ALERT MEMORANDUM

The "VACATED" Heard 'Round the World: What's Next after the SEC Private Fund Adviser Rules?

June 17, 2024

In its highly-awaited opinion[1] released on June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated all of the Securities and Exchange Commission's (the "SEC") Private Fund Adviser rules ("PFAR"), agreeing with industry trade associations (the "Petitioners") that the SEC lacked the necessary statutory authority to adopt PFAR. In this Client Alert, we examine the opinion, what private fund sponsors may still expect to survive the outcome, and what the Fifth Circuit's decision may mean for other pending and final SEC rules.

As we discussed in our client post the day of the decision, one of the Petitioners' central arguments was that neither Section 206(4)—the anti-fraud provision—of the Investment Advisers Act of 1940 (the "Advisers Act") nor Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which focused on the SEC's authority to enact rules for the protection of retail customers and under which Section 211(h) of the Advisers Act was added, in fact gave the SEC the requisite authority.

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[1] *National Association of Private Fund Managers et al. v. Securities and Exchange Commission* (June 5, 2024), available at https://www.ca5.uscourts.gov/opinions/pub/23/23-60471CV0.pdf. Unless otherwise noted, all quotations included in this Client Alert are from this opinion.

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The Fifth Circuit unanimously agreed and vacated PFAR in full. The Court emphasized two fatal flaws in the SEC's assertion of statutory authority. First, "section 913 of Dodd-Frank… applies to 'retail customers,' not private fund investors. It has nothing to do with private funds." As a result, the Court held that the SEC cannot promulgate rules under Section 211(h) of the Advisers Act that would regulate the activities of private funds and the relationships between advisers and those funds. The SEC had stated in the PFAR adopting release and argued in the litigation that when Congress added Section 211(h), "[it] spoke of 'investors,' and in so doing gave no indication that it was referring to 'retail customers.'"[2] The Fifth Circuit decisively dismissed this argument, describing the Advisers Act and the Investment Company Act of 1940 as "sister statutes" and noting that the latter "imposes additional measures designed to protect investors… Yet Congress clearly chose *not* to impose the same prescriptive framework on private funds" (emphasis in original).

Second, the SEC argued that pursuant to Section 206(4) of the Advisers Act, it "may regulate acts that are 'not themselves fraudulent' if the restriction is 'reasonably designed to prevent' fraud or deception." The Fifth Circuit did not disagree with that assertion as a general matter, but concluded that "[t]he Final Rule's 'anti-fraud' measure is pretextual" and that the SEC had "not articulated a 'rational connection' between fraud and any part of the Final Rule [it] adopted." Importantly, the Fifth Circuit stated that "Section 206(4), as amended, specifically requires the Commission to 'define' an act, practice, or course of business that is 'fraudulent, deceptive, or manipulative' before the Commission can prescribe 'means reasonably designed to prevent' such act, practice, or course of business." The Court held that the SEC had "fail[ed] to explain how the Final Rule would prevent fraud"—as a result, its "vague assertions" regarding observations of fraudulent adviser misconduct "fall short of the definitional specificity that Congress has required." As we discuss further below, this clear statement that the SEC must define and identify a fraudulent, deceptive, or manipulative behavior before introducing rules designed to prevent that behavior may set a higher standard for rulemaking in reliance on Section 206(4), with implications for a number of pending proposed rules and potentially for existing final rules.

Will the SEC Challenge the Outcome? When Will We Know for Certain?

One question now top of mind for many is whether the SEC will appeal or otherwise seek judicial review of the Fifth Circuit panel's decision, particularly given the extent to which Chair Gensler had prioritized PFAR and devoted considerable resources to the rulemaking. Chair Gensler recently testified[3] that the SEC is still considering its options, but we believe an appeal is unlikely for several reasons. The SEC can petition the Fifth Circuit within 45 days of the decision to re-hear the case *en banc*, meaning that the full roster of the Court's active judges would consider it collectively. But an *en banc* review is generally considered to be an extraordinary measure given the expenditure of judicial resources, and a petitioner for re-hearing may be penalized if the Court views the petition to have insufficient merit. The fact that the panel decision was unanimous, with its opinion so strongly worded, suggests that the SEC may not view its chances as sufficiently favorable to make a petition.[4]

[2] Release No. IA-6383, *Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews* (Sep. 14, 2023) ("Adopting Release"), at 63214.

