JULY 2026

WEIL PRIVATE FUNDS REGULATORY REVIEW

The Securities and Exchange Commission (the "**SEC**") and other regulators continue to be active in rulemaking and enforcement activity that impacts private fund advisers. This publication summarizes recent activity, including: (i) the SEC's announcement of its 2026 regulatory agenda; (ii) an SEC Division of Examinations ("**Exams**") risk alert regarding investment advisers' economic conflicts of interest; (iii) remarks by the new Director of the SEC's Division of Enforcement ("**Enforcement**"); and (iv) further proposed amendments to Form PF. Additionally, this publication discusses certain SEC settlements with investment advisers for purported violations.

REGULATORY ROUND-UP

CONTINUED SEC FOCUS ON POST-COMMITMENT PERIOD MANAGEMENT FEES

In the past year, Weil has handled (successfully) numerous SEC examinations and enforcement actions where the SEC staff continues to focus on post-commitment period management fees of private equity advisers. In particular, SEC staff from the Private Funds Unit in Exams and the Asset Management Unit in Enforcement have targeted practices around dividend recapitalizations and the capitalization of operating expenses. In instances where dividend recapitalizations do not reduce the management fee base, the SEC staff is looking at whether fund documents adequately disclose that the dividend recapitalization is not a return of capital. In instances where operating expenses (such as closing transaction costs) are capitalized into invested capital, the SEC staff is looking at whether fund documents disclose that the management fee base includes such expenses. Each situation is dependent on the specific facts and circumstances, but certain approaches can mitigate the chance of an exam deficiency or enforcement investigation.

SEC ANNOUNCES 2026 REGULATORY AGENDA

In July 2026, SEC Chairman Paul S. Atkins released the SEC's 2026 Regulatory Agenda, which includes proposed rulemakings reflecting the SEC's priorities of facilitating capital formation, reducing compliance burdens, establishing a regulatory framework for crypto assets, and revitalizing the public markets.[1]

With respect to investment management and the private markets, the agenda includes proposals to: (i) amend Rule 17a-7 under the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), to modernize the conditions for, and expand the availability of, the exemption for certain purchase or sale transactions between an investment company and certain affiliated persons; (ii) amend the custody rules under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), and the Investment Company Act to improve and modernize the regulations around the custody of advisory client and fund assets, including to address crypto assets; (iii) enhance retail investor exposure to private markets while preserving investor protections; (iv) further amend the reporting requirements under Form PF; (v) reform the pay-to-play rules under the Advisers Act; and (vi) amend the investment adviser recordkeeping rule under the Advisers Act, in part to address technological changes including the prevalence of artificial intelligence. In addition, the agenda includes a proposal regarding the definition of "dealer" under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), which would reconsider the scope of the dealer registration requirement.

With respect to public company disclosure and capital formation, the agenda includes proposals to, among other things, (i) update exempt offering pathways to simplify and modernize the means by which private companies raise capital, including by potentially adjusting the definition of "accredited investor" under Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"); and (ii) propose a registered offering reform for crypto assets, including tailored disclosures, exemptions, and safe harbor mechanisms.

The Weil Private Funds Group will continue to monitor these developments closely and will communicate updates as the SEC issues proposing releases and opens public comment periods.

EXAMS ISSUES RISK ALERT ON ECONOMIC CONFLICTS OF INTEREST

In June 2026, Exams issued a risk alert on its observations from examinations of SEC-registered investment advisers related to economic conflicts of interest (the "**Risk Alert**").[2]

Although many of the specific examples in the Risk Alert address retail-facing arrangements—e.g., cash sweep programs, mutual fund share class selection, and Rule 12b-1 fees—the underlying fiduciary principles apply to private fund advisers as well. As fiduciaries, investment advisers must seek to either eliminate or fully and fairly disclose all conflicts of interest and adopt written policies and procedures reasonably designed to address those obligations under the Advisers Act.

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[1] A link to the press release can be found here. A link to the regulatory agenda can be found here.

[2] A link to the Risk Alert can be found here.

Exams observed economic conflicts of interest that were undisclosed, or for which the disclosures were incomplete or misleading, as well as adviser practices that were inconsistent with advisory agreements and disclosures and compliance programs that did not fully address such conflicts.

Exams cautioned that disclosing that an adviser "may" have a conflict is inadequate where the conflict actually exists, and that the "may" qualifier is appropriate only for a potential conflict that does not currently exist but could reasonably arise in the future. The staff also identified advisers whose Form ADV brochures omitted or inconsistently described material conflicts arising from compensation arrangements with affiliates and from the selection and compensation of brokers.

Exams observed advisers that calculated or charged fees inconsistently with their advisory agreements and disclosures, charged fees for services that were not actually provided or billed more than once for the same service, and failed to refund prepaid fees upon termination. Finally, Exams also found compliance programs that did not adopt and implement written policies and procedures reasonably designed to address the advisers' billing arrangements and conflicts, or lacked controls to monitor for accurate fee calculations.

