Proskauer Built to Serve Asset Managers

Legal & Business Insights for Asset Managers

The Bottom Line

A Proskauer Webinar Series

Proskauer Built to Serve Asset Managers

The Bottom Line: The Final SEC Private Fund Adviser Rules are Here. What Does That Really Mean for Private Funds?

Stephen Mears, Partner
Robert Plaze, Partner
Brian Schwartz, Partner
Robert Sutton, Partner

November 7, 2023

A Proskauer Webinar Series

Private Fund Adviser Rules

Agenda

1. Overview
2. Compliance Timeline
3. Restricted Activities
4. Preferential Treatment
5. Quarterly Statements
6. Audit Rule
7. Compliance Rule Amendments
8. Adviser-Led Secondaries
9. Grandfathering / Legacy Status
10. Application: RIAs, ERAs, U.S. & Non-U.S.
11. Fiduciary Duties
12. Closing Thoughts

Private Fund Adviser Rules

Overview

- On August 23, 2023, the SEC approved new rules that will apply to advisers of private funds.
- The SEC's Goal: To protect private funds and their investors by increasing transparency and limiting activities that the SEC has determined is harmful to private funds and their investors and thereby contrary to the public interest and the protection of investors.
- Asserting *very broad* legislative authority
  - Advisers Act Sec. 211(h)
  - Adopted under Dodd-Frank amendments
  - Not previously used as a basis for rulemaking
  - This basis and many of the SEC's other justifications for the Rules are currently being challenged in the Fifth Circuit…

> The Commission shall —
>
> (1) *facilitate the provision of simple and clear disclosures* to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and
>
> (2) *promulgate rules prohibiting* or restricting certain sales *practices*, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers *that the Commission deems contrary to the public interest and the protection of investors*.
>
> Investment Advisers Act Sec. 211(h)

Proskauer

Private Fund Adviser Rules

Overview (cont'd)

Three General Themes

Lack of Transparency. Private fund investments are often opaque, and advisers do not frequently or consistently provide investors with sufficiently detailed information about the terms of the advisers' relationships with funds and their investors.

Conflicts of Interest. Conflicts of interest can harm investors, such as when an adviser grants preferential redemption rights to entice a large investor… Investors are also harmed by not being informed of conflicts of interest concerning the private fund adviser and the fund, which reduces the information available to investors to guide their investment decisions… Similarly, advisers have a conflict of interest with the fund (and, indirectly, its investors) when they offer existing fund investors the choice between selling and exchanging their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons as part of an adviser-led secondary transaction.

Lack of Governance Mechanisms. [T]he governance structure of a typical private fund is not designed to prioritize investor oversight of the adviser and general partner or managing member (or similar control person) or investor policing of conflicts of interest.

Adopting Release, pp. 16-19

- Investors previously addressed such concerns through negotiation and freedom of contract
- Now, however, the SEC is mandating the terms – whether investors want those terms or not

Private Fund Adviser Rules

Overview (cont'd)

- The rules:
  - Restrict all private fund advisers from engaging in certain **restricted activities** unless they provide specified **disclosure** and, for certain **restricted activities**, obtain consent from investors;
  - Prohibit all private fund advisers from providing certain types of **preferential treatment** that would have a **material, negative effect** on other investors, subject to certain exceptions;
  - Prohibit all private fund investors from providing other types of **preferential treatment** to any investor in a private fund, except if disclosed.
  - Require RIAs to private funds to provide **transparency** to investors regarding fees and expenses and other terms of their relationship with private fund advisers and the performance of such private funds;
  - Require RIAs to obtain an **annual financial statement audit** of each private fund it advises and, in connection with an **adviser-led secondary transaction**, a **fairness opinion** or **valuation opinion** from an independent opinion provider;
- **"Legacy Status**" is available with respect to certain aspects of the **preferential treatment rule** and **restricted activities rule**.