[3] Chair Gensler responded to questions from Senator Kennedy on this point during his testimony before the U.S. Senate Appropriations Subcommittee on Financial Services and General Government on June 13, 2024.

[4] The Fifth Circuit's Internal Operating Procedures caution that "a petition for rehearing en banc is an extraordinary procedure that is intended to bring to the attention of the entire court an error of exceptional public importance or an opinion that directly conflicts with prior Supreme Court, Fifth Circuit or state law precedent… Petitions for rehearing en banc are the most abused prerogative of appellate advocates in the Fifth Circuit.

Alternatively, the SEC could petition the U.S. Supreme Court within 90 days of the decision to review the Fifth Circuit's determination. The likelihood that the Supreme Court would grant review[5]—combined with the likelihood that it would reach a different decision than the Fifth Circuit did—seems sufficiently low that the SEC may not expend further time and resources on a petition.

PFAR is Dead; Long Live PFAR? SEC Views that Will Likely Survive

Absent a statement from the SEC on the matter, the public won't know with certainty whether the SEC will appeal until late summer. But from our perspective, at this stage it is worth shifting focus from the vacated rules to the SEC's discussion in the PFAR adopting release of its concerns with certain private fund adviser practices that drove the rulemaking. The adopting release discussion offers important insights into how the SEC staff views certain adviser activities and which areas are likely to draw scrutiny in the context of examinations and enforcement investigations.

Limitations of Liability and Indemnification

One example that predated the litigation is the notion that advisers should not be able to seek limitations of liability or indemnification for ordinary negligence from retail clients or investors. As we discussed in our original Client Alert on the final PFAR, the SEC had included in the proposed PFAR an outright prohibition on such limitations and indemnifications. The SEC dropped this prohibition from the final PFAR but stated in the adopting release that it may still consider advisers to have breached their fiduciary duties under the Advisers Act for conduct that is simply negligent (*i.e.*, and not rising to gross negligence or willful misconduct) in certain circumstances. The SEC also reiterated the views expressed in the 2019 Fiduciary Duty Guidance[6] that an adviser cannot waive, or seek reimbursement for breaches of, its Advisers Act fiduciary duties. Examination staff have already issued deficiencies for these so-called "hedge clauses" and we expect a focus on provisions that provide indemnification for ordinary negligence in private funds that have retail investors.[7]

Conflicts of Interest; Transparency through Disclosure and Reporting

Conflicts of interest for private fund advisers will almost certainly remain an area of keen interest for SEC examination and enforcement staff. There are a number of conflicts specifically discussed in the adopting release and that were the focus of the PFAR; we expect that the staff will scrutinize those even in the absence of a new rule governing the activity, and will test adviser disclosures of the

Fewer than 1% of the cases decided by the court on the merits are reheard en banc; and frequently those rehearings granted result from a request for en banc reconsideration by a judge of the court rather than a petition by the parties." *See* "Rules and Internal Operating Procedures of the United States Court of Appeals for the Fifth Circuit," pp. 34-35, available at https://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/5thcir-iop.

[5] The U.S. Supreme Court typically is asked to review more than 7,000 cases per year, according to uscourts.gov, and accepts 100-150 of them, most often when the issue presented is one of national importance and/or there has been a split among U.S. Circuit Courts in decisions on the same issue.

[6] *Commission Interpretation Regarding Standard of Conduct for Investment Advisers* (July 12, 2019) ("2019 Fiduciary Duty Guidance"), available at https://www.sec.gov/files/rules/interp/2019/ia-5248.pdf. We discuss the SEC's views on limitation of liability and indemnification, as expressed in the PFAR adopting release and the 2019 Fiduciary Duty Guidance, in further detail in our Client Alert on the final PFAR.

