



KIRKLAND & ELLIS

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Rulemaking Update

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Adopted and Still Active

TOPIC	DESCRIPTION	RELEVANT DATES	COMMENTS
Dollar Threshold to Qualify as a VC Fund	Amendment to section 3(c)(1) of the Investment Company Act. Increases dollar threshold for a fund to qualify as a “qualifying venture capital” from \$10 million to \$12 million aggregate capital contributions and uncalled committed capital. The rule also allows the SEC to adjust for inflation every five years.	Proposed: Feb 14, 2024 Adopted: Aug 21, 2024 Effective/Compliance Date: 30 days after publication in the federal register (publication pending)	
AML Policies and Procedures	Final Rule adopted by FinCEN. The rule, among others, (1) adds certain Registered Investment Advisers (“RIA”) and Exempt Registered Advisers (“ERA”) to the definition of “financial institutions” that implement the Bank Secrecy Act, (2) establishes minimum standard for Anti Money Laundering/Countering the Financing of Terrorism programs by such RIAs and ERAs, and (3) requires such RIA and ERAs to report suspicious activities to FinCEN.	Proposed: Feb 13, 2024 Adopted: Aug 28, 2024 Effective/Compliance Dates: Jan 1, 2026	
Regulation S-P	Enhancements to Regulation S-P require advisers to adopt incident response programs to address cyber breaches and broaden the scope of information covered under the safeguarding and disposal rules, among other changes.	Proposed: March 15, 2023 Adopted: May 16, 2024 Effective Date: Aug. 2, 2024 Compliance Dates: Dec. 3, 2025 for larger entities, June 3, 2026 for smaller entities	
Form PF (Round 2)	Amendments to Form PF (1) require separate reporting for each private fund in “master-feeder arrangements” or “parallel fund structures,” and aggregated reporting for “parallel managed accounts” relating to each reporting fund and (2) increase the scope and granularity of information required by Form PF’s sections. These amendments are in addition to the amendments to Form PF that the SEC adopted on May 3, 2023, listed below.	Proposed: August 10, 2022 Adopted: Feb. 8, 2024 Effective/Compliance Date: March 12, 2025	
SPACs	Rule changes would impose specialized disclosure requirements with respect to IPOs by SPACs and in subsequent business combinations between SPACs and private operating companies, and would deem any business combination transaction involving a reporting shell company, including a SPAC, to involve a sale of securities. A new rule would also establish a safe harbor under the Investment Company Act for SPACs that satisfy certain conditions.	Proposed: March 30, 2022 Adopted: January 24, 2024 Effective Date: July 1, 2024 Compliance Dates: July 1, 2024, except for 17 CFR 229.1610 (inline XBRL tagging requirement), which is June 30, 2025	

Adopted and Still Active (cont.)

TOPIC	DESCRIPTION	RELEVANT DATES	COMMENTS
Dealer Registration	New rules further define the phrase “as part of a regular business” in the statutory definition of “dealer” under the Securities Exchange Act in ways that would cause certain market participants that assume “dealer-like” roles (e.g., by acting as liquidity providers in the markets) to have to register as a dealer or a government securities dealer. The rules may scope in certain registered investment advisers or their private funds (mainly hedge funds).	Proposed: March 28, 2022 Adopted: Feb. 6, 2024 Effective Date: April 29, 2024 Compliance Date: April 29, 2025	
Beneficial Ownership Reporting	Rule changes modernize beneficial ownership reporting by accelerating current deadlines for Schedule 13D and Schedule 13G filings. Instead of rule text changes, the adopting release provided guidance on cash-settled derivatives and 13D groups.	Proposed: Feb. 10, 2022 Adopted: Oct. 10, 2023 Effective/Compliance Dates: Feb. 5, 2024 (Sep. 30, 2024 for new Schedule 13G filing deadlines)	
Form PF	Amendments to Form PF impose new quarterly current event reporting, add new categories of information to be collected, and expand information reporting for certain existing categories. Upon the occurrence of a triggering event, advisers would file a current event report within 60 days of the applicable fiscal quarter end.	Proposed: Jan. 26, 2022 Adopted: May 3, 2023 Effective/Compliance Dates: Dec. 11, 2023 for current event reporting June 11, 2024 for all other amendments	
Reporting of Certain Proxy Votes	Rule and Form amendments require 13(f) filers to report on Form N-PX how they voted proxies related to executive compensation matters (i.e., “say-on-pay” votes). Managers will be required to file their first reports by Aug. 31, 2024, covering the period of July 1, 2023, to June 30, 2024.	Proposed: Sep. 29, 2021 Adopted: Nov. 2, 2022 Effective/Compliance Date: July 1, 2024	

