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Investment Funds & Private Capital Market Insights

SEC Adopts Scaled-Back Version of Private Fund Rules (Part 2 of 2)

18-MINUTE READ

By John Budetti, Esther Chiang, Scott Gluck, Ira Kustin, Ryan Swan, and David Wilson

Introduction

As summarized in Part 1 of our release (*available here*), on August 23, 2023, the SEC adopted the final version of its highly anticipated and controversial private fund reforms (the "**Private Fund Rules**"). The Private Fund Rules consist of five different new rules: (i) the **Quarterly Statement Rule** (Rule 211(h)(1)-2), (ii) the **Preferential Treatment Rule** (Rule 211(h)(2)-3), (iii) the **Restricted Activities Rule** (Rule 211(h)(2)-1), (iv) the **Adviser-Led Secondaries Rule** (Rule 211(h)(2)-2) and (v) the **Mandatory Audit Rule** (Rule 206(4)-10). In addition, the final Private Fund Rules require all registered investment advisers to document in writing the annual review of their compliance programs (amended Rule 206(4)-7). As has been widely noted, the final version of the Private Fund Rules do not include some of the more onerous and, from the perspective of private fund sponsors, problematic provisions from the proposal. This may, in some respects, reflect a welcome willingness from the SEC to engage with and incorporate some of the substantial feedback it received from commenters. Less charitably, it also may signal the SEC's desire to reduce the likelihood or prospects of ongoing or additional anticipated litigation. We note, as discussed in a prior alert (*available here*), that several private fund sponsor industry groups have filed a lawsuit to challenge the legality of the rulemaking. Notwithstanding the SEC's revisions to the initial rule proposal, the Private Fund Rules are expected to usher in transformative changes affecting the historical relationships and negotiations between investors and managers and the nature of regulatory oversight for affected advisers. Even in their scaled-back final form, the Private Fund Rules are the largest regulatory codification of an ongoing decades-long evolution of a commercially contracted market. Although investors are largely supportive, there is not unanimity around the Private Fund Rules.

Now that observers have had an opportunity to begin digesting the lengthy adopting release (the "**Adopting Release**"), what they have found is a highly detailed set of prescriptions and obligations that may, for example: (a) affect longstanding negotiation processes between investors and fund sponsors, (b) introduce reporting (under the Quarterly Statement Rule), notice (under Restricted Activities Rule) and disclosure

(under the Preferential Treatment Rule) requirements that will add stress to already overtasked accounting/finance, investor relations and compliance personnel of private fund sponsors and (c) add operational complexity to side letter negotiations (under the Preferential Treatment Rule) and co-investment processes (under the Restricted Activities Rules), all of which could impede capital formation and closing certainty with indeterminate and ill-defined benefits to investors offered as a countervailing rationale.

In the Adopting Release, the SEC offers 660 pages of explanation and justification. Despite this, sponsors will be left to sort through interpretive questions and operational challenges as they prepare to implement their approaches to compliance. These and other elements of the Private Fund Rules are discussed in detail below. At the end of this Client Alert, there also is a chart summarizing the rules, which has been included here for convenient reference.

Private Fund Rules

Applicability and Scope

- **RIAs:** SEC-registered investment advisers ("**RIAs**") who advise private funds **are subject to all provisions** of the Private Fund Rules.
- **ERAs:** Exempt reporting advisers ("**ERAs**") who advise private funds **are subject to only the Preferential Treatment and Restricted Activities Rules**.
- **Offshore Advisers**: For any offshore private fund adviser—that is, an adviser, **whether an RIA or an ERA**, whose **principal place of business is outside the U.S.**—the substantive provisions of the rules:
  - **apply only to any U.S.-domiciled funds** (*e.g.*, Delaware funds) of such adviser,
  - and **do not to any non-U.S. funds** (*e.g.*, Cayman or Luxembourg-domiciled funds), regardless of whether such non-U.S. funds have U.S. investors.
- **Securitized Asset Funds**: The Private Fund Rules **do not apply to securitized asset funds (*e.g.*, collateralized loan obligations)**, which are defined as "any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt holders."
- **Non-Private Funds**: Private funds include investment vehicles relying on either the Section 3(c)(1) or 3(c)(7) exemptions from registration under the Investment Company Act; thus, investment vehicles relying on other exemptions or exclusions from investment company status (*e.g.*, real estate investment vehicles that may rely on Section 3(c)(5) of the Investment Company Act) **generally are not subject to the Private Fund Rules**.

Quarterly Statement Rule

Overview

The Quarterly Statement Rule (Rule 211(h)(1)-2) will require RIAs to send private fund investors a quarterly report setting forth certain prescribed information relating to adviser compensation (whether payable by a fund or portfolio investment), fund expenses and performance. The SEC intends for the Quarterly Statement Rule to standardize investor reporting and facilitate comparability of private fund investments. Notwithstanding the lengthy discussion of the Quarterly Statement Rule and its related requirements (exceeding 100 pages in the Adopting Release), the new rule raises a number of interpretive questions, some of which are discussed below. Based on initial client feedback, and notwithstanding that some form of quarterly reporting currently is commonplace, our expectation is that the prescribed quarterly statements

will represent one of the most significant operational and compliance burdens for private fund sponsors under the Private Fund Rules.

Fund-Level Fees and Expenses Table

The Quarterly Statement Rule will require an RIA to distribute quarterly a **fund-level table** that reflects (i) a detailed accounting of all compensation, fees and other amounts (*e.g.*, management fee, carried interest, amounts relating to affiliate or in-house service providers that are borne by a fund) allocated or paid to the RIA or its related persons, (ii) a detailed accounting of all fees and expenses allocated to or paid by the fund (*e.g.*, organizational, accounting, legal, administration, audit, tax, due diligence and travel expenses) and (iii) the amount of any excess management fee offsets or rebates that will be carried forward for future application, in each case incurred or accrued during the applicable quarter. The fund-level table must show these amounts **before and after** the application of any management fee offsets, rebates or waivers for the relevant quarterly period. An RIA's "**related persons**" includes its control persons, officers, partners, directors, its affiliates, and current employees. If a given expense could be categorized as either RIA compensation or a fund expense (*e.g.*, costs associated with in-house or affiliated service providers that are borne by a private fund and authorized under the governing documents as a fund expense), it must be reflected in the quarterly fund level table as adviser compensation.

