November Investment Management Minute

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SEC FISCAL YEAR 2026 ENFORCEMENT RESULTS: 348 ACTIONS AND $1.095 BILLION IN MONETARY RELIEF

On Nov. 10, 2026, the Securities and Exchange Commission (the **SEC**) announced its enforcement results for the fiscal year 2026, which ended Sept. 30. The SEC filed 348 enforcement actions, consisting of 235 standalone actions and 113 follow-on administrative proceedings seeking to bar or suspend individuals from participating in certain securities market activities based on criminal convictions, civil injunctions or other qualifying orders. The SEC obtained orders for monetary relief totaling $1.095 billion, made up of $752 million in disgorgement and prejudgment interest and $343 million in civil penalties, and returned approximately $731 million to more than 250,000 harmed investors. Among other things, the SEC noted that two-thirds of standalone actions included charges against at least one individual and highlighted actions that included charges against 45 entities for allegedly filing false Forms ADV to pose as legitimate U.S. advisers and lure retail investors.

Investment advisers remained an important focus. The SEC stated that it continued to target misappropriation of client assets, inadequate safeguarding of assets, misleading or inadequate disclosures, undisclosed fees and expenses, fraudulent valuations and mismarking, and undisclosed conflicts of interest. Notable adviser matters included a $100 million civil penalty against an adviser that failed to take reasonable steps to detect and prevent a cherry-picking scheme by a former co-chief investment officer, a settled action against an adviser whose advisory fee calculations and fee offset practices were inconsistent with its advisory agreements and disclosures, and a settled action against a private fund adviser that sold loans to its private fund clients without reasonably determining whether the trades were at fair market value. The SEC also brought “guardrail” cases, aimed at enforcing core compliance obligations and detecting misconduct early, under Rule 206(4)-2 of the Investment Advisers Act of 1940 (the **Advisers Act**) (the **Custody Rule**), Regulation S-P and Regulation S-ID, and Schedule 13D filing requirements, as well as fraud actions against private fund advisers involved in pre-IPO secondary market investments.

The results illustrate that fee and expense practices, valuation, conflicts of interest and core compliance obligations remain active enforcement priorities for advisers to private funds and other clients. The SEC also continued to credit prompt self-reporting, remediation and cooperation in its charging and penalty decisions, while holding accountable firms that failed to timely remediate known deficiencies.

Read the SEC’s press release HERE.

SEC DIVISION OF EXAMINATIONS RELEASES FISCAL YEAR 2027 EXAMINATION PRIORITIES

The SEC’s Division of Examinations (the **Division**) has released its examination priorities for fiscal year 2027, which included a focus on understanding how registrants’ use of super intelligence (**SI**)

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tools affects their compliance with existing, technology-neutral obligations. The Division also noted that it recently published "The SEC Exam Handbook: A Practical Guide on Process and Engagement," which replaces and expands on its prior examination brochure.

For investment advisers, the Division will continue to focus on adherence to fiduciary duties, with particular emphasis on economic conflicts of interest, including fee rebates, fee and expense calculations, cash management, deposits, withdrawals and *quid pro quo* arrangements. In reviewing fiduciary obligations related to the formulation of investment advice, examinations will also evaluate whether the characteristics of recommended investment products or strategies are consistent with client profiles, investment objectives and risk tolerance, considering factors such as liquidity, volatility, time horizons and costs (including exit costs). The Division will also prioritize advisers that recommend illiquid, difficult-to-trade or complex products, such as loans provided by private funds or business development companies (**BDCs**), investments in private companies through special purpose vehicles, inverse exchange-traded funds (**ETFs**), single-stock ETFs and zero-days-to-expiration options.

For private fund advisers specifically, examinations will assess whether investment-related risk disclosures are consistent with fiduciary standards and whether compliance policies, procedures, and controls address both fund-level and investment-level risks, including disclosures relating to investments and allocations, the use of debt and fund-level lines of credit, the use of affiliated service providers, and the accuracy of fee and expense calculations at both the fund and investment levels. The Division will also focus on advisers that rely on proxy advisory firms or use third parties to access client accounts.

The Division will also review the effectiveness of advisers' compliance programs, with particular attention to advisers that have changed their business models, begun advising new types of clients or asset classes, or grown through mergers or acquisitions, and will review whether advisers with activist engagement practices are making timely and accurate filings on Schedules 13D and 13G and Forms 13F, 13H, 3, 4, 5 and N-PX, as applicable. Never-examined and recently registered advisers remain a priority.

