Press Release

SEC Proposes to Enhance Private Fund Investor Protection

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Washington D.C., Feb. 9, 2022 — The Securities and Exchange Commission today voted to propose new rules and amendments under the Investment Advisers Act of 1940 (Advisers Act) to enhance the regulation of private fund advisers and to protect private fund investors by increasing transparency, competition, and efficiency in the $18-trillion marketplace.

"Private fund advisers, through the funds they manage, touch so much of our economy. Thus, it’s worth asking whether we can promote more efficiency, competition, and transparency in this field," said SEC Chair Gary Gensler. "I support this proposal because, if adopted, it would help investors in private funds on the one hand, and companies raising capital from these funds on the other."

The proposed rules would increase transparency by requiring registered private fund advisers to provide investors with quarterly statements detailing certain information regarding fund fees, expenses, and performance.

Additionally, the proposed rules would prohibit private fund advisers, including those that are not registered with the SEC, from providing certain types of preferential treatment to investors in their funds and all other preferential treatment unless it is disclosed to current and prospective investors.

The proposed changes also would create new requirements for private fund advisers related to fund audits, books and records, and adviser-led secondary transactions.

The proposals also would prohibit all private fund advisers from engaging in several activities, including seeking reimbursement, indemnification, exculpation, or limitation of liability for certain activity; charging certain fees and expenses to a private fund or its portfolio investments, such as fees for unperformed services and fees associated with an examination or investigation of the adviser; reducing the amount of an adviser clawback by the amount of certain taxes; charging fees or expenses related to a portfolio investment on a non-pro rata basis; and borrowing or receiving an extension of credit from a private fund client.

In addition, the SEC proposed amendments to the Advisers Act compliance rule that would require all registered advisers, including those that do not advise private funds, to document the annual review of their compliance policies and procedures in writing.

The public comment period will remain open for 60 days following publication of the proposing release on the SEC’s website or 30 days following publication of the proposing release in the Federal Register, whichever period is longer.

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Related Materials

- Proposed Rule
- Fact Sheet