

The Top 10 SEC Compliance Risks for Private Fund Advisers

With tremendous growth in the private markets has come increased regulatory scrutiny. For the past several years, the U.S. Securities and Exchange Commission (SEC) has prioritized protecting investors, enhancing visibility into private funds, and examining private fund advisers. The result has been an uptick in SEC scrutiny and enforcement actions.

Now, firms of all sizes and strategies must review and, in some cases, improve their compliance processes and tools. It's particularly important to keep a close eye on the 10 risk categories we discuss below as many of these are ongoing SEC exam priorities.

Fueled by the world's largest repository of industry data, Ontra's Legal Operating System for Private Markets offers AI-powered tools to accelerate workflows, while reducing cost and risk. With Ontra, advisers can strengthen their fundraising, entity management, and obligation management practices and be confident in their preparedness for an SEC exam.

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01 Conflicts of Interest

The SEC remains focused on conflicts of interest, requiring firms to implement policies and procedures to mitigate these conflicts, and ensure proper disclosures are made to investors. Firms should focus on core Code of Ethics policies targeted at addressing conflicts of interest related to gifts and entertainment, use of material nonpublic information, service provider selection, and fee and expense allocations.



The SEC started bringing enforcement actions based on the Marketing Rule in August 2023 and has since charged numerous advisers.

02 Marketing Materials

The Division of Examinations (Division) is keeping a watchful eye on advisers' marketing practices, highlighting the new Marketing Rule in the 2024 Exam Priorities¹ and a Risk Alert from June 8, 2023². The Division is interested in whether advisers have implemented written policies to prevent violating the Marketing Rule, properly disclosed information on Form ADV, and documented their substantiation processes based on the Books and Records Rule. Most importantly, however, the SEC is looking for any untrue, misleading, or deceptive statements. The SEC started bringing enforcement actions based on the Marketing Rule in August 2023 and has since charged numerous advisers.

¹<https://www.sec.gov/files/2024-exam-priorities.pdf>

²<https://www.sec.gov/files/risk-alert-marketing-rule-announcement-phase-3-060823.pdf>

03 Contractual Obligations to LPs

In 2024, the SEC maintains its focus on whether advisers have upheld their contractual commitments to LPs, including those pertaining to limited partnership advisory committees (or similar structures), as well as notification and consent provisions.

“The top objective was being able to confidently and quickly provide that list of side letter provisions to the SEC when requested. And that was exactly what Ontra’s Insight enabled us to do.”



Kimberly Futrell
CCO & CFO, Pharos Capital Group

04 Fees & Expenses

The Division’s interest in fee and expense calculations made both the 2023 and 2024 Exam Priorities.⁴ The Division will review whether a firm has accurately calculated and allocated private fund fees and expenses, including valuation of illiquid assets, calculation of post-commitment period management fees, adequacy of disclosures, and potential offsetting of such fees and expenses.

05 Custody & Audit Requirements

Since the Custody Rule was first adopted in 2009, the SEC has prioritized reviewing advisers’ cash and securities custody arrangements for compliance. Its most recent priorities reflected this evergreen focus, highlighting Custody Rule compliance, accurate Form ADV reporting, timely completion of private fund audits, and the distribution of audited financial statements.

⁴<https://www.sec.gov/files/2023-exam-priorities.pdf>

06 Reporting

Private fund advisers should remain cognizant of public filing requirements under the Advisers Act, the Securities Act, and other state and federal laws. Advisers should have policies and procedures in place to timely file annual, quarterly, and periodic or events-based updates to filings including, without limitation, Form ADV, Form PF, and forms required under Sections 13 and 16 of the Exchange Act. The SEC has introduced amendments to both Form PF and Section 13 and 16 reporting, which may trigger more frequent updates, necessitate faster reporting, or require more comprehensive information and disclosures.⁵

07 Portfolio Due Diligence

The SEC has indicated that it will review private fund advisers' policies, procedures, and disclosures related to due diligence performed on portfolio investments in 2024. While the guidance on this issue continues to evolve, the SEC will likely focus on confirming that advisers are conducting due diligence on potential portfolio company investments in a manner consistent with that described in offering memoranda and other marketing materials. The SEC is also likely to review an adviser's adherence to its investment committee or internal review process. Finally, the SEC will likely request supporting documentation to substantiate compliance.

⁵<https://www.sec.gov/files/ia-6297-fact-sheet.pdf>

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Neal Kalechofsky
VP of Alternatives Legal,
AllianceBernstein





08 Outsourcing

In October 2022, the SEC proposed a rule that would require advisers to perform due diligence on outsourcing providers for certain covered functions along with updated records and reporting requirements.⁶ "Covered function" means a function or service that is necessary for the investment adviser to provide its investment advisory services in compliance with the Federal securities laws, and that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services. The proposal is in the final rule stage based on the SEC's 2023 spring agenda, final action is expected in early 2024.⁷

09 Compliance Policies & Reviews

The SEC expects advisers to evaluate their compliance programs and document their findings. The SEC's 2024 Exam Priorities explicitly state the Division's ongoing interest in advisers' compliance programs. Deficiencies in either the compliance program or the adviser's recordkeeping can have serious consequences. In particular, the SEC has been scrutinizing advisers' use of "off-channel communications," and deficiencies have resulted in fines and enforcement actions for failing to appropriately retain certain types of electronic communications.

⁶<https://www.sec.gov/files/ia-6176-fact-sheet.pdf>

⁷<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=3235-AN18>

10 Predictive Analytics & Generative AI

In July 2023, the SEC proposed an AI Rule that would require investment advisers to address conflicts of interest related to the use of predictive data analytics.⁸ If enacted, it would require firms to evaluate the use or potential use of a covered technology in investor interactions, identify whether any conflicts of interest placed the firm's interest ahead of investors, and determine how to eliminate or neutralize the effect of any existing conflicts. Firms will benefit from keeping a close eye on this rule and the Strategic Hub for Innovation and Financial Technology for future developments.



⁸<https://www.sec.gov/files/34-97990-fact-sheet.pdf>

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