

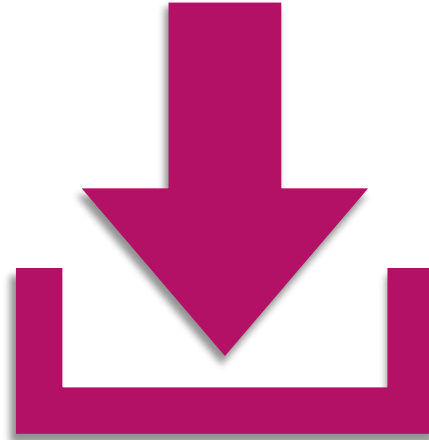


# Riding the Regulatory Wave:

Navigating the  
Potential 2024 Surge for  
SEC Registered  
Investment Advisers

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

# Your Instructor



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- ▶ Investment Adviser Certified Compliance Professional®
- ▶ Masters of Arts in Management



# Course Overview

- SEC Rule Making Process
- Sampling of SEC Finalized Rules (Past 12 Months)
  - Amendments to Form PF
  - Edgar Reporting Proxy Voting on Executive Compensation
  - Private Fund Adviser Rules & Written Annual Review
  - 13D and 13G Amendments
  - Short Reporting
- Sampling of SEC Proposed Rules
  - Cybersecurity Risk Management & Update to Regulation S-P
  - Update to Custody Rule
  - Outsourcing by Investment Advisers
  - Conflicts of Interest with Use of AI & Other Tech
  - Internet Only Adviser
- Questions

# Regulatory Resources

## Finalized Rules

### **Final Rule: Short Position and Short Activity Reporting by Institutional Investment Managers**

<https://www.sec.gov/rules/2022/02/notice-text-proposed-amendments-national-market-system-plan-governing-consolidated#34-98738>

### **Final Rule: Modernization of Beneficial Ownership Reporting**

<https://www.sec.gov/rules/2022/02/modernization-beneficial-ownership-reporting#33-11253>

### **Final Rule: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews**

<https://www.sec.gov/rules/2022/05/private-fund-advisers-documentation-registered-investment-adviser-compliance-reviews#IA-6383>

### **Final Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers**

<https://www.sec.gov/rules/2022/11/enhanced-reporting-proxy-votes-registered-management-investment-companies-reporting#33-11131>

### **Final Rule: Conformed Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting**

<https://www.sec.gov/rules/2022/01/amendments-form-pf-require-current-reporting-and-amend-reporting-requirements-large#IA-6297>

# Regulatory Resources

## Proposed Rules

### **Proposed Rule: Safeguarding Advisory Client Assets**

<https://www.sec.gov/rules/2023/02/safeguarding-advisory-client-assets#IA-6384>

### **Proposed Rule: Exemption for Certain Investment Advisers Operating Through the Internet**

<https://www.sec.gov/rules/2023/07/s7-13-23#IA-6354>

### **Proposed Rule: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers**

<https://www.sec.gov/rules/2023/07/s7-12-23#34-97990>

### **Proposed Rule: Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information**

<https://www.sec.gov/rules/2023/03/regulation-s-p-privacy-consumer-financial-information-and-safeguarding-customer#34-97141>

### **Proposed Rule: Outsourcing by Investment Advisers**

<https://www.sec.gov/rules/2022/10/outsourcing-investment-advisers#IA-6176>

### **Proposed Rule: Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies**

<https://www.sec.gov/rules/2022/02/cybersecurity-risk-management-investment-advisers-registered-investment-companies-and#33-11028>

## Limited Review

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This Is Not A Comprehensive Listing of  
All Proposed and Finalized Rules

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Rules Referenced In This Presentation  
Are Merely Examples of SEC Rules  
Selected by RCC

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There May Be Other Proposed and  
Finalized Rules Which Are Not  
Referenced Here But Nonetheless  
Applicable To Attendee

# SEC Rulemaking Process

## Rule Proposal

- Publication of Detailed Rule Proposal with Text of New or Amended Rule
- Available at <https://www.sec.gov/rules/rulemaking-activity>

## Public Comment

- Public Is Typically Provided 30 to 60 days for Review and Comment

## Economic Analysis

- SEC Assesses Potential Impact of Proposed Rule
- Evaluating Costs and Benefits and Alternative Regulatory Approaches

## Regulatory Flexibility Act

- Agenda Identifies Rules that It May Consider in Next 12 Months
- Available at Office of Management of Budget: [RegInfo.gov](http://RegInfo.gov)

## Rule Adoption

- Commissioners Vote Whether to Adopt the Final Rule

## Effective/Compliance Date

- Final Rule Typically Becomes Effective 60 Days After Publication in FR
- Compliance Date May Be Set Well Beyond Effective Date



