

# EXPECT FOCUS<sup>®</sup>

LEGAL ISSUES AND DEVELOPMENTS FROM CARLTON FIELDS

## CHECKUP RESULTS: *An Industry Under Examination*





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## EXPECTFOCUS®

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# SEC Prescribes Higher FINRA Gift Limit

BY JASON BERKUN

On February 12, 2026, the Securities and Exchange Commission approved an amendment to Financial Industry Regulatory Authority (FINRA) Rule 3220. Rule 3220 prescribes the maximum value of gifts that a FINRA member or associated person may make to any one person that are given “in relation to the business of the employer of the recipient” of the gift. Payments of anything of value, including gratuities, can be gifts for this purpose. Also, FINRA members must maintain a separate record of all known payments or gratuities.

Prior to the SEC’s approval of the amended rule, a gift could not exceed \$100 per person per year. That threshold was established in 1992, which, adjusting for inflation, would be considerably more than \$200 today. FINRA acknowledged that the outdated rule was an “ongoing pain point in everyday business” and proposed an adjusted regulatory dosage that FINRA explained would take account of both past inflation and some amount of future inflation.

FINRA first proposed modifications to Rule 3220 on May 29, 2025, as part of a broader effort to modernize its rules. As finally approved by the SEC, the modified rule:

- Increases the gift limit from \$100 to \$300 per person per year.
- Provides FINRA authority to grant exemptive relief from Rule 3220.
- Codifies existing guidance regarding gifts incidental to business entertainment, valuation of gifts, aggregation of gifts, personal gifts, bereavement gifts, de minimis gifts and promotional or commemorative items, donations due to federally declared major disasters, and supervision and record-keeping of gifts.
- Makes conforming changes to the gift limits in FINRA’s noncash compensation rule.

The SEC expressed that FINRA’s updated regulatory treatment is reasonably designed to prevent fraud, promote just and equitable principles of trade, and protect investors. No longer must FINRA member firms and their associated persons follow the rules on their expired prescription bottles. The new prescription has no specific expiration date, but it should be good for at least a few years.



# SEC Gives Enforcement Manual an Overdue Physical

BY NATALIE NAPIERALA AND AUSTIN JACKSON

We recently reported that SEC Chairman Paul Atkins had prescribed new procedures for the agency's Wells submission process: i.e., more time for and more transparency to potential defendants' counsel, and more meaningful engagement between enforcement staff and counsel. See "[SEC Chairman Drops His Remix of Wells Process](#)," *Expect Focus – Life, Annuity, and Retirement Solutions* (January 2026). On February 24, 2026, the SEC's Division of Enforcement published the first update to its *Enforcement Manual* since 2017, thus formalizing these and other reforms.

The most significant changes to the manual relate to the Wells process. Now, respondents will receive four weeks to prepare a Wells submission (an increase from two weeks), and the division must schedule a post-submission meeting between defense counsel and senior SEC leadership at the associate director level or above within four weeks of receiving the submission. And for the first time, the manual provides explicit guidance for an effective Wells submission, including:

- Referring accurately to the relevant evidence and applicable precedents.
- Acknowledging the staff's position while highlighting exculpatory evidence.
- Focusing on disputed factual or legal issues.
- Addressing litigation risks.
- Supporting key arguments with citations to the investigative record.

Where pending charges are particularly complex or technical, the manual also now permits counsel to submit an expert report.

Moreover, the updated manual administers a dose of clarity to the settlement process. The SEC has restored its practice of simultaneously considering settlement offers alongside related waiver requests: No longer must a party resolve an action and only later learn the collateral consequences of doing so. Staff must now present the settlement offer and waiver request together for the SEC's consideration, giving settling parties a complete diagnostic picture before they commit to a resolution.

Other noteworthy updates include a formalization of "white paper" submissions (which will be capped at 40 pages) and the inclusion of off-channel communications (such as iMessage, WhatsApp, and Signal) within the definition of "document" for both subpoena and document preservation purposes. And, to provide closure to parties who cooperated and were not ultimately charged, SEC staff are encouraged to send termination letters if such a party made significant productions in an investigation. The division also has committed to give the manual an annual review, signaling that further refinements may follow.

For companies and individuals under SEC scrutiny, the updated manual signals a meaningful shift in the division's behavior: the exam has been standardized, the instruments have been calibrated, and the bedside manners have been improved. But make no mistake, the doctor is still in.



# ERISA Class Certification Fails to Get a Clean Bill of Health

BY IRMA SOLARES AND DAVID SAFIR

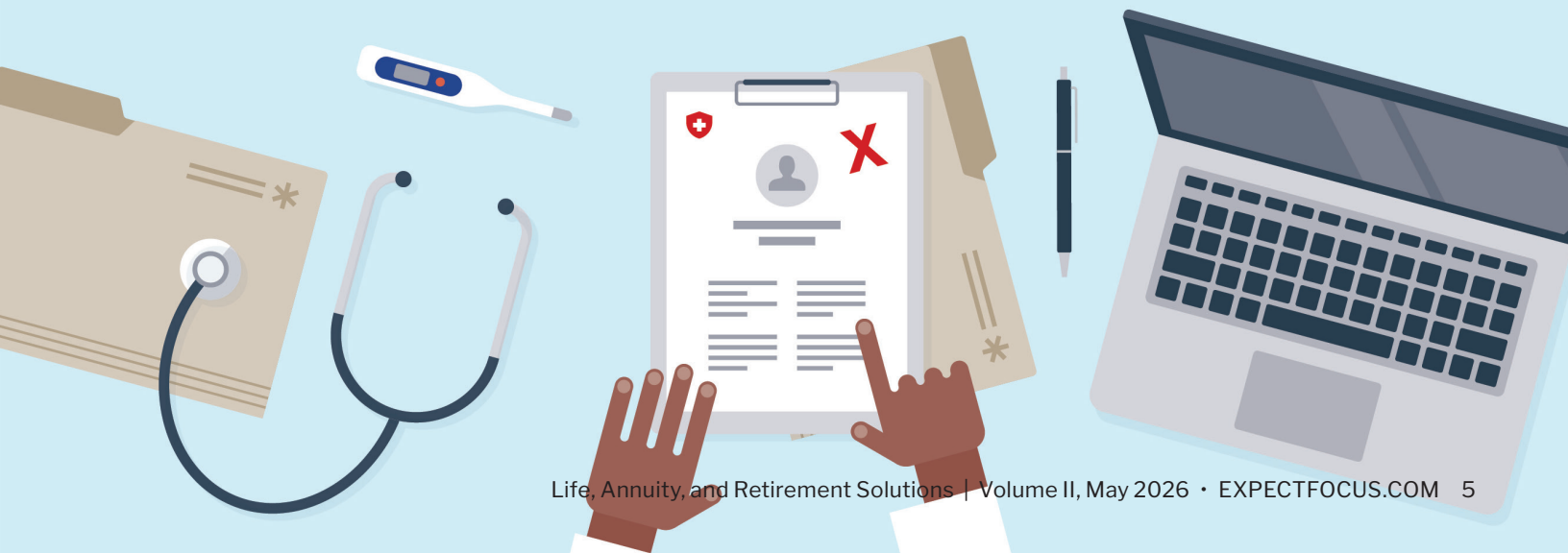
A recent federal appellate decision put certification of ERISA claims under the microscope. In *Trauernicht v. Genworth Financial Inc.*, the Fourth Circuit Court of Appeals decertified a class action asserting claims under Federal Rule of Civil Procedure 23(b)(1). The plaintiffs, former employees who invested in target date funds, alleged that the sponsor of its employee defined contribution retirement plan breached its fiduciary duties by selecting and retaining imprudent investment opportunities for the plan.

The Fourth Circuit held, on interlocutory review, that in the context of defined contribution plans, ERISA claims under section 502(a)(2) present claims for individualized monetary relief and thus are not appropriate for class treatment under Rule 23(b)(1). The court explained that, in a defined *contribution* plan, unlike a defined *benefit* plan, a plan participant technically brings section 502(a)(2) claims on behalf of the plan, and the plan assets at issue in these claims are the assets in the participant's individual retirement account. Therefore, section 502(a)(2) and section 409(a) claims in the context of defined contribution plans amount to individualized monetary claims. Citing hypothetical scenarios, the court demonstrated that in a defined contribution plan the loss, if any, to any individual account could vary significantly depending on factors such as how much money a participant invested in the allegedly imprudent fund, the duration of the particular investment, and the "precise timing" of when the fund was bought and sold.

Relying on *Wal-Mart Stores Inc. v. Dukes*, the court concluded that these individualized monetary claims are not appropriate for class treatment under Rule 23(b)(1). The court reasoned that class actions seeking predominantly individual monetary relief must be brought under Rule 23(b)(3), which provides procedural protections like notice and the opportunity to opt out of the class. In contrast, classes certified under Rule 23(b)(1), which have long been favored by ERISA litigants, are "mandatory" because class participants do not have the opportunity to opt out of the class and the court is not obliged to give class members notice of the action. Therefore, aggregating claims for monetary relief in a mandatory class under Rule 23(b)(1) would violate the due process rights of class members.

Finally, the court held that the district court abused its discretion by not conducting a rigorous analysis to determine whether the plaintiffs satisfied the commonality requirement of Rule 23(a)(2). The district court concluded that the plaintiffs satisfied this requirement because section 502(a)(2) claims inherently presented issues common to the class. The Fourth Circuit rejected this conclusion because the district court failed to address the individualized nature of relief in the context of defined contribution plans or the fact that members of the proposed class participated in the plan in materially different ways. Specifically, plan participants made their own investment decisions and selected the challenged investment options at different times and under different market conditions, thus potentially suffering different injuries or no injury at all.

