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Alert | Financial Regulatory & Compliance/ Investment Management/Private Funds

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Private Fund Adviser Rulemaking

By a 3-2 party-line vote, on Aug. 23, 2023, the Securities and Exchange Commission (the "**SEC**") adopted some of the most significant new rules under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"), since the elimination of the old "15 or fewer" exemption that most private fund advisers had relied upon prior to the 2010 enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act. While some of the most controversial aspects of the new private fund adviser rules, which the SEC had originally proposed on Feb. 9, 2022 (the "**Proposed Rules**"), were omitted or scaled back in the adopted version of these rules (the "**Final Rules**"), the Final Rules nonetheless impose numerous onerous restrictions and requirements on nearly all investment advisers to private funds[1] ("**Private Fund Advisers**"), whether or not they are SEC-registered or exempt from registration. The Final Rules not only require substantial additional disclosures, but also mandate informed consent with respect to certain activities and certain fees and expenses, thereby adding a significant compliance burden on Private Fund Advisers, which burden was also recently amplified under the SEC's new marketing rule that registered investment advisers were required to comply with as of Nov. 4, 2022 (the "**Marketing Rule**").

[1] The adopting release cites the Advisers Act's definition of a "**private fund**" contained in Section 202(a)(29) thereof, "an issuer that would be an investment company, as defined in section 3 of the Investment Company Act…but for section 3(c)(1) or 3(c)(7) of that Act," and goes on to say that, subject to the exception for securitized asset funds discussed herein, the terms "private fund" and "fund" as used by the SEC have this meaning. Based on this usage and in light of other guidance provided by the SEC in the past, the Final Rules do not apply to other pooled investment vehicles exempt from the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), for other reasons, unless the investment adviser thereto has chosen to treat any such vehicle as relying upon the exemption contained in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act (for example, in order that the investment adviser can rely upon the private fund adviser exemption from SEC registration under Section 203(m) of the Advisers Act).

In addition, the SEC also adopted rule amendments requiring *all* registered investment advisers to document their annual compliance reviews in writing (the "**Compliance Rule**").

Only two categories of Private Fund Advisers are completely exempt from the Final Rules: (i) advisers to securitized asset funds, which generally include issuers of collateralized loan obligations (CLOs), and (ii) Private Fund Advisers whose principal offices and places of business are outside of the United States ("**non-U.S. Advisers**") with respect to any funds they advise that are domiciled in non-U.S. jurisdictions, even if U.S. investors have invested in such funds.[2] Throughout this GT Alert, the term Private Fund Advisers should be read to exclude these two categories of investment advisers. Exempt reporting advisers (ERAs) and other Private Fund Advisers that are not SEC-registered are not subject to the Quarterly Statement Rule, the Fund Audit Rule, or the Adviser-Led Secondaries Rule, but are subject to all other aspects of the Final Rules (i.e., the Preferential Treatment Rule, the Restricted Activities Rule, and the Compliance Rule).

Below is a substantive overview of the Final Rules and a discussion of certain key deviations from the Proposed Rules.[3]

Final Rules Applicable to All Private Fund Advisers, Regardless of SEC Registration Status

The Preferential Treatment Rule

Under the "**Preferential Treatment Rule**," Private Fund Advisers may not grant, through a side letter or otherwise, (i) preferential redemption or liquidity rights to any investor in a private fund (collectively, "**Investors**" and, as to any Private Fund Adviser, the private funds it advises, collectively, "**Funds**"), unless required by applicable law, rule, regulation – such as ERISA, bank regulatory laws, and state "pay-to-play" laws, rules, or regulations – or order of any governmental authority, or (ii) preferential information rights with respect to any portfolio investment or exposure, if, in each case, the adviser reasonably expects the preferential right(s) to have a material negative effect on other Investors, *unless* all other Investors in the applicable Fund *and* any "similar pool of assets"[4] are also offered such rights. Furthermore, Private Fund Advisers may not grant to an Investor any other form of "preferential treatment" *unless* (x) any preferential treatment with respect to any material economic term applicable to the Investor is disclosed in writing to other Investors before they make their respective commitments, and (y) all other preferential terms are disclosed to other Investors, on a timeline that varies based on Fund type: for an illiquid fund,[5] such disclosure must be made as soon as reasonably practicable following the end of the applicable Fund's fundraising period, and for a liquid fund, such disclosure must be made as soon as reasonably practicable following the applicable Investor's investment. The foregoing requirements must be taken into account across all "similar pools of assets" (e.g., offshore and onshore parallel funds designed to invest in tandem, and different funds with substantially similar investment policies, objectives, or strategies), and Private Fund Advisers must also provide an annual statement to each Investor disclosing any new preferential treatment granted to other Investors in a Fund (or any similar pool of assets) since the time of such Investor's original subscription.

