

An aerial night view of a city skyline, featuring a prominent skyscraper with a distinctive dome on the left. The image is overlaid with a semi-transparent blue filter. In the upper right corner, there are several large, out-of-focus circular light spots in shades of orange and red. The overall composition suggests a modern, financial, or technological theme.

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INVESTMENT MANAGEMENT REGULATORY UNIVERSITY

OCTOBER 8, 2026

AGENDA

1. Welcome Remarks
2. Regulatory Hot Topics
3. Artificial Intelligence and the Future of Legal Privilege

An aerial, high-angle view of a dense urban skyline at night. The image is dominated by a large, modern skyscraper with a distinctive, curved, and segmented top, which appears to be the One World Trade Center. The building's facade is illuminated with a cool blue light. To the right of the main building, there are other skyscrapers and a complex network of highways with multiple lanes, some of which are brightly lit with yellow and orange lights. The overall scene is a vibrant, high-contrast representation of a major metropolitan area.

WELCOME REMARKS

WELCOME REMARKS



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An aerial, high-angle view of a dense urban skyline at night. The image is dominated by a large, modern skyscraper with a distinctive, curved, and segmented top, which appears to be the One World Trade Center. The building's facade is illuminated with a warm, golden light, contrasting with the cooler blue tones of the surrounding city. The surrounding area is filled with numerous other high-rise buildings, some of which are also lit up. A complex network of highways and roads is visible, with traffic lights and lane markings glowing. The overall atmosphere is one of a bustling, modern metropolis.

REGULATORY HOT TOPICS

REGULATORY HOT TOPICS



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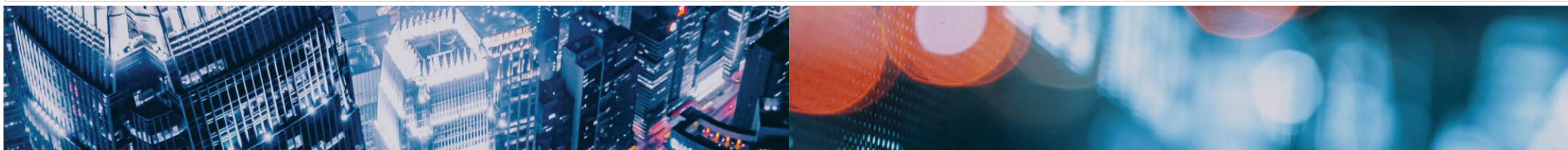


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SEC REGULATORY RULEMAKING AGENDA – SELECT RIA RELATED PROPOSED RULES

Proposed Rule	Summary	Status
Form PF Amendments	Proposed updates to Form PF filing thresholds and simplification of reporting requirements	Proposed Rule (April 2026)
E-Delivery	Update rules on use of electronic delivery for information required to be delivered under the U.S. federal securities laws	Proposed Rule (July 2026)
Rescission of Pay to Play Rule	Proposed rescission of Rule 206(4)-5, the political contributions/pay-to-play rule for RIAs	Proposed Rule (Sept. 2026)
Enhancing Retail Exposure to Private Markets	Update Qualified Client definition to allow RIAs to charge performance fees to an expanded set of clients; seeks public comment on expanding Accredited Investor definition	Proposed Rule (Sept. 2026)
Interval Fund Modernization; Expansion of Multiple Share Class to Registered Closed-End Funds and BDCs	Modernize the interval fund framework by increasing flexibility in the repurchase offer process and allowing interval funds to better match the liquidity profile of their portfolio; permit registered closed-end funds and BDCs to issue multiple share classes	Proposed Rule (Sept. 2026)
Amendments to Custody Rules	Proposed updates to Rule 206(4)-2 custody rule to “modernize” certain provisions/codify past guidance, address custody of crypto assets and make other “modernization” updates to Investment Company Act custody rules	Proposed Rule (October 2026)
Rule 17a-7 Amendments	Potential changes to cross trade exemption conditions for registered funds	OMB Review
Amendments to Books and Records	Potential updates to Advisers Act’s Rule 204-2 books and records rule	On Agenda
Regulatory Status of Finders	Potential rules concerning the regulatory status of “finders” for purposes of Section 15(a) of the Securities Exchange Act.	On Agenda



Enforcement Actions Filed in Fiscal Years 2020 to 2025

	FY 2025	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Standalone Enforcement Actions	303	431	501	462	434	405
Follow-On Admin. Proceedings	69	93	162	169	143	180
Delinquent Filings	84	59	121	129	120	130
Total Actions	456	583	784	760	697	715

Standalone Enforcement Actions is a combined count of Civil Actions and Standalone APs.

