy and related disclosures. A frequent criticism of the Names Rule prior to the 2023 amendments was that it was applied in an uneven manner by the SEC staff, with similarly situated funds experiencing different levels of pressure to adopt or amend Names Rule-related investment policies through the disclosure review process. It remains to be seen how the SEC staff will evaluate non-material or more-stringent changes to a fund's 80% investment policy, including whether or to what extent the staff will challenge the reasonableness of a fund's decision to not provide a 60-day notice to shareholders in connection with such changes.

2. **Treatment of Unfunded Commitments**. For a fund with an 80% investment policy relating to investments in private funds or special purpose vehicles that own one or more private assets (collectively, "Portfolio Funds"), the FAQs confirm that a fund that enters unfunded commitments as "an intrinsic part of" its investments in Portfolio Funds may include within its 80% basket the cash and cash equivalents it uses to cover these unfunded commitments. The staff noted that the value of the covering cash and cash equivalents that a fund may count towards its 80% investment policy should be equal to what the fund reasonably expects to be called in the future, and that the fund should include explanatory disclosure regarding its intention to take this approach in its registration statement.

   Note: The staff's clarification is welcome guidance, especially considering the anticipated growth in the number of funds that invest in Portfolio Funds due to increasing retailization.

3. **Fund Names with Terms that Modify "Growth" or "Value."** The FAQs confirm that there are certain limited cases where the terms "growth" or "value" are paired with other terms in a fund's name in ways that change the overall context and communicate something different about the overall characteristics of a fund's portfolio.[6]

[5] A Ropes & Gray Alert describes the 2025 SEC release deferring the compliance date for amendments to the Names Rule (i) for new funds, to the effective date of the fund's initial registration statement on or following June 11, 2026, and (ii) for existing funds, to the effective date of the fund's first "on-cycle" annual prospectus update filed on or following June 11, 2026

[6] The FAQs reiterate the SEC's statement in the 2023 Names Rule adopting release (described in a Ropes & Gray Alert) that the terms "growth" and "value" generally indicate that a fund focuses its investments in securities that exhibit growth or value characteristics, and the Names Rule typically would require a fund to adopt an 80% investment policy with respect to the terms "growth" or "value" if those terms are not modified by additional terms.

- More specifically, if the term "growth" or "value" is used in combination with a modifying term that clearly indicates growth or value investments are not the predominant component of the fund's portfolio – and assuming no other aspect of the name would require the fund to adopt an 80% investment policy – the Names Rule would not require an 80% investment policy with respect to the term growth or value.
- For example, the staff views the term "income," when paired with growth, as conveying something different to investors than the term growth conveys on its own. As the term income in a fund's name generally suggests that the fund emphasizes the achievement of current income as a portfolio-wide result, the combination of the terms income and growth generally indicates that the fund seeks to achieve a portfolio-wide result of growth of capital, along with current income. In such cases, an 80% investment policy with respect to the term growth would not be required.

4. **Terms not Communicating an Investment Focus.** The FAQs confirm that funds with terms in their names that do not communicate the particular characteristics of investments in which a fund invests are not required to adopt an 80% investment policy with respect to those terms. Thus, a fund with a name that includes only the terms "merger" or "merger arbitrage" is not required to adopt an 80% investment policy. The FAQs state that the "staff understands that funds that include the term 'merger' or 'merger arbitrage' in their name pursue a strategy that generally seeks returns from inefficiencies in asset pricing" and this suggests "an investment technique (like 'long/short' or 'hedged') or a portfolio-wide result to be achieved (like 'real return') that does not require the adoption of an 80% investment policy."

   Note: The 2023 Names Rule adopting release clarified that that the Names Rule does not distinguish between a type of investment and an investment strategy because a fund name "might connote a particular investment focus and result in reasonable investor expectations regardless of whether the fund's name describes a strategy as opposed to a type of investment." While the amended Names Rule might have been expected to end the rejection by registrants of SEC staff comments requesting that a fund adopt an 80% investment policy for terms in its name that connote investment strategies or objectives rather than a type of investment, this FAQ and staff response suggest that we may not have seen the last of this discussion with the SEC staff in disclosure reviews.

