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Investment Management & Funds Regulatory Update - July 2026

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In this issue, we discuss a proposed rule regarding the use of electronic delivery to satisfy information delivery requirements under the federal securities laws and a recent Supreme Court decision rejecting implied private rights of action under Section 47(b) of the Investment Company Act of 1940, as amended.

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Rules and regulations

SEC proposes Regulation E-Delivery to allow for electronic delivery of information required to be delivered under the federal securities laws

On July 16, 2026, the Securities and Exchange Commission proposed a new rule, referred to as “Regulation E-Delivery,” that would expand the ability of issuers, broker-dealers, investment advisers and other parties to use electronic delivery (or e-delivery) to satisfy information delivery requirements under the federal securities laws. Under current regulations, required regulatory information is typically delivered in paper format unless the recipient affirmatively elects otherwise. Regulation E-Delivery includes certain requirements and conditions under which required information could be delivered electronically without first obtaining affirmative consent, while still preserving a recipient’s ability to receive delivery in paper format. The purpose of the proposed rule is to modernize the current delivery regulations and reflect how today’s issuers, market intermediaries, investors and others frequently use electronic media to provide and access information. If adopted, the proposal will also provide these parties with savings with respect to paper, printing and postage costs.

Regulation E-Delivery would address the e-delivery of “covered information” by “covered entities” to “covered recipients”:

Covered information, in general, would apply to any information required to be delivered to a covered recipient under the federal securities laws, including, but not limited to, prospectuses for funds and other issuers, fund annual and semi-annual shareholder reports, proxy statements, trade confirmations, disclosures pursuant to Form CRS and Form ADV Part 2 Brochures.

Covered entities would include any person that has an obligation to deliver covered information to a covered recipient under the federal securities laws, including, but not limited to, issuers, investment advisers and broker-dealers.

Covered recipients would include any current or prospective customer, client, investor, security holder, counterparty or similar recipient of information.

Conditions to relying on Regulation E-Delivery

Regulation E-Delivery would permit, but not require, covered entities to use e-delivery as the default method of delivery for covered information, subject to certain conditions. A covered entity could rely on Regulation E-Delivery to satisfy its delivery obligations without first obtaining affirmative consent where:

(1) the covered recipient has provided an electronic address;

(2) the covered entity has provided a prominent disclosure to the covered recipient that it will send covered information to the electronic address provided; and

(3) the covered recipient has not opted out of e-delivery.

In addition to these threshold conditions, Regulation E-Delivery would impose general requirements governing the method, timing and ability to opt out of e-delivery, the ability of a covered recipient to receive a paper version of covered information free of charge upon request, as well as requirements related to the websites on which covered information is made available.

Two permissible methods of e-delivery

Regulation E-Delivery would provide for two permissible methods of e-delivery, and the method a covered entity may use depends upon whether the covered information includes personal financial information (PFI).

Direct delivery – For covered information that does not include PFI, a covered entity could electronically deliver covered information directly to a covered recipient’s electronic address.

Statement of availability – For covered information that includes PFI, a covered entity would be required to deliver a statement of availability of the covered information to the covered recipient’s electronic address (e.g., an email with a link to the website address where the covered recipient can access the transmitted information). A covered entity would also be permitted to use the statement of availability method for covered information that does not include PFI, giving covered entities flexibility to tailor the choice of delivery method to the type of covered information involved.

The principal difference between the two methods is that direct delivery transmits the covered information itself to the recipient’s electronic address, whereas a statement of availability instead directs the recipient to a website where the information can be accessed.

Rescission of Rule 30e-3 under the Investment Company Act

Notably, Regulation E-Delivery would rescind Rule 30e-3 under the Investment Company Act of 1940, as amended, which provides an optional method for mutual funds, ETFs and other registered investment companies to deliver certain fund shareholder reports electronically only when certain conditions outlined in Rule 30e-3 are satisfied. Rather, Regulation E-Delivery would apply generally to those fund shareholder reports (and certain other required regulatory filings).

Litigation

Supreme Court issues decision rejecting implied private rights of action under Section 47(b) of the Investment Company Act of 1940, as amended

On June 11, 2026, the Supreme Court issued its decision in *FS Credit Opportunities Corp. et al. v. Saba Capital Master Fund, Ltd. et al*, No. 24-345, in which it held that Section 47(b) of the Investment Companies Act (the ICA) does not contain an implied private right of action to sue for recission of contracts that allegedly violate the act.

Section 47(b) of the ICA, generally provides that a “contract that is made, or whose performance involves” a violation of the ICA or regulations thereunder is “unenforceable by either party” and that, if performed, “a court may not deny recission at the instance of any party” unless the court finds that enforcement or denial of recission “would produce a more equitable result” than the alternative. While it is clear that the statute provides for certain remedies in the event a contract violates the ICA, courts had grappled with the question of whether Section 47(b) created an implied right of action to sue to void or rescind a contract on the ground that violated the ICA or rules thereunder or only provided a remedy in a case premised on an independent cause of action. Courts of Appeals had split this question, with the Third and Ninth circuits concluding that Section 47(b) did not create such a right, while the Second Circuit had concluded that such a right existed.

The case arose out of the investment of Saba Capital Master Fund Ltd. (Saba) in a number of closed-end funds (the Funds). The Funds were incorporated under Mayland law, which, according to the Court, “limits voting rights for shareholders holding a disproportionate number of shares.” In June 2023, Saba sued the Funds in the U.S. District Court for the Southern District of New York under Section 47(b) of the ICA, arguing that the voting limitations imposed on the Funds violate the ICA’s requirement that “every share of stock … shall be a voting stock and have equal voting rights with every other outstanding stock” of a regulated investment company, 15 U.S.C. § 80a-18(i). The District Court, applying then-controlling Second Circuit precedent, concluded that Section 47(b) provides an implied private right of action to sue for recission; the Second Circuit summarily affirmed. The Funds petitioned for certiorari, which the Supreme Court granted. Oral argument was held in December 2025.

On June 11, 2026, the Court issued its decision reversing the Second Circuit by a 6-3 margin. Justice Barrett, writing for the majority, began by reviewing the Supreme Court’s shift – now several decades old – away from implying private rights of action in statutes that otherwise provide for express rights of action. To create a private right, she explained, a statute must use “rights-creating language” aimed at protecting “a particular class of persons”; even so, an express right of action elsewhere in a statute’s remedial scheme may foreclose implying a private right elsewhere. Turning to the ICA, Justice Barrett explained that Section 47(b)’s express language rendering contracts unenforceable or subject to recission creates what the law typically regards as remedies available in a suit, not rights of action in themselves. Finally, she noted, the ICA provides for express rights of action against an adviser for breaches of fiduciary duty, or to recover certain short-term profits; those express causes of action are inconsistent, in the majority’s view, with Congress having created private rights of action in Section 47(b) by implication.

The most immediate consequence of the Supreme Court’s ruling is that investment companies will no longer be subject to private suits for recission under Section 47(b), and that the remedies Section 47(b) provides can only be sought in a suit otherwise available to investors. While the SEC itself retains the power to bring civil actions on account of a violation of “any provision” of the ICA, and to seek money damage and injunctive relief, private actions have typically presented greater risks and economic consequences. Similarly, the decision does not alter the state-law remedies that may be available to investors in closed-end funds (although those may be less attractive to activist investors or opportunistic plaintiffs). More broadly, the Court’s decision is consistent with the Supreme Court’s multi-decadal project of trimming implied rights of action, building on precedents dating back to *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 170 (1994).

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