Several overarching themes translate directly to private fund advisers. First, disclosure that a conflict "may" exist is inadequate where the conflict actually exists, and boilerplate that lists all potential conflicts without specifying those that are present will not support informed consent. Second, disclosures across Form ADV, fund governing documents, and side letters must be consistent with one another and with the adviser's actual practices. Third, fees and expenses must be calculated and charged in accordance with the applicable governing agreements, an area of heightened relevance for private fund advisers given management fee offsets, expense allocations, and fee waivers. This is a theme we continue to see played out in SEC examinations of investment advisers where, for example, the post-commitment period management fee calculations of closed-end private fund sponsors are heavily scrutinized. Fourth, compliance programs should be reasonably designed to identify and address economic conflicts and to monitor for accurate fee billing.

Following this Risk Alert, private fund advisers should regularly review their disclosures, governing documents, and policies and practices to confirm that material economic conflicts of interest are fully disclosed and that fees are charged consistently with agreements and disclosures.

ENFORCEMENT DIRECTOR'S REMARKS AT MFA LEGAL & COMPLIANCE CONFERENCE

In May 2026, David Woodcock, the new Director of Enforcement, spoke at the 2026 MFA Legal & Compliance Conference,[3] emphasizing a deliberate shift toward quality over quantity in enforcement actions, with a focus on protecting investors from real harm—particularly through cases involving offering frauds, reporting violations, market manipulation, and insider trading.

With respect to private funds, the Director acknowledged that broadening retail access thereto can be a positive development but warned that Enforcement will stay vigilant on risks related to liquidity, fees, valuations, and conflicts at the adviser level and throughout the distribution chain. According to the Director, Enforcement intends to continue pursuing cases involving misappropriated assets, misleading disclosures, undisclosed fees and expenses, fraudulent valuations, prohibited trading, and undisclosed conflicts. As we have previously written, Exams and Enforcement efforts appear to be substantively unchanged from the prior Commission.

The Director highlighted the recent *Madison Capital* enforcement action against a private fund adviser that failed to reassess the impact of the pandemic's effect on the fair market value of the loans it sold to its fund clients, despite representing that such loans were sold at fair value.[4] He also discussed a case in which an adviser caused a fund client to invest in a Ponzi-like scheme.

[3] A link to the speech can be found here.

[4] A previous alert discussing the settlement can be found here. A press release related to the settlement can be found here. A link to the full SEC Order can be found here.

The Director called out private credit, noting that while prior banking regulatory decisions created the conditions for its rapid expansion, the SEC is monitoring stresses playing out in the sector.

Finally, the Director encouraged early and candid engagement with Enforcement, noting that self-reporting, cooperation, and remediation can be expected to be treated favorably, while concealment or obstruction will not. He invited firms operating in gray areas to take advantage of pre-enforcement dialogue rather than waiting for a subpoena.

SEC AND CFTC JOINTLY PROPOSED AMENDMENTS TO FORM PF

In April 2026, the SEC and Commodity Futures Trading Commission announced jointly proposed amendments (the "**Proposed Amendments**") to the reporting requirements under Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds.[5] The Proposed Amendments would, among other things, raise the Form PF filing threshold for all filers from $150 million in private fund assets under management to $1 billion, and specifically for large hedge fund advisers from $1.5 billion in hedge fund assets under management to $10 billion.

The Proposed Amendments would also streamline many existing Form PF requirements, including by eliminating certain "look through" requirements and certain performance volatility reporting requirements, simplifying certain large hedge fund counterparty exposure reporting, eliminating certain current reporting for large hedge fund advisers and eliminating quarterly event reporting for all private equity fund advisers, among other things. Notably, the Proposed Amendments purport to eliminate the requirement to affirmatively report adviser-led secondary transactions to the SEC. However, until a final rule is published, advisers are required to continue making Form PF filings as required under current rules.

The Weil Private Funds Group will continue to monitor this development closely and will communicate relevant updates moving forward.

NOTABLE ENFORCEMENT ACTIVITY

ENFORCEMENT ACTION RELATED TO CUSTODY RULE VIOLATIONS

In June 2026, the SEC announced settled charges against Northeast Financial Group, Inc. ("**Northeast**"), a registered investment adviser, for failing to comply with Rule 206(4)-2 of the Advisers Act (the "**Custody Rule**") in connection with private funds it advised.[6]

The Order found that Northeast had custody of the assets of four private funds it advised but that in 2015 through 2024 neither had their assets verified each year by a surprise examination conducted by an independent public accountant, nor had the funds been audited annually and with such audited financials distributed to each fund's respective investors within 120 days of each fund's fiscal year end. Therefore, the SEC found that Northeast violated Section 206(4) of the Advisers Act and the Custody Rule. As a result, Northeast was censured, ordered to cease and desist from committing any similar violations, and ordered to pay a civil monetary penalty.

Takeaway: The Custody Rule remains a key area of focus of the SEC in examinations and potential violations are often pursued by Enforcement, in part because of the support SEC staff have from the Commission on this topic otherwise. Private fund advisers should keep Custody Rule compliance top of mind particularly in complicated fund structures where capital is being contributed by investors at multiple levels of the structure.

