

Alert | Financial Regulatory & Compliance



July 2024

SEC Elects Not to Request a Rehearing on Private Funds Rule

Go-To Guide:

- On June 5, 2024, the Fifth Circuit Court of Appeals in New Orleans determined that the Securities and Exchange Commission “exceeded its statutory authority” in adopting the “Private Funds Rule.”
- The SEC had until July 22, 2024, to request a review of the Fifth Circuit Court of Appeal’s June opinion, but elected not to do so.
- Although the SEC can appeal the decision to the U.S. Supreme Court, the agency may be cautious in its approach to have the ruling reheard.

The SEC finalized the Private Funds Rule in August 2023, imposing compliance and regulatory requirements on private fund advisers, as summarized in this [GT Alert](#). The Private Funds Rule requires quarterly disclosure statements to include information about performance fees, expenses, conflicts of interest, and treatment of certain investors.

On June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit unanimously [vacated](#) the Private Funds Rule, determining that the SEC “exceeded its statutory authority in adopting the Final Rule.” While the rule was intended to protect investors who invest in certain private funds and help prevent fraud by the investment advisers to private funds, it imposed significant new requirements on private fund advisers.

After the court's June decision, the SEC had several weeks to review and determine its next steps, with a deadline of July 22, 2024, to request a rehearing. However, the agency filed no such request.

The SEC may attempt to promote a narrower version of the Private Funds Rule that would require reporting rules under antifraud provisions rather than under the Dodd-Frank Act, as the agency initially proposed.

Although the SEC still has several weeks to petition the U.S. Supreme Court to review the Fifth Circuit's June decision, it appears unlikely it will do so. On June 28, the Supreme Court **overturned** 40 years of *Chevron* deference, significantly reducing the ability of regulatory agencies to interpret federal laws, a direct blow to the power of the SEC and other federal agencies.

Notwithstanding the Fifth Circuit and the Supreme Court's respective rulings, it remains to be seen whether the SEC would be successful in appealing the decision to the Supreme Court and how the Fifth Circuit's ruling or any such appeal (if one is made) might impact additional SEC rulemakings for private fund advisers in the future.

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