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ADVISORY

Private Credit Developments: Regulatory Signals and Emerging Litigation Trends

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The "retailization" of private credit markets has received significant media attention. As access to private markets becomes more democratized, there has been a corresponding increase in scrutiny, with recent litigation and enforcement activities focused on valuation methodologies, investment disclosures, redemption parameters, and adviser oversight. As discussed below, these developments provide valuable early insights and lessons for market participants offering private credit investments to high-net-worth clients and other non-institutional investors.

Recent Private Credit Growth

Private credit, in simple terms, is non-bank lending provided by entities such as private equity firms, hedge funds, or specialized funds.[1] Borrowers often include middle-market businesses seeking more tailored, flexible arrangements than traditional bank lending offers. Lenders provide financing through direct lending, mezzanine financing, distressed debt, and other forms of non-publicly traded debt.

Private credit lending and borrowing have grown increasingly popular over the past decade, with the global market now reaching $3 trillion. What was historically an investment market limited to accredited investors, institutions, and ultra-high-net-worth individuals is now available at the retail level through private credit exchange-traded funds (ETFs), business development companies (BDCs), interval funds and other vehicles.[2] And on March 30, 2026, following an earlier Executive Order calling for access to private credit for 401(k) investors, the Department of Labor unveiled a proposed rule, subject to a 60-day comment period, to broaden access to alternative investments in private markets through workplace retirement plans.[3] With retail investor participation on the rise, private credit is beginning to attract heightened regulatory attention and litigation exposure.

Regulatory Activity

At a March 4, 2026, Securities and Exchange Commission (SEC or Commission) roundtable, SEC leadership highlighted its focus on the private credit sector, indicating that it supports the "reasonable retailization" of the markets as private credit becomes increasingly available to non-institutional

investors.[4] Specifically, Chairman Paul S. Atkins indicated that as access to private markets broadens, the SEC has an "obligation [] to meet that demand with both openness and rigor — expanding pathways with appropriate investor protections."[5]

Similarly, the SEC's 2026 examination priorities reflect growing regulatory focus on private markets generally and on investment advisers' adherence to fiduciary duties for products like "private credit and private funds with investment lock-up for extended periods" and complex or tax-advantaged products such as "ETFs that invest in illiquid assets," like "private equity or private credit."[6] Regulatory action in this sphere has already started. It will likely increase in the coming months as the Commission staff focuses on the adequacy of risk disclosures to retail investors, documentation and adherence to valuation methodologies and processes, and disclosure and mitigation of conflicts of interest.

Uptick in Litigation

Likewise, several recent civil lawsuits highlight the potential legal risks private credit lenders and investment advisers face in this market.

Securities Fraud Claims

Securities fraud class action lawsuits have been brought against issuers and affiliated individual defendants alleging violations under Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5, and Section 20(a).[7] In one such lawsuit, in connection with the proposed merger of two BDCs, the issuer was alleged to have failed to disclose purported "pressure" on its asset base from investor redemptions that would necessitate limiting or halting such redemptions, and undisclosed liquidity issues that rendered positive statements about the issuer's business materially misleading. A separate shareholder derivative lawsuit was also filed against the issuer, alleging breach of fiduciary duties, gross mismanagement, waste of corporate assets, unjust enrichment, and violation of Section 10(b).[8]

In a second case asserting Section 10(b) and 20(a) claims against a publicly traded BDC, the plaintiff alleged the BDC's net asset value (NAV) was being misrepresented as far back as late 2024, when the company started experiencing increases in loan losses.[9] The complaint was filed shortly after the BDC disclosed in January 2026 that its reported per-share NAV was 19 percent lower than the prior quarter and 23.4 percent lower than the prior year. The complaint alleged that various misstatements and omissions were tied to this NAV drop, including that investments were not being timely valued, unrealized losses were understated, NAV was overstated, and positive statements about the BDC lacked a reasonable basis. These allegations were made despite the fact that the BDC had certain investments priced by an investment adviser that determined their fair value in accordance with Board-approved valuation policies and procedures. And on March 20, 2026, yet another securities

class action was filed against a BDC and certain of its directors and officers following publication of a short-seller report suggesting that the company misrepresented its borrower due diligence and portfolio valuation processes.[10]

Common Law Claims

In addition to Exchange Act claims, investment advisers and their associated investment vehicles may also face claims grounded in fraud, negligence, breach of fiduciary duty, and breach of contract.

On February 24, 2026, investors filed a lawsuit in New York state court alleging that a private credit fund linked to an auto-parts supplier and its investment manager made false representations about the structural integrity of the fund's investment model.[11] According to the complaint, the fund's model was based on "factoring" — buying short-term accounts receivable from sellers at a discount, with profit coming from the difference between the discounted purchase price and the full-face value paid by the obligor.

