

SEC's New Rules and Amendments Essentials for Private Fund Advisors

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Introduction

The SEC adopted a series of rules and rule amendments in August 2023 to enhance regulations for private fund advisors. With these changes, it hopes to improve transparency, competition, and efficiency in the private markets. Though the final rules are less stringent than what was initially proposed in 2022, trade groups, including the Managed Funds Association, have challenged the new rules in court, saying the agency has overreached its statutory authority and interferes with contracts. The new rules will increase the reporting and disclosure requirements for private fund advisors, necessitating additional resource deployment, and increasing costs.

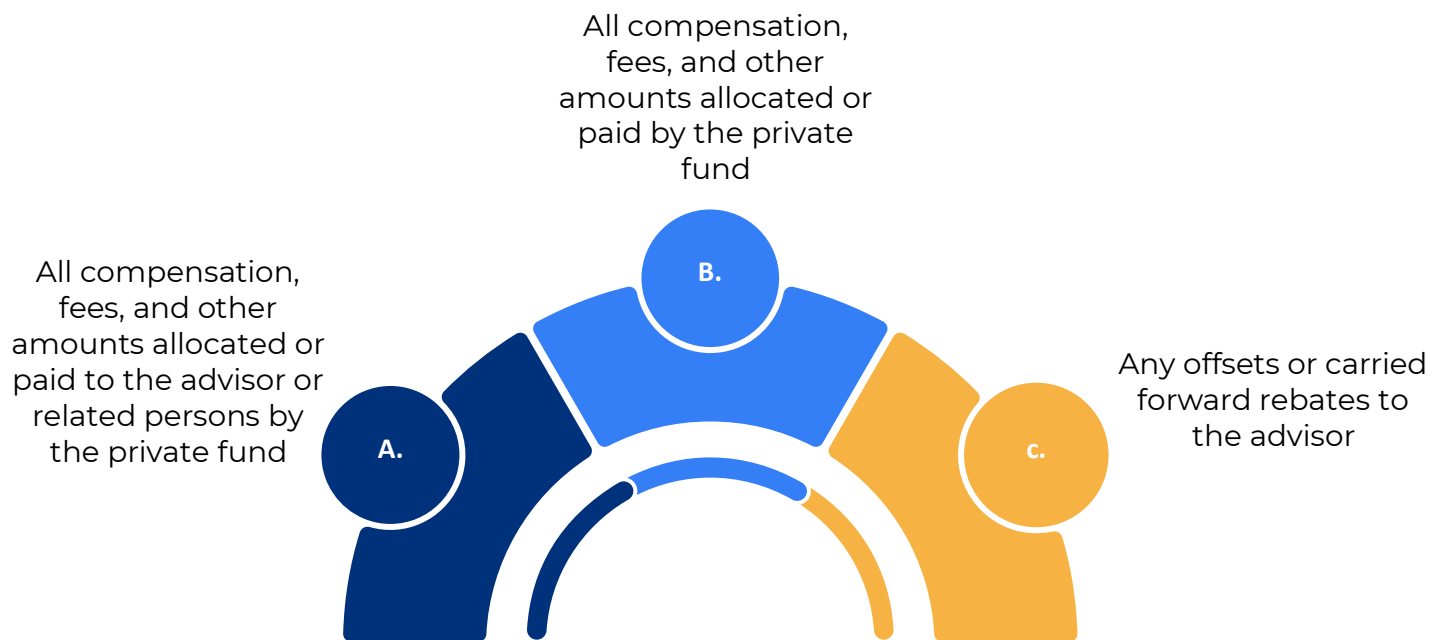
Firms should consider outsourcing these reporting and disclosure requirements and focus internal resources on their core competency. Here are the requirements under the new rule.

1. Quarterly Statement Rule

The rule is designed to improve the investor's ability to assess and monitor fees, expenses, and performance. It requires registered private fund advisors to disclose to investors detailed information about fund-level performance on a quarterly basis.

