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NOVEMBER 2026

Investment Management **Update**

In This Update

Covering legal developments and regulatory news for funds, their advisers, and industry participants for the quarter ended September 30.

Rulemaking and Guidance

Risk Alert: Observations Regarding Lost Securityholder Rule Compliance

08.28.26

Overview

The Securities and Exchange Commission's (SEC) Division of Examinations (the Division) has issued a Risk Alert, "Observations Regarding Lost Securityholder Rule Compliance," to assist transfer agents and broker-dealers, including paying agents, in meeting their obligations under Securities Exchange Act of 1934 (Exchange Act) Rule 17Ad-17 (the Lost Securityholder Rule). The Risk Alert is informational and does not impose new obligations. It shares staff observations from examinations that identified noncompliance, including issues related to database searches and recordkeeping. The Risk Alert is a staff statement, not a rule, regulation, or statement of the SEC, and it has no legal force or effect.

Background

Rule 17Ad-17, Lost Securityholders and Unresponsive Payees, has applied to transfer agents since 1998. In 2013, the SEC extended its requirements to broker-dealers and added the unresponsive payee provision. The Division examined transfer agents and broker-dealers, some of which were also paying agents, and is sharing the results so registrants can consider them when evaluating their own compliance.

Key Observations of the Risk Alert

Failure to Comply With the Rule

The staff observed multiple firms subject to Rule 17Ad-17 that did not search for lost securityholders, provide notifications to unresponsive payees, or maintain written procedures describing their compliance methodology.

Written Procedures

- Some firms searched for lost securityholders and notified unresponsive payees but never created written procedures.
- Other firms had inadequate procedures. Some identified databases that did not meet the rule's definition of "information database service," or set search time frames that did not comply with the rule.
- Some procedures omitted basic steps, such as how to identify and code lost securityholders or how to conduct database searches.

Database Searches and Unresponsive Payee Notices

Some firms did not identify and search for all lost securityholders or notify all unresponsive payees. Causes included miscoding accounts (for example, inaccurately designating persons as deceased) and not following the firm's own procedures. Some firms searched

by a combination of taxpayer identification number (TIN) and name, rather than TIN alone, without first determining that a TIN search was not reasonably likely to locate the securityholder.

Timing
Some firms conducted a first search more than a year after the securityholder became lost, or a second search less than six months after the first. Some sent unresponsive payee notices more than seven months after the nonnegotiated check was sent.

Recordkeeping
Some firms did not retain records of searches or payee notices, such as the dates searched or when notifications were mailed.

Electronic Communications
Some firms did not update their methodology to reflect their use of electronic addresses. Their processes for coding securityholders as lost did not account for emails returned as undeliverable, so those securityholders were not coded as lost.

The Risk Alert encourages registrants to review the SEC's existing guidance on electronic delivery and notes the Commission's July 16, 2026, proposal of Regulation E-Delivery.

Practical Implications for Transfer Agents and Broker-Dealers

The Division encourages firms to evaluate their practices, policies, and procedures and implement appropriate modifications. Firms should consider the following steps:

- Confirm that written procedures describe the firm's methodology for identifying and coding lost securityholders, conducting database searches, and notifying unresponsive payees;
- Verify that the databases used meet the rule's definition of "information database service" and that search time frames comply with the rule;
- Review account coding practices to prevent miscoding, such as incorrectly designating securityholders as deceased;
- Confirm that searches are made by TIN unless a TIN search is not reasonably likely to locate the securityholder;
- Retain records of search dates and payee notifications;
- Update coding processes to account for emails returned as undeliverable where electronic addresses are used.

The Risk Alert notes that other risks may be appropriate to consider and that the adequacy of a firm's systems depends on its specific profile, facts, and circumstances.

SEC Proposes to Modernize Rules for Registered Transfer Agents

09.01.26

Overview

On September 1, the SEC proposed to update the rules and forms that apply to registered transfer agents.

