



## SEC Private Fund Advisers Rules

### ILPA Quarterly Reporting Standards Initiative

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#### Rule Language and Definitions (Final and Redline)

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##### Quarterly Statements - Rule Language

###### § 275. 211(h)(1)-2 Private fund quarterly statements.

(a) *Quarterly statements.* As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall prepare a quarterly statement that complies with paragraphs (a) through (g) of this section for any private fund (other than a *securitized asset fund*) that it advises, directly or indirectly, that has at least two full fiscal quarters of operating results, and *distribute* the quarterly statement to the private fund's investors, if such private fund is not a fund of funds, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the private fund and 90 days after the end of each fiscal year of the private fund and, if such private fund is a fund of funds, within 75 days after the end of the first three fiscal quarters of each fiscal year and 120 days after the end of each fiscal year, in either case, unless such a quarterly statement is prepared and *distributed* by another person.

(b) *Fund table.* The quarterly statement must include a table for the private fund that discloses, at a minimum, the following information, presented both before and after the application of any offsets, rebates, or waivers for the information required by paragraphs (b)(1) and (2) of this section:

(1) A detailed accounting of all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the private fund during the *reporting period*, with separate line items for each category of allocation or payment reflecting the total dollar amount, including, but not limited to, management, advisory, sub-advisory, or similar fees or payments, and *performance-based compensation*;

(2) A detailed accounting of all fees and expenses allocated to or paid by the private fund during the reporting period (other than those listed in paragraph (b)(1) of this section), with separate line items for each category of fee or expense reflecting the total dollar amount, including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses; and

(3) The amount of any offsets or rebates carried forward during the reporting period to subsequent periods to reduce future payments or allocations to the adviser or its related persons.

(c) *Portfolio investment table.* The quarterly statement must include a separate table for the private fund's *covered portfolio investments* that discloses, at a minimum, the following information for each *covered portfolio investment*: a detailed accounting of all *portfolio investment compensation* allocated or paid to the investment adviser or any of its *related persons* by the *covered portfolio investment* during the *reporting period*, with 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.

(d) *Calculations and cross-references.* The quarterly statement must include prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated and include cross references to the sections of the private fund's organizational and offering documents that set forth the applicable calculation methodology.

(e) *Performance.* (1) No later than the time the adviser sends the initial quarterly statement, the adviser must determine that the private fund is an *illiquid fund* or a *liquid fund*.

- (2) The quarterly statement must present the following with equal prominence:
- (ii) *Illiquid funds*. For an *illiquid fund*:
    - (A) The following performance measures, shown since inception of the *illiquid fund* through the end of the quarter covered by the quarterly statement (or, to the extent quarter-end numbers are not available at the time the adviser *distributes* the quarterly statement, through the most recent practicable date) and computed with and without the impact of any *fund-level subscription facilities*:
      - (1) *Gross IRR* and *gross MOIC* for the *illiquid fund*;
      - (2) *Net IRR* and *net MOIC* for the *illiquid fund*; and
      - (3) *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.
    - (B) A *statement of contributions and distributions* for the *illiquid fund*.
  - (iii) *Other matters*. The quarterly statement must include the date as of which the performance information is current through and prominent disclosure of the criteria used and assumptions made in calculating the performance.
- (f) *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*.
- (g) *Format and content*. The quarterly statement must use clear, concise, plain English and be presented in a format that facilitates review from one quarterly statement to the next.
- (h) *Definitions*. For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)-1.

### **Quarterly Statements - Relevant Definitions**

*Adviser clawback* means any obligation of the adviser, its *related persons*, or their respective owners or interest holders to restore or otherwise return *performance-based compensation* to the private fund pursuant to the private fund's governing agreements.

*Committed capital* means any commitment pursuant to which a person is obligated to acquire an interest in, or make capital contributions to, the private fund.

*Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. For the purposes of this definition, control includes:

- (1) Each of an investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;
- (2) A person is presumed to control a corporation if the person:
  - (i) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or
  - (ii) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;
- (3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;
- (4) A person is presumed to control a limited liability company if the person:
  - (i) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
  - (ii) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or
  - (iii) Is an elected manager of the limited liability company;
- (5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

*Covered portfolio investment* means a *portfolio investment* that allocated or paid the investment adviser or its *related persons portfolio investment compensation* during the *reporting period*.

*Distribute, distributes, or distributed* means send or sent to all of the private fund's investors, unless the context otherwise requires; provided that, if an investor is a pooled investment vehicle that is *controlling, controlled by, or under common control* with (a "control relationship") the adviser or its *related persons*, the adviser must look through that pool (and any pools in a control relationship with the adviser or its *related persons*) in order to send to investors in those pools.

*Fund-level subscription facilities* means any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness incurred by the private fund that is secured by the *unfunded capital commitments* of the private fund's investors.

*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.

*Illiquid fund* means a private fund that:

- (1) Is not required to redeem interests upon an investor's request; and
- (2) Has limited opportunities, if any, for investors to withdraw before termination of the fund.

*Internal rate of return* means the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

*Liquid fund* means a private fund that is not an *illiquid fund*.

*Multiple of invested capital* means, as of the end of the applicable fiscal quarter:

- (1) The sum of:
  - (i) The unrealized value of the illiquid fund; and
  - (ii) The value of all distributions made by the illiquid fund;
- (2) Divided by the total capital contributed to the *illiquid fund* by its investors.

*Net IRR* means an *internal rate of return* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

*Net MOIC* means a *multiple of invested capital* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

*Performance-based compensation* means allocations, payments, or distributions of capital based on the private fund's (or any of its investments') capital gains, capital appreciation and/or other profit.

*Portfolio investment* means any entity or issuer in which the private fund has directly or indirectly invested.

*Portfolio investment compensation* means any compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the *portfolio investment* attributable to the private fund's interest in such *portfolio investment*, including, but not limited to, origination, management, consulting, monitoring, servicing, transaction, administrative, advisory, closing, disposition, directors, trustees or similar fees or payments.

*Related person* means:

- (1) All officers, partners, or directors (or any person performing similar functions) of the adviser;
- (2) All persons directly or indirectly *controlling* or *controlled* by the adviser;
- (3) All current employees (other than employees performing only clerical, administrative, support or similar functions) of the adviser; and
- (4) Any person under common *control* with the adviser.

*Reporting period* means the private fund's fiscal quarter covered by the quarterly statement or, for the initial quarterly statement of a newly formed private fund, the period covering the private fund's first two full fiscal quarters of operating results.

*Securitized asset fund* means any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt holders.

*Similar pool of assets* means a pooled investment vehicle (other than an investment company registered under the Investment Company Act of 1940, a company that elects to be regulated as such, or a *securitized asset fund*) with substantially similar investment policies, objectives, or strategies to those of the *private fund* managed by the investment adviser or its *related persons*.

*Statement of contributions and distributions* means a document that presents:

- (1) All capital inflows the private fund has received from investors and all capital outflows the private fund has distributed to investors since the private fund's inception, with the value and date of each inflow and outflow; and
- (2) The net asset value of the private fund as of the end of the *reporting period*.

*Unfunded capital commitments* means *committed capital* that has not yet been contributed to the private fund by investors.

## **Quarterly Statements - Rule Language (Redline - Original to Final)**

### **§ 275. 211(h)(1)-2 Private fund quarterly statements.**

(a) *Quarterly statements.* As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall prepare a quarterly statement that complies with paragraphs (a)-(f) through (g) of this section for any private fund (other than a securitized asset fund) that it advises, directly or indirectly, that has at least two full calendar~~fiscal~~ quarters of operating results, and distribute the quarterly statement to the private fund's investors, if such private fund is not a fund of funds, within 45 days after the end of each calendar quarter end of the first three fiscal quarters of each fiscal year of the private fund and 90 days after the end of each fiscal year of the private fund and, if such private fund is a fund of funds, within 75 days after the end of the first three fiscal quarters of each fiscal year and 120 days after the end of each fiscal year, in either case, unless such a quarterly statement is prepared and distributed by another person.

