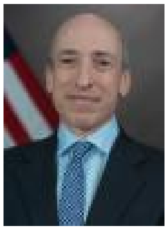
Statement

Statement on Private Fund Advisers Proposal



Chair Gary Gensler

Feb. 9, 2022

Today, the Commission is considering rules and amendments under the Investment Advisers Act to improve the efficiency, competition, and transparency of the activities of private funds' advisers. 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.

Why do private funds matter?

First, they matter because they're large, and they're growing in size, complexity, and number. These funds, including hedge funds, private equity funds, venture capital funds, and liquidity funds, currently have approximately $18 trillion in gross assets.

Beyond their size, though, these funds matter because of what, or who, stands on either side of them. The funds pool the money of other people: the limited partners. And who are those limited partners? Sometimes, they're wealthy individuals. Often, though, they're retirement plans, like state government pension plans, or non-profit and university endowments. The people behind those funds and endowments often are teachers, firefighters, municipal workers, students, and professors.

And who are the people on the other side of the private funds? They're entrepreneurs, trying to turn big ideas into big companies. They're small business owners looking to hire employees, invest in new technologies, and grow. They're the managers of late-stage companies, bought and sold by private equity firms.

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.

This proposal is designed to do a number of things.

First, it would increase **transparency** and would provide comparability to fund investors on a quarterly basis around three items:

- Fees, such as management fees, performance fees, and portfolio investment fees;
- Expenses; and
- Performance metrics.

That being said, increasing transparency by private fund advisers with respect to fees, expenses, and performance is not enough to protect investors.

Thus, secondly, this proposal also would **prohibit** private fund advisers from engaging in a number of activities that are contrary to the **public interest** and the protection of investors. For example, the proposal would prohibit:

- Seeking reimbursement, indemnification, exculpation, or limitation of its liability for certain activities, such as a breach of fiduciary duty in providing services to the private fund;
- Charging certain fees and expenses to a private fund or its portfolio investments, such as accelerated monitoring fees and fees associated with an examination or investigation of the adviser.
- Granting preferential treatment for certain investors regarding redemption or information about portfolio holdings or exposures;

Third, other preferential treatment (as typically granted through **side letters**) would be allowed only if it is disclosed to prospective investors and existing investors.

Fourth, this proposal also would require an **annual audit** of private funds, provided to the funds' investors. Audits would provide an important review on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees, and would help protect private fund investors against the misappropriation of fund assets.

Fifth, this proposal would require registered private fund advisers to obtain a **fairness opinion** from an independent opinion provider in connection with a specific kind of transaction where the adviser may stand to profit at the expense of private fund investors. This would provide an important check against an adviser's conflicts of interest in structuring and leading such adviser-led secondary transactions.

Finally, this release proposes amendments to advisers' obligations with respect to **books and records and compliance** for all advisers.

I am pleased to support today's proposal and, subject to Commission approval, look forward to the public's feedback. I'd like to thank the members of the SEC staff who worked on this rule, including:

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