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[2] However, non-U.S. Advisers are subject to the Final Rules with respect to the U.S.-domiciled private funds that they advise.
[3] We are mindful that certain industry trade groups have suggested that they plan to pursue legal challenges to the Final Rules.
[4] Defined as "a pooled investment vehicle (other than an investment company under the Investment Company Act of 1940 or a company that elects to be regulated as such) with substantially similar investment policies, objectives, or strategies to those of the private fund managed by the adviser or its related persons."
[5] The adopting release defines an "illiquid fund" as a private fund that (i) is not required to redeem interests upon an investor's request and (ii) has limited opportunities, if any, for investors to withdraw before termination of the fund. A "liquid fund" is any private fund that is not an illiquid fund.

The Restricted Activities Rule

The "Prohibited Activities Rule" under the Proposed Rules would have prohibited a Private Fund Adviser from (i) being indemnified for negligent conduct (as opposed to the more common gross negligence standard); (ii) reducing clawbacks by any actual, potential, or hypothetical taxes; (iii) charging fees and expenses associated with SEC examinations (or those of other regulators) or with its or any of its related persons' regulatory compliance obligations, including routine filings; (iv) charging non-pro rata fees or expenses in connection with any portfolio investment (e.g., allocating such fees exclusively to a "main fund" rather than charging a "co-investment fund" or "employees fund" its pro rata share); (v) borrowing or receiving an extension of credit from any Fund); and (vi) charging monitoring, servicing, consulting, or other fees for unperformed services (so-called "accelerated" fees). By contrast, the renamed "**Restricted Activities Rule**" adopted as part of the Final Rules omits the restrictions in clauses (i) and (vi) and, rather than prohibiting each of the activities in clauses (ii), (iii), (iv), and (v), instead imposes specific written disclosure requirements on Private Fund Advisers that must be fulfilled prior to their engaging in such activities (or within specified timeframes thereafter), as set forth below.

For purposes of the Restricted Activities Rule, the requirements apply to activities of the Private Fund Adviser's related persons and its and their respective owners, too.

– *After-Tax Clawbacks*

A Private Fund Adviser may reduce the amount of its clawback by actual, potential, or hypothetical taxes, but if it does so, it must disclose, in a written notice to Investors in the applicable Fund within 45 days of the end of the fiscal quarter in which the clawback occurs, the aggregate dollar amounts of the clawback *both* before and after any such reduction.

– *Fees and Expenses Associated with Regulatory, Compliance, Examinations, and Investigations*

A Private Fund Adviser may allocate its and its related persons' own regulatory, compliance, and examination-related fees and expenses to Funds if it discloses, in a written notice to Investors therein within 45 days of the end of the fiscal quarter in which the applicable expenses were incurred, the amounts of all such fees and expenses. By contrast, before a Private Fund Adviser is permitted to allocate any fees or expenses associated with any government or regulatory investigation to any Fund(s), it must obtain written consent from a majority in interest of the Investors (excluding any interests held by any of the Private Fund Adviser's related persons for purposes of this determination) in the applicable Fund(s). Notwithstanding any such consent, Private Fund Advisers are prohibited from allocating to their Funds any fees or expenses associated with regulatory investigations (whether of the adviser or any of its affiliates) that result in any sanctions for violations of the Advisers Act or any of the rules promulgated thereunder.

– *Non-Pro Rata Allocation of Fees and Expenses of Portfolio Investments*

When multiple Funds or other clients (such as separately managed accounts) of a Private Fund Adviser or its related persons have invested, or propose to invest, in the same portfolio investment, the Private Fund Adviser may only charge or allocate fees and expenses arising from or related to the portfolio investment on a non-pro rata basis if (i) the allocation or charge is "fair and equitable under the circumstances" and (ii) in advance of so doing, it distributes written notice to each Investor in the impacted Funds describing each non-pro rata charge or allocation and explaining what makes it fair and equitable under the circumstances. It also is worth noting that the SEC elected not to define "pro rata" or stipulate the basis

upon which a pro rata allocation is to be made, which affords the Private Fund Adviser some measure of discretion in determining the methodology of the allocation.