For registered investment companies, examinations will focus on, among other things, operations relating to fund fees and expenses, as well as portfolio management practices and whether related disclosures align with stated investment strategies, fund filings and marketing materials. The Division will also monitor valuation and redemption issues, as well as disclosures of conflicts of interest and risks, for funds holding complex products, less liquid or illiquid investments, including private credit.

Other areas of focus across registrants include cybersecurity and operational resiliency, SI-related cyber threats and the use of SI in business operations, and compliance with the amendments to Regulation S-P and with Regulation S-ID.

Read the Division's examination priorities HERE.

SEC ADOPTS FINAL RULE UPDATING THE 'SMALL ENTITY' DEFINITIONS FOR ADVISERS AND FUNDS

The SEC has adopted amendments to the definitions of "small business" and "small organization" (together, **Small Entities**) used in SEC rulemaking under the Advisers Act and the Investment Company Act of 1940 (the **Investment Company Act**) (together, the **Small Entity Amendments**). These definitions are used for purposes of the Regulatory Flexibility Act (the **RFA**), which requires

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the SEC to consider the impact of its rules on Small Entities, and had not been updated since 1998. The Small Entity Amendments were published in the Federal Register on Nov. 6, 2026, and are effective Feb. 4, 2027.

Under the Small Entity Amendments, an adviser will be a Small Entity if it has regulatory assets under management (**RAUM**) of less than $1 billion, up from the prior $25 million threshold. According to the SEC, the $1 billion RAUM threshold represents 75 percent of advisers, but just under 3 percent of the total RAUM in the industry. The SEC also eliminated the requirement that an adviser have total assets of less than $5 million and made conforming changes to the related control relationship test, which now only looks at whether an affiliated adviser is at or above the $1 billion threshold. For registered investment companies and BDCs, the net asset threshold is increased from $50 million to $10 billion. Related funds are aggregated across a "family of investment companies" as that term is used in Form N-CEN, and this replaces the "group of related investment companies" term. The SEC will also adjust these thresholds for inflation by order, beginning on or about March 1, 2037, and approximately every 10 years thereafter.

The SEC also made conforming amendments to General Instruction 17 and Item 12 of Form ADV and to Rule 203-3(b) under the Advisers Act, which allows certain small SEC-registered advisers to apply for a continuing hardship exemption from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository.

The Small Entity Amendments do not change the threshold for SEC registration. They primarily affect how the SEC analyzes the impact of future rulemakings on smaller firms, and the SEC stated that they will have no immediate impact on investor protection. Because many more advisers will now qualify as Small Entities, however, future rule proposals may give greater weight to the compliance burdens of mid-sized managers. In addition, approximately 10,180 additional registered advisers will need to complete Item 12 of Form ADV, generally with their next annual amendment, and some may become eligible if needed for the continuing hardship exemption under Rule 203-3(b).

Read the SEC's final rule HERE.

Read the fact sheet HERE.

FINCEN PROPOSES AMENDMENTS TO CUSTOMER DUE DILIGENCE RULE

On Nov. 17, 2026, the Financial Crimes Enforcement Network (**FinCEN**) issued a proposed rule (the **Proposal**) that would amend the Customer Due Diligence Rule (the **CDD Rule**) at 31 C.F.R. 1010.230. The Proposal implements Executive Order 14406, Restoring Integrity to America's Financial System, which directed Treasury to reduce financial system risks posed by cross-border financial activity and unauthorized immigration. The Proposal applies only to financial institutions already subject to the CDD Rule (**Covered Institutions**), namely banks, broker-dealers, mutual funds, futures commission merchants and introducing brokers in commodities. The Proposal does not expand that list. Note that FinCEN's rule requiring covered investment advisers to maintain Anti-Money Laundering/Countering the Financing of Terrorism (**AML/CFT**) programs and file Suspicious Activity Reports (**SARs**) takes effect on Jan. 1, 2028.

The Proposal submits three principal revisions to the CDD Rule. First, it would grant Covered Institutions express authority to obtain additional account information, specifically whether the account holder has lawful immigration status and employment authorization in the U.S. This would

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be permitted where doing so is warranted by other risk indicators or supervisory concerns. FinCEN notes that this authority is permissive and imposes no obligation to collect any particular document.

