The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

July 27, 2026

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Opposition to Preemption of State Registration and Qualification Requirements – Proposed Rule for Registered Offering Reform (File Number S7-2026-17)

Dear Secretary Countryman:

I am writing in my capacity as the chief securities regulator for Massachusetts[1] to express my strong opposition to the Securities and Exchange Commission's (the "Commission") proposal to expand the preemption of state regulation with respect to complex and highly risky offerings (the "Proposal"), including unlisted business development companies ("BDCs"). The Commission should not define "qualified purchaser" as proposed.

The fundamental question raised by the Proposal is straightforward and simple: Are the "protections" offered by the Commission applicable to unlisted securities sufficient to protect investors?[2] They are not. Consequently, the Proposal fails to justify its efforts to preempt state authority. It represents a watered-down framework, contrary to the applicable Congressional mandate, and is inappropriate given the wide universe of potentially-impacted investors.

My opposition is informed by years of enforcement actions my office has undertaken to protect investors with respect to unlisted securities. My office has taken numerous actions recovering over $23 million for investors who were inappropriately sold unlisted products.[3] In

[1] The Office of the Secretary of the Commonwealth (the "SOC") administers and enforces the Massachusetts Securities Act, M.G.L. c. 110A, through the Massachusetts Securities Division.
[2] *See* Proposal at 186-188.
[3] *See, e.g.*, Massachusetts Securities Division Enforcement Actions: *In the Matter of: LPL Financial, LLC - Non Traded REITs* (E-2012-0036), Consent Order dated February 6, 2013; *In the Matter of: Commonwealth Financial*

addition, I have consistently observed that these unlisted securities include high selling-person compensation, high ongoing fees, elevated costs via sponsor-affiliated "external" management, and potential conflicts of interest relating to the valuation of program assets. Without question, these products include unique risks not present with other securities, such as exchange-listed registered stocks.

The Commission should not move forward with modifying the definition of qualified purchaser to preempt sensible state review and registration of unlisted registered offerings.

A. The Proposal Eliminates State Securities Laws that are Necessary and Appropriate to Protect Investors in the Unlisted Market

1. Massachusetts has undertaken efforts that improve investor outcomes

Investor protection in connection with unlisted securities demands proactive prospectus requirements beyond those disclosure requirements found in federal law. These securities[4] are full of conflicts of interest, often have troubled track records, and have proven to be highly risky and unexpectedly illiquid investments for retail investors. State review roots out sharp industry practices that otherwise may "tend to work a fraud" upon investors. Indeed, the difference between the provisions proposed by sponsors and what exists as investor-facing disclosure documents following my office's review is clear. For example:

Deficient Investor Protection in the Absence of Massachusetts Review	Improved Investor Protection Following Massachusetts Review
Inadequate proposed language insulating fund managers from liability, whereby sponsor attempted to hold the Manager to a "willful misfeasance" standard, rather than a "misconduct" standard	In response, counsel provided an undertaking on behalf of the issuer to revise the prospectus to meet the state-required standard of conduct

Network - Non Traded REITs (E-2013-0046), Consent Order dated May 22, 2013; *In the Matter of: Ameriprise Financial Services, Inc. - Non Traded REITs* (E-2013-0045), Consent Order dated May 22, 2013; *In the Matter of: Royal Alliance Associates - Non Traded REITs* (E-2013-0044), Consent Order dated May 22, 2013; *In the Matter of: Securities America - Non Traded REITs* (E-2013-0048), Consent Order dated May 22, 2013; *In the Matter of: Lincoln Financial Advisors Corp. - Non Traded REITs* (E-2013-0047), Consent Order dated May 22, 2013; *In the Matter of: SII Investments, Inc.* (E-2016-0128), Consent Order dated September 7, 2018; *In the Matter of: Next Financial Group, Inc.* (E-2017-0079), Consent Order dated December 20, 2019; *In the Matter of: Charles C. Kulch* (E-2017-0079), Consent Order dated June 1, 2021.

[4] For example: Unlisted BDCs and unlisted REITs, public oil and gas programs, and commodity pool programs.

