

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA-6773; File No. S7-03-22]

Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: The Securities and Exchange Commission (“Commission”) is adopting technical amendments to various rules under the Investment Advisers Act of 1940 (“Advisers Act”) to reflect a Federal court’s vacatur of new rules and rule amendments that the Commission adopted on August 23, 2023. The Commission adopted new rules designed to protect investors who directly or indirectly invest in private funds, corresponding amendments to the Advisers Act books and records rule to facilitate compliance with the new rules and assist examination staff, and additional amendments to the Advisers Act compliance rule to better enable staff to conduct examinations (together, the “Private Fund Adviser Rules”). The court’s vacatur of the Private Fund Adviser Rules was effective as of June 5, 2024, and had the legal effect of: vacating the new rules and the reservation of a rule number in the Code of Federal Regulations (“CFR”); as well as vacating the amendments to the existing books and records and compliance rules such that those vacated amendments are no longer in effect. These technical amendments revise the CFR to reflect the court’s vacatur of the Private Fund Adviser Rules.

DATES: Effective November 19, 2024; however, the Federal court issued its vacatur of the rule amendments June 5, 2024.

FOR FURTHER INFORMATION CONTACT: John Cavanagh, Senior Counsel; Robert Holowka, Branch Chief; Jennifer Porter, Assistant Director, Investment Adviser Regulation Office, Division of Investment Management at (202) 551-6787 or IMOCC@sec.gov; U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting technical amendments to the following rules: 17 CFR 275.206(4)-9, 17 CFR 275.206(4)-10, 17 CFR 275.211(h)(1)-1, 17 CFR 275.211(h)(1)-2, 17 CFR 275.211(h)(2)-1, 17 CFR 275.211(h)(2)-2, 17 CFR 275.211(h)(2)-3, 17 CFR 275.204-2, and 17 CFR 275.206(4)-7 under the Advisers Act.

I. Background

On August 23, 2023, the Commission adopted the Private Fund Adviser Rules, which, through its constituent parts, would have protected investors who directly or indirectly invest in private funds and better enabled staff to conduct examinations. The Private Fund Adviser Rules became effective on November 13, 2023.¹ On June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the Private Fund Adviser Rules.² The court’s vacatur of the Private Fund Adviser Rules was effective as of June 5, 2024, and had the legal effect of (i) vacating the new rules and the reservation of rule 206(4)-9 and (ii) vacating the amendments to the existing books and records rule 204-2 and compliance rule 206(4)-7 such that those vacated amendments are no longer in effect. These technical amendments reflect the vacatur in the CFR by rescinding the Private Fund Adviser Rules.

II. Procedural and Other Matters

The Administrative Procedure Act (“APA”) generally requires an agency to publish notice of a rulemaking in the *Federal Register* and provide an opportunity for public comment. This requirement does not apply, however, if the agency “for good cause finds . . . that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.”³

¹ *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews*, Release No. IA-6383 (Aug. 23, 2023) [88 FR 63206 (Sept. 14, 2023)].

² *National Association of Private Fund Managers v. SEC*, No. 23-60471 (5th Cir. 2024).

³ 5 U.S.C. 553(b)(B).

The technical amendments do not impose any new substantive regulatory requirements on any person and merely reflect the vacatur of the Private Fund Adviser Rules. For these reasons, for good cause, the Commission finds that notice and public comment are unnecessary.⁴

For similar reasons, although the APA generally requires publication of a rule at least 30 days before its effective date, the Commission finds there is good cause for the amendments to take effect on November 19, 2024.⁵

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated these amendments as not a “major rule,” as defined by 5 U.S.C. 804(2).

List of Subjects in 17 CFR Part 275

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of Amendments

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, 80b-11, 1681w(a)(1), 6801-6809, and 6825, unless otherwise noted.

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Section 275.204-2 is also issued under 15 U.S.C. 80b-6.

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⁴ This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the amendments to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are impractical, unnecessary or contrary to the public interest, a rule shall take effect at such time as the Federal agency promulgating the rule determines). The amendments also do not require analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 604(a) (requiring a final regulatory flexibility analysis only for rules required by the APA or other law to undergo notice and comment).

⁵ *See* 5 U.S.C. 553(d)(3).

§ 275.204-2 [Amended]

2. Amend § 275.204-2 by:

a. Removing the “; and” at the end of paragraph (a)(7)(iv)(B) and adding a period in its place;

b. Removing paragraph (a)(7)(v); and

c. Removing and reserving paragraphs (a)(20) through (24).

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§ 275.206(4)-9, § 275.206(4)-10 [Removed]

3. Remove §§ 275.206(4)-9 and 275.206(4)-10.

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§ 275.206(4)-7 [Amended]

4. Amend § 275.206(4)-7 by revising paragraph (b) to read as follows:

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(b) *Annual review.* Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

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§ 275.211(h)(1)-1 through § 275.211(h)(2)-3 [Removed]

5. Remove §§ 275.211(h)(1)-1, 275.211(h)(1)-2, 275.211(h)(2)-1, 275.211(h)(2)-2, and 275.211(h)(2)-3.

Dated: November 8, 2024.

Sherry R. Haywood,

Assistant Secretary.