Fund of Funds FAQ Added

On March 5, 2026, the staff of the SEC Division of Investment Management published a response to a new FAQ concerning the treatment by an acquired fund of the debt securities of issuers of collateralized loan obligations ("CLOs") for purposes of the limits applicable to the acquired fund under Rule 12d1-4 under the 1940 Act. The staff noted that many issuers of CLOs rely on the exclusion in Section 3(c)(1) or Section 3(c)(7) of the 1940 Act and, therefore, fall within the definition of "private fund" for purposes of Rule 12d1-4. Rule 12d1-4(b)(3)(ii) generally prohibits an acquired fund from acquiring the securities of a private fund if, immediately after such acquisition, the securities of investment companies and private funds owned by the acquired fund have an aggregate value in excess of 10% of the value of the total assets of the acquired fund, with certain limited exceptions (the "10% bucket").

The staff observed that the prohibition is "to prevent potential increases in duplicative fees and expenses, and to avoid the investor confusion" that can result from complex multi-tier fund structures. The staff noted that, in the case of debt securities issued by CLOs, there are fundamental structural and operational features that distinguish them from hedge funds, private equity funds, and other entities traditionally considered pooled investment vehicles for purposes of these underlying concerns regarding complex multi-tier fund structures. The staff observed that because of certain features of CLOs' debt securities, these are not the type of "fund-like" investment where the expectations of the acquiring fund's shareholders would be frustrated if these shareholders could not look through the multi-tier structure to determine the nature and value of the CLO holdings. Accordingly, the staff stated that it would not recommend enforcement action if an acquired fund does not count investments in debt securities issued by CLOs towards its 10% bucket.

SEC Staff Issues Updated FAQs Regarding the Advisers Act Marketing Rule

On January 15, 2026, the staff of the SEC Division of Investment Management published two new responses to the FAQs related to the amendments to Rule 206(4)-1 under the Advisers Act (the "Marketing Rule").

1. **Use of Model Fees.** The first FAQ addresses whether advertising the net performance of a portfolio reflecting the deduction of actual fees is permissible when the fees to be charged to the intended audience are anticipated to be higher

than the actual fees charged. The staff notes that footnote 590 of the Marketing Rule's adopting release stated that, when presenting "net performance" in an advertisement, "[i]f the fee to be charged to the intended audience is anticipated to be higher than the actual fees charged, the adviser must use a model fee that reflects the anticipated fee to be charged in order not to violate the rule's general prohibitions." The staff noted that some advisers in this situation have interpreted this language to require the presentation of net performance calculated using a higher model fee in circumstances where the anticipated fees are higher than the actual fees.

The staff observed that the adopting release additionally stated that the general prohibitions are intended to "provide appropriate flexibility and regulatory certainty for advisers considering how to market their investment advisory services" and "[i]n applying the general prohibitions, an adviser should consider the facts and circumstances of each advertisement." Therefore, whether the use of actual fees violates the general prohibitions depends on all of the facts and circumstances of a specific advertisement, including, but not limited to, relevant disclosures. The staff did not give any particular guidance on what such disclosures should say, only that advisers may use various means to illustrate the effect of differences between actual fees and anticipated fees on performance.

2. **Testimonials and Endorsements**: Disqualification for SRO Final Orders. The second FAQ addresses whether certain persons subject to a self-regulatory organization's (an "SRO") final order are barred by the Marketing Rule from receiving compensation for a testimonial or endorsement. The staff noted that, if an SRO has issued an order with respect to a person's disqualifying conduct but did not bar or suspend the person or prohibit such person from acting in any capacity in connection with that disqualifying conduct, the staff will not recommend enforcement action if such person engages in activities related to compensated testimonials or endorsements, provided certain conditions are satisfied. Because this fact pattern arises infrequently, for brevity, we refer you to the conditions within this FAQ.

