

# SEC Private Fund Advisers Rule Overview

## Rule-By-Rule Walkthrough for LPs



Rule	Element	Key Points		Notes
<b>Legacy Status</b>		<i>Final vs. Proposed:</i>	New	Renamed from the question posted by the SEC on “grandfathering,” legacy status pertains to final rules “not applying” to existing funds and their contractual agreement. As such, applying legacy status means the specific final rule does not apply to existing funds and their contractual agreements. However, not applying legacy status means the specific final rule does apply to existing funds and their contractual agreements. Legacy status provisions apply to agreements that were entered into prior to the compliance date where the agreement had commenced operations as of the compliance date based on bona fide activity directed towards operating a fund.
		<i>Applies To:</i>	Rule Dependent	
		<i>Compliance Date:</i>	Rule Dependent	
		<i>Applies To Existing Contractual Agreements:</i>	Rule Dependent	
<b>Quarterly Statements</b>	Fee and Expense Disclosure	<i>Final vs. Proposed:</i>	Minor Changes	GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contain detailed accounting of (i) all compensation, fees and other amounts paid to the GP by the fund, (ii) all fees and expenses allocated to or paid by the fund with separate line items related to organizational, accounting, legal, administration, audit, tax, due diligence, and travel and (iii) the amount of any offsets or rebates carried forward. Additionally, GPs must provide LPs a detailed accounting of all portfolio investment compensation allocated or paid to the GP by the covered portfolio investment reflecting the total dollar amount, presented before and after the application of any offsets, rebates or waivers.
		<i>Applies To:</i>	Registered Private Fund Advisers	
		<i>Compliance Date:</i>	18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Quarterly Statements</b>	Performance Disclosure	<i>Final vs. Proposed:</i>	Minor Changes	GPs must provide LPs, within 45-days of fiscal quarter-end and 90-days of fiscal year-end (75-days FQE / 120-days FYE for Fund of Funds), with quarterly statements on the fund-level that contain performance measures shown since inception through the latest quarter-end computed with and without the impact of any fund-level subscription facilities, that includes (i) Gross IRR and Gross MOIC, (ii) Net IRR and Net MOIC, (iii) Gross IRR and Gross MOIC for the realized and unrealized portions of the fund’s portfolio (shown separately) and (iv) statement of contributions and distributions.
		<i>Applies To:</i>	Registered Private Fund Advisers	
		<i>Compliance Date:</i>	18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Private Fund Adviser Audits</b>		<i>Final vs. Proposed:</i>	No Real Changes	GPs must conduct and deliver annual financial statement audits that meet the requirements of the audit provision of the Custody Rule.
		<i>Applies To:</i>	Registered Private Fund Advisers	
		<i>Compliance Date:</i>	18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	

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<b>Adviser-Led Secondaries</b>		<i>Final vs. Proposed:</i>	Minor Changes	GPs conducting adviser-led secondary transactions must, prior to the due date of the election form from LPs (i) obtain and distribute to LPs a fairness opinion or a valuation opinion from an independent opinion provider and (ii) prepare and distribute to LPs a summary of any material business relationships among the GP and the independent opinion provider for the two-year period prior to the issuance of the opinion.
		<i>Applies To:</i>	Registered Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Restricted Activities</b>	<u>Overview:</u> Rather than introduce “Prohibited Activities” as outlined in the initial rule, the SEC instead introduced “Restricted Activities” that are prohibited <u>unless</u> certain Disclosure-Based or Consent Exceptions are followed.			
<b>Restricted Activities (Disclosure-Based)</b>	Regulatory, Compliance, and Examination Expenses	<i>Final vs. Proposed:</i>	New	GP <u>may not</u> charge the fund for fees or expenses associated with an examination of the GP or for compliance fees and expenses <u>unless</u> the GP provides quarterly written notice to LPs of any such fees or expenses, and the dollar amount thereof.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Restricted Activities (Disclosure-Based)</b>	Reducing Adviser Clawbacks for Taxes	<i>Final vs. Proposed:</i>	Significant Changes	GP <u>may not</u> reduce the amount of their clawback obligation by actual, potential or hypothetical taxes <u>unless</u> the GP provides written notice to LPs the aggregate dollar amounts of the clawback before and after any reduction for actual, potential or hypothetical taxes within 45-days after the fiscal quarter end in which the clawback occurs.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Restricted Activities (Disclosure-Based)</b>	Certain Non-Pro Rata Fee and Expense Allocations	<i>Final vs. Proposed:</i>	Significant Changes	GPs <u>may not</u> allocate fees and expenses related to a portfolio investment on a non-pro rata basis <u>unless</u> (i) the allocation approach is fair and equitable, and (ii) prior to charging or allocating such fees or expenses, the GP provides written notice to each LP of the non-pro rata charge or allocation and a description of how it is fair and equitable.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	

