New SEC Rules for Investment Advisers and Private Funds: An Overview of Requirements and Challenges

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The Securities and Exchange Commission ("SEC"), in a vote on August 23, 2023, adopted several new rules that apply primarily to investment advisers to private funds (for purposes of this note, the "New Rules"). The New Rules, promulgated under the Investment Advisers Act of 1940, as amended (the "Investment Advisers Act"), impose significant requirements on private fund advisers and represent a continuation of the recent migration away from the SEC's traditional reliance on principles-based and disclosure-focused regulation of the alternative investment management sector toward a prescriptive, rule-based regulatory regime.[1]

The New Rules are set out in Rules 211(h)(1)-1 (definitions), 211(h)(1)-2 (required quarterly statements), 211(h)(2)-1 (restriction on certain terms for private funds), 211(h)(2)-2 (adviser-led secondaries), 211(h)(2)-3 (restrictions on preferential terms for private fund investors), 206(4)-7 (documentation of annual compliance reviews), 206(4)-10 (required financial statement audits of private funds), and 204-2 (record-keeping relating to requirements under the New Rules). The New Rules were formally published in the Federal Register on September 14, 2023 and can be found here.

Overview of the New Rules

Substantively, the New Rules relate to six distinct areas:

1. *Restricting certain conflicted economic terms*. The New Rules restrict both SEC-registered and unregistered investment advisers from engaging in certain activities that present economic conflicts of interest unless the investment advisers provide specified notice to the applicable private fund investors or, for certain activities, obtain such investors' consent.
2. *Restricting preferential treatment for investors*. Under the New Rules, both SEC-registered and unregistered investment advisers must comply with substantial requirements on the manner in which they and their related persons provide preferential redemption, portfolio information, material economic rights, and other preferential terms to some investors relative to others.
3. *Requiring quarterly statements*. SEC-registered investment advisers will have to provide private fund investors with quarterly reports, with the New Rule specifying the content of these reports relating to fund-level performance, investment adviser compensation, fees and expenses, and portfolio investment-related compensation.
4. *Requiring annual audits*. SEC-registered investment advisers will be required by the New Rules to obtain and deliver to investors audited financial statements of the private funds they advise (notwithstanding if the investment adviser previously relied on "surprise verification" to comply with Rule 206(4)-2 under the Investment Advisers Act (the "Custody Rule") with respect to the applicable private fund).
5. *Imposing requirements on adviser-led secondaries*. To conduct an adviser-led secondary transaction between funds that it advises, an SEC-registered investment adviser will be obligated to obtain a fairness

[1] This legal update benefited from research contributions by Svenja Plonski, a legal intern at Pryor Cashman LLP on secondment from HÄRTING Rechtsanwälte PartGmbB.

opinion or valuation opinion and provide both the opinion and a summary of the adviser's material business relationships with the opinion provider to the relevant private funds' investors.

6. *Books and Records*. All SEC-registered investment advisers (in the case of this rule, without regard to whether such advisers advise private funds) will be required to document their Rule 206(4)-7-required annual review of their compliance policies and procedures. In addition, the New Rules include additions to Rule 204-2's list of the books and records required to be maintained by SEC-registered investment advisers to cover the items mandated by the other New Rules.

Scope

As noted above, certain of the New Rules apply only to investment advisers that are registered (or required to be registered) with the SEC under the Investment Advisers Act, but other New Rules apply to both SEC-registered and unregistered investment advisers, with the latter category encompassing exempt reporting advisers or "ERAs" (e.g., investment advisers relying on the venture capital fund adviser or private fund adviser exemptions from registration) and state-registered investment advisers.

In general, the New Rules apply to investment advisers' relationships with private funds and their investors. The term "private fund" is used in the New Rules as the term is defined in Section 202(a)(29) of the Investment Advisers Act, and includes any issuer that would be an investment company, as defined in Section 3 of the Investment Company Act, but for the exclusion from this definition set out in Section 3(c)(1) or Section 3(c)(7) of that statute. This scope would generally cover all pooled investment vehicles designed to invest as hedge funds, private equity funds, venture capital funds, or hybrids of the foregoing. However, the New Rules typically carve out from their application "securitized asset funds," which are defined in the New Rules as including any private fund whose primary purpose is to issue asset-backed securities and whose investors are primarily debt holders. The term securitized asset fund is intended to cover most CLOs and similar vehicles.

