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CFR Cite: 29 C.F.R. Part 2550 (proposed § 2550.404a-6)
FR Cite: 91 Fed. Reg. 16,088 (Mar. 31, 2026); FR Doc. 2026-06178
Comment Deadline: June 1, 2026
From: Mona DeFrawi, CEO & Founder, Radivision, Inc.

Re: "Fiduciary Duties in Selecting Designated Investment Alternatives" – Comment on Proposed Rule, RIN 1210-AC38

To the Employee Benefits Security Administration:

I submit this comment with 30+ years of capital markets experience in the two conditions the proposed rule must navigate: the pre-2001 era of functional IPO markets, when retail investors participated broadly in early-stage wealth creation, and the post-decimalization era of IPO market dysfunction that has systematically excluded them since – producing the K-shaped divergence in wealth between institutional and retail investors, and the private asset liquidity crisis at the heart of the proposed rule, implementing Executive Order 14330. I do so as:

- **CEO and founder of Radivision, Inc.,** a digital media platform informing and connecting consumer audiences to the startup ecosystem to help restore capital formation, investor liquidity, and retail wealth access.

- **Former CEO and founder of the first private market platform, InsideVenture[1],** built in 2007-9 to restore IPOs and venture industry liquidity[2] at the requests of leading VCs and strategic partner, Silicon Valley Bank (acquired twice; now the Nasdaq Private Market).

- **Former VP of Corp Dev / Dir., Investor Relations** managing four Nasdaq-listed technology companies through IPOs and aftermarkets over 10 years from 1991–2000, when the IPO exit pathway now underlying the Department's liquidity factor was fully functional and retail investors comprised 50% of shareholder bases.

- Also, as the **CEO and founder of four startups** and as **Director of a PE fund** founded by a former Comptroller of the Currency of the U.S. Federal Reserve, I have experienced and studied these liquidity and valuation gaps firsthand, capitalized ventures designed to address them, and spent 20 years building solutions directly related to the gaps in the proposed rule.

I support the goals of Executive Order 14330 and commend the Department for proposing a process-based, asset-neutral framework giving fiduciaries the clarity needed to fulfill their duty to maximize risk-adjusted returns for the more than 90 million Americans who rely on defined contribution plans. The proposed rule's six-factor safe harbor is well-designed and reflects sound ERISA principles.

I submit these comments to flag **a critical gap in the proposed rule: two of the six safe harbor factors – liquidity and valuation – cannot be reliably met for venture capital and private equity fund investments without a concurrent fix to the broken U.S. IPO market.** Without that fix, the Investment Selection Rule risks channeling retirement savings into illiquid and inadequately valued investments that cannot satisfy the Department's own prudence standard. The same 25-year PE outperformance data cited to justify expanded access[3] is itself a measure of returns retail investors were systematically denied during the same period of IPO dysfunction; without IPO reform, expanded access would replicate rather than remedy that exclusion. These comments complement letters to the Senate Banking Committee[4] and SEC Chairman Atkins, including Radivision's Petition for Rulemaking filed with the SEC (File No. 4-892)[5] both dated March 26, 2026.

The practical stakes are concrete. Without the safeguards recommended below, the VC and PE funds that would enter 401(k) plans are the same funds whose institutional limited partners are waiting for distributions blocked by the absence of IPO exits – a condition that also negatively affects private valuations. Opening 401(k) access to those funds in that condition would not expand opportunity. It would transfer an institutional liquidity crisis directly into the retirement accounts of 90 million Americans. Fixing IPO exits would increase wealth access for all investors while restoring both liquidity and valuation validation. Including IPO solutions are key for the proposed ruling's success.

I. The Proposed Rule Correctly Identifies Liquidity and Valuation as Threshold Fiduciary Concerns

The Department's proposed rule (at 91 Fed. Reg. 16,088, proposed §§ 2550.404a-6(f)(3)–(4)) requires fiduciaries to "appropriately consider and determine" that a designated investment alternative has "sufficient liquidity to meet the anticipated needs of the plan at both the plan and individual levels." The proposed rule wisely acknowledges that the prudence standard does not require a fiduciary to select only fully liquid products.[6] That is correct as a matter of law.