Amounts "allocated" include accrued compensation and expenses, and such amounts must be included in the quarterly statement during the reporting period in which they are accrued. The rule requires the "detailed accounting" to provide investors **"with sufficient detail to assess and monitor whether [the private fund expenses and adviser compensation] borne by the fund conform to contractual agreements and the private fund terms.**" Accordingly, RIAs must list each category of expense as a separate line item, and are not permitted to exclude *de minimis* expenses, group smaller expenses into broad categories or label expenses as "miscellaneous." The Adopting Release provides limited guidance around the level of detail required for expense categories, but does include an example suggesting that insurance premiums, administrator expenses and auditor fees should all be set forth as separate line items. The Adopting Release further notes that it would be inappropriate to classify these generally as "fund expenses." Similarly, in the context of regulatory, compliance and examination expenses, the Adopting Release notes that it would be inappropriate to categorize these charges broadly as "legal expenses" or "compliance expenses" and notes that each specific category of fee or expense should be set forth as a separate line items.

Portfolio Investment-Level Compensation Table

The Quarterly Statement Rule also requires an RIA to prepare a **portfolio investment-level table** that reflects a detailed accounting of all portfolio investment compensation allocated or paid to the RIA or its related persons**. Portfolio investment** encompasses any holding company or intermediate structuring entities in which a private fund has a direct or indirect interest. **Portfolio investment compensation** includes any compensation, fees and other amounts allocated or paid to the RIA or any of its related persons by the portfolio investment, and captures both **cash and non-cash compensation, such as any stock, options or warrants** that fall within the scope of the rule. Relevant examples likely will differ depending on a private fund's strategy, but generally would include the following categories of fees, to the extent paid to an RIA or its related persons by an underlying portfolio investment:

- For credit funds, any origination, structuring, servicing, administrative, closing or other similar supplemental fees;
- For equity funds, any monitoring, consulting, advisory, transaction, directors or other supplemental fees;

- For real estate funds[1], asset management, property management, brokerage, closing or other similar supplemental fees; and
- For all private funds, amounts (including non-cash components) paid with respect to in-house or affiliated service providers.

The table must set forth each covered portfolio investment (*i.e.*, any portfolio investment that has paid compensation to the RIA) on an investment by investment basis, together with a separate line item showing the amount for each category of portfolio investment compensation paid. The table must show only the amounts attributable to the private fund's ownership in the portfolio investment (*i.e.*, there is no requirement to show any portions attributable to another owner, such as a co-investor).

Cross References to Governing Documents

To support the information included in the fund- and portfolio investment-level tables, the Quarterly Statement Rule also requires an RIA to include prominent disclosures regarding the manner in which all expenses, payments, allocations, rebates, waivers and offsets are calculated (*e.g.*, whether such compensation is fixed, based on performance over a certain period or based on the value of a fund's assets), and to include cross references to relevant sections of the private fund's governing and offering documents that set forth the calculation methodologies.

Performance Information

The Quarterly Statement Rule will require an RIA to provide standardized performance reporting information. The information required differs depending on whether a private fund is an illiquid or liquid fund. An **illiquid fund** is any fund that is not required to redeem interests upon an investor's request, and has limited opportunities for investor to withdraw before the termination of the fund. A **liquid fund** is any fund that is not an illiquid fund.

Illiquid funds must show (i) fund-level gross and net IRR, (ii) fund-level gross and net MOIC, and (iii) gross IRR and gross MOIC for both the realized and unrealized portions of the fund's portfolio. Where applicable, amounts must be shown **with and without the impact of any fund-level subscription facility**. In addition, illiquid funds must include a statement of contributions and distributions for the reporting period. **IRR** is defined under the rule as the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero. **MOIC** is defined as the sum of unrealized value and all distributions *divided by* the total capital contributed to the fund by investors.

Although the definitions of **IRR** and **MOIC** largely accord with industry standards and practices, some aspects of the guidance in the Adopting Release potentially affect how some sponsors historically have treated various inputs. For example, the Adopting Release clarifies that for purposes of calculating the IRR on the quarterly statement, sponsors should (i) take into account the specific date the cash flow has occurred (rather than an alternative timing convention, such as mid-month), and (ii) treat recalled (or recycled) distributions as additional contributions for purposes of calculating illiquid fund performance.

Liquid funds must show (i) annual net total return for each fiscal year over the past 10 fiscal years, (ii) average annual net total returns over the one-, five- and 10-fiscal year periods; and (iii) cumulative net total return for the current fiscal year as of the end of the most recent fiscal quarter reported in the quarterly statement.

Performance reporting must include an "as of" date reflecting the reporting period through which the performance information is current. The Adopting Release recognizes that certain funds may not be able to obtain necessary portfolio investment-level data to provide performance information as of the most recent

[1] As noted above, a "real estate fund" in this context is a private fund with a real estate focus, but not a fund exempt under Section 3(c)(5) of the Investment Company Act.

quarter-end. The final rule permits an RIA to provide performance metrics as of the most recent practicable date, which the Adopting Release suggests would be the end of the prior quarterly period (*i.e.*, a Q3 quarterly statement could include performance information current as of the end of Q2 if the RIA were unable to obtain the Q3 performance information).

Performance Disclosures

To support the calculations included in the performance information, the Quarterly Statement Rule will require an RIA to provide **prominent disclosure** regarding the criteria and assumptions used in preparing the required performance metrics. As an example for illiquid funds, the Adopting Release notes that an RIA must disclose the use of any "assumed fee rates, including whether the adviser is using fee rates set forth in the fund documents, whether it is using a blended rate or weighted average that would factor in any discounts, or whether it is using a different method for calculating net performance."

Consolidated Reporting

The Quarterly Statement Rule includes a principles-based consolidation requirement. An RIA **must** consolidate reporting for a fund and any **similar pool of assets** (see discussion of 'similar pool of assets' under the Preferential Treatment Rule below) to the extent doing so would provide more meaningful information to the fund's investors and would not be misleading. As examples, the Adopting Release notes that consolidation would be appropriate for certain master-feeder and parallel fund structures.

Compliance Date / Delivery of Reports

RIAs will have **18 months** from the date the rules are published in the U.S. Federal Register to begin complying with the Quarterly Statement Rule. After the compliance date, RIAs must provide a compliant quarterly statement within **45 days after the end of a fund's first, second and third fiscal quarters**, and within **90 days after the end of the fund's fourth fiscal quarter**. The timelines for a fund of funds are extended to 75 and 120 days, respectively. For a **newly formed fund**, an RIA must prepare the initial quarterly statement for such fund beginning after the fund's second full fiscal quarter (and the quarterly statement should be inclusive of the first two quarters of operating results).