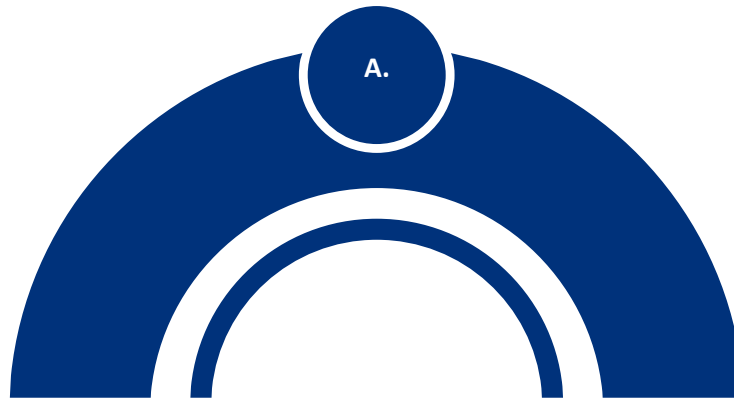
Requirements:

Private Fund Level Disclosures:



Portfolio Investment Level Disclosures:

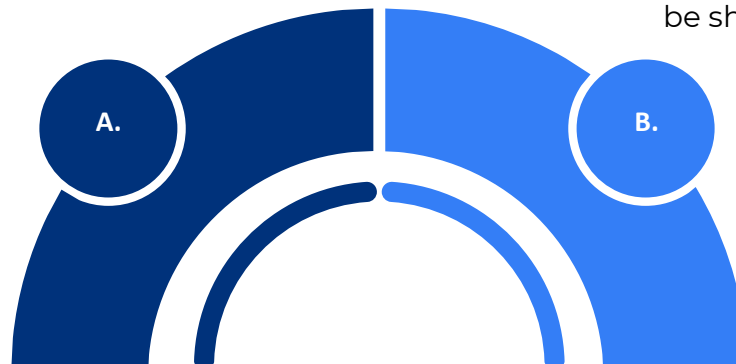
All compensation, fees, and other amounts allocated or paid by the private fund



Performance Disclosure:

For liquid funds, the performance needs to be shown on total return basis on an annual period of 10 years or since inception, whichever is shorter

For illiquid funds, the performance needs to be shown on IRR and MOIC since inception, on both gross and net basis, along with statement of contributions and distributions. Realized and unrealized returns will also need to be shown



Timelines

A private fund that is not a fund of funds must distribute a quarterly statement within 45 days after the end of each of the first three quarters of its fiscal year, and within 90 days after the end of its fiscal year. If the private fund is a fund of funds, then a quarterly statement must be distributed within 75 days after the end of each of the first three quarters and 120 days after the end of the fiscal year.

Additional Requirements for Advisors

The advisors will need to work with administrators and other professional service providers to set up systems to collect the required information regarding the private funds and their portfolio investments and distribute the reports to investors. They would need to form policies and systems and automate wherever possible to ensure the data is retrieved in time. The effort required will be significantly higher for a fund of funds advisor.

TresVista can offer extensive assistance by coordinating with various departments and fund administrators to gather the necessary information, and by tracking and calculating the allocations, expenses, fees, and other disclosures required under the rule.

2. Audit Rule

Under the new rules, SEC-registered investment advisors who provide investment advice to a private fund, either directly or indirectly, are required to undergo an audit of their financial statements. The audit would serve as a check on the advisor's valuation of the fund's assets, and cases of conflict of interest. Private funds are required to undergo audits in accordance with the audit provision under the custody rule. The audit must be performed by an independent public accountant and in accordance with the generally accepted accounting principles.

As an exception, for a fund that the advisor does not control and is neither controlled by nor under common control with the advisor, they only need to take reasonable steps to cause the fund to undergo an audit. The SEC has left it to the advisor's discretion to determine what is reasonable, based on facts and circumstances.

Timelines

The fund's audited statements must be delivered to its investors within 120 days after the end of the fund's fiscal year or upon its liquidation.

Additional Requirements for Advisors

The fund will need to undergo a financial statements audit in accordance with the U.S. law, by an independent public accountant (registered with and subject to inspection by the Public Company Accounting Oversight Board).

A service provider like TresVista can support this by creating audit packs and coordinating with the fund admin and the auditor, thus reducing the workload of the team.

3. Preferential Treatment

The new rules prohibit all fund advisors (registered or unregistered) from providing preferential treatment to any investor regarding the redemption of interest or providing information regarding portfolio holdings if such treatment would have a material, negative effect on other investors in the fund or similar pool of assets. The only exception to this rule is if the redemption is mandated by law or if the same redemption option is available to all investors, both current and future.