In specifying the detailed information required to be included in quarterly reports to private fund investors, the New Rules rely on a distinction between "liquid funds" and "illiquid funds." An "illiquid fund" is a private fund that (a) is not required to redeem interests upon an investor's request and (b) has limited opportunities, if any, for investors to withdraw before termination of the fund. A "liquid fund" is any private fund that isn't an illiquid fund. In general, private equity and venture capital funds will be illiquid funds, and hedge funds will be liquid funds. Each investment adviser will have to formally determine which category applies to each of the private funds it advises and keep a record of this determination.

Compliance Dates; Legacy Status; Larger and Smaller Private Fund Advisers

For the audit rule and the quarterly statement rule the New Rules permit an 18-month transition period for all private fund advisers after the New Rules' publication in the Federal Register (that is, until March 14, 2025).

For the adviser-led secondaries rule, the preferential treatment rule, and the restricted activities rule the New Rules impose different compliance dates based on the relevant investment adviser's "private fund assets under management":

- Advisers with $1.5 billion or more in private funds assets under management ("larger private fund advisers") are permitted a 12-month transition period (that is, until September 14, 2024)
- Advisers with less than $1.5 billion in private funds assets under management ("smaller private fund advisers") are permitted an 18-month transition period (that is, until March 14, 2025).

SEC-registered investment advisers will have to commence documenting their annual compliance review 60 days after publication of the New Rules in the Federal Register (that is, commencing November 13, 2023). In practice,

this means that for most SEC-registered investment advisers, their annual compliance review for 2023 will be required to be documented in compliance with the New Rules.

In some cases, the New Rules also provide for a "legacy status." Where this status (referred to below as the "Legacy Status") applies, the relevant rule is expressly not applicable with respect to contractual agreements governing a private fund that has commenced operations as of the relevant compliance date, where the relevant contractual agreement was entered into in writing prior to the compliance date and the applicable New Rule would require the parties to amend the relevant contractual agreement. For these purposes, the term "commencement of operations" includes any *bona fide* activity directed towards operating the applicable private fund, including investment, fund-raising, or operational activities (such as issuing capital calls, setting up a subscription facility, holding an initial fund closing and conducting due diligence on potential fund investments, or making an investment on behalf of the private fund).

Legal Challenges to the New Rules

In the New Rules' adopting release, the SEC takes particular care to outline claims raised by commentators following the New Rules' initial proposal that asserted that specific elements of the New Rules were outside of the SEC's authority, and the SEC presents its arguments for why such criticisms are unfounded. Nonetheless, the Managed Funds Association (the "MFA"), the Loan Syndications and Trading Association (the "LSTA"), the Alternative Investment Management Association Ltd. ("AIMA"), the National Venture Capital Association, and several other investment management trade associations have initiated legal proceedings against the SEC, in a lawsuit filed on September 1 (*National Association of Private Fund Managers* v. *SEC*, case number 23-60471, in the U.S. Court of Appeals for the Fifth Circuit). The plaintiffs' claims focus not only on the assertion that the SEC's authority does not extend to this level of regulatory oversight of private funds, but also on concerns that the New Rules will harm the private fund industry, impede the ability to provide attractive investment returns to private fund investors, and hamper the creation of jobs and innovation by the investment management sector. The lawsuit also takes the position that the New Rules unduly restrict private fund advisers in their contractual dealings with investors, where traditionally parties were permitted wide latitude to contract for their respective rights and obligations. In support of the plaintiffs' position that the SEC's process for crafting the New Rules was "arbitrary, capricious, and an abuse of discretion" and flawed as a matter of administrative law, the lawsuit cites a report from the SEC's own Inspector General that found that, in crafting the New Rules, the SEC relied on personnel with "little or no experience" and rushed an "aggressive agenda" based on inadequate research and analysis.

It is not clear what the result of this legal challenge, or of any other future legal challenges along these lines, may be. Given the relatively lengthy period before the compliance dates for most of the New Rules (as discussed above), there may well be court-mandated modifications to the New Rules before they are required to be implemented by private fund investment advisers. Nonetheless, at this point, investment advisers would do well to prepare their operations and systems for compliance with the New Rules as they are currently formulated.

