



Are You In Danger of Landing In the SEC's New Private Fund Cross Hairs?

The SEC brought 700 enforcement actions in its fiscal 2020! Thirty-six percent (36%) of registered investment advisors now manage private funds. The number of private equity funds stands at more than 18,000, an almost sixty percent (60%) increase since 2016. SEC Chairman, Gary Gensler, has told Congress that he has requested recommendations on enhanced disclosure and reporting through Form ADV, Form PF, and other new possible initiatives.

The SEC is on record as saying they will examine the adequacy of disclosure of a private fund's risks, liquidity, and conflict of interests. One practice the SEC has highlighted involves conflicts around liquidity of funds and practices such as "stapled secondary transactions" whereby *new* fund investors purchase the interest of *current* fund investors while also agreeing to invest in a new fund.

Fees and expenses are part of your registered investment adviser's compliance responsibility and are a renewed area of emphasis under Chairman Gensler's agenda. Is YOUR fund valuing its assets consistently and utilizing appropriate methodology? In a world where no investment advisory self-regulatory organization exists, and many advisers have never been examined, that lack of contact can lead to significant problems submerged just below the surface.

Are you heading into an enforcement danger zone?

Potential Danger Zone; Do Any Of These Sound Familiar?

- ◆ Do you think that the maintenance of a private equity fund involves boilerplate forms and is at most tangential to your core focus of doing deals?
- ◆ Do you think that the amount of money spent complying with the securities laws should equal a percentage of your *profits*?
- ◆ If you are not yet profitable, do you think that should excuse or lessen the amount you need to spend on compliance?

When was the last time YOU reviewed Form ADV or Form PF for your fund?

If trouble does come knocking on your door, what will prevent your chief compliance officer (CCO) or other employees from deciding their interests are no longer aligned with YOURS?



- ◆ Did you hire someone to handle this critical compliance function so that you could concentrate on doing deals and growing portfolio companies?
- ◆ Did you hire a compliance shop that pulled the old “bait and switch” by presenting an attractive ex-SEC official who pitched you for your business but does not work on your fund whatsoever while some low-level functionary really does this essential work? Your fund’s compliance is only as strong as its weakest link.
- ◆ Do you know what is in your contract with your compliance consultant? Most likely, it includes a cap on the amount that they could owe *you* for *their* negligence. The laws of professional responsibility prevent firms like Hinshaw from putting such terms in our engagement agreements.

Compliance shops go out of their way to say that they are not providing legal services. Law firms like Hinshaw stand behind our work and carry professional responsibility insurance to back the work that we do on your matter.

We Are Here To Help

Let us guide you through these complex issues:

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At Hinshaw, our experienced corporate, securities and tax attorneys are well-positioned to advise a broad range of private equity funds, with a particular focus on funds active in the middle market. We work with our sleeves rolled up and can guide clients through the process of forming a fund, handling compliance-related concerns, establishing an effective governance structure, and raising capital. We are also prepared to lead initial and follow-on acquisitions, serve as key counsel for portfolio companies’ ongoing business activities, and prepare such companies for eventual disposition via sale, auction, going-public, joint venture, and other transactions.