

Regulatory Update

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FINRA Opens Comment Period on Modernizing Arbitration Processes (Notice 26-06)

On March 2, 2026, the Financial Industry Regulatory Authority (FINRA) issued Regulatory Notice 26-06, requesting public comment on a broad initiative to modernize its arbitration rules, guidance, and processes. The Notice highlights FINRA's intent to reassess key components of its arbitration framework—including forum selection, claim eligibility, arbitrator qualifications, dispositive motions, discovery, hearing management, and the handling of punitive damages—to improve fairness, efficiency, and transparency in dispute resolution. The initiative stems from extensive stakeholder feedback received through earlier comment requests, as well as ongoing engagement with member firms and the investing public.

FINRA emphasizes that arbitration remains a critical mechanism for resolving customer and industry disputes and that modernization efforts aim to reduce unnecessary burdens while strengthening investor protection. Market participants are encouraged to evaluate how potential reforms may affect compliance obligations, litigation strategy, and customer-facing agreements. The comment period for Notice 26-06 is open until May 1, 2026, giving firms and other stakeholders the opportunity to help shape the future of FINRA's arbitration.

Read the notice [here](#).

SEC Updates Fund of Funds FAQ: New Guidance on Rule 12d1-4 Requirements

On March 5, 2026, the US Securities and Exchange Commission (SEC) Division of Investment Management issued an updated set of Fund of Funds Arrangements Frequently Asked Questions, providing additional clarity on the application of Rule 12d1-4 under the Investment Company Act. The latest update adds important guidance regarding when an acquiring fund must enter into a fund of funds investment agreement, even in situations where the acquisition does not exceed certain statutory limits. The update reinforces that if a management company relies on Rule 12d1-4 to exceed any of the Section 12(d)(1)(A) limits—whether the 3%, 5%, or 10% thresholds—an investment agreement with the acquired fund is still required.

The SEC staff also clarified that while an agreement is required under these circumstances, no formal “findings” under Rule 12d1-4(b)(2)(i) are necessary if the acquiring fund does not exceed the 3% limit. In those cases, the agreement does not need to contain “material terms” tied to those findings. This nuance helps funds tailor arrangements appropriately while still adhering to the structural requirements envisioned in the rule. The Commission's intent, as reiterated by the staff, is to ensure acquiring and acquired funds have a framework for negotiating and protecting their respective interests in fund-of-funds relationships.

Finally, the update confirms that these interpretations do not change when the acquiring entity is a unit investment trust (UIT). The same agreement obligations apply. This latest round of FAQs reflects the SEC staff's continued effort to refine practical guidance around Rule 12d1-4 and support fund complexes as they navigate the operational implications of fund-of-funds structures.

Read the FAQ [here](#).

SEC Proposes Amendments to Exchange Act Rule 15c2-11

On March 16, 2026, the SEC issued Press Release 2026-28 proposing amendments to Exchange Act Rule 15c2-11, the rule governing information-gathering and review obligations for broker-dealers that

publish quotations for securities in the OTC market. The SEC is proposing to clarify that the rule applies only to equity securities, reaffirming its long-standing purpose of preventing manipulative and fraudulent trading schemes in the OTC equity space. As SEC Chair Paul S. Atkins noted, the update is intended to ensure that regulatory requirements remain properly tailored to the relevant asset class.

Importantly, the proposal would formally update the rule text by replacing the terms “security” and “securities” with “equity security” or “equity securities,” using the existing definition under Exchange Act Rule 3a11-1. This clarification addresses the confusion that followed the 2020 amendments, which led some market participants to believe the rule extended to fixed-income and other non-equity products. While the underlying information-review requirements remain unchanged, this update makes explicit that the rule is not intended to apply beyond equities.

The proposing release is available on SEC.gov, and the public comment period will remain open for 60 days following publication in the Federal Register. Firms are encouraged to review the changes closely and assess whether any existing OTC quotation processes require adjustment in light of the clarified scope.

