

Proskauer»

Edge on Hedge

A Proskauer Forum

Wednesday
May 22, 2024

CLE Materials

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Agenda

Staying on Top of the Latest Regulatory and Legal Updates Impacting Hedge Funds

Wednesday, May 22, 2024

- Introduction
- Private Fund Adviser Rules: Annual Audit and Compliance Review
- Private Fund Adviser Rules: Borrowing from Clients, Clawbacks
- Private Fund Adviser Rules: Compliance Expenses, Expense Allocations
- Private Fund Adviser Rules: Preferential Liquidity
- Private Fund Adviser Rules: Preferential Transparency
- Private Fund Adviser Rules: Disclosure of Preferential Economic Terms
- Private Fund Adviser Rules: New Quarterly Reports to Investors
- Form PF Amendments
- Form N-PX
- Form SHO
- Schedule 13D/G Amendments
- Broker/Dealer Registration
- Corporate Transparency Act
- New AML Rule
- Pipeline
- Q&A

CLE Materials

Private Fund Adviser Rules

[SEC Adopts Private Fund Adviser Rules](#)

[Relief for Non-U.S. Investment Advisers: SEC Clarifies the Extraterritorial Limits of the New Private Fund Adviser Rules](#)

[The Countdown Starts: Compliance Dates Set for Private Fund Adviser Rules](#)

[Not Off the Hook: The SEC Addresses its Position on Exculpation And Indemnification For Private Fund Advisers](#)

Form SHO

[SEC Sued Over New Short Sales and Securities Lending Disclosure Rules: Second Lawsuit Filed This Year in 5th Circuit Challenging SEC Action](#)

[SEC Adopts New Short Sale Disclosure Rule](#)

Form N-PX

[Form 13F Filers Must Start Tracking Proxy Voting Record to Prepare for 2024 Form N-PX Filing](#)

Form PF Amendments

[Amendments to Form PF Require Hedge Funds and Private Equity Funds to Make Ad Hoc Reports to the SEC Regarding Significant Events](#)

[SEC Proposes Significant Amendments to Form PF](#)

Schedule 13D/G amendments

[SEC Strengthens Regulation 13D-G Rules for Beneficial Ownership Reporting](#)

Additional Resources

[Top Ten Regulatory and Litigation Risks for Private Funds in 2024](#)

[A Tale of Two Regulators: The SEC and FCA Address AI Regulation for Private Funds](#)

[A Practical Guide to the Regulation of Hedge Fund Trading Activities](#)

[2024 Proskauer Annual Review for Private Investment Funds](#)

U.S. Regulatory/SEC Rulemaking Timeline

TOPIC	DESCRIPTION	RULEMAKING STAGE	COMPLIANCE DATE
Private Fund Adviser Rules			
Compliance Rule Amendments	Requires the documentation of the annual review of an RIA's compliance policies and procedures.	Adopted.	November 13, 2023
Preferential Treatment Rule	Prohibits, with limited grandfathering, certain preferential treatment with respect to redemption terms and information rights. Certain preferential rights are permitted with disclosure.	Adopted.	Larger Private Fund Advisers (AUM \geq \$1.5 billion): Sept. 14, 2024 Smaller Private Fund Advisers (AUM < \$1.5 billion): March 14, 2025
Adviser-led Secondaries Rule	Requires an RIA conducting an adviser-led secondary transaction with respect to any private fund that it advises to distribute to investors a fairness or valuation opinion and a summary of any material business relationships with the opinion provider.	Adopted.	Larger Private Fund Advisers (AUM \geq \$1.5 billion): Sept. 14, 2024 Smaller Private Fund Advisers (AUM < \$1.5 billion): March 14, 2025
Restricted Activities Rule	Restricts, with limited grandfathering, advisers from engaging in certain activities and practices, unless they satisfy specific disclosure and, in certain cases, consent requirements of the rule, including certain non-pro rata	Adopted.	Larger Private Fund Advisers (AUM \geq \$1.5 billion): Sept. 14, 2024 Smaller Private Fund Advisers (AUM < \$1.5 billion): March 14, 2025

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	fee and expense allocations, reduction of adviser clawback for taxes, regulatory, compliance and examination fees and expenses, investigation fees and expenses, and borrowing or receiving an extension of credit from a client. Investigation fees and expenses prohibited in all cases (no grandfathering, and regardless of disclosure or consent) if adviser is sanctioned for violating the Advisers Act.		
Quarterly Statement Rule	Requires the preparation of a quarterly statement that includes certain information regarding fees, expenses and performance.	Adopted.	March 14, 2025
Audit Rule	Requires an RIA to cause a private fund to undergo a financial statement audit that meets the requirements of the Custody Rule.	Adopted.	March 14, 2025
Other Upcoming Rules			
Regulation S-P (Data Breaches)	Amendments to Regulation S-P which impose enhanced requirements on RIAs, investment companies, broker dealers and transfer agents with respect to the	Adopted.	The amendments will become effective 60 days after publication in the Federal Register. ¹ Larger entities (i.e., RIAs with >\$1.5bn in AUM, transfer agents

¹ **Note:** These amendments were adopted on May 16, 2024. Because these amendments were recently adopted, they have not yet been published in the Federal Register.

