

Where We Stand in Early 2026: Highlights of SEC Regulatory Developments for Registered Funds and Advisers

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The period during the second half of 2025 and early 2026 was marked by the Securities Exchange Commission (the “SEC” or the “Commission”) and SEC staff (the “staff”) beginning to take steps to enact the agency’s new agenda under Chairman Atkins. Some of the recent actions that are applicable to registered investment companies and investment advisers illustrate the thematic priorities that the Director of Investment Management, Brian Daly, previewed in his first speech: overall deregulation, modernization, democratization of access to alternative assets, and the promotion of artificial intelligence.¹

¹ *Democratization by Retailization: SEC Division of Investment Management Director Shares Plans for Private Investments Oversight, Other Agenda Priorities*, Willkie Farr & Gallagher LLP (Dec. 10, 2025), available at <https://www.willkie.com/-/media/files/publications/2025/12/democratizationbyretailizationsecdivisionofinvestmentmanagementdirectorsharesplansforprivateinvestm e.pdf>

This client alert discusses SEC actions that have not been covered in our prior client alerts.² First we discuss three actions related to registered investment companies: (a) staff action allowing additional investments by registered closed-end funds in private investments; (b) exemptive orders allowing dual mutual fund and ETF share classes; and (c) the staff no longer denying accelerated registration for issuers including mandatory pre-dispute arbitration clauses. We then discuss the SEC's first proposed and adopted rules of 2026, new staff FAQs related to the Names rule and fund of funds arrangements, and conclude with an updated list of the current and postponed compliance dates for certain previously adopted rules.

A. Registered Closed-End Funds Investing in Private Investments

The staff took action to enable additional retail investor access to private market exposure by issuing an accounting and disclosure information ("ADI") for registered closed-end funds investing in private funds.³ The ADI allows retail closed-end funds that invest more than 15% of their net assets in private funds ("CE-FOPFs") to remove existing accredited investor and/or minimum initial investment requirements from their registration statements, either by filing amendments to their registration statements under Securities Act Rule 486(a)-(b) or by filing prospectus supplement updates under Securities Act Rule 424. The ADI also discussed that investors in CE-FOPFs have regulatory protections under the federal securities laws, including management by a registered adviser and oversight by a board of directors, and the ADI highlighted areas staff have focused on when reviewing CE-FOPF registration statements. The ADI said CE-FOPFs should make sure their disclosures are clear, concise, and understandable, include full information about the costs, strategies, risks, and investment process-related due diligence practices conducted by the adviser when evaluating private fund investment opportunities, and clearly and prominently disclose the fund's liquidity terms.

B. ETF Share Classes

The SEC facilitated another innovation for mutual funds and exchange-traded funds ("ETFs") through the exemptive applications process. The SEC permitted single open-end registered investment companies to offer both an ETF share class and one or more mutual fund share classes ("ETF share class funds"), provided that certain conditions are met.⁴ When the SEC finalized rule 6c-11 in 2019, permitting ETFs to operate under established conditions without receiving an exemptive order, the Commission specifically and purposefully excluded ETF share class

² See Willkie Farr & Gallagher LLP, *News* (last visited Mar. 11, 2026), <https://www.willkie.com/news> (for latest Client Alerts); see also, Willkie Farr & Gallagher, *Client Alert Compendium: Top Asset Management Client Alerts of 2025* (Feb. 3, 2026), available at <https://www.willkie.com/-/media/files/publications/2026/02/client-alert-compedium-top-asset-management-client-alerts-of-2025.pdf> (listing prior Willkie client alerts on significant developments in 2025).

³ Guidance, Securities and Exchange Commission, *ADI 2025-16 - Registered Closed-End Funds of Private Funds* (last updated Aug. 15, 2026), available at <https://www.sec.gov/about/divisions-offices/division-investment-management/fund-disclosure-glance/accounting-disclosure-information/adi-2025-16-registered-closed-end-funds-private-funds>.

⁴ Investment Company Act Rel. No. 35786, *DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP* (Nov. 17, 2025), available at <https://www.sec.gov/files/rules/ic/2025/ic-35786.pdf>.

funds, requiring them to request relief through exemptive applications.⁵ As a result, most ETF shares and mutual fund shares have continued only to be offered through separate open-end registered investment companies.