Read proposed rule [here](#).

SEC and CFTC Issue Landmark Interpretive Release on Crypto Asset Classification

On March 17, 2026, the SEC and Commodity Futures Trading Commission (CFTC) jointly issued Interpretive Release No. 33-11412, providing the most comprehensive regulatory clarification to date on how federal securities laws apply to crypto assets. The 68-page release establishes a unified, five-category classification framework – digital commodities, digital securities, stablecoins (not “regulated payment stablecoins”), digital tools, and digital collectibles marking a significant shift from the prior “regulation by enforcement” era to a more transparent and predictable compliance environment. This categorization aligns with the five-category taxonomy set forth in the joint interpretive release.

This collaboration reflects the agencies coordinated effort under Project Crypto to harmonize jurisdiction and provide a clear legal path for innovation in digital assets.

Central to the guidance is the explicit delineation of when a crypto asset qualifies as a security, including a formal mechanism allowing an asset to transition out of securities status if certain criteria are met. The SEC also identified several major tokens including Bitcoin, Ether, Solana, XRP, Cardano (ADA), Avalanche (AVAX), Chainlink (LINK), Dogecoin (DOGE), and additional named assets as digital commodities, placing them outside SEC jurisdiction but potentially within the CFTC’s oversight authority. The release identifies approximately 16–18 assets as digital commodities rather than the shorter list previously referenced. Additionally, the release provides detailed treatment of NFTs, fan tokens, and meme coins, generally classifying them as digital collectibles unless fractionalization or profit-reliant structures introduce securities-like characteristics.

The joint release also offers long-awaited clarity on on-chain activities, confirming that protocol staking and protocol mining are not securities transactions, thereby reducing regulatory uncertainty for both networks and market participants. Overall, Interpretive Release No. 33-11412 represents a pivotal regulatory milestone, giving market participants clearer rules of the road and helping compliance teams better evaluate the status and obligations associated with various crypto-asset activities.

What Falls Under SEC Rules vs. What Does Not

To further clarify the framework introduced in Interpretive Release No. 33-11412, the following distinctions summarize which assets are subject to SEC jurisdiction and which are not:

Under SEC Rules = “Digital Securities”

- These assets are regulated by the SEC and include: Tokenized equity and tokenized debt instruments
- Any token sold or structured as an investment contract, where value depends on the managerial or entrepreneurial efforts of others (the traditional Howey analysis)
- Fractionalized NFTs, because shared ownership introduces investment-contract characteristics
- Security tokens and other tokenized representations of traditional securities.

Not Under SEC Rules

These categories fall outside SEC jurisdiction unless structured in a way that introduces securities-like features:

- Digital commodities – including the full group of approximately 16–18 assets expressly named by the SEC and CFTC, such as Bitcoin (BTC), Ether (ETH), Solana (SOL), XRP, Cardano (ADA), Avalanche (AVAX), Chainlink (LINK), Dogecoin (DOGE), Polkadot (DOT), Stellar (XLM), Hedera (HBAR), Litecoin (LTC), Shiba Inu (SHIB), Bitcoin Cash (BCH), Aptos (APT), Tezos (XTZ), Algorand (ALGO), and LBRY Credits (LBC). These are overseen by the CFTC as commodities.
- Digital collectibles – NFTs, meme coins, and fan tokens, unless fractionalized.
- Digital tools – utility-type tokens used for access, functionality, or governance.
- Stablecoins – are not categorically securities; instead, they are assessed based on their structure and whether they satisfy securities-law tests.

Read the final rule [here](#).

DFPI Suspends FIPVCC Implementation and Launches Formal Rulemaking Process

On March 17, 2026, the California Department of Financial Protection and Innovation (DFPI) announced that it will initiate formal rulemaking for the Fair Investment Practices by Venture Capital Companies Law (FIPVCC) and has suspended the law’s implementation and enforcement until final regulations are adopted. As a result, covered venture capital firms are not required to submit registrations or demographic reports previously due by April 1, 2026. The DFPI plans to gather stakeholder feedback in the coming months before beginning the formal rulemaking process later this year.

