



Fifth Circuit Vacates SEC Private Fund Advisers Rule

In August 2023, the Securities and Exchange Commission ("SEC") adopted **new rules** to enhance the regulation of private fund advisers, with a focus on increasing transparency, competition and efficiency in the private funds market.¹

On June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated these rules, which would have had a significant impact on the private funds industry, including those with a focus on real estate.²

The rules had been highly criticized by some within the industry, in large part because of the costs that would be incurred to produce the required reporting and meet other obligations as set forth under the rules. Conversely, certain investor groups such as the Institutional Limited Partners

Association ("ILPA") were supportive of the newly proposed rules and have criticized the Fifth Circuit's latest decision.³

While it is unclear whether the SEC will challenge or appeal the decision, it is clear is that the rules will not go into effect in September 2024 as originally planned. Regardless of the SEC's next move in response to the ruling, we believe that the SEC's path toward increased transparency will continue and suggest that advisers plan accordingly in the areas of governance, controls, processes and technology.

Endnotes

¹ Confirmed to Federal Register version Securities and Exchange Commission 17 CFR Part 275. (n.d.). <https://www.sec.gov/files/rules/final/2023/ia-6383.pdf>.

² U.S. Court of Appeals, 5th Cir., 2024. <https://www.ca5.uscourts.gov/opinions/pub/23/23-60471CV0.pdf>.

³ SEC Private Fund Advisers rules. ILPA. (2024, June 13). <https://ilpa.org/privatefundadvisers/>.

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