The SEC, however, published a notice of its intent to grant the first exemptive order for ETF share class funds on September 29, 2025.⁶ In addition, all three major exchanges have updated their respective rules to allow generic listing and trading of the ETF share class funds.⁷ Since then, more than 40 applicants filed “substantially identical” applications;⁸ and to date, the Commission has published more than 30 orders.⁹ The orders are subject to specific conditions, including:

- Reports to the fund’s board of trustees;
- Initial and periodic board findings that the dual share class structure is in the best interests of the shareholders of each share class and the fund as a whole;
- Board approval and implementation of ongoing monitoring to identify issues related to the dual share class structure; and
- Fund prospectus disclosures, including information about the interclass exchange privilege.

⁵ Investment Company Act Rel. No. 35770, *DFA Investment Dimensions Group Inc., Dimensional Investment Group Inc., Dimensional ETF Trust and Dimensional Fund Advisors LP* at 4 (Sept. 29, 2025), available at <https://www.sec.gov/files/rules/ic/2025/ic-35770.pdf>; see also Investment Company Act Rel. No. 33646, *Exchange-Traded Funds*, [84 FR 57162] (Sept. 25, 2019), available at <https://www.sec.gov/files/rules/final/2019/33-10695.pdf>.

⁶ Investment Company Act Rel. No. 35770, *DFA Investment Dimensions Group Inc., et al.* (Sept. 29, 2025), available at <https://www.sec.gov/files/rules/ic/2025/ic-35770.pdf>.

⁷ See Securities and Exchange Commission, Rel. No. 34-104252, *Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Rule 5703 To Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares* (Nov. 28, 2025), available at <https://www.federalregister.gov/documents/2025/11/28/2025-21406/self-regulatory-organizations-the-nasdaq-stock-market-llc-notice-of-filing-of-amendment-no-2-and>; Securities and Exchange Commission, Rel. No. 34-104251, *Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Rule 5.2-E(j)(9) To Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares* (Nov. 28, 2025), available at <https://www.federalregister.gov/documents/2025/11/28/2025-21405/self-regulatory-organizations-nyse-arca-inc-notice-of-filing-of-amendment-no-2-and-order-granting>; Securities and Exchange Commission, Rel. No. 34-104247, *Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt New Rule 14.11(n) To Permit the Generic Listing and Trading of Class Exchange-Traded Fund Shares* (Nov. 28, 2025), available at <https://www.federalregister.gov/documents/2025/11/28/2025-21400/self-regulatory-organizations-cboe-bzx-exchange-inc-notice-of-filing-of-amendment-no-2-and-order>.

⁸ See Securities and Exchange Commission, *Investment Company Act Notices and Orders* (last accessed Mar. 11, 2026), available at <https://www.sec.gov/rules-regulations/investment-company-act-notices-orders>; see also Suzanne McGee and Chris Prentice, *US SEC readies relief for asset managers to add ETFs to mutual funds*, Reuters (Sept. 29, 2025), available at <https://www.reuters.com/sustainability/boards-policy-regulation/us-sec-readies-relief-asset-managers-add-etfs-mutual-funds-2025-09-29/> (featuring an interview with Director Brian Daly, describing the approval “as a win” and reporting that, at the time of the action, there were approximately 80 similar applications for review).

⁹ See Investment Company Act Rel. No. 35834, *Multi-Class ETF Fund Exemptive Relief under the Investment Company Act of 1940* (Dec. 17, 2025), available at <https://www.sec.gov/files/rules/ic/2025/ic-35834.pdf>; see also Securities and Exchange Commission, *Investment Company Act Notices and Orders* (last accessed Feb. 17, 2026), available at <https://www.sec.gov/rules-regulations/investment-company-act-notices-orders>.

In February 2026, the first ETF share class fund began to be offered to investors, while many other such funds are currently expected to follow, though a number of challenges remain for ETF share class fund sponsors and distributors to implement and offer such funds.

C. Mandatory Dispute Arbitration Clauses for Registered Funds

In another action, the SEC published a policy statement announcing that the presence of a contractual provision requiring arbitration of federal securities claims will not factor into decisions about whether to accelerate the effectiveness of a registration statement for issuers, including registered investment companies.¹⁰ The staff will continue to focus on the adequacy of the issuer's disclosures in its registration statement when considering acceleration requests, including any disclosures regarding an arbitration provision, though the statement does not answer whether public companies can or should adopt such provisions.

D. First Proposed and Adopted Rules

The SEC also proposed and adopted the first new rules related to investment advisers and investment companies under the leadership of Chairman Atkins. These actions demonstrate the continued attention of the Commission and staff on modernizing and updating rules applicable to its registrants, specifically related to regulatory procedures and requirements.

