



Proposed SEC Private Fund Advisers Rule

Five aspects of the rule LPs should monitor & where ILPA is focusing its efforts

Proposal	GPs say the SEC should not implement because...	But LPs know that...	ILPA's stance
Required Quarterly Fee & Expense Reporting GPs would provide quarterly fee and expense reporting at the <u>fund-level</u> to all LPs in their funds.	Required fee and expense reporting would be too costly and too restrictive.	Required fee and expense reporting is essential to transparency and tracking costs.	The SEC should require GPs to provide <u>LP-level</u> reporting upon request and fund-level reporting to all investors.
Addressing Fiduciary Duty GPs would be prohibited from seeking indemnification or exculpation for a breach of fiduciary duty, misfeasance, bad faith, <u>negligence</u> or recklessness.	LPs are sophisticated investors able to negotiate for the fiduciary protections they need.	The erosion of fiduciary protections shifts risks to LPs and limits GP accountability. But an ordinary negligence standard may lead to unintended results.	ILPA supports a strong fiduciary standard and substituting "negligence" with "gross negligence" provided that ordinary negligence applies to LPA or side letter breaches.
Disclosure of Preferential Treatment GPs would be required to disclose, on a rolling basis and annually, to all current or prospective LPs any preferential treatment provided to an LP.	Side letters are critical to the industry, but this rule would discourage GPs from providing side letters to LPs.	Side letters are essential for LPs with statutory or other specific requirements. A best-in-class Most Favored Nation ("MFN") offers transparency without burdensome documentation.	The SEC should reaffirm that side letters are essential to investors. A best-in-class MFN process may achieve desired policy goals without imposing additional cost or time burdens.
Reducing Clawbacks for Taxes GPs would be prohibited from reducing the clawback by taxes applicable to the adviser.	This would be too costly for the industry and could discourage new fund formation due to financial risk or lead existing GPs to stop offering clawbacks.	Established parameters for how tax is applied to clawbacks would improve alignment.	ILPA supports the intent of this proposal but believes a hypothetical but reasonable rate would prevent leakage and address unintended consequences.
Non-Pro Rata Fee and Expenses GPs would be prohibited from charging fees related to a portfolio investment on a non- <i>pro rata</i> basis.	Determining <i>pro rata</i> allocations may be too difficult. This also may discourage co-investment.	The SEC needs to clarify how the rule would impact co-investors, particularly around broken-deal expenses for co-underwriters vs. syndicated co-investments.	ILPA supports this provision but recommends the SEC should clarify how this would impact co-investors.