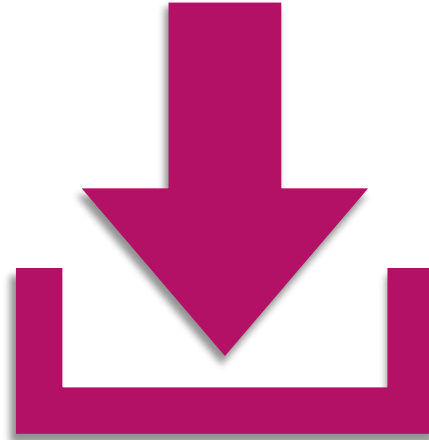


# Preparing for SEC's New Private Fund Adviser Rules



# Download Our Slides

<https://www.ria-compliance-consultants.com/private-fund-adviser-rules>



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[ContEd@ria-compliance-consultants.com](mailto:ContEd@ria-compliance-consultants.com)

# Your Instructor



Bryan Hill, President  
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Bryan has over 28 years of experience working with investment advisers, broker-dealers and investors as a compliance consultant, attorney and executive.

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- ▶ Senior Vice President of RIA Compliance Consultants, Inc.
- ▶ Investment Adviser Certified Compliance Professional®
- ▶ Masters of Arts in Management



# Course Overview

- Regulatory Resources
- Applicability of Rules to Different Advisers
- Quarterly Statement Rule
- Private Fund Audit Rule
- Adviser Led Secondaries Rule
- Restricted Activities Rule
- Preferential Treatment Rule
- Rule 206(4)-7 Annual Review Amendment
- Compliance Dates
- Questions



# Regulatory Resources

- ▶ **SEC Final Rule Release for Private Funds Advisers (Release No.: IA-6383)**
  - ▶ <https://www.sec.gov/files/rules/final/2023/ia-6383.pdf>

## Applicability of Private Fund Adviser Rules

- ▶ Rules that Only Apply to **SEC Registered Private Fund Advisers**
  - Quarterly Statement Rule
  - Private Fund Audit Rule
  - Adviser Led Secondaries Rule
- ▶ Rules that Apply to **All Private Fund Advisers**
  - Restricted Activities Rule
  - Preferential Treatment Rule
- ▶ Rule that Applies to **All SEC Registered Advisers**
  - Rule 206(4)-7 Amendment Requiring Documenting Annual Review in Writing

# Quarterly Statement Rule

- SEC registered private fund adviser is required to provide investors of private fund with quarterly statements
- Exclusions from Quarterly Statement Rule
  - ❑ *Securitized asset fund excluded from exclusion*
  - ❑ *Excluded are exempt reporting advisers and state-registered investment advisers*
  - ❑ *Non-U.S. private fund clients of an SEC-registered offshore adviser are not covered by this rule*
- Quarterly Statement for New Funds
  - ❑ *Not required until private fund has two fiscal quarters of operating results*

# Content of Quarterly Statements Fee Table

- All compensation paid to private fund adviser during period
- All fees and expenses allocated to or paid by private fund during period with separate line items for each category of fee or expense including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses
- Amounts of any offsets or rebates



# Content of Quarterly Statement Portfolio Table

All portfolio investment compensation allocated or paid to the private fund adviser

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

# Content of Quarterly Statement Calculations & Cross-References

- ▶ Prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated
- ▶ Must include cross references to calculation methodology in private fund's organizational and offering documents

# Content of Quarterly Statement Performance

- Liquid vs Illiquid Fund
  - Liquid fund means a private fund that is not an illiquid fund
  - Illiquid fund means a private fund that:
    - Is not required to redeem interests upon investor's request; and
    - Has limited opportunities, if any, for investors to withdraw before termination of fund

# Quarterly Statement – Performance

## ▶ Liquid Funds

- ▶ Annual net total returns for each fiscal year over the past 10 fiscal years or since inception, whichever time period is shorter
- ▶ Average annual net total returns over the 1, 5, 10 fiscal year periods
- ▶ Cumulative net total return for current fiscal year as of the end of most recent fiscal quarter



# Quarterly Statement – Performance

## Illiquid Funds - Performance since inception through last fiscal quarter

- Definitions
  - Gross IRR means an internal rate of return that is calculated gross of all fees, expenses, and performance-based compensation borne by the private fund
  - Gross MOIC means a multiple of invested capital that is calculated gross of all fees, expenses, and performance-based compensation borne by the private fund
- Gross IRR & Gross MOIC
  - Net IRR and net MOIC for the illiquid fund, and
  - Gross IRR and gross MOIC for the realized and unrealized portions of the illiquid fund's portfolio, with the realized and unrealized performance shown separately
- Statement of contributions and distributions for the fund
- Other disclosures
  - Date as of which the performance information is current
  - Prominent disclosure of the criteria used and assumptions made in calculating performance

# Quarterly Statements – Miscellaneous

## Consolidated Reporting:

- *“To the extent doing so would provide more meaningful information to the private fund’s investors and would not be misleading, the adviser must consolidate the reporting required by paragraphs (a) through (e) of this section to cover similar pools of assets”*