Regulatory Priorities Corner

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

SEC Chairman Says That E-Delivery Default Rule Is In The Works

On February 23, 2026, *Bloomberg* reported that SEC Chairman Paul Atkins publicly stated that he had "instructed his staff to draft a proposal letting funds deliver electronic documents to shareholders by default instead of mailing out packets."

- The SEC currently permits electronic delivery of certain documents, but an investor is frequently required to opt in to e-delivery.
- Chairman Atkins also noted that rulemaking will require coordination across the SEC Divisions of Corporation Finance, Trading and Markets, and Investment Management before it is published for public comment.

Investment Management Director Daly On Proxy Voting

On January 8, 2026, Brian Daly, Director of the SEC Division of Investment Management, addressed the New York City Bar Association in a speech titled "(Re)Empowering Fiduciaries in Proxy Voting." His remarks are summarized below.

A Thumbnail History. Director Daly noted that earlier guidance from the Department of Labor to the effect that proxy voting determinations by pension plan managers are fiduciary acts that must be made for "the exclusive benefit of plan participants" became "enshrined in [the SEC's] 2003 proxy voting rule." As a result, he said, it eventually led to "investment adviser proxy voting policies [that] now almost universally reflect the coupled mantras of 'votes have value'" and 'we will vote all proxies.'" In turn, this "created a lucrative business opportunity for proxy advisory firms," which now have "de facto power to impose their views on social and political matters upon a large portion of the American capital markets."

An Opportunity to Reset. The Director highlighted recent steps within the SEC's regulatory agenda to reform proxy voting. However, he emphasized that "a seismic shift" occurred in December 2025 when President Trump issued an executive order "addressing the influence that proxy advisors and their related consultancies wield to promote radical politically-motivated agendas" and directing the Chairman of the SEC to consider several points, including (i) whether proxy advisors should be required to register with the SEC as investment advisers, (ii) whether proxy advisors should be required to enhance the transparency of their recommendations, methodology, and conflicts of interest, especially regarding "diversity, equity, and inclusion" and "environmental, social, and governance" factors, and (iii) examining whether investment advisers that follow the recommendations of proxy advisors with respect to non-pecuniary factors (including DEI and ESG factors) is inconsistent with their fiduciary duties.

Proxy Voting Policies and Processes. Director Daly noted that he frequently hears from investment advisers that they "feel compelled to vote on matters they do not deem important to their investment programs and that they would welcome more clarity that they need

not vote all proxies." Director Daly added that he believed that many investment advisers would welcome a broader consensus on the answers to two basic proxy voting questions:

Question 1: Must I Vote Client Proxies? The Director dismissed the "widespread, but superficial, view" that an adviser must vote all client proxies. He highlighted that, while the SEC's 2003 adopting release for the SEC's proxy voting rule stated that the fiduciary duty of care requires an adviser "to monitor corporate actions and vote client proxies," in the same paragraph of that release, the SEC also stated that (i) "[w]e do not suggest that an adviser that fails to vote every proxy would necessarily violate its fiduciary obligations," and (ii) there may even be times when "refraining from voting a proxy is in the client's best interest . . . [such as] where the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client."

Director Daly maintained that an investment adviser deciding not to vote a proxy "makes sense in many situations," giving the following examples:

- "quantitative and systematic managers, who often operate models that merely seek exposures to identified sources of alpha." He noted that many advisers of these strategies will agree that "voting on board members, management policies, or on precatory social and political matters is irrelevant to their strategy and imposes costs without conferring any measurable benefit to investors."
- with respect to index fund managers, Director Daly stated that he suspects that "some (perhaps many) of these investment advisers vote proxies – often according to some formula created by or in conjunction with a proxy advisor – because they feel pressured or obliged to do so."

Notwithstanding these examples, the Director emphasized that "for the overwhelming number of investment advisers" proxy voting is important. He noted that "[f]undamental managers can and generally should be voting on fundamental corporate matters" and that it would be "unusual, absent a conflict of interest, for an activist, a private equity, or a venture fund manager not to vote on matters involving a portfolio company."

In sum, Director Daly emphasized that there is "no stock answer" to "must I vote?" Instead, he believes "it is important that advisers and clients have a fair amount of latitude to decide what works in their individual cases."

