

2024 Third Quarter Newsletter

Rule Proposals, Risk Alerts, & More for Investment Advisers

The third quarter typically sees elevated enforcement action activity from the SEC as it looks to sneak in a few extra settlements before closing out its fiscal year at the end of September. This year was no exception, with over 200 enforcement actions in September alone.

Subsequent to the quarter ending, the SEC's Division of Examinations (the "Division") announced its Examination Priorities for Fiscal Year 2025 (the "Priorities"). Reviewing this document each year is a great way for advisers to see if their compliance program and risks are ready for the SEC's scrutiny. The Priorities highlighted expanded resources and capabilities dedicated to, among other things, cybersecurity, security-based swaps, crypto assets, and artificial intelligence. For private fund managers, areas of focus remain centered on the 1) effectiveness of compliance programs, 2) accuracy and completeness of disclosures with respect to actual practices, 3) fee and expense calculations, 4) disclosure of conflicts of interest, including with respect to the use of leverage, overlap in investments between funds, and the use of affiliated service providers, and 5) compliance with recently adopted rules. To read HighCamp's detailed summary, please click here: [2025 Examination Priorities](#).

Below is a comprehensive listing of the most significant news and enforcement actions impacting private fund managers.

Third Quarter Headlines

FinCEN Issues Final Rule Requiring Investment Advisers to Adopt AML Programs

On August 28, FinCEN [finalized](#) a rule requiring SEC-registered and exempt reporting advisers to implement risk-based and reasonably designed anti-money laundering and counter-terrorism financing programs, file certain reports with FinCEN, keep relevant records, and fulfill certain other obligations applicable to financial institutions subject to the BSA and FinCEN's newly implemented regulations. FinCEN has delegated examination and enforcement authority for such regulations to the SEC. The effective date for the new requirements is January 1, 2026. For further details, HighCamp's detailed memo on the new requirements can be found [here](#).

SEC Declines to Appeal Previously Struck Down Private Funds Rule Amendments

After having its newly [adopted](#) Private Fund Adviser Rules [vacated](#) by the US Court of Appeals for the Fifth Circuit on June 5, the SEC had until September 3, 2024 to appeal to the Supreme Court to keep the rules in place. The SEC declined to appeal the Fifth Circuit's decision, confirming that the Private Fund Rules will not go into effect as originally adopted.

Did You Know?

Commissioners Hester M. Peirce and Mark T. Uyeda released a statement after the SEC announced new off-channel communication recordkeeping violations, stating that "Today's case... illustrates and confirms the reason for our reservations: it does not appear that firms have an achievable path to compliance" and urging their "colleagues to reconsider our current approach to the off-channel communications issue."

– [Statement](#) from Commissioners Hester M. Peirce and Mark T. Uyeda

Q3 Key Enforcement Actions and News

We left off on June 30 in our 2024 [Second Quarter Newsletter](#). Please note all sources are hyperlinked rather than footnoted.

SEC Continues Aggressive Approach to Electronic Communications

Throughout the quarter, the SEC continued its aggressive pursuit of penalties and enforcement against advisers that allegedly violated the Books and Records Rule regarding employee off-channel communications:

- August 14: Twenty-six firms [pay](#) more than \$390 million
- September 23: Adviser allegedly [violates](#) recordkeeping requirements, avoids monetary civil penalties due to self-reporting
- September 24: Eleven firms [pay](#) more than \$88 million

SEC Charges Adviser with MNPI Failures

On September 30, the SEC [charged](#) a hedge fund adviser ("Adviser A") with failing to prevent the misuse of MNPI related to its participation in ad hoc creditors' committees. Adviser A had joined a creditor committee for a bond issuer in its portfolio. The committee also included another adviser ("Adviser B") who had signed an NDA with the issuer and managed general communications between the committee and the issuer. Adviser B shared information with Adviser A, which did not have an NDA in place with the issuer. An analyst at Adviser A who was involved with the committee then shared this information with a trader at Adviser A, who is alleged to have subsequently executed an investment strategy based on it.

SEC Charges Adviser with Failure to Adequately Disclose Payments Received by Affiliate

On September 26, a settlement was [announced](#) with an adviser after the SEC alleged the adviser's fee arrangement with another unaffiliated entity posed conflicts of interest to the

adviser's clients. The adviser relied upon the third party's money to help amass a combined position in target companies, and the adviser received a performance fee from the third party for the idea generation. The SEC alleged this was a conflict of interest that should be properly disclosed as it could create an incentive for the adviser to favor the third-party entity or its own interest above the adviser's clients.

SEC Charges Adviser with Whistleblower Protection Violations

On September 26, an adviser was **charged** with violating whistleblower protections under the Exchange Act of 1934 after it allegedly asked potential employees to sign NDAs prohibiting them from disclosing confidential information about the adviser, including to the government specifically, unless it was in response to an inquiry from the Commