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Top Ten Litigation and Regulatory Risks for Private Funds in 2026

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If we had to define the mood for 2026 in three words, we would choose alert, intentional and institutional. After several years of normalizing longer hold periods and navigating evolving regulatory frameworks, 2026 will see managers permanently vigilant – vigilant in pursuing value creation theses, identifying exit opportunities and embedding robust governance structures to mitigate litigation and regulatory risks.

Private equity, and private credit, are now fully mainstream, and are treated as such by regulators. Concerns about systemic risk – particularly given the rapid growth of the private credit market in a period when banks have been increasingly reluctant to lend to SMEs (small and medium-sized enterprises) – have led to calls in the US and the UK for increased regulatory scrutiny. These developments heighten the need for vigilance and discipline in fiduciary practices within the private credit sector.

At the same time, the continued maturation of the private funds retail market will lead to further demand for evergreen funds, and the higher need for liquidity associated with these products will further boost the secondaries markets. The related enhanced disclosure expectations for secondary transactions as well as market growth have already led to an increased focus on, and disputes arising from, such transactions, especially where GP led, and we expect that this trend will continue into 2026.

Disclosures also remain a perennial focus of regulation in the environmental, social and governance (ESG) sphere. In 2026, particular attention will be paid to how each word used in ESG-related disclosures matters, as managers navigate increasing divergence between the US federal government and “red states” on one hand, and the EU, UK, and “blue states” on the other.

A similar divergence characterizes the regulation of crypto assets, a hot, but still unsettled, asset class, with both US and UK regulators promising clarity in 2025 but with no comprehensive and coherent regulatory framework yet being delivered.

Fundraising challenges persisted throughout 2025, reportedly making it one of the weakest years for the private capital sector in general since 2020, and underscoring the need for managers to have demonstrable track records of exits, cash returns and credible, documented governance processes and structures. AI transformation will drive value creation, both in terms of asset classes and internal processes. The investment focus is on digital and AI infrastructure, with its attendant risks and rewards. In-house, as managers grow more comfortable with deploying AI in investment processes, the associated compliance framework will be critical to address the inevitable exam questions.

In addition to secondary transactions, and despite continued market volatility and valuation gaps, many predict that 2026 will see a return of primary investment deal flow as the weight of long-held assets and pressure to return cash to LPs builds still further, resulting in an increase in traditional and non-traditional exits. Valuation practices have become an increasing focus of SEC oversight, as drivers of management and performance fees, and will stay in the spotlight.

With increasingly novel and complex fund structures being put in place in response to these and related themes, sponsors would be well advised to dust off their primers on fiduciary duties as not just regulators, but the plaintiffs' bar, are watching.

Over the next few weeks, we will explore each of these themes in greater detail. With this backdrop, we are pleased to present the Top Ten Regulatory and Litigation Risks for Private Funds in 2026.

1. Private Credit under the Microscope – Why Vigilance Matters

2. AI Infrastructure Investing: Structuring, Disclosure and Contract Risks for Private Funds

3. Five Considerations for Advisers Implementing AI in Investment Decisions

4. Five Guidelines for ESG Disclosures in 2026: Choose Your Words Carefully

5.Private Litigation Risk for GP-Led Secondary Transactions

6. Valuation Under Pressure: Retail Access, Market Stress and the Enforcement Lens

7. Crypto's Second Act: A Rational Framework or a Regulatory Mirage?

8. Opening the Gates: Retail Access to Private Funds and the Coming Regulatory Pressure Points

9. What the New SEC's First Year Signals for the Future of Private Fund Oversight

10. Fiduciary Duties Revisited: Delaware Law and the Fund Manager's Evolving Obligations

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