

The SEC plays a crucial role in monitoring and protecting investors the laws in the private markets

The SEC has proposed critical rulemaking to bring basic investor protection and regulatory transparency to the rapidly growing \$20 trillion private fund industry.

Though nearly the same size as the \$23 trillion in assets held inside the banking sector, private funds which include hedge funds, private equity firms, and venture capital funds are not subject to the same reporting requirements as the banks.

The inherent lack of transparency in the \$20 trillion in private funds leaves policymakers in the dark as to the risks to the financial system in an economic downturn, leading Federal Reserve Chair Jerome Powell recently to state that private funds require structural changes.¹ The SEC has the authority to help provide policymakers with the adequate information they need to make informed policy decisions.

The SEC is preparing to finalize two rules, one which would expand the reporting requirements under Form PF and have private funds to provide greater details about their holdings, financing, and sudden events to allow the SEC who in turn can share the information with the Financial Stability Oversight Council (FSOC) to better oversee the shadow banking system to which there is still very little visibility and oversight.

Second, the SEC would require private funds to disclose in a standardized manner a full breakdown of all fees and expenses, assumptions and calculations behind returns, and disclosure of special arrangements with other fund investors (“side letters”).

Without greater transparency in private funds the SEC’s Division of Examinations has found that anywhere from 40% to 60% of private funds were improperly charging fees or allocating expenses² and in 2022 issued another Risk Alert based on recent private fund exams.³

Recent instability in the financial markets should remind Congress and the SEC the importance of transparency and safeguards the SEC has proposed with its two rules that are urgently needed by private market investors.

¹ Campbell, Kyle. American Banker. Powell: Nonbanks need structural reforms, not Fed backstop. Jan 10, 2023. <https://www.americanbanker.com/news/powell-nonbanks-need-structural-reforms-not-fed-backstop>

² Bowden, Andrew J. Securities and Exchange Commission. Spreading Sunshine in Private Equity. May 6, 2014. <https://www.sec.gov/news/speech/2014-spch05062014ab>

³ Securities and Exchange Commission Division of Examinations. Observations from Examinations of Private Fund Advisers. Jan 27, 2022. <https://www.sec.gov/files/private-fund-risk-alert-pt-2.pdf>