However, the proposed rule also requires fiduciaries to determine that an investment "has adopted adequate measures to ensure that [it] is capable of being timely and accurately valued." And the safe harbor requires fees to be appropriate "taking into account risk-adjusted expected returns, net of fees." These three requirements – liquidity sufficiency, accurate valuation, and risk-adjusted return benchmarking – together create a high bar for VC/PE fund investments. Under current market conditions, they are a bar that **requires a functioning IPO market to clear.**

This is not theoretical. The 2022–2024 venture capital liquidity crisis – in which VC and PE funds could not distribute capital to limited partners, portfolios were marked down, and secondary markets collapsed – was not caused by bad assets or imprudent underwriting. It was caused by the absence of IPO exit pathways.[7] Without IPOs, private market investments cannot be valued against public benchmarks, liquidity becomes speculative, and risk-adjusted return projections cannot be substantiated.

A. Response to the Department's Request for Comment on Valuation Methodologies (91 Fed. Reg. at 16,107–16,108, proposed § 2550.404a-6(f)(4))

Valuation methodologies for VC and PE fund investments are structurally deficient when no functional IPO market exists to provide external price discovery. This is the most consequential gap in the proposed rule's valuation factor, and it deserves explicit treatment in the final rule or accompanying guidance.

The IPO is not merely an exit mechanism for private fund managers. It is the primary mechanism by which private company valuations are validated against observable public market benchmarks. In a functioning IPO market, the process of preparing a company for public listing – S-1 disclosure, underwriter due diligence, roadshow price discovery, and first-day trading – subjects private company valuations to rigorous external scrutiny. That process forces a reconciliation between manager-reported marks and what arm's-length public market participants will actually pay.

When that process is unavailable – as it has been, structurally, for most of the past 25 years for small and mid-cap companies – private fund valuations become self-referential. They are benchmarked against other private transactions, which are themselves not publicly priced. The result is a feedback loop in which marks can remain elevated even as underlying asset quality deteriorates, because no external market price exists to force a correction. This is precisely the "smoothed returns" phenomenon documented in academic research: apparent volatility is suppressed not because private assets are genuinely less volatile than public equities, but because they are not being marked to an observable market. During the 2022 public market downturn, PE firms declined to mark portfolio companies to market, suppressing apparent volatility while public equity investors absorbed real losses in real time. Nearly every IPO executed since 2022 has debuted at a fraction of their private valuation in a "down round," providing further evidence of private market overpricing relative to public markets.[8]

The practical implication for the Department's valuation factor is direct: **a fiduciary's determination that a VC/PE investment "has adopted adequate measures to ensure timely and accurate valuation"**

cannot be made with confidence when the primary external benchmark for that valuation – the public equity market reached through an IPO – is inaccessible. The proposed rule's requirement of "independent and conflict-free" valuation processes is necessary but not sufficient. Independence from the fund manager does not cure the structural absence of a public market comparator.

For these reasons, I recommend that the final rule or accompanying interpretive guidance clarify that, for the valuation factor, fiduciaries evaluating VC/PE fund investments must specifically consider: (i) whether a functional public market exit pathway exists at the time of investment selection; (ii) the fund manager's methodology for valuing portfolio companies in the absence of recent arm's-length transactions or public market comparables; and (iii) whether performance is reported on an IRR or PME basis, with a plain-language explanation of the difference required in all participant-facing materials.

B. Response to the Department's Request for Comment on Liquidity Testing Methodologies (91 Fed. Reg. at 16,107, proposed § 2550.404a-6(f)(3))

The Department asked what processes fiduciaries should use to assess whether a designated investment alternative has "sufficient liquidity" at both the plan and participant levels. For conventional liquid assets, existing stress-testing methodologies – modeling redemption scenarios against cash and near-cash holdings – are adequate. For closed-end VC/PE fund structures, they are not. The reason is structural: the primary mechanism by which a closed-end private fund converts illiquid positions into distributable proceeds is not an internal fund mechanism. It is an external market event – most often an IPO, and secondarily an M&A transaction.

This means that for VC/PE fund investments, no internal fund-level liquidity stress test – however rigorous and independently conducted – can substitute for the existence of a functional public market exit pathway. A fund's stated redemption gates, distribution policies, and secondary market access are all contingent on the availability of exits. When IPO markets close, as they effectively did for small and mid-cap companies after 2001 and again during 2022–2024, those contingencies collapse simultaneously. The 2022–2024 distribution freeze was not a failure of fund-level liquidity management. It was a system-level failure caused by the absence of external exit pathways.

