

# Regulatory Compliance Watch

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# Growing pains seen in private credit

'This is the legal and compliance framework maturing along with the growth of the industry, but private credit is here to stay,' O'Melveny's Meaghan VerGow says

**S**ome experts see private credit's recent troubles as the growing pains that naturally accompany a maturing market.

"This is an area where we've seen explosive growth in assets in a very short period of time. The litigation and compliance questions that are emerging now are really just kind of catching up to where the market is, but these are fairly conventional litigation theories to bring, with respect to any kind of investment," says Meaghan VerGow, co-chair of O'Melveny's securities litigation and financial services practice group.

VerGow and her colleagues have dissected the class-action suits filed in the wake of the \$2 trillion industry's stumbles (RCW, May 14, 2026).

"At a very high level, I think it's important not to over-read these lawsuits as any indication that there's something deeper amiss in the market," VerGow says. "This is the legal and compliance framework maturing along with the growth of the industry, but private credit is here to stay. You have private credit because there's a need, and it's being met, and that's good for everybody."

### 'Cyclical moments'

Adam Aderton, a partner at Simpson Thacher & Bartlett, agrees that we've seen this movie before.

"Sometimes in these cyclical moments, regulators will also ask about diligence

and underwriting on the front end," he says. "We've had some pretty significant changes in the market from the time of underwriting, whether that's interest rate changes or AI's effect on software and other industries. Such that I think those claims are also going to be quite challenging, just like we saw that they were quite challenging in the crypto environment."

Steve Grigoriou, another Simpson Thacher partner, says private fund sponsors who offer their wares to retail investors should know they "are taking on a certain level of risk."

### Public products

"Often these products require Exchange Act filings, whereas, for private funds that remain private, the general public won't necessarily know what the returns are," he says. "But these products are very public, and are gaining a lot of attention in the media, so sponsors have to take into account how they reflect their brand."

Massachusetts and several other states impose fiduciary duties on broker-dealers, Grigoriou says. As so often happens, the most drastic state laws have a kind of veto.

"If you're in trouble in an individual state, and you can't offer in that state, your offering is likely dead in the water, to the extent that you're using any wire houses," he says. "Wire houses will only sell your product if you're cleared in all states and territories."

### New evolutions

Lauren Wagner, another O'Melveny partner, says it's worth watching the litigation closely because there's still a chance we could see new evolutions in regulation and compliance.

"I think we'll see market participants sort of catering their risk mitigation strategy based on where they fall within this ecosystem," Wagner says. "But I think we'll see increased attention to accurate disclosures, increased attention to implementing and documenting valuation procedures, on due diligence of the borrowers, paying attention to provisions in credit agreements, attention to fee structures. I think we'll see, as well, a valuation of distribution partners, and attention to matching investor profiles with product risk."

An early place to start is with due diligence on the B-Ds, RIAs and other distributors, Wagner says. "There's a concerted effort to increase retailization of this asset class," she says. "So, I think market participants will be paying attention to the distribution channels and the way that they are communicating to investors about these products."

Grigoriou says fund managers ought to be careful attention to their valuations, too.

"I always advise my clients: process, process, process, when it comes to valuations," he says. "When something's at par, that's really easy to value. When you are fair-valuing something that isn't



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at par, though, it's very easy to make comments in hindsight. I think that is just one of the inherent risks of these products. The question is, if valuations ultimately drop, should sponsors have dropped the

valuations earlier? Were there any signs? Again, that goes towards process.”

“My suspicion, personally,” Grigoriou adds, “is that it will be shown that sponsors and boards have followed their processes

and had the right disclosures. There's a cyclical nature, not just to enforcement but to market developments. We're just dealing with a particular moment of heightened scrutiny.” ■