Grandfathering / Legacy

There is no grandfathering or legacy status afforded to existing private funds, and upon the compliance date RIAs will be required to prepare reports for all existing private fund clients.

QUARTERLY STATEMENT RULE

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1. **Certain of the content requirements for the quarterly statements will require an RIA's interpretive analysis.**
    - For example, while the level of detail required for line item expenses almost certainly goes beyond current standard market practice for quarterly reporting, it is not entirely clear exactly what level of granularity is required.
    - Sponsors should work with administrators, accountants and counsel to assess the relevant categories of their fund expenses and adviser compensation and develop reporting procedures and a quarterly statement template consistent with the rule.

2. **In response to the detailed expense reporting requirement, sponsors may seek to develop simpler models for recouping costs (*e.g.*, through an asset-based administrative fee or higher management fee).**
    - Any such fees changes are likely to be less exact than current expense practices, but they may be desirable for sponsors looking to substantially alleviate the burdens and costs associated with the new reporting requirements.
    - Separately, RIAs may consider developing expense ratios or other comparison metrics to better contextualize the magnitude of expenses that are being newly disclosed in the quarterly statement's more detailed format.
3. **The performance reporting requirements do not align with the performance reporting requirements in the Advisers Act's new marketing rule[2] (the "Marketing Rule"); for example:**
    - The Marketing Rule did not include a definition or prescribe a calculation with respect to IRR or other performance metrics;
    - The Marketing Rule does require net performance information to be shown with respect to extracted performance, such as the unrealized or realized portion of a portfolio, whereas the Quarterly Statement Rule does not; and
    - The Adopting Release clarifies that for purposes of calculating the IRR on the quarterly statement, sponsors should (i) take into account the specific date the cash flow has occurred (rather than an alternative timing convention, such as mid-month), and (ii) treat recalled (or recycled) distributions as additional contributions for purposes of calculating illiquid fund performance, neither of which is applicable for Marketing Rule compliance.
    - Given these and other differences, some sponsors will be left to wrestle with how to reconcile competing interests—including administrative and reporting efficiency, investor relations considerations, accuracy, and the consistency of the presentation of track record information between prospective and current investors—while trying to simultaneously comply with two sets of requirements that are both highly detailed and not entirely consistent.
4. **There are no carveouts or exceptions under the Quarterly Statement Rule; absent SEC guidance, an RIA will be required to comply with respect to each private fund client, potentially including, for example, any co-investment vehicles sponsored by the RIA, employee or friends and family funds, continuation vehicles, funds of one and/or other bespoke structures.**
    - Consolidated reporting may work with respect to certain of these vehicles, but generally would not apply, for example, to a one-off co-investment vehicle.
    - Also, although the rule does not technically apply to non-U.S. funds, in any fund structure that include U.S. and non-U.S. parallel funds, it is possible, if not likely, that in practice all investors in the same fund complex will expect to receive the same quarterly reporting information.
    - The new rule could in particular be burdensome for sponsors who have adopted the ILPA reporting template (and/or agreed to use such template in side letters with certain

[2] Advisers Act, Section 206(4)-1.

LPs), who will now need to reconcile such template and the new requirements under the Quarterly Statement Rule.

- It remains to be seen whether the standardized reporting requirements under the Quarterly Statement Rule will affect the bespoke reporting commonly requested by various types of investors.

Preferential Treatment Rule – Prohibitions on Certain Preferential Terms

Overview

The Preferential Treatment Rule (Rule 211(h)(2)-3) applies to all advisers, including both RIAs as well as ERAs (*e.g.*, venture capital advisers, U.S. and non-U.S. advisers relying on the mid-sized private fund adviser exemption) under the Advisers Act. This rule imposes two general prohibitions on preferential terms, with certain exceptions, as well as advance notice and ongoing reporting requirements.

Prohibition on Preferential Liquidity

Advisers may not grant any investor in a private fund or in a **similar pool of assets** (discussed in more detail below) preferential redemption or withdrawal rights if the adviser reasonably expects such rights will have a **material, negative effect** on other investors in the private fund or similar pool of assets, ***except if*** (i) the preferential ability to redeem or withdraw is **required by applicable law, rule or regulation or by an order of any U.S. or foreign government or political subdivision** to which the investor, private fund or similar pool of assets is subject or (ii) the same preferential liquidity rights **are offered by the adviser to all other existing investors** in the fund or similar pool of assets **and the adviser will continue to offer such rights to future investors in the fund or similar pool of assets**. Notably, the exception in (i) above would **not** extend to redemption rights that are driven by an investor's internal policies and procedures or compliance requirements. Advisers also will be required to disclose any such preferential treatment in accordance with the disclosure framework described below. The preferential treatment analysis is not limited only to terms agreed with investors in side letters—it also extends to share class differences. For example, with respect to the exception in (ii), the Adopting Release clarifies that share classes with different liquidity terms (but otherwise subject to the same terms) would be permissible to the extent all investors have the opportunity to subscribe for each such share class; however, share classes with different liquidity terms based on the size of an investor would not be permitted. The Adopting Release would permit pairing different fee structures with varied liquidity rights, although it also warns that advisers should not try to achieve indirectly (*e.g.*, through creative structuring) what they are not permitted to do directly.

Prohibition of Preferential Transparency

Advisers may not grant any investor in a private fund or in a similar pool of assets preferential information rights (for example, information about the portfolio investments in a fund) if the provision of such information would reasonably be expected to have a **material, negative effect** on other investors in the private fund or similar pool of assets, ***except if*** the same preferential transparency rights are **offered by the adviser to all other existing investors** in the fund or similar pool of assets at substantially the same time. Any preferential transparency that does not trigger the prohibition would be subject to the disclosure framework described below. **While the prohibition is broadly drawn to apply to many kinds of information rights, it generally should not apply for closed-end funds**. As the Adopting Release notes, "the ability to redeem is an important part of determining whether providing information would have a material negative effect," and concludes that, although it will be a facts and circumstances analysis, the provision of preferential information rights to one or more investors in a closed-end fund generally would **not** be expected to have a material negative effect on the other investors.