– *Borrowing from Clients*

Before engaging in any borrowing of cash, securities, or other assets, or receiving any loan or other extension of credit, from a Fund, Private Fund Advisers must (i) provide written notice to Investors therein that describes the material terms of such borrowing (such as the amount, interest rate, and maturity of such borrowing) and (ii) obtain written consent from a majority in interest of such Investors (excluding any interests held by any of the Private Fund Adviser's related persons for purposes of this determination). The SEC noted that this rule does not impose restrictions on a Private Fund Adviser's ability to borrow directly from Investors; it only affects borrowings from Funds.

– *Approach to Disclosure and Consent Requirements*

Other than requiring the foregoing notices to be distributed in writing, the Final Rules do not specify any particular mode of distribution; thus, Private Fund Advisers may be able to leverage existing investor portals and other distribution channels typically used by fund administrators to comply with these new disclosure and consent requirements. The Final Rules also do not prohibit the use of negative consent, which approach is employed in certain other circumstances where Private Fund Advisers request consent from Investors under the existing rules. The SEC notes, for the avoidance of doubt, that "*the Final Rules do not change the applicability of any other disclosure and consent obligations, whether under law, rule, regulation, contract, or otherwise. For example, the adviser, as a fiduciary, is obligated to act in the fund's best interest and to make full and fair disclosure of all conflicts and material facts which might incline an investment adviser – consciously or unconsciously – to render advice which is not disinterested such that a client can provide informed consent to the conflict. See 2019 IA Fiduciary Duty Interpretation, supra footnote 5.*"

– *Accelerated Monitoring, Consulting, and Services Fees*

Although the SEC omitted from the Restricted Activities Rule its proposal to prohibit Private Fund Advisers from charging portfolio companies for future services that the Private Fund Adviser or its related persons do not ultimately, or do not reasonably expect to, provide (e.g., accelerated monitoring, consulting, and services fees, among others), the SEC shared its view in the adopting release that these practices "*generally already run contrary to an adviser's obligations to its clients under the Federal fiduciary duty*." Because the SEC provided this color to explain why its decision on this topic deviated from its Proposed Rules, Private Fund Advisers should be diligent in their assessments of services rendered (or expected to be rendered) to Funds by any management company, asset servicer, or other affiliate and promptly refund any amounts advanced in respect of which no services were actually performed.

The compliance date for the **Preferential Treatment Rule** and **Restricted Activities Rule** is 12 months after publication of the Final Rules in the Federal Register (such publication date, as used herein, the "**Effective Date**") for Private Fund Advisers with $1.5 billion or more in private fund assets (which, incidentally, is the same size threshold for "Large Advisers" with respect to Form PF). Private Fund Advisers with less than $1.5 billion in private fund assets have another six months to comply (i.e., until 18 months after the Effective Date). The Final Rules include "legacy" status for Funds that have commenced operations prior to the applicable compliance dates that allows them to grandfather their existing fund documents and side letters for the prohibitions portion of the **Preferential Treatment Rule** (relating to preferential redemption rights and information about portfolio holdings) and the aspects of the

Restricted Activities Rule that require investor consent (other than charging for fees and expenses of an investigation that results in sanctions under the Advisers Act or the rules thereunder, which is prohibited by the Final Rules). Funds that commenced operations prior to the applicable compliance dates will be required to comply with all other portions of the Final Rules as of the applicable compliance dates.

Final Rules Applicable Solely to SEC-Registered Private Fund Advisers

Quarterly Statements Rule

In addition to the foregoing requirements, all SEC-registered Private Fund Advisers are required to distribute to Investors in each Fund certain written quarterly statements containing detailed information ("**Quarterly Reports**"), as discussed further below, within 45 days after the first three fiscal quarter-ends of each fiscal year and within 90 days following each fiscal year-end (except in the case of Private Fund Advisers to fund-of-funds, which have until 75 days following the applicable fund-of-fund's fiscal quarter-end and 120 days after its fiscal year-end). The Final Rules specify that these Quarterly Reports must include (i) a detailed accounting of fund-level expenditures in tabular format (the "**Fund-Level Expenses Table**"); (ii) a detailed accounting of certain portfolio investment compensation in tabular format (the "**Portfolio-Level Fees Table**"); (iii) expense calculation disclosures with a methodology discussion and cross-references to such Fund's organizational documents; and (iv) certain standardized performance information, the format of which varies based on Fund type.