Proposed but Not Adopted

TOPIC	DESCRIPTION	RELEVANT DATES	COMMENTS
Customer Identification	Proposed rule, if adopted, would require registered investment advisers and exempt registered advisers to adopt written customer identification programs. The program must include procedures for (1) verifying the identity of each customer to the extent reasonable; and (2) maintaining records of the information used to verify a customer's identity, including, name and address.	Proposed: May 13, 2024 Comments Due: July 22, 2024	
Adviser Outsourcing	SEC-registered advisers would be required to (1) undertake due diligence assessments before engaging service providers for certain core advisory-related services and functions and (2) periodically monitor the service providers' performance and reassess the appropriateness of the outsourcing arrangement. Related books and records requirements include a provision specifically addressing the retention of outsourced recordkeepers.	Proposed: Oct. 26, 2022 Comments Due: Dec. 27, 2022 Proposed Transition Period: 10 months	A consortium of advocacy groups submitted a comment letter urging the SEC to withdraw the rule proposal, or to exclude client relationships advisers have with private funds, in light of the Fifth Circuit's Private Fund Adviser Rules holding regarding limits on Advisers Act statutory authority.
ESG Investment Practices	SEC-registered advisers and exempt reporting advisers would be required to include new narrative disclosures in brochures and census-like information in Part 1-A of their Form ADVs regarding Environmental, Social or Governance ("ESG") factors the advisers consider implementing in their investment strategies, with separate ESG reporting for each private fund the advisers are required to identify in Part 1A. More extensive requirements would apply to the ESG investment practices of regulated investment companies and business development companies ("BDCs").	Proposed: May 25, 2022 Comments Due: Aug. 16, 2022 Comment Period Re-Opened: Oct. 7, 2022 Comments Due: Nov. 1, 2022 Proposed Transition Period: One Year	
Cybersecurity	More detailed and prescriptive than the existing SEC cybersecurity guidance and rules, the proposed rules would (1) impose new reporting and disclosure obligations on SEC-registered advisers relating to cybersecurity incidents and risks and (2) potentially require advisers to enhance their cybersecurity policies and procedures.	Proposed: Feb. 9, 2022 Comments: Due April 11, 2022 Comment Period Re-Opened: Mar. 15, 2023 Comments Due: May 22, 2023	A consortium of advocacy groups submitted a comment letter urging the SEC to withdraw the rule proposal, or to exclude client relationships advisers have with private funds, in light of the Fifth Circuit's Private Fund Adviser Rules holding regarding limits on Advisers Act statutory authority.