Total Money Ordered (in millions)

	FY 2025	FY 2024	FY 2023	FY 2022	FY 2021	FY 2020
Penalties	\$1,300*	\$2,100	\$1,580	\$4,194	\$1,456	\$1,091
Disgorgement	\$1,400*	\$6,100	\$3,369	\$2,245	\$2,395	\$3,588
Total	\$2,700*	\$8,200	\$4,949	\$6,439	\$3,852	\$4,680

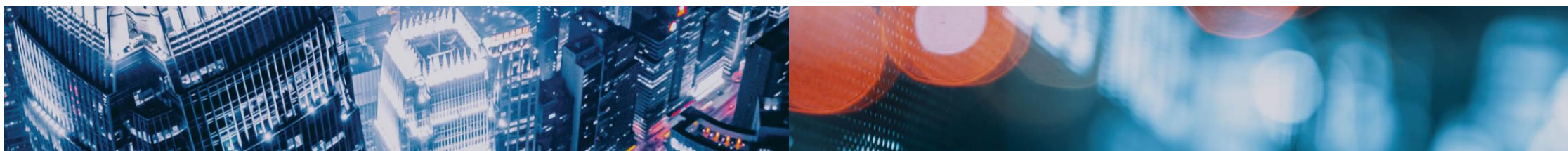
* Excludes "deemed satisfied" amounts and judgments against Robert Allen Stanford and other defendants in the SEC's long-running \$8 billion Ponzi scheme litigation.



Enforcement Summary Chart for FY 2025 by Primary Classification

Primary Classification	Civil Actions	Standalone APs	Follow-On APs	Delinquent Filings	Total	% of Total Actions	Total Civil Actions & Standalone APs	% of Civil and Standalone APs
Broker Dealer	5 (6)	34 (41)	26 (28)	0 (0)	65 (75)	14%	39 (47)	13%
Delinquent Filings	0 (0)	0 (0)	0 (0)	84 (84)	84 (84)	18%	0 (0)	0%
Foreign Corrupt Practices Act	1 (1)	5 (5)	0 (0)	0 (0)	6 (6)	1%	6 (6)	2%
Insider Trading	21 (43)	10 (13)	1 (1)	0 (0)	32 (57)	7%	31 (56)	10%
Investment Advisers / Investment Companies	20 (40)	52 (71)	27 (27)	0 (0)	99 (138)	22%	72 (111)	24%
Issuer Reporting / Audit & Accounting	11 (25)	25 (28)	11 (12)	0 (0)	47 (65)	10%	36 (53)	12%
Market Manipulation	11 (39)	4 (4)	1 (1)	0 (0)	16 (44)	4%	15 (43)	5%
Miscellaneous	5 (7)	4 (4)	0 (0)	0 (0)	9 (11)	2%	9 (11)	3%
NRSRO	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0%	0 (0)	0%
Public Finance Abuse	1 (3)	5 (7)	1 (2)	0 (0)	7 (12)	2%	6 (10)	2%
Securities Offering	75 (237)	13 (13)	2 (2)	0 (0)	90 (252)	20%	88 (250)	29%
SRO / Exchange	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	0%	0 (0)	0%
Transfer Agent	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)	0%	1 (1)	0%
Total	150 (401)	153 (187)	69 (73)	84 (84)	456 (745)	100%	303 (588)	100%

Each action initiated has been included in only one category listed above, even though many actions may fall under more than one category. Party counts are noted in parentheses.



Networking Break

An aerial, high-angle view of a dense urban skyline at night. The image is dominated by a large, modern skyscraper with a distinctive, curved, and segmented top, resembling a dome or a series of overlapping layers. This building is the central focus, with its lights glowing against the dark sky. Surrounding it are numerous other high-rise buildings, their windows lit up, creating a mosaic of light and shadow. The streets below are visible as a network of lines, with some areas showing more intense light, possibly from traffic or streetlights. The overall color palette is dark, with deep blues and blacks, punctuated by the warm, yellow and orange lights of the city. The text "ARTIFICIAL INTELLIGENCE AND THE FUTURE OF LEGAL PRIVILEGE" is overlaid in the center in a bold, white, sans-serif font. Two thin, vertical white lines run parallel to each other, one on the left and one on the right of the text, extending from the top to the bottom of the frame.