– *Fund-Level Expenses Table*

The Fund-Level Expenses Table must be prepared for each Fund and must include:

a) all compensation, fees, and other amounts *allocated or paid **to*** the Private Fund Adviser (or any of its related persons) by the Fund, with a separate line item for each category (including, without limitation, management, advisory, sub-advisory, or similar fees or payments, and performance-based compensation);

b) all fees and expenses *allocated to or paid **by*** the Fund (regardless of the recipient or service provider), with a separate line item for each category (including, without limitation, organizational, accounting, legal, administration, audit, tax, due diligence, and travel expenses), but without repeating the items listed in (a) above; and

c) the amount of any offsets or rebates carried forward to reduce future payments or allocations to the Private Fund Adviser (or any of its related persons) that otherwise would have been included in (a) above.

The **Quarterly Statements Rule** intends to capture all forms of compensation, fees, and expenses in a fashion similar to that of a general ledger (which, incidentally, is among the documents often requested by the SEC's Division of Examinations' Staff during routine examinations), and does not provide for a *de minimis* exclusion or general grouping of smaller expenses into broad categories, such as "miscellaneous."

– *Portfolio-Level Fees Table*

Another of the Quarterly Reports to be furnished to Investors in each Fund is a detailed accounting of all compensation *allocated or paid to* the Private Fund Adviser (or any of its related persons) during the applicable reporting period by or in connection with each of the Fund's portfolio investments. The

Quarterly Statements Rule intends to capture all potential or actual conflicted compensation arrangements where a Fund's interest in a portfolio investment may be negatively impacted by the allocation or payment of portfolio investment compensation to the Private Fund Adviser (or any of its related persons). As a result, distributions representing profit or return of capital to the Fund would not need to be disclosed in this table; however, all fees, such as origination, management, consulting, monitoring, servicing, transaction, or administrative fees, would need to be disclosed to the extent that they are allocated or paid to the Private Fund Adviser (or any of its related persons) by a portfolio investment or out of (including in connection with the consummation of) a portfolio investment. Similar to the approach taken with adviser compensation and fund expenses required to be disclosed in the Fund-Level Expenses Table, the Portfolio-Level Fees Table must include a separate line item for each category of portfolio investment compensation, and dollar amounts must be calculated both before and after the application of any offsets, rebates, or waivers.

– *Expense Calculation Disclosures, Methodology, and Cross-References*

The Quarterly Reports must prominently disclose the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated. For example, the disclosure would need to include the method used to determine performance-based compensation, such as the distribution waterfall, as applicable. Further, the disclosure must cross-reference the relevant sections of the applicable fund's organizational and offering documents that set forth the calculation methodology for all of the expenses, payments, allocations, rebates, waivers, and offsets noted anywhere in the Quarterly Report.

– *Standardized Performance Information – Liquid vs. Illiquid Funds*

In addition to providing information regarding fees and expenses, the **Quarterly Statements Rule** requires the Quarterly Reports to include standardized Fund performance information, the content of which turns on whether the reporting Fund is deemed liquid or illiquid.

For liquid Funds, the Quarterly Report must include the Fund's (i) *total annual net return* for either its last 10 fiscal years or since the Fund's inception (whichever is shorter); (ii) *average annual net total return* over one-, five-, and 10-year fiscal periods; and (iii) *cumulative net total return* for the fiscal year-to-date through the most recent quarter-end covered by the applicable Quarterly Report.

For illiquid Funds, performance data must be reported in terms of internal rates of return ("**IRR**") and multiples of invested capital ("**MOIC**") – in each case, both gross and net simultaneously for the Fund as a whole – since the Fund's inception, and such metrics must be computed with *and* without the impact of Fund-level subscription facilities. These Quarterly Reports must also include gross calculations of IRR and MOIC for the realized and unrealized portions of the Fund's portfolio, with realized and unrealized performance shown separately. Finally, keeping with the general ledger-type theme, illiquid Funds must present an overview of contributions and distributions for the applicable quarter, reflecting aggregate cash inflows from and outflows to Investors, along with the Fund's net asset value.

