What They Are Saying – Private Fund Advisers Rule is "Unjustified, Unlawful, Harmful to Investors & the Economy"

The Securities and Exchange Commission (SEC) recently voted along partisan lines to finalize its Private Fund Advisers Rule (rules) which would limit the private investments that businesses, workers, public pension funds and retirees depend on. SEC Commissioners Hester Peirce and Mark Uyeda opposed the rules for imposing burdensome requirements that could dampen returns for investors, limit investment choices, and increase costs. Additionally, both pointed out the rules exceed the SEC's authority. House Majority Leader Rep. Steve Scalise and Chairman of the House Financial Services Committee Rep. Patrick McHenry also spoke out against these requirements, stating that they unjustly restrain private markets. Hal Scott, president of the Committee on Capital Markets Regulation, and Bob Greene, president of the National Association of Investment Companies, also spoke out on how harmful and unnecessary these rules are.

Congressional leaders urge SEC to rescind "ill-advised" Private Fund Advisers Rule.

- *"I urge the SEC to rescind this ill-advised rule, which is a thinly veiled attempt to dictate private fund management."* – **Chairman McHenry**
- "*Over the years we have seen a decline in public companies that everyday Americans can invest in. SEC Chair Gensler should be improving our public markets to help families save and build wealth rather than repeatedly overreaching and harming private markets and economic growth*." – **Majority Leader Scalise**

SEC Commissioners Hester Peirce & Mark Uyeda vote against Private Fund Advisers Rule.

- "*The rulemaking is ahistorical, unjustified, unlawful, impractical, confusing, and harmful. Accordingly, I cannot support it*." – **Commissioner Peirce**
- "*The Commission relies on questionable statutory authority, fails to consider the aggregate impact of the multitude of rules promulgated since 2022 affecting investment advisers, and dismisses warnings that it will have a disparate impact on smaller advisers, including those that are minority- and women-owned."* – **Commissioner Uyeda**

The new Rule will make it harder for pension funds and investors to generate returns.

- "*Today's rulemaking will harm investors, advisers, and the economy. In the name of fostering competition, we are squelching it*." – **Commissioner Peirce**
- *"The Commission is on a precarious path that will inhibit capital formation and innovation, and will interfere with sophisticated investors' abilities to invest in private funds."* – **Commissioner Uyeda**
- "*The rule will impede the ability of the marketplace to serve unique needs. An investor trying to negotiate particular terms, or a company seeking funding from a specialized venture capital fund will find it more difficult in the new regime*." – **Commissioner Peirce**

The SEC has exceeded its authority.

- "*Congress, by exempting private funds from the Investment Company Act, set up a system in which private funds would not be subject to the same level of regulation as retail-oriented registered investment companies*." – **Commissioner Peirce**
- *"The solution [the Commission is] … considering lacks a statutory basis."* – **Commissioner Peirce**
- *"I have significant concerns with using the coercive power of government regulation to favor one side of a private negotiation."* – **Commissioner Uyeda**
- *"Once again, Chair Gensler's SEC is exceeding its statutory authority to impose onerous and costly mandates—this time on private funds."* – **Chairman McHenry**

The Rule imposes outsized burdens on women & minority owned funds.

- *"I remain concerned about the adverse impact these rules will have on diverse-owned and emerging funds across the country. The new rules have far-reaching implications and if they move forward, they will threaten access to capital, discourage competition, and undermine diversity in the private funds industry."* – **NAIC President Bob Greene**
- *"The rules will disproportionately impact smaller advisory firms, which are owned to a greater degree by women and minorities. Smaller firms will have more difficulty undertaking the additional obligations required by these rules … Asking women- and minority-owned advisers to reduce their assets under management to under $100 million to avoid registration is astonishingly terrible advice. In other words, never dream big."* – **Commissioner Uyeda**

The Rule erases the distinction between public and private funds.

- "*The Commission justifies its new approach to private fund regulation by dismissively recasting private fund investors as unsophisticated … By abandoning the notion that qualified purchasers can fend for themselves in a way that retail investors cannot, we erase the distinction that has limited access to private funds*." – **Commissioner Peirce**
- *"Private funds have grown up, as Congress planned, outside of the requirements that govern registered investment companies, which are designed for the general public ... Uprooting the historical approach to regulating private funds, as we are doing with this rulemaking, will irreparably mar the regulatory landscape."* – **Commissioner Peirce**
- *"By applying a framework designed for retail funds used by everyday investors to private funds, this rule fails to acknowledge the differences between these markets. Instead of pursuing this one-size-fits-all approach, the SEC should be working to strengthen our public markets and create new opportunities for all investors to save and build wealth through our private markets—just like Republicans have done with our capital formation agenda."* – **Chairman McHenry**

The Rule will hurt competition among private funds.

- "*One has to question whether the Commission considers the entrenchment of the largest investment firms as a feature – rather than a flaw – of this rulemaking."* – **Commissioner Uyeda**
- "*Large incumbent advisers will figure out how to comply, but newer, smaller advisers will struggle to enter the industry and compete with incumbents*." – **Commissioner Peirce**

The SEC has not examined the combined economic impact of extensive regulation.

- "*The release does not do a good job at assessing how this rule, interacts with other rules the Commission has adopted and is considering*." – **Commissioner Peirce**
- "*I am also deeply concerned that the Commission is effectively sidestepping its economic analysis obligation by refusing to consider the aggregate impact of recent rulemakings for investment advisers."* – **Commissioner Uyeda**
- "*The Commission should explore whether it needs to modify or eliminate existing regulations to facilitate the entrance and flourishing of new advisers*." – **Commissioner Peirce**

Sophisticated institutional investors voluntarily invest in private funds.

- "*Investors dissatisfied with a particular manager's refusal to agree to certain conditions are free to shop around among the thousands of other managers eager for their capital."* – **Commissioner Peirce**
- "*These sophisticated investors are free to conclude that accepting such terms is a fair tradeoff for gaining access to a particular fund. This result should come as no surprise when investor demand for a private fund outstrips the capital sought by the funds."* – **Commissioner Uyeda**

- *"Private fund investors are wealthy individuals and sophisticated institutions. Institutional investors—university endowments, pension funds, insurance companies, and sovereign wealth funds, to name several—are well represented by highly qualified professionals in their search for and negotiations with private fund advisers … Under the current regime, private parties come to mutually agreeable terms. The government, appropriately, stays out of the negotiations."* – **Commissioner Peirce**
- *"As long as investors understand the terms on which they are investing, why should the government care what those terms are?"* – **Commissioner Peirce**

Investors are already protected under existing statutes.

- *"Most of what Gensler has done is unnecessary…markets need to be regulated but they need to be regulated in the correct way."* – **CCMR President Hal Scott**
- "*The Commission already has the authority to bring enforcement actions against private fund advisers to address "fraudulent practices related to fees and expenses and conflicts." So why is the Commission adopting these rules?"* – **Commissioner Uyeda**
- "*This rulemaking is premised on a stubborn refusal to accept an inconvenient reality: private fund investors can "negotiate the terms that are important to them*." – **Commissioner Peirce**

Private funds will face onerous requirements.

- "*The Commission no longer is content to regulate private fund advisers to the same extent as other investment advisers. Instead, private fund advisers will be subject to six additional requirements."* – **Commissioner Uyeda**
- "*The uniformity of the disclosures required, the breadth and ambiguity of the rule's defined terms, the operational difficulties of providing advance notice of any preferential treatment related to material economic terms, the process for obtaining investor consent, the chilling of communications between advisers and investors, and the brevity of the compliance period are among the many issues that remain*." – **Commissioner Peirce**