Private Fund Adviser Rules

Overview (cont'd)

- "Illiquid" and "liquid" funds:
  - **Illiquid Fund**: Any private fund in which investors (i) do not have the right to request redemptions and (ii) have limited opportunities to withdraw before the fund's termination.
  - **Liquid Fund**: Any private fund that is not an illiquid fund.
- Only two Rules provide for different requirements for illiquid funds vs. liquid funds:
  - Quarterly Statement Rule
  - Preferential Treatment Rule
- All other Rules apply to both categories of funds.
- Related amendments to the Books and Records Rule (applicable to RIAs only) require RIAs to substantiate and document their determinations as to each fund's status as illiquid or liquid.

Private Fund Adviser Rules

Compliance Timeline

New Rule	Applicability	General Description	Compliance Date:	
			Larger Private Fund Advisers (AUM ≥ $1.5 billion)	Smaller Private Fund Advisers (AUM < $1.5 billion)
Compliance Rule Amendments Rule 206(4)-7	All SEC-registered advisers (whether or not advising private funds).	Requires the documentation of the annual review of an RIA's compliance policies and procedures.	November 13, 2023 (60 days from publication)	
Restricted Activities Rule Rule 211(h)(2)-1	All private fund advisers.	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 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.	September 14, 2024 (12 months from publication)	March 14, 2025 (18 months from publication)

Note: For purposes of determining size as a "larger" or "smaller" private fund adviser, advisers should calculate private fund assets under management (in the same manner as for Form PF) as of the last day of the adviser's most recently-completed fiscal year.

Private Fund Adviser Rules

Compliance Timeline (cont'd)

New Rule	Applicability	General Description	Compliance Date:	
			Larger Private Fund Advisers (AUM ≥ $1.5 billion)	Smaller Private Fund Advisers (AUM < $1.5 billion)
Preferential Treatment Rule *Rule 211(h)(2)-3*	All private fund advisers.	Prohibits, with limited grandfathering, certain preferential treatment with respect to redemption terms and information rights. Certain preferential rights are permitted with disclosure.	September 14, 2024 (12 months from publication)	March 14, 2025 (18 months from publication)
Adviser-led Secondaries Rule *Rule 211(h)(2)-2*	Registered private fund advisers only.	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.	September 14, 2024 (12 months from publication)	March 14, 2025 (18 months from publication)
Quarterly Statement Rule *Rule 211(h)(1)-2*	Registered private fund advisers only.	Requires the preparation of a quarterly statement that includes certain information regarding fees, expenses and performance.	March 14, 2025 (18 months from publication)	
Audit Rule *Rule 206(4)-10*	Registered private fund advisers only.	Requires an RIA to cause a private fund to undergo a financial statement audit that meets the requirements of the Custody Rule.	March 14, 2025 (18 months from publication)	

Note: For purposes of determining size as a "larger" or "smaller" private fund adviser, advisers should calculate private fund assets under management (in the same manner as for Form PF) as of the last day of the adviser's most recently-completed fiscal year.

Private Fund Adviser Rules

Restricted Activities Rule

General Principle:

- Restricts private fund advisers from engaging in certain activities unless specific disclosures are made and, in some cases, investor consent is obtained.

Restricts:

- Charging or allocating to a private fund advised by the adviser any **regulatory, compliance or examination-related** fees or expenses of the adviser or its related persons (permitted with **subsequent disclosure**). Disclosure will need to include the dollar amount of what is being charged and itemization (i.e., stating “compliance expenses”, will not suffice).
- Charging or allocating to a private fund advised by the adviser any fees or expenses associated with an **investigation** of the adviser or its related persons by any governmental or regulatory authority (permitted with **informed consent** from investors, but **only if the adviser or its related persons have not been sanctioned** for violations of the Advisers Act).
    - If the investigation results in **sanctions**, allocating such expenses to the fund is **always prohibited** even with disclosure and consent.
    - If expenses are approved during the investigation, but the investigation later results in sanctions, the adviser would need to reimburse the fund.

Private Fund Adviser Rules

Restricted Activities Rule (cont'd)

Restricts:

- Charging or allocating fees and expenses related to a **portfolio investment *or potential portfolio investment*** on a **non-pro rata** basis when more than one private fund or other client advised by the adviser or its related persons have invested or are proposed to invest.
  - Permitted if the non-pro rata allocation is **fair and equitable under the circumstances** and with **advance disclosure**; the disclosure **must describe** to investors how it is fair and equitable under the circumstances**.**
  - Consider timing issues and other implications for co-investment vehicles and managed account arrangements.
- Reducing the amount of any **performance compensation clawback** by actual, potential or hypothetical taxes applicable to the adviser, its related persons or their owners.
  - Permitted with **subsequent disclosure** of the clawback amount before and after any reduction for taxes
- Borrowing, or receiving a loan or extension of credit, from a private fund client.
  - Permitted with "**informed consent**" (adviser must disclose **material** terms).
  - Tax advances and management fee offsets that reduce future payments to the adviser are not "borrowings".

