



FALL CONFERENCE 2023

Walt Disney World Swan - Orlando, FL
November 14-16





PERFORMANCE & ACCOUNTING JOINT SESSION

Discussion on the Private Fund Rule

Moderators:

Christy L. Daniels, CPA, Director - Accounting - Principal Real Estate

Panelists:

Rosellen Bounds, CIPM, Director - ACA Group

Robert Fraher - KPMG LLP - Audit Partner

Jamie Kingsley - Data Governance and Reporting Standards Director

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AGENDA

- General Rule Timeline
- Overview of Private Fund Rule
- Industry Reaction/Status
- Real Estate Impacts
- Reporting Standards' Approach
- Quarterly Statement Review
- Quarterly Statement Timeline
- Fees and Expenses
- Performance Reporting
- Questions

POLLING QUESTIONS #1

How familiar are you with the SEC's new Private Fund Rule?

- A. Very familiar
- B. Somewhat familiar
- C. Not familiar at all

Final Private Fund Rules

- ▶ **SEC Issue Date:**
August 23, 2023
- ▶ **Effective Date:**
September 14, 2023
- ▶ **Final compliance date:**
Quarterly Statement
March 14, 2025
- ▶ **Annual Review**
November 14, 2023
- ▶ **Remainder:**
Large (>1.5B) -
September 14, 2024,
Other (<1.5B) – March
14, 2025

Final Rule Release:

<https://www.sec.gov/files/rules/final/2023/ia-6383.pdf>

Fact Sheet:

<https://www.sec.gov/files/ia-6383-fact-sheet.pdf>

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Final Rules and Amendments

	Overall Impact	Adopted Rule Impact VS Proposal
Quarterly Statement (Only SEC-Registered Private Fund Managers)	High	Little Change
Private Fund Audits (Only SEC-Registered Private Fund Managers)	Low	Decrease
Fairness and Valuation Opinions (Only SEC-Registered Private Fund Managers)	Low	Little Change
Limitations on Preferential Treatment (<i>All Private Fund Managers</i>)	Moderate	Decrease
Restricted Activities (<i>All Private Fund Managers</i>)	Moderate	Decrease
Documented Annual Review (<i>Only SEC-Registered Advisers</i>)	Low	Unchanged

What is a Private Fund?

▶ **Per the SEC:**

- Private funds are privately offered investment vehicles that pool capital from one or more investors and invest in securities and other instruments or investments
 - ▶ Each investor in a private fund invests by purchasing securities (which are generally issued by the fund in the form of interests or shares) and then participates in the fund through the securities that it holds.
 - ▶ 3(c)(1) and 3(c)(7) Investment Company Act of 1940 exempt funds

▶ **Examples of Private Funds:**

- ▶ hedge fund, private equity, real estate, venture funds, and other “private” funds

POLLING QUESTIONS #2

Will the rule apply to the type of fund(s) your firm manages?

- A. Does apply
- B. Does not apply
- C. Are not sure

POLLING QUESTIONS #3

Will you be responsible in any capacity for implementing this at your firm?

- A. Yes
- B. No

Industry Reaction/Status

- ▶ Number of firms currently in litigation over the rule
- ▶ Rule is still in effect and most likely won't change prior to the effective date
- ▶ Firms proceeding as if all elements in the PF Rule will continue as written

Additional Regulatory Impact

- ▶ 3 statements potentially required
- ▶ Lots of industry push around gross to be calculated at the fund level:
 - ▶ GIPS recommends gross but requires it to be at the fund-level
 - ▶ FINRA Rule 20-21 does not allow unrealized gross deal-level returns to be presented as it requires firms to be GIPS consistent and must be at fund-level
 - ▶ New SEC Marketing Rule allows gross deal-level performance however it is deemed to be extracted and firms must show a net return
 - ▶ New SEC Private Fund Rule requires gross performance almost universally going to change to a fund level IRR

Reporting Standard's Approach

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SEC Private Fund Adviser Rules

- ▶ Project Prospectus approved September 20, 2023
- ▶ Created Oversight Task Force that meets at least monthly
- ▶ Established collaborative connection with Big Four Accounting Firms, CFA Institute, ILPA, Real Estate Round Table, and attorneys
- ▶ Created two sub-task forces focused on the Quarterly Statement Rule:
 - ▶ Fees and Expenses
 - ▶ Performance Reporting
- ▶ Project Prospectus and task forces member list can be found at www.reportingstandards.info under “Current Projects” tab