If other circuits adopt the Fourth Circuit's reasoning, the decision could eliminate the availability of mandatory certification under Rule 23(b)(1), but the ruling does not foreclose the possibility that ERISA breach of fiduciary duty class actions arising under defined contribution plans can be filed under Rule 23(b)(3). Even so, plaintiffs will face greater challenges, including requiring them to provide class members with notice and the opportunity to opt out of the class. Additionally, plaintiffs may face a higher burden when pleading commonality, and future classes may be limited to participants who participated in the plan in a similar manner and suffered the same or similar injuries.





## NAIC Heads Back to the Lab on Annuity Suitability

BY ANN BLACK AND TALIA SVID

After the National Association of Insurance Commissioners' (NAIC) Annuity Suitability (A) Working Group published its 2025 technical report, aimed at insurers, on "Annuity Best Interest Regulatory Guidance and Considerations," the working group immediately went back into the lab to embark on a new phase of work. The report evaluated insurers' obligations when they delegate the NAIC suitability model regulation's supervision requirements to third parties. For 2026, however, the group will focus its work on developing materials that are primarily for regulator use, as summarized below.

### Training

The working group will develop training on the Suitability in Annuity Transactions Model Regulation (Model #275) in coordination with the NAIC's education and training team, geared toward insurance regulatory agency attorneys, investigators, and examiners. In doing so, the group is seeking input from regulators with annuity suitability examination experience to assist in developing the training materials. Commissioner Doug Ommen, chair of the Life Insurance and Annuities (A) Committee, explained that the working group will collaborate with the new Market Conduct Regulation Modernization (D) Working Group on training issues.

### Resource Document

The working group will examine insurers' suitability practices to identify methodologies and practices that insurers have implemented to effectively meet their supervisory obligations under Model #275. Because Model #275 is principles-based and provides flexibility, the group believes that state insurance regulators, insurers, and interested parties could benefit from compiling a document outlining common best practices insurers use to comply with the model. To develop this resource document, the group exposed a "Framework of Resource Document" and is seeking "specific 'best' practices or procedures insurers have implemented to satisfy the supervisory obligations of Model #275." The working group seeks to identify three categories of such practices or procedures:

- Training
- Supervision systems
- Required disclosures and conflicts of interest

The working group also requested data on insurers' compliance challenges or confusion. The deadline for responses is May 11, 2026.

### Database of Administrative Law Decisions

As a data resource for insurance regulators, the working group seeks to compile administrative decisions in a searchable format.

# SEC Seeks Peer Review of FINRA’s Proposed Outside Activities Rule

BY ANN FURMAN

In March 2025, the Financial Industry Regulatory Authority (FINRA) published and requested comment on a proposed new “outside activities” Rule 3290 that would combine and replace Rules 3270 (outside business activities) and 3280 (private securities transactions) and focus only on “investment-related” outside activities of registered personnel. See “[FINRA’s Symphonic Reimagining of Its OBA and PST Rules](#),” *Expect Focus – Life, Annuity, and Retirement Solutions* (August 2025). These proposals are part of FINRA’s ongoing “FINRA Forward” rule modernization initiative.

Commenters on FINRA’s 2025 outside activities proposal requested second opinions on certain proposed exclusions from the rule and reporting requirement differences between the proposed rule and Form U4.

After dissecting 216 comment letters, FINRA revised portions of the 2025 proposal and submitted it to the SEC. The SEC published proposed Rule 3290 as revised on January 29, 2026, and requested comment. In its revised proposal, FINRA:

- Eliminates the requirement for firms to engage in supervision and record-keeping of outside *unaffiliated* investment adviser activities. Like outside *affiliated* investment adviser activity, this activity would be considered outside activity under Rule 3290 (and not an outside securities transaction) that would continue to require prior written notice and assessment but would not require record-keeping or supervision.
- Adds supplementary material to clarify the application of Rule 3290 to unaffiliated investment adviser activity, as well as to banking and insurance networking activity.
- Does not reconcile Form U4 reporting of non-investment related activities with proposed Rule 3290 reporting of investment-related-only activities. To further address any differences, however, FINRA offers to work with the SEC and state securities regulators “to harmonize the requirements where appropriate.”

With few exceptions, commenters on FINRA’s revised outside activities proposal have not requested second or third opinions. Indeed, reaction has been positive except for those commenters who seek more regulation, such as Massachusetts chief securities regulator William Galvin, or firms and trade groups that seek resolution of the chronic pain caused by differing Rule 3290/Form U4 investment/non-investment-related reporting requirements. The comment period on proposed Rule 3290 has been extended to May 4, 2026.



# An Enforcement Tuneup: Following SEC’s Lead, FINRA Looks Under Its Own Hood

BY JUSTIN CHRETIEN AND ZACK BABBITT

The SEC recently updated its enforcement program in an effort to increase fairness, transparency, and the quality of its decisions made during investigations. And the Financial Industry Regulatory Authority (FINRA) is following suit by proposing changes to its enforcement program aimed at improving transparency, efficiency, and opportunities for respondents to be heard during its investigations.

## SEC Enforcement Changes

In October 2025, SEC Chairman Paul Atkins announced reforms to be made to the agency’s Wells process and to certain settlement procedures. The Wells process allows individuals or firms under investigation to present factual evidence, legal arguments, and mitigating circumstances to the regulator in an attempt to persuade the SEC (or FINRA) not to proceed with the enforcement action.

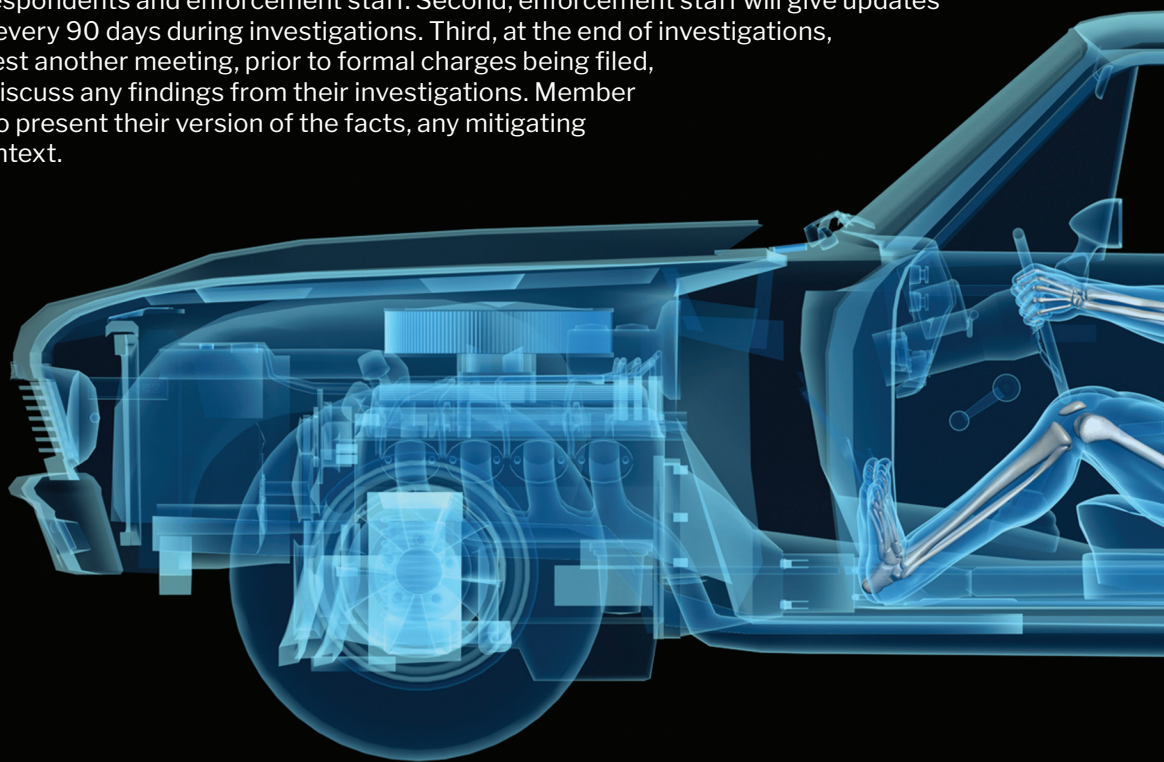
On February 24, 2026, the SEC updated its *Enforcement Manual* to reflect the changes. Specifically, the updates include changes to the Wells and settlement processes, a formalization of “white paper” submissions, and the inclusion of off-channel communications within the scope of SEC requests for production of “documents.” Finally, the revisions encourage SEC staff to send termination letters to cooperating parties. For additional details, see “[SEC Gives Enforcement Manual an Overdue Physical.](#)”

## FINRA Enforcement Changes

In March 2026, FINRA’s Head of Enforcement Bill St. Louis announced that FINRA will update its enforcement procedures in accordance with its “FINRA Forward” initiative. Specifically, he announced plans to advance three core objectives:

### 1. Transparency

FINRA plans to increase transparency through expanding communications with firms facing potential enforcement. First, FINRA will schedule introductory meetings at the beginning of investigations for Q&A sessions between the respondents and enforcement staff. Second, enforcement staff will give updates to respondents at least every 90 days during investigations. Third, at the end of investigations, member firms can request another meeting, prior to formal charges being filed, with FINRA officials to discuss any findings from their investigations. Member firms will be permitted to present their version of the facts, any mitigating factors, or additional context.



## 2. Efficiency

FINRA plans to increase efficiency through the creation of a specialization program that will cover 11 areas of expertise, including systemic anti-money laundering and market-related issues. The program is intended to ensure that the enforcement attorneys working on FINRA cases are the ones who have the deepest expertise relevant to the matters in question. In so doing, FINRA aims to increase internal collaboration and consistency throughout FINRA's enforcement actions.