[7] The SEC noted in the 2019 Fiduciary Duty Guidance that "[t]he question of whether a hedge clause violates the Advisers Act's antifraud provisions depends on all of the surrounding facts and circumstances, including" the sophistication level of the client; further, "there are few (if any) circumstances in which a hedge clause in an agreement with a retail client would be consistent with those antifraud provisions… Whether a hedge clause in an agreement with an institutional client would violate the Advisers Act's antifraud provisions will be determined based on the particular facts and circumstances." (2019 Fiduciary Duty Guidance, p. 11, footnote 31.)

conflicts of interest that PFAR addressed. As one example, the SEC cautioned in the adopting release that "[c]onflicts of interest can harm investors, such as when an adviser grants preferential redemption rights to entice a large investor that will increase overall management fees to commit to a private fund, and then, when the fund experiences a decline, such preferential redemption rights allow a large investor to exit the private fund before and on more advantageous terms than other investors."[8] The SEC's stated rationale for the Adviser-Led Secondaries rule also rested on conflicts of interest considerations. We expect exam and enforcement staff to closely review disclosures to investors regarding adviser-led secondary transactions, as well as the process around pricing if fairness or valuation opinions are not obtained. Investors may also be more insistent on these opinions even though they ultimately bear the costs.

Alongside conflicts of interest, the adopting release identified advisers' lack of transparency and lack of effective governance mechanisms as the three main contributors to investor harm. The disclosure requirements that the Preferential Treatment rule would have imposed, including of (1) preferential material economic terms and (2) all preferential treatment granted to an investor in a private fund, may become staff expectations for an adviser to satisfy its fiduciary duty. Advisers should continue to consider what disclosures to potential investors regarding existing or potential future side letter terms—such as preferential redemption or information rights for investors committing over a certain threshold amount of capital, agreeing to seed a new fund, etc.—are appropriate in order to ensure sufficient disclosure of conflicts.

Advisers are rightly relieved that PFAR's highly prescriptive, one-size-fits-all Quarterly Statements were vacated. However, some of that content may still be expected by the SEC staff in other fund disclosures, requested (or insisted upon) by investors, or both. For example, SEC staff have recently shown an interest in how advisers reflect a fund's use of subscription facilities in performance presentations. In recent SEC Marketing Rule FAQs, the staff explained that an adviser to a fund with a subscription facility would violate the Marketing Rule if, in its marketing materials, it presented only net IRR figures that include the impact of fund-level subscription facilities without *either* also showing net IRR figures without the impact of such facilities *or* including specific disclosures describing the impact of such facilities on the net performance shown. The Quarterly Statements rule would have gone a step further and eliminated the option - advisers would have been required to show performance both with and without the impact of such facilities. The Marketing Rule guidance remains valid, and the SEC staff have clearly conveyed its view that presenting net figures reflecting the effects of fund-level subscription facilities has the potential to mislead investors, so examination staff is likely to look closely at performance presentations that contain these net figures and the disclosure that accompanies such presentations.

Separately, momentum towards a common reporting template that advisers—particularly GPs of illiquid funds—could use to satisfy the Quarterly Statements rule had been building as the PFAR compliance dates drew nearer, with industry associations such as ILPA[9] convening working groups to gather input from institutional investors and other stakeholders. Having seen the details of the Quarterly Statement rule and having considered the possibility of receiving standardized reporting across funds, investors may now try to push sponsors towards providing some of these items

[8] Adopting Release at 63210.

[9] The Institutional Limited Partners Association ("ILPA") had launched a Quarterly Reporting Standards Initiative to work towards a reporting template that would comply with PFAR. In the wake of the Fifth Circuit's decision, ILPA has stated that it has temporarily paused these efforts, but will continue its "work on the next evolution of ILPA reporting templates." *See* https://ilpa.org/quarterly-reporting-standards/.

going forward. In other words, certain reporting that would have been a regulatory requirement may ultimately become a commercial requirement.

PFAR's Restricted Activities rule will continue to offer a roadmap for activities the SEC staff believes present conflicts of interest that should potentially be disclosed in more detail to fund investors. The practice of charging or allocating investment fees and expenses on a non-*pro rata* basis across advisory clients, for example, would have been prohibited under the rule absent (1) a determination that the allocation was "fair and equitable under the circumstances" *and* (2) provision of prescriptive disclosure to investors regarding the charge or allocation. Going forward, advisers that allocate portfolio-level fees and/or expenses across clients on a non-*pro rata* basis should review and consider whether to enhance the disclosure provided to investors regarding their expense allocation policies—as well as the policies themselves and whether they are defensible as "fair and equitable." Other items that would have required additional and specific disclosure under the rule if charged to a fund include regulatory, compliance, or examination-related fees, and any reduction of adviser (or related person) clawbacks as a result of taxes. And more generally, the SEC strongly cautioned against the practice of charging to a private fund expenses that are not specifically (not just generically) described as chargeable expenses in the fund's governing documents, warning that charging certain expenses to a fund "without authority in the governing documents is inconsistent with an adviser's fiduciary duty and may violate the antifraud provisions of the [Advisers] Act."[10]