I therefore recommend that the final rule or accompanying interpretive guidance clarify that, for the liquidity factor as applied to closed-end VC/PE fund structures, fiduciaries must specifically assess: (i) the current depth and activity of the IPO market for companies at the size and stage represented in the fund's portfolio; (ii) the fund manager's historical distribution rate and the proportion of distributions achieved through IPO versus M&A or secondary sale exits, and the return results; (iii) the fund's stated dependence on IPO exits to achieve projected return timelines; and (iv) the impact on projected participant liquidity under a scenario in which IPO exits are constrained for two or more years. These four considerations constitute the minimum adequate liquidity-testing methodology for this asset class under the Department's own prudence standard.

C. Post-'Loper Bright' Context: The Rule's Persuasive Authority Makes Statutory Companions Essential

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), overruled of Chevron deference, so courts no longer apply Chevron's automatic two-step deference to agency interpretations of ambiguous statues. Courts must interpret the statute independently, while giving weight to agency reasoning only insofar as they find it persuasive. The Department itself acknowledged in the preamble that the safe harbor will provide "persuasive authority regarding what constitutes a prudent process" (91 Fed. Reg. at 16,090) to provide guidance, rather than to mandate outcomes in litigation. In light of *Loper Bright*, this guidance and the underlying economic assumptions have direct relevance to the liquidity and valuation arguments made in this comment. will not receive automatic judicial deference.

If a plan fiduciary selects a VC/PE fund investment pursuant to the safe harbor, and a participant subsequently brings a breach of fiduciary duty claim alleging that the investment was illiquid or improperly marked, a reviewing court is not obligated to defer to the Department's process-based safe harbor as a conclusive defense. The court will conduct its own assessment of whether the fiduciary's process was prudent under ERISA § 404(a)(1)(B). In that assessment, the structural absence of a

functioning IPO market – and a fiduciary's failure to account for it in the liquidity and valuation analysis – will be a material fact.

This reinforces both the specific recommendations in this comment and the case for companion legislation. HR 3339 and HR 3383, which passed the House 302–123, would give the Executive Order's policy objectives the force of law and provide a more durable statutory foundation for fiduciary decisions to include alternative investments in DC plan menus. Without that statutory grounding, fiduciaries who follow the safe harbor remain exposed to litigation risk that the rule's persuasive-authority status cannot fully eliminate.

II. The IPO Market Is the Missing Piece – And It Is Fixable

A. Previous Liquidity Crisis

In the first decade of this century, the U.S. financial system experienced a severe liquidity crisis centered on unsound mortgage-backed securities and related structured products. These securities had been widely distributed through the global financial system to banks and institutional investors, including pension funds and other vehicles investing on behalf of retail investors and retirement savers. Today, venture capital and private equity face a liquidity crisis because their primary exit pathway – the IPO – has been broken for 25 years. The proposed rule, to the extent it accelerates the inclusion of VC/PE fund investments in 401(k) plans before the IPO exit market is repaired, risks transferring the institutional liquidity problem to the retirement savings of more than 90 million Americans[9] – and to the $14 trillion in defined contribution plan assets those savers have entrusted to this system.[10]

Ranking Member Warren and six Senate colleagues raised this concern directly with the Department and the SEC in their October 29, 2025 joint letter, documenting the absence of IPO exit pathways as a structural driver of VC/PE fund illiquidity. The Ranking Member's March 30, 2026 statement on this proposed rule renewed that concern.[11] The structural data in this comment provides the precise mechanism: when the IPO market is broken, private fund investments satisfy neither the liquidity factor nor the valuation factor in the Department's own safe harbor – making the 2008 analogy not a political argument but a fiduciary one.

The solution is not to prohibit VC/PE investments in retirement plans – it is to fix the IPO market concurrently, so that the liquidity and valuation factors in the Department's own safe harbor can be satisfied with confidence. I urge the Department to finalize the Investment Selection Rule in coordination with the SEC's IPO reform agenda.

