

The new SEC proposals and their impact on private funds

2022 has seen a number of proposed and enacted reforms which will significantly impact US private fund managers.

The Strengthening American Cybersecurity Act of 2022, which was passed by the US Senate in March 2022, applies to financial service organizations and adds another level of compliance for managers, as they must report cyber-attacks within 72 hours (reduced to 24 hours if a ransomware payment has been made). Disclosure of cyber-events exposes an organization's weaknesses, so there is even more incentive for US managers to continue to invest heavily in their IT security environment.

In respect of the new marketing rules, which will come into force in November 2022, investors will likely see different PPM material for successor funds, especially around case studies and testimonials. Managers will need to ensure that they are transparent about any sponsored testimonials and going forward, case studies can't cherry pick performance.

On February 9, 2022, the Securities and Exchange Commission (the "SEC") published a set of proposed rules and amendments to the Investment Advisors Act of 1940 as amended (the "Act"). This guide focuses on the proposed amendments to the Act and the impact on private fund managers. The Rules seek to increase investor protections through transparency and conflicts management in the private funds space and fly in the face of the principles-based approach to regulation (relying on self-disclosure) that has been a hallmark of the SEC's approach for many years.

The Rules represent the biggest SEC rule making exercise in the private funds space since the introduction of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which brought most large private fund advisers under SEC control. While the Dodd-Frank reforms specifically targeted private fund advisers, the Rules will operate on private funds through their associated advisers. In common with recent rule-making in the EU, the Rules seek to enhance investor protection among the institutional investor community, applying

principles more commonly reserved for retail investors in an arguably wrongheaded way.

While the SEC's approach in proposing the Rules is in some senses unexpected, their impact may be more or less seismic for any given adviser, based on the size, maturity and complexity of that adviser's business. A lack of grandfathering provisions, however, will add complexity to implementation, applying the Rules to existing as well as new private fund arrangements. Parallels in approach with recent EU rulemaking are hard to ignore (i.e. the adoption of an increasing prescriptive approach for institutional investor focussed products) and it will be interesting to see whether the US market tolerates this approach and how successful it will be.

In this guide, we provide an overview of the new rules together with some commentary on the main implications for advisers of closed ended private funds.

Download the full guide here

[Download](#)

What we'll cover in this guide:

- Who is in scope?
- What are the rules?
- Quarterly statements
- Mandatory audit
- Compliance review
- Adviser-led secondaries
- Prohibited activities
- Entry into force and conclusion