# Amendment to Form PF Filing Requirements

## Summary

- **Large Hedge Fund Adviser** (\$1.5 Billion or More of Hedge Fund AUM) Required to File an Event Report No Later than **72 Hours From Occurrence of a Trigger** (e.g., Extraordinary Investment Losses, Significant Margin and Default Events, Terminations or Material Restrictions of Prime Broker Relationships, Operations Events, and Events associated with Withdrawals and Redemptions)
- **Large Private Equity Adviser** (\$2 Billion or More of Private Equity Fund AUM) to Report **Annually** Any GP or LP Clawback During Past Year and Information on Strategies and Borrowings
- **Private Equity Adviser** (\$150 Million or More of Private Equity Fund AUM) Required to File an Event Report Within **60 Days of Fiscal Quarter End of Trigger** (e.g., Removal of GP, Fund Termination Events, and an Adviser-Led Secondary Transaction)

# Amendment to Form PF Filing Requirements

## *Finalized by SEC:*

- 5/3/2023

## *Compliance Date:*

- 12/11/2023 for Amendments to Current Reporting vents (Large Hedge Fund Adviser)
- 6/11/2024 for Other Reporting Requirements (Large Private Equity Adviser and Private Equity Adviser)

# Edgar Reporting of Exec Comp Votes

## Rule 14Ad-1 & Form N-PX

*Summary:* Require Institutional Investment Managers (e.g., Investment Adviser Exercising Discretion) to Report Annually on Form N-PX Regarding How They Voted Proxies on Executive Compensation or “Say-on-Pay” Votes

*Finalized by SEC:* 11/2/2022

*Effective Date:* 7/1/2024

*Compliance Date:* Votes Starting 7/1/2023 with First Filing Due in 2024

# Private Fund Advisers & Compliance Reviews Summary

## For **SEC Registered Private Fund Advisers**

- Quarterly Statement Detailing Info Regarding Fund Performance, Fees, and Expenses
- Obtain Annual Audit for Each Fund
- Obtain a Fairness or Valuation Opinion for Advisor-Led Secondary Transaction

## For **All Private Fund Advisers**

- Prohibit Certain Activities Contrary to Protection of Investors Unless Certain Disclosures Provided and (in Some Cases) Receive Investor Consent
- Prohibit Certain Types of Preferential Treatment that Have Negative Effect on Other Investors Unless Disclosed to Investors

## For **All SEC Registered Advisers**

- Rule 206(4)-7 Amendment Requiring Documenting Annual Review in Writing

# Private Fund Advisers & Compliance Reviews

## Compliance Dates:

- Quarterly Statement Rule – **3/14/2025**
- Private Fund Audit Rule – **3/14/2025**
- Adviser Led Secondaries 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*
- 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*
- Rule 206(4)-7 (Documented Compliance Review) – **11/13/2023**

# Schedule 13D and 13G Amendments

## Background

Sections 13(d) and 13(g) of Securities Exchange Act of 1934 along with Regulation 13D-G Require Investor Who Beneficially Owns More than 5% of a Covered Class of Equity Securities to Publicly File Either a Schedule 13D (Intent to Control) or a Schedule 13G (Qualified Institutional Investor & Passive Investor Without Intent to Control)

# Schedule 13D and 13G Amendments

## Summary

- Changed Filing Requirement of *Initial* Schedule 13D from 10 Days to **5 Business Days** and *Amended* Schedule 13D to **2 Business Days**
- Changed Filing Requirement of *Initial* Schedule 13G for **Qualified Institutional Investors & Exempt Investors** from 45 Days After End of Calendar Year to **45 Days After End of Calendar Month**
- Changed Filing Requirements of *Initial* Schedule 13G for **Passive Investors** from 10 Days to **5 Business Days After End of Calendar Quarter**
- Changed Filing Requirements of *Amended* Schedule 13G for **All Filers** from 45 Days After Calendar Year to **45 Days After End of Calendar Quarter** In Which Any Change Occurred
- Schedules 13D & 13G Filings Use a Structured, Machine-Readable Data Language
- Release Provides Guidance on When 2 or More Persons May Be Considered a Group for Beneficial Ownership Threshold

# Schedule 13D and 13G Amendments

*Finalized by SEC: 10/10/2023*

*Effective Date: 90 Days Following  
Publication in Federal Register*

*Compliance Date:*

- Compliance with Revised Schedule 13G Filing deadlines Begins 9/30/2024
- Compliance with Structured Data Requirement for Schedules 13D and 13G Begins 12/18/2024