ENFORCEMENT ACTION RELATED TO WHISTLEBLOWER PROTECTION RULE VIOLATIONS

In May 2026, the SEC announced settled charges against Foot Locker, Inc. ("**Foot Locker**"), then a publicly traded company, for violating Rule 21F-17(a) under the Exchange Act, which prohibits any person from taking any action to impede an individual from communicating directly with the SEC staff about a possible securities law violation, including by enforcing, or threatening to enforce, a confidentiality agreement.[7]

[5] A link to the press release announcing the Proposed Amendments can be found here. The Proposed Amendments and a related fact sheet can be found here and here, respectively.

[6] A link to the full SEC Order can be found here.

[7] A link to the full SEC Order can be found here.

According to the Order, certain departing Foot Locker employees signed separation agreements that, in exchange for severance payments, purported to waive the employees' rights to receive whistleblower awards from the SEC. Although the agreements expressly permitted employees to file charges with, and participate in investigations by, governing agencies, and the SEC did not identify any instance in which Foot Locker enforced the provision or an individual declined to report to the SEC, the SEC found that the provision nonetheless impeded participation in its whistleblower program by requiring departing employees to forgo possible whistleblower awards in exchange for severance. Foot Locker was ordered to cease and desist from further violations of Rule 21F-17(a) and to pay a civil monetary penalty, with the SEC crediting the fact that Foot Locker began phasing out the provision before being contacted by SEC staff, as well as its cooperation with the SEC's investigation.

Takeaway: This is the first Enforcement action alleging violations of the whistleblower protection rule brought by this Commission, after dozens of such actions in the prior Commission. Although the respondent here was a public company, Rule 21F-17(a) applies to private fund advisers, whether or not registered. In light of this action, private fund advisers should continue to review the confidentiality, release, and waiver provisions in all agreements, including but not limited to employment-related agreements, non-disclosure agreements, and limited partnership agreements. The SEC will take a negative view of any provisions that purport to waive whistleblower award rights or otherwise impede individuals from communicating with the SEC.

ENFORCEMENT ACTION RELATED TO EXCESSIVE MANAGEMENT FEES AND FALSE & MISLEADING STATEMENTS

In April 2026, the SEC filed a complaint against Backswing GP LLC ("**BVGP**"), an unregistered investment adviser, and its principal ("**Principal**" and, together with BVGP, the "**Defendants**"), for allegedly defrauding the private fund they advised (the "**Fund**") by taking excessive management fees and making fraudulent statements to investors and prospective investors.[8]

Specifically, the complaint alleges Defendants: (i) claimed the Fund had raised as much as $48 million, when actual commitments never exceeded $3.8 million; (ii) reported an investment that was never made; (iii) continued to report a follow-on investment after the underlying shares had been cancelled for nonpayment; (iv) represented that an annual audit was completed when no auditor had been engaged; and (v) overstated the Principal's prior work experience. As a result, the SEC charged the Defendants with scienter-based violations of the Advisers Act, and is seeking permanent injunctions, an injunction barring the Principal from acting as, or being associated with, any investment adviser, disgorging with prejudgment interest, and civil monetary penalties.

Takeaway: Private fund advisers, regardless of their registration status, should periodically review and confirm that management fees are calculated and charged in accordance with fund governing documents, requirements for audits and financial reporting obligations are satisfied, and communications with investors are accurate and not misleading.

[8] A link to the full SEC complaint can be found here.

ENFORCEMENT ACTION RELATED TO FALSE AND MISLEADING DISCLOSURES AND OTHER VIOLATIONS

In April 2026, the SEC announced settled charges against three investment advisers and their founder (collectively, the "**Respondents**") for numerous violations, including making false and misleading disclosures to investors.[9]

The Order alleged that Respondents falsely assured investors that their investments were "low risk, high return" by citing co-investments by well known institutional investors that never occurred, overstated investment performance, and omitted significant negative information about the financial condition of portfolio companies. Respondents also allegedly failed to disclose certain material conflicts of interest, including that the advisers' founder and his family stood to lose millions if the advisers' funds failed to make additional investments in certain distressed portfolio companies. In addition, the SEC found that all of the funds advised by the advisers were investment companies which were not registered with the SEC, but for which no exemption from registration was available.

In light of the above alleged conduct, the SEC found that the Respondents willfully violated sections of the Securities Act, the Investment Company Act, the Exchange Act, and the Advisers Act. In connection with this settlement, the founder was issued an industry bar and personally ordered to pay a civil monetary penalty, and the Respondents were collectively ordered to pay disgorgement and prejudgment interest.

Takeaway: Investment advisers should ensure their communications with investors, through marketing materials or otherwise, are not materially misleading and include full and fair disclosure of all material conflicts of interest.

Weil's Private Funds Group is available to help.

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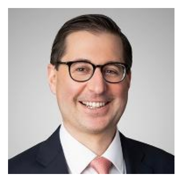

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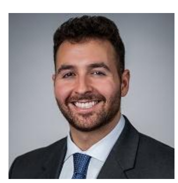

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[9] A press release related to the settlement can be found here. A link to the full SEC Order can be found here.