The SEC describes transfer agents as a key component of the national clearance and settlement system. It says they now perform a more diverse array of functions and services that may not be adequately addressed by the SEC's transfer agent rules, which have not been substantively updated since the first rules were adopted in the late 1970s and early 1980s. According to the SEC, the proposal would modernize the federal transfer agent rules while continuing to facilitate the safe and efficient functioning of the U.S. securities markets and the national clearance and settlement system.

The proposed rule updates reflect the technological environment in which transfer agents operate, including the widespread use of electronic recordkeeping and communications, and the services they provide to issuers, investors, and other market intermediaries. The proposal would amend existing rules and forms, rescind a rule, and introduce new rules that apply to registered transfer agents and their activities.

Comments on the proposal should be received on or before November 3, 2026.

The proposal is available here: Proposed rule: Transfer Agent Rules.

SEC Proposes Rescission of Political Contribution Rule for Investment Advisers

09.03.26

On September 3, the SEC issued a proposal to rescind Rule 206(4)-5 under the Investment Advisers Act of 1940 (the Advisers Act), commonly known as the “pay-to-play” rule, in its entirety, including the related recordkeeping requirements under Rule 204-2. Since its adoption in 2010, the “pay-to-play” rule has banned investment advisers from receiving compensation for managing state or local government client assets for two years after a covered associate makes a political contribution to relevant officials.

In a public statement, SEC Chairman Paul S. Atkins described the rule as “overly prescriptive and has produced a host of unintended consequences,” noting the rationale for the proposal as including the rule’s overbreadth, strict-liability penalties for minor or inadvertent donations ("foot-faults"), suppression of political speech, and administrative complexity. Atkins added that, “[u]ltimately, matters involving political contributions are more properly governed by local ordinances, state laws, and federal election regulations — not by the SEC.” General fiduciary duties, antifraud provisions, the compliance rule (Rule 206(4)-7), and code of ethics rules under the Advisers Act remain as safeguards that continue to apply.

Comments on the proposal should be received on or before November 9, 2026.

The proposal is available here: Proposed rule; rescission: Political Contributions by Certain Investment Advisers.

Examinations Observations Regarding Investment Adviser Annual Compliance Review

09.14.26

On September 14, the SEC's Division of Examinations (the Division) issued a Risk Alert sharing staff observations on how SEC-registered investment advisers conduct the annual review of their compliance policies and procedures required by Rule 206(4)-7 (the Compliance Rule) under the Investment Advisers Act of 1940. The Compliance Rule requires advisers to review, at least annually, the adequacy of their policies and procedures and the effectiveness of their implementation, and to keep true, accurate, and current records documenting those reviews. Advisers, chief compliance officers (CCOs), and compliance personnel should expect annual reviews to remain a routine focus of examination document requests.

Overview

Timeliness – The staff observed advisers that skipped years (*e.g.,* reviewing 2021 and 2023 but not 2022), let review intervals exceed 12 months (including after CCO departures or other business changes), treated compliance training or annual attestations as a substitute for a review, or failed to correct this issue after prior deficiency letters.

Complete Review Procedures – Some advisers required annual reviews, testing, and validation but adopted no procedures (or incomplete ones) describing how to test, what factors to weigh, or what documentation to keep. Others omitted from the review topics that other sections of their own policies required to be reviewed annually, such as identity theft testing.

Consistency with Written Procedures – Reviews were conducted on time but did not follow the advisers' own procedures for review period, scope, workpapers, and required tests, and in some cases assessed outdated, superseded versions of policies.

Alignment with Practices – Reviews failed to detect that policies did not address risk areas pivotal to the business or did not reflect business changes. Examples include fee billing that deviated from disclosures (fee methodologies, proration, breakpoints, refunds); proxy voting policies inconsistent with disclosures and practice; custody procedures that did not identify accounts to the surprise-examination accountant; marketing policies not updated for the marketing rule; filing procedures omitting Form CRS; no oversight of delegated functions; and known noncompliance incidents left out of the review.