Question 2: How Must I Vote? The Director observed that this is not an easy question to answer. Nevertheless, he said, how to achieve voting in a client's best interests raises "questions on how much of the deliberative process can be outsourced to proxy advisors." As a general principle, he believes that "regulators should let advisers and clients have the first crack at deciding" this outsourcing question. Director Daly added two related points:

- There is "nothing inherently wrong with an investment adviser using a proxy advisor." A proxy advisor, when "operating pursuant to specific instructions within a tailored mandate and subject to periodic review . . . can provide valuable research, analysis, and logistical support to an investment adviser."
- Clients and investors should be "concerned when an investment adviser's track record on non-routine matters is nearly identical to a proxy advisor's standard voting policies and positions." In such a case, the Director said, there is a question whether "clients and investors [are] benefitting from the investment adviser's expertise" and whether "the votes cast [are] in the best interest of clients."

So Where Do We Go from Here? The present situation, Director Daly said, is "clearly an unsatisfying locale" in which "retail and institutional investors are directly and indirectly supporting a system where an oligopoly of proxy advisors exercise influence over voting decisions." This contributes to the "de facto imposition of external political and social ideologies on U.S.-listed public companies through the proxy voting process."

To overcome these problems, Director Daly underscored that proxy voting "should not be a rote box-checking exercise" and an investment adviser "should be free to ask itself tough questions and to act in accordance with the honest answers." He believes that this would lead to investment advisers who are not afraid to decide that "proxy voting is not required by, or may even be inconsistent with, their investment program" assuming that the decision "is consistent with all relevant client agreements and is effectively disclosed to investors."

Those investment advisers that decide to vote, the Director said, should be "empowered to utilize their best judgment and whatever resources they deem appropriate under the circumstances when making that vote." However, he added that "to the extent that the underlying investment mandate seeks passive exposure, those advisers should (re)confirm that they are comfortable with their authority to vote" especially where a "vote reflects an investment adviser's or a proxy advisor's personal view or opinion on a social or political matter."

Is AI the Answer? Director Daly also said that he wanted "to insert a plug for artificial intelligence." Given the scale and complexity of proxy voting, he believes that "AI tools like large language models and agentic AI, offer a compelling opportunity." He added that an adviser's use of AI in proxy voting "would also need to take into consideration principles of transparency, auditability, and consistency with fiduciary duties."

Brian Daly Speaks On AI And Investment Management

On February 3, 2026, Director Brian Daly addressed the Investment Company Institute board meeting in a speech titled "Artificial Intelligence and the Future of Investment Management." While acknowledging that the SEC has historically been slow to address technology-driven change, the Director addressed how the Division of Investment Management is looking at the changes and opportunities that artificial intelligence affords investment advisers, funds and investors.

AI and the Investment Process. Director Daly noted that that the feedback from numerous industry surveys is that "adoption is still uneven and often tentative" and the "greatest impediment to a more widespread adoption of AI is liability concerns." He stated that liability concerns should not be insurmountable obstacles just as, after "a period of adjustment" caused by the advent of algorithmic and quantitative models, the "industry settled into a rough equilibrium marked by commonly used disclosures and accepted compliance practices."

Director Daly added that the Division cannot realistically "issue a bunch of rules and guidance on what your fiduciary duties require you to do," but is amenable to listening to the industry. He said that, to the extent participants have concerns about how existing laws, rules and regulations constrain investment advisers' deployment of new technologies, they should reach out to the Division.

Large Language Models and Investor Disclosures. The Director shared his thoughts on modernizing fund document delivery. He stated that this was a time for the SEC "to think boldly" and asked "[w]hat if we reimagined disclosure using large language models?" He posited a retail investor interacting with something other than a "200-page document" such as a "fund- or adviser-provided AI agent" that is "trained on the library of fund documents" and can answer questions like:

- What do you invest in?
- What fees will I pay?
- How do I redeem my shares?
- Do you hold short positions? And what is a short position, anyway?
- Do you have conflicts of interest?
- What benchmarks do you think are useful performance comparisons? Can you generate some comparison charts?