[*Memorandum continues on next page*.]

Discussion of Specific Requirements Under the New Rules

The following chart provides a high-level overview of the New Rules' requirements. This summary is necessarily not tailored to any specific private fund or other vehicle, and our more detailed advice should be sought in order to analyze the application of the New Rules to any specific private fund, investor (existing or prospective), or transaction.

What	Who	When
Restricted Activities Rule (Rule 211(h)(2)-1)		
Prohibited: A private fund adviser is prohibited from charging or allocating fees or expenses related to an investigation that results (or has resulted) in a court or governmental authority imposing a sanction for a violation of the Investment Advisers Act. **General Rule.** Moreover, in general, a private fund adviser *may not* charge or allocate to a private fund investor any fees or expenses associated with an investigation of the investment adviser or its related persons by any governmental or regulatory authority, even if a sanction has not been imposed in connection therewith. (Note that this restriction applies to the fees and expenses of an *investigation*, which should be distinct from a routine SEC presence *examination*.) **Exception:** Such fees and expenses may be charged or allocated to private fund investors if the private fund adviser requests each investor of the private fund to consent to, and obtains written consent from at least a majority in interest of the private fund's investors that are not related persons of the private fund adviser for, such charge or allocation. (In addition, the SEC reiterates in the New Rules' adopting release that these expenses may only be charged if the private fund adviser has authority to do so under the private fund's governing documents.)	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. No Legacy Status.
General Rule. A private fund adviser is prohibited from charging or allocating to a private fund that it advises any regulatory or compliance fees or expenses, or fees or expenses associated with an examination, of the investment adviser or its related persons. **Exception.** An exception is available if the investment adviser distributes a written notice of any such fees or expenses (with disclosure of the dollar amount thereof) to the investors of the	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. After transition period, Legacy Status applies.

What	Who	When
applicable private fund within 45 days after the end of the fiscal quarter in which the charge occurs.		
General Rule. A private fund adviser is prohibited from reducing the amount of any clawback of the investment adviser's carried interest or other performance-based compensation by actual, potential, or hypothetical taxes applicable to the adviser, its related person, or their respective owners or interest holders. **Exception**. A private fund adviser may effect such a tax-related clawback reduction if, within 45 days after the end of the fiscal quarter in which the adviser clawback occurs, the investment adviser distributes to the investors in the impacted private fund a written notice that discloses the aggregate dollar amounts of the adviser clawback both before and after such reduction.	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. No Legacy Status.
General Rule. A private fund adviser may not charge or allocate fees or expenses related to a portfolio investment on a non-*pro rata* basis when multiple private funds and other clients advised by the investment adviser have invested (or propose to invest) in the same portfolio investment. **Exception.** A private fund adviser may avail itself of an exception from this prohibition if (a) the non-*pro rata* charge or allocation is fair and equitable under the circumstances *and* (b) prior to charging the non-*pro rata* fee or expense, the investment adviser distributes to each investor a written notice of the non-*pro rata* charge and a description of how the allocation approach is fair and equitable under the circumstances.	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. No Legacy Status.
General Rule. A private fund adviser may not borrow money, securities, or other private fund assets, or receive a loan or an extension of credit, from a private fund that it advises. **Exception.** An exception is available if the investment adviser (a) distributes to each investor in the applicable private fund a written description of the material terms of, and requests each such investor to consent to, such borrowing, loan, or extension of credit; and (b) obtains written consent from at least a majority in interest of the private fund's investors that are not related persons of the investment adviser.	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. After transition period, Legacy Status applies.