Private Fund Adviser Rules

Restricted Activities Rule (cont'd)

Key Definitions:

- **Consent**: *Written* consent from at least a **majority in interest** of the fund's investors that are **not related persons** of the adviser.
  - The Adopting Release specifically notes that **LPAC approval is not sufficient**.
- **Subsequent disclosure**: Disclosure made in writing within 45 days after the end of the fiscal quarter in which the relevant activity occurs. RIAs can disclose through inclusion in quarterly statements *if delivered within 45 days*.
  - The Adopting Release notes that the **extended deadlines for Q4 statements and for fund-of-funds** (discussed below) would **not** apply to the requirement to disclose such expenses.
- **Pro rata basis**: Not defined in the Rules and will require a "facts and circumstances" analysis. Note, pro rata may be based on available capital, relative NAV, invested capital or other pro rata methodologies.
  - "Pro rata" need not mean the same thing for all expense types, but methodologies should be clearly disclosed.

Private Fund Adviser Rules

Preferential Treatment Rule – Preferential Liquidity

- Prohibits granting an investor in the private fund or in a **similar pool of assets** the ability to redeem on terms that the adviser reasonably expects to have a **material, negative effect** on other investors in that private fund or **similar pool of assets**, with **two exceptions**:

Exception #1: Where ability to redeem "is **required by the applicable laws, rules, regulations, or orders** of any relevant foreign or U.S. Government, State, or political subdivision to which the investor, the private fund, or any similar pool of assets is subject". – Per the Adopting Release, an investor's policies or resolutions (e.g., an investor's restricted investment policies) do **not** suffice as basis for this exception.	**Exception #2:** Where such rights are offered to **all other existing investors** in the fund and any **similar pool of assets** and will **continue to be offered** to all future investors in the private fund or **similar pool of assets**. – Per the Adopting Release, this exception is only available where the rights are offered **without qualification** (e.g., no requirements as to commitment size or investor affiliation, or other limitations), although different redemption rights could permissibly be tied to different fee classes. – Consider implications for manager/general partner and employee liquidity (e.g., in a hedge fund).

  - Note that this prohibition is **not limited to side letters**. It also applies to different class rights.

Private Fund Adviser Rules

Preferential Treatment Rule – Preferential Liquidity (cont'd)

Key Definitions:

- **Similar pool of assets**: Pooled investment vehicle that has substantially similar investment policies, objectives **or** strategies to those of the private fund.
  - Adopting Release notes that the use of "or" is intentionally broad, and therefore picks up more than just funds where there is an overlap in investments: "For example, an adviser's healthcare-focused private fund may be considered a 'similar pool of assets' to the adviser's technology-focused private fund under the definition."
  - Release also cites co-investment vehicles, noting that they present "the same risks and circumvention concerns as other pooled investment vehicles captured by the definition" and therefore should not be treated differently.
  - Carves out registered funds, securitized asset funds (e.g., CLOs, CDOs) and managed accounts, although Release notes that funds of one may qualify as "pooled investment vehicles" and therefore as "similar pools of assets" in certain circumstances (e.g., where the fund expects to admit more investors in the future).
  - Release also notes that, while "similar pool of assets" does not include separately managed accounts, existing Advisers Act fiduciary duties **already prevent** advisers from disadvantaging a private fund by granting special rights to a managed account client.
- **Material, negative effect**: Not defined in the Rules; will require a "facts and circumstances" analysis.