Material, Negative Effect

It is the adviser's duty to make a good faith determination whether granting preferential liquidity or transparency rights could reasonably be expected to have a **material, negative effect** on other investors in the private fund or similar pool of assets. While the SEC did not provide a specific definition of "material, negative effect," it indicated that the characteristics of a fund's investment portfolio could be a factor in this determination. For example, if remaining investors not benefiting from the same preferential liquidity terms would be exposed to a highly illiquid portfolio that could impair their redemption/withdrawal rights, the remaining investors could be expected to suffer a material, negative effect resulting from other investor(s)' preferential terms.

Similar Pool of Assets

The Preferential Treatment Rule's prohibitions apply to preferential liquidity and transparency rights granted to investors in the private fund and/or any **similar pool of assets**. This differs from the disclosure components of the Preferential Treatment Rule (discussed below), which do not include a requirement to consider similar pools of assets. Under the rule, a similar pool of assets encompasses pooled investment vehicles with "***substantially similar investment policies, objectives, or strategies***." The SEC's use of the term "similar pool of assets" is intended to capture other funds, parallel or feeder funds, alternative investment funds and co-investment vehicles. It could also apply to proprietary vehicles of an adviser. Whether a pool of assets managed by the adviser is "similar" to the private fund requires a facts and circumstances analysis. A pool of assets with a materially different target return or sector focus, for example, would likely not have substantially similar investment policies, objectives, or strategies to those of the subject private fund, depending on the facts and circumstances.

Grandfathering / Legacy Status - Prohibitions

The SEC provided for grandfathering/legacy status for the two prohibitions discussed above (preferential liquidity and preferential transparency). Legacy status applies to contractual obligations entered into prior to the compliance date for the Private Fund Rules. Therefore, side letters, or other preferential arrangements, granted by funds that commenced operations prior to the compliance date will not need to be amended to comply with the rule.

Preferential Treatment Rule – Advance and Ongoing Notice Requirements

In one of the most significant changes likely to result from the Private Fund Adviser Rule, if the adviser has granted any preferential treatment relating to **material economic terms**, it must provide advance written notice including specific information about those preferential economic terms to each prospective investor in the private fund **prior to their investment**. Per the Adopting Release, material economic terms include, but are not limited to, preferential treatment regarding the cost of investing, liquidity rights, fee breaks and co-investment rights. The Preferential Treatment Rule requires advance disclosure of material economic terms **that an adviser has provided**, and the rule and Adopting Release are unclear and decline to elaborate on whether **such terms must be disclosed to other investors who are simultaneously participating in the same closing** (or, in the alternative, only with respect to investors who participate in subsequent closings). In all events, the advance disclosure process is expected to be disruptive to current market practices relating to side letter negotiations and MFN election processes, but, in particular, advance disclosure for investors in a contemporaneous closing could result in timing delays for closing, as investors potentially seek to reopen negotiations on a real-time basis.

Ongoing Notice Requirements

Illiquid Funds. If an adviser to an illiquid fund provides any other preferential terms, all investors in the private fund must receive written notice of those terms **as soon as reasonable practicable following the end of the private fund's fundraising** period (*i.e.*, following the fund's final closing).

Liquid Funds. If an adviser to a liquid fund provides any preferential terms to an investor, each other investor in the private fund must receive written notice of those terms **as soon as reasonably practicable following the investment of such investor who received preferential treatment in the private fund** (*i.e.*, following each of the fund's closings).

While the Preferential Treatment Rule did not clearly define the "as soon as reasonably practicable" disclosure timing requirement, the Adopting Release notes that it expects the disclosure process would be completed within a **four-week timeframe** after an illiquid fund's final closing or an investor's investment into a liquid fund.

Annual Notice Requirements

An adviser must provide, on at least an annual basis, written notice with specific information regarding preferential treatment provided by the adviser since the last annual notice.

Compliance Date

Subject to the grandfathering / legacy status discussed above with respect to the prohibitions portion of the Preferential Treatment Rule, RIAs and ERAs with more than $1.5 billion in private fund assets under management ("**Large Advisers**") will have 12 months to begin complying with the Preferential Treatment Rule. RIAs and ERAs with less than $1.5 billion in private fund assets under management ("**Smaller Advisers**") will have 18 months to begin complying with the Preferential Treatment Rule.

Grandfathering / Legacy Status – Disclosure Requirements

The Preferential Treatment Rule **does not** include grandfathering or legacy status with respect to the disclosure components of the rule. **Accordingly, sponsors to funds that are no longer fundraising (*e.g.*, closed-end funds that have held a final closing) will need to evaluate what disclosures have been made to existing fund investors to determine whether it will be necessary to provide all investors with a one-time disclosure of all preferential treatment in order to meet the rule's requirements**.

PREFERENTIAL TREATMENT RULE

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1. The exceptions to the prohibitions on preferential liquidity and transparency do not require preferential liquidity or transparency terms to be *granted* to all investors in a fund; those terms must simply be *offered* to other investors.
2. Although it is currently standard market practice to construe an MFN process as applicable to a related set or family of funds that are fundraising at the same time, the Preferential Treatment Rule's advance and post-closing disclosure provisions do not appear to require an adviser to consider similar pools of assets in connection with determining what preferential treatment an adviser must disclose to investors.
3. Similarly, for preferential treatment other than with respect to liquidity and transparency, the Preferential Treatment Rule only requires disclosure to investors rather than an offer of equivalent terms.
    a. However, one likely consequence is that investors may, even after their commitment/contribution to the fund has been made, request that they receive the benefit of preferential terms granted to others as a result of the disclosure process. We may also see market practice develop where investors request a compendium or

similar summary of all preferential terms granted to other investors (in addition to liquidity and transparency) prior to their admission to the fund even if not required by the Preferential Treatment Rule.

4. It is likely the annual notice requirement will be more onerous for liquid funds that have a more frequently changing investor base, although many liquid funds tend to grant fewer side letters than illiquid/private equity-style funds.

5. Given that the preferential treatment analysis is not limited only to side letter terms, a private fund sponsor will need to ensure that its employees are coordinated in documenting any actions or inactions during their administration of the fund that could be deemed as preferential treatment, such as any waiver of a LP's obligations under the LPA (*e.g.*, waiving legal opinion requirement for a LP when it seeks to transfer its interest in the fund), or responding to any LP's one-off informational request for information that has not been generally offered to other LPs (*e.g.*, responding to any governmental plan's annual diversity survey). Sponsors will need to establish internal systems to ensure these instances are captured, documented and disclosed.