Decreased shareholder voting rights and Trustee quorum requirements	In response, counsel for the issuer provided an undertaking to amend the Fund's bylaws to raise the quorum required for shareholder votes from 40% to 50% of outstanding shares and increase the quorum requirement for meetings of Trustees from one-third to a majority of the Trustees
Proposed advertising that omitted material information necessary to present a complete presentation of all facts, whereby a BDC that had capped at 5% investor share repurchase requests and prorated the fulfillment of those requests failed to address the current high rate of repurchase requests, current liquidity, and a major rating agency downgrade to "negative" from "stable," driven by a surge in investor redemption requests	In response to these comments and questions, counsel represented that the Fund would not use its existing advertising until regulatory comments and questions were resolved

More generally, my office regulates these offerings by requiring critical protections, including:

- Establishing minimum levels of investor net worth and income for illiquid direct participation programs ("DPPs") to help prevent inappropriate sales
- Placing limits on using program funds to indemnify the sponsor, by prohibiting indemnification for securities law violations or for negligence or misconduct
- Working to limit conflicts of interest that drive up costs and risks
- Requiring shareholder votes on key transactions
- Protecting shareholder access to program records
- Limiting excessive fees and compensation
- Establishing concentration limits to help prevent investor overconcentration in risky and illiquid DPPs

Nothing in the federal regime protects in this way. The Commission has acknowledged this very fact, stating, "merit-based review conducted by some states may, in some cases, offer investor protections distinct from the Commission staff's disclosure-based review program for registered offerings."[5]

2. *Industry changes continue to require investor protection mandated by the states*

[5] Proposal at 263.

While industry has developed new iterations of unlisted products, my office has begun to see the cracks in the "new model." I am particularly concerned with visible problems in the unlisted BDC space as redemption requests rise. The practical reality is that investors are rushing to get out, but they are unable to do so.

Recent statistics are telling. In Q1 2026, 12 of the largest unlisted BDCs – which between them account for over 80% of unlisted BDC assets – received over $15 billion in redemption requests.[6] Ultimately, these funds were only able to honor 53.4% of these requests.[7] Practically speaking, swaths of investors are left receiving only a fraction of the redemptions they requested. In Q2 2026, average redemption requests continued to rise for perpetually unlisted BDCs.[8] And industry analysts predict persistent elevated redemptions for many firms in the coming quarters.[9]

State review of unlisted BDCs in particular allows my office to respond to industry developments by requiring a balanced presentation of the risks in advertising. For example, my office has required advertising materials that promote "semiliquid" product features to also include information about how the share repurchase programs work in practice. Particularly, if a DPP has failed to meet redemption requests, my office requires that this material information is included in advertising materials. State registration further requires important disclosures such as the fact that "share repurchase programs are discretionary and may be amended or suspended at any time," be included up front in advertising, not hidden or downplayed in a 300-page prospectus. The Proposal would eliminate these safeguards.

3. *Clear, direct disclosures mandated by the states are necessary to protect investors*

Individual investors are often sold a bill of goods regarding the structural mechanisms of many of these products. These are technically-complex products and the prospectuses are challenging for even investment professionals to fully understand. Too often, alternative products are recommended and sold in a way that downplays risks and complexity. In fact, earlier this year a recognized industry executive commented that:

> What's happened is as the asset class has grown, as an industry we could have done a better job of making individual investors truly understand there will be times where redemptions are low and you

[6] "BDC Portfolios: Redemptions, NAVs and Credit Stress" (April 30, 2026). With Intelligence. Retrieved from: *https://www.withintelligence.com/insights/what-is-actually-going-on-in-bdc-portfolios/*
[7] *Id.*
[8] "Elevated Redemptions Persist for Perpetually Non-Traded BDCs" (July 7, 2026). Fitch Wire. Retrieved from: *https://www.fitchratings.com/research/corporate-finance/elevated-redemptions-persist-for-perpetually-non-traded-bdcs-07-07-2026*
[9] *Id.*

> can move in and out all of your capital. But there will be times like today where you're only going to get a fraction out.[10]

For these reasons, we urge the Commission not to move forward with the preemption of state registration.

B. <u>History of Investor Harm in the Unlisted Security Market – State Enforcement</u>

While it may be true that many unlisted products are "inherently national," it is equally true that they are sold locally to Main Street investors. My office has brought multiple enforcement actions based on substantive state review standards. Because these products pay high selling commissions, brokers and agents have strong incentives to sell them, even when they are not suitable for the customer. It is notable that many of the cases my office has pursued resulted directly from investor complaints.