On December 29, 2025, the Commission adopted a rule granting the Director of the Division of Investment Management the authority to grant, deny, or revoke confidential treatment requests for information on Form ADV.¹¹ Form ADV is the uniform application for investment adviser registration and the reporting form for exempt reporting advisers. Previously, only the Commission had authority to grant, deny, or revoke applications for such confidential treatment, and although the Commission received such applications in the past, the agency had not taken action with respect to such applications.¹² The rule amendment delegated that authority and permitted the Director of the Division of Investment Management to issue orders for confidential treatment. The adopting release also discussed the process for advisers to request confidential treatment for information on Form ADV, which includes public notice and an opportunity for a hearing.

On January 7, 2026, the SEC published proposed amendments to the rules that define which registered investment companies, registered investment advisers, and business development companies are defined as "small entities"

¹⁰ Securities and Exchange Commission, Rel. No. 33-11389, *Acceleration of Effectiveness of Registration Statements of Issuers with Certain Mandatory Arbitration Provisions* (Sept. 17, 2025), available at <https://www.sec.gov/files/rules/policy/33-11389.pdf>.

¹¹ Investment Advisers Act Rel. No. 6934, *Delegation of Authority to the Director of the Division of Investment Management* (Dec. 29, 2025), available at <https://www.sec.gov/files/rules/final/2025/ia-6934.pdf>.

¹² See *id.*; see also Investment Advisers Act of 1940 § 210(a) (15 U.S.C. § 80b-10(a)) (The Advisers Act provides that information contained on Form ADV or any other registration application or report or amendment thereto filed with the Commission pursuant to the Advisers Act shall be made available to the public, unless the Commission finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. In such circumstances, investment advisers may seek confidential treatment of certain information.).

for the purposes of the Regulatory Flexibility Act.¹³ That Act requires the SEC to consider alternative regulatory approaches, with the goal of minimizing the economic impact on small entities. The Commission proposed increasing thresholds for “small entities” to include investment companies with net assets of \$10 billion or less and investment advisers with regulatory assets under management of less than \$1 billion.¹⁴ This increase would result in significantly more funds and advisers being deemed “small entities” and analyzed pursuant to the Regulatory Flexibility Act.¹⁵ The Commission said the proposal is designed to help the Commission better tailor its analyses of regulatory challenges that small investment companies and advisers face, to better inform the Commission of the regulatory impacts that these small entities encounter, and to help the Commission consider adapting proposed and final rules accordingly.

On February 18, 2026, the SEC also published proposed amendments to Form-NPORT.¹⁶ Those amendments are discussed in a separate client alert.¹⁷

E. Names Rule

On February 18, 2026, the staff published responses to four new FAQs¹⁸ (the “2026 FAQs”) related to Rule 35d-1 (often referred to as the “Names Rule”) under the Investment Company Act of 1940 (the “Investment Company Act”) and related amendments to the rule adopted in 2023 (the “2023 amendments”).¹⁹ The 2026 FAQs supplement the set of FAQs released by the staff in January 2025.

The 2026 FAQs clarify that a fund does not need to provide 60 days’ notice to shareholders when it makes non-material changes to its non-fundamental 80% policy solely to comply with the amended Names Rule. Similarly, a fund does not need to provide 60 days’ notice when making its 80% policy more stringent to comply with the Names Rule.

¹³ See Rels. No. IA-6935; IC-35864, *Amendments to the “Small Business” and “Small Organization” Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act* (Jan. 7, 2026), available at <https://www.sec.gov/files/rules/proposed/2026/ia-6935.pdf>.

¹⁴ Rels. No. IA-6935; IC-35864, *Amendments to the “Small Business” and “Small Organization” Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act*, at 18 (Jan. 7, 2026), available at <https://www.sec.gov/files/rules/proposed/2026/ia-6935.pdf>.

¹⁵ See *id.* at 24-5 (for investment companies, the increased threshold would include nearly 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”); see *also id.* at 37-8 (for investment advisers, the increased threshold would increase the number of small entities from “only 451 of the total 15,909 SEC-registered investment advisers (approximately 3% of registered investment advisers)” to “approximately 15,850 of the total 21,650 investment advisers, or approximately 75% of advisers [have RAUM below the proposed RAUM Threshold]”).

