

[Securities Regulation Daily Wrap Up, ALTERNATIVE INVESTMENT FUNDS—Commissioner Uyeda outlines case for including private investments in retail portfolios, \(Nov. 21, 2025\)](#)

Securities Regulation Daily Wrap Up

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Uyeda envisions PSLRA-like ERISA litigation reforms as an adjunct to fully opening 401(k)s to private investments.

SEC Commissioner Mark T. Uyeda delivered [remarks](#) at the ICI Retail Alternatives and Closed-End Funds Conference held in New York City in which he outlined how private market investments might be incorporated into retail investors' portfolios such as 401(k) retirement plans. The Trump Administration, which is leading the push to open private markets to retail investors, earlier this year issued an executive order directing the Department of Labor and the SEC to consider how that objective could be achieved. But critics of the plan have noted that many private equity investments soured in recent years and that opening these markets to retail investors may serve only to saddle unsuspecting workers with investments in assets that may never pay out.

A PSLRA for ERISA? One of the goals of the Trump Administration's push to expand retail access to private investments is the lessening of litigation risks associated with fiduciaries' decisions about asset allocation under the Employee Retirement Income Security Act (ERISA). Uyeda made this a key part of his proposal to expand access to private market investments.

"To create an ideal future for retirement investing, we must address the significant litigious environment that surrounds fiduciary decision-making under ERISA for plan sponsors considering including private assets in defined-contribution plans," said Uyeda. "Lawsuits in this area are often driven by hindsight bias and very permissive pleading standards."

Uyeda envisions an ERISA equivalent to the Private Securities Litigation Reform Act (PSLRA) of 1995, which included heightened pleading requirements for many elements of private securities class actions. Uyeda said it would be especially beneficial to impose a heightened pleading requirement for the element of fiduciary duty in ERISA cases.

In other words, ERISA plaintiffs would have to plead breach of fiduciary duty with particularity. "It is not enough to allege merely that a plan included private investments; plaintiffs should be required to identify specific recommendations, decisions, or processes that allegedly failed to meet ERISA's standards of prudence and loyalty," said Uyeda.

According to Uyeda, such an approach would not protect bad actors but rather would place emphasis on "prudence," an ERISA standard which he said does not mandate "perfection."

Uyeda added: "Without such reform, the threat of opportunistic lawsuits will continue to chill innovation and discourage fiduciaries from offering more diversified investment options—even when those options are in the best interest of participants. A modern retirement system must include not only access and oversight, but also legal clarity and fairness."

Navigating risk exposure. Even assuming that ERISA litigation reforms were put into place, there still remains the question of whether access to private investments is worth it for retail investors. For Uyeda, modern portfolio theory (MPT) appears to be the driver of the push to open private markets to retail investors. MPT is premised on the optimization of risk through the selection of investments that are diverse and uncorrelated in order to protect

a portfolio from wild swings in value. By comparison, Uyeda noted that passively managed index funds have become increasingly concentrated in only a small number of public companies in recent years.

Uyeda also noted that liquidity can play a significant role in retail investors' fortunes. As an example, he offered the case of target date funds. These funds are designed to be diverse and progressively shift to an increasingly conservative allocation as the target date approaches. But Uyeda suggested that target date funds with long time horizons until they reach their target date could be a proper locus for less liquid securities available in exempt offerings. Currently, most retail investors can access private investments only indirectly through publicly-traded SPACs and closed-end funds.

Here, Uyeda suggested that private equity, venture capital, real estate, and other investments could satisfy the conditions of MPT. But there is an inherent trade-off between obtaining a premium for these investments' illiquidity and the combined effects of illiquidity and subjective valuations. Still, Uyeda suggested that there is risk in not having these types of investments in a portfolio.

"Regulation should not presume that zero percent exposure is inherently safer or preferable," said Uyeda. "The absence of access is not the same as the presence of protection. A blanket exclusion from defined contribution plans denies both investment professionals and investors alike the ability to make informed choices about risk and reward."

Uyeda observed that the Trump Administration had removed Biden Administration guidance that sought to limit what types of investments ERISA fiduciaries can invest in in order to revert to guidance issued during the first Trump Administration that broadened investments available to ERISA fiduciaries.

"Arguments that paint private investments as inherently unsuitable—citing illiquidity, valuation opacity, or fee structures—ignore a core principle of ERISA: the duty of prudence," said Uyeda. "ERISA does not ban private investments. It requires that fiduciaries act with care, skill, and diligence. When managed prudently, private investments can offer meaningful diversification and long-term value."

Uyeda closed his remarks by calling for a "harmonized" approach to DOL and SEC standards. "To improve a retirement system that works for all Americans, we must create a unified framework that balances investor protection with market access under both ERISA and the federal securities laws," said Uyeda. "That means acknowledging and addressing legitimate concerns—such as disclosure standards, fee transparency, conflicts of interest, valuation practices, and custody safeguards."

(For additional background on the details of the Trump Administration's EO and the critiques of the EO's goals see, "[Federal government ready to expand 401\(k\) offerings](#)"; For additional background on how a Supreme Court case involving shareholder activism at closed-end funds may impact retail investors see, "[Supreme Court preview: will closed-end funds case derail SEC's expected move to expand retail investors' access to private markets?](#)").

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