Preparing for Implementation of the PFA Rules*

Clients have asked when to start preparing for the PFA Rules in light of pending legal challenges. We recommend that clients ***prepare now***. Legal challenges often exceed the 12- to 18-month compliance periods, and the SEC will expect investment advisory firms to meet the relevant compliance dates. Clients have also asked where to begin and for ideas on initial preparedness steps. The PFA Rules will impact each adviser differently and some issues will be more critical to a particular adviser than others. That said, we believe the PFA Rules roughly break down into the following three tiers according to the time most advisers will need to spend implementing them. Please see our summary cover note for any defined terms not defined herein. You can access the final PFA Rules on the SEC's website HERE.

PRIORITY TIER	KEY CONSIDERATIONS FOR PRIVATE FUND ADVISERS	INITIAL PREPAREDNESS STEPS
1. Tier 1 (Immediate Attention)		
a. Quarterly Statements Rule RIAs Only March 14, 2025 Compliance Date for both Larger ($1.5 billion+) & Smaller ($1.49 billion-) Advisers No Grandfathering	**Fund-Level Disclosures.** RIAs must provide detailed *quarterly disclosures* of the following for each private fund that has at least 2 full quarters of performance: 1. All compensation, fees, and other amounts allocated or paid to the adviser or a "related person" of the adviser (e.g., any person under common control with the adviser) by the private fund (e.g., management and performance, sub-advisory, or consulting fees); 2. All fees and expenses allocated to or paid by the private fund during the reporting period (e.g., organizational, accounting, legal, administrative, audit, tax, due diligence, and travel fees and expenses); **and** 3. Any offsets or rebates carried forward from prior quarterly periods to reduce future payments or allocations to the adviser or its related persons. The SEC did not recognize a *de minimis* expense amount. Each category of information above must be disclosed in tabular form as a separate line item, and RIAs cannot group smaller expenses into broad categories such as "miscellaneous." **Portfolio Investment-Level Disclosures.** RIAs must also provide a line-item accounting of all portfolio investment compensation allocated or paid by each covered portfolio investment during the reporting period in a single, separate table from the Fund-Level Disclosure table above. The term "covered portfolio investment" is defined broadly to capture investments held through SPVs or other structures. **Performance Disclosures.** RIAs must provide standardized performance disclosures. The content of the performance disclosures will be dictated in part by whether or not the relevant fund is an "illiquid fund" (i.e., a fund without investor redemption	Preparedness steps may include: 1. Preparing a gap analysis by reviewing current investor reports to determine what information you already provide to investors and comparing it to the Quarterly Statements Rule requirements. 2. Mapping existing performance methodology and assumption disclosures across all organizational, offering, and marketing documents, including LPAs, PPMs, and pitch decks. 3. Once mapped, consider standardizing all disclosures about performance calculation methodologies and assumptions across all documentation if they are not already aligned. 4. Considering how any adjustments to performance methodology or assumptions will impact existing and future investor communications (e.g., by reducing performance) and adopting a messaging strategy.

* This chart describes key aspects of the PFA Rules for private fund advisers and provides initial preparedness steps for advisers to consider. The chart is not an exhaustive summary of the PFA Rules, and it does not describe all the steps an adviser should take prior to the compliance dates. The PFA Rules are complex and legal counsel should be regularly consulted as you prepare for the rules and implement new practices.