Recordkeeping

Advisers should also consider the recordkeeping provisions in PFAR, such as those that would have required advisers to retain records of the calculation methodology used in preparing Quarterly Statements and substantiation of how the adviser classified its funds. The SEC noted in the adopting release that requiring this type of recordkeeping "should also enhance advisers' internal compliance efforts" and "will help facilitate the Commission's inspection and enforcement capabilities"[11]—both of which remain priorities of the SEC and could be viewed by the staff as required elements of an effective compliance program or required substantiation supporting advertisements.

So where does this leave the industry? We believe that despite the temptation to put proverbial pens down on all PFAR-related workflows, advisers should consider what planned policy, process, and disclosure enhancements are still beneficial ones to implement—from a best practices, compliance, and/or commercial perspective. The same views that motivated PFAR rulemaking will continue to inform SEC examination topics and questions, and the staff may well expect enhanced disclosures as a matter of existing fiduciary duty and anti-fraud principles even in the absence of a specific new regulatory requirement.

The Tortured Rulemakers Department[12]: Will Other SEC Rules be Challenged?

The SEC during Chair Gensler's tenure has had a remarkably active rulemaking agenda, and a number of Advisers Act proposed rules remain pending. The Fifth Circuit's opinion's broad and strongly-worded language on statutory authority may present challenges for some pending Advisers Act rules without major changes from their respective proposals.[13] Moreover, an industry galvanized by the clean sweep against PFAR may consider challenges to recent existing rules as well in

[10] Adopting Release at 63270, footnote 703.
[11] *Id.* at 63249.
[12] The SEC leaned heavily into a Taylor Swift theme for its 90th Anniversary celebration (which, coincidentally enough, occurred the day after the Fifth Circuit released its opinion). *See* https://www.sec.gov/news/video-transcript/gensler-transcript-eras-tour-060624. "The Tortured Poets Department" did not make the list of eras referenced in Chair Gensler's speech.
[13] It is also worth noting that major changes from the proposed version of a rule to the final one without

light of the Court's holding as to Section 206(4) of the Advisers Act because that is a source of statutory authority frequently cited by the SEC in proposing and adopting Advisers Act rules. In addition, the Fifth Circuit's determination that Section 211(h) of the Advisers Act was intended by Congress for the protection of retail and not private fund investors directly undercuts the statutory authority cited by the SEC in respect of other recent proposals. We would not be surprised to see the SEC shift some of the proposals to become disclosure-focused rules under Section 204, which gives the SEC fairly broad authority to require disclosure and recordkeeping regarding business practices (including reporting on private funds).

The following table summarizes certain rules closely watched by the private funds industry and the statutory authority on which each relies:

Other Relevant Advisers Act Rules *(listed in reverse chronological order)*			
Rule	**Statutory Authority (Advisers Act)**	**Status**	**Comments**
Predictive Data Analytics	Sections 204, 211(a) and (h)	Pending; proposed July 2023	Proposal: -new Rule 211(h)(2)-4 (conflicts of interest) and -amends Rule 204-2 (Books and Records)
Safeguarding	Sections 203, 204, 206(4), 211(a), and 223	Pending; proposed February 2023	Proposed new Rule 223-1 redesignates existing rule 206(4)-2 (Custody Rule)
Outsourcing	Sections 203, 204, 206(4), and 211(a) and (h)	Pending; proposed October 2022	Proposal: -new Rule 206(4)-11 (service providers); -amends Rule 204-2 (Books and Records); and -amends Form ADV
Adviser ESG Disclosure	Sections 203, 204, and 211	Pending; proposed May 2022	Proposal amends Form ADV
Adviser Cybersecurity	Sections 203, 204, 206(4) and 211(a) and (h)	Pending; proposed February 2022	Proposal: -new Rule 206(4)-9 (advisers must implement cybersecurity policies and procedures); -new Rule 204-6 and Form ADV-C (advisers must report "significant" cybersecurity incidents to the SEC); and -amends Rules 204-2 (Books and Records) and 204-3 (Brochure Rule)
Marketing	Sections 203(d), 204, 206(4), and 211(a) and (h)	Final; adopted and fully effective	Rule combined and replaced Advertising and Cash Solicitation Rules (206(4)-1 and 206(4)-3)