¹⁶ Investment Company Act Rel. No. 35962, *Form N-PORT Reporting* (Feb. 18, 2026), available at <https://www.sec.gov/files/rules/proposed/2026/ic-35962.pdf> (“Proposing Release”).

¹⁷ *Form N-PORT Pivot: SEC Proposes Rulemaking to Roll Back Registered Fund Reporting*, Willkie Farr & Gallagher LLP (Mar. 10, 2026), available at <https://www.willkie.com/-/media/files/publications/2026/03/form-n-port-pivot-sec-proposes-rulemaking-to-roll-back-registered-fund-reporting.pdf>.

¹⁸ Securities and Exchange Commission, 2025-26 Names Rule FAQs (last updated Feb. 19, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/division-investment-management-frequently-asked-questions/2025-26-names-rule-faqs>.

¹⁹ See Investment Company Act Rel. No. 35000, *Investment Company Names* (Sept. 20, 2023) (the “Adopting Release”), available at <https://www.sec.gov/files/rules/final/2023/33-11238.pdf>.

The 2026 FAQs also provide a change in the staff’s position on cash held for unfunded commitments to Portfolio Funds (as defined below). If a fund invests in private funds or special purpose vehicles that own or will own private assets (“Portfolio Funds”), the fund may hold a significant amount of cash or cash equivalents to cover its unfunded commitments to Portfolio Funds. The FAQ states that the value of any cash and cash equivalents that cover unfunded commitments to invest equity in Portfolio Funds that are or will be included in the fund’s 80% basket and that the fund reasonably expects to be called in the future can count towards the fund’s 80% policy. The staff stated the fund should include explanatory disclosure in its registration statement of its intent to take this approach.

In the 2023 amendments, the SEC added the terms “growth” and “value” to the scope of terms in fund names required to have an 80% investment policy.²⁰ The 2026 FAQs clarify the staff’s position that, in limited instances, a fund with these terms in its name would not need to adopt an 80% policy with respect to the term “growth” or “value,” such as when another term in the fund’s name makes clear that “growth” or “value” is not the predominant component of the portfolio. For example, a “growth income” fund emphasizes current income as well as growth of capital across the portfolio as a whole, and not only the fund’s investments in growth securities.

Finally, the FAQs clarify that funds with the terms “merger” or “merger arbitrage” in their names do not need to adopt an 80% policy with respect to those terms. The FAQs affirm the staff’s view that these terms represent an investment technique, not a type of investment security.

We view these as helpful clarifications that should reduce regulatory and compliance burdens on fund managers and, in some cases, expand portfolio flexibility.

F. Fund of Funds Arrangements

On March 5, 2026, the staff published a response to a new FAQ related to fund of funds arrangements under the Investment Company Act (the “March 2026 Update”).²¹ The March 2026 Update is significant in that it effectively provides no-action relief that expands the ability of funds to invest in collateralized loan obligation (“CLO”) debt, while continuing to serve as acquired funds in a fund of funds arrangement.²²

The March 2026 Update addresses the inclusion of CLOs in the “10% bucket” limitation under Rule 12d1-4(b)(3)(ii).²³ Many CLO issuers rely on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act, and therefore, they fall within the definition of “private fund” for purposes of Rule 12d1-4.²⁴ Under the rule, an acquired fund generally may not hold securities of investment

²⁰ See *id.* at 18 (“expand the rule’s 80% investment policy requirement beyond its current scope...will include, for example, fund names with terms such as ‘growth’ or ‘value,’ or terms indicating that the fund’s investment decisions incorporate one or more ESG factors.”).

²¹ Securities and Exchange Commission, *Fund of Funds Arrangements Frequently Asked Questions* (last updated Mar. 5, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/fund-funds-arrangements-frequently-asked-questions>.

²² *Id.*

²³ See *id.*; see also 17 C.F.R. § 270.12d1-4(b)(3)(ii) (2020) (“Fund of Funds Arrangement Rule”).