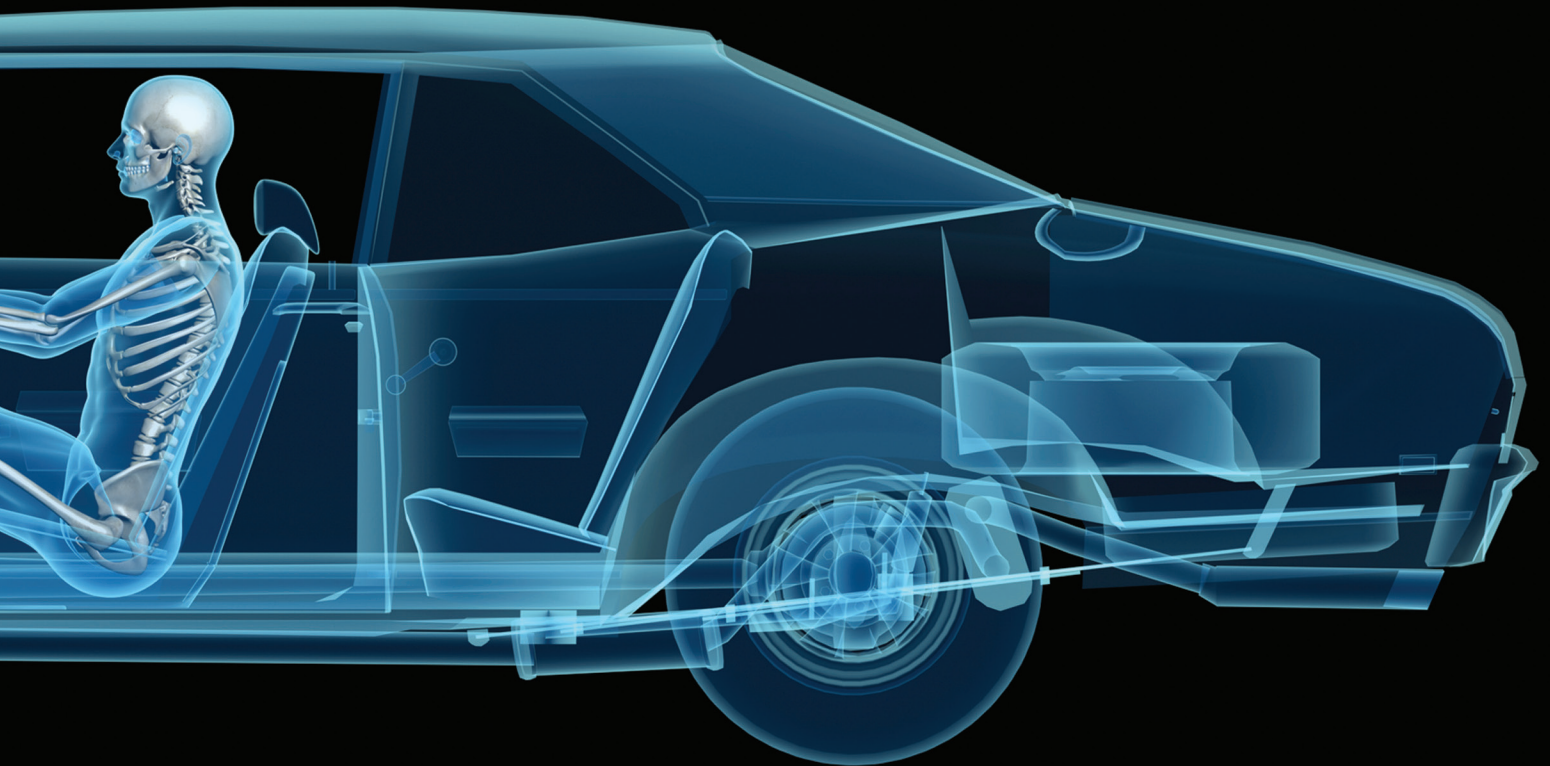
FINRA also introduced a self-reporting pilot program. Member firms in the self-reporting program will report their own potential violations and, when appropriate, engage directly with the enforcement staff before a formal investigation is started. In addition, member firms may be allowed to conduct their own internal review and remedy problems without concurrent FINRA investigations. Ultimately, the program is intended to avoid a full enforcement investigation in appropriate cases.

## 3. Greater Opportunity to Be Heard Before Disciplinary Decisions Are Finalized

FINRA plans to allow enforcement staff to contact member firms prior to issuing "cautionary action letters." FINRA believes this dialogue will give firms and individuals the chance to provide context or challenge conclusions. Moreover, on occasion, FINRA will contact firms prior to issuing Rule 8210 information requests in order to clarify for the member firm the scope of FINRA's expectations. Finally, FINRA plans to allow firms to respond to Wells notices on an increased 30-day timeline.

## Future Performance

With these changes, FINRA appears well positioned to continue FINRA Forward in a manner that reduces any stumbles or misfires in its enforcement program. Focus on core principles such as transparency, efficiency, and opportunities for respondents to be heard will bode well for the success of FINRA Forward. And, while FINRA is clearly following the lead of the SEC here, these changes, collectively, should foster better resolutions for many FINRA members.



# Litigation Checkup: Recent Developments in Life Insurance Litigation

BY ANNICK RUNYON AND DAVID SAFIR

Courts around the country continue to conduct regular checkups on the law regarding stranger-originated life insurance (STOLI) policies, slayer statutes, and privacy legislation.

## Stranger-Originated Life Insurance

In *GWG DLP Master Trust Dated 03/01/06 v. Estate of Frank*, the Supreme Court of Delaware held that a three-year limitations period applied to a claim brought under a Delaware statute, 18 Del. C. § 2704(b), that allows an insured, or the insured's executor or administrator, to bring an action to recover benefits received by a beneficiary, assignee, or payee under a contract made in violation of the statute prohibiting life insurance policies lacking an insurable interest. The court declined to accept the plaintiff's argument that limitations periods were inconsistent with prior determinations by the court that STOLI policies are unenforceable, concluding that the three-year limitations period was consistent with public policy. Statutes of limitations, the court explained, promote justice by ensuring timely litigation, and the court balanced that interest with the interest of preventing human-life wagering.

In *Wilmington Trust, National Association v. Ameritas Life Insurance Corp.*, the Supreme Court of Georgia examined a series of certified questions to help resolve a dispute arising from an insurer's refusal to pay death benefits under life insurance policies that it claimed were illegal STOLI policies.

Under Georgia law, an insurance policy is void if the one taking out the policy does not have an "insurable interest" in the life of the insured. Accordingly, a life insurance policy is void if it is "procured or caused to be procured" by a third party unless the policy is payable to one with an insurable interest in the life of the insured. The certified questions sought clarification on the circumstances under which a life insurance policy could be said to have been "procured or caused to be procured" by a third party.

The court rejected Ameritas' argument that a policy is procured by a third party whenever someone other than the insured paid the premium. The court, however, also rejected Wilmington Trust's argument that a policy could not be procured, or caused to be procured, by a third party if the insured took part in the application process.

The court concluded that a policy is procured, or caused to be procured, by a third party when the third party has effectively obtained or acquired a life insurance contract on the life of another or has "served as the cause" for obtaining such a contract. When assessing this issue, a court must consider the totality of the circumstances to determine who effectively obtained or acquired the policy. Relevant circumstances for courts to consider include: who paid the premiums on the policy; who located the potential insured; who participated in the formation of the policy; who prepared and controlled the content of the relevant documents; whether the policy was created for the benefit of the insured or investors; who had the power to name the trustee of a life insurance trust and who had control over the trust; the sophistication of the insured on financial matters; and the extent of the insured's participation in the insurance application process.

## Slayer Statute

In *Popanda v. Roth*, the U.S. District Court for the Eastern District of Wisconsin held that Wisconsin's slayer statute applied to an individual whose plea of not guilty by reason of mental disease or defect had been accepted by the Wisconsin state court.

*Popanda* was an interpleader action initiated to resolve competing claims to the death benefit of a life insurance policy. The resolution of the claims turned on whether the insured's husband, who pleaded not guilty by reason of mental disease or defect to her killing, could recover under the policy.

Nearly all states, including Wisconsin, have adopted "slayer statutes," which prohibit a killer from profiting from their wrongdoing. For the statute to apply, the killing must be unlawful and intentional. Under Wisconsin's slayer statute, a killing is unlawful and intentional if: (1) a final judgment establishes criminal accountability for the killing; (2) a final adjudication of delinquency establishes accountability for the killing; or (3) a court determines by a preponderance of the evidence that the killing was unlawful and intentional.

The court held that there was no final judgment establishing criminal accountability. Although the husband had admitted to killing his wife, the insured, the court in his criminal trial had accepted his plea of not guilty by reason of mental disease or defect. The court further held that the husband was an adult at the time he killed his wife, and thus there was no adjudication of delinquency.

The court, however, held that the preponderance of the evidence showed that the killing was unlawful and intentional. The court reasoned that the killing was unlawful because there was no evidence that it was authorized by law. While the husband's plea of not guilty by reason of mental disease or defect meant he did not form the criminal intent to kill the insured, "intentionally" in the context of the slayer statute referred to civil intent. Civil intent requires only that a person intended their actions, regardless of whether they knew that those actions were wrongful. The uncontroverted evidence, including the husband's guilty plea during the first phase of his criminal proceeding, established that he acted with the purpose to kill. The husband was therefore barred from recovering under the policy.

## Privacy

The Illinois case *Reynolds v. State Farm Life Insurance Co.* involved a class action brought by an applicant for a life insurance policy, alleging a violation of the state's Genetic Information Privacy Act (GIPA) for using genetic and personal health information to assess eligibility for coverage.

The complaint alleged that the insurer violated section 20(b) of GIPA by requiring the applicant to undergo a physical exam and provide genetic health information to assess coverage eligibility. Section 20(b) prohibits insurers from disclosing "protected health information (PHI) that is genetic information" for "underwriting purposes."

The trial court concluded that section 20(b), taken as a whole, did not apply to life insurers and granted the insurer's motion to dismiss with prejudice. The Illinois appellate court affirmed. Focusing on statutory interpretation, the court reasoned that the "genetic information" collected by the insurer for underwriting did not meet GIPA's definition of "protected health information." GIPA adopted HIPAA's definition of "personal health information," which must be "individually identifiable health information" and be "created or received by a health care provider, health plan, employer, or health care clearinghouse." Since the plaintiff did not allege that the life insurer is any of these, the life insurer's use of genetic information fell outside GIPA's scope.