This comment acknowledges the strongest opposing position: that VC and PE should be excluded from 401(k) plans entirely, regardless of IPO market conditions, because of transparency failures, fee abuse, and inherent information asymmetry. That position accurately describes the current unreformed system – which is precisely why this comment recommends specific structural safeguards rather than unconditional access. The argument for full exclusion provides no solution to the structural exclusion that has driven the U.S. wealth divide for 25 years. The correct response to fee abuse and opacity is disclosure – Recommendation B below – not categorical prohibition. This comment respectfully urges the Department to adopt the middle path: access with structural safeguards and IPO coordination.

B. The Structural Data

U.S. public companies have declined by approximately 50% – from a peak of approximately 8,090 in 1996 to roughly 4,010 as of year-end 2024.[12] These are not cyclical phenomena; they reflect structural failures: the collapse of small-cap IPO infrastructure following decimalization in 2001, which destroyed the retail broker distribution economics that had historically channeled early-stage growth to retail investors; the consolidation of IPO underwriting into large-bank mega-deals; and the Sarbanes-Oxley compliance burden that made small-company IPOs economically unviable.[13]

The time from company founding to IPO has extended dramatically. In the pre-decimalization era, companies routinely went public approximately four years after founding. By 2024, the median age at IPO had risen to approximately 14 years.[14] The highest-return years of a company's growth cycle – the first decade after founding – are now entirely private, accessible primarily to institutional investors and a few accredited investors. Retail investors can only access IPO shares after a first-day premium has been

captured by the institutional investors who received allocations at the offering price.[15] By the time a company IPOs, retail investors are buying in at or near peak private-market valuations, without the benefit of the 2.8x cumulative PE advantage over the S&P 500 that accrued in the private years.[16]

Before 2001, VC and PE funds exited up to approximately 30% of their investments through IPOs, giving the private capital cycle its self-sustaining character.[17] When that exit pathway closed, the cycle froze. Opening 401(k) access to VC/PE fund investments without restoring IPO exit pathways risks replicating this pattern inside retirement accounts – exposing the $14 trillion held in defined contribution plans[18] to illiquid, improperly marked positions with limited exit prospects.

The broader context: venture capital currently reaches only approximately 0.05% of U.S. startups,[19] and capital formation is constrained further by the absence of the retail capital that once participated in early-stage company building through public markets. The declining retail share US wealth maps closely with the period of retail exclusion from early-stage wealth creation following the IPO market's structural collapse after decimalization.[20]

Over the 25 years ending December 2023, PE delivered average annual returns of approximately 13.1% against 8.6% for the S&P 500 – a consistent ~4.5 percentage point annual advantage.[21] Expressed cumulatively, that advantage is approximately 52% higher than the S&P 500 over 25 years and approximately 77% higher over the 20-year period ending June 30, 2020. Academic research across approximately 1,400 U.S. buyout funds found PE outperformed the S&P 500 by at least 20% over the life of the fund in most vintage years since 1984.[22] These figures are not merely a case for PE access – **they are a precise measure of the returns retail investors were systematically denied during the same 25-year period of IPO market dysfunction.**

Important methodological caveats apply. The industry-standard IRR metric flatters performance relative to the Public Market Equivalent (PME) preferred by academic researchers; measured by PME, the PE outperformance advantage narrows but remains positive in most long-horizon studies. During the 2022 public market downturn, PE firms declined to mark portfolio companies to market, suppressing apparent volatility. These caveats support the standardized valuation disclosures recommended in Section III.B below.[23]

To illustrate the economic stakes at the participant level: a 401(k) participant investing $50,000 in a VC/PE fund for 10 years would accumulate about $172,000 at a 13.1% annual return versus about $114,000 at an 8.6% annual return, a difference of roughly $58,000. For a $10,000 allocation, the gap would be about $11,600. These projections use the Cambridge Associates return figures cited herein and are intended to illustrate how disclosure requirements affect participant outcomes, and the difference between wealth access and wealth transfer for the participants this rule is designed to protect. The calculations apply the cited annual return rates to the stated initial investment over 10 years using standard compound growth methodology; they are the author's own projections and should not be treated as a guarantee of future results.