The SEC has prohibited advisors from providing any other preferential treatment to investors in the private fund unless there is a written disclosure to current and prospective investments regarding the same. For existing investors, the disclosure needs to be done:

1. **For liquid funds** - as soon as reasonably practicable following the investor's investment in the fund
2. **For illiquid funds** - following the end of the fund's fundraising period

For a prospective investor, the advisor is required to deliver the notice prior to their investment in the fund. Advisors must also distribute an annual written notice to current investors in a private fund. The notice should detail information about any preferential treatment the advisor or its related persons have provided to other investors in the same private fund since the last written notice.

The SEC has implemented legacy status provisions that relate to the prohibition aspect of the Preferential Treatment Rule and not to the disclosure aspect of the rule. Legacy status is for funds that "commenced operations as of the compliance date".

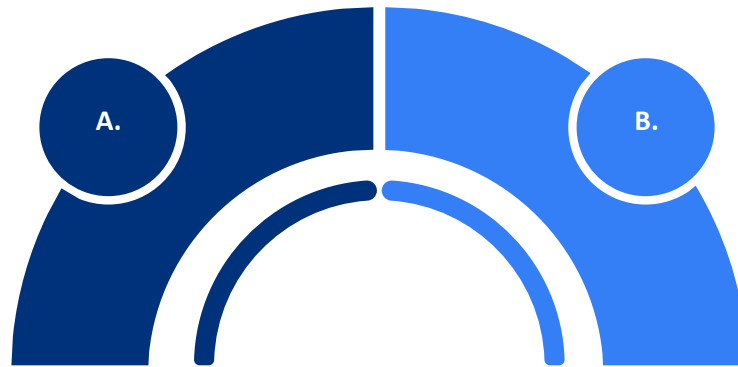
4. New Advisor-led Secondaries Transaction Rule

The new rules apply to SEC-registered advisors who initiate a secondary transaction led by the advisor, giving fund investors the option to sell all or part of their interest in the private fund or to exchange it for new interest in another vehicle advised by the advisor or their related persons.

Under the new rule:

The advisor will need to get a fairness or valuation opinion from an independent body, which needs to be distributed to the private fund investors prior to the due date of the election form

The advisor must disclose in writing any material business relationships between the advisor or its related persons and the independent body



Note: Advisors must make and retain a copy of the fairness opinion or valuation opinion and material business relationship summary distributed to investors, as well as a record of each addressee and the date the opinion and summary were sent

In practice, this is already followed by a majority of advisory-led secondary transactions in terms of valuation. LP advisory committees tasked with reviewing conflicts of interest require sponsors to obtain independent fairness or valuation opinion.

5. Recordkeeping

The SEC has added a requirement for advisors to maintain records of new reporting and disclosure requirements. Advisors must document the addressees, dates of notices sent, and the steps taken to ensure that private fund clients without a control relationship undergo a financial statement audit in compliance with the audit rule.

Under the quarterly statements rule, the advisors are required to keep a record of the calculation method for all expenses, payments, allocations, rebates, and performance listed on all quarterly statements delivered. This recordkeeping will facilitate the SEC staff's ability to assess the advisor's compliance with the new rules. All registered advisors are required to document the annual review of their compliance policies and procedures in writing.

Private fund advisors can look to outsource the recordkeeping to a service provider like TresVista which would reduce the burden on the advisor and allow them to focus on their core competency while also bringing in the knowledge of best practices and efficient processes.

Transition Timeline

For the advisor-led secondaries rule and preferential treatment rule, a staggered compliance timeline is adopted. For advisors with \$1.5 billion or more in private funds assets under management (“larger private fund advisors”), a 12-month transition period is permissible and for advisors with less than \$1.5 billion in private funds assets (“smaller private fund advisors”), an 18-month transition period.

For the audit rule and quarterly statement rule, an 18-month transition period is kept for all private fund advisors.

RULE	LARGE PRIVATE FUND ADVISORS (AUM >=\$1.5Bn)	SMALL PRIVATE FUND ADVISORS (AUM <=\$1.5Bn)
Quarterly Statements (Final Rule 211(h)(1)-2)	March 2025	March 2025
Private Fund Audits (Final Rule 206(4)-10)	March 2025	March 2025
Restricted Activities (Final Rule 211(h)(2)-1)	September 2024	March 2025
Advisor-Led Secondaries (Final Rule 211(h)(2)-2)	September 2024	March 2025
Preferential Treatment (Final Rule 211(h)(2)-3)	September 2024	March 2025

RULE	LARGE PRIVATE FUND ADVISORS
Compliance Program 206(4)-7(b)	November 2023



About TresVista

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reachus@tresvista.com | www.tresvista.com