Documentation – Advisers created review materials (testing, issues identified, recommended corrective actions) but did not keep them in their books and records, did not prepare required written annual review reports, or only partially completed required checklists and templates.

Corrective Action – Advisers did not implement changes recommended in their annual reviews (*e.g.,* proxy voting disclosures, client risk tolerance documentation, best execution analysis, and broker-dealer due diligence), including cases where reports stated actions had been taken but the issues persisted.

The Division encourages advisers to reflect on their own practices, policies, and procedures and to make appropriate modifications to their annual review processes. The Risk Alert reflects staff views only; it has no legal force or effect and creates no new obligations, and its relevance depends on each firm's particular profile and circumstances.

Given these observations, advisers should confirm that reviews occur at least every 12 months, which written review procedures are complete and actually followed, that policies reflect current business practices and regulatory changes, that review workpapers are retained, and that recommended corrective actions are tracked to completion.

A copy of the Risk Alert can be found at: https://www.sec.gov/files/examinations-observations-regarding-investment-adviser-annual-compliance-review-091426.pdf.

SEC Proposes Rescission of Shareholder Proposal Rule and Reforms to Proxy Solicitation Process

09.16.26

On September 16, the SEC issued two proposals that, if adopted, would be the most significant overhaul of the federal proxy rules in decades. The first would rescind Rule 14a-8 under the Securities Exchange Act of 1934 (the Exchange Act), the rule that has required public companies to include qualifying shareholder proposals in their proxy materials since 1942, and would revise Exchange Act Rule 14a-4(c) on discretionary voting authority. The second would update a series of proxy mechanics that were written for a paper-based world.

Why the SEC Wants to Rescind Rule 14a-8

The SEC argues that Section 14(a) of the Exchange Act lets it regulate how companies solicit votes, not what shareholders may vote on, which is a matter of state law. As the release puts it, "longevity is not a substitute for legal authority." The SEC also cites policy concerns: only about 7% of the 786 proposals submitted in 2025 received majority support, 10 proponents filed 58% of them, and, apart from Texas, no state has legislated on shareholder proposals in more than 80 years.

If adopted, shareholder proposal rights would be governed by state law and each company's charter and bylaws, including for registered funds and business development companies (BDCs). Separately, SEC staff stopped responding to Rule 14a-8 no-action requests on August 14, 2026, although companies must still file the Rule 14a-8(j) notice of intent to exclude.

Changes to Discretionary Voting Authority (Rule 14a-4(c))

Today, a company loses discretionary voting authority over a non-Rule 14a-8 proposal if the proponent solicits enough shares to carry it, a dynamic exploited in "zero slate" campaigns. The SEC would remove that threshold if the company describes the proposal and its intended vote in the proxy statement and gives shareholders a checkbox to withhold discretionary authority over their own shares. This change could be adopted even if Rule 14a-8 is not rescinded.

Modernizing Proxy Mechanics

The separate modernization proposal would:

- **End annual report delivery**: Companies would no longer have to deliver an annual report to security holders; filing the Form 10-K (or furnishing an annual report on EDGAR) would suffice, and companies with a current Form 10-K on file would be relieved of the separate Rule 14a-3 annual report disclosure requirements.
- **Drop the stock performance graph**: Noninvestment companies would no longer have to include the Item 201(e) graph.

- **Remove a delivery deadline**: The 20-business-day delivery deadline would be eliminated.
- **Exempt solicitations**: Rule 14a-6(g) filings, both mandatory and voluntary, would be eliminated.
- **Shorten the broker search**: The minimum period would drop from 20 business days to five.
- **Add a contact person**: Proxy statements would list a contact representative.

What This Means for Public Companies

- **Plan the next proxy season under current rules**. Any final rules are unlikely to take effect before the 2026–2027 proxy season, and the statutory-authority theory may draw litigation. Companies should continue to follow Rule 14a-8's deadlines and procedures, without expecting SEC staff no-action responses.
- **Review advance notice bylaws now**. Without Rule 14a-8, advance notice bylaws become the primary procedural control over shareholder proposals, and under the proposed Rule 14a-4(c) they would govern timeliness for discretionary voting. Bylaw changes take lead time and board discussion.
- **Watch the states, exchanges, and proxy advisers**. Many state statutes are silent on shareholder proposals. Delaware's Corporation Law Council is factoring the potential rescission into its annual statutory review, Texas has an opt-in statute that already sets ownership and solicitation thresholds, and the NYSE, Nasdaq, Institutional Shareholder Services (ISS), and Glass Lewis may issue their own guidance.
- **Expect activism through other channels**. Proponents may shift to independent solicitations, floor proposals, "vote no" campaigns, and public pressure. With Notices of Exempt Solicitation eliminated, companies will need to monitor press releases and third-party platforms more closely.
- **Do not count on the shorter broker search yet**. Broker and bank response deadlines are not changing and can exceed five business days, so companies should keep a buffer in accelerated meeting timelines.

The Bottom Line

The SEC is proposing to step out of the shareholder proposal business and return those questions to state law and company governing documents, while streamlining proxy mechanics that have not kept pace with technology. The changes are not final and could shift after the comment period, but companies that review their bylaws, track state-law developments, and strengthen direct shareholder engagement now will be best positioned for whatever the final rules look like.

Comments on the proposal should be received on or before November 20, 2026.

A copy of the proposal is available here: Proposed Rule: Rescission of Rule 14a-8's Federal Regulation of Shareholder Proposals and Amendments to Rule 14a-4.

SEC Proposes Expanding Securities Eligible for Cross Trading by Registered Funds

10.09.26

On October 9, the SEC proposed amendments to Rule 17a-7 under the Investment Company Act of 1940, commonly known as the “cross-trading rule,” which permits transactions in securities between a registered fund and its affiliates under certain conditions. When executed appropriately, cross trades allow registered funds to avoid costs associated with open market trades and to then pass those savings on to investors.

Following the initial adoption of Rule 17a-7 in 1966, registered funds relied on the cross-trading rule to trade both equity and fixed-income securities. However, adoption of the Investment Company Act’s “fund valuation rule” in 2020 effectively restricted cross trading of most fixed-income securities. The amendments being proposed include, among other things, to:

(1) Expand cross trading to include securities valued using directly or indirectly observable market inputs (generally Level 2 securities under U.S. GAAP), restoring the ability to cross trade most fixed-income securities (such as corporate and municipal bonds). Level 3 unobservable-input assets remain excluded;

(2) Replace restrictive price conditions with two alternative options: (i) the security's value in the fund's next net asset value (NAV) calculation on the trade day, or (ii) an adviser-determined current market price using unaffiliated pricing sources;

(3) Remove the requirement for fund boards to adopt procedures, approve changes, or make quarterly compliance determinations, shifting routine compliance review and annual back-testing to the fund’s chief compliance officer; and,

(4) Require aggregated reporting of cross-trading activity by asset class on Form N-PORT and Form N-MFP, alongside new recordkeeping obligations, to provide additional transparency.

Comments on the proposal should be received on or before December 14, 2026.

The proposal is available here: Proposed rule: Investment Company Cross Trading.

Litigation and Enforcement

SEC Establishes Financial Reporting and Accounting Unit in Enforcement Division

08.05.26

On August 5, the SEC announced it is establishing a new Financial Reporting and Accounting Unit within its Division of Enforcement (the Division). The unit will focus on accounting and financial reporting fraud, as well as misconduct in the accounting and auditing areas more broadly. Issuers, audit committees, auditors, and finance executives should expect this change to sharpen the SEC's focus on accounting-related matters.

Overview

Mandate – In providing dedicated expertise, focus, and capacity to pursue accounting and financial reporting fraud cases as well as general misconduct in the accounting and auditing areas, the unit will work closely with staff across all relevant SEC divisions and offices.