Plaintiffs alleged they were induced to invest by marketing materials that represented the fund would exercise "cash dominion" over receivable payments requiring each obligor to pay directly to the fund, giving it complete oversight and making it "impossible" for a seller to falsify invoices. However, plaintiffs claim defendants instead allowed the auto-parts supplier to collect cash payments rather than the fund, such that defendants had "appointed the proverbial wolf . . . to run the hen house." Plaintiffs assert they had "zero visibility" into invoice management and would not have invested had they known the fund would not implement cash dominion as a "critical fraud-prevention control."

After the manufacturer declared bankruptcy in September 2025, the fund notified investors of a "probable total loss." Plaintiffs brought claims for fraud and negligent misrepresentation under Cayman Islands law against the fund, its general partner, and investment adviser, as well as breach of fiduciary duty against the general partner. A separate lawsuit filed March 6, 2026, by a different plaintiff asserted claims of fraud and breach of contract against the same fund and its affiliates, alleging that the defendants misrepresented that accounts receivable associated with the supplier's financing program were valid collateral when they had reason to know those receivables were not.[12]

Themes and Key Takeaways

In the context of retail investor participation, private credit market participants should consider the following to help mitigate the risk of unwanted regulatory attention or civil claims being filed against them:

- **Examine Investor Disclosures.** Funds, investment advisers, brokers, and publicly traded private credit vehicles may all face potential disclosure-related liability under the Exchange Act,

Regulation BI, and general tort or contract theories. In other contexts, the SEC staff has criticized advisers for providing investors with generalized risk disclosures, as opposed to disclosing the likely specific adverse consequences in a hypothetical down-market situation. Accordingly, market participants would be well-served to review their disclosures in light of recent market events to assess their adequacy. In the fiduciary duty/Regulation BI context, advisers and broker-dealers should re-evaluate these investments relative to other comparable investments to confirm that they continue to present a reasonable risk-return profile relative to available alternatives. Proper processes and documentation of these reviews are critical.

- **Review and Pressure-Test Valuation Procedures.** Private credit assets trade infrequently, making accurate valuations more challenging and subjective. Funds and BDCs should revisit their valuation processes and procedures, understand whether the applicable methodologies are being applied and documented properly, and consider involving additional adviser oversight to support NAV determinations.
- **Closely Review Borrower Financial Information.** Private credit borrowers should review lender due diligence procedures and accounting policies to guard against claims and investigations concerning whether financial statements accurately reflect allegedly underperforming loans and other instruments.
- **Understand Redemption Limits and Parameters.** Higher redemption demands from retail investors can trigger funds to take a variety of actions, including limiting redemptions and selling assets to increase liquidity and meet demand. This risk warrants a close review of available liquidity in a down-market environment and contingency planning for an increase in redemption demands. Market participants should reassess whether they have provided "plain English" disclosures to investors concerning redemption rights and under what circumstances a private credit vehicle can restrict redemptions or take other actions to prevent withdrawals of investments. Funds should also ensure their redemption rules and discretionary restrictions are clearly disclosed.
- **Monitor the Regulatory Landscape and Emerging Case Law.** Advisers in private markets should stay current with evolving developments in the regulatory space as regulators increase their focus on private markets, including specific rules that may apply to the particular investment vehicles at issue. Private credit participants should also closely monitor any emerging case law to anticipate potential claims and adjust compliance practices accordingly.

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1 https://www.ssga.com/us/en/intermediary/insights/what-is-private-credit-and-why-investors-are-paying-attention.

2 *Id.*

3 Executive Order 14330, "Democratizing Access to Alternative Assets for 401(k) Investors," August 7, 2025, https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/; Department of Labor Proposed Rule 29 CFR Part 2550, "Fiduciary Duties in Selecting Designated Investment Alternatives," March 30, 2026, https://assets.law360news.com/2459000/2459155/0330proposed.pdf.

4 https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-im-private-markets-roundtable-030426.

5 https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-im-private-markets-roundtable-030426.

6 https://www.sec.gov/files/2026-exam-priorities.pdf.

7 Case No. 1:25-cv-10047 (S.D.N.Y. Dec. 3, 2025).

8 Case No. 1:26-cv-00477 (S.D.N.Y. Jan. 19, 2026).

9 Case No. 2:26-cv-01102 (C.D. Cal. Feb. 2, 2026).

10 Case No. 3:26-cv-02465 (N.D. Cal. Mar. 20, 2026).

11 Index No. 651123/2026 (Sup. Ct. N.Y. Cnty. Feb. 24, 2026).

12 Index No. 651389/2026 (Sup. Ct. N.Y. Cnty. Mar. 6, 2026).

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