

Investment Management Alert

SEC Private Fund Rules – Applicability and Compliance Deadlines

On August 23, 2023, the Securities and Exchange Commission (SEC) voted 3-2 to adopt a final set of rules and amendments under the Investment Advisers Act of 1940 (collectively, the Final Rules) that significantly expand the regulatory compliance requirements for certain investment advisers.

The table below summarizes the applicability of each part of the Final Rules (as well as the corresponding compliance date) to private fund advisers (both registered and not registered), exempt reporting advisers, State-regulated advisers, advisers relying on the foreign private adviser exemption and all other registered advisers. We will take a more detailed look at the Final Rules in a subsequent alert.

Applicability of SEC Private Fund Adviser Rules to Investment Advisers (with corresponding compliance dates, all measured from the date of publication in the Federal Register)					
	Private Fund Advisers (excluding any securitized asset funds) ¹				All Registered Advisers
	Registered		Not Registered (including exempt reporting advisers, State-regulated advisers and advisers relying on the foreign private adviser exemption)		
	Less than \$1.5 billion AUM ² in private fund assets	At least \$1.5 billion AUM in private fund assets	Less than \$1.5 billion AUM in private fund assets	At least \$1.5 billion AUM in private fund assets	
Quarterly Statement Rule	Yes (18 months)				
Private Fund Audit Rule					
Adviser-Led Secondaries Rule	Yes (18 months)	Yes (12 months)			
Restricted Activities Rule ³	Yes (18 months)	Yes (12 months)	Yes (18 months)	Yes (12 months)	
Preferential Treatment Rule ³	Yes (18 months)	Yes (12 months)	Yes (18 months)	Yes (12 months)	
Compliance Rule Amendments	Yes (60 days)				

¹ Exclusion does not apply to the Compliance Rule Amendments.

² Assets under management.

³ The SEC agreed to provide legacy status for (1) the prohibitions aspect of the Preferential Treatment Rule (which prohibits advisers from providing certain preferential redemption rights and information about portfolio holdings) and (2) the aspects of the Restricted Activities Rule that require investor consent (which restrict an adviser from borrowing from a private fund and from charging for certain investigation fees and expenses). This legacy status only applies to a private fund (i) whose governing agreement was entered into prior to the applicable compliance date (if the rule would require the parties to otherwise amend such agreement), and (ii) that commenced operations (including any bona fide activity directed toward operating a private fund, including investment, fundraising or operational activity) as of the applicable compliance date.

SEC Private Fund Rules – Applicability and Compliance Deadlines

Contacts

John M. Caccia

Partner / New York
212.735.7826
john.caccia@skadden.com

Heather Cruz

Partner / New York
212.735.2772
heather.cruz@skadden.com

Greg Norman

Partner / London
44.20.7519.7192
greg.norman@skadden.com

Anna Rips

Partner / New York
212.735.3237
anna.rips@skadden.com

Anastasia T. Rockas

Partner / New York
212.735.2987
anastasia.rockas@skadden.com

David A. Jain

Counsel / New York
212.735.2671
david.jain@skadden.com

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West
New York, NY 10001
212.735.3000

skadden.com