Moreover, the court concluded that section 20(b) applies only to health insurance underwriting because section 20(b)(4) provides a "catch-all provision" for other health insurance activities "besides" those already listed in the statute. The court stated that this language showed that the statute describes health insurance underwriting, not life insurance underwriting. Further, every clause that follows the term "underwriting purposes" mentions health insurance or some activity related to health insurance. No clause mentions life insurance or anything exclusively related to life insurance.



# Next Round of Testing: NAIC Clarifies Third-Party Oversight Plan

BY ANN BLACK

Continuing its goal of mapping out the regulatory landscape that would apply to insurers' use of third-party models and data, the National Association of Insurance Commissioners' (NAIC) Third-Party Data and Models (H) Working Group detailed its conceptual approach in developing its "Third-Party Regulatory Framework" at the NAIC Spring National Meeting. The working group chair, Jason Lapham of Colorado, explained that the comments received on the framework exposed at the 2025 Fall National Meeting reflected misinterpretations of the framework's intent. During the meeting, the group reiterated its views on registration and governance, and that it would continue to refine the framework, with a focus on pricing and underwriting.

## Registration

Lapham clarified that the framework seeks registration of the third parties and not of the third parties' models or data. Working group members explained that the breakthrough sought by the framework's registration requirement is a means for regulators to obtain data directly from the third parties. Currently, when regulators seek information on models or data, insurers often are unable to provide the information because of non-disclosure agreements with the third parties.

Lapham described registration under the framework as a two-part process — registration of the third parties and then, if requested by regulators, the submission of any models or datasets. He indicated that this two-part process would allow regulators to scrutinize the third parties and question them on what models or data they provide to insurers. If deemed necessary, regulators could then scrutinize models or datasets.

Regulators questioned whether registration would be compulsory or voluntary. Several regulators theorized that compulsory registration would require action by state legislatures, impeding widespread adoption of the framework. Regulators considered whether voluntary registration would yield adequate protection over the information that third parties provide to regulators, noting that regulators' exam authority confers privacy and confidentiality protections. If registration were merely voluntary, it could be considered outside regulators' exam authority and thus not subject to those protections.

Regulators also discussed streamlining the third-party registration process, to avoid state-by-state registration. One regulator suggested a registry process that is similar to what is used for surplus lines. Based on Lapham's report to the H Committee, it appears that the working group intends to examine the possibility of this registry option moving forward.



## Governance

The working group explained that as part of the registration process, regulators would obtain the third parties' governance frameworks. The group indicated that a third party's framework would allow regulators to have insight into the third party's operations.

## Pricing and Underwriting

While the exposed framework covers third-party vendors across the spectrum of insurance-related functions, the working group discussed focusing the framework on activity that is considered the highest risk for negative consumer impact. The group reached consensus on revising the framework to concentrate on pricing and underwriting, with the understanding that other functions could be added, as warranted by risk-based considerations.

## Next Steps

A drafting group, taking account of the discussions during the Spring National Meeting, will prepare a new version of the framework before the Summer National Meeting. As part of its work, the drafting group will consider:

- Whether registration should be voluntary or compulsory.
- Whether the framework should become a model law or a bulletin.

The drafting group will also be prepared to discuss the pros and cons of its recommended approach, as well as alternative approaches.

*This article was co-authored by Carlton Fields law clerk Jake Heiges.*



# Gensler-Era Crypto Regulation Goes Under the Knife

## SEC/CFTC Operation Targets Uncertainty Around Crypto Assets' Legal Status

BY HARRY EISENSTEIN

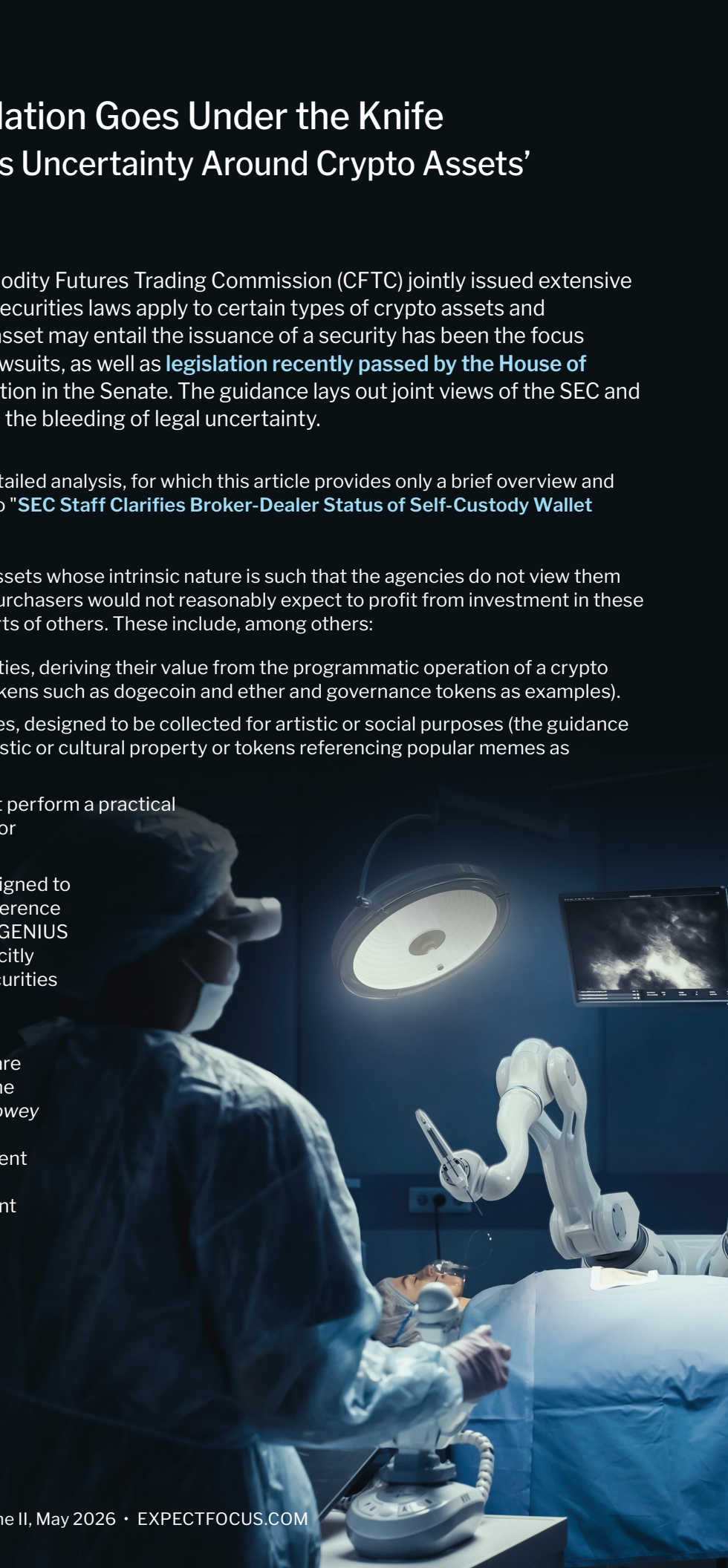
On March 17, 2026, the SEC and the Commodity Futures Trading Commission (CFTC) jointly issued extensive **interpretive guidance** on how the federal securities laws apply to certain types of crypto assets and transactions. Whether a particular crypto asset may entail the issuance of a security has been the focus of SEC enforcement actions, and private lawsuits, as well as **legislation recently passed by the House of Representatives** and now under consideration in the Senate. The guidance lays out joint views of the SEC and the CFTC on the subject, in order to stanch the bleeding of legal uncertainty.

The guidance is lengthy and contains much detailed analysis, for which this article provides only a brief overview and comment. For additional details, please refer to "**SEC Staff Clarifies Broker-Dealer Status of Self-Custody Wallet Interface Providers.**"

The guidance first describes types of crypto assets whose intrinsic nature is such that the agencies do not view them as securities given that, among other things, purchasers would not reasonably expect to profit from investment in these assets based on the essential managerial efforts of others. These include, among others:

- Assets, referred to as digital commodities, deriving their value from the programmatic operation of a crypto system (the guidance cites fungible tokens such as dogecoin and ether and governance tokens as examples).
- Assets, referred to as digital collectibles, designed to be collected for artistic or social purposes (the guidance cites tokens representing rights to artistic or cultural property or tokens referencing popular memes as examples).
- Assets, referred to as digital tools, that perform a practical function such as representing a ticket or membership.
- Assets, referred to as stablecoins, designed to maintain a stable value relative to a reference asset (under the soon-to-be effective GENIUS Act, certain stablecoins are to be explicitly excluded from the ambit of federal securities law).

The agencies' basis for concluding that these are not securities is an analysis that the SEC and the courts have generally applied, known as the *Howey* test, to determine whether an instrument or arrangement should be treated as an "investment contract" and, consequently, a security under the federal securities laws. An essential element of this analysis requires that, for there to be an investment contract, an investor must rely on essential management efforts of others to produce a financial return to the investor. For the crypto assets fitting the above-listed categories, the agencies concluded that any financial return is not a function of such essential managerial efforts.



Perhaps even more importantly, the guidance sets out principles clarifying how the various elements of the *Howey* test should be applied to crypto assets broadly. First, the guidance provides examples of what constitutes essential management efforts of others, and what types of promises or representations made by developers to attract users would justify a reasonable expectation of profits from such efforts, which is another element of the *Howey* test.

Also, in contrast to the approach taken by the SEC under former Chairman Gary Gensler, the guidance states that a crypto asset itself could be considered a non-security crypto asset, yet the arrangement under which interests in those assets are transferred could constitute the offer or sale of an investment contract. This possibility raises questions about what steps a purchaser or seller of those interests must take to assess whether that transaction should be deemed a securities transaction. One such step would be evaluating whether the transaction was induced by representations made regarding essential management efforts of others in the manner required under the *Howey* test.