Private Fund Advisers should note that the requirements of the foregoing Fund-Level Expenses Table and the standardized performance information in the Quarterly Reports for illiquid Funds differ somewhat from the requirements under the Marketing Rule. Accordingly, certain changes will be necessary to the extent that a Private Fund Adviser deems it appropriate to share any such Quarterly Reports with prospective Investors considering an investment in the same Fund or a new Fund pursuing a similar investment mandate.

The transition period for the Quarterly Statements Rule is 18 months after the Effective Date and, to the extent that so doing would not be misleading and would provide more meaningful information to Investors, Private Fund Advisers are required to consolidate their compliance with the foregoing reporting requirements to cover parallel or similarly situated funds in a single Quarterly Report.

Adviser-Led Secondaries Rule

The Final Rules provide that in connection with any adviser-led secondary transaction,[6] SEC-registered Private Fund Advisers will be required to distribute to Investors in the applicable Fund(s) a written fairness opinion or a written valuation opinion, in each case prepared by an independent third party in the business of preparing such opinions and performing the analysis underlying it, prior to the date by which Investors must submit any response related to their options to participate in such transaction. Together with that written opinion, the Private Fund Adviser must disclose in writing all material business relationships that it or any of its affiliates has (or had within the two years immediately preceding the opinion issuance date) with the third-party opinion provider.

The Final Rules adopted a staggered transition period for the **Adviser-Led Secondaries Rule**: 12 months from the Effective Date for SEC-registered Private Fund Advisers with $1.5 billion or more in private fund assets, and 18 months from the Effective Date for those with less than $1.5 billion in private fund assets.[7]

Fund Audit Rule

Under the **Fund Audit Rule**, SEC-registered Private Fund Advisers must cause each Fund (whether advised directly or indirectly) to undergo a financial statement audit that aligns with Rule 206(4)-2 under the Advisers Act (the "**Custody Rule**").[8] As a result, each Fund's audit must meet the following requirements:

a) the audited financial statements must be (i) prepared in accordance with generally accepted accounting principles, and (ii) delivered to Investors annually within 120 days of the fund's fiscal year-end and promptly upon liquidation; and

b) the audit must be conducted by an independent public accountant that is registered with and inspected regularly by the Public Company Accounting Oversight Board that meets the independence requirements set forth in Rule 2–01(b) and (c) of Regulation S–X of the Securities Exchange Act of 1934, as amended.

[6] Under the adopting release, the SEC uses the phrase "adviser-led secondary transaction" to refer to any transaction initiated by the adviser or any of its related persons that offers investors in the applicable Fund(s) the choice between (i) selling all or a portion of their respective Fund interests and (ii) exchanging or converting all or a portion of their respective Fund interests into interests in another vehicle advised by the Private Fund Adviser or any of its related persons. Whether a transaction qualifies, however, is a facts-and-circumstances-driven determination that should be discussed with counsel in light of the examples provided in the adopting release.

[7] Recent changes to Form PF also include an obligation for certain private equity funds to report adviser-led secondary transactions on Form PF on a quarterly basis. In adopting the Final Rules, the SEC noted such reporting is confidential and will not provide investors with additional information, but that the **Adviser-Led Secondaries Rule** is "*designed to, among other things, make investors better informed about adviser-led secondary transactions in which they may be participating*."

[8] The Fund Audit Rule requires (i) financial statement audits (as defined in Rule 1-02(d) of Regulation S-X) to meet the requirements of (b)(4)(i) through (b)(4)(iii) of the Custody Rule and (ii) financial statements to be delivered in accordance with paragraph (c) of the Custody Rule.

The SEC notes that the **Fund Audit Rule** essentially does away with the "surprise examination" option under the Custody Rule. In addition, the Final Rules provide an exception for SEC-registered Private Fund Advisers that do not control the Fund and are not under common control with the Fund (e.g., an adviser to a fund-of-funds that selects an unaffiliated sub-adviser to implement a portion of the underlying investment strategy). In such case, the Private Fund Adviser is only required to take reasonable steps to ensure that the Fund undergoes an audit satisfying the **Fund Audit Rule**'s conditions.