What	Who	When
Preferential Treatment Rule Rule 211(h)(2)-3		
General Rule. No investment adviser to a private fund may grant, directly or indirectly, an investor in such private fund (or in a similar pool of assets) the ability to redeem its interests on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or pool of assets. **Exception.** Exceptions are available if (a) such ability to redeem is required by 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 or (b) the investment adviser has offered the same redemption ability to all existing investors in such private fund (and pool of assets), and will offer it to all future such investors.	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. After transition period, Legacy Status applies.
General Rule. No investment adviser to a private fund may, directly or indirectly, provide information regarding the portfolio holdings or exposures of such private fund (or of a similar pool of assets) to any investor in the private fund if the investment adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or pool of assets. **Exception.** An exception is available if the investment adviser offers such information to all investors in the applicable private fund and pool of assets at the same, or substantially the same, time.	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. After transition period, Legacy Status applies.
General Rule. An investment adviser to a private fund may not, directly or indirectly, provide any preferential treatment (including preferential redemption rights, preferential information rights, and preferential economic and non-economic terms) to any investor in the private fund. **Exception.** Preferential rights may be provided to investors in a private fund if the investment adviser provides written disclosures with respect to all preferential treatment provided to other investors in such private fund as follows: • If the preferential rights relate to material economic terms, the investment adviser must provide advance notice to each	SEC-registered private fund advisers Unregistered private fund advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. No Legacy Status. In order for the exception to be available: Preferential rights relating to material economic terms must be disclosed to each prospective investor **prior to such**

What	Who	When
prospective investor in the private fund (i.e., notice prior to such prospective investor's investment in such private fund) with specific information regarding such preferential material economic terms provided to other investors in the same private fund. • For each illiquid fund, all current investors in such private fund must receive, as soon as reasonably practicable after the end of the private fund's fundraising period, a written disclosure of all preferential treatment the adviser or its related persons have provided to other investors in the same fund. • For each liquid fund, each current investor in such private fund must receive, as soon as reasonably practicable after such investor's investment in such private fund, a written disclosure of all preferential treatment the adviser or its related persons have provided to other investors in the same fund. • For each private fund, whether an illiquid fund or a liquid fund, the private fund adviser must provide all investors, on at least an annual basis, a written notice that provides specific information regarding any preferential treatment provided by the investment adviser or its related persons to any investor in such private fund since the most recent such periodic written notice.		**prospective investor's investment** in the applicable private fund. For **illiquid funds**, disclosures of preferential treatment must be made **as soon as reasonably practicable after the end of the private fund's fundraising period**. For **liquid funds**, disclosures of preferential treatment must be made **as soon as reasonably practicable after the applicable investor's investment** in such private fund. Comprehensive disclosures of preferential treatment must be made to investors in the applicable private fund **at least annually**.
Quarterly Statement Rule Rule 211(h)(1)-2		
Each investment adviser that is registered (or required to be registered) with the SEC must deliver to all investors in each private fund that it advises that has at least two full fiscal quarters of operating results, a quarterly statement that includes the information outlined below. The "reporting period" for each quarterly statement is the fiscal quarter covered by that statement or, for the initial quarterly statement for a newly formed private fund, the period covering the private fund's first two full fiscal quarters (and any partial fiscal quarter of operations prior to such two full fiscal quarters). For example, if a private fund commences operations on February 1 of a	SEC-registered investment advisers	March 14, 2025 (regardless of the investment adviser's private fund assets under management). No Legacy Status. After the transition period (and after meeting the two-full-fiscal-quarter requirement) (a) private funds that *are not funds-of-funds* must provide the quarterly statements within 45 days after each of the first three fiscal quarters and within 90 days after the end of the private fund's

What	Who	When
given year, the reporting period for such private fund's initial quarterly statement would cover the period from February 1 through September 30. *Private Fund Adviser Compensation Disclosures*. A detailed accounting (including a description of the manner of calculation and cross-references to the relevant authorizing provisions of the applicable private fund's governing documents) of all compensation, fees, expenses, and other amounts allocated or paid to the investment adviser or any of its related persons by the private fund during the reporting period, and any offsets or rebates carried forward during the reporting period. • These disclosures must show the relevant information both before and after the application of any offsets, rebates, or waivers. • Both cash and non-cash compensation (e.g., in-kind distributions of performance-based compensation) are included. • There must be separate line items for each category of allocation or payment, reflecting the total dollar amount (although the New Rules do not specifically prescribe the relevant categories); smaller expenses cannot be grouped into broad categories and expenses cannot be labelled as "miscellaneous." • Even *de minimis* expenses must be listed. • Sub-advisory fees paid to a private fund adviser's related person that are paid by such *investment adviser*, and not by the applicable private fund, are not required to be listed as a separate item of adviser compensation. • In each quarterly report, the foregoing disclosures are required solely with respect to the reporting period covered by that quarterly report and are not required to cover historical periods. *Private Fund Fee and Expense Disclosures*. A detailed accounting (including a description of the manner of calculation and cross-references to the relevant authorizing provisions of the applicable private fund's governing documents) of all fees and expenses allocated to or paid by the applicable private fund during the reporting period, with		fiscal year and (b)private funds that *are funds-of-funds* must provide the quarterly statements within 75 days after each of the first three fiscal quarters and within 120 days after the end of the private fund's fiscal year. If an adviser is unable to deliver a quarterly statement in the required timeframe due to reasonably unforeseeable circumstances, the SEC would not view this failure as the basis for an enforcement action so long as the investment adviser reasonably believed that the quarterly statement would be distributed by the deadline and delivers the quarterly statement as promptly as possible.