In the Matter of: LPL Financial, LLC - Non Traded REITs (E-2012-0036), Consent Order dated February 6, 2013	Following senior investor complaints, my office pursued an administrative complaint and ultimately settled matters, resulting in investor recovery and changes to sales practices
In the Matter of: Commonwealth Financial Network - Non Traded REITs (E-2013-0046), Consent Order dated May 22, 2013; *In the Matter of: Ameriprise Financial Services, Inc. - Non Traded REITs* (E-2013-0045), Consent Order dated May 22, 2013; *In the Matter of: Royal Alliance Associates - Non Traded REITs* (E-2013-0044), Consent Order dated May 22, 2013; *In the Matter of: Securities America - Non Traded REITs* (E-2013-0048), Consent Order dated May 22, 2013; *In the Matter of: Lincoln Financial Advisors Corp. - Non Traded REITs* (E-2013-0047), Consent Order dated May 22, 2013	Following an industrywide sweep conducted by my office, multiple firms were found to have failed to ensure sales to Massachusetts residents conformed with maximum concentration and minimum net worth requirements, resulting in investor recovery

[10] "Institutional investors lash retail misuse of private credit" (March 27, 2026). Professional Planner. Retrieved from: *https://www.professionalplanner.com.au/2026/03/instos-lash-retail-misuse-of-private-credit/*

In the Matter of: SII Investments, Inc. (E-2016-0128), Consent Order dated September 7, 2018	Following an investigation, my office settled its action concerning overconcentration sales of DPPs, resulting in an independent compliance review, offers of restitution, and administrative fine
In the Matter of: Next Financial Group, Inc. (E-2017-0079), Consent Order dated December 20, 2019 and *In the Matter of: Charles C. Kulch* (E-2017-0079), Consent Order dated June 1, 2021	Following a complaint received from a Massachusetts retiree and veteran seeking conservative investments who relied on sales agent for investment advice, my office, following investigation, ordered restitution and corrective action given unsuitable sales practices

These cases have brought about industry changes that should not be unwound. Broker-dealers, who most often solicit these investments, have been forced to be vigilant. The industry has been forced to evolve. Nevertheless, issues remain that require continued state registration and review.

C. <u>The Federal Protections Cited by the Commission are Vague and Ambiguous</u>

1. State review is necessary and appropriate in light of limited SEC review

The Proposal contends that "Federal securities laws applicable to registered offerings contain investor protections that address potential concerns regarding the preemption of State securities law registration and qualification requirements."[11] This is fundamentally false. The SEC does not evaluate the merits of any transaction or determine whether an investment is suitable for any investor.[12] Notably, while unlisted REITs and BDCs would be required to file SEC-registered prospectuses subject to full SEC review, the SEC candidly states that these products are subject to only "**potential** Commission staff review of Securities Act registration statements and other filings made in connection with a registered offering."[13] (Emphasis added.) The extent of SEC review varies, and the Commission admits that its review may be a "targeted issue review," in which staff examines for one or more specific items of disclosure.[14]

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[11] Proposal at 186.
[12] "Filing Review Process" (accessed July 23, 2026). US Securities and Exchange Commission. Retrieved from: *https://www.sec.gov/about/divisions-offices/division-corporation-finance/filing-review-process-corp-fin*
[13] Proposal at 187.
[14] "Filing Review Process" (accessed July 23, 2026). US Securities and Exchange Commission. Retrieved from: *https://www.sec.gov/about/divisions-offices/division-corporation-finance/filing-review-process-corp-fin*

Also, listed amongst the federal securities provisions that would supposedly protect investors is "recurring staff review of periodic and interim reports."[15] This too is insufficient. Pursuant to Section 408 of the Sarbanes-Oxley Act of 2002, the SEC only conducts "some level" of review of each reporting company, and this review can be as infrequent as once every three years.[16] Moreover, the Commission does not, and cannot, provide any assurance of even the current level of federal regulatory review continuing in the future. This is especially the case as federal agencies increasingly move toward "streamlined" review of transactions under the guise of reducing burdens and costs to industry.[17]

2. *The Proposal contorts the intended meaning of "qualified purchaser"*

Congress clearly established policies to safeguard investor protections when enacting NSMIA,[18] but the Proposal reflects an incomplete application of those policies. Financial sophistication and the ability to fend for themselves are hallmarks of a qualified purchaser. In the context of a 2001 proposal to define "qualified purchaser," the Commission stated: "NSMIA's legislative history indicates that qualified purchasers for purposes of the Securities Act preemption of state regulation should include investors that, by virtue of their financial sophistication and ability to fend for themselves, do not require the protections of registration under the state securities laws."[19] The Proposal abandons these principles, and replaces the well-tested and fit for purpose system of state review with *caveat emptor*.