²⁴ See Securities and Exchange Commission, *Fund of Funds Arrangements Frequently Asked Questions* (last updated Mar. 5, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/fund-funds-arrangements-frequently-asked-questions>; see also 17 C.F.R. § 270.12d1-4(d) (definition of private fund).

companies or private funds exceeding 10% of its total assets.²⁵ As a result, funds investing more than 10% of their assets in CLOs meeting the definition of a private fund could not serve as acquired funds in a fund of funds arrangement.²⁶

In the March 2026 Update, the staff recognized that the SEC’s concerns involving complex multi-tier fund structures are not implicated by debt securities issued by CLOs.²⁷ Specifically, the staff stated that debt securities issued by CLOs have “fundamental structural and operational features” that distinguish them from private funds like hedge funds, private equity funds, and other entities traditionally considered pooled investment vehicles.²⁸ The staff reasoned that, unlike equity securities in a CLO, which economically expose investors to the underlying collateral, CLO debt securities earn distributed principal and income based on the financing costs of the collateral.²⁹ Because CLO debt securities are not the type of “fund-like” investments where shareholder expectations would be frustrated by an inability to look through a multi-tier structure, the staff concluded that the concerns underlying the three-tier prohibition are not implicated.³⁰ Accordingly, the staff took the position that acquired fund investments in debt securities issued by CLOs need not be counted towards the 10% bucket.³¹

G. Current Compliance Dates

During 2025 and in early 2026, the Commission postponed the compliance dates for several adopted rules. The current upcoming compliance dates are as follows, but it is unclear whether the Commission will take additional action to further amend some or all of the rules with extended dates before the new deadlines.

Item	Current Compliance Date	Extended From	References
Deadline for larger entities to comply with Regulation S-P amendments that significantly expand data security, incident response, and breach notification obligations for regulated entities	December 3, 2025 for larger entities and most broker-dealers and June 3, 2026 for smaller entities		17 CFR 248.30 Willkie Client Alert

²⁵ 17 C.F.R. § 270.12d1-4(b)(3)(ii) (2020).

²⁶ Securities and Exchange Commission, *Fund of Funds Arrangements Frequently Asked Questions* (last updated Mar. 5, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/fund-funds-arrangements-frequently-asked-questions> (noting that there are “fundamental structural and operational features” to debt securities issued by CLOs); compare with Investment Company Act Rel. No. 34045, *Fund of Funds Arrangements* at 108 (Oct. 7, 2020), available at <https://www.sec.gov/files/rules/final/2020/33-10871.pdf> (the “Fund of Funds Arrangements Rule Adopting Release”) (explaining the rationale for limiting the ability of funds to structure multi-tier arrangements while relying on multi-tier structures).

²⁷ Securities and Exchange Commission, *Fund of Funds Arrangements Frequently Asked Questions* (last updated Mar. 5, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/fund-funds-arrangements-frequently-asked-questions>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Securities and Exchange Commission, *Fund of Funds Arrangements Frequently Asked Questions* (last updated Mar. 5, 2026), available at <https://www.sec.gov/rules-regulations/staff-guidance/fund-funds-arrangements-frequently-asked-questions> (The staff’s response states that it “would not recommend enforcement action to the Commission under sections 12(d)(1)(A), 12(d)(1)(B), 12(d)(1)(C), 17(a), 57(a)(1)-(2), or 57(d)(1)-(2) of the [Investment Company] Act if an acquired fund does not count investments in debt securities issued by CLOs towards the 10% bucket in Rule 12d1-4(b)(3)(ii).”).

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Item	Current Compliance Date	Extended From	References
SEC extends compliance dates for amendments to investment company “Names Rule”	June 11, 2026 for larger fund groups and December 11, 2026 for smaller fund groups	December 11, 2025 for larger fund groups and June 11, 2026 for smaller fund groups.	SEC Press Release
SEC extends compliance dates for Form N-PORT amendments related to investment company “Names Rule” ³²	November 17, 2027 for larger fund groups and May 18, 2028 for smaller fund groups	June 11, 2026 for larger fund groups and December 11, 2026 for smaller fund groups	SEC Press Release
SEC extends compliance for the amendments to the broker-dealer customer protection rule 15c3-3	June 30, 2026	December 31, 2025	SEC Press Release
SEC and CFTC extend compliance date for amendments to Form PF	October 1, 2026	October 1, 2025	Willkie Client Alert SEC Release
FinCEN postpones implementation of final investment adviser anti-money laundering rule and notes intention to revisit scope of AML rule and the related proposed customer identification program rule	January 1, 2028	January 1, 2026	Willkie Client Alert Treasury Press Release

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³² *Form N-PORT Pivot: SEC Proposes Rulemaking to Roll Back Registered Fund Reporting*, Willkie Farr & Gallagher LLP (Mar. 10, 2026), available at <https://www.willkie.com/-/media/files/publications/2026/03/form-n-port-pivot-sec-proposes-rulemaking-to-roll-back-registered-fund-reporting.pdf>.

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