6. The notice requirements under the Preferential Treatment Rule will likely result in a significant shift to current market practice around the "most favored nations" or "MFN" process utilized by most private fund advisers.

    - The Preferential Treatment Rule requires that disclosure be given to all investors, not only those who have negotiated an MFN provision entitling them to this information. Historically, only larger investors or some with significant bargaining leverage have been granted MFN provisions permitting them to view and elect from certain provisions granted to investors of the same size or smaller.

    - The rule requires that disclosure of all preferential terms be "as soon as practicable" after the applicable closing (with differing timing requirements for liquid and illiquid funds as noted above).

    - While the SEC noted that the "as soon as practicable" standard requires a facts and circumstances analysis, the SEC believes that distribution of notices of preferential treatment should generally take place within four weeks from the applicable closing. Many advisers currently need significantly more time to organize their notice and election process in this context, particularly where a fund has a large or disparate investor base and a large number of preferential terms have been granted.

    - The notice and election process relating to preferential terms can also be more complicated where there are variations on similar terms that have been granted as a result of negotiations with investors.

    - Sponsors will need to evaluate how any multi-fund side letter arrangements fit within the new disclosure framework.

    - Many in the industry have noted that the disclosure requirements under the Preferential Treatment Rule are likely to increase a private fund's organizational or partnership expenses, and put pressure on the timing for closings if last-minute negotiations surrounding preferential terms are required by investors.

7. Overall, with the requirement to disclose and offer preferential liquidity and transparency terms prior to a prospective investor's investment and the ongoing disclosure requirement, we anticipate that many private fund sponsors will need to invest more resources (including for example upgrading software systems, hiring additional personnel, consultants or other advisers) to meet these requirements.

Restricted Activities Rule

Overview

The Restricted Activities Rule (Rule 211(h)(2)-1) applies to all investment advisers (RIAs and ERAs) and includes five restricted activities, three of which are permissible with notice to investors and two of which are permissible only with investor consent. This is a change from the SEC's rule proposal which would have prohibited outright these and certain other practices. More specifically, the Restricted Activities Rule does not limit an adviser to an indemnity trigger by a private fund for simple negligence. As a result, the "gross negligence" standard of care, which is common in the marketplace, was not altered by the rules. The Adopting Release did, however, reiterate the SEC's view that an adviser may not attempt to contractually limit its fiduciary duty under the Advisers Act or other duties that may not be waived under applicable law, and sponsors should revisit applicable documentation to ensure they have specified expressly that any limitation of liability is not intended as a waiver of any such duties. Additionally, the Private Fund Rules do not include an express prohibition or limitation on charging a fund for services not performed; however the SEC notes in its extended commentary on the Advisers Act fiduciary duty that it considers such activities to be inconsistent with an adviser's fiduciary obligations.

Regulatory, Compliance and Examination Fees – Permitted with Subsequent Disclosure

Fees and expenses relating to regulatory, compliance and examination activities **may not** be charged to a private fund or otherwise borne by private fund investors **unless, within 45 days** after the end of the fiscal quarter in which such fees/expenses are charged to the fund, investors are provided with written notice of (i) the fact that such fees and expenses were charged to the fund and (ii) the dollar amount of such fees and expenses actually charged during the relevant fiscal quarter.

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- The 45-day timing aligns with the quarterly statement requirements, and the disclosure for regulatory, examination and compliance expense can be included on a fund's quarterly statement (except for any amounts incurred during a private fund's fourth fiscal quarter, which would need to be delivered in advance of the 90-day timing for the year-end quarterly statement).
- The scope of examinations includes **any governmental or regulatory authority**. This picks up not only SEC examinations, but any examination—state, local, U.S. or non-U.S.—of an adviser or its related persons.
- The Adopting Release notes that, consistent with the requirements under the Quarterly Statement Rule, such amounts should be set forth as a detailed accounting, and each specific category of fee or expense should be set forth as a separate line item, rather than being grouped together in a broader category such as "compliance expenses."
    - The Adopting Release also reiterates that any such amounts **are not permitted to be charged without appropriate authorization** under a private fund's governing documents. While this is a common refrain for the SEC and its examination teams, the new related disclosure requirements are likely to put additional pressure on allocation practices, and sponsors should review their documents and practices with this in mind.
- The Adopting Release declines to provide guidance on how an adviser should determine which expenses are adviser compliance or regulatory expenses versus those that are compliance expenses of a private fund, and for instance, does not specify how advisers should treat costs related to reporting and disclosure efforts under the Private Fund Rules.

Reduction of Carried Interest / Performance Compensation Clawbacks for Taxes – Permitted with Subsequent Disclosure

A general partner clawback subject to the Restricted Activities Rule includes any obligation of the adviser or its related persons (including, for example, an affiliated general partner, employees and persons owning or controlling the adviser) to restore or otherwise return any performance-based compensation to the private fund required under its governing documents. This may apply to both end-of-life and interim clawbacks. It is a common negotiated term that any clawback relating to carried interest or other performance compensation is reduced for any taxes paid (or deemed paid) by the recipients of such compensation, often based on a formula which assumes a standard tax rate. This is often referred to as the carried interest clawback being paid "net of taxes." A private fund **may** include a clawback provision that is net of taxes **if**, within 45 days after the end of the fiscal quarter in which any clawback payment is made to the fund, written disclosure is provided to investors in the fund detailing the aggregate amounts of the clawback before and after any reduction for taxes.

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- The 45-day timing aligns with the quarterly statement requirements, and the general partner clawback disclosure can be included on a fund's quarterly statement (except with respect to a private fund's fourth fiscal quarter, which would need to be delivered in advance of the 90-day timing for the year-end quarterly statement).
- Tax netting provisions relating to clawback amounts differ from fund to fund, and advisers should review all of their governing documents to assess when and what disclosures must be made, and how to calculate the before- and after-tax amounts.
- The notice regarding disclosure of reduction of clawback net of taxes can be based on the assumed tax rate applicable under a private fund's governing documents, and would not have to disclose the actual tax liabilities of the carried interest recipients.
- For funds with a clawback which is net of taxes but is increased by tax benefits realized as a result of the clawback, the impact of the tax benefits will generally not be known when the disclosure is required. Therefore we assume that the potential for additional clawback payments to be made if tax benefits are realized would be noted in the required disclosure and additional disclosure would be made at any time that subsequent clawback payments are made.