Quarterly Statement Rule: Fees and Expenses

▶ FUND LEVEL

- ▶ Expense ratios are not sufficient
- ▶ Table Format
 - ▶ Dollar amounts
 - ▶ By category
 - ▶ No de minimis or miscellaneous categories
 - ▶ No broad categories
- ▶ Three Sections
 - ▶ #1 Adviser Compensation
 - ▶ #2 Fund fees and expenses not in Adviser Compensation
 - ▶ #3 Offsets, Rebates, and Waivers
 - ▶ #1 and #2 must be shown before and after #3
 - ▶ Must disclose any carryforwards

Quarterly Statement Rule: Fees and Expenses

▶ PORTFOLIO INVESTMENT LEVEL

- ▶ No requirement to show ownership
- ▶ Only “Covered Portfolio Investments”
- ▶ Portfolio investment table is designed to show scope and magnitude of any investment level compensation
 - ▶ Portfolio investments that allocated or paid the investment adviser or related persons portfolio investment compensation during the reporting period.
 - ▶ Portfolio investment compensation should be shown before and after application of any offsets, rebates, or waivers (like fund level section re: categories and details).

▶ CROSS REFERENCE TO FUND DOCUMENTS

▶ LEVERAGING EXISTING GUIDANCE

- ▶ Total Global Expense Ratio (TGER)
- ▶ Related Party Disclosures in Accounting Fair Value Manual
- ▶ Real Estate Supplement to the ILPA Template

POLLING QUESTIONS #4

Are you going to package the Quarterly Statement with your quarterly Investor Reporting or will it be a separate document?

- A. With quarterly Investor Reporting
- B. Separate document
- C. Still deciding

Quarterly Statement Rule: Performance Reporting

▶ REDEMPTION AND WITHDRAWAL

- ▶ Represent distinguishing features between illiquid and liquid funds

▶ LIQUID FUNDS

- ▶ Any private fund that is not an illiquid fund

▶ ILLIQUID FUNDS

- ▶ A private fund that:
 - ▶ Is not required to redeem interests upon investor's request; and
 - ▶ Has limited opportunities, if any, for investors to withdraw before termination of the fund
- ▶ Generally closed-end funds that do not offer redemption/withdrawal options other than in exceptional circumstances

Quarterly Statement Rule: Performance Reporting

▶ LIQUID FUNDS

- ▶ Net total return on annual basis
 - ▶ Annually, 10 fiscal years prior to the quarterly statement or since inception (whichever is shorter); and
 - ▶ Average annual over 1, 5, and 10 fiscal year periods; and
 - ▶ Cumulative for current fiscal year as of current quarter

▶ ILLIQUID FUNDS

- ▶ Internal rates of return and multiples of invested capital since inception
 - ▶ Performance shown with and without fund level subscription facilities
 - ▶ Performance shown with realized and unrealized portions shown separately
- ▶ Statement of contributions and distributions

- ▶ Shown with equal prominence
- ▶ No Public Market Equivalent reporting requirement
- ▶ Required after first two full quarters of operating results

Quarterly Statement Rule: Performance Reporting

- ▶ Prominent Disclosure of Performance Calculation Information
 - ▶ Criteria used and assumptions made in calculating performance
 - ▶ Must be included within the quarterly statement and not separately

Quarterly Statement Rule: Timing

- Fiscal Year
- Q+45, Y+90
- Fund of Funds = Q+75, Y+120

Private Fund Rule - Quarterly Statements Timeline

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POLLING QUESTIONS #5

If your firm is going to manage this internally, what group will be responsible?

- A. Accounting
- B. Joint effort (Legal, Accounting, Performance, Systems, etc.)
- C. Asset/Portfolio Management
- D. External Counsel/Compliance Consultant
- E. Outsourcing it!
- F. Still deciding

Questions?

Please direct all follow up questions to Jamie Kingsley jkingsley@ncreif.org

Task Force Goals (within next 2 qtrs.):

- Provide deliverable template
- Guidance for implementation
- Note: Must follow standard approval process



THANK YOU!



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