Private Fund Adviser Rules

Preferential Treatment Rule – Preferential Transparency

- Prohibits providing information regarding the **portfolio holdings** or **exposures** of the private fund, or of a **similar pool of assets**, to any investor in the private fund if the adviser reasonably expects that providing the information would have a **material, negative effect** on other investors in that private fund or similar pool of assets.
  - Permitted if the adviser **offers** such information to **all other existing investors** in the private fund at the same time or substantially the same time.
  - Preferential transparency for investors in an **illiquid fund** will generally not be seen as having a **material, negative effect** on other investors in most cases.
    - The analysis will turn on the adviser's reasonable expectation of harm to other investors from having provided the information to the investor (e.g., where sharing the information creates a risk of front-running or insider trading on public positions held by the fund, or could otherwise result in losses or reduction in profit for the fund)
    - Consider review of NDAs and similar agreements signed by investors who receive special information to assess whether they prevent disclosure or use in ways that could harm investors
- Consider implications with respect to investor due diligence requests, investor meetings, reports to risk aggregation services, etc.

Private Fund Adviser Rules

Preferential Treatment Rule – Other Preferential Terms

- **Material Economic Terms:** Requires **advance disclosure** of any preferential treatment related to any **material economic terms** that the adviser or its related persons provide to other investors in the same private fund.
  - Material economic terms includes management fees, incentive/carried interest terms, rights to co-investment and liquidity terms.
- **Other Terms:** Requires **subsequent disclosure** of **other** preferential terms of any kind to all investors in the same private fund:
  - For **liquid funds**: as soon as reasonably practicable following the investor's investment in the private fund.
  - For **illiquid funds**: as soon as reasonably practicable following the end of the private fund's fundraising period.
  - "As soon as reasonably practicable": Not defined, but the Adopting Release stated within four weeks would be appropriate.
- **Annual Notice of New Terms:** Requires annual notices of any preferential terms granted since the most recent prior notice.

Private Fund Adviser Rules

Quarterly Statements

Requires RIAs to provide **quarterly statements** (in plain English) to private fund investors, including:

- **Fund Table**:
  - A detailed accounting of all **compensation, fees and other amounts** allocated or paid **to the adviser or any of its related persons** during the reporting period **by the private fund**, with **separate line items** for each category of allocation or payment (e.g., management, advisory, sub-advisory or similar fees or payments, performance-based compensation, but also loan administration);
  - A detailed accounting of all **fees and expenses** allocated to or paid by the private fund during the reporting period, with **separate line items** for each category of fee or expense reflecting the **total dollar amount** (e.g., organizational, accounting, legal, administration, audit, tax, due diligence, travel fees and expenses, etc.), **without "bucketing"** and **without omitting any de minimis amounts**, including **cross references** to the sections of the fund's organizational and offering documents that set forth the applicable provisions; and
  - The amount of any **offsets** or **rebates** carried forward during the reporting period to subsequent periods to reduce **future payments or allocations** to the **adviser or its related persons**.

Private Fund Adviser Rules

Quarterly Statements (cont'd)

- **Portfolio Investment Table**:
  - A separate table describing payments by **covered portfolio investments**, including a detailed accounting of all portfolio investment compensation allocated or paid to the adviser or any of its related persons by the **covered portfolio investment** during the reporting period, with **separate line items** for each category of allocation or payment reflecting the **total dollar amount**, presented both **before** and **after** the application of any **offsets, rebates or waivers**.
  - Calculations and cross references:
    - Must include prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers and offsets are calculated;
    - Must include **cross references** to the sections of the fund's organizational and offering documents that set forth the applicable **calculation methodology**.

Key Definitions:

- **Covered portfolio investment**: A portfolio investment that allocated or paid the investment adviser or its related persons portfolio investment compensation during the reporting period.
  - Note: Includes non-control and other minority investments.

Private Fund Adviser Rules

Quarterly Statements (cont'd)

- **Liquid funds** must provide:
  - (i) **annual net total returns** for **each fiscal year** over the past 10 fiscal years or since inception, whichever is shorter;
  - (ii) **average annual net total returns** over **one**, **five**, and **ten-year** fiscal periods; and
  - (iii) the **cumulative net total return for the current fiscal year** as of the most recent financial quarter covered by the statement.
- **Illiquid funds** must provide, from **inception**:
  - (i) **gross** and **net IRR**;
  - (ii) **gross** and **net MOIC**;
  - (iii) **gross IRR** and **gross MOIC** for the **realized** and **unrealized portion** of the illiquid fund's portfolio, with the realized and unrealized performance shown separately;
  - (iv) a statement of all contributions and distributions;
  - Both levered and unlevered returns must be shown (unlevered: assume all draws on the subscription line were funded with LP contributions, back out all line-related expenses).