ARTIFICIAL INTELLIGENCE AND THE FUTURE OF LEGAL PRIVILEGE

ARTIFICIAL INTELLIGENCE AND THE FUTURE OF LEGAL PRIVILEGE



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1. The Duty of Confidentiality in the AI Era
2. Legal Privilege: A Refresher
3. Confidentiality and Privilege: The Intersection
4. Hypothetical Scenarios for Discussion



01

THE DUTY OF CONFIDENTIALITY IN THE AI ERA

RULE 1.6: THE FOUNDATION

Model Rule 1.6(a):

- *"A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent."*
- The duty extends beyond privileged communications — it covers ALL information relating to the representation, regardless of its source.

Key Principle

- The duty of confidentiality is broader than the attorney-client privilege. Privilege governs what can be compelled in legal proceedings; confidentiality governs what a lawyer may voluntarily disclose in any context.

AI AS A THIRD-PARTY RECIPIENT

- When a lawyer inputs client information into an AI tool, that information is transmitted to the AI provider — a third party.

Critical Questions

- Does the AI provider's terms of service permit use of inputs for training, improvement, or sharing?
- Are inputs stored, logged, or accessible to the provider's employees?
- Can the provider be compelled to produce user inputs in response to a subpoena or government request?
- *Under Rule 1.6, a lawyer must make reasonable efforts to prevent the inadvertent or unauthorized disclosure of client information — including through technology.*

RULE 1.6(C): REASONABLE SAFEGUARDS

Rule 1.6(c):

- “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

ABA Formal Opinion 477R (2017)

- Lawyers must assess the sensitivity of the information, the likelihood of disclosure, and the cost of additional safeguards when using technology.

The Standard

- The “reasonable efforts” standard does not require perfection — but it does require informed, deliberate decision-making about which AI tools to use and how.

COMPETENCE AND AI: RULE 1.1

Comment [8] to Rule 1.1:

- *Lawyers must keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.*
- A lawyer who uses AI without understanding its data practices — training, retention, sharing, security — may lack the technological competence the rule demands.

Competence Requires Understanding:

- How the AI tool processes and stores inputs
- Whether inputs are used to train or improve the model
- What security measures protect client data
- Whether the tool meets enterprise-grade standards

SUPERVISION DUTIES: RULES 5.1 AND 5.3

Rule 5.1

- Partners and supervising lawyers must ensure that subordinate lawyers conform to the Rules of Professional Conduct.

Rule 5.3

- Lawyers with supervisory authority over nonlawyers must make reasonable efforts to ensure their conduct is compatible with the lawyer's professional obligations.

AI Implications

- Firms must establish clear policies governing which AI tools are approved for use with client information.
- Supervising lawyers must train and monitor associates, paralegals, and staff on appropriate AI use.
- Failure to supervise AI use by subordinates can result in discipline for the supervising lawyer.

An aerial, high-angle view of a dense urban skyline at night. The image is heavily stylized with a deep blue color overlay. Numerous skyscrapers are visible, with their windows glowing with light. The perspective is looking down from a high altitude, showing the intricate patterns of the city's architecture and the flow of traffic on the roads below. The overall mood is sophisticated and modern.

02

LEGAL PRIVILEGE: A REFRESHER

LEGAL PRIVILEGE: EFFECT AND PURPOSE

- Privileges protect documents and communications involving a lawyer (in-house or outside counsel) and their clients from discovery in civil litigation and regulatory enforcement actions.
 - Attorney-Client Privilege: protects documents and communications that are intended to be, and are kept, confidential, for the purpose of obtaining legal advice.
 - Attorney-Work Product: protects materials prepared by or at the direction of an attorney in anticipation of, or with an “eye toward” litigation.
- Privileges are intended to allow clients to communicate candidly with their attorneys, including in anticipation of litigation.
- Privileges are not absolute. They do not cover every communication with a lawyer and can be waived.

ESTABLISHING PRIVILEGE

- These protections generally can be established by:
 - Directing communications to lawyers that request or inform their legal advice; and/or
 - Lawyers providing legal advice or directing the creation of analyses and reports in preparation for, or anticipation of, potential litigation.
- Communications with counsel seeking legal advice that are connected to other goals of the business may be privileged if kept confidential.
 - Directives from counsel to use AI tools to further legal advice may extend attorney-work product protections to that specific use.
 - Materials that serve largely a “business purpose” are generally not privileged.
- However, courts typically apply privileges narrowly, with a particular focus on confidentiality and the purpose for which materials and communications were created.
 - If there are cracks, courts will often rule against finding documents or communications to be privileged.