## Format & Content:

- Clear and concise
- Plain English
- Facilitates review from one quarter to next quarter

# Delivery of Quarterly Statements

If private fund is not a fund of funds, then quarterly statement will be delivered

- Within 45 days of the end of the first 3 quarters of the fiscal year and
- Within 90 days of the end of the fiscal year

If private fund is a fund of funds, then quarterly statements will be delivered

- Within 75 days of the end of each of the first 3 quarters of the fiscal year and
- Within 120 days of the end of the fiscal year

# Private Fund Audit Rule

- SEC-registered private fund adviser required to obtain an independent annual financial statement audit of each of the private funds it advises (whether directly or indirectly) that meets the requirements of the audit provision in Rule 206(4)-2
  - Must cause audited financials to be delivered to the private fund investors within 120 days of the fiscal year end (or within 180 days of the fiscal year end for a fund of funds)



# Private Fund Audit Rule Exclusions

Securitized asset fund excluded

Exempt reporting advisers and  
state-registered investment  
advisers

Non-U.S. private fund clients of  
an SEC-registered offshore  
advisers



Private Fund Not  
Controlled or  
Under Common  
Control by  
Private Fund  
Adviser

*SEC registered private fund adviser must take all reasonable steps to cause the private fund to undergo a financial statement audit and cause audited financial statements to be delivered to the private fund investors*

## Advisor Led Secondaries Rule - Purpose

To prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business

# Advisor Led Secondaries - Definition

Any transaction initiated by SEC registered private fund adviser (or its related person) that offers the private fund investor a choice between


- 1) Selling or converting all or portion of the investor's interest 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 SEC registered private fund adviser or its related persons

# Requirements for Advisor Led Secondaries

Obtain, and distribute to private fund investors, a fairness opinion or valuation opinion from an independent opinion provider; and



Prepare, and distribute to private fund investors, a written summary of any material business relationships the adviser or any of its related persons 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;



Fairness or valuation opinion and written summary must be distributed to each private fund investor prior to the due date of the election

## Excluded from Advisor Led Secondaries Rule

- Securitized asset fund
- Exempt reporting advisers and state-registered investment advisers
- Non-U.S. private fund clients of an SEC-registered offshore adviser



# Private Fund Adviser Restricted Activities Rule

- ▶ Restrict all private fund advisers from engaging in 5 specific types of activities
  - For 3 categories of restricted activities, there's an exception if disclosure is made
  - 2 categories of restricted activities, there's an exception if disclosure is made & investor consent is obtained

# Restricted Activities Rule Applicability

Includes all investment advisers (including SEC and state registered firms and exempt reporting advisers) to private fund(s)



Excludes securitized asset funds



Non-U.S. private fund clients of an SEC-registered offshore adviser are not covered by this rule

## Restricted Activities with Disclosure Exception: Regulatory, Compliance & Exam Expenses

- **Restriction:** Private fund adviser may not directly or indirectly charge or allocate to the private fund any (i) regulatory or compliance fees or expenses, or (ii) an examination fee or expense
- **Exception:** If private fund adviser distributes a written notice of any such fees or expenses and dollar amount within 45 days after the end of the fiscal quarter in which the charge occurs

# Restricted Activities with Disclosure Exception

## Reducing Adviser Clawback for Taxes

- **Definition of Adviser Clawback:** Any obligation of the private fund adviser to restore or otherwise return performance-based compensation to the private fund
- **Restriction:** Private fund adviser may not reduce the amount of an adviser clawback by actual, potential, or hypothetical taxes applicable to the adviser, its related persons, or their respective owners or interest holders
- **Exception:** If private fund adviser distributes a written notice of the aggregate dollar amounts of the adviser clawback before and after any reduction for actual, potential, or hypothetical taxes within 45 days after the end of the fiscal quarter in which the adviser clawback occurs



## Restricted Activities with Disclosure

## Non-Pro Rata Fee & Expense Allocations

- **Restriction:** Private fund adviser may not charge or allocate fees or expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds and other clients advised by private fund adviser or its related persons (other than a securitized asset fund) have invested (or propose to invest) in the same portfolio investment
- **Exception:** If the non-pro rata fees and expenses are fair and equitable under the circumstances and the private fund adviser distributes to each private fund investor a written notice of the non-pro rata charge or allocation and a description of how it is fair and equitable under the circumstances (prior to charging or allocating such fees and expenses)



# Restricted Activities with Disclosure & Consent

## Investigation Expenses

- **Restriction:** Private fund adviser may not charge or allocate to the private fund fees or expenses associated with an investigation by any governmental or regulatory authority
- **Exception:** If private fund adviser requests each investor to consent to, and obtains written consent from at least a majority in interest of the investors that are not related persons of the adviser for, such charge or allocation
  - Private fund adviser may not charge or allocate to the private fund 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 of 1940 or the rules promulgated thereunder

# Restricted Activities with Disclosure & Consent

## Borrowing Money

- **Restriction:** 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 client
- **Exception:** If private fund adviser
  - Distributes to each investor a written description of the material terms of, and requests each investor to consent to, such borrowing, loan, or extension of credit, and
  - Obtains written consent from at least a majority in interest of the private fund's investors that are not related persons of the adviser

# Restricted Activities Grandfathered Contracts

Restrictions on activities will not apply to contractual agreements governing a private fund and contractual agreement governing borrowing, loan, or extension of credit by a private fund that commenced operations and were entered into prior to the Restricted Activities Rule's Compliance Date

# Preferential Treatment Rule

All investment advisers to private funds (other than a securitized asset fund) are prohibited from providing certain types of preferential treatment that would have a material, negative effect on other investors, subject to certain exceptions.