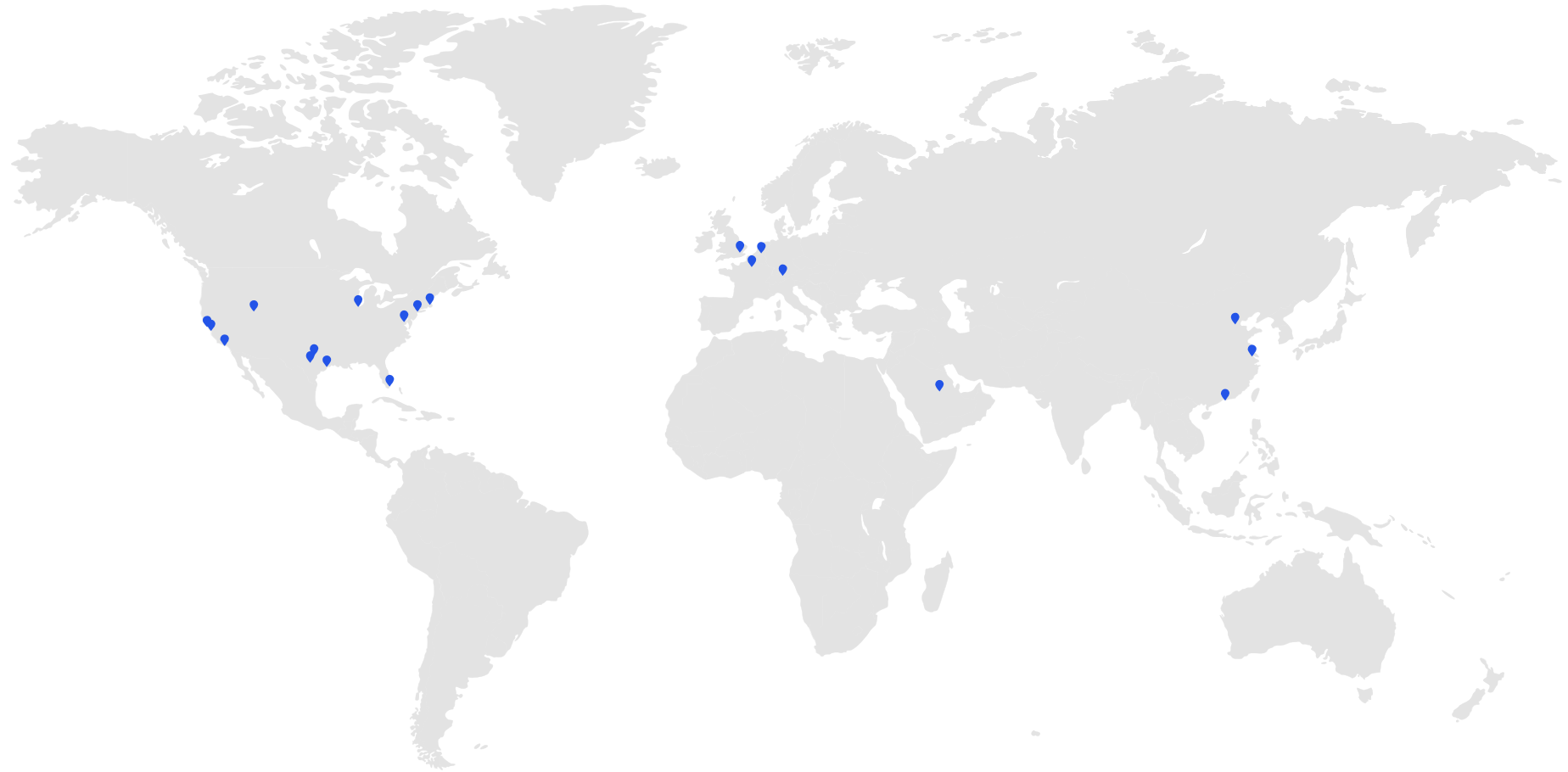
Subject to Re-Proposal or Injunction

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Predictive Data Analytics	Proposed rule changes would address certain conflicts of interest associated with investment advisers' or broker-dealers' use of predictive data analytics in investor interactions.	Proposed: July 26, 2023 Comments Due: Oct. 10, 2023	Chair Gensler has signaled publicly that the rule is likely to be repropose. Any reproposal is administratively the same as a proposal, i.e., open for public comment for at least 30 days that would be followed by an Adopting Release, which suggests that final rules before year end is unlikely. In addition, a consortium of advocacy groups submitted a comment letter urging the SEC to withdraw the rules, or to exclude client relationships advisers have with private funds, in light of the Fifth Circuit's Private Fund Adviser Rules holding regarding limits on Advisers Act statutory authority.
Custody (a.k.a. Safeguarding Rule)	Proposed rule changes would significantly amend and redesignate Rule 206(4)-2 under the Investment Advisers Act and make related recordkeeping and reporting changes to address how investment advisers safeguard client assets.	Proposed: Feb. 15, 2023 Comments Due: May 8, 2023 Comment Period Re-Opened: Aug. 23, 2023 Comments Due: Oct. 30, 2023 Proposed Transition Period: One Year; for advisers with AUM \$1 bn or less, 18 Months	Chair Gensler has signaled publicly that the rule is likely to be repropose. Any reproposal is administratively the same as a proposal, i.e., open for public comment for at least 30 days that would be followed by an Adopting Release, which suggests that final rules before year end is unlikely.
Public Company Climate-Related Disclosures (a.k.a. ESG for Public Companies)	Final rules require U.S. public companies, including BDCs and real estate investment trust ("REITs"), to evaluate and adapt their disclosure controls and procedures, management processes, and governance structures around climate-related risks and provide extensive climate-related information in their registration statements and periodic reports.	Proposed: March 21, 2022 Adopted: March 6, 2024 Effective Date: May 28, 2024 Implementation stayed: April 4, 2024	Litigation seeking to overturn the Climate rules has been filed in several Courts of Appeals and procedural steps are being taken to determine which court will hear the case. In the interim, the Fifth Circuit has stayed the application of the rules, which were not going to come into effect until March 2026 in any event.

Struck Down

TOPIC	DESCRIPTION	RELEVANT DATES	COMMENTS
Private Fund Adviser Rules	Sweeping new set of rules are expected to have a broad impact on private fund adviser practices and increase regulatory burdens.	Proposed: Feb. 9, 2023 Adopted: Aug. 23, 2023 Effective Date: Nov. 13, 2023 Struck Down by 5th Circuit: June 5, 2024 Deadline to appeal to Supreme Court: Sept. 3, 2024	The U.S. Court of Appeals for the Fifth Circuit vacated the entire rule package. The date to appeal to the Fifth Circuit <i>en banc</i> has passed, and the SEC has until September to seek review by the U.S. Supreme Court. The SEC is unlikely to appeal to the Supreme Court.

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