The Senate Committee Report on NSMIA explained and provided guidance that the purpose of these provisions was to codify at the federal level existing state exemptions, including those based on the "level of wealth and sophistication" of certain investors:

> The bill also codifies another exemption existing in most states – the preemption from state "blue sky" registration for offers and sales to qualified purchasers. Based on their level of wealth and sophistication, investors who come within the definition of "qualified purchasers" do not require the protections of registration. The bill creates a uniform standard among the states for the "qualified purchaser" exemption.

S. Rep. 104-293, at 14-15 (1996).

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[15] Proposal at 188.
[16] *Id.*
[17] "Justice Department to Speed Up Merger Reviews by Asking Less of Companies" (July 23, 2026). The Wall Street Journal. Retrieved from: *https://www.wsj.com/politics/policy/justice-department-to-speed-up-merger-reviews-by-asking-less-of-companies-5c5af371?msockid=25133ed8f66e6267261129abf7466353*
[18] National Securities Markets Improvement Act of 1996 ("NSMIA"), Pub. L. No. 104-290, 110 Stat. 3416 (codified as amended in scattered sections of 15 U.S.C.)
[19] *See Defining the Term "Qualified Purchaser" Under the Securities Act of 1933,* 66 Fed. Reg. 66,841 (proposed Dec. 27, 2001). *See also* H.R. Rep. No. 622, 104th Cong. 2d Sess. at 31 (1996) ("House Report"); S. Rep. No. 293, 104th Cong. 2d Sess. at 15 (1996) ("Senate Report").

The House Committee Report similarly emphasized the need for "a uniform national rule for qualified purchasers, which should greatly facilitate the ability of issuers to use it." H.R. Rep. No. 104-622, at 31 (1996), reprinted in 1996 U.S.C.C.A.N. 3877, 3893. "**In all cases**," the report stated, "the Committee intends that the Commission's definition be rooted in the belief that 'qualified' purchasers are sophisticated investors, capable of protecting themselves in a manner that renders regulation by State authorities unnecessary." (Emphasis added.) *Id.*, reprinted in 1996 U.S.C.C.A.N. at 3894.

D. Assertions of Prohibitive Costs Associated with State Registration are Unfounded

While the Proposal points to state registration as a factor that discourages companies from going public, there is considerable evidence that the market for the unlisted products that the states register is active and robust. According to Morningstar's *The State of Semiliquid Funds 2026,*[20] the semiliquid fund market has demonstrated strong growth and is nearing $600 billion in assets. I note that many of these semiliquid products, particularly unlisted BDCs and REITs, are designed to be marketed to retail investors.

The Morningstar report shows notable increase in assets under management in several categories of products:

Program Type	2022 Net Assets	2026 Net Assets (To March 30)
Private Equity	$21.09 Billion	$90.82 Billion
Direct Real Estate	$120.65 Billion	$110.88 Billion
Private Debt - General	$23.72 Billion	$58.44 Billion
Private Debt - Direct Lending	$72.45 Billion	$236.86 Billion

At least one commenter has stated that program sponsors will turn to private placements (sold only to accredited investors) rather than public offerings in order to avoid the state registration process. The Morningstar report discusses reasons that lead sponsors to favor the private placement route, and state regulation does not show up as a factor.[21]

It is ironic that the primary investor protection apparatus that would be left if the Commission were to preempt state review and registration is the very "regulation by enforcement" that industry, and some within the Commission's leadership, are so often eager to decry. Again, the Commission, as well as industry, should embrace having states in play to mandate critical investor protections pre-enforcement. After all, there is nothing more costly,

[20] "The State of Semiliquid Funds 2026" (June 16, 2026). Morningstar. Retrieved from: *https://www.morningstar.com/business/insights/research/semiliquid-funds-report*

[21] *Id.*

disruptive, time consuming, or uncertain for businesses engaged in capital formation than months- or years-long investigations and litigation.

In the end, our first priority as regulators must be the protection of investors. While I support regulatory efforts to encourage use of registered markets, the Proposal as drafted is not the solution. I urge the Commission to remove all preemption of necessary and appropriate state securities regulations in this critical area. Please do not hesitate to contact me or Anthony R. Leone, Director, Securities Division at 617-727-3548, if you have questions or we can assist in any way.

Sincerely,

William Francis Galvin

William Francis Galvin
Secretary of the Commonwealth
Commonwealth of Massachusetts