# Short Reporting (Rule 13f-2 & Form SHO) Summary

Institution Money Manager (e.g., investment adviser exercising discretion) that meet or exceed certain prescribed reporting thresholds will report on Form SHO certain short position and activity data for equity securities

- **Reporting Threshold A** for a Security of a Reporting Issuer
  - Monthly Average Gross Short Position in an Equity Security of \$10 Million or More, or
  - Monthly Average Gross Short Position as a % of Shares Outstanding in the Equity Security of 2.5 % or More
- **Reporting Threshold B** for a Security of a Non-Reporting Issuer
  - Gross Short Position in the Equity Security of \$500,000 or More at Close of Regular Trading Hours on Any Settlement Date During Calendar Month
- If Threshold A or B is Met, Manager must file a Form SHO report via EDGAR system within 14 calendar days after the end of each calendar month

# Short Reporting

*Finalized by SEC: 10/13/2023*

*Effective Date: 60 Dates  
Following Publication in Federal  
Register*

*Compliance Date: 1 Year from  
Effective Date*

## Cybersecurity Risk Management

(Proposed: 2/26/2022 )

### Summary of Rule 206(4)-9

- Adopt & Implement Written P&P Reasonably Designed to Address Cybersecurity Risks
- Promptly (48 Hours) Report Significant Cybersecurity Incidents to SEC via ADV-C
- Disclose Cybersecurity Risks and Past Cybersecurity Incidents in Form ADV Part 2A
- Make and Retain Cybersecurity Related Books & Records

# Update to Regulation S-P

(Proposed: 3/15/2023)

## Incident Response Plan

- Requires Adviser to Maintain an IRP Which Is Reasonably Designed to Detect, Respond to, and Recover from Unauthorized Access to or Use of Customer Info

## Customer Notice

- Requires Adviser to Provide (No Later than **30 Days** After Adviser Becomes Aware of a Likely Unauthorized Access or Use of Customer Info) Notice to Customer

## Privacy Notice Delivery

- Conform Reg S-P's Annual Privacy Notice Delivery to Exception Added by 2015 Fixing America's Surface Transportation Act, Which Provides that Advisers Are Not Required to Deliver an Annual Privacy Notice Under Certain Conditions

# Safeguarding Advisory Client Assets

*Initially Proposed 2/15/2023 &  
Re-opened 8/23/2023*

*Comment Period Closes  
10/29/2023*

Expands Custody Beyond “Funds and Securities” to Any Investments Which Adviser Has Custody

Defines Custody to Also Include an Adviser with Investment Discretion

Required to Maintain a Client’s Assets with Qualified Custodian If Adviser Has Custody

Provides More Requirements for Foreign Financial Institution to be Considered a Qualified Custodian

Specifies How QC Which Is Bank or Savings Association Must Hold Assets

Require Adviser to Enter Into a Written Agreement with Qualified Custodian

- Must Include Reasonable Assurances from QC that Client Assets Are Properly Segregated and Held in Accounts Designed to Protect Assets in the Event of QC Bankruptcy/Insolvency

# Safeguarding Advisory Client Assets (Continued)

Modify the current custody rule's exception from the obligation to maintain client assets with a qualified custodian for certain privately offered securities, including expanding the exception to include certain physical assets;

Retains Requirement for Adviser to Undergo a Surprise Exam by an Independent Public Accountant to Verify Client Assets