Non-Pro Rata Allocation of Fees and Expenses – Permitted with Advance Disclosure and Notice

An adviser is restricted from charging fees and expenses relating to a portfolio investment (or proposed portfolio investment) held by one or more client funds or accounts on a non-*pro rata* basis unless (i) the **adviser determines that such allocation is "fair and equitable"** under the circumstances and (ii) **prior to charging such fees and expenses**, the adviser provides disclosure to investors in the applicable private fund that such fees/expenses will be charged on a non-*pro rata* basis and an explanation for why the adviser believes that doing so would be fair and equitable under the circumstances.

Insights & Continuing Conversation

- The Private Fund Rules do not define "fair and equitable," "*pro rata"* or the intended scope of "expenses relating to a portfolio investment."
  - The SEC indicated that "fair and equitable" will depend on factors relevant for the specific expense. For example, it would be relevant whether the expense relates to a specific type of security that one private fund client holds. In another example, a factor could be whether the expense relates to a bespoke structuring arrangement for one private fund client to participate in the portfolio investment. As yet another example, another factor could be that one private fund client may

receive a greater benefit from the expense relative to other private fund clients, such as the potential benefit of certain insurance policies.
    - Per the Adopting Release, *pro rata* allocations may be based on underlying portfolio investment ownership or another methodology, which should afford sponsors some discretion in developing flexible allocation approaches.
    - While the scope of expenses subject to *pro rata* restrictions is not clearly defined under the rule, the Adopting Release notes that it is intended to pick up broken-deal expenses.
- While the **proposed rule** acknowledged and would have permitted sponsors to continue to allocate broken-deal expenses exclusively to a private fund and not to prospective co-investors under certain conditions (*e.g.*, where a prospective co-investor had not yet signed a binding agreement to participate), **it is not clear under the Private Fund Rules** whether such practice will be required to satisfy the disclosure and notice conditions outlined above.
- Sponsors should evaluate existing instances of non-*pro rata* allocations (*e.g.*, relating to co-investments, tax treatment and structuring) to determine likely circumstances when the rule's disclosure requirements will be triggered.

Investigation Expenses – Permitted Only with Approval of Disinterested Investors

Any allocation to a private fund of fees or expenses associated with **any government or regulatory investigation** of the adviser requires disclosure and the prior consent from a majority-in-interest of fund investors, **excluding the adviser and any related persons**.

Sponsors will likely need to seek separate investor consent for any such investigation costs.

Additionally, advisers are **prohibited** from charging a private fund any fees or expenses relating to an investigation that ultimately results in a violation of the Advisers Act, including, for example, settled enforcement actions. Thus, advisers will need to reimburse a fund for all investigation-related fees and expenses that had been charged to, or advanced and/or reimbursed by a fund where the investigation results in the adviser being sanctioned under the Advisers Act.

Insights & Continuing Conversation

- As with regulatory, compliance and examination activities, the scope of "investigation" includes any state, local, U.S. or non-U.S. governmental entities and/or regulatory authorities.
    - Accordingly, the notice and consent requirements could apply to portfolio investment investigations that name the adviser or its related persons, or other fund-related investigations, in each case, which current market practice frequently authorizes as properly chargeable to a private fund under its governing documents.
- As with the borrowings discussed below, the SEC's requirement for a majority-in-interest investor consent expressly rejects the use of a private fund's limited partner advisory committee ("**LPAC**") for conflicts clearance and expense approvals.
    - In various places in the Adopting Release, the SEC questioned whether existing governance mechanisms such as LPACs effectively protect the interest of private fund investors due to a lack of independence, authority and accountability, and disregarded that the roles of such committees are the product of negotiated oversight arrangements.

Borrowings from Private Funds – Permitted Only with Approval of Disinterested Investors

Any direct or indirect borrowing of money, securities or other assets by an adviser from a private fund is prohibited unless the adviser (i) provides all private fund investors with written notice describing the material

terms of the loan and (ii) obtains written consent from a majority-in-interest of fund investors, **excluding the adviser and any related persons**.

Insights / Continuing Conversation

- The material terms of any borrowing required to be disclosed were not defined in the rule or the Adopting Release, but the SEC provides the amount of borrowing, the interest rate and the repayment schedule as examples.
- While borrowing from private fund clients is not a common practice among sponsors, industry concern has focused on whether certain common industry practices that may be characterized as loans from a fund would be implicated by the prohibition.
    - The Adopting Release clarifies that certain tax advances (*i.e.*, where such advances are offset against future adviser income rather than being repayable by an adviser to the fund), and carry-over management fee available for offsetting future management fees would not trigger the rule's prohibitions.

Compliance Date

Large Advisers will have 12 months to begin complying with the Restricted Activities Rule. Smaller Advisers will have 18 months to begin complying with the Restricted Activities Rule.

Grandfathering / Legacy Status

The SEC provided grandfathering/legacy status for restricted activities requiring investor consent (*i.e.*, charging through the costs of a governmental or regulatory investigation and any adviser borrowings from a private fund) if those activities were in effect prior to the compliance date. However, there is no grandfathering/legacy status for the restricted activities requiring investor notice (regulatory, compliance and examination expenses, reducing clawbacks for taxes and non-pro rata allocations of fees and expenses).

Mandatory Private Fund Audits

Overview

Under the Mandatory Audit Rule, RIAs providing investment advice, directly or indirectly, to a private fund must cause that fund to (i) undergo a financial statement audit **at least annually** and **upon liquidation**; and (ii) **deliver the audited financial statements** to all investors in the fund, **in accordance with the current Custody Rule[3] (*e.g.*, within 120 days of the private fund's fiscal year-end)**. Each private fund that is an investment advisory client of an RIA will need to undergo an annual audit that complies with current audit requirements under the Custody Rule. Thus:

- the audit must be performed by an independent public accountant registered with, and subject to regular inspection as of the commencement of the engagement period by, the Public Company Accounting Oversight Board;
- the audit must generally be performed in accordance with U.S. generally accepted accounting standards (U.S. GAAS);
- the audited financial statements must be prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP);
    - or, consistent with existing market practice and SEC guidance under the Custody Rule for a non-U.S. fund with a non-U.S. general partner, contain substantially similar information

[3] Advisers Act Rule 206(4)-2.

as financial statements prepared in accordance with U.S. GAAP with reconciliations for any material differences; and

- the private fund's audited financial statements must be delivered to investors in the private fund annually, **within 120 days** of the private fund's fiscal year-end and **promptly** upon liquidation.

