

Fifth Circuit Strikes Down SEC's Private Fund Advisers Rule

by David Tang, Bradley M. Pugh, and Michael Schmieder

On June 5, 2024, the United States Fifth Circuit Court of Appeals (the "Court") vacated the Private Fund Advisers Rule (the "Rule") adopted by the SEC on August 23, 2023.^[1] In reaching its decision, the Court concluded that the SEC exceeded its statutory authority in adopting the Rule.

Among other requirements, the now-vacated Rule would have required private fund advisers to provide quarterly statements to private fund investors, and placed restrictions on charging certain expenses to private funds and providing certain preferential treatment to private fund investors.

Dorsey Observations

Now that the Rule has been vacated, private fund advisers that may have amended or adopted policies and procedures in anticipation of the Rule may consider reversing those changes. To the extent private fund offering documents were amended in view of the Rule, however, those changes may be more difficult to undo. Many aspects of the Rule were purportedly grounded in legal principles and fiduciary duties under Federal law. Notwithstanding the Court's decision to strike down the Rule, those standards and duties continue to apply. Lastly, it is possible that the SEC's examinations and enforcement staff will continue to use the now-vacated Rule as an internal reference as they conduct their reviews and enforcement actions. Private fund advisers would be well-advised to consider the restrictions and limitations of the Rule as a good indicator of the SEC's views on various private fund adviser practices.

Related People

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^[1] See also Dorsey's eUpdate on the Rule "[The SEC Adopts Significant New Rules for Private Fund Advisers](#)"

