

RIA Regulatory Review

by David Tang and Michael Schmieder

This RIA Regulatory Review highlights certain key regulatory developments affecting investment advisers. Please contact us with any questions on the topics covered below.

The SEC Adopts Significant New Rules for Private Fund Advisers

The SEC adopted significant new rules and rule amendments under the Investment Advisers Act of 1940 (“Advisers Act”) to enhance the regulation of private fund advisers. The new rules require private fund advisers to prepare and distribute quarterly statements to private fund investors, restrict private fund advisers from engaging in certain activities, restrict and require written notice of preferential terms offered to private fund investors, require private fund advisers to cause private funds that they manage to conduct annual financial statement audits, and impose requirements regarding adviser-led secondary transactions. Dorsey’s eUpdate on the new rules is available [here](#).

The SEC Adopts Amendments to Rules Governing Beneficial Ownership Reporting

The SEC adopted rule amendments governing beneficial reporting under Section 13(d) and 13(g) of the Securities and Exchange Act of 1934 (“Exchange Act”). With respect to Schedule 13D, the amendments shorten the initial filing deadlines from 10 days to five business days and require that amendments be filed within two business days. With respect to Schedule 13G, the amendments require qualified institutional investors and exempt investors to make their initial filing within 45 days of quarter-end rather than 45 days of year-end, and passive investors to make their initial filing within five business days rather than 10 days. In addition, all Schedule 13G filers will be required to file an amendment within 45 days after the calendar quarter in which a material change occurred rather than 45 days after the calendar year in which any change occurred. The adopting release provides guidance on when two or more persons form a group for the purposes of beneficial reporting, and when holding certain cash settled derivatives count towards the reporting threshold.

Related People

- David Tang
- Michael Schmieder

Related Capabilities

- Investment Management
- Investment Funds
- Financial Services Regulatory
- Corporate Governance & Compliance

The SEC Issues Risk Alert on SEC Examinations

The SEC's Division of Examinations released a risk alert that gave a rare glimpse into their decision making process on selecting investment advisers for examinations. The risk alert discusses how the Division of Examinations Staff selects firms for examination, examination focus areas, and documents to request.

The SEC Charges Five Advisory Firms with Custody Rule Violations

The SEC settled enforcement actions against five registered private fund advisers for violations of the Custody Rule under the Advisers Act. The violations were the result of a sweep by the SEC's Division of Examinations for Custody Rule violations; the second such sweep in the last twelve months. The firms were charged with failing to have annual financial statement audits performed, timely distribute audited financial statements to private fund investors, and/or have a qualified custodian maintain client assets.

SEC Marketing Rule Sweep Results in Charges against Nine Investment Advisers

The SEC settled enforcement actions against nine registered investment advisers for advertising "hypothetical performance," as defined by the Marketing Rule under the Advisers Act, to the general public on their websites without adopting and/or implementing policies and procedures required by the Marketing Rule. The charged firms agreed not to advertise hypothetical performance without having the requisite policies and procedures and to pay \$850,000 in combined penalties.

The SEC Charges 10 Firms with Widespread Recordkeeping Failures

The SEC announced enforcement actions against 10 registered broker-dealers and/or investment advisers for widespread and longstanding failures to maintain and preserve electronic communications. The firms admitted the facts set forth in their respective SEC orders and acknowledged that their conduct violated recordkeeping provisions of the federal securities laws. The firms agreed to pay combined penalties of \$79 million and implement improvements to their compliance policies and procedures. These actions follow prior SEC enforcement actions against registered firms for electronic communications recordkeeping violations that resulted in combined penalties of over \$1.5 billion.

The SEC Proposes Rules to Address Conflicts of Interests Associated with the Use of Predictive Data Analytics

The SEC proposed new rules under the Exchange Act and the Advisers Act to address the risks to investors from conflicts of interest associated with the use of predictive data analytics ("PDA") by investment advisers and broker-dealers. The proposed rules are intended to prevent firms from using PDA and similar technologies, including AI, to benefit the firms' interests over those of the firms' investors. The proposed rules would require firms to: eliminate or neutralize the effect of conflicts of interest related to the use

of a covered technology in any investor interaction; adopt and implement written policies and procedures reasonably designed to prevent violations of the proposed rules; and maintain records related to any such conflicts of interest. Dorsey's eUpdate on the proposed new rules is available [here](#).

Certain New Form PF Reporting Requirements Become Effective on December 12, 2023

Earlier this year, the SEC adopted [amendments](#) to Form PF that will require current reporting by large hedge fund advisers of certain events that may indicate significant stress at a reporting fund; quarterly reporting by private equity fund advisers of certain events that could raise investor protection issues; and enhanced annual reporting by large private equity fund advisers to improve the ability to monitor systemic risk and identify and assess changes in market trends at reporting funds. The new current reporting requirements for large hedge fund advisers and quarterly reporting requirements for private equity fund advisers will become effective on December 12, 2023. The new enhanced annual reporting requirements for large private equity fund advisers will become effective on June 12, 2024. Dorsey's eUpdate on the new Form PF reporting requirements is available [here](#).

Upcoming Compliance Dates

- Code of Ethics Quarterly Transaction Reports due October 30
- Form 13F due November 14
- Form CTA-PR due November 14
- Quarterly update to Form PF for all "large hedge fund advisers" due November 29
- Periodic Report for CPOs due November 30 and December 30