Baker McKenzie.

Client Alert

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United States: Asset Management Spotlight (February 2026 - March 2026)

Major developments for alternative asset managers

In brief

From February to March 2026, US regulators took several significant actions affecting financial markets, alternative asset managers, and digital asset participants. The US Securities and Exchange Commission (SEC) adopted final rules implementing the Holding Foreign Insiders Accountable Act (HFIA), requiring directors and officers of foreign private issuers to begin filing Section 16 reports electronically. The SEC also proposed amendments to narrow Exchange Act Rule 15c2-11 to equity securities and published new capital raising and security-based swap dealers (SBSD) financial condition data through the SEC's Division of Economic and Risk Analysis (DERA).

Contents

The SEC and the Commodity Futures Trading Commission (CFTC) jointly issued a major interpretation clarifying how securities laws apply to crypto assets, outlining a new token taxonomy and providing cross-agency alignment. The CFTC separately issued no-action relief for a noncustodial wallet interface, as well as new FAQs refining guidance on the use of crypto assets as collateral for futures commission merchants (FCMs), derivatives clearing organizations (DCOs), and swap dealers.

The Department of Labor (DOL) has issued a proposed rule in response to President Trump's Executive Order **Democratizing Access to Alternative Assets for 401(k) Investors**.

These developments reflect continued regulatory focus on transparency, market integrity, and clearer oversight of digital asset activities, while also highlighting the need for market participants to update compliance processes, reporting workflows, and product classifications.

In more detail

- SEC Implements HFIA: FPI Directors and Officers Must File Forms 3, 4 & 5 Starting Mar. 18, 2026. (See also) On February 27, 2026, the SEC adopted final rule and form amendments implementing the HFIA, which was enacted on December 18, 2025. If not subject to the March 5, 2026 SEC exemptive order, beginning March 18, 2026, directors and officers of foreign private issuers (FPIs) with a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), not beneficially owning more than 10% of any class of an FPI's equity securities, must file Section 16 reports electronically and in English. As mandated by the HFIA, the SEC amended Exchange Act Rule 3a12-3(b) to eliminate the blanket FPI exemption and retain exemptions only for Section 16(b) short-swing and Section 16(c) short-sale provisions, and amended Exchange Act Rule 16a-2 to exclude 10% holders of an FPI's equity securities from the new Section 16(a) reporting requirement. The adopting release is available on the SEC's website and in the Federal Register.

  What to do now: Identify covered directors/officers and prepare to file Forms 3, 4, and 5 (e.g., initial Form 3 no later than March 18, 2026, for current insiders (or within 10 days of becoming a reporting person); Form 4 within two business days of reportable changes; and Form 5 within 45 days after fiscal year-end). Set up Electronic Data Gathering, Analysis, and Retrieval (EDGAR) access (Form ID), update insider lists, policies, and training, and ensure workflows support English and electronic filings. Note that holders of greater than 10% of an FPI's equity securities remain outside Section 16(a) and that the SEC's final rules largely track the statute; firms should also monitor the SEC's FAQs and any targeted relief.

- SEC's Proposal to Narrow Exchange Act Rule 15c2-11 to Equity Securities: On March 16, 2026, the SEC proposed amendments to Exchange Act Rule 15c2-11 to make clear the rule applies only to equity securities quoted in the over-the-counter (OTC) market. The proposal is intended to align the rule's text with its historical focus on preventing manipulative and fraudulent schemes in OTC equity trading. As SEC Chairman Paul S. Atkins noted, the proposal is meant to

"clarify regulatory obligations when publishing quotations and affirm what was always understood: Rule 15c2-11 applies to equity securities."

What this means: If adopted, broker-dealer quotation information and review requirements under Exchange Act Rule 15c2-11 would not apply to non-equity instruments (e.g., most fixed income), while existing obligations for OTC equity quotations remain unchanged. The comment period is open until May 18, 2026. Consider submitting feedback and reviewing OTC equity quoting controls in light of the clarified scope.

- SEC Data Drop: DERA Updates Capital-Raising Dashboards and Releases SBSD Health Check: **On March 17, 2026,** DERA released updated, interactive statistics on public and private capital-raising and published a new report on the financial condition of SBSDs. Highlights for 2025 include: 374 initial public offerings (IPOs) raised over USD 70 billion (up from 246 IPOs/USD 39 billion in 2024); Regulation D activity rose to 34,553 offerings raising USD 2.4 trillion (compared to USD 2.1 trillion in 2024); corporate bond offerings lowered in count (1,694 from 1,795) but proceeds raised increased (USD 1.25 trillion from USD 1.17 trillion); asset-backed securities (ABS) issuances climbed to 2,320 (compared to 2,032 in 2024) and commercial mortgage-backed securities (CMBS) issuances also climbed to 348 (compared to 302 in 2024).

  What this means: DERA's Statistics & Data Visualizations page offers time-series charts, distribution views, and heat maps — downloadable and interactive — covering IPOs, follow-ons, exempt offerings (Regs A, CF, D), municipal advisors, transfer agents, SBSDs, and securitizations; the new SBSD report details assets, cash, leverage, profitability, and aggregate positions across security-based swaps, swaps, and mixed swaps. Issuers and underwriters can use these trends to gauge financing windows, while private-markets and compliance teams can benchmark activity and SBSD risk metrics. While IPO activity increased sharply from 2024 to 2025, the significant majority of capital raising activity remains in the private markets.