Applicability

The Mandatory Audit Rule applies only to **private funds** advised directly or indirectly by **an RIA**. There is also an exception for a private fund that the RIA does not control and that is not under common control with the RIA (*e.g.*, an adviser to a fund of funds with an unaffiliated sub-adviser). In such instance the adviser is only required to take "all reasonable steps" to cause the private fund to undergo an audit.

As noted above, the mandatory audit requirement does not apply with respect to non-U.S. clients (including private funds) of an SEC-registered offshore investment adviser.

Compliance Date

RIAs will have 18 months to begin complying with the Mandatory Audit Rule.

Mandatory Audit Rule

Insights & Continuing Conversation

1. The Mandatory Audit Rule applies to each private fund that is an investment advisory "client" of the RIA.
    - Due to expected examination pressure following the compliance date, RIAs should carefully evaluate whether a given investment vehicle is a "client" of the RIA. Non-client entities (*e.g.*, special purpose or alternative investment vehicles for which the RIA is not providing investment advice) are not subject to the Mandatory Audit Rule.
2. RIAs that already comply with the Custody Rule via distribution of audited annual financial statements to private fund investors should not need to change their current procedures in order to comply with the Mandatory Audit Rule. However, RIAs advising private funds that currently comply with the Custody Rule through a surprise examination **will need to transition to having each such private fund undergo an annual audit** once the compliance period begins. This will likely increase the compliance costs for these private funds.
    - Additionally, the extent to which guidance issued by the SEC pursuant to the Custody Rule will apply to requirements under the Mandatory Audit Rule is unclear.
3. The SEC had initially proposed that each audit be conducted pursuant to a written agreement between the adviser or private fund and the auditor pursuant to which the auditor would be required to notify the SEC's Division of Examinations upon the auditor's termination or issuance of a modified opinion. This provision is not included in the final Mandatory Audit Rule. However, such a requirement is included as part of the SEC's proposed Safeguarding Rule[4] which, if implemented, would replace the current Custody Rule and would have additional impact on existing private fund audits and related practices (for example, relating to current audit practices for so-called stub periods between the date when a private fund accepts contractual capital commitments but has not commenced operations). Concurrent with

[4] See Safeguarding Advisory Client Assets, Investment Advisers Act Release No. 6240 (Feb. 15, 2023), [88 FR 14672 (Mar. 9, 2023)].

adoption of the Private Fund Rule, the SEC also re-opened the comment period on the previously-proposed Safeguarding Rule.

4. The Adopting Release notes that the Mandatory Audit Rule is intended to serve as a check on an adviser's valuation of private fund assets, and cites recent enforcement cases relating to valuation and investment write-down processes and management fee calculations.
    - It remains to be seen whether related SEC examinations and inquiries will defer to auditors in circumstances where the audit engagement encompasses a particular valuation or calculation process.

Adviser-Led Secondary Transactions

Overview

For each "adviser-led secondary transaction," an RIA must (i) obtain a **fairness opinion** or a **valuation opinion** from an independent opinion provider and distribute such opinion to investors prior to the **due date of the election form** that the RIA requires the investors to return with respect to such secondary transaction; and (ii) prepare and distribute to the private fund's investors a written summary of any **material business relationships** between the RIA or its related persons and the independent opinion provider within the two years prior to issuance of the opinion. An "adviser-led secondary transaction" is defined as a transaction **initiated by the investment adviser or any of its related persons** that offers private fund investors the choice between (i) selling all or a portion of their interests in the fund; or (ii) converting or exchanging all or a portion of their interests in the fund for interests in another vehicle advised by the RIA or any of its related persons.

Applicability

This requirement applies to all RIAs advising private funds.

Compliance Date

Large Advisers (RIAs only) will have 12 months to begin complying with the Adviser-Led Secondaries Rule. Smaller Advisers (RIAs only) will have 18 months to begin complying with the Adviser-Led Secondaries Rule.

ADVISER-LED SECONDARY TRANSACTIONS
Insights & Continuing Conversation

1. Under the proposed rule, an RIA only would have had the option to obtain a fairness opinion.
    - The additional optionality to obtain a valuation opinion provides what should be a cheaper alternative, although such costs still may not be justifiable for smaller scale transactions.
2. For single- or multi-asset continuation funds, the current market practice typically incorporates a fairness opinion, and therefore, this rule essentially codifies the market "best practice" which many sponsors already follow. However, the rule also expressly rejects other price validating mechanisms such as a third-party minority buyer or recent third-party sale.

3. The definition generally includes secondary transactions where a private fund is selling one or more assets to **another vehicle managed by the RIA**, such as what is commonly known as a continuation fund, **if** (and only if) investors have the option between obtaining liquidity and rolling all or a portion of their interests into the other vehicle.
    - In a departure from the initial proposal, the new requirements generally will **not** apply to a tender offer, as a tender offer generally does not require investors to choose between selling all or a portion of their interest in a private fund and converting or exchanging their interest.

4. The adopting release clarifies that the new rule would not apply where an RIA, **at the unsolicited request of a private fund investor**, assists in the secondary sale of such investor's private fund interest, nor would it apply to **rebalancings between parallel funds** or "**season and sell**" transactions for credit funds.

Written Annual Compliance Review

The Private Fund Rules will require RIAs to document in writing the annual review of their compliance programs. This provision applies to **all** RIAs, and not just advisers to private funds. Written annual compliance reviews are already a common market practice for private fund sponsors.

Compliance Date

RIAs will have 60 days from the date of publication in the Federal Register to begin complying with the written annual compliance review requirement.

Summary of applicability, Compliance and Legacy Status

Please see below a summary chart comparing certain key provisions of the rule proposal against the final rule.

