

Client Insight: U.S. Court of Appeals Strikes Down Private Fund Adviser Rules

Insights

June 5, 2024

The U.S. Court of Appeals for the Fifth Circuit (“**Court**”) issued its long awaited [opinion](#) today in *National Association of Private Fund Managers et. al. vs. Securities and Exchange Commission*, the lawsuit brought by the National Venture Capital Association and other trade associations representing the private funds industry (“**Petitioners**”) challenging the validity of the Securities and Exchange Commission’s (“**SEC**”) private fund adviser rules (“**PFA Rules**”).

Key Decision Takeaways

- The private fund adviser rules, portions of which would have gone into effect in September for many private fund advisers, have been fully vacated.
- This decision represents a significant win for all private fund managers and will reduce costly regulatory burdens.
- The SEC may appeal the decision, either through a request to the Fifth Circuit to re-hear the case or to the U.S. Supreme Court, and may propose certain portions of the PFA Rules again.

[As we previously outlined](#), the recently adopted private fund adviser rules imposed substantial regulatory and disclosure burdens on all private fund advisers.

In striking down the PFA Rules, the Court agreed with the Petitioners’ arguments and considered all of the PFA Rules as a single rule for purposes of its opinion.

Specifically, the Court held that the SEC exceeded its statutory authority under the Investment Advisers Act of 1940 and the Dodd-Frank Wall Street Reform and Consumer Protection Act in adopting the PFA Rules.

As such, anticipated burdens on private fund advisers under all portions of the PFA Rules have been eliminated including requirements imposed by the Quarterly Statement Rule, Restricted Activities Rule, Preferential Treatment Rule, Audit Rule, Adviser-Led Secondaries Rule, and amendments to the Recordkeeping Rule.

While the PFA Rules have been vacated, the [Adopting Release](#) for the PFA Rules and the rules themselves continue to offer insight into the SEC's current priorities and interpretation of investment advisers' fiduciary duties. We expect the SEC will continue to focus on areas covered by the PFA Rules in examinations including conflicts of interest and adequacy of investor disclosures. In addition, we note that it is possible the SEC may propose certain portions of the PFA Rules again with modifications designed to address issues identified by the Court. Finally, the SEC may request that the Court re-hear the case *en banc* or petition the U.S. Supreme Court to review the decision.

We will continue to monitor for any developments. Please reach out to insights@gunder.com or your primary Gunderson Dettmer attorney if you have any questions.

Related Services

Fund Formation

Featured Insights

EVENTS

Gunderson Dettmer and Alpha Edison Launch PitchLive.LA to Spotlight Pre-Seed and Seed Founders During LA Tech Week

EVENTS

PLI's Noncompetes and Restrictive Covenants 2025: An In-Depth Look into What Every Lawyer, Human Resources Professional, and Key Strategic Decisionmaker Needs to Know

INSIGHTS

The Power of Equity: Founding partner Tom Villeneuve reflects on the last 20

The Power of Focus: Founding partner Tom Villeneuve reflects on the last 30 years

CLIENT NEWS

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

CLIENT NEWS

Prosus Leads Intella \$12.5M Series A with Participation from HearstLab

EVENTS

Gunderson Dettmer Partner Maggie White Co-Leads a Roundtable To Discuss “Secondaries, Liquidity & the Pressure Cook”

CLIENT NEWS

Mexico-Based Auto Insurer Momento Seguros Raises \$10M Series A

CLIENT NEWS

Brazil-Based Darwin AI Announces \$4.5M in Additional Seed Financing

INSIGHTS

Digiday Interviews Aaron Rubin in Article on “AI ‘Grounding’ Licensing and Why Publishers Say It Matters Over Training Deals”

FIRM NEWS

Gunderson Dettmer Recognized as Most Active VC Law Firm in Southeast Asia and India by PitchBook’s H1 2025 League Tables

FIRM NEWS

Best Lawyers Recognizes 38 Gunderson Dettmer Attorneys in the 2026 Best Lawyers in America Guide

INSIGHTS

Ryan Purcell Guest-Authors “6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)” for Not Another CEO