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ADVANCED TOPICS IN
PRIVATE FUND PRACTICES
CONFERENCE

Manager and Investor Perspectives

BOSTON

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Regulatory Updates

Speakers



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Pending Regulations

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SEC Regulatory Blitz

- SEC under Commissioner Gensler has engaged in 50+ rulemakings to date
 - Complex and sweeping changes
 - Challenging implementation timelines
- Rulemaking demands have reduced Staff relief and interpretive guidance
 - Decreasing transparency of SEC expectations and interpretations
- Fifth Circuit vacatur of Private Fund Adviser Rules
- Other legal challenges to SEC rulemaking (dealer definition, Treasury bond dealers, climate disclosure rule) and implications for pending rulemaking
- SEC rulemaking blitz coincides with hyperactive enforcement programs, increasing penalties and the use of a “broken windows” approach

SEC Rulemakings Target Financial Services

Key Rules Adopted:

- Internet Advisers (3/24)
- Climate Disclosure (3/24)
- Dealer Rule (2/24)
- Short Interest Reporting (10/23)
- Securities Loan Reporting (10/23)
- Beneficial Ownership Reporting (10/23)
- Investment Company Names (9/23)
- **Private Fund Advisers (8/23)**
 - **Vacated June 5 by Fifth Circuit**
- Money Market Fund Reforms (7/23)
- Form PF (5/23), (7/23), (2/24)
- Broker-Dealer Recordkeeping (10/22)

Key Rules Proposed but Not Yet Adopted:

- Volume-Based Exchange Pricing (10/23)
- Predictive Data Analytics/AI (7/23)
- Cybersecurity (3/23)
- Safeguarding Rule (Custody) (2/23)
- Exchange Definition (1/22) (crypto supp. 4/23)
- Equity Market Structure (12/22):
 - Regulation Best Execution
 - Reg NMS (Min. Pricing Increments, Access Fees)
 - Order Competition Rule
 - Order Execution Disclosure
- RIA Outsourcing (10/22)
- RIA and IC ESG (5/22)
- SPAC (3/22)
- Government Securities Dealer (3/22)

Key Rule Proposals (or Reproposals) to Watch

Outsourcing by Investment Advisers

Cybersecurity Risk Management

Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices

FinCEN AML Proposal

Predictive Data Analytics

Safeguarding Advisory Client Assets (Custody Rule)

SEC Examinations Update

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SEC Examinations Update

Continued focus on private fund advisers

Themes underlying rule proposals and newly adopted rules are often areas of focus during examinations

Marketing Rule

- Performance
- Testimonials and endorsements
- Substantiation

Open question as to whether vacated PFA rules will still underlie tone of exams

SEC Examination Priorities – Private Fund Advisers

Adherence to contractual requirements for LP advisory committees, including notification and consent processes

Accurate calculation and allocation of private fund fees and expenses

Due diligence practices for consistency with policies, procedures, and disclosures

Conflicts, controls, and disclosures for private funds managed side by side with registered investment companies and use of affiliated service providers

Custody: reporting timely completion of fund audits by a qualified auditor on Form ADV, and distribution of audited financial statements

Form PF reporting

Other Regulatory Hot Topics

Regulatory Hot Topics

- Impact of recent cases on Private Fund Advisers
 - Panuwat “Shadow Trading” case
 - Off-channel communication cases
- Hedge clauses
- Whistleblower rules
 - Considerations for client/investor agreements, including complaint settlements