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	mechanisms with limited opportunities for investors to withdraw, such as a closed-end fund). 1. Advisers to *illiquid funds* must: (i) show performance based on gross and net internal rates of return and multiples of invested capital since inception and for the realized and unrealized portions of the illiquid fund's portfolio; and (ii) present a statement of contributions and distributions. 2. Advisers to *liquid funds* (such as open-end funds) must show performance based on: (i) annual net total returns for 10 years or since inception; (ii) average annual net total returns over one-, five-, and 10-fiscal year periods; and (iii) cumulative net total return for the current fiscal year as of the most recent fiscal quarter. RIAs must also provide clear and prominent disclosure of the methodologies and assumptions made in calculating performance, ***as well as cross-references*** to the sections of the private fund's organizational and offering documents that set forth the relevant calculation methodologies. Statements containing the information above must be distributed 45 days after the end of each quarter and 90 days after the end of the fiscal year, for all funds except funds of funds. Fund of funds may distribute their statements 75 days after the end of each fiscal quarter and 120 days after the end of the fiscal year.	5. Determining whether updates are required to internal calculation systems or databases. 6. Identifying and working with key third-party providers (e.g., fund administrators) to implement any new investor reporting requirements or processes, including reporting templates. 7. Preparing new written supervisory and recordkeeping procedures to ensure compliance with the new rules and closely track investor distributions.
b. Preferential Treatment Rule RIAs, ERAs, Certain Unregistered Larger Adviser Compliance by September 14, 2024 Smaller Adviser Compliance by March 14, 2025 Grandfathering, but only if Amendments Required to Fund or Credit Agreements in Existence Prior to the Compliance Date	**Preferential Redemptions.** An adviser generally may not give preferential redemption treatment to any investor if the adviser reasonably expects such terms to have a material, negative effect on other investors in the same fund or a similar pool of assets. However, preferential redemption terms are permitted if they are required by law (e.g., for certain pension funds) or are offered to all investors in the fund or a similar pool of assets *without qualification*. **Portfolio Holdings.** An adviser may not give information about portfolio holdings or exposures only to certain investors if the adviser reasonably expects providing the information to have a material, negative effect on other investors in that fund or a similar pool of assets. However, preferential access to holdings or exposure information is permitted if it is offered to all investors in the fund or a similar pool of assets at substantially the same time. **Disclosure Requirements for all Other Preferential Terms.** First, an adviser must provide *pre-commitment* disclosure to each investor of *any* preferential treatment related to "material economic terms" (e.g., cost of investing, liquidity rights, fee	Preparedness steps may include: 1. Creating a catalogue of all documents that provide investors with: (i) preferential terms related to material economic terms; and (ii) preferential terms that are not material economic terms. The new prohibitions also apply to both primary funds and each "similar pool of assets" (e.g., parallel funds, funds-of-one, and co-investment vehicles). 2. Using this catalogue, determining if preferential redemption terms, and information provided to some but not all investors, would have a "material negative effect" on other investors in the same fund or in a "similar pool of assets." If so, determine

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	breaks, and co-investment rights) granted to other investors in the same fund. Second, all preferential terms that are not material economic terms must be disclosed *post-commitment*, either: 1. As soon as "reasonably practicable" (generally a maximum of four weeks) after the end of the fundraising period for a closed-end fund; **or** 2. After the investment is completed for an open-end fund. Preferential terms granted after advance disclosure or one of the other disclosure options immediately above must be disclosed at least annually. Unlike the rules for Preferential Redemptions and Portfolio Holdings mentioned above, the disclosure component of this rule ***does not benefit from grandfathering***, because disclosure updates should not require amendments to fund agreements or credit agreements.	if an exception applies or perform a grandfathering analysis. 3. Formulating a strategy to ensure that either preferential practices are ended or required disclosures are made going forward. For example, consider creating standardized templates for side letters and any other documents that grant preferential terms to avoid variation between funds and inadvertent failures to disclose. 4. In the case of portfolio holdings or other information that could be discussed over the phone or in-person, consider preparing scripts for firm employees that require them to direct investors to a data room or implementing other measures. 5. Reviewing all fund operating and offering documents, as well as contractual agreements involving a borrowing, loan, or extension of credit entered into by a private fund, to determine if they are impacted by the PFA Rules and whether grandfathering applies. 6. Preparing new written supervisory and recordkeeping procedures to ensure compliance with the new rules.