Director Daly stated that this type of tool "could be a tremendous bridge between investors and the disclosures that all too often are misunderstood or – even worse – go unread." He acknowledged that there were liability questions. However, he noted, there are also liability questions for the AI systems "used by surgeons, law firms, and logistics firms moving critical goods around the world" and, therefore, that these questions "are not insurmountable challenges." He invited ideas and the exploration of a pilot program, adding that "if you would like to request a no-action letter or staff guidance—come talk to us. We can't promise every idea will make it to market. But we can promise that every idea will be heard."

Additional Ropes & Gray Alerts and Podcasts Since Our November - December IM Update

VANGUARD SETTLES TEXAS COAL ANTITRUST SUIT: POTENTIAL SEISMIC SHIFT OR STANDARD PRACTICE REAFFIRMED?

March 5, 2026

On February 25, 2026, The Vanguard Group settled its part of the closely watched antitrust action brought by 13 Republican state Attorneys General in the Eastern District of Texas, agreeing to pay $29.5 million and make certain commitments regarding its investment stewardship and proxy practices. The AGs have not been shy about claiming this as a victory in their attack on ESG investing practices. But a closer look at the settlement terms tells a different story: the commitments to which Vanguard agreed largely reflect current industry norms and standard stewardship practices that the asset management industry has long embraced as a matter of course.

GREENWASHING LITIGATION TRENDS UPDATE

February 25, 2026

This update provides an overview of key greenwashing litigation and regulatory developments in the United States from the later part of 2025, including government enforcement actions, state attorney general investigations, and private consumer lawsuits targeting deceptive corporate environmental marketing claims. Overall, developments reflect a growing trend of heightened scrutiny over sustainability representations and recyclability claims across multiple industries including tech, food, consumer products, and energy.

FINRA PROPOSES RULE CHANGE TO PERMIT PROJECTIONS OF PERFORMANCE AND TARGETED RETURNS IN MEMBER COMMUNICATIONS

February 18, 2026

FINRA has proposed changes to FINRA Rule 2210 (Communications with the Public) that would permit FINRA member broker-dealers to include performance projections and targeted returns in communications with investors, subject to specified conditions. If approved by the SEC, the proposed changes to FINRA Rule 2210 (the "Proposal") would more closely align FINRA's Rule 2210, applicable to broker-dealers, with the SEC's marketing rule applicable to SEC-registered investment advisers. The Proposal is broader than the November 2023 proposal to amend FINRA Rule 2210 (the "2023 Proposal"), which would have permitted broker-dealers to include performance projections and targeted returns in institutional communications and in communications to qualified purchasers. Unlike the 2023 Proposal, the Proposal does not explicitly limit the universe of investors who can receive projections and thus would allow the use of projections with a wider range of investors, potentially including investors in private funds exempt from registration under Section 3(c)(1) of the 1940 Act. The changes would be a particularly welcome development for broker-dealers that market private funds, as well as for private fund sponsors that market their funds through placement agents and other registered broker-dealers.

GLOBAL FUND FINANCE SYMPOSIUM 2026: EVOLVING MARKET TRENDS

February 18, 2026

The Ropes & Gray fund finance team recently attended this year's Fund Finance Association's Global Symposium, where industry leaders convened to discuss the latest developments in fund finance. Building on last year's momentum, the market continues to evolve rapidly, with Net Asset Value (NAV) financing and GP-led continuation vehicles (CVs) now firmly established as mainstream tools across private equity, credit, and secondary funds. This Alert has our key takeaways and updates from the conference, highlighting both continuing themes and new trends for 2026.

NEW (2025) HSR RULES VACATED: WHAT'S NEXT?

February 13, 2026

On February 12, 2026, the United States District Court for the Eastern District of Texas vacated the final rule that overhauled and dramatically expanded the premerger notification requirements for transactions subject to the HSR Act, which had taken effect on February 10, 2025. The Court also stayed the applicability of the order for seven days to allow the Federal Trade Commission time to appeal.