Read the update [here](#).

DOL Final Rule Restores Five-Part Test and Reinstates PTE 2020-02

On March 20, 2026, the Department of Labor (DOL) issued a final technical amendment implementing the judicial vacatur of its 2024 Retirement Security Rule, which had sought to redefine investment-advice fiduciary status under ERISA and the Internal Revenue Code. Because federal courts stayed and later vacated the 2024 rule, it never took effect, and the regulatory framework fully reverts to the longstanding Five-Part Test for determining investment-advice fiduciary status. In this action, the DOL removes the vacated 2024 rule text from the Code of Federal Regulations, restores the prior regulatory language, and

republishes the operative text of Prohibited Transaction Exemption (PTE) 2020-02 exactly as issued in December 2020, without the 2024 amendments.

The operative conditions of PTE 2020-02 including the Impartial Conduct Standards, fiduciary acknowledgment requirements, disclosure obligations, and required policies and procedures remain in force, and PTE 2020-02 continues to serve as the primary exemption for fiduciary investment advice.

However, the DOL explains that although only portions of the PTE 2020-02 preamble were vacated by courts, those vacated portions are so interrelated with the remaining sections that the Department is “no longer confident in the soundness of the remaining portions of the preamble,” and thus the preamble is no longer reliable as interpretive guidance. Legal analysis confirms that the Department has effectively withdrawn the preamble due to these rulings.

The DOL characterizes this update as a ministerial action required to implement the court decisions, and therefore not subject to notice-and-comment rulemaking.

Read the final rule [here](#).

Reg M – Rule 5190 Filings Report Card

On March 23, 2026, FINRA introduced the Reg M – Rule 5190 Filings Report Card as part of its ongoing effort to strengthen oversight of Regulation M reporting obligations. This new tool provides firms with detailed insights into exceptions identified during FINRA’s review of Rule 5190 submissions, including analyses by exception type and deal type. It also offers industry-wide compliance benchmarking, allowing firms to compare their filing accuracy and timeliness against peer firms and identify trends that may indicate supervisory or procedural weaknesses.

This initiative supports compliance with FINRA Rule 5190, which requires member firms to submit timely notices to FINRA for key events in distributions subject to Regulation M such as pricing notices, cancellations or postponements, and the imposition of penalty bids or syndicate covering transactions. These filings are essential for FINRA’s ability to monitor for potential market-manipulative activity during restricted periods. The report card functions as a practical compliance checkpoint, helping firms verify that internal controls are capturing and submitting required notifications accurately and within mandated timeframes.

Firms are encouraged to integrate the report card into their compliance testing calendars and supervisory routines. By reviewing exception summaries and benchmarking data regularly, compliance teams can proactively identify gaps, refine reporting workflows, and reinforce adherence to Regulation M’s market-integrity safeguards.

Read more information here on viewing the on-demand recording [here](#).

NFA Finalizes Amendments to Interpretive Notices on Swap Valuation Dispute Reporting and Marketing Material Supervision

On March 23, 2026, the National Futures Association (NFA) officially adopted revisions to Interpretive Notice 9072 (Swap Valuation Dispute Filing Requirements) and Interpretive Notice 9077 (Supervision of Marketing Materials for Swap Dealers and Major Swap Participants). These amendments follow the NFA’s

March 5, 2026, submissions to the Commodity Futures Trading Commission (CFTC) and are now fully in force after the expiration of the CFTC's 10-day review window, signaling that no objection was raised. Interpretive Notice 9072 now reflects a revised effective date of March 23, 2026, replacing the previously operative 2018 version.