(b) *Fund table.* The quarterly statement must include a table for the private fund that discloses, at a minimum, the following information, presented both before and after the application of any offsets, rebates, or waivers for the information required by paragraphs (b)(1) and (2) of this section:

(1) A detailed accounting of all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its related persons by the private fund during the reporting period, with separate line items for each category of allocation or payment reflecting the total dollar amount, including, but not limited to, management, advisory, sub-advisory, or similar fees or payments, and performance-based compensation;

(2) A detailed accounting of all fees and expenses allocated to or paid by the private fund during the reporting period (other than those listed in paragraph (b)(1) of this section), with separate line

items for each category of fee or expense reflecting the total dollar amount, including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses; and

(3) The amount of any offsets or rebates carried forward during the reporting period to subsequent periods to reduce future payments or allocations to the adviser or its related persons.

(c) *Portfolio investment table.* The quarterly statement must include a separate table for the private fund's covered portfolio investments that discloses, at a minimum, the following information for each covered portfolio investment: ~~(1) A~~ detailed accounting of all portfolio investment compensation allocated or paid to the investment adviser or any of its related persons by the covered portfolio investment during the reporting period, with 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; ~~and~~

~~(2) The fund's ownership percentage of each such covered portfolio investment as of the end of the reporting period, or zero, if the fund does not have an ownership interest in the covered portfolio investment, along with a brief description of the fund's investment.~~

(d) *Calculations and cross-references.* The quarterly statement must include prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated and include cross references to the sections of the private fund's organizational and offering documents that set forth the applicable calculation methodology.

(e) *Performance.* (1) No later than the time the adviser sends the initial quarterly statement, the adviser must determine that the private fund is an illiquid fund or a liquid fund.

(2) The quarterly statement must present the following with equal prominence:

~~b.(ii) Illiquid Funds:funds.~~ For an *illiquid fund*:

(A) The following performance measures, shown since inception of the *illiquid fund* through the end of the quarter covered by the quarterly statement (or, to the extent quarter-end numbers are not available at the time the adviser distributes the quarterly statement, through the most recent practicable date) and computed ~~with and~~ without the impact of *any fund-level subscription facilities*:

(1) *Gross IRR* and *gross MOIC* for the *illiquid fund*;

(2) *Net IRR* and *net MOIC* for the *illiquid fund*; ~~and~~

(3) *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; ~~and~~

~~4.(B)~~ A statement of contributions and distributions for the illiquid fund.

(iii) *Other matters.* The quarterly statement must include the date as of which the performance information is current through and prominent disclosure of the criteria used and assumptions made in calculating the performance.

(f) *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 ~~substantially~~ similar pools of assets.

(g) *Format and content.* The quarterly statement must use clear, concise, plain English and be presented in a format that facilitates review from one quarterly statement to the next.

(h) *Definitions.* For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)-1.

## Quarterly Statements - Relevant Definitions (Redline - Original to Final)

*Adviser clawback* means any obligation of the adviser, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the private fund pursuant to the private fund's governing agreements.

*Committed capital* means any commitment pursuant to which a person is obligated to acquire an interest in, or make capital contributions to, the private fund.

*Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. For the purposes of this definition, control includes:

- (1) Each of an investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;
- (2) A person is presumed to control a corporation if the person:
  - (i) Directly or indirectly has the right to vote 25% ~~percent~~ or more of a class of the corporation's voting securities; or
  - (ii) Has the power to sell or direct the sale of 25% ~~percent~~ or more of a class of the corporation's voting securities;
- (3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% ~~percent~~ or more of the capital of the partnership;
- (4) A person is presumed to control a limited liability company if the person:
  - (i) Directly or indirectly has the right to vote 25% ~~percent~~ or more of a class of the interests of the limited liability company;
  - (ii) Has the right to receive upon dissolution, or has contributed, 25% ~~percent~~ or more of the capital of the limited liability company; or
  - (iii) Is an elected manager of the limited liability company; ~~or~~
- (5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

*Covered portfolio investment* means a portfolio investment that allocated or paid the investment adviser or its related persons portfolio investment compensation during the reporting period.