ADOPTED RULE	ADVISER APPLICABILITY	COMPLIANCE PERIOD & LEGACY STATUS
QUARTERLY STATEMENT RULE		
An RIA must provide a quarterly statement within (i) 45 days of the end of the first, second and third fiscal quarters, and (ii) 90 days of the end of the fourth fiscal quarter. Such timelines are 75 and 120 days, respectively for fund of funds. The quarterly statement must include: • (1) a **Fund-Level Table** showing a detailed accounting of (i) all compensation, fees and other amounts allocated or paid to the RIA or its "related persons," (ii) all fees and expenses allocated to or paid by the fund (for each of the above, before and after the application of any offsets, rebates or waivers) and (iii) any offsets or fees carried forward for application in subsequent periods.	Private fund RIAs only	**Compliance Period**: 18 months **Grandfathering / Legacy Status:** None

• (2) a **Portfolio Investment-Level Table** showing a detailed accounting of all compensation paid by a "covered portfolio investment" to the RIA or its related persons. • (3) **Performance information**, including: For illiquid funds: o Fund-level gross and net IRR (on a levered and an unlevered basis); o Gross IRR and MOIC for the realized and unrealized portions of the portfolio; and o A statement of contributions and distributions. For liquid funds: o Annual net total return for each of the last 10 fiscal years; o Average annual net total return for the 1, 5 and 10-fiscal year periods; and o Cumulative net total for the current fiscal year • (4) **Related cross-references** to governing documents supporting allocation and calculation methodologies and disclosures regarding performance information.		
PREFERENTIAL TREATMENT RULE		
Liquidity Where an adviser (i) offers an investor in a fund or similar asset pool preferential treatment regarding the investor's ability to redeem and (ii) the adviser reasonably expects such terms to have a material, negative effect on other investors in the fund or similar asset pool, the adviser must offer the preferential redemption rights to all other investors without qualification, unless such ability to redeem is required by law.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** Yes
Transparency Where an adviser (i) offers to provide to an investor preferential information about a portfolio holding or exposure of the fund or similar asset pool and (ii) the adviser reasonably expects such terms to have a material, negative effect on other investors in the fund or a similar asset pool, the adviser must offer such preferential information to all investors at substantially the same time.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** Yes
Other Preferential Treatment Any material economic terms granted to an investor require that an adviser provide advance disclosure to other investors prior to closing. Additionally, an adviser must disclose all preferential terms, including those terms with legacy status, "as soon as reasonably practicable" after the final closing (for closed-end funds) or the investor's capital contribution (for liquid funds) and	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers

any new preferential terms must be disclosed at least annually during the fund term.		**Grandfathering / Legacy Status:** None
RESTRICTED ACTIVITIES RULE		
Regulatory, Compliance and Examination Expenses Charging an adviser's regulatory, compliance or related examination fees or expenses to a fund **is not** permitted **unless** any such amounts are disclosed to investors through written notice, within 45 days of the end of the fiscal quarter in which such charges occur.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** None
Investigation Expenses Charging fees or expenses associated with an investigation of the adviser or its related persons **is not permitted unless** an adviser **obtains prior consent** from a majority-in-interest of fund investors. Additionally, the adviser is prohibited from charging a fund any fees or expenses for an investigation that results in a violation of the Advisers Act.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** Yes
GP Clawbacks Advisers may not reduce the amount of a GP clawback by actual, potential or hypothetical taxes, **unless the before- and after-tax amounts of the clawback before and after the application of any tax reduction are disclosed to investors within 45 days** of the end of the fiscal quarter in which such action occurs.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** None
Non-pro rata portfolio expense allocation: Any portfolio-level fees or expenses charged by the adviser to fund investors on a non-pro rata basis (i) must be fair and equitable and (ii) requires prior written notice to the affected investors of the non-pro rata charges and an explanation of why such charges are fair and equitable.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers

		• 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** None
Borrowing From a Fund Any direct or indirect borrowing of cash, securities or other assets by an adviser from a private fund **is not permitted unless** the adviser (i) provides all fund investors with written notice describing the material terms of the loan, and (ii) obtains written consent from a majority-in-interest of fund investors, in each case, **prior to such borrowing**. Sponsors should note that most private funds allow for loans to the carry recipient in lieu of distributions of carry in situations where the distributions would exceed the carry recipient's tax basis in the fund, and as a result the terms of such loans would need to be consented to in the governing documents to avoid the necessity of receiving consent at the time any loan is made.	All private fund advisers, including RIAs and ERAs	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) advisers • 18 months for smaller (<$1.5bn AUM) advisers **Grandfathering / Legacy Status:** Yes
ADVISER-LED SECONDARIES RULE		
Third-Party Pricing Support In connection with an adviser-led secondary, RIAs must (i) obtain and distribute **either a fairness opinion or valuation opinion** from an independent provider and (ii) disclose any material business relationships the RIA has had with the opinion provider in the last two years.	Private fund RIAs only	**Compliance Period**: • 12 months for larger (≥$1.5bn AUM) RIAs • 18 months for smaller (<$1.5bn AUM) RIAs **Grandfathering / Legacy Status:** None
MANDATORY AUDIT RULE		
Annual Audit Requirement Each fund advised directly or indirectly by an RIA must undergo an annual audit that meets the requirements set forth in the audit provision of the Advisers Act Custody Rule.	Private fund RIAs only	**Compliance Period**: • 18 months for both larger (≥$1.5bn AUM) and smaller (<$1.5bn AUM) RIAs **Grandfathering / Legacy Status:** None
Annual Review On at least an annual basis, RIAs must review and document in writing the adequacy and effectiveness of their compliance policies and procedures.	All RIAs	**Compliance Period**: • 60 days after publication in the Federal Register **Grandfathering / Legacy Status:** None

Go deeper:

Paul Hastings' Investment Funds & Private Capital practice has a truly global footprint, with more than 70 lawyers across the U.S., Europe and Asia. We represent a diverse set of asset managers, private fund sponsors, and institutional investors.

Our Investment Funds & Private Capital – Regulatory practice includes attorneys with deep experience handling sensitive and complex regulatory and compliance issues. In the U.S., we regularly advise on Investment Company Act status and structuring issues, private fund investment manager registration, Investment Advisers Act, Securities Act, Securities Exchange Act and other compliance, SEC examinations and enforcement.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

John Budetti
1(212) 318-6736
johnbudetti@paulhastings.com

Esther Chiang
1(212) 318-6412
estherchiang@paulhastings.com

Scott Gluck
1(212) 318-6610
scottgluck@paulhastings.com

Ira Kustin
1(212) 318-6094
irakustin@paulhastings.com

Ryan Swan
1(312) 499-6080
ryanswan@paulhastings.com

David Wilson
1(713) 860-7311
davidwilson@paulhastings.com