Even if such inducement was present, however, a subsequent transaction in the same crypto asset might not entail the offer or sale of a security if any such representations were by that time no longer being relied upon (because, for example, the representations had already been fulfilled or were otherwise no longer capable of being fulfilled). Clearly, such analyses may involve difficult factual determinations and judgments.

The guidance, however, doubtless will not be the agencies' final word on the security status of crypto assets and arrangements involving such assets that could constitute investment contracts. In a speech announcing the guidance, SEC Chairman Paul Atkins said that the SEC and CFTC will move forward with rulemakings that Atkins has referred to as "Regulation Crypto Assets," based on the principles outlined in the guidance. Further, the guidance itself notes that the SEC is soliciting public comment on the views in the guidance and that the SEC may refine, revise, or expand these views based on that feedback.

It also is not clear whether courts, if asked, will agree with the agencies' positions on these matters. It seems possible, for example, that counsel for aggrieved plaintiff investors may at some point bring court actions asserting that some of these positions (a) do not represent the appropriate standard of care for investors or (b) involve regulatory operations the agencies were not properly licensed to perform.



# More CLOs in Retail Investors' Diet Will Their Financial Health Improve?

BY THOMAS LAUERMAN

The investment company industry has welcomed a new [Q&A](#) that was published on March 5, 2026, as an addition to the SEC Division of Investment Management's "Frequently Asked Questions." The new Q&A increases the amount of collateralized loan obligations (CLOs) in which some investment companies can directly or indirectly invest, and to which investors in those investment companies — including ordinary retail investors — can therefore gain exposure.

## The Problem

Many registered investment companies and business development companies serve as "acquiring funds" by investing in other investment companies (acquired funds). If acquiring funds' investments in acquired funds are sizable enough, the funds must rely on exemptive relief from certain provisions of the Investment Company Act of 1940. The SEC's Fund of Funds Rule, adopted in 2020, is one source of such relief, subject to certain conditions. One of the rule's conditions requires that acquired funds not invest more than 10% of their assets in "private funds," which are defined as funds that rely on the exemptions in sections 3(c)(1) or 3(c)(7) of the act that apply to certain nonpublic funds.

Many issuers of CLOs rely on these exemptive sections, which could require those CLOs to be counted as investments in private funds for purposes of the 10% limit. This, in turn, would effectively limit the amount of exposure to CLOs that the acquired fund could provide, directly or indirectly, to any retail investors in the acquired or acquiring funds.

## SEC Staff's Solution

The division staff concluded that, given the nature of CLO debt securities, an acquired fund's ownership of such securities would have little relevance to the underlying purposes of the Fund of Funds Rule. Accordingly, the staff's new Q&A effectively resolves any ambiguity in this regard by stating that the staff will not recommend enforcement action to the SEC if acquired fund investments in CLO debt securities are not counted toward the 10% limit. CLO equity tranches, however, remain subject to the limit.

## Implications for Retail Investors

Although increased exposure to CLO debt may produce favorable investment results in many cases, the staff's no-action position also has the potential for investment pain. CLOs often entail considerable investment risks and usually are offered and sold in reliance on a nonpublic offering exemption from registration under the Securities Act of 1933. Accordingly, rather than being available to ordinary retail investors, CLOs can generally be purchased only by institutional and other categories of investors

(e.g., "accredited investors") that, for federal securities law purposes, are considered capable of fending for themselves when considering investment in risky securities.

The staff's no-action position is consistent with a current overall policy of the SEC, and of the Trump administration more generally, to facilitate increased opportunities for retail investors to obtain access to the potential benefits of various types of investments such as private equity and private credit funds. For example, in 2025, the SEC staff withdrew its historic position that, if a closed-end investment company invested 15% or more of its assets in private funds, all of that investment company's investors had to be accredited investors, each of whom the staff's position also required to make a minimum initial investment of at least \$25,000 in the investment company. The staff's withdrawal of its position enabled shareholders of a closed-end investment company (many of whom could be ordinary retail investors) to have greater indirect investment exposure to private funds.

Nevertheless, the staff's March 5 Q&A no-action position did not enable increased direct investment by retail investors in CLOs. Nor did the staff's 2025 position on closed-end funds enable increased *direct* investment by retail investors in any private funds. Rather, in each case, any increased retail investor exposure to private assets would be accomplished only *indirectly*, i.e., via investment by the retail investor in intermediary funds that are subject to significant regulation by the SEC. The presence of such intermediary regulated funds can reduce the risks (in some cases substantially) of retail investors' exposure to such funds' private investments — a fact that doubtless influenced the SEC staff's decisions to take these actions.

In the future, look for more actions by the SEC or its staff to facilitate increased retail investor participation in what have historically been private investment opportunities — especially where that participation is through a regulated intermediary or is based on investment advice or management provided by other firms or individuals whose qualifications and expertise may reduce the risk to retail investors.

# DOJ's National Corporate Enforcement Policy May Improve Outcomes When Companies Discover Violations

BY MICHAEL YAEGER

On March 10, 2026, the Department of Justice **announced** what it described as the “first-ever Department-wide corporate enforcement policy for criminal matters,” covering all corporate criminal matters except for antitrust violations of 15 U.S.C. §§ 1–38. The claim to originality may be overstated. The **Corporate Enforcement and Voluntary Self-Disclosure Policy** (CEP) builds on a similar program that the DOJ's Criminal Division **announced** in May 2025. But the CEP does have some changes and added details that past statements lacked. Overall, the CEP clarifies how companies that report their misconduct to the DOJ may avoid charges entirely, reduce penalties, or escape the imposition of a corporate monitor.

Part I of the CEP explains how a company that voluntarily self-discloses misconduct can obtain a declination of charges. The DOJ will decline to prosecute when a company:

- Voluntarily self-discloses the misconduct to an appropriate DOJ criminal component;
- Fully cooperates with the DOJ's investigation;
- Timely and appropriately remediates the misconduct; and
- There are no aggravating circumstances tied to the harm and no corporate recidivism, although the presence of aggravating circumstances is not a per se bar to declination.

A company's self-disclosure of misconduct will not be considered voluntary if the company already had a duty to disclose the misconduct to the DOJ, perhaps under a monitoring agreement; when a government investigation is already imminent; or if the DOJ already knows about the misconduct. However, if the DOJ knew of the misconduct only because of a whistleblower, the company could still qualify if it self-reports “as soon as reasonably practicable but no later than 120 days after receiving the whistleblower's internal report.”

Full cooperation means “proactively” disclosing facts and evidence gathered during a company's internal investigation. Cooperation also requires “identification of all individuals involved in or responsible for the misconduct at issue, regardless of their position, status, or seniority, including the company's officers.” Remediation includes paying “all disgorgement/forfeiture as well as restitution/victim compensation payments resulting from the misconduct at issue.” And “[a]ll declinations under the CEP will be made public.” In fact, on March 19, 2026, the DOJ made its first such **announcement**, stating that it had declined to prosecute France-based medical device company Balt SAS in connection with alleged violations of the U.S. Foreign Corrupt Practices Act.

Part II of the CEP explains how a company that does not quite qualify for a full declination — a company with a “near-miss” disclosure — may still obtain a resolution with lower fines and a reduction between 50% and 75% “off the low end” of the applicable fine range in the U.S. Sentencing Guidelines. Part II appears to be one of the more significant changes from the 2025 Criminal Division program.

Finally, Part III of the CEP provides that if a company is not eligible for declination and is not a “near miss,” “prosecutors maintain discretion to determine the appropriate resolution including form, term length, compliance obligations, and monetary penalty.” But the CEP limits that discretion “[w]ith respect to the monetary penalty.” Specifically, “the company will not receive, and [the DOJ] will not recommend to a sentencing court, a reduction of more than 50% off the fine under the [U.S. Sentencing Guidelines].”

As a national policy, the CEP naturally tends — and, in this case, explicitly aims — to promote uniform treatment throughout the DOJ. However, some local offices of the DOJ have their own policies. Most notably, the U.S. Attorney's Office for the Southern District of New York announced a financial crimes program earlier this year that is arguably both more lenient on declinations and less predictable. Exactly how the DOJ and its components will harmonize such local policies with the CEP remains to be seen. Companies may want to keep such local policies in mind when considering which “component” of the DOJ to approach with a disclosure.

# Under the Microscope: A Closer Look at Regulators' Life and Annuities Priorities

BY ANN BLACK AND MARGARET DONNELLY

At the National Association of Insurance Commissioners' (NAIC) 2026 Spring National Meeting, the Life Insurance and Annuities (A) Committee zoomed in on regulatory changes to protect consumers.

## Illustrations

After the Life Insurance and Annuities Illustrations (A) Working Group dissected annuity illustrations, it reported its findings to the A Committee. The working group discovered that the use of high illustrated rates and the prominence of new proprietary indexes for which backcasted data is used were the cause of the high illustrated rates. It also found that the average length of the illustration is 21 pages, including a lot of fine print.

Commissioner Scott White questioned the complexity of the illustrations and what was driving the complexity. Ben Slutsker, chair of the working group, explained that the complexity is that "the products themselves are complex." Slutsker explained that Model #245 includes requirements for annuities, but those requirements do not require complexity.

As a follow-up, the working group met on March 31, 2026, to discuss short- and long-term approaches to ensure consumers receive reasonable expectations from annuity illustrations and disclosures. Several commenters narrowed the focus to Model #245 and whether its illustration and disclosure requirements could be a useful starting point to address regulatory concerns for annuities.