What	Who	When
separate line items for each category of fee or expense reflecting the total dollar amount. • These disclosures are intended to complement, rather than repeat, the disclosures of such private fund's adviser compensation, as outlined above. Sub-advisory fees paid by a private fund to a sub-adviser that is not a related person of the reporting private fund adviser would be disclosed in the quarterly statement as a private fund expense rather than as private fund adviser compensation. • These disclosures must show the relevant information both before and after the application of any offsets, rebates, or waivers. • Each category of expense should be listed as a separate line item, rather than being grouped into broad categories. (E.g., "insurance premiums, administrator expenses, and audit fees" would be listed separately, rather than grouped as "fund expenses.") Although the New Rules do not specifically prescribe the relevant categories, certain categories are referred to in the adopting release, including "organizational, accounting, legal, administration, audit, tax, due diligence, and travel expenses." Smaller expenses cannot be grouped into broad categories and expenses cannot be labelled as "miscellaneous." • Even *de minimis* expenses must be listed. • In each quarterly report, the foregoing disclosures are required solely with respect to the reporting period covered by that quarterly report and are not required to cover historical periods. *Covered Portfolio Company Expense Disclosures.* A detailed accounting (including a description of the manner of calculation) of all compensation, fees, expenses, and other amounts allocated or paid to the investment adviser or any of its related persons by any portfolio investment held by the private fund during the reporting period. • These disclosures must show the relevant information both before and after the application of any offsets, rebates, or waivers.		

What	Who	When
• In each quarterly report, the foregoing disclosures are required solely with respect to the reporting period covered by that quarterly report and are not required to cover historical periods. *Performance Information.* All required categories of performance information must be presented with equal prominence. *For liquid funds:* • Annual net total returns for each fiscal year over the past 10 fiscal years or since inception, whichever is shorter. • Average annual net total returns over the 1-, 5- and 10-fiscal year periods. • Cumulative net total return for the current fiscal year as of the end of the most recent fiscal quarter covered by the private fund's quarterly statement. *For illiquid funds:* Each required performance measure must be computed since inception of the private fund through the end of the quarter covered by the quarterly statement, and **computed and shown both with and without the impact of any fund-level subscription facilities**: • Gross IRR and gross MOIC • Net IRR and net MOIC • Gross IRR and gross MOIC for the realized and unrealized portions of the private fund's portfolio, with the realized and unrealized performance shown separately. *Contributions and distributions*. For each illiquid fund, these quarterly statements must include a statement of such private fund's contributions and distributions. *Consolidation with similar pools*. For each private fund, these quarterly statements must also cover similar pools of assets, to the extent doing so would provide more meaningful information to the private fund's investors and would not be misleading. For example, a quarterly statement for a feeder in a master-feeder private fund structure would likely need to cover the applicable feeder fund and that feeder fund's proportionate interest in the master fund on a consolidated basis.		