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Rule	Element	Key Points		Notes
<b>Restricted Activities (Consent)</b>	Investigation Expenses	<i>Final vs. Proposed:</i>	New	GP <i>may not</i> charge the fund for fees or expenses associated with an investigation of the adviser <i>unless</i> the GP requests and obtains consent of a majority in interest of investors. GP <i>may not</i> charge investigation expenses in any event if the GP is subject to a sanction for violating the Advisers Act.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	No	
<b>Restricted Activities (Consent)</b>	Borrowing	<i>Final vs. Proposed:</i>	Significant Changes	GP <i>may not</i> borrow money, securities or other fund assets, or receive an extension of credit, from the fund <i>unless</i> the GP (i) provides written notice to each LP the material terms of such transactions and (ii) obtains advance consent from at least a majority in interest of investors.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	No	
<b>Certain Adviser Misconduct</b>	Fees for Unperformed Services	<i>Final vs. Proposed:</i>	Removed and Reaffirmed	Original proposed rule is not being adopted in any form - instead, the SEC is reiterating its position that charging fees for unperformed services is inconsistent with GP's fiduciary duty and may also violate anti-fraud provisions.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	Existing	
		<i>Applies To Existing Contractual Agreements:</i>	Yes ( <i>SEC views this was already prohibited</i> )	
<b>Certain Adviser Misconduct</b>	Limiting or Eliminating Liability	<i>Final vs. Proposed:</i>	Removed and Reaffirmed	Original proposed rule is not being adopted in any form - instead the SEC is reaffirming its position outlined in the <a href="#">2019 IA Fiduciary Duty Interpretation</a> with the view that GPs must adhere to federal fiduciary duty requirements and may not seek reimbursement, indemnification, or exculpation for breaching federal fiduciary duty as that would operate effectively as a waiver, which is not allowed under the Advisers Act.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	Existing	
		<i>Applies To Existing Contractual Agreements:</i>	Yes ( <i>SEC views this was already prohibited</i> )	

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Rule	Element	Key Points		Notes
<b>Preferential Treatment</b>	Prohibited Preferential Redemptions	<i>Final vs. Proposed:</i>	Significant Changes	GPs <i>may not</i> grant preferential redemption rights if they reasonably expect the preferred rights would have a <u>material, negative effect</u> on the other LPs in the fund or similar pool of assets <i>unless</i> (i) redemptions are required by applicable law, rule, regulation, or order of certain governmental authorities or (ii) the GP has offered the same redemption ability to all existing LPs and will continue to do so to all future LPs.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	No	
<b>Preferential Treatment</b>	Prohibited Preferential Transparency	<i>Final vs. Proposed:</i>	Significant Changes	GPs <i>may not</i> grant preferential rights related to portfolio holdings and/or exposure information if they reasonably expect the preferred rights would have a <u>material, negative effect</u> on the other LPs in the fund or similar pool of assets <i>unless</i> the GP offers such information to all other existing LPs at the same time or substantially the same time.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	No	
<b>Preferential Treatment</b>	Other Preferential Treatment and Disclosure of Preferential Treatment	<i>Final vs. Proposed:</i>	Significant Changes	GPs <i>may not</i> grant other preferential treatment to LPs in the fund <i>unless</i> the GP (i) provides advanced written notice prior to the LP's close that includes specific information related to any <u>material economic terms</u> provided to other LPs and (ii) provides written disclosure of all preferential treatment provided to other LPs as soon as reasonably practicable following the fundraising period.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	>\$1.5b AUM - 12-months <\$1.5b AUM - 18-months	
		<i>Applies To Existing Contractual Agreements:</i>	Yes	
<b>Compliance Rule Amendments</b>		<i>Final vs. Proposed:</i>	New	Requires all SEC-registered investment advisers document in writing, on no less than an annual basis, the adequacy of their policies and procedures and the effectiveness of implementation of their compliance policies and procedures.
		<i>Applies To:</i>	All Private Fund Advisers	
		<i>Compliance Date:</i>	60-days	
		<i>Applies To Existing Contractual Agreements:</i>	No	

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