## Market Data and Scanning

As part of the NAIC's 2026 Strategic Priorities to deepen its capabilities as a data aggregator, analytics provider, and early warning monitor, and to support more proactive regulatory oversight and risk identification, NAIC leadership assigned to the A Committee "a market data and scanning priority." This also includes collaborating with the Market Regulation and Consumer Affairs (D) Committee to:

[C]ollect and analyze data on insurer compliance with sales and marketing requirements for life insurance and annuities, including exploring how technology can be employed to monitor advertising and the independent marketing organizations (IMOs) to identify marketing outliers.

Currently, the NAIC collects retrospective data to be used in market regulation efforts, including the Market Conduct Annual Statement (MCAS). MCAS annually collects summary market conduct data reported by individual insurance companies with a filing deadline of April 30 each year. The MCAS data is reported to individual states and subject to a 60-day data quality review, which results in a time lag of almost a year before the NAIC can meaningfully capture and review the data.

The NAIC currently has no means of collecting data on complaints involving illustrations. However, new specific illustration-related coding is being created within the NAIC's Regulatory Information Retrieval System to capture adjudicated regulatory actions involving illustrations that are inadequate, misleading, or not provided when required.

At the Spring National Meeting, the A Committee also sharpened the lens focusing on how technology can be used more proactively for market regulation efforts. Specifically, the committee exposed a question asking:

Are there ways that technology can be used to improve market regulation (related to advertising, marketing and sales) for the benefit of consumers?

In particular, are there ways that regulators can be more proactive rather than retrospective. For example:

- Are there tools to evaluate and compare projected accumulations in an annuity illustration at time of sale with subsequent actual performance? This could help identify which annuities significantly fail to meet projections or require an update to the illustration.
- Are there tools that could be used to monitor IMO compensation incentives?
- Are there efficient ways to monitor what consumers actually see?
- Are there ways to aggregate findings to provide early feedback to industry to encourage course correction in real time?
- Are there any other ideas or suggestions we should consider?

These exposure questions bring into view the A Committee's emphasis on using technology to aid in market regulation, and life insurance and annuity providers should keep a close eye on potential changes that may emerge.

### **Annuity Buyer's Guide**

Since the NAIC buyer's guides for deferred annuities were last updated in 2013, the A Committee's Annuity Buyer's Guide Working Group is focusing on reviewing and updating the guide in light of several evolutions in the annuity marketplace. The group exposed a draft update to the guide to reflect the introduction of registered index-linked annuities and multiyear guaranteed annuities, as well as Model #275's new best interest standard.

At its meeting on April 20, 2026, the group discussed comments received on the draft revisions to the guide. Several commenters stressed the need for the revised guide to stay true to its intended purpose as a resource for consumers to understand annuity products and identify key questions to discuss with a financial professional. Commenters also highlighted that the guide should provide balanced information on annuity products, by including potential benefits as well as warnings and risks. The group instructed a regulator-only drafting group to consider the feedback received and create a second draft of the revised guide for further examination.



# SEC and CFTC Regulatory Labs Try Joint Venturing Landmark Memorandum Sets the Terms

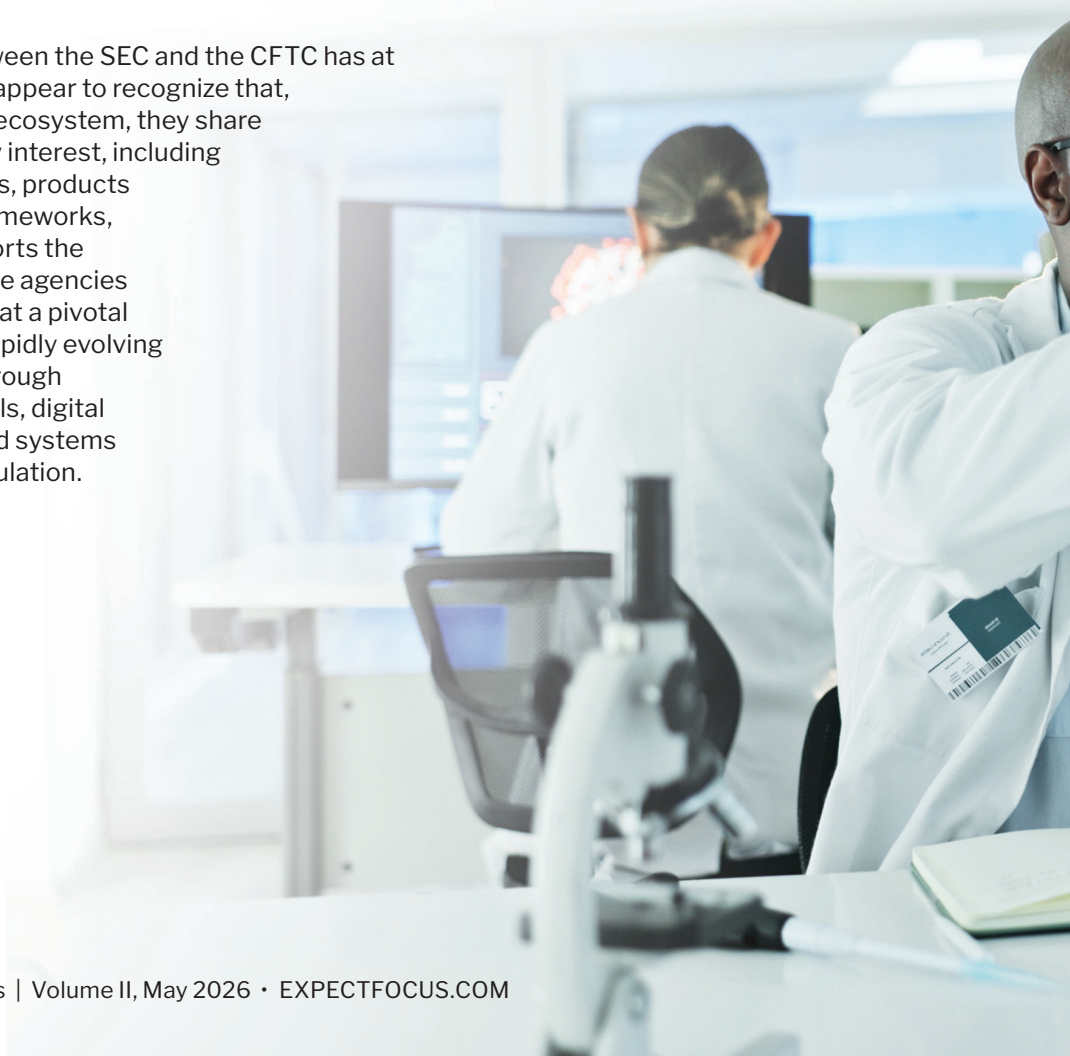
BY THOMAS CONNER

On March 11, 2026, the SEC and the Commodity Futures Trading Commission (CFTC) signed what both agencies have called a “historic” memorandum of understanding. The memorandum is intended to create a new level of cooperation between the two agencies and end decades of turf wars when developing appropriate treatments for financial products. SEC Chairman Paul Atkins declared that the era when “regulatory turf wars, duplicative agency registrations, and different sets of regulations between the SEC and CFTC have stifled innovation and pushed market participants to other jurisdictions” is over. CFTC Chairman Michael Selig promised a “golden age of American finance.”

The agencies have created a joint harmonization initiative to provide coordinated oversight of this venture and promote regulatory clarity in areas of common regulatory interest. The initiative will support coordination across the policymaking, examination, and enforcement functions of each agency, particularly for joint applications and shared policy efforts, including:

- Clarifying product definitions through joint interpretations and rulemakings.
- Modernizing clearing, margin, and collateral frameworks.
- Reducing frictions for dually registered exchanges, trading venues, and intermediaries.
- Providing a fit-for-purpose regulatory framework for crypto assets and other emerging technologies.
- Streamlining regulatory reporting for trade data, funds, and intermediaries.
- Coordinating cross-market examinations, economic analyses, risk monitoring, surveillance, and enforcement.

Although the working relationship between the SEC and the CFTC has at times been strained, the two agencies appear to recognize that, in an increasingly convergent financial ecosystem, they share significant areas of common regulatory interest, including oversight of pooled investment vehicles, products that span securities and derivatives frameworks, and the broad infrastructure that supports the trading of these products. Moreover, the agencies appear to appreciate that they operate at a pivotal moment where financial markets are rapidly evolving and becoming more interconnected through global technologies. New trading models, digital infrastructure, and on-chain, automated systems increasingly blur traditional lines of regulation.



The memorandum takes a fresh and proactive approach to regulatory harmonization, building on a forthright acknowledgement that, historically, the working relationship between the two agencies has at times been strained. For example, the Shad-Johnson Accord of 1981, which ultimately divided regulatory jurisdiction for certain emerging types of securities-based futures and options, has been described as the product of a “seven-year turf battle.”

A subsequently emerging form of financial product — swaps — created another area of serious regulatory overlap. When Congress passed the 2010 Dodd-Frank Act in the aftermath of the 2007–2008 global financial crisis, the CFTC was given jurisdiction over “swaps” while the SEC was given jurisdiction over “securities-based swaps.” Still, the agencies took two years to hammer out definitions of the varying types of swaps, ultimately leaving significant gray areas and effectively requiring two sets of rules for margin, reporting, and examination matters.

The most recent decade has witnessed a further SEC/CFTC turf war, this time over digital assets. The CFTC in 2015 declared bitcoin a commodity, and later declared ether a commodity, while the SEC under Chairman Gary Gensler took the position that most crypto tokens are securities under the *Howey* test. These differing interpretations led to what Atkins has called a “maze of overlapping and often inconsistent regulatory frameworks.” The industry breathed a sigh of relief, though, when in 2025 the SEC and CFTC held a joint roundtable on regulatory harmonization, followed by the two agencies in 2026 issuing a joint interpretation addressing the regulatory status of different types of digital assets. For more detail about this joint interpretation, please refer to this issue’s article [“Gensler-Era Crypto Regulation Goes Under the Knife.”](#)

The memorandum clearly represents a significant step forward in building a cohesive and coordinated SEC/CFTC venture to study new products and develop appropriate regulatory frameworks for the future. This augurs well for the successful introduction of products that are currently awaiting release, as well as products that are not yet even on the drawing board.