*Distribute, distributes, or distributed* means send or sent to all of the private fund's investors, ~~unless the context otherwise requires~~; provided that, if an investor is a pooled investment vehicle that is controlling, controlled by, or under common control with (a "control relationship") the adviser or its related persons, the adviser must look through that pool (and any pools in a control relationship with the adviser or its related persons) in order to send to investors in those pools.

*Fund-level subscription facilities* means any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness incurred by the private fund that is secured by the *unfunded capital commitments* of the private fund's investors.

*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.

*Illiquid fund* means a private fund that:

- ~~(1) Has a limited life;~~
- ~~(2) Does not continuously raise capital;~~



- ~~(3) (1) Is not required to redeem interests upon an investor's request; and~~  
~~(4) Has as a predominant operating strategy the return of the proceeds from disposition of investments to investors;~~  
~~(5) (2) Has limited opportunities, if any, for investors to withdraw before termination of the fund; and~~  
~~(6) Does not routinely acquire (directly or indirectly) as part of its investment strategy market-traded securities and derivative instruments.~~

*Internal rate of return* means the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

*Liquid fund* means a private fund that is not an illiquid fund.

*Multiple of invested capital* means, as of the end of the applicable calendarfiscal quarter:

- (1) The sum of:
  - (i) The unrealized value of the *illiquid fund*; and
  - (ii) The value of all distributions made by the *illiquid fund*;
- (2) Divided by the total capital contributed to the *illiquid fund* by its investors.

*Net IRR* means an *internal rate of return* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

*Net MOIC* means a *multiple of invested capital* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

*Performance-based compensation* means allocations, payments, or distributions of capital based on the private fund's (or any of its portfolio investments') capital gains ~~and/or~~, capital appreciation and/or other profit.

*Portfolio investment* means any entity or issuer in which the private fund has directly or indirectly invested.

*Portfolio investment compensation* means any compensation, fees, and other amounts allocated or paid to the investment adviser or any of its related persons by the portfolio investment attributable to the private fund's interest in such portfolio investment, including, but not limited to, origination, management, consulting, monitoring, servicing, transaction, administrative, advisory, closing, disposition, directors, trustees or similar fees or payments.

*Related person* means:

- (1) All officers, partners, or directors (or any person performing similar functions) of the adviser;
- (2) All persons directly or indirectly controlling or controlled by the adviser;
- (3) All current employees (other than employees performing only clerical, administrative, support or similar functions) of the adviser; and
- (4) Any person under common control with the adviser.

*Reporting period* means the private fund's calendarfiscal quarter covered by the quarterly statement or, for the initial quarterly statement of a newly formed private fund, the period covering the private fund's first two full calendarfiscal quarters of operating results.

*Securitized asset fund* means any private fund whose primary purpose is to issue asset backed securities and whose investors are primarily debt holders.

*Substantially similar* ~~Similar~~ pool of assets means a pooled investment vehicle (other than an investment company registered under the Investment Company Act of 1940 ~~or~~, a company that elects to be

regulated as such, or a securitized asset fund) with substantially similar investment policies, objectives, or strategies to those of the private fund managed by the investment adviser or its related persons.

Statement of Contributions contributions and Distributions distributions means a document that presents:

- (1) All capital inflows the private fund has received from investors and all capital outflows the private fund has distributed to investors since the private fund's inception, with the value and date of each inflow and outflow; and
- (2) The net asset value of the private fund as of the end of the reporting period.

*Unfunded capital commitments* means committed capital that has not yet been contributed to the private fund by investors.