- Crypto Clarity: SEC & CFTC Draw the Line on When Tokens are Securities: **On March 17, 2026,** the SEC issued a commission-level interpretation — joined by the CFTC — clarifying how federal securities laws apply to crypto assets and common on-chain activities. The release outlined a five-part token taxonomy (digital commodities, digital collectibles, digital tools, stablecoins, and digital securities), affirmed that many tokens are not themselves securities, and explained how a non-security crypto asset can nonetheless be sold as part of an investment contract — and how that relationship can end. The interpretation also addressed airdrops, protocol mining, protocol staking, and "wrapping" of non-security assets. The CFTC stated it will administer the Commodity Exchange Act consistently with the SEC's interpretation. The interpretation is published on SEC.gov and the Federal Register.

  What this means: Expect a more workable jurisdiction split between securities and commodities oversight, plus clearer expectations for token design, secondary trading, and staking/mining programs. While the interpretation provides the SEC's most comprehensive guidance to date and supersedes the SEC staff's 2019 digital asset framework, it does not bind courts. The Howey test still governs case-by-case assessments. Near-term to-dos: map each asset to the SEC's taxonomy, document investment-contract risk factors for any offering or on-chain distribution and align policies with both agencies' views while tracking forthcoming market-structure legislation.

- CFTC Letter No. 26-09: Conditional No-Action Relief for a certain developer's Self-Custody Wallet Interface: On March 17, 2026, the CFTC's Market Participants Division (MPD) issued Letter No. 26-09, taking a no-action position that it will not recommend enforcement if a certain developer of a self-custodial cryptocurrency wallet software (or relevant personnel) does not register as an introducing broker (IB) (or associated person (AP)) solely for providing and marketing non-custodial wallet/front-end software that allows users to trade through registered FCMs, IBs, and designated contract markets (DCMs). The relief expressly covers a software-interface model — no custody of user assets, no "buy/sell" signals, and no discretion over order routing/execution — with trading and custody remaining at regulated venues/intermediaries. Users may view market data/positions/products and submit orders to collaborator DCMs/FCMs/IBs, either as DCM members or as customers of an FCM/IB.

  The no-action relief is conditioned on controls including user risk/conflict disclosures, National Futures Association (NFA)-style marketing/communications policies, recordkeeping, consent to CFTC jurisdiction, joint-and-several liability undertakings with each DCM/FCM/IB collaborator, and notice to the CFTC's MPD upon insolvency/bankruptcy, among others. It is entity-specific (not market-wide), does not address Decentralized Finance (DeFi) derivatives access, and remains in effect until the CFTC issues rulemaking or guidance on IB registration for software providers.

  What this means: Firms pursuing similar models should (i) map features to the "passive interface" criteria (no custody/signals/discretion), (ii) implement the required disclosures/controls, and (iii) consider seeking their own no-action relief in advance of launch.

- CFTC FAQs Clarify Crypto Collateral Rules for FCMs, DCOs, and Swap Dealers: On March 20, 2026, the CFTC's Market Participants Division and Division of Clearing and Risk issued FAQs that refine prior guidance on using certain crypto assets

as collateral in the derivatives markets, building on CFTC Staff Letter 26-05 (digital assets accepted as margin collateral) and CFTC Staff Letter 25-39 (tokenized collateral). For FCMs, firms may apply the post-haircut value of customers' non-security crypto assets (e.g., BTC, ETH, payment stablecoins) to secure debit/deficit balances; may deposit proprietary payment stablecoins as residual interest subject to a 2% capital charge; may not use proprietary BTC/ETH as residual interest; and CFTC staff will not object to a minimum 20% capital charge for proprietary BTC/ETH and 2% capital charge for payment stablecoins. For swap dealers, crypto assets (including payment stablecoins) remain ineligible as initial or variation margin for uncleared swaps, though tokenized forms of otherwise eligible collateral are permitted if the token confers the same or functionally equivalent legal and economic rights as the native asset. For DCOs, crypto assets (including payment stablecoins) may be accepted as initial margin if it meets minimal credit, market, and liquidity-risk standards, with appropriate haircuts reviewed monthly.

What this means: Before relying on CFTC Staff Letter 26-05, a FCM must file written notice (via the WinJammer electronic filing system) of its intent to rely on CFTC Staff Letter 26-05; for the first three months commencing on the date it first accepts crypto assets from customers, (i) it may accept only payment stablecoins, BTC, and ETH, and (ii) must promptly report significant operational/cyber incidents; following the month the FCM files its notice of intent to rely on CFTC Staff Letter 26-05, the FCM must file weekly reports of crypto held in customer accounts, with weekly reporting continuing through the end of the third calendar month following the notice.

- DOL issues proposed rule to democratize access to alternative investments in 401(k) plans. The proposed rule implements President Trump's August 2025 executive order and explains the steps 401(k) fiduciaries should take when considering alternative assets in their investment lineups and establishes safe harbours for plan fiduciaries to use when selected designated investment alternatives. Reliance on the safe harbor requires an evaluation of performance, fees and expenses, liquidity, valuation, benchmarking, and complexity and expertise of the relevant investment. The proposal makes clear that fiduciaries may consider various types of investments, including private equity and private credit, digital assets and infrastructure, direct and indirect real estate investments, and lifetime income and annuities.

  What this means: While such investments have never explicitly been prohibited, the proposed rule creates a framework for fiduciaries to expand access to such investments by complying with the safe harbor. While it remains to be seen whether the proposed rule will have its intended effect, it provides significant potential to democratize access to investments that have historically been restricted to a relatively small subset of investors. The comment period is open until June 1, 2026 and may be submitted through the Federal eRulemaking Portal (www.regulations.gov) or by mail to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, US Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

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