These final amendments modernize NFA's approach to swap valuation dispute reporting by aligning filing obligations with cross-border substituted compliance and refining the circumstances under which swap dealers must escalate valuation disputes to regulators. Similarly, Interpretive Notice 9077 also revised effective March 23, 2026, updates supervisory expectations regarding the creation, use, and retention of marketing materials used by swap dealers and major swap participants. The changes reinforce supervisory rigor, including clearer definitions of what constitutes marketing material and heightened employee training and documentation requirements.

Collectively, the finalized amendments underscore NFA's continued commitment to enhancing regulatory oversight, improving the quality and consistency of risk-relevant data reporting, and elevating supervisory standards across the swap dealer community. Firms subject to these rules should promptly update their internal compliance programs, reporting workflows, training modules, and recordkeeping frameworks to incorporate the new requirements for both swap valuation dispute filings and marketing material supervision.

Read the notice [here](#).

SEC Issues Notice to Update Performance Fee Eligibility Thresholds

On March 27, 2026, the SEC issued Release No. IA-6955, announcing its intent to adjust for inflation the financial thresholds that determine whether a client qualifies as a "qualified client" permitted to pay performance-based advisory fees under Rule 205-3 of the Investment Advisers Act. The planned adjustments would raise both the net-worth requirement and the assets-under-management threshold to reflect inflation since the last update in 2021, continuing the Commission's obligation under the Dodd-Frank Act to revisit these values approximately every five years.

Unless a hearing is requested, the SEC will finalize and publish the order in the Federal Register, with the updates expected to take effect roughly 60 days after issuance. The anticipated revised thresholds are \$1.4 million in AUM (up from \$1.1 million) and \$2.7 million in net worth (up from \$2.2 million). Advisers who rely on the qualified-client exemption particularly those charging performance fees, carried interest, or incentive fees should review advisory contracts, investor questionnaires, and subscription materials ahead of the effective date to ensure ongoing compliance.

Read the release [here](#).

DOL Issues Proposed Rule on Fiduciary Duties for Selecting Designated Investment Alternatives

On March 31, 2026, the Department of Labor's Employee Benefits Security Administration issued a proposed rule titled Fiduciary Duties in Selecting Designated Investment Alternatives. The rule aims to clarify ERISA's duty of prudence for fiduciaries of participant-directed individual account plans most notably 401(k) plans when selecting designated investment alternatives. The proposal would establish a process-based safe harbor outlining how fiduciaries should evaluate investment options, including asset-

allocation funds that contain alternative assets such as private equity, real estate, digital assets, commodities, infrastructure investments, and lifetime income strategies. The proposal directly implements Section 3(c) of Executive Order 14330, which seeks to democratize access to alternative assets for 401(k) investors by reducing regulatory barriers and litigation risks that currently discourage plan sponsors from offering these investment types.

Under the proposal, fiduciaries would be required to follow a prudent, well-documented evaluation process, considering factors such as performance expectations, fees, liquidity, valuation methods, complexity, and benchmarking while maintaining an asset-neutral approach that neither favors nor prohibits any particular class of investments. The proposal emphasizes that ERISA remains grounded in process: if fiduciaries act with appropriate care, skill, and diligence, courts should defer to those decisions under a “presumption of prudence.” Notably, the rule would not apply to brokerage windows or self-directed brokerage accounts, focusing instead on designated investment alternatives chosen by plan sponsors. The proposed rule is open for public comment until June 1, 2026, giving stakeholders an opportunity to weigh in on how this safe harbor may reshape fiduciary practices and broaden participant access to diversified investment options.

Read the proposal [here](#).

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This Regulatory Update provides information about the consultative documents and publications issued by various regulators which are still current, proposed changes to the Rules and Guidance set out in Handbooks, actual changes to Rules and Guidance that have occurred in the months leading up to the update and other matters of relevance to regulated firms. This Regulatory Update is intended to provide general summarized guidance only, and no action should be taken in reliance on it without specific reference to the regulators' document referred to therein.