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Fifth Circuit Strikes Down Private Fund Adviser Rules

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In a [sweeping opinion published today](#), the U.S. Court of Appeals for the Fifth Circuit struck down the private fund adviser rules [adopted by the SEC in August 2023](#).

The Fifth Circuit found that the SEC exceeded its statutory authority under Section 211(h) and Section 206(4) of the Investment Advisers Act of 1940 in adopting the rules and vacated them in their entirety, including:

- the preferential treatment rule;
- the restricted activities rule;
- the quarterly statement rule;
- the adviser-led secondaries rule; and
- the audit rule.

The ruling also vacated amendments requiring written annual compliance documentation, although these remain a best practice, as well as the amendments to the books and records rule related to the invalidated rules.

The SEC has not yet indicated what action, if any, it will take in light of today's decision, although any further review by the Fifth Circuit or the Supreme Court or any rule reproposal would involve a compliance timeline well past the first set of compliance dates that were set to trigger in September 2024.

If you have any questions, please contact the Kirkland regulatory attorneys with whom you regularly work.

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Suggested Reading

- 11 September 2023 Kirkland AIM SEC Adopts Significant Rule Changes for Private Fund Advisers (Part 2 of 2)
- 05 May 2023 Kirkland AIM SEC Adopts Significant Amendments to Private Fund Adviser Reporting on Form PF
- 07 March 2024 Kirkland AIM SEC Increases Burden of Private Fund Adviser Reporting on Form PF

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