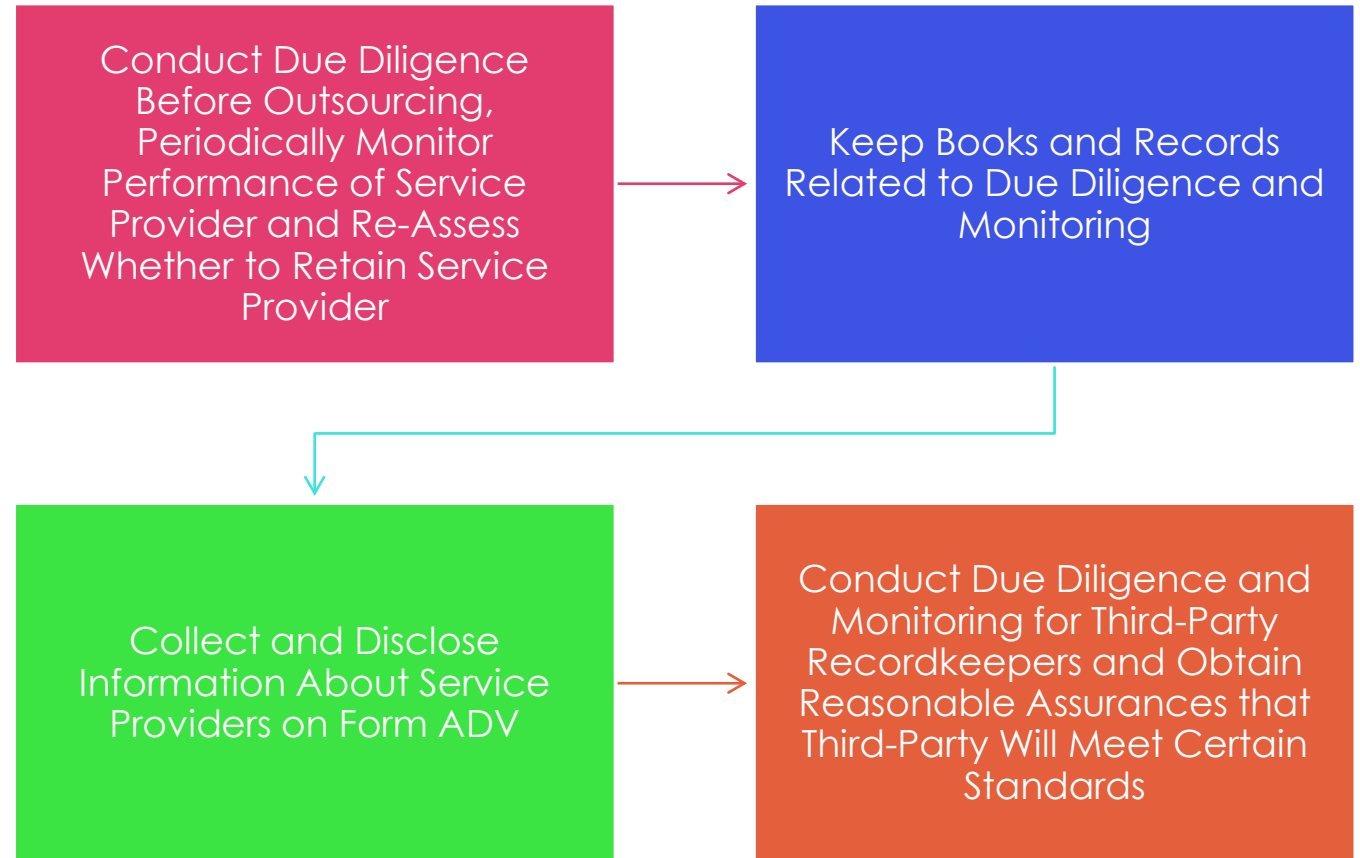
- Expands Availability of Audit to Satisfy Surprise Exam

Requires an Adviser to Keep Detailed Records of Trades/Positions for Each Account Which Adviser Has Custody

Provide Additional Information About Custody on Form ADV

# Outsourcing by Investment Advisers

*Proposed by SEC:  
10/26/2022*



# Conflicts of Interest with Use of Technology

*Proposed by SEC: 7/26/2023*

- For Covered Technology: Any Algorithm, Computational Tool, or Technology that Uses Data Analysis, Predictive Modeling, or Machine Learning **to Guide or Influence Investment-Related Behaviors or Outcomes**
- Must Evaluate Covered Technology to Identify Any Conflict of Interests
- Determine Whether Conflict Places Adviser's Interest Ahead of Client's Interests
- If Covered Technology Places Adviser's Interest First, Must Eliminate or Neutralize Conflict
- Adopt, Implement & Maintain P&P
- Review Annually Effectiveness of P&P



# Registration Exemption for Internet Investment Adviser

*Proposed by SEC:  
7/26/2023*

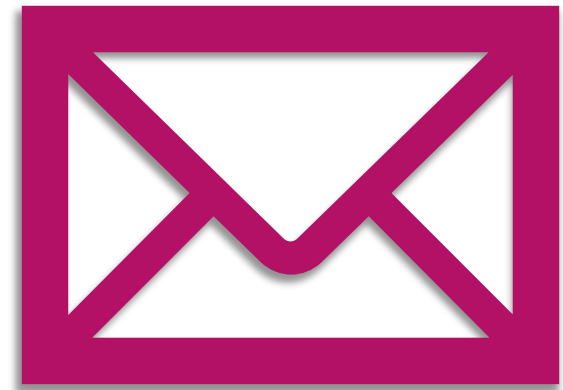
Require Adviser Relying on Exemption to Have at All Time an Operational Interactive Website Through Which Advisory Services Are Provided on an **Ongoing Basis to More than One Client**

Eliminate Current De Minimis Exception for Non-Internet Clients

# Questions

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

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Thank You

