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Retailization

After Retail Gets Access to Alts, Then What?

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Two statements posted on the SEC's website in rapid succession jointly offer an important message about the agency's approach to making PE and other alternative investments available to retail investors. On November 18, 2026, the SEC Division of Examinations issued its [2026 examination priorities](#), which listed several priorities in SEC examinations relating to alternative retail products, with a particular focus on favoritism as to investment allocations and cross-trades; valuation practices; and fees and expenses. Two days later, Commissioner Mark Uyeda gave a [speech](#) discussing the unique role the products can play in retail accounts and how regulators can work together to remove obstacles.

Reading between the lines of the SEC's two messages, the agency appears to be encouraging investment advisers who historically have served private markets to expand their offerings to retail customers. At the same time, however, the Commission is also signaling that it has no intention of relaxing its vigilant approach to protecting those investors. As the SEC is already looking past facilitating retail access to how it will police retail alternative products once they are widely available, this article looks beyond current obstacles to public markets and explores several ways issuers can manage downstream regulatory risks in three key areas: disclosures, sales practices and valuations.

See "[SEC 2026 Examination Priorities Highlight Classic Compliance Issues, Retailization Efforts and AI Oversight](#)" (Jan. 8, 2026).

Disclosures

The federal securities laws include broad provisions that prohibit material misstatements made to investors, whether in public or private markets. The question of whether something is misleading or material is an objective inquiry that turns on a hypothetical reasonable investor.

The provisions may be applied differently in practice because the average, hypothetical PE investor differs from the average retail investor in several important respects. An accredited investor participating in a PE offering can be presumed to have a certain level of sophistication, an ability to conduct due diligence and an awareness of market customs that may inform how they interpret disclosures about performance, fees and potential conflicts of interest. Retail investors typically do not have those traits, and the SEC reviews statements made to them in that light.

The upshot of those differences is that the SEC may hold disclosures made to retail investors to a more exacting standard than to average PE investors. Whereas the SEC may look to what practices are common in the PE industry in evaluating the accuracy of disclosures, SEC enforcement actions involving retail products typically do not assume purchasers possess specialized market or industry knowledge. Instead, the agency looks within the four corners of the disclosure to determine whether retail investors were being presented with a fair and complete picture of the risks associated with the investment opportunity.

Therefore, investment advisers may face heightened regulatory expectations for disclosures made to retail investors, especially when it comes to features or risks that are not common among traditional retail products, such as:

- atypical fee structures;
- unique conflicts of interest;
- the difficulty of valuing Level-3 assets on a daily basis; and
- the possibility of a divergence between how a fund values its assets and how the market values the fund.

See [“Retailization Season Is Heating Up: A Private Fund Manager’s Guide to Structuring, Procedures and Fundraising”](#) (Jun. 12, 2025); and [“Inherent Obstacles and Promising Pathways to Retailization in the PE Industry”](#) (May 29, 2025).

Sales Practices

The federal securities laws contain provisions – most notably, Regulation Best Interest (Reg BI) – that protect retail investors from unsuitable securities recommendations. Reg BI includes a “care obligation” requiring that broker-dealers and their registered representatives who make securities recommendations:

- have a reasonable basis to recommend the product;
- consider reasonably available alternatives; and
- ensure the product is suitable for the specific customer receiving the recommendation.

Also, Reg BI defines a “recommendation” broadly to include anything that may be considered a call to action, which can include website banners and chatbot statements.

See [“SEC Chair Defends Regulation Best Interest and Investment Adviser Fiduciary Duty”](#) (Sep. 10, 2019).

Understanding the Product

Each component of Reg BI’s care obligation is potentially relevant to issuers when structuring and launching a new product. An understanding of the product’s structure, as well as its risks and benefits, can help inform the suitability determination performed by broker-dealers and their sales

force. SEC guidance states that understanding should extend to how a product may perform in different market conditions. Educational materials, therefore, are critical not just for investors, but for distributors.

To comply with their regulatory obligations, registered representatives at broker-dealers may seek to understand not just the product's structure, but also unique risks presented by it. Examples of relevant risks may include a liquidity mismatch between an open-end fund and illiquid underlying investments, including what a customer's experience may be if their holding period does not extend until the fund sells some or all of the assets in its portfolio. Issuers can help distributors perform suitability assessments under Reg BI by offering trainings and materials that educate their sales force on underlying risks of the products, with a particular focus on risks that typically are not present with retail products.

In addition, it is worth noting that Reg BI guidance states that securities recommendations should take into account how products may perform across different market conditions. To that end, distributors may benefit from training and educational materials that not only assess risk and performance purely from a historical perspective but also consider current and future challenges to alternative products, such as different interest rate environments and an evolving competitive landscape.

See "[Survey Finds PE Fundraising Momentum Building Toward 2026 Uptick](#)" (Sep. 18, 2025).

Reasonably Available Alternatives

How issuers structure and market retail alternative products can also be relevant to a broker-dealer's consideration of reasonably available alternatives. Many firms – especially recordkeepers under the Employee Retirement Income Security Act of 1974 – have advice tools that recommend proposed allocations and investments within each asset class based on, among other things, the customer's existing holdings and retirement goals. For each asset class, those tools typically analyze all available assets within a given asset class and make recommendations from among them using mean variance optimization that balances expected returns with their accompanying risks and costs.