# FINRA Proposes to Permit Performance Projections and Targeted Returns

## Proposal Would Help Level the BD/RIA Playing Field

BY RICHARD CHOI

In February 2026, the Financial Industry Regulatory Authority (FINRA) proposed amendments to its Rule 2210(d)(1)(F) that would permit member firms to include performance projections and targeted returns in communications to investors. Member firms, however, would be subject to three conditions designed to ensure the projections have a sound basis.

### Existing Prohibition and Exceptions

Currently, the rule prohibits communications that “predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast,” with exceptions for:

- A hypothetical illustration of mathematical principles that do not predict or project the performance of an investment or investment strategy (e.g., calculators that compute savings over an assumed time period with assumed variables of rates of return, frequency of compounding, and tax rates);
- An investment analysis tool, or written reports produced by such a tool, that meet the requirements of FINRA Rule 2214 (“Requirements for the Use of Investment Analysis Tools”) (e.g., interactive technological tools that produce simulations and statistical analyses that present the likelihood of various investment outcomes of certain investments or investment strategies); and
- A price target in a research report on debt or equity securities, provided the price target has a reasonable basis, the report discloses the valuation methods used to determine the price target, and the price target is accompanied by disclosure concerning the risks that may impede achievement of the target.

### Proposed New Exception

The proposed amendments would create a new “narrowly tailored” exception to Rule 2210(d)(1)(F) that would allow member firms to disseminate communications that “project the performance or provide a targeted return with respect to a security, a securities portfolio, or an asset allocation or other investment strategy.” The new exception would be subject to compliance with the following three conditions:

1. The member firm must adopt and implement **written policies and procedures** that are “reasonably designed to ensure that the communication is relevant to the likely financial situation and investment objectives of the intended audience

of the communication.” Member firms would have the flexibility to develop policies and procedures that “best suit their investor base and the business in which they engage.” FINRA suggested, for example, that a firm could adopt and implement written policies “based in part on the member’s past experiences with particular types of investors who seek this information.” As a practical matter, FINRA expects the proposed amendments to affect primarily communications to institutional and other sophisticated investors.

2. The member firm must have a **reasonable basis** “for the criteria used and assumptions made in calculating the projected performance or targeted return.” The member firm also must retain written records that support the basis for such criteria and assumptions, as well as maintain a supervisory system to achieve compliance with the reasonable basis requirement. As with condition 1 above, the rule would not prescribe the method by which a member firm forms a reasonable basis. Rather, the factors that member firms would consider in forming a reasonable basis would depend on the facts and circumstances.

Nonexclusive examples of factors provided by FINRA include consideration of:

- Global, regional, and country macroeconomic conditions;
- In the case of a single security issued by an operating company, the issuing company’s operating and financial history;
- The industry’s and sector’s current conditions and the stage of the business cycle;
- The quality of the assets included in a securitization; and
- The appropriateness of selected peer-group comparisons.

These examples overlap, though not entirely, with the factors that FINRA set out in the supplementary material accompanying its November 2023 rule change proposal to permit the use of projected performance and targeted returns. That proposal

was stayed by the SEC, and the supplementary materials are not part of the current proposed amendments. Nevertheless, FINRA stated that member firms “would be free to consider [the factors in the supplementary material], as well as other factors, when making their reasonable basis determinations” under its proposed rule change proposal.

3. The member firm must provide **sufficient information** to enable the intended audience to understand:
  - The criteria used and assumptions made in calculating the projected performance or targeted return, including whether the projected performance or targeted return is net of anticipated fees and expenses; and
  - The risks and limitations of using the projected performance or targeted return in making investment decisions, including reasons why the projected performance or targeted return might differ from actual performance.

According to FINRA, the first such disclosure requirement “is not intended to prescribe any particular methodology or calculation of such performance.” In addition, FINRA does not “expect a firm to disclose proprietary or confidential information regarding the firm’s methodology and criteria.” Rather, FINRA expects member firms “to provide a general description of the methodology used sufficient to enable the investors to understand the basis of the methodology, as well as the assumptions underlying the projection or targeted return.”

### Reason for the Proposed Amendments

According to FINRA, the purpose of the proposed amendments is to “better align the regulatory requirements for broker-dealers” with those of investment advisers, which have greater flexibility to use performance projections and other types of performance under Rule 206(4)-1 (Adviser Marketing Rule) under the Investment Advisers Act of 1940.

The proposed amendments reflect FINRA’s determination that aligning Rule 2210 with the Adviser Marketing Rule provisions concerning hypothetical performance will “help investors, including by reducing investor confusion and enabling them to receive additional

information when making investment decisions, and increase regulatory harmonization while maintaining investor protection safeguards.” Such investor confusion currently may arise when investors receive different information about the same investments from different types of financial professionals.

### Differences From Adviser Marketing Rule Conditions

FINRA anticipates interpreting the requirements in the proposed amendments that align with similar requirements in the Adviser Marketing Rule consistently with how the SEC has interpreted those Adviser Marketing Rule requirements. That said, the conditions of the proposed amendments do not entirely align with those of the Adviser Marketing Rule.

According to FINRA, the scope of the performance types covered by the proposed amendments (projected performance and targeted returns) is intentionally narrower than that of the Adviser Marketing Rule (hypothetical performance, including performance derived from model portfolios; backtested performance; and targeted or projected performance returns with respect to any portfolio or to the advisory services with regard to the securities offered). The proposed amendments also impose a reasonable basis requirement (outlined above), whereas the Adviser Marketing Rule does not, though it does require adviser advertising to be fair and balanced and to meet other hypothetical performance requirements. Finally, the proposed amendments require disclosure of the reasons why the projected performance or targeted return might differ from actual performance, whereas the Adviser Marketing Rule requires an investment adviser “to provide sufficient information to enable the intended audience to understand the criteria used and assumptions made in calculating the hypothetical performance,” as well as “the risks and limitations of using such hypothetical performance in making investment decisions.”

Nevertheless, both the SEC and FINRA have in mind that projected performance may be useful to investors in making an informed investment decision, which arguably would contribute to their financial wellness.



# NAIC Launches New Regulatory Wing on Market Conduct Oversight

BY ANN BLACK

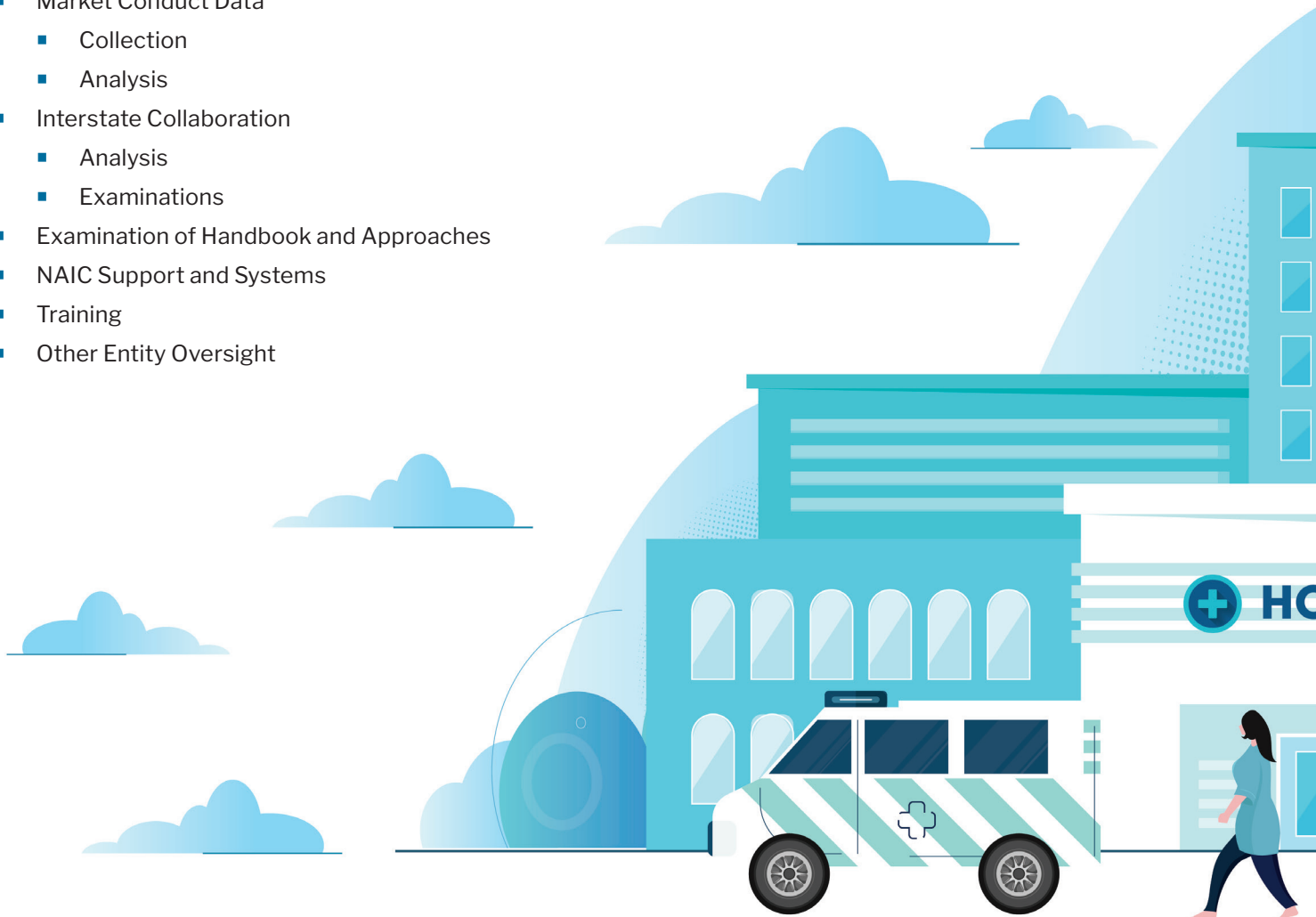
## Formation of the New Regulatory Unit

Members of the National Association of Insurance Commissioners' (NAIC) Market Regulation and Consumer Affairs (D) Committee appointed the Market Conduct Regulation Modernization (D) Working Group and adopted its charges at the 2026 NAIC Spring National Meeting. The inception of this working group came in February at a commissioner-only conference to discuss the initial framing and charge of the working group.