The reported outperformance of private equity over the past quarter-century is, in large part, the arithmetic of retail investor disenfranchisement: the gap between what institutional investors captured and what retail investors were left with. **Properly structured 401(k) access – with the IPO reforms and transparency requirements described in this comment – is the mechanism to begin restoring that access.**[24]

The post-2022 PE and VC underperformance appears to have been driven in significant part by an exit-liquidity problem rather than a quality or fee problem. From March 2022 to July 2023, the Federal Reserve increased the target federal funds rate from 0-0.25% to 5.25-5.50%, which made IPO, M&A, and leveraged buyout exits more difficult and contributed to the 2022-2024 distribution slowdown.[25] **The solution is to fix the IPO exit market and retail IPO access – not to bar retail investors from an asset class whose long-term return advantage is historically documented.**

Two bills before the Senate Banking Committee – HR 3339 (Equal Opportunity for All Investors Act) and HR 3383 (INVEST Act), which passed the full House 302–123 with 87 Democrats joining all Republicans[26] – together with the SEC's IPO reform agenda under Chairman Atkins and

Radivision's SEC Petition for Rulemaking (File No. 4-892, Mar. 26, 2026), constitute a coherent complementary package.[27] The Investment Selection Rule will deliver its full intended benefit when paired with these companion reforms.

C. A Note on the Benchmarking Factor and the Pending 'Anderson v. Intel' Decision

The proposed rule's fifth safe harbor factor requires fiduciaries to ensure that each designated investment alternative has a "meaningful benchmark" and to compare the alternative's risk-adjusted expected returns, net of fees, to that benchmark, which is definied as a comparator with similar mandates, strategies, objectives, and risks. 91 Fed. Reg. at ~16,108, proposed § 2550.404a-6(f)(5). The Supreme Court's recent grant of certiorari in *Anderson v. Intel Corporation Investment Policy Committee*, No. 25-498 (cert. granted Jan. 16, 2026) – which will address whether ERISA breach of fiduciary duty claims based on fund underperformance must please a "meaningful benchmark" – makes this factor particularly significance. The Supreme Court's resolution of Anderson and the Department's final rule are likely to inform each other's treatment of benchmarking in ERISA litigation.

For VC/PE fund investments, calendar-period comparisons against public market indices are systematically misleading for two reasons. First, the J-curve effect means private equity investments characteristically show negative or minimal returns in their early years before generating significant gains; early-period comparisons against public indices will almost always disadvantage PE regardless of ultimate fund quality. Second, as documented above, suppressed private market volatility during periods of IPO market closure makes calendar-period returns even less comparable to public market equivalents.

I recommend that the Department's guidance on the benchmarking factor clarify that for closed-end private market funds, **vintage-year benchmarking – comparing a fund's performance against other funds formed in the same year – is the methodologically appropriate standard,** supplemented by a Public Market Equivalent calculation that accounts for the timing of capital calls and distributions. Participant-facing materials should explain, in plain language, which benchmark was used and why, and what the comparison means for the participant's projected retirement outcome.

III. Specific Recommendations for the Final Rule and Accompanying Guidance

I respectfully submit four recommendations for the Department's consideration, each accomplishable through clarifying guidance without modifying the proposed text:

A. Add an IPO Market Functionality Consideration to the Liquidity Factor

The proposed liquidity factor should be clarified to require fiduciaries, when evaluating VC and PE fund investments, to consider whether adequate public market exit pathways – including a functional IPO market – exist at the time of investment. Fiduciaries should specifically consider: (i) current IPO market depth and activity; (ii) the fund manager's historical IPO exit rate as a percentage of dispositions; and (iii) the fund's stated dependence on IPO exits to achieve projected returns.

B. Require Standardized Disclosure of Exit Market Assumptions

The valuation factor should be accompanied by guidance requiring fund managers offering VC/PE products for 401(k) inclusion to disclose: (i) the assumed exit pathway and timeline; (ii) historical IPO and M&A exit rates for the manager's prior funds; (iii) sensitivity analysis showing projected participant returns under constrained IPO scenarios; and (iv) whether performance is presented on an IRR or PME basis, with a plain-language explanation of the difference provided in all participant-facing materials.

C. Issue Coordination Guidance with the SEC Regarding IPO Reform

I respectfully urge the Department to issue coordinating guidance noting that the Investment Selection Rule's efficacy for VC/PE fund alternatives is materially dependent on the health of the U.S. IPO exit market, and that the Department supports the Commission's efforts to restore functional small-cap IPOs. The SEC's January 2026 request for comment on Regulation S-K and Chairman Atkins' December 2025 "Revitalizing America's Markets" address, together with Radivision's Petition for Rulemaking (File No. 4-892), provide a direct opportunity for interagency coordination.[28]

D. Issue Monitoring Guidance Concurrently with the Final Rule

The Department noted in the preamble that it decided against including safe harbors for monitoring designated investment alternatives after initial selection, and plans to issue interpretive guidance on

monitoring separately. 91 Fed. Reg. at ~16,092. I respectfully urge the Department to issue that monitoring guidance concurrently with, not after, the final selection rule.