DISTRESSED DEBT LEGAL INSIGHTS: SPECIAL EDITION: 2025 TAKEAWAYS AND 2026 OUTLOOK

February 11, 2026

This is a special edition of *Distressed Debt Legal Insights*, Ropes & Gray's source of timely insights for professionals navigating the complex world of liability management and special situations finance. In this issue, we identify five key takeaways from 2025 and outline five predictions that we expect will shape the liability management landscape in 2026.

VOLUNTARY BENEFITS UNDER SCRUTINY: MULTIPLE PLAN SPONSORS AND CONSULTANTS SUED FOR ALLEGED ERISA BREACHES

February 2, 2026

On December 23, 2025, four large employers and several national benefits consulting firms were sued in connection with their provision of employee-paid "voluntary benefits," generally marking the first time that the plaintiffs' bar sought to test the application of ERISA's fiduciary standards in the voluntary benefits space. This wave of class action complaints brought by Schlichter Bogard LLC was filed against (i) Community Health Systems, Inc. and Gallagher, (ii) Laboratory Corporation of America Holdings and Willis Towers Watson, (iii) United Airlines, Inc. and Mercer, and (4) Universal Services of America, LP (d/b/a Allied Universal) with Mercer and Lockton, and imports familiar fiduciary concepts from the excessive fee cases that have targeted hundreds of 401(k) and 403(b) plan sponsors in recent years and attempts to apply them to the pricing and distribution model of voluntary benefits. The complaints allege breaches of fiduciary duty, prohibited transactions and self-dealing that purportedly caused employees to pay excessive and unreasonable premiums for the voluntary plans.

CALIFORNIA'S VENTURE CAPITAL DIVERSITY REGISTRATION AND REPORTING DEADLINES APPROACH: SURVEY AND REPORTING FORMS NOW AVAILABLE; REGISTRATION PORTAL PENDING

February 2, 2026

The initial registration and reporting deadlines under California's Fair Investment Practices by Venture Capital Companies

("FIPVCC") Law are fast approaching. "Covered entities" under the FIPVCC Law – a broad category that can even capture funds managed by sponsors who do not consider themselves California venture capital investors – should be preparing now to satisfy their registration and reporting obligations. Though enacted in its earliest form in 2023 (as SB 54) and amended in 2024 (by SB 164), until now, managers have been hamstrung in preparing to meet reporting obligations under the law because the California Department of Financial Protection and Innovation (the "DFPI") had not issued the forms necessary to comply with those obligations. The DFPI has now published the official survey and reporting forms, and we recommend that in-scope managers act promptly to ensure timely compliance.

CRYPTO QUARTERLY: DIGITAL ASSETS, BLOCKCHAIN AND RELATED TECHNOLOGIES UPDATE

January 30, 2026

The landscape of government enforcement, private litigation, and federal and state regulation of digital assets, blockchain and related technologies is constantly evolving. Each quarter, Ropes & Gray attorneys analyze government enforcement and private litigation actions, rulings, settlements, and other key developments in this space. We distill the flood of industry headlines so that you can identify and manage risk more effectively. This newsletter includes takeaways from this quarter's review.

PODCAST: THE RISE OF DATA CENTER FUNDS: MARKET DRIVERS AND UNIQUE CHALLENGES

January 20, 2026

On this Ropes & Gray podcast, asset management partners Jason Kolman and Eric Requenez were joined by tax partner Chris Roman to discuss the rise of data center investments within private funds. The episode highlighted how market trends are shaping fund terms and addresses the ESG, compliance, and tax challenges unique to data center investments, including the use of REITs. Listeners came away with practical guidance on navigating the complexities and opportunities in this rapidly expanding asset class.

UPDATE ON 401(K) ALTERNATIVES: SUPREME COURT CHOOSES TO HEAR INTEL AND DOL GUIDANCE EXPECTED IMMINENTLY

January 20, 2026

The landscape for alternative investments in 401(k) plans is rapidly evolving. This is a key time for asset managers to evaluate opportunities and take appropriate steps to join in the growing movement to create tangible options for 401(k) plan alternatives.