opening an additional public comment period could also invite challenge under the Administrative Procedures Act.

The SEC's Predictive Data Analytics proposal[14] may be the most difficult for the SEC to justify in the wake of the PFAR decision in light of its reliance on Section 211(h) as authority for a conflicts rule that would apply to private fund advisers. That said, Chair Gensler has emphasized throughout his tenure that the regulation of artificial intelligence usage in capital markets, and addressing the threat that conflicts of interest relating to digital engagement practices pose to investors, are among his top priorities. As a result, the SEC's next step may be to repropose a new version that, on the Advisers Act side, consists of a new rule under Section 211(h) that applies only to *retail* customers, and amendments or rules under the recordkeeping and/or anti-fraud provisions that apply to all registered advisers (for recordkeeping rules) and all advisers (for 206(4) rules). For a new rule under 206(4), the SEC would need to include the proposing release, clear descriptions of a well-defined fraud that the rule is meant to address. Either way, Chair Gensler has already suggested[15] that the SEC plans to repropose Predictive Data Analytics rather than move next to a final version; in doing so, the SEC may take the opportunity to fix other widely-noted concerns with the original proposed rules, including the overbroad definition of "covered technology" and the new, undefined concept of "neutralizing" a conflict of interest.

The Safeguarding Rule, by contrast, seems likely to move forward under the same statutory authority as the original proposal, albeit with other changes to address numerous practical issues with the proposed version identified by commenters.[16] The existing Custody Rule is a well-established anti-fraud rule under 206(4), and the SEC included a substantial amount of discussion and examples of fraudulent conduct—including references to Madoff—in the proposing release. The SEC explained that, like the Custody Rule, the proposed Safeguarding Rule "maintains the core purpose of protecting client assets from loss, misuse, theft, or misappropriation by, and the insolvency or financial reverses of, the adviser and maintains the Commission's ability to pursue advisers for failing to properly safeguard client assets under the Act's antifraud provisions."[17] It is possible that, to strengthen the nexus between the existing Custody Rule and the new Safeguarding Rule, the SEC will drop its plans to renumber the Rule and finalize it as an amendment of the Custody Rule (206(4)-2).[18]

The Outsourcing Rule was also proposed under 206(4), making it unlawful for registered advisers "to retain a service provider to perform a covered function unless the investment adviser conducts certain due diligence and monitoring of the service provider."[19] Unlike the Safeguarding Rule, however, the SEC seemed to struggle in the Outsourcing Rule's proposing release to articulate and provide substantial evidence of the fraud that the proposal was designed to address. Indeed, the discussion in the proposing release reads as noticeably more speculative: "[o]utsourcing also *has the potential* to defraud, mislead or deceive clients. For example, outsourcing *could* have a material negative impact on clients, such as: inaccurate pricing and performance information…" (emphasis added).[20] With the Fifth Circuit so clearly denouncing "vague assertions" from the SEC regarding fraudulent adviser behavior as justification for anti-fraud rulemaking, the SEC would need to find

[14] *See* Release No. IA-6353, *Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers* (Aug. 9, 2023).

[15] *See, e.g.*, "SEC's Gensler Rethinking AI Advising, Crypto Custody Regs" (June 13, 2024), available at https://www.law360.com/securities/articles/1847615.

[16] Such changes may be substantive enough that the SEC would reopen the comment file or repropose the rule, rather than move to a final release as the next step—possibilities that Chair Gensler recently mentioned when testifying before a U.S. Senate appropriations subcommittee.

[17] *See* Release No. IA-6240, *Safeguarding of Client Assets* (Mar. 9, 2023), at 14676.