This gap is particularly acute for illiquid alternative assets. A fiduciary who correctly selects a VC/PE fund investment when IPO market conditions are adequate faces an ongoing monitoring obligation as those conditions change. If the IPO exit market deteriorates materially after selection – as it did from 2022 to 2024 – a prudent fiduciary must reassess both the liquidity sufficiency and valuation integrity of the holding. Without guidance on what that ongoing assessment requires, fiduciaries who included alternative investments in reliance on the selection safe harbor will have no corresponding safe harbor protection for the monitoring decisions that follow. The selection and monitoring obligations are inseparable for this asset class.

IV. Conclusion

This comment has documented three interconnected structural failures the proposed rule does not address: (1) a broken IPO exit market that prevents the liquidity and valuation factors in the Department's own safe harbor from being satisfied for VC/PE fund investments; (2) the systematic exclusion of retail investors from the highest-return years of the innovation economy – a 25-year period during which PE outperformed public markets by approximately 52% cumulatively – and the risk that the proposed rule without the safeguards recommended herein would replicate rather than remedy that exclusion; and (3) a capital formation system reaching only 0.05% of U.S. startups, requiring reconnection of the $14 trillion retail DC plan asset base to generate the broader economic growth that justifies expanded access in the first place. These three failures share a single integrated solution: the Investment Selection Rule with the recommended safeguards, paired with HR 3339, HR 3383, and the SEC's IPO reform agenda.

The Investment Selection Rule is an important and well-constructed step toward democratizing access to the returns private markets have historically delivered. I strongly support its passage. To fulfill its promise, I respectfully recommend the Department:

1. **Clarify the liquidity factor** to require consideration of IPO market functionality – including the fund manager's historical IPO exit rate and current IPO market depth – for VC/PE fund investments;
2. **Require standardized exit-market disclosure** from fund managers, including IRR-versus-PME disclosure and sensitivity analyses under constrained IPO scenarios;
3. **Issue coordinating guidance with the SEC** supporting restoration of functional small-cap IPOs as a precondition for sustainable retail private market access; and
4. **Issue monitoring guidance concurrently with the final rule,** providing fiduciaries with safe harbor protection for the ongoing assessment of liquidity and valuation conditions after initial selection.

Private markets represent a genuine opportunity for retirement savers – but only with genuine investor protections and only if accompanied by a functioning IPO market that provides the exit liquidity on which the Department's own safe harbor depends. The $14 trillion in defined contribution plan assets those savers have entrusted to this system deserve both the opportunity and the protection that a properly constructed reform package can provide. The bipartisan 302–123 House vote on HR 3383[29] signals that Congress has already endorsed the companion reforms necessary to make this rule work as intended.

I appreciate the Department's consideration of these comments and would welcome the opportunity to provide additional information or participate in any hearing the Department may convene.

Respectfully submitted,

/Mona DeFrawi/

Mona DeFrawi
CEO & Founder, Radivision, Inc.

Endnotes

[1] Silicon Valley Bank, Press Release, "Silicon Valley Bank Invests in InsideVenture", February 24, 2009.

[2] National Venture Capital Association, NVCA 4-Pillar Plan to Restore Liquidity in the U.S. Venture Industry, April 29, 2009 (InsideVenture featured on Slide 19, Pillar 2).

[3] Cambridge Associates LLC US PE Index®, net of fees, 1999–2023; S&P 500 Total Return Index. Past performance is not indicative of future results. Cambridge Associates, "US PE/VC Benchmark Commentary: Calendar Year 2023" (2024).

[4] Mona DeFrawi, Letter to Senate Committee for Banking, Housing, and Urban Affairs, Chairman Scott and Ranking Member Warren, "HR 3339 and 3383 – Recommended Investor Protections and IPO Reforms to Safely Deliver Main Street Wealth Access, U.S. Capital Formation, and Stronger Public Markets", March 26, 2026.