Many existing retail products are structured to optimize their performance as to those tools by offering passive strategies that have relatively low costs and high historical returns. Many of the benefits of PE, such as the ability to anticipate market cycles and to improve an asset for an exit opportunity, do not lend themselves to easily being measured, even though higher fees may be charged in exchange for those services. Therefore, issuers may seek to obtain visibility into how their prospective offerings would fare under several prominent advice tools relative to other products in the same asset class.

Specific Investor Recommendations

The care obligations under Reg BI require that a recommendation be in the best interest of the particular customer based on their investment profile. SEC guidance on what may be in a

particular customer's best interest focuses on aspects of products that are easily comparable, such as their fees and level of complexity. Focus on those factors gives products currently filling retail accounts – *e.g.*, index funds, target date funds and exchange-traded funds – a distinct advantage.

There are other areas, however, where alternative retail products may offer important advantages, such as diversification from public markets and returns that are less correlated with those markets than many other equity or fixed income products. Educating distributors, as well as the broader public, about those unique advantages can better inform suitability determinations and can make the advantages of alternative products more top of mind, which may, in turn, lead to more customer-initiated purchases.

See this two-part series on retail distribution platforms: “[Growing Popularity, Numerous Benefits and Operational Obstacles](#)” (Sep. 4, 2025); and “[Selection Criteria, Due Diligence Processes and Potential Pitfalls](#)” (Sep. 18, 2025).

Valuations

Product Risks

Although assets commonly held in PE funds and other alternative products (*e.g.*, private companies and real estate) are often difficult to value, the structure of those products often mitigates the risks presented by inaccurate valuations. The problem, however, is that many of the analogues of those products that are developed for retail investors may lack those same mitigants, which could raise new challenges for advisers. For that reason, issuers should consider new approaches and safeguards when valuing fund assets in retail vehicles.

The structure of private funds inherently insulates those investors from some of the risks associated with misvaluing assets. For example, PE investors are typically required to hold for years and stand to profit together from the same liquidity event, which makes monthly or quarterly valuations sufficient. For a retail product that offers daily liquidity, however, investors rely on the accuracy of the fund's daily net asset value because it sets the prices at which they buy in and sell out. That introduces a need for issuers to perform daily valuations of illiquid, hard-to-value products. With financial information on the underlying asset only available weekly or monthly, valuing the asset during intervening days can be challenging.

Another challenge with retail alternative products is that not all investors share the same intended investment horizon. Whereas private fund investors are largely committed to the same investment horizon, retail investors with access to daily liquidity will hold at different times and for different lengths. A failure to timely mark down an asset may, therefore, benefit retail investors who sell before the mark-down and adversely impact those who do not, just as a failure to timely incorporate positive developments into the valuation would have the inverse effect.

See “[Structural Challenges PE Sponsors Must Overcome to Expand Into 401\(k\)s \(Part One of Two\)](#)” (Oct. 16, 2025).

Potential Solutions

To manage the unique valuation risks posed by retail alternative products, issuers may want to consider adopting the following practices.

Detailed Disclosures

A thorough description of an issuer's valuation methodologies can help investors better understand changes in valuations or the lack of such changes. Although an issuer can always be subject to a claim that it did not follow a valuation methodology, claims that a methodology itself was flawed become more difficult when the challenged aspects of the methodology have always been known.

Different Valuation Methodologies

Many PE and hedge fund managers engage in a robust valuation process on a monthly or quarterly basis, which may require extensive analysis conducted over several days. The impracticality of engaging in that process on a daily or even weekly basis should not deter issuers from continuing to use thorough valuation methodologies at the end of each month. Given that the inputs that go into determining fair value are typically not as robust outside of the end of each month, issuers should consider intra-month valuation methodologies that are tailored to the types of inputs that are available. Those methodologies can be informed by the more fundamental analysis conducted at the end of each month and use intra-month datapoints to estimate intervening changes in value.

Pricing Services

Pricing services play a beneficial role in valuations by bringing expertise and additional market visibility, as well as by introducing a measure of independence. Those benefits, however, often come with risks that should be carefully managed. Although it is always important to convey accurate and relevant information to pricing services to consider when determining fair value, it is even more critical when the task at hand is providing daily valuations for a Level-3 asset. As things can fall through the cracks when discussed informally, issuers should consider implementing processes for ensuring all relevant information is timely conveyed.

See this three-part series on independent valuation firms: [“As Scrutiny of Valuations Grows Throughout the Industry, so Does Their Importance”](#) (Sep. 29, 2020); [“Rising Prominence of Third-Party Valuations and Factors to Consider When Engaging a Firm”](#) (Oct. 6, 2020); and [“Tips for Overseeing the Process and Resolving Disputes Over Conflicting Valuations”](#) (Oct. 13, 2020).

Conclusion

As regulators seek to broaden access to private markets long denied to retail investors, both issuers and retail investors stand to benefit. Failures to anticipate the protections afforded to retail investors, however, may lead to private and regulatory actions seeking to enforce those protections.

In turn, that enforcement activity may prompt regulators to reassess their push for retail access to the private markets, or compel regulators in a new administration to walk it back.

The success of retail alternative products may depend on structures and approaches that carefully consider the objectives of the different types of investors; conflicts that can arise from managing one set of investors over another; and how the regulatory obligations of the issuer and distributor can be met for each type of investor.

See “[SEC Investor Advisory Committee’s Recommendations to Facilitate Retail Access to Private Markets](#)” (Oct. 30, 2025).

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