WAIVING PRIVILEGE

- **Loss of Confidentiality**
 - Any disclosure that disrupts the “confidential” nature of the information can waive the privilege.
 - This includes sharing the confidential information with third parties (with exceptions).
- **External Distribution**
 - Sharing reports, memos, and/or analyses with individuals or entities outside of the company (e.g., customers, vendors, contractual third parties), who are not retained by counsel to assist in giving legal advice.
- **Internal Distribution**
 - Distributing reports, memos, and/or analyses beyond the main team of individuals responding/investigating.
 - Distributing reports, memos, and/or analyses for commercial or technical purposes beyond the use for legal advice or in anticipation of litigation.

An aerial, high-angle view of a dense urban skyline at night. The image is heavily stylized with a dark blue, almost black, color palette. A large, prominent skyscraper with a distinctive, tiered, and somewhat dome-like top structure is the central focus on the left side. To its right, a complex network of highways and smaller buildings is visible, with some lights reflecting on the surfaces. The overall atmosphere is futuristic and high-tech. A thin, vertical white line runs down the center of the image, passing through the text.

03

CONFIDENTIALITY AND PRIVILEGE: THE INTERSECTION

HOW CONFIDENTIALITY BREACHES DESTROY PRIVILEGE

- Attorney-client privilege requires that communications be made in confidence and that confidentiality be maintained.
- If a lawyer discloses privileged communications to a third party — including an AI tool — without adequate safeguards, the privilege may be waived.
- The waiver analysis turns on whether the disclosure was voluntary, whether the third party is an agent of the attorney, and whether reasonable precautions were taken to maintain confidentiality.

Key Risk

- If an AI provider is not treated as a functional agent of the lawyer, sharing privileged information with the tool may constitute a voluntary disclosure to a third party — destroying the privilege.

THE COMMON INTEREST AND AGENCY DOCTRINES

Can an AI provider qualify as an agent of the lawyer for privilege purposes?

The Agency Argument

- If the AI tool operates under the lawyer's direction, processes information solely for the representation, and the provider contractually agrees to maintain confidentiality, the provider may be treated as a functional agent — similar to an outside copy service or e-discovery vendor.

The Counterargument

- Consumer AI tools with broad terms of service, data-training permissions, and no confidentiality obligations are unlikely to qualify as agents.

Practical Takeaway:

- Enterprise AI tools with contractual confidentiality protections are far more likely to preserve the agency relationship — and therefore the privilege.

UNITED STATES V. HEPPNER, 25-CR-00503 (S.D.N.Y.)

- Defendant used the commercial, self-learning, version of Anthropic's Claude, Gen-AI tool to create information for his attorney for use in his defense.
 - Not done at the direction of counsel.
 - Materials entered on privilege log as AI generated analysis conveying facts to counsel for the purpose of obtaining legal advice.
- Judge Rakoff ruled that the inputs and outputs were not protected by attorney-client privilege.
- Held that confidentiality cannot be maintained if communications were shared with a third-party that disclaimed confidentiality over that information.
- Held that attorney work product protections did not apply because: (1) neither the defendant nor the AI tool were legal counsel and (2) the defendant did not use the AI tool at the direction of counsel.

HEPPNER: NOVEL, BUT NOT SURPRISING

- Many cases prior to *Heppner* have grounded the privilege determination in the existence of a reasonable expectation of confidentiality. Courts have frequently looked to:
 - Whether the communications are between an employee and counsel.
 - Whether the context of the communications prevents an expectation of confidentiality.
 - Whether the purpose of the communication is to obtain confidential legal advice.
- Earlier legal authorities anticipated the distinction between closed, enterprise AI tools and self-learning models, as well as between application of the attorney-client privilege and the attorney-work product doctrine.
 - See ABA Formal Op. 512, Generative AI Tools (July 2024): “self-learning [Generative AI] tool may disclose information relating to the representation to persons outside the firm who are using the same [tool].”
 - See *Dahl v. Bain Capital Partners, LLC*, 714 F. Supp. 2d 225, 227-28 (D. Mass. 2010) (privilege “does not apply to instances where an attorney’s ability to represent a client is merely improved by the assistance of the third party.”).
- The *Heppner* decision extended these principles to the use of Anthropic’s commercial version of Claude.