[18] The SEC did feel the need to explain in the Safeguarding Rule's proposing release, "While we are renumbering the current rule as rule 223-1, section 206(4) is still available to the Commission and is also a basis of statutory authority for this proposed rulemaking." *Id.* at 14676, footnote 32.

[19] *See* Release No. IA-6176, *Outsourcing by Investment Advisers* (Nov. 16, 2022), at 68821.

[20] *Id.* at 68818.

a way to demonstrate that reliance on 206(4) for the Outsourcing Rule is not merely a pretext to introduce substantive diligence and monitoring requirements that the SEC simply thinks would constitute better business practices. The Rule as proposed may, along with Predictive Data Analytics, be among the most challenging for the SEC to defend; some alternatives to watch for include a version that shifts to investor disclosure requirements regarding risks associated with the use of service providers, including concentration risk and the possibility of operational or compliance gaps, or one that focuses on books and records relating to the use and ongoing oversight of service providers.

Two proposals that the SEC may soon look to finalize, with the Fifth Circuit PFAR opinion posing less of a direct obstacle, are Adviser Cybersecurity[21] and Adviser ESG Disclosure.[22] The Adviser Cybersecurity proposal includes a new rule 206(4)-9 requiring advisers to adopt and maintain cybersecurity policies and procedures as well as a series of disclosure requirement rules under section 204 and a new "Form ADV-C" for reporting to the SEC (not the public) any significant cybersecurity event. If the SEC moves to finalize these rules and keep the new rule 206(4)-9, it will likely focus in the adopting release on defining more precisely what the fraud is – as opposed to what external threats from third-party bad actors may exist – that the rule is designed to address. The SEC finalized a set of cybersecurity disclosure rules for public companies in July 2023, and it is also possible that the SEC will narrow the set of final Adviser Cybersecurity rules to ones mandating disclosure and reporting.

The Adviser ESG Disclosure proposal, as the name suggests, would create new disclosure obligations for registered advisers on their Form ADV filings and brochures. Although Chair Gensler has stated publicly his desire to combat "greenwashing" in the investment management industry, Adviser ESG Disclosure was not proposed as an anti-fraud rule. Instead, the SEC relied on Sections 203 and 204 (along with 211), which provide broad authority to require disclosure of business practices. The proposal has been criticized by commenters for the over-inclusive ESG product characterization framework that it would create, but this may be a relatively straightforward issue for the SEC to address in a final version. It is worth noting that the SEC's recently-finalized climate disclosure rules for public company issuers are currently being litigated in the Eighth Circuit, with one of the legal challenges relating to the SEC's authority to promulgate such sweeping requirements. But ESG remains a priority for the Chair, and even in the absence of a finalized rule with new Form ADV disclosure requirements, we expect the SEC's Climate and ESG Task Force—formed within the Division of Enforcement last year—to remain active, with SEC staff continuing to look for adviser misconduct in this area during examinations and investigations.

Finally, some may wonder whether the Fifth Circuit's decision to vacate PFAR and holding that the SEC lacked the statutory authority to enact the rules will galvanize the industry to challenge existing Advisers Act rules on the same grounds. The Marketing Rule in particular has surfaced as a candidate for challenge, given its adoption under 206(4) and some similar concepts to PFAR (*e.g.*, requirements for performance presentations). We think that a successful challenge to the Marketing Rule ultimately is unlikely—the Marketing Rule's adopting release cited evidence of allegedly fraudulent misconduct by advisers in the advertising context and stated that the rule was designed to address such conduct, and further, the rule was adopted as a new, combined version of the preexisting Advertising Rule and Cash Solicitation Rule, both of which had been in effect for decades and were established parts of adviser compliance programs. We expect to see a continued focus by the SEC staff on compliance with the

[21] *See* Release No. IA-5956, *Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies* (Mar. 9, 2022).

[22] *See* Release No. IA-6034, *Enhanced Disclosure by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices* (June 17, 2022).

Marketing Rule, as suggested by a recent Risk Alert from the Division of Examinations and staff guidance in the form of FAQs.

With so many potential developments to anticipate, we will be closely monitoring activity by the SEC and in the courts over the months ahead. The PFAR verdict is in, but for the private funds industry, there may be much more to come.

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