# Preferential Treatment Applicability

Includes all investment advisers (including SEC and state registered firms and exempt reporting advisers) to private fund(s)

Excludes securitized asset funds

Non-U.S. private fund clients of an SEC-registered offshore adviser are not covered by this rule



# Preferential Treatment – Redemption

- **Prohibition:** May not grant investor the ability to redeem its interest on terms that the private fund adviser reasonably expects to have a material, negative effect on other investors in that private fund
- **Exceptions:**
  - If such redemption is required by law or government, or
  - If private fund adviser has offered same redemption ability to all other existing investors and will continue to offer such redemption ability to all future investors

# Preferential Treatment Disclosure of Portfolio Holdings

- **Prohibition:** May not provide information regarding the portfolio holdings or exposures of the private fund to any investor if private fund adviser reasonably expects that providing the information would have a material, negative effect on other investors
- **Exception:** If private fund adviser offers information to all other existing investors in the private fund and any similar pool of assets at the same time

# Preferential Treatment Other Situations

- **Prohibition:** May not provide any preferential treatment to any investor in the private fund
- **Exception:**
  - *Advance Written Notice for Prospective Investor* - Provide to each prospective investor in the fund, prior to investment, a written notice with specific information regarding any preferential treatment related to any material economic terms that the private fund adviser provides to other investors in the same fund
  - *Written Notice for Current Investors in a Private Fund* - Distribute to current investors:
    - For an illiquid fund, as soon as reasonably practicable following the end of the private fund's fundraising period, written disclosure of all preferential treatment the adviser has provided to other investors in the same private fund;
    - For a liquid fund, as soon as reasonably practicable following the investor's investment in the private fund, written disclosure of all preferential treatment the adviser has provided to other investors in the same private fund; and
  - An annual written notice that provides specific information regarding any preferential treatment provided by the adviser to other investors in the same private fund since the last written notice provided

# Preferential Treatment Rule

## Grandfathered Contracts

Preferential treatment rule requirements related to **redemption** and **disclosure of portfolio holdings** will not apply to contractual agreements governing a private fund that commenced operations and were entered into prior to the Preferential Treatment Rule's Compliance Date

# Rule 206(4)-7 Annual Review

- Amended Rule to Require Annual Review to Be Documented in Writing
- Applies to SEC Registered Investment Adviser Firms
  - Including SEC Registered Private Advisers Managing Securitized Asset Funds



Compliance  
Dates  
Rules Applying  
Only SEC  
Registered  
Private Fund  
Adviser

- Quarterly Statement Rule - **March 14, 2025**
- Private Fund Audit Rule - **March 14, 2025**
- Adviser Led Secondaries Rule
  - Large Adviser (\$1.5 billion or more in private funds assets): **September 14, 2024**
  - Small Adviser (Less than \$1.5 billion in private fund assets): **March 14, 2025**

# Compliance Dates Rules Applying to All Private Fund Advisers

- Restricted Activities Rule
  - Large Adviser (\$1.5 billion or more in private funds assets) – **9/14/2024**
  - Small Adviser (Less than \$1.5 billion in private fund assets) – **3/14/2025**
- Preferential Treatment Rule
  - Large Adviser (\$1.5 billion or more in private funds assets) – **9/14/2024**
  - Small Adviser (Less than \$1.5 billion in private fund assets) – **3/14/2025**

# Compliance Dates

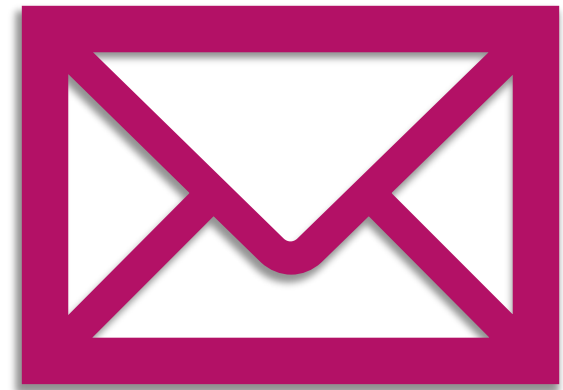
## Rule Applying to All SEC Registered Firms

- ▶ Rule 206(4)-7 Annual Review In Writing
  - All Annual Reviews Commenced After **November 13, 2023**

# Questions

Please submit any question online or email with any questions about the content of this course.

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Thank You