ATTORNEY WORK PRODUCT PROTECTIONS AND AI

- Courts may apply work product protections to a broader use of AI tools.
- Courts have recognized that using these tools at the direction of counsel *may* permit work product protections over prompts and outputs.
 - Relying on this theory comes with some risk, as this law is not settled.
- Claims of attorney-work product protections can be bolstered by including in the prompts that the query is done at the direction of counsel and including appropriate “Attorney Work Product” markings in the prompt and directing the AI tool to include that label in the output.
 - *See e.g., Concord Music Grp., Inc. v. Anthropic PBC*, 24-cv-03811, 2025 WL 1482734, at *2 (N.D. Cal. May 23, 2025); *but see, In re OpenAI, Inc., Copyright Infringement Litigation*, 2025 WL 2799890 (S.D.N.Y. Oct. 1, 2025).
 - *See e.g., Warner v. Gilbarco*, 24-cv-12333, ECF No. 94, at p. 11 (E.D. Mich. Feb. 10, 2026) (“And ChatGPT (and other generative AI programs) are tools not persons . . .” and noting that while this may waive attorney-client privilege, it’s not in itself enough to waive work product protection).

PRESSURE TESTING PRIVILEGE: EMERGING DISCOVERY TRENDS REGARDING THE USE OF AI

- Increasingly common for discovery to target AI-tools to request sensitive company information.
 - Document requests seek custodians' and employees' AI use history for enterprise tools and personal devices.
 - Often designating the AI-tool as a search repository to be searched.
 - Interrogatories have begun targeting relevant employees' AI usage.
 - Depositions target employees' preferred AI tools and AI usage and opposing counsel have used these answers to demand discovery from these tools.
 - Demands at the outset of litigation to preserve AI tool prompts and output.
- Increased challenges to privilege logs and privilege determinations.
 - References to "AI aided" or "AI generated" materials are creating new grounds for challenging privilege logs.
 - ESI Protocols and Protective Orders are including procedures requiring disclosure of the use of AI; the existence of AI generated or aided materials; and procedures for challenging claims of privilege.

Anticipate increases in motions to compel discovery.

- Opposing counsel will seek to challenge privilege designations or failure to produce information about the AI tools used by employees.
- Strategically, this serves dual purposes:
 - (1) opportunities to challenge privilege designations to obtain the information and a possibility to argue subject matter waiver; and
 - (2) potential to argue for an adverse inference or spoliation in the event the information was not retained.

DISCUSSION POINTS WITH OUTSIDE COUNSEL

- What tools is counsel proposing to use in connection with the engagement?
- What are the data security and confidentiality protections of those tools?
- Is counsel the deployer or the developer of the tool?
- Technical Stuff!

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04

HYPOTHETICAL SCENARIOS FOR DISCUSSION

HYPOTHETICALS

Fact Pattern #1

The general counsel of a private equity sponsor instructs her legal team to use the firm's approved enterprise AI platform to prepare responses to an SEC examination. A paralegal copies the SEC's confidential examination request letter — along with internal communications discussing potential compliance deficiencies in the fund's expense allocation practices — into the AI tool to draft a response. The sponsor's information security team later confirms that the enterprise AI platform logs and retains all user prompts for 90 days. The SEC subsequently requests production of all documents related to the fund's use of AI tools in preparing examination responses.

Fact Pattern #2

The Head of Corporate Development at a private equity sponsor is discussing a potential joint venture with another fund sponsor. The potential venture partner has provided an initial draft term sheet, and the Head of Corp Dev is now using an AI tool to review the term sheet and identify terms that pose risk to the company. He then sends the AI tool output directly to internal and external counsel, "Let's discuss."

Fact Pattern #3

An investment adviser has adopted a policy of recording all internal meetings using AI notetakers, which automatically generate meeting summaries and key takeaways/action items. After a potential incidence of insider trading is reported to Compliance, the CCO sets up a meeting to talk to the Chief Investment Officer to investigate the potential incident. During the meeting, the CIO remarks off the cuff that the particular PM that was involved in the trade is sometimes sloppy with wall-crossing, and the CCO agrees that they have been written up before for compliance breaches related to MNPI concerns, so they are worried about potential significant liability for the firm. Subsequently, the investigation does not uncover any evidence of wrongdoing by the PM. The SEC and FINRA are now investigating the same trade and have requested information from the firm.





QUESTIONS?

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