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2. Tier 2 (Prompt Attention)		
a. Restricted Activities Rule RIAs, ERAs, Certain Unregistered Larger Adviser Compliance by September 14, 2024 Smaller Adviser Compliance by March 24, 2025 Grandfathering, but only if Amendments Required to Fund or Credit Agreements in Existence Prior to the Compliance Date	**Compliance.** An adviser may charge or allocate regulatory, examination, or compliance fees or expenses for the adviser or its related persons to a private fund, if it discloses them to investors within 45 days after the end of the fiscal quarter in which the charges occur. **Investigations.** An adviser may allocate fees or expenses associated with a governmental or regulatory investigation of the adviser or its related persons to a private fund, provided that it discloses the practice and obtains written consent detailing each category of fee or expense from a majority in interest of the fund's investors (excluding the adviser and its related persons). ***Notably, the adviser must repay all such fees or expenses*** to the fund if an investigation results in a sanction for a violation of the Advisers Act or the rules thereunder. This recapture requirement applies regardless of the governmental or regulatory authority that finds a violation. **Borrowing from the Fund.** An adviser may borrow or receive an extension of credit from a private fund, provided that it discloses the material terms of the borrowing to investors and receives the written consent of a majority in interest of the fund's investors (excluding the adviser and its related persons). This component of the Restricted Activities Rule would not apply to management fee offsets, subscription lines of credit, and other arrangements specified in the adopting release. Loans entered prior to the compliance date are also grandfathered if achieving compliance would require amendments to a loan agreement. **Clawbacks.** An adviser may reduce the amount of a GP clawback by amounts due for certain actual, potential, or hypothetical taxes, if the pre-tax and post-tax amounts of the clawback are disclosed to fund investors within 45 days after the end of the fiscal quarter in which the clawback occurs. **Pro-Rata Expenses.** An adviser may charge or allocate fees or expenses related to a portfolio investment (or potential investment) on a non-pro rata basis, if the charge or allocation is "fair and equitable" and the adviser provides advance notice that describes and justifies the fairness and equitability of the charge or allocation.	Preparedness steps may include: 1. Reviewing all fund operating and offering documents, as well as contractual agreements involving a borrowing, loan, or extension of credit entered into by a private fund, to determine if they are impacted by the Restricted Activities Rule and whether grandfathering applies. 2. Reviewing all disclosures related to restricted activities across fund operating, offering, and marketing documents and consider standardizing the disclosures going forward. 3. Formulating a strategy to ensure that either restricted activities are ended or required disclosures are made going forward. For example, consider creating standardized templates for investor disclosures. 4. Determining how you will approach investor consent gathering under any relevant provisions (e.g., affirmative/negative consent), create standardized templates if needed, and regularly confirm contact information for all investors. 5. Identifying all currently known examinations or investigations by the SEC or other regulators and determining if fee recapture could apply in the event of a future settlement. Preparing new written supervisory and recordkeeping procedures to ensure compliance with the new rules.

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3. Tier 3 (Standard Attention)		
a. Private Fund Audit Rule RIAs Only March 14, 2025 Compliance Date for both Larger & Smaller Advisers No Grandfathering	All private fund RIAs must arrange for an annual financial statement audit for the private funds they advise.	Preparedness steps may include: 1. Confirming whether your RIA already distributes audited financial statements annually to comply with the Custody Rule. If not, you must identify an accountant. 2. Considering if amendments are necessary to fund operating or offering documents. 3. Preparing new written supervisory and recordkeeping procedures to ensure compliance with the new rules.
b. Adviser-Led Secondaries Rule RIAs Only Larger Adviser Compliance by September 14, 2024 Smaller Adviser Compliance by March 14, 2025 No Grandfathering	Private fund RIAs must obtain either a fairness opinion or a valuation opinion if they offer existing fund investors the choice of either selling their interests in the private fund or converting those interests for stakes in another vehicle advised by the same adviser or any of its related persons (an "adviser-led secondary" transaction).	Preparedness steps may include: 1. Establishing a process to determine whether proposed transactions are adviser-led secondaries. 2. Confirming whether or not you already obtain fairness opinions or valuation opinions for adviser-led secondaries. If not, you must identify and engage a firm capable of providing an opinion. 3. Considering if amendments are necessary to fund operating or offering documents. 4. Preparing new written supervisory and recordkeeping procedures to ensure compliance with the new rules.
c. Compliance Rule Amendments RIAs Only November 13, 2023 Compliance Date for both Larger & Smaller Advisers No Grandfathering	All RIAs, ***even those not advising private funds***, must document their annual review of compliance policies and procedures in writing.	Preparedness steps may include: 1. Reviewing current policies and procedures to ensure that written annual compliance reviews are required. 2. Adding a reference to new rule 206(4)-7(b) existing procedures.