[5] Mona DeFrawi, Petition for Rulemaking, SEC File No. 4-892, "Petition for Rulemaking – Proposed Amendments to Securities Act Rules 163B and 169", March 26, 2026.

[6] Proposed Rule, RIN 1210-AC38, 91 Fed. Reg. 16,088, 16,094 (Mar. 31, 2026) [hereinafter Proposed Rule], at proposed §§ 2550.404a-6(e)–(f).[7] NVCA Yearbook 2024 (PitchBook data).

[8] Weinberg, Cory, "Every VC-Backed IPO in the Past 12 Months Has Been a Down Round", The Information, May 30, 2025.

[9] DOL Press Release, ("more than 90 million Americans"), Mar. 30, 2026.

[10] ICI, "Retirement Assets Reached a Record $48.1 Trillion" (January 2026) (DC plan assets approximately $14 trillion).

[11] Warren Statement on President Trump's Executive Order Opening Up Americans' 401(k)s to Risky Assets (Aug. 7, 2025); Warren et al. Letter to DOL & SEC (Oct. 29, 2025); Warren Statement on DOL Proposed Rule (Mar. 30, 2026).

[12] World Bank, Listed Domestic Companies–United States (peak 8,090 in 1996; 4,010 in 2024).

[13] Decline of the Small IPO, Lerner, Leamon & Hardymon, HKS Working Paper No. 86; Equity Trading in the 21st Century, Angel, Harris & Spatt, 1 Q.J. Fin. 1 (2011).

[14] Jay R. Ritter, IPOs: Median Age Through 2025, Univ. of Florida (Jan. 2026) (median 13.5 years at IPO in 2024).

[15] Ritter, supra note 15 (avg. IPO age ~4–7 years pre-decimalization vs. 13.5 years in 2024).

[16] Cambridge Associates, supra note 4 (20-yr: 10.48% PE vs. 5.91% S&P 500, 2.8x cumulative). Harris, Jenkinson & Kaplan, J. Fin. (2014) (~1,400 funds; PE beat S&P ≥20% most vintages since 1984).

[17] Gompers & Lerner, The Venture Capital Cycle (MIT Press, 2d ed. 2004).

[18] Supra note 11.

[19] Wood, "Raising Capital for Startups: 8 Statistics That Will Surprise You", Fundera/NerdWallet (Feb. 3, 2020) (citing Entrepreneur) (~0.05% of ~5M annual U.S. new businesses receive VC).

[20] World Inequality Report 2022; WID.world (2023 update). The declining retail share of early-stage equity ownership during the post-decimalization period is documented in Ritter, supra note 15, and NVCA Yearbook 2024, supra note 8.

[21] Cambridge Associates LLC, "US Private Equity Index and Selected Benchmark Statistics" (December 31, 2023).

[22] Harris, Jenkinson & Kaplan, "Private Equity Performance: What Do We Know?" J. Fin. (2014).

[23] "Private Equity Performance: Returns, Persistence, and Capital Flows", Kaplan & Schoar, J. Fin. (2005); "The Performance of Private Equity Funds", Phalippou & Gottschalg, Rev. Fin. Stud. (2009); "An Inconvenient Fact: Private Equity Returns & The Billionaire Factory", Phalippou, J. Invest. (2020). On smoothed returns, see "An Econometric Model of Serial Correlation and Illiquidity in Hedge Fund Returns", Getmansky, Lo & Makarov, J. Fin. Econ. (2004).

[24] Supra notes 4, 18.

[25] Federal Reserve, Federal Funds Rate Data (Mar. 2022–Jul. 2023): 0–0.25% → 5.25–5.50%; NVCA Yearbook 2024, supra note 8.

[26] HR 3383, House Roll Call No. 185 (2025) (302–123; 87 Democrats joining all Republicans); HR 3339, supra note 5.

[27] Revitalizing America's Markets at 250, Chairman Atkins, NYSE (Dec. 2, 2025); DeFrawi, SEC Petition for Rulemaking, File No. 4-892 (Mar. 26, 2026).

[28] Revitalizing America's Markets at 250, Chairman Atkins, NYSE (Dec. 2, 2025); Statement on Reforming Regulation S-K, SEC (Jan. 13, 2026); DeFrawi, SEC Petition for Rulemaking, File No. 4-892 (Mar. 26, 2026).

[29] HR 3383, House Roll Call No. 185 (2025) (302–123).