

Fund Finance Friday



SEC Adopts Extensive New Rules for Investment Advisers

August 25, 2023

On August 23, 2023, the Securities and Exchange Commission voted to implement a number of new requirements for private funds, including requiring private funds to issue quarterly fee and performance reports and to perform annual audits. The new rules also impact adviser-led secondary transactions and restrict certain practices that the SEC characterizes as having continued “despite our enforcement actions and that disclosure alone will not adequately address.” The preferential treatment rule, in particular, will be relevant in the context of fund finance transactions as it requires private fund managers to disclose certain fee arrangements made with investors and restricts certain types of preferential investment terms. Bespoke fee or liquidity arrangements are typically memorialized in side letters, which are an important component of most fund finance deals. They are reviewed by lenders in connection with due diligence reviews (i) for subscription line facilities to determine the rights and obligations of investors in respect of capital commitment collateral and (ii) for NAV facilities to determine the liquidity and information rights attached to equity interest collateral. This will also impact institutional investors who often use side letters for statutory, regulatory or governance compliance, other investors (e.g., many pension plans) who need the flexibility to divest for internal portfolio risk limits and seed or anchor investors. For an in-depth analysis of the new rules, please read our Clients & Friends Memo [here](#).