Regulatory Snapshot for Private Fund Managers

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The last few weeks were marked by some news from the U.S. Securities and Exchange Commission (SEC) that may affect private fund managers and their clients and investors. To help clients stay current on these developments and be proactive with respect to any upcoming changes, the Private Equity & Venture practice group at FBT Gibbons prepared the summary below.

Enforcement Focus on Private Funds

On May 13, 2026, the new director of the SEC's Division of Enforcement (DOE), David Woodcock, delivered his first public remarks in the office, including a discussion of the private fund industry. Per Director Woodcock, "The private fund space is [...] always subject to close attention." Under his leadership (as illustrated by recent enforcement cases), the DOE will continue to focus on problematic practices in the private fund industry, including:

- Misappropriation of client assets;
- Inadequate safeguarding of assets;
- Misleading strategy disclosures;
- Undisclosed fees and expenses;
- Fraudulent valuations and mismarking;
- Prohibited trading practices; and
- Undisclosed conflicts of interest.

Interestingly, Director Woodcock specifically addressed private credit in a somewhat ominous way: "There are stresses in some portfolios and developments playing out more broadly across this sector, and we are monitoring the situation."

On a brighter note, the new DOE director stressed that his division is "not focused on prosecuting firms or individuals for honest mistakes that cause no investor harm." He emphasized the long-

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standing SEC position that "[a] company that self-reports, cooperates fully, and remediates will not be treated the same as one that conceals or obstructs."

Increased "Qualified Client" Thresholds

SEC-registered investment advisers (RIAs) cannot charge performance-based fees to clients that are not "qualified clients" under Rule 205-3 of the Investment Advisers Act of 1940 (the "Advisers Act").

As a reminder, in the case of a private fund relying on Section 3(c)(1) of the Investment Company Act of 1940, each investor of such private fund is considered a "client" for the purposes of Rule 205-3 and, thus, has to meet the "qualified client" requirements. In addition, some states impose their own prohibitions on receipt of performance-based compensation for state-registered advisers, and in so doing they refer to the "qualified client" parameters of Rule 205-3. There are also states that rely on Rule 205-3's "qualified client" requirements when defining conditions of their private fund adviser exemptions from state registration.

Finally, it should be noted that pursuant to Section 205(b)(5) of the Advisers Act, the prohibition on receipt of performance-based compensation does not apply to an investment advisory contract with a person who is not a resident of the United States.

Final Order

Every five years, to account for the effects of inflation, the SEC is required to issue an order adjusting the dollar amount thresholds for determining "qualified clients." On April 28, 2026, the SEC issued a final order increasing the "qualified client" thresholds as follows:

- Net worth – increased from at least $2.2 million to at least **$2.7 million** (excluding the person's primary residence and certain debt related to such residence); or
- Assets under management (AUM) of the investment adviser – increased from at least $1.1 million to at least **$1.4 million**.

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The final order does not generally apply retroactively; rather, the increased thresholds affect only contractual relationships entered into on or after June 29, 2026. For example, the updated thresholds do not apply to new investments by an existing investor in a Section 3(c)(1) private fund who met the definition of "qualified client" when they entered into the advisory contract (even if they no longer meet the updated dollar amount thresholds).

Action Items

By June 29, 2026 (the effective date of the final order), RIAs and other investment advisers that may be affected should update their fund offering documentation for Section 3(c)(1) private funds and investment advisory agreements for separately managed accounts (in both cases — to the extent they provide for performance-based compensation) to reflect the increased "qualified client" net worth and AUM thresholds. In addition, any other documentation that references the "qualified client" thresholds, such as compliance policies and procedures and training materials, should also be updated in a timely manner.

Finally, as with any steps taken to comply with evolving regulatory environment, RIAs should reference their actions to ensure compliance with the increased "qualified client" thresholds in their annual compliance reviews under Rule 206(4)-7 of the Advisers Act.

Proposed Form PF Amendments

The SEC may soon have some great news for RIAs with private fund AUM of $150 million or more. As a reminder, SEC-registered investment advisers must file Form PF if they, collectively with their related persons, have at least $150 million in private fund AUM as of the last day of their most recently completed fiscal year. On April 20, 2026, the SEC proposed significant amendments to the Form PF reporting. One of the proposed amendments would eliminate the Form PF filing requirement for smaller advisers by raising the filing threshold from $150 million in private fund AUM to **$1 billion**. Among other changes, the SEC is contemplating revising Form PF reporting to enable a method to identify funds that are active in the private credit market. The proposal is currently in the public comments

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stage, which will run through June 23, 2026. It is expected that the SEC will go through this rulemaking process rather expeditiously.

For any inquiries related to this client advisory, please contact your regular attorneys in FBT Gibbons' Private Equity & Venture practice group or the authors listed above.

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