At the Spring National Meeting, committee chair Ann Gillespie of Illinois outlined the scope of the working group, which is to assess “the current state of the market conduct regulatory framework and the need for changes in response to changing markets, business models, and consumer expectations.” She indicated that the group is open to all jurisdictions, though the initial members include Illinois and Missouri as chair and vice chair, respectively, Alaska, Arkansas, Idaho, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, Pennsylvania, Rhode Island, South Dakota, and West Virginia.

Gillespie then outlined the areas that the working group would initially operate within its regulatory unit, based on an internal poll conducted during the initial planning intake session. The listed areas include the following:

- Market Conduct Data
  - Collection
  - Analysis
- Interstate Collaboration
  - Analysis
  - Examinations
- Examination of Handbook and Approaches
- NAIC Support and Systems
- Training
- Other Entity Oversight



Gillespie stressed that the initial list was just the first set based on commissioner observations and that more could be added. She further explained that 2026 will be used for early-stage review and input gathering, with the hope that 2027 will be used for implementing the techniques identified in 2026.

Commissioner Doug Ommen of Iowa inquired as to the group's plans regarding lines of business, as a parallel effort is currently in development within the A Committee. Gillespie replied with a unique plan to first investigate particular topic areas and then zero in on how those topic areas apply to a particular line of business.

## Initial Operations

Following the committee's meeting at the Spring National Meeting, the working group had its first meeting in April, where it fleshed out the project timeline, along with the overall plan of action. Gillespie explained that the goal moving forward is to have meetings with a biweekly cadence, with the majority of these meetings being for regulators only. However, interspersed with these regulator-only meetings, the working group would provide periodic reports to apprise the public about what progress is being made behind the curtain. The initial timeline of events is as follows:

- April/May: Overview of NAIC Data Analytics Tools and Resources (Regulator Only)
  - May/June: Industry Group Input of Initial Areas of Exploration, specifically Property and Casualty, Health, Life, Insurtech, and Specialty Lines
    - May/June: Consumer Board and Liaisons Input on Initial Areas of Exploration
      - June/July: Interstate Collaboration (Regulator Only)
        - June/July: Market Regulation Handbook (Regulator Only)
          - July/August: Training (Regulator Only)
            - July/August: Third-Party Oversight (Regulator Only)

The working group has planned its initial three meetings for April 22, May 11, and May 26. Gillespie also indicated that consumer advocates would have an opportunity to present information as well, so that regulators could get a clinical readout from all participating stakeholders. Some regulators questioned how much support the NAIC would provide for this endeavor, indicating that the working group would need support similar to what financial condition examiners get to ensure the project gets off the ground.

The group hopes to have final recommendations on the additional work needed for implementation by the NAIC Fall National Meeting, with the expectation that specific detailed changes will occur beginning in 2027 as the working group moves toward full operational readiness.

*This article was co-authored by Carlton Fields law clerk Jake Heiges.*



# STAY AHEAD WITH EO WATCH:

*Timely Insights on Executive Orders Impacting Your Industry*

Presidential actions in the Trump administration continue to play a crucial role in shaping U.S. policy. It is important for businesses to stay informed about the potential impact of recent executive orders, memoranda, and proclamations.

To support our clients in navigating this evolving landscape, Carlton Fields is proud to continue **EO Watch** — our dedicated online hub for analyzing select executive orders. EO Watch provides clear, actionable insights to help businesses understand and address the implications of these executive actions on operations, compliance, and strategy.

For financial services, life insurance, and securities industry clients, here are some of the latest **EO Watch** articles of interest:

- **SEC Staff Clarifies Broker-Dealer Status of Self-Custody Wallet Interface Providers**  
The SEC staff issued guidance explaining when self-custody crypto wallet interfaces are not required to register as broker-dealers.
- **A Safe Harbor in Rough Waters: Department of Labor’s Proposed Regulation on Alternative Assets**  
A deep dive into the U.S. Department of Labor’s proposal reveals how evolving guidance on alternative investments could reshape fiduciary discretion — and what still needs fixing to make a true safe harbor work.
- **FinCEN Bows to Executive Order, Relaxes Customer Due Diligence Requirements**  
FinCEN is loosening customer due diligence requirements under a new executive order, reducing compliance burdens for banks while maintaining anti-money laundering controls.
- **Revised SEC N-PORT Proposals Emerge From Trump-Ordered Regulatory Freeze**  
The SEC has reworked its Form N-PORT reporting proposals in response to Trump’s regulatory freeze order, scaling back disclosure requirements and easing compliance burdens for investment funds.
- **How to Tokenize Securities: SEC Staff Provides a Taxonomy of Different Approaches**  
SEC staff has outlined a taxonomy of tokenized securities, distinguishing issuer and third-party models to clarify how blockchain-based representations of traditional securities fit within existing securities laws.
- **SEC Proposal for Small Fund Complexes and Investment Advisers Follows Executive Orders**  
The SEC proposes expanding “small entity” definitions for funds and advisers under RFA rules, increasing the number of firms eligible for lighter regulatory analysis as part of an executive order-driven deregulation effort.

Access our full collection of EO insights at <https://www.carltonfields.com/services/executive-order-watch>.



# NEWS AND NOTES

Carlton Fields released its [2026 Carlton Fields Class Action Survey](#), providing an overview of key trends, risks, and best practices in class action management. The milestone 15th anniversary edition provides a rare long-view lens on how class action litigation has expanded, evolved, and become embedded in corporate risk management, revealing record corporate exposure to class actions and a sharp rise in artificial intelligence- and privacy-related risks.

Carlton Fields has been named the winner of the **Litigation Department of the Year** in the insurance category by the *Daily Business Review*. The firm won the same award last year.

**Ann Black** was named as a top author in the insurance category in *JD Supra's 2026 Readers' Choice Awards*. Ann, who co-chairs Carlton Fields' Life, Annuity, and Retirement Solutions Industry Group, writes regularly on topics of interest to the life insurance industry.

**Natalie Napierala** was named to the 2026 “**Notable Women in Law**” list by *Crain's New York Business*. The exclusive list recognizes leading female attorneys in the New York City metro area who have made significant contributions to the legal profession.

Thomson Reuters has named seven Carlton Fields attorneys to its 2026 “**Stand-Out Lawyers**” list, including **Ann Black**, **Richard Choi**, and **Ann Furman**, who were selected via client nomination in Thomson Reuters' randomly sampled global Sharplegal survey.

Carlton Fields was named among **Vault's 2027 Top Law Firms for Diversity**. The firm ranked 6th for Overall Inclusion, Women, and LGBTQ+ Individuals. It also ranked 7th for People of Color, and 9th for People with Disabilities.

The firm was a proud sponsor of the **Securities Industry and Financial Markets Association (SIFMA) Annual Compliance and Legal Seminar** on March 22–25 in Orlando, Florida.

Carlton Fields sponsored the **Global Insurance Symposium** on April 14–15 in Des Moines, Iowa.

The firm sponsored the **National Alliance of Life Companies (NALC) Spring Conference** on April 22–24 in Asheville, North Carolina.

Carlton Fields sponsored the **DRI Life, Health, Disability, and ERISA Seminar** on April 29–May 1 in Atlanta, Georgia.

Carlton Fields sponsored the **Insured Retirement Institute (IRI) Annual Conference** on April 22–24 in Tampa, Florida, and several of our firm's shareholders were presenters: **Justin Chretien**, **Tom Conner**, **Dean Conway**, and **Harry Eisenstein** spoke on the regulatory landscape for insurance carriers and producers selling securities and **Adam Scaramella** participated as moderator for a panel on enforcement, innovation, and expectations for the securities regulator.

Carlton Fields is a sponsor of the **National Association for Fixed Annuities (NAFA) Annuity Leadership Forum** on June 22–23 in Washington, D.C.

The firm is pleased to support the **American Council of Life Insurers (ACLI) Compliance, Legal, and Fraud Prevention Conference** on July 13–15 in Chicago, Illinois, as a sponsor.

Carlton Fields welcomes the following attorneys to the firm: shareholders **Christopher Fowlkes** (mass tort and product liability, Minneapolis) and **Thomas Rohback** (class actions, Hartford); of counsel **Jeffrey Davidson** (government law and consulting, Washington, D.C.); and associates **Sarah Annabi** (real estate and commercial finance, Hartford), **Jason Berkun** (financial services regulatory, New York), **Owen Beylus** (real estate and commercial finance, Tampa), **Emily Karpen** (business litigation, Los Angeles), **Tyler Peruta** (real estate and commercial finance, Hartford), and **David Sosa** (business transactions, Miami).

**CARLTON  
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**125  
YEARS**

Carlton Fields proudly marks its **125th anniversary this year**. For more than a century, the firm has been defined by excellence — serving clients, shaping industries, and strengthening communities. As we celebrate this milestone, we remain equally focused on the future, building on our legacy through continued investment in technology, collaboration, and the development of future leaders. We are grateful to the clients and colleagues who have been part of this journey and are even more excited about what lies ahead.

Carlton Fields serves business clients in key industries across the country and around the globe. Through our core practices, we help our clients grow their businesses and protect their vital interests. The firm serves clients in eight key industries:

- Life, Annuity, and Retirement Solutions
- Banking, Commercial, and Consumer Finance
- Construction
- Health Care
- Property and Casualty Insurance
- Real Estate
- Securities and Investment Companies
- Technology and Telecommunications

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