The transition period for the **Fund Audit Rule** is 18 months after the Effective Date. In addition, it is important to note that the SEC proposed sweeping revisions to the Custody Rule on Feb. 15, 2023 (the "**Proposed Custody Rule**"), which revisions have yet to be adopted. As a result, the Proposed Custody Rule (which the SEC refers to as the "Safeguarding Rule") could have a profound impact on the **Fund Audit Rule**. In recognition of the interplay between the Final Rules and the Proposed Custody Rule, the SEC has reopened the comment period for the Proposed Custody Rule for 60 days after the notice of the reopening is published in the Federal Register, which publication occurred on Aug. 30, 2023 (i.e., the additional comment period is open until Oct. 30, 2023).

Final Rules Applicable to All SEC-Registered Investment Advisers (not only Private Fund Advisers)

The Compliance Rule

The Proposed Rules included a requirement that all registered investment advisers (and not just advisers to private funds) document their annual compliance reviews in writing, and the Final Rules adopted the **Compliance Rule** as proposed. *It is the only aspect of the Final Rules that extends to all SEC-registered investment advisers regardless of whether they manage any private fund assets*. The SEC originally adopted rules regarding the compliance programs of registered investment advisers, and corresponding books and records rules, in 2003, and included a requirement that advisers annually review the adequacy of their compliance policies and procedures and the effectiveness of their implementation, and preserve any records documenting such review; however, there was no express requirement to affirmatively document such annual review. The **Compliance Rule** takes effect on the shortest timeline (60 days from the Effective Date), and in practice, most registered investment advisers already document their annual reviews in some fashion. In the adopting release, the SEC also notes its view that having written documentation of the annual review should allow the SEC and its staff to determine whether the adviser is regularly reviewing the adequacy of its policies and procedures.

The Compliance Rule does not contain any specific elements that must be included in the written annual review; rather, the SEC notes that the requirement is intended to be flexible to allow advisers to use the review procedures they have already developed and found most effective. The SEC provided a non-exhaustive list of ways that an adviser may choose to document its annual compliance review, including: a lengthy written report; quarterly reviews aggregated at year-end; presentations to a board or other governing body like a limited partner advisory committee ("**LPAC**"); a short memorandum summarizing findings; or even informal documentation such as a compilation of notes throughout the year.

The annual review is meant to be available to the SEC and its staff and therefore should be produced promptly upon request (in the case of electronically stored records, the expectation is immediately or within a few hours, with a delay of more than 24 hours only acceptable in unusual circumstances). The SEC stated that the written annual review is not required to be shared with an LPAC or other Investors.

Unlike with the other Final Rules, there is no transition period for the Compliance Rule; it becomes effective and compliance is mandatory as of 60 days following the Effective Date.

Conclusion

The additional compliance burden imposed by the Final Rules will likely be significant to many Private Fund Advisers. Although, as noted above, Funds' governing agreements (including side letters and other arrangements with Investors) that pre-date the applicable compliance dates for the Final Rules do not need to be amended to comply with certain provisions, many provisions of the Final Rules will affect disclosure and reporting practices of existing Funds going forward, including custom reporting templates currently in use and agreed upon with certain Investors and disclosure of side letters entered into prior to the applicable compliance date. The grandfathering provisions under the Final Rules are complex and should be reviewed with counsel, including the extent to which pre-compliance date activities and matters will need to be disclosed or otherwise addressed upon and after the compliance date.

The full impact of the Final Rules will not be known for some time; however, if the SEC's approach with respect to the Marketing Rule is any indication, the SEC staff will be prepared to test Private Fund Advisers' compliance with the Final Rules by way of examinations commencing on the compliance date for each rule. Moreover, the SEC stated both in the open meeting on Aug. 23, 2023, and in the adopting release, that it believes it already has the authority to pursue certain of the elements of the Proposed Rules that were ultimately dropped from the Final Rules. For example, examinations already focus on accelerated monitoring fees and other consulting or servicing fees paid by a portfolio company to the adviser or its affiliates, and other transactions that result in supplemental compensation to the adviser beyond the fees and carried interest governed by the applicable fund documents.

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