Leadership – Timothy Zimmerman, who joined the SEC in May 2026 as a senior advisor to Division Director David Woodcock, will lead the unit. Prior to May, Zimmerman worked for 12 years at an international law firm and most recently served as Deputy General Counsel at an international accounting and professional services firm.

Staffing – The unit will be staffed by both attorneys and accountants with specialized skills related to financial reporting, accounting, and auditing in securities regulation.

With the new unit's dedicated accounting expertise, issuers, audit committees, and audit firms should expect closer scrutiny of financial reporting. Now is a good time to review accounting policies, internal controls, and documentation practices.

Investment Company and SEC Regulatory Matters

- Joseph V. Del Raso, Partner | Joseph.DelRaso@troutman.com
- John M. Ford, Partner | John.Ford@troutman.com
- Genna Garver, Partner | Genna.Garver@troutman.com
- Theodore D. Edwards, Partner | Theodore.Edwards@troutman.com
- Terrance James Reilly, Counsel | Terrance.Reilly@troutman.com
- Michael M. Matthews, Associate | Michael.Matthews@troutman.com
- James L. Severs, Associate | James.Severs@troutman.com
- Meghan E. Termat, Associate | Meg.Termat@troutman.com
- Taylor M. Williams, Associate | Taylor.Williams@troutman.com
- Barbara H. Grugan, Senior Regulatory Compliance Specialist | Barbara.Grugan@troutman.com

SEC Enforcement and Litigation Matters

- Jay A. Dubow, Partner | Jay.Dubow@troutman.com
- Ghillaine A. Reid, Partner | Ghillaine.Reid@troutman.com

Financial and Securities Regulatory Matters

- Matthew M. Greenberg, Partner | Matthew.Greenberg@troutman.com

Investment Company Tax Matters

- Saba Ashraf, Partner | Saba.Ashraf@troutman.com
- Morgan Klinzing, Partner | Morgan.Klinzing@troutman.com
- Thomas Gray, Partner | Thomas.Gray@troutman.com

Authors



Joseph V. Del Raso
Partner | Philadelphia
West Palm Beach
joseph.delraso@troutman.com

VIEW BIO

Joseph's work encompasses the representation of investment advisers, mutual funds, closed-end investment companies, unit investment trusts, hedge funds, offshore funds and publicly owned venture capital funds, usually organized as business development companies. He advises clients on the development of new or innovative securities products that are regulated by the Investment Company Act and works closely with the SEC, state securities regulators, and federal and state banking regulatory authorities that are primarily responsible for the oversight of collectively managed investment vehicles.



John M. Ford
Partner | Philadelphia
john.ford@troutman.com

VIEW BIO

John focuses his practice on investment company and investment adviser regulatory issues, and related issues affecting the investment management activities of financial institutions. He assists clients with the formation and registration of investment companies and investment advisers, and provides advice about regulatory compliance and securities law issues. He serves as fund counsel to a broad array of mutual fund complexes and is experienced in the issues impacting both large-scale fund operations and smaller complexes operating as niche players.



Genna Garver
Partner | New York
genna.garver@troutman.com

VIEW BIO

Genna provides targeted, practical advice to asset managers and financial services industry participants. She routinely advises clients on SEC and state investment adviser, broker-dealer, and private fund regulation; Investment Advisers Act compliance programs, annual reviews and ongoing compliance matters; and regulatory examinations and investigations. Genna represents asset managers trading digital assets as well as investing in digital asset treasury companies (DATs). She also has extensive experience representing financial institutions in a variety of transactional and regulatory matters.



Theodore D. Edwards
Partner | Philadelphia
theodore.edwards@troutman.com

VIEW BIO

Theodore advises private and registered funds and their sponsors on formation, transactions, and regulatory compliance. He has experience with open-end and closed-end funds, and funds pursuing a variety of strategies, including private equity, real estate, private credit, and hedge funds. Theodore counsels investment advisers as to formation, registration, compliance, and disclosure matters. His sponsor work also includes design and implementation of carried interest programs and upper tier structuring, and he has advised investment advisers in connection with regulatory exams. Theodore regularly addresses status issues under the Investment Company Act of 1940 and the Investment Advisers Act of 1940.