On January 13, 2026, the U.S. Department of Labor ("DOL") submitted its proposed regulation entitled "Fiduciary Duties in Selecting Designated Investment Alternatives" to the Office of Management and Budget to implement President Trump's executive order (the "Order") on alternative investments in ERISA-governed defined contribution plans. The DOL's submission arrives ahead of the 180-day timeframe originally imposed by the Order, which would not have elapsed until early February.

Shortly after the rule was submitted, on January 16, 2026, the U.S. Supreme Court agreed to hear an appeal from two former Intel Corporation employees in Anderson v. Intel Corp. Inv. Pol'y Comm., 137 F.4th 1015, 1021 (9th Cir. 2025), which is the leading case to date on alternative assets in defined contribution plans. Regardless of the timing or ultimate outcomes, the combination of the rulemaking and the Supreme Court's attention to this area is expected to accelerate awareness of alternatives for 401(k) plan sponsors. It is critical for asset managers to be prepared to answer questions on strategy and product offerings as prospective investors express interest.

NYDFS REGULATED ENTITIES FACE STRONGER CYBERSECURITY REGULATIONS

January 20, 2026

The New York Department of Financial Services ("NYDFS") implemented the final phases of amendments to its NYDFS Cybersecurity Regulation in May and November. The amendments originally passed in 2023, but were rolled out in a phased approach over the course of two years. Just days before the final set of requirements took effect on November 1, 2025, NYDFS also issued new industry guidance on managing third-party risks; NYDFS followed up the final implementation date by releasing a new set of highly prescriptive Frequently Asked Questions dedicated to providing guidance to covered entities on implementing compliant multifactor authentication ("MFA").

Taken together, the guidance and final amendments underscore what NYDFS will be scrutinizing in upcoming investigations and examinations: leadership oversight and documentation, complete asset inventories governed by clear policies, strict access controls and privilege management, universal MFA coverage or well-justified compensating controls, and credible third-party risk management evidence. There is no question that this year NYDFS will continue to be active in regulating and investigating the cybersecurity posture of Covered Entities – entities operating under or required to operate under a license, registration, charter, certificate, permit, accreditation or similar authorization under New York's Banking Law, Insurance Law, or Financial Services Law.

FINRA PROPOSES OVERHAUL OF OUTSIDE ACTIVITIES RULES

January 20, 2026

FINRA has proposed a new rule (the "Proposal") that would consolidate and modernize its rules governing outside business activities and private securities transactions by broker-dealer personnel. Proposed FINRA Rule 3290 (Outside Activities Requirements) would replace current Rule 3270 (Outside Business Activities) and Rule 3280 (Private Securities Transactions). The Proposal would be narrower in scope than the existing rules, and FINRA intends that the Proposal's focus on higher-risk investment-related activities would reduce compliance burdens for FINRA member broker-dealers and their personnel.

PODCAST: CONSIDERATIONS FOR FUND MANAGERS AND INVESTORS IN LIGHT OF EMG LITIGATION

January 15, 2026

On this Ropes & Gray podcast, partners Bil Davison and Adam Dobson were joined by counsel Kevin White to discuss recent high-profile litigation involving Energy & Minerals Group's (EMG's) single asset continuation vehicle transaction. The conversation explored how this litigation highlights the complexities and conflicts of interest inherent in GP-led continuation vehicle deals, focusing on the importance of transparency, parity of information, and robust LPAC involvement. The team analyzed the implications of this litigation for fund managers, buyers, and investors, highlighting best practices for communication and process integrity. Listeners gained valuable insights into navigating the evolving landscape of continuation vehicles and the lessons learned from the EMG case.

DISTRESSED DEBT LEGAL INSIGHTS: STG LOGISTICS' LMT LITIGATION

January 13, 2026

In this issue of Distressed Debt Legal Insights, Ropes & Gray's source of timely insights for professionals navigating the complex world of liability management and special situations finance, we discussed the first major decision of 2026: STG Logistics. The January 3 opinion primarily denies the motions to dismiss brought by defendants seeking to validate their October 2024 drop down plus double dip transaction.

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