Second, the Proposal would ease customer due diligence requirements for Covered Institutions in cases where there is no reason to believe a legal entity customer's beneficial ownership has changed. Codifying FinCEN's February 2026 exceptive relief, the Proposal would no longer require Covered Institutions to identify and verify beneficial owners each time a customer opens a new account, but only when the customer first opens an account, when the institution learns of facts that call the reliability of previously obtained information into question, and as otherwise needed under its risk-based procedures.

Third, the Proposal would set out in the rule itself the minimum information that must be collected for each beneficial owner, namely name, date of birth, address and an identifying number. Recognizing the risk associated with relying on an Individual Taxpayer Identification Number (**ITIN**) in lieu of a Social Security number, valid employment authorization or other suitable alternative identification, FinCEN proposes to now exclude its use as an identifying number for a beneficial owner. The Proposal would also expressly permit institutions to obtain this information from third-party sources.

The Proposal applies directly to banks, broker-dealers and mutual funds. Registered investment advisers and exempt reporting advisers are not Covered Institutions and are not subject to the Proposal, although advisers and their private funds should expect updated beneficial ownership requests from the broker-dealers and banks with which they maintain accounts. Broker-dealers and mutual fund complexes should review their onboarding procedures, particularly their handling of ITINs and their documentation of customer confirmations that previously provided information remains accurate.

Comments on the Proposal will be due 60 days after publication in the Federal Register, and the rule as proposed would become effective 90 days after a final rule is published.

Read the Treasury press release HERE.

Read the proposed rule HERE.

DEPARTMENT OF LABOR PROPOSES CLASS EXEMPTION FOR QPAMS TO REGAIN ELIGIBILITY AFTER A DISQUALIFYING EVENT

The Department of Labor (**DOL**) recently proposed a new class exemption related to the Qualified Professional Asset Manager Exemption, PTE 84-14, as amended (the **QPAM Exemption**). As background, the QPAM Exemption provides relief for plan asset investment funds managed by a "qualified professional asset manager" (**QPAM**) to engage in certain transactions that would otherwise be prohibited under the Employee Retirement Income Security Act of 1974, as amended, and the Internal Revenue Code of 1986, as amended. A QPAM becomes ineligible for 10 years if the QPAM, certain affiliates or owners of 5 percent or more of the QPAM are convicted of certain U.S. or foreign crimes or engage in serious misconduct.

The Proposed QPAM Reeligibility Options After Disqualification Class Exemption (**Proposed QROAD Exemption**) would give QPAMs an alternative path to continued relief under the QPAM Exemption. Rather than apply for an individual exemption, which can be time-consuming, costly and uncertain, a QPAM could meet set conditions under the Proposed QROAD Exemption designed to protect plans and their participants and retain relief for up to 10 years. As the DOL

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notes, this would reduce the risk that plans must sell investments or replace investment managers on short notice.

The Proposed QROAD Exemption would establish two categories of relief based on the number of convictions and whether the entity involved in the misconduct is a QPAM or has a control relationship with the QPAM:

- **Entity involved in the misconduct is not a QPAM and does not have a control relationship with the QPAM**: This relief covers QPAMs ineligible due to a single U.S. conviction, one or more foreign convictions, or one or more instances of prohibited misconduct by the QPAM's affiliate or certain owners, provided the misconduct did not involve plan assets. The conditions for such relief include adopting written policies and training, selection of an independent fiduciary to review compliance, and written notice to the DOL and covered plan fiduciaries.
- **Entity involved in the misconduct has a control relationship with the QPAM or, in limited circumstances, is the QPAM**: The first category's conditions generally apply for this relief, plus additional conditions would apply including a recurring biennial independent audit, a requirement to make and comply with certain representations and warranties to covered plans (including indemnification for certain losses), and an annual compliance review and certification by a senior compliance officer.

The Proposed QROAD Exemption also includes a one-year phase-out period if the conditions above are not met and a six-year recordkeeping requirement.

The Proposed QROAD Exemption does not narrow the existing ineligibility triggers in the QPAM Exemption. QPAMs that do not qualify for either category, for example where the QPAM itself has a conviction or the misconduct involves plan assets, would have to apply for an individual exemption.

The DOL is currently accepting comments on the Proposed QROAD Exemption through Jan. 19, 2027. A final exemption would be effective 60 days after publication in the Federal Register.

Read the DOL press release HERE.

Read the Proposed Class Exemption HERE.

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