



425 Market Street ♦ Eleventh Floor  
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June 6, 2024

**VIA EMAIL**

To Our Investment Adviser Clients and Other Friends:

Re: Private Fund Adviser Rules Vacated

On June 5, 2024, the U.S. Fifth Circuit Court of Appeals [vacated](#) the SEC’s final private fund adviser rules adopted August 23, 2023 (as described in [our prior client alert](#), the “Private Fund Rule”). 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 Private Fund Rule and vacated it in its entirety. Therefore, investment advisers no longer need to prepare to comply with the Private Fund Rules, including the quarterly reporting requirements for private funds, prohibited activities, restrictions and disclosures relating to permissible fund terms, private fund audit requirements and provisions relating to adviser-led secondaries.

The SEC may appeal this decision to the U.S. Supreme Court or seek additional review of the panel’s decision en banc by the Fifth Circuit Court of Appeals. However, it is unlikely that any further action that may overturn this decision would be finally determined prior to the Private Fund Rule’s previously scheduled compliance deadlines.

Even with the Private Fund Rule vacated, the SEC will likely continue to apply heightened focus on adviser disclosures with respect to expenses, expense allocations, preferential treatment, and conflicts.

If you have any questions regarding the Fifth Circuit’s ruling and its effect on your firm’s policies and procedures, please contact one of the Shartsis Friese attorneys in the [Investment Funds & Advisers Group](#).

Previous letters to our investment advisory clients and friends and discussions of other topics relevant to private fund managers, investment advisers and private investment funds can be found at our insights page: [www.sflaw.com/blog/investment-funds-advisers-insights](http://www.sflaw.com/blog/investment-funds-advisers-insights).

**SHARTSIS FRIESE LLP**