What	Who	When
Manner of delivery. An investment adviser would generally be viewed as complying with the delivery requirement for a quarterly statement if, within the applicable time period, the relevant statement is uploaded to a data room accessible to the applicable investors and such investors are notified that such statement is available.		
Adviser-Led Secondaries Rule Rule 211(h)(2)-2		
Each investment adviser that is registered (or required to be registered) with the SEC must obtain, and distribute to investors in each private fund that it advises, a fairness opinion or valuation opinion from an independent opinion provider when offering existing fund investors the choice between (a) selling all or a portion of their interests in a private fund and (b) converting or exchanging all or a portion of their interests in the private fund for interests in another vehicle advised by the investment adviser or any of its related persons. (Note that this concept of adviser-led secondaries is intended to capture structures like continuation funds, but not standard rebalancing transactions between private funds advised by the same investment adviser.) In addition, in connection with each adviser-led secondary, an investment adviser must prepare and distribute to investors in the applicable private funds a written summary of any material business relationships the adviser has, or has had within the two-year period immediately prior to the issuance of the fairness opinion or valuation opinion, with the independent opinion provider.	SEC-registered investment advisers	Subject to transition period: • Larger Private Fund Advisers September 14, 2024. • Smaller Private Fund Advisers March 14, 2025. No Legacy Status. Disclosures relating to each adviser-led secondary transaction must be made prior to the due date of the investors' election form in respect of such adviser-led secondary transaction.
Audit Rule Rule 206(4)-10		
Each investment adviser that is registered (or required to be registered) with the SEC must cause each private fund that it advises and controls to undergo a financial statement audit that meets the requirements of the Custody Rule, and the audited financial statements must be sent to all of the applicable private fund's investors. The accountant performing the private fund audit: • must meet the standard of independence described in Regulation S-X, and	SEC-registered investment advisers	March 14, 2025 (regardless of the investment adviser's private fund assets under management). No Legacy Status. Such audited annual financial statements must be distributed to the applicable private fund investors within 120 days after the end of the private fund's fiscal year (or 180 days in the

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• must be registered with, and subject to regular inspection as of the commencement of its engagement and as of each calendar year-end by, the Public Company Accounting Oversight Board (the "PCAOB"). The audit must be in accordance with U.S. GAAP or another comprehensive body of accounting standards (such as IFRS) if the information is substantially similar to financial statements prepared in accordance with GAAP and the financials include a footnote reconciling any material differences. Following the view generally taken under Custody Rule analysis, it would be expected that a qualified audit opinion (for example, where the opinion includes a qualification for non-GAAP amortization of organizational expenses) would not satisfy this audit requirement. With respect to a private fund that an investment adviser does not control (or that is not under common control with, or control, the investment adviser), the investment adviser must take all reasonable steps to cause its private fund client to undergo an audit that satisfies the New Rules. This requirement likely means that an investment adviser would need to be able to document that it included or sought to include this requirement in its sub-advisory contract with the relevant non-controlled private fund.		case of a fund of funds or 260 days in the case of a fund of funds of funds). In the case of a liquidated private fund, such audited financial statements must be distributed to the applicable private fund investors promptly after completion of the audit. (These timelines coincide with the requirements under the audited financials provisions of the Custody Rule.) If an adviser is unable to deliver audited financial statements in the relevant timeframe due to reasonably unforeseeable circumstances, the SEC would not view this failure as the basis for an enforcement action so long as the investment adviser reasonably believed that the audited financial statements would be distributed by the deadline and delivers the financial statements as promptly as possible.
Books and Records; Annual Compliance Review Rules 204-2 (amended); 206(4)-7 (amended)		
Each investment adviser that is registered (or required to be registered) with the SEC, whether or not such investment adviser advises private funds, must document its annual compliance review in writing.	SEC-registered investment advisers, **whether or not advising private funds**	November 13, 2023.
Each investment adviser that is registered (or required to be registered) with the SEC, is required to maintain and have accessible for at least five years from the end of the fiscal year during which the last entry was made on the relevant record: • documentation substantiating the investment adviser's determination that a private fund it advises is a "liquid fund" or an "illiquid fund"	SEC-registered investment advisers	

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• copies of all quarterly statements required under the New Rules • records of each addressee and the date distributed for each quarterly statement • the records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any quarterly statement • copy of all audited statements prepared and distributed for each private fund advised by the investment adviser • with respect to each private fund that the investment adviser advises, but does not control (or is not under common control with, or controlling, the investment adviser), records documenting the investment adviser's steps to cause such private fund to undergo an audit • with respect to any preferential rights provided to private fund investors, a copy of all notifications, consents, or other documents distributed or received by the investment adviser, together with a record of each addressee and the date distributed for each such document • with respect to any adviser-led secondaries, a copy of the fairness opinion or valuation opinion and material business relationship summary distributed to the applicable private fund investors, together with a record of each addressee and the date distributed for each such opinion		

If you have any questions regarding this client alert or any related topic, please reach out to your Pryor Cashman contact or reach out to Bertrand Fry or Robert Friedman directly.