TOPIC	DESCRIPTION	RULEMAKING STAGE	COMPLIANCE DATE
	handling of consumer financial information.		and broker-dealers that are not small entities) will have 18 months after the date of publication in the Federal Register to comply with the amendments. Smaller entities will have 24 months after the date of publication in the Federal Register to comply.
Corporate Transparency Act	Requires a range of entities to file a report with the U.S. Department of the Treasury's Financial Crime Enforcement Network to identify their beneficial owners and also provide information about the persons who formed the entities.	Adopted.	January 1, 2024 (effective date) January 1, 2025 (reporting companies which existed before January 1, 2024 must file their beneficial ownership information reports by this date) ²
Form PF Amendments – Current Reports	Amendments to Form PF which require new quarterly current event reporting, add new categories of information to be collected, and expand information reporting for certain existing categories. Upon a triggering event occurring, advisers must file a current event report within 72 hours (for large hedge fund advisers to qualifying hedge funds) or 60 days of the applicable fiscal quarter end (for advisers to private equity funds).	Adopted.	December 11, 2023 (for current reporting) June 11, 2024 (for all other reporting)

² **Note:** Reporting Companies created or registered to do business on or after January 1, 2024, must file their initial reports within 90 calendar days (if created or registered in 2024) or 30 calendar days (if created or registered in 2025 or later) of the earlier of (i) the date on which they receive actual notice that their creation or registration has become effective or (ii) the date on which a secretary of state or similar office first provides public notice of the creation or registration of the entity, as applicable.

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Form PF Amendments	Enhances reporting by large hedge fund advisers to qualifying hedge funds (i.e., those with more than \$500 million in net asset value). Also amends how advisers report complex structures by generally requiring separate reporting for each component fund of a master-feeder arrangement and a parallel fund structure.	Adopted.	March 12, 2025
Beneficial Ownership Reporting (13D and G)	Modernizes beneficial ownership reporting by accelerating current deadlines for Schedule 13D and Schedule 13G filings.	Adopted.	February 5, 2024 (revised Schedule 13D Filing Deadlines) September 30, 2024 (revised Schedule 13G Filing Deadlines) December 18, 2024 (structured data requirement for Schedules 13D and 13G)
Form N-PX	Requires 13(f) filers to report on Form N-PX how they voted proxies related to certain executive compensation matters or “say-on-pay” votes.	Adopted.	July 1, 2024 (first filing due August 31, 2024 for 12 months period ended June 30, 2024)
Short Sale Reporting	Adopted new Rule 13f-2 requires monthly reporting by institutional investment managers of short sale positions and activity data on new Form SHO.	Adopted.	January 2, 2025

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Dealer Rule	Adopted rules further define the phrase “as part of a regular business” in the statutory definition of “dealer” under the Securities Exchange Act to cause certain market participants in “dealer-like” roles to have to register as a “dealer” or a “government securities dealer.”	Adopted.	April 29, 2025
<i>Pending Rules in the Pipeline</i>			
Cybersecurity Rule	Would require (1) new reporting and disclosure obligations on RIAs relating to cybersecurity incidents and risks and (2) potentially require advisers to enhance their cybersecurity policies and procedures.	Proposed.	Proposed: Feb. 9, 2022 Comment Period Closed: May 22, 2023
ESG Rule	Would require RIAs and ERAs to include new narrative disclosures in the materials and their Form ADVs regarding their use of ESG factors. Would also apply to business development companies.	Proposed	Proposed: May 25, 2022 Comment Period Closed: Nov. 1, 2022
Adviser Outsourcing	Would require RIAs to (1) undertake due diligence assessments before engaging service providers for certain core advisory-related services and functions and (2) periodically monitor the service	Proposed	Proposed: Oct. 26, 2022 Comment Period Closed: Dec. 27, 2022

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	providers' performance and reassess the appropriateness of the outsourcing arrangement. Would also impose new related books and records requirements.		
Custody Rule ("Safeguarding Rule")	Would amend and rename Rule 206(4)-2 under the Investment Advisers Act and make related recordkeeping and reporting changes to address how investment advisers "safeguard" client assets.	Proposed	Proposed: Feb. 15, 2023 Comment Period Closed: Oct. 30, 2023
Predictive Data Analytics	Would require RIA or broker-dealers to eliminate or neutralize the effect of conflicts of interest associated with the firm's use of covered technologies in investor interactions and have written policies and procedures reasonably designed to prevent violations of or achieve compliance with the proposed rules. Would also require certain recordkeeping related to the conflicts of interests.	Proposed	Proposed: July 26, 2023 Comment Period Closed: Oct. 10, 2023
AML Rule	Would designate RIAs and ERAs as "financial institutions" under the Bank Secrecy Act. As a result, RIAs and ERAs would be subject to new AML/CFT requirements, including having to develop and implement	Proposed	Proposed: February 13, 2024 Comment Period Closed: April 15, 2024

TOPIC	DESCRIPTION	RULEMAKING STAGE	COMPLIANCE DATE
	their own AML compliance programs and file suspicious activity reports.		
Customer Identification Programs Rule	Would require RIAs and ERAs to implement a customer identification program to identify and verify the identities of their customers. Would also require RIAs and ERAs to maintain records of the information which they used to verify their customer's identities.	Proposed	Proposed: May 13, 2024 Comment Period Closes: July 22, 2024

Hedge Funds

Comprehensive Solutions for Hedge Fund Managers

Proskauer distinguishes itself from its peers by its ability to provide comprehensive support and solutions through a one-stop-shop approach to advising hedge fund managers and other investment management shops throughout their life cycles.

From the “day one” launch of an emerging manager, to the transition to mid-size/ large institutional manager, Proskauer serves as a partner to our clients throughout their life cycle, assisting in the formation of a diverse range of investment products while advising hedge fund firms on the business and regulatory challenges they face on a day-to-day basis. Proskauer’s level of dedication to the private funds industry, and hedge funds in particular, is highlighted by our passion, commitment, depth of our team and level of investment we have made in building out technology and other innovative solutions for client service.

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