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Regulatory Update

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SEC Proposes Amendments to the Small Entity Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act

On January 7, 2026, the Securities and Exchange Commission (SEC) issued a proposal to modernize the definitions of "small entities" under the Regulatory Flexibility Act (RFA). The SEC seeks to update thresholds that have remained largely unchanged since 1998 by proposing to raise the "small entity" assets under management (AUM) threshold for:

- Investment advisers from $25 million to $1 billion
- Investment company from $50 million to $10 billion.

The proposal also updates aggregation rules for related funds and adds a requirement for inflation adjustments every ten years. These changes are intended to help future SEC rulemaking to more accurately reflect the operational realities of smaller advisers and funds and to better incorporate their cost and resource limitations into regulatory impact analyses. Importantly, the proposal does not change AUM thresholds for SEC registration, but it would require significantly more advisers to complete Form ADV Item 12, which determines "small business" status for RFA purposes.

Although no immediate compliance obligations would change under this proposal, the broadened definition of "small entities" would affect how the SEC structures future regulatory requirements. A much larger segment of the advisory industry would have its characteristics, costs, and operational constraints factored directly into the SEC's economic analysis when crafting new rules. As a result, advisers may see more tailored regulatory expectations, longer compliance timelines, and greater flexibility in future rulemaking. The proposal aims to reduce disproportionate burdens on smaller firms and support a more scalable regulatory framework as the industry continues to evolve.

Read the proposal here.

Updated SEC Marketing Rule FAQ

On January 15, 2026, The SEC's Division of Investment Management issued two targeted updates to its Marketing Rule FAQs, providing clarification in areas where advisers continue to face practical interpretive questions. The new guidance focuses on the appropriate use of model fees when presenting net performance and the circumstances under which compensated promoters who are subject to certain self-regulatory organization (SRO) orders may still be eligible to provide testimonials and endorsements. These updates offer meaningful direction for firms seeking to ensure their marketing practices remain aligned with the rule's general prohibitions and disclosure expectations.

1) Performance: Use of Model Fees

The SEC introduced new guidance addressing how advisers should calculate and present net performance when the fees charged historically differ from the fees anticipated for the intended audience. The staff emphasized that presenting net performance using only actual historical fees could, in certain circumstances, be inconsistent with the Marketing Rule's general prohibitions if prospective clients will be charged higher fees. In such situations, advisers may need to apply a model fee that reflects the anticipated charges to avoid creating a misleading impression. This update reinforces the importance of ensuring that net performance presentations accurately and fairly represent the fee environment relevant to the audience receiving the advertisement.

Practical takeaway: If the fees you plan to charge new or prospective clients exceed historical fee levels, consider using a model fee to generate net performance or ensure that any differences are clearly disclosed so as not to mislead.

2) Testimonials and Endorsements: SRO Final Orders and Ineligible Persons

The SEC also clarified the eligibility status of promoters who have been subject to final orders issued by self-regulatory organizations. According to the updated FAQ, a person subject to such an order is not necessarily prohibited from providing compensated testimonials or endorsements, provided the SRO did not suspend or bar the individual from acting in any capacity. Advisers must also confirm that the SRO order is the sole basis for potential ineligibility, verify that the individual is in full compliance with the order including satisfaction of any financial obligations and ensure that for ten years, any advertisement that includes the testimonial or endorsement clearly discloses the existence of the order and provides access to it when available.

Practical takeaway: Advisers may continue to compensate such promoters only if all eligibility conditions are satisfied and advertisements include clear, prominent disclosures describing the SRO order.

Read the FAQ here.

SEC Statement on Tokenized Securities

On January 28, 2026, the Securities and Exchange Commission reiterated that representing a security on a blockchain does not alter its legal classification or the obligations associated with it. In its recent statement, the SEC emphasized that tokenized securities remain subject to the full scope of federal securities laws, including registration, disclosure, anti-fraud rules, and all requirements that apply to traditional securities. The Commission noted that the use of distributed-ledger technology may enhance efficiency and transparency, but it does not change the fundamental nature of the underlying instrument. A digital token that represents a security is still a security, and all regulatory obligations are preserved regardless of technological format.

What Are Tokenized Securities?

Tokenized securities are traditional financial instruments such as stocks, bonds, or fund interests that are recorded, transferred, or tracked on a blockchain. Tokenization does not modify investor rights or the issuer's responsibilities; it simply changes the method by which ownership is represented. These tokens may be issued directly by the issuer or by an intermediary that holds the underlying security and creates a digital representation of the related entitlement. Regardless of the structure, the SEC has made clear that the same legal requirements apply to both on-chain and off-chain versions of a security. Market participants using tokenization are expected to evaluate disclosure obligations, custody considerations, and the legal rights conveyed by the tokenized form.

SEC Observations on Market Infrastructure and Tokenization

The SEC has acknowledged that market infrastructure providers are exploring models that integrate blockchain technology into settlement and recordkeeping. Pilot programs and no-action processes have emerged to test tokenized entitlements and blockchain-based transfer mechanisms. Even in these experimental stages, the Commission has emphasized that operational oversight, books-and-records requirements, and investor protections remain unchanged. Tokenization may help modernize aspects of post-

trade processing, but it does not provide an alternative regulatory framework or reduce the need for compliance with existing securities-market controls.

Why Bitcoin Is Not a Tokenized Security

Bitcoin does not fall within the SEC's concept of a tokenized security because it is a native asset and does not represent an ownership interest in a traditional security or issuer. Unlike tokenized securities, which digitize an existing financial instrument, Bitcoin is a native digital asset created by and existing on its own decentralized network. It is not a tokenized version of a stock, bond, or other regulated security, nor does it convey legal or beneficial ownership rights in an underlying asset. For this reason, Bitcoin is treated differently under federal law and does not fall under the SEC's tokenization guidance.

Compliance Considerations for Firms

Firms engaged in the issuance, tokenization, or trading of tokenized securities should operate with the same regulatory posture they would apply to traditional instruments. This includes evaluating appropriate registration pathways, providing full and fair disclosures, ensuring proper custody and control of securities or entitlements, and maintaining robust market-conduct and recordkeeping practices. Firms considering third-party tokenization models should take particular care to address counterparty risk, the clarity of investor rights, and how blockchain-based mechanics map onto established legal requirements. The SEC's core message remains consistent: tokenization does not alter the application of securities laws, and compliance expectations remain fully intact.

Read the SEC statement here.

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