Terrance James Reilly
Counsel | Philadelphia
terrance.reilly@troutman.com

VIEW BIO

Terrance advises registered investment companies, investment advisers, hedge funds, broker-dealers and other financial services industry firms, bringing industry experience and a practical approach to addressing their ongoing management needs. He has been involved in the investment industry for more than 25 years and is well-versed in all applications of the Investment Company Act of 1940 and the Investment Advisers Act of 1940. Terrance also has extensive experience with the ongoing representation of several mutual fund complexes.



Joseph T. Cataldo
Associate | Boston
joseph.cataldo@troutman.com

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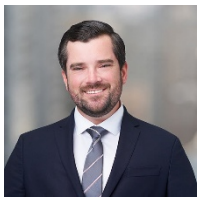
Joe is an associate in the firm's Corporate practice, advising clients on mergers and acquisitions, venture financing, securities transactions, and corporate governance. He represents private equity funds and portfolio companies in technology, business support services, and real estate sectors. Joe also counsels capital markets clients on securities offerings, SEC compliance, and cross-border transactions, and advises emerging companies on corporate governance and organizational matters.



DeJuawn "DJ" Griffin
Associate | Atlanta
dj.griffin@troutman.com

VIEW BIO

DJ is an associate in the firm's Corporate practice.



Michael Matthews
Associate | Philadelphia
michael.matthews@troutman.com

VIEW BIO

Michael is an associate in the firm's Corporate practice. He received his J.D. from the Temple University Beasley School of Law, where he served as managing editor for the Temple Law Review. Prior to attending law school, Michael served on active duty as an officer in the United States Army. The majority of his military career was spent serving in the 101st Airborne Division with whom he deployed to Afghanistan. His service also saw time spent leading soldiers in South Korea and across the nation in Tennessee, Oklahoma, Louisiana, and Washington state.



James L. Severs
Associate | Charlotte
james.severs@troutman.com

VIEW BIO

James advises clients on transactional and regulatory matters, including the formation of privately offered investment funds; the formation, registration, and offering of publicly traded closed-end investment companies, business development companies, and exchange-traded funds. He also advises on the operation of commodity pools; public securities offerings (including IPOs); and compliance with the Investment Advisers Act of 1940, Investment Company Act of 1940, Commodity Exchange Act, Securities Act of 1933, and the Securities Exchange Act of 1934.



Meghan E. Termat
Associate | Philadelphia West (Berwyn) | Philadelphia
meg.termat@troutman.com

VIEW BIO

Meg is an associate in the firm's Private Equity + Investment Funds practice. She received her J.D. from the Villanova University Charles Widger School of Law, where she served as managing editor of outside articles for the Villanova Environmental Law Journal.



Taylor M. Williams
Associate | Philadelphia
taylor.williams@troutman.com

VIEW BIO

Taylor is an associate in the firm's Corporate practice. While attending law school, Taylor served as a member of the Villanova Student Bar Association, the Villanova Black Law Students Association, and the Corporate Law Society. Additionally, Taylor was a student attorney in the school's Clinic for Law and Entrepreneurship, where she helped provide pro bono legal services to Philadelphia-area community enterprises, nonprofit organizations, entrepreneurs, and small businesses.



Barbara H. Grugan
Senior Regulatory Compliance Specialist | Philadelphia
barbara.grugan@troutman.com

VIEW BIO

A financial professional for more than 35 years, Barbara has broad experience with financial and compliance issues in investment management, including the design and oversight of procedures to assist investment professionals and other fiduciaries in carrying out their responsibilities. She is a designated Investment Adviser Certified Compliance Professional.

Related Practices and Industries

- Investment Management and Compliance
- Investment Funds
- Private Fund Services