CLIENT ALERT

Retail Investors' Access to Private Markets through 401(k)s

November 26, 2025

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On November 20, 2025, Commissioner Mark Uyeda of the Securities and Exchange Commission (the "SEC", or the "Commission") addressed an audience of investment management industry professionals regarding the SEC's current stance on offering private investments in retail retirement plans.[1] The speech, given at the Investment Company Institute (the "ICI")'s Retail Alternatives and Closed-End Funds conference in New York City, signifies a stronger endorsement by Commission leadership of the current administration's views that private investments have a place in defined contribution retirement plans, such as 401(k) plans. Commissioner Uyeda's speech further builds on an August 2025 executive order that directs federal agencies to "facilitate access to investments in alternative assets by participants in participant defined-contribution retirement savings plans."[2]

1 Mark Uyeda, Commissioner, Securities and Exchange Commission, Joint Keynote Remark at the Investment Company Institute Retail Alternatives and Closed-End Funds Conference: The Diversification Deficit: Opening 401(k)s to Private Markets (Nov. 20, 2025), available at https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025?utm_medium=email&utm_source=govdelivery#_ftn19.

2 Exec. Order No. 14330, 90 Fed. Reg. 38921 (Aug. 7, 2025), available at https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/.

The Rationale for Private Investments

Commissioner Uyeda underscored a pro-private investments position with the rationale of providing 401(k) plan participants access to investment opportunity and diversification not found in the public markets. Even broad-based index exposure may not be adequate diversification for retail investors, Commissioner Uyeda noted. Today, the top 10 companies in the S&P 500 account for nearly 40% of the index’s total market capitalization.[3] Private equity, private credit, venture capital, and real estate strategies may be less highly correlated to public markets, thereby providing the diversification that retail investors need to help reduce volatility across their portfolios. Given lower IPO activity in general, a longer term trend towards more private companies means a reduction overall in the number of public companies. Opening 401(k) plans to private investments will grant retail investors access to greater diversification opportunities through private companies.

Many pension funds, endowments and sovereign wealth funds that are longstanding investors in private funds have seen the benefits of diversification and have also seen these investments contribute to their return profiles. Commissioner Uyeda’s speech takes the position that retail investors should be able to share in this growth opportunity as well, but currently have limited opportunities for participation. Allowing retail investors to enter the private markets through 401(k) plans would significantly increase ease of access.

Further, while these assets are more illiquid in nature than traditional investments, Commissioner Uyeda stated that those individual investors saving for retirement “do not require daily liquidity and may benefit from the higher expected returns associated with longer holding periods.” A liquidity tradeoff may be a worthwhile investment for retail retirement account holders who have a longer time horizon with respect to their investments and would not be making these investments for short-term liquidity needs.

A Policy Shift Away From Zero Exposure

Commissioner Uyeda urged regulators and plan managers to avoid presuming that the goal of facilitating retail exposure to private investments misaligns with the Commission’s goal of investor protection and explained that both goals can be accommodated with prudent regulation. The optimal allotment to private investments in a retail investment portfolio, he stated, “is not zero.” This is a more permissive stance than that taken by the Biden administration. For example, in December 2021, the Department of Labor (the “DOL”) issued a supplemental statement to a June 2020 information letter cautioning plan fiduciaries regarding the use of private equity investments in individual account plans subject to the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

Shortly after the issuance of the executive order in August 2025, the Department of Labor rolled back the 2021 supplemental guidance. Commissioner Uyeda rejected the Biden era standard of a zero allocation policy as “paternalistic” and “ill-conceived” in his speech last week. Regulation should provide “guardrails, not gates,” to retail investors navigating private markets.

3 The Diversification Deficit: Opening 401(k)s to Private Markets, *supra* note 1.

Commissioner Uyeda reassured audience members that the SEC will approach private market inclusion with the same caution and prudence that the agency uses for all retail investments requiring fiduciary guidance and that the SEC would be thoughtful in its approach. This would mean addressing legitimate investor concerns about disclosure, fees, conflicts of interest, valuation, and custody.

Looking Forward

The path forward for inclusion of private investments in retail retirement accounts requires cooperation between administrative agencies, including the SEC and DOL. The executive order, which directs the DOL to align ERISA's fiduciary standards with broader access to alternative investments, is the first step towards this end. Commissioner Uyeda called for regulatory alignment between the DOL and the SEC and noted that the two agencies must coordinate efforts to balance investor protection with market access under both ERISA and the federal securities laws. We will continue to monitor any proposals and if you have any questions you can reach out to one of the attorneys listed below.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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