Private Fund Adviser Rules

Quarterly Statements (cont'd)

- Must provide consolidated reporting for **similar pools of assets** if that provides **more meaningful information**.
  - Per the Adopting Release: "private fund advisers generally should take into account any input received from investors on what approach to consolidation that they view as most meaningful."
- Statements must be delivered within **45 days** of the end of the quarter for Q1 - Q3, and within **90 days** of the end of the quarter for Q4.
  - For **funds of funds**, statements must be delivered within **75 days** of the end of the quarter for Q1-Q3, and within **120** days of the end of the quarter for Q4.
- Quarterly reports can be used to meet certain Restricted Activities Rule disclosure requirements, but only if delivered within that Rule's 45-day requirement, with no exceptions for Q4 or funds of funds.
- Newly-formed funds must comply after the **second full fiscal quarter** of generating operating results.
- For hedge funds and other liquid funds with side pockets, consider how the performance of side pocket investments should be calculated and reported.
  - Adopting Release is silent, but advisers may want to consider being guided by what investors are likely to find more meaningful (analogously to consolidated reporting).

Private Fund Adviser Rules

Audit Rule

- Requires RIAs to ensure that each fund undergoes an annual financial statement audit.
  - Audit must adhere to the same standards as the Custody Rule's audit requirements.
  - Requires such audits be done annually within **120 days** of the private fund's fiscal year-end and promptly upon liquidation. All of the Custody Rule provisions and guidance relating to audits apply here as well, including the **180-day** timeframe afforded to fund-of-funds, and including the SEC staff's previous relief for SPVs that are wholly-owned by one or more of the adviser's audited private funds.
  - If the adviser is an unaffiliated sub-adviser of a fund's primary adviser, the sub-adviser must make (and document) **all reasonable efforts** to cause the fund to undergo an audit that meets the Custody Rule requirements. Likely to pose real difficulties for sub-advisers to non-US funds with non-US primary advisers. Sub-adviser would need to ask for US GAAP audit or reconciliation.
- Effectively **eliminates** the option of a surprise examination.
- What if a fund is in **wind-down**?
  - The Rule does nothing to address known issues for funds with diminishing resources to pay audit costs. Some potential solutions include liquidating trusts with an unaffiliated trustee or otherwise selling off positions.

Private Fund Adviser Rules

Compliance Rule Amendments

- The existing Compliance Rule has been amended to require **all** RIAs (including those that do not advise private funds) to document in writing the required annual review of their compliance policies and procedures.
  - Previously, the Books and Records Rule required retaining any such written report, if the RIA happened to create one, but did not require the **creation** of such a written report.
  - This amendment plugs that gap.
  - Because creating the report would be a regulatory requirement, the report's content generally would not be subject to privilege claims in most cases, even if prepared by outside counsel.
  - Even so, the amendment does not prevent privileged communications between investment advisers and their lawyers, which can continue to occur (e.g., regarding whether or not certain information is required to be included in such a written report or whether such information may be omitted).
- This rule is effective on November 13, 2023, **60 days** from its publication in the Federal Register.

Private Fund Adviser Rules

Adviser-Led Secondaries Rule

- Requires an RIA, prior to the due date of the election form for an adviser-led secondary transaction, to:
  - Obtain and distribute a **fairness opinion** or **valuation opinion** from an independent opinion provider; and
  - Prepare and distribute a written summary of any material business relationships the adviser or any of its related persons have, or have had, within the two-year period immediately prior to the issuance of the fairness opinion or valuation opinion, with the independent opinion provider.

Key Definition:

- **Adviser-led secondary transaction**: Any transaction initiated by the investment adviser or any of its related persons that offers private fund investors **the choice between**:
  - (1) Selling all or a portion of their interests in the private fund; and
  - (2) Converting or exchanging all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons.
- Note that this definition is narrower than the definition used in Form PF for "current reports" of adviser-led secondary transactions. Per the Adopting Release, this difference appears deliberate, with the SEC acknowledging that the Form PF reporting requirement and the Adviser-Led Secondaries Rule disclosure requirement use "different means, entail different burdens, and employ modified definitions".

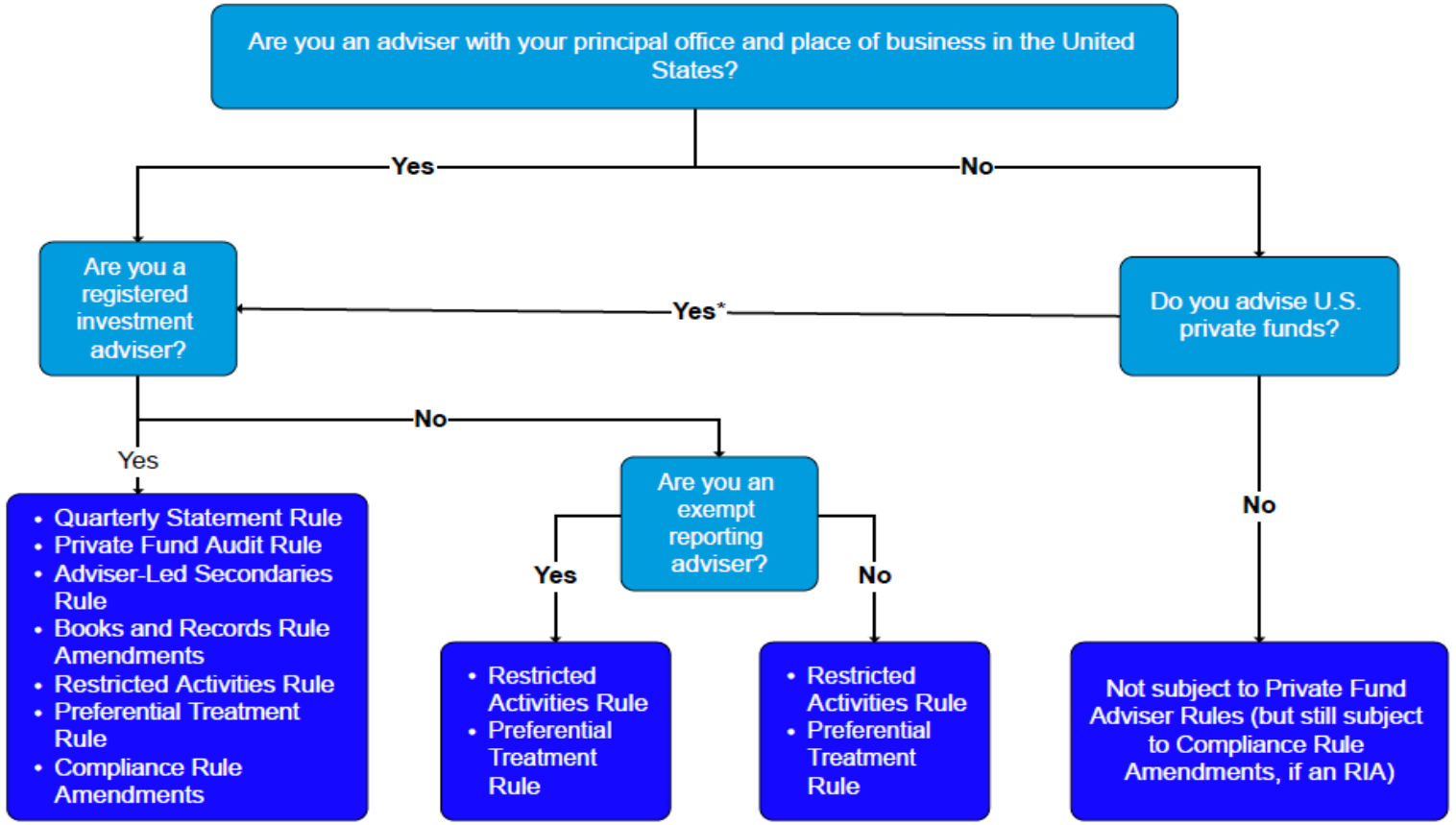
Private Fund Adviser Rules

Grandfathering / "Legacy" Status

- The **Restricted Activities Rule** and **Preferential Treatment Rule** provide for **grandfathering** with respect to certain of the Rules' provisions for **"legacy" contractual agreements** that govern the fund or that govern any borrowing, loan, or extension of credit entered into by a fund, if the agreements both (i) were entered into **prior to the Compliance Date** and (ii) would **need to be amended** in order to ensure compliance with the rules.
  - Legacy agreements relating to a fund bearing investigation-related expenses, or to the adviser borrowing from a fund, are grandfathered without the need to obtain investor consent if the agreement would otherwise need to be amended in order to comply.
    - **Exception:** Agreements permitting a fund to bear expenses related to sanctioned matters are **not** grandfathered.
  - Legacy **preferential redemption** or **information rights** are grandfathered without a need to offer them to other investors if the agreement would otherwise need to be amended in order to comply.
    - **However, grandfathered terms must still be disclosed pursuant to the notice provisions**.

Private Fund Adviser Rules

Application: RIAs, ERAs, U.S. & Non-U.S.



* In the Adopting Release, the SEC clarified that the Rules would not apply to an offshore adviser (whether registered or exempt) with respect to any non-U.S. private fund that it advises, even if the fund has U.S. investors, but **would** apply to an offshore adviser with respect to any U.S. private fund that it advises. U.S. advisers, by contrast, are subject to the Rules with respect to **all** private funds they advise (whether U.S. or offshore).

NOTE: The Private Fund Adviser Rules do not apply to investment advisers with respect to "securitized asset funds", private funds whose primary purpose is to issue asset-backed securities and whose investors are primarily debt holders (e.g., CLOs).

Proskauer

Private Fund Adviser Rules

Fiduciary Duties

- The SEC had initially proposed to prohibit an adviser to a private fund from seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or investors for a **breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness** in providing services to the private fund.
- Instead of adopting that proposal, the Adopting Release clarified that the following actions could be contrary to an adviser's fiduciary duties under current law:
  - Charging monitoring, servicing, and other fees for services that are not performed.
  - Waivers of fiduciary duties under federal securities laws (but expressly declined to comment on purported waivers of state law fiduciary duties).
    - The Release noted that "savings clauses" could be helpful in making a purported waiver not misleading, but also noted that purported waivers of federal duties are less likely to be misleading if the investor is not a "retail" investor, implying that "savings clauses" are less necessary for non "retail" investors.
- This is not a new point, but is receiving new emphasis here: Purported waivers of investment adviser federal fiduciary duties have been an SEC examination and enforcement focus for many years, although somewhat unevenly. Will this result in more consistent exam and enforcement focus? Time will tell…

Final Thoughts

No Two Advisers Are the Same:

- The application of the new rules varies from adviser to adviser, and from fund to fund, based on the facts and circumstances of each situation. Even advisers that seem very similar in terms of size and investment strategy may find they are struggling with completely different issues. It is critical for each adviser to assess its own path forward.

Fifth Circuit Litigation Challenge:

- On Sept. 1, 2023, a lawsuit was filed with the federal Court of Appeals in the Fifth Circuit challenging the validity and enforceability of the rules. On November 2, Petitioners filed their Opening Brief, asserting that "Each part of the Rule is unnecessary, unworkable, and unduly burdensome—and the Commission failed to establish otherwise."
- The lawsuit does not automatically delay the compliance dates.
- The court has agreed to expedite the proceedings. Petitioners requested a decision by the end of May, although the court has not yet agreed to a calendar beyond the first few filings, so the date of the final decision remains open.
  - Given the short period of time between any mid-2024 decision and the compliance dates, most advisers (particularly "larger" private fund advisers) are likely to be disadvantaged by taking a "wait and see" approach.
  - That would leave little time to prepare for compliance should the court ultimately uphold the Rules, even in part.

Proskauer Presenters

Stephen Mears
Partner
smears@proskauer.com

Robert Plaze
Partner
rplaze@proskauer.com

Brian Schwartz
Partner
bschwartz@proskauer.com

Robert Sutton
Partner
rsutton@proskauer.com

Proskauer's Global Presence

Proskauer» Built to Serve Asset Managers

A Proskauer Webinar Series