

THE REVIEW OF
**SECURITIES & COMMODITIES
REGULATION**

AN ANALYSIS OF CURRENT LAWS AND REGULATIONS
AFFECTING THE SECURITIES AND FUTURES INDUSTRIES

Vol. 57 No. 1 January 10, 2024

COLLATERAL CONSEQUENCES:
WHAT DOES THE EXPANDING ADVISERS ACT REGULATORY
REGIME MEAN FOR PRIVATE FUND MANAGERS?

Last year, the U.S. Securities and Exchange Commission adopted landmark rulemaking impacting the \$26.6 trillion private fund industry. While most are still navigating the nuances of the new rules, it is clear that the consequences will be global.

By Christine A. Schleppegrell and Thomas J. Crociata *

The private fund industry is currently experiencing the most seismic regulatory shift since the Dodd-Frank Act of 2010.¹ That Act required many private fund advisers to register for the first time and to consider their reporting obligations. Recent activity by the private fund industry's primary regulator in the United States, the Securities and Exchange Commission ("SEC"), has resulted in an enhanced burden for private fund managers as the agency attempts an overhaul of the traditional, disclosure-based regulatory regime. Within the last two years, the new rules adopted under the Investment Advisers Act of 1940 ("Advisers Act"), as amended, have expanded the body of rules under the Advisers Act by approximately 16%. Over 35% of advisers registered with the SEC are private fund managers² with \$26.6 trillion in assets under management.³

Under SEC Chairman Clayton, the agency focused on expanding investor (including retail investor) access to the capital markets, including private funds.⁴ In contrast, under SEC Chairman Gensler, the agency is focused on enhancing regulation of private funds and, some would argue, imposing restrictions that are similar to those placed on registered investment companies.⁵ The SEC is advancing this overhaul through rulemaking, enforcement, and examinations of advisers to private funds. As detailed below, the SEC's rulemaking initiatives also stand to significantly impact advisers that

footnote continued from previous column...

at 9 (Aug. 23, 2023) ("Adopting Release"), <https://www.sec.gov/files/rules/final/2023/ia-6383.pdf> (data as of 2022).

⁴ Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets, Advisers Act Release No. 90300 (Nov. 2, 2020), <https://www.sec.gov/rules/2020/11/facilitating-capital-formation-and-expanding-investment-opportunities-improving#33-10884>.

⁵ SEC Chairman Gensler, *Prepared Remarks at the Institutional Limited Partners Association Summit* (Nov. 10, 2021), <https://www.sec.gov/news/speech/gensler-ilpa-20211110>.

¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, §§ 403, 404, 124 Stat, 1378, 1571-72 (July 2010), codified at 15 U.S.C. 80b-4(b).

² SEC Examination Priorities, Division of Examinations (Feb. 7, 2023), <https://www.sec.gov/files/2023-exam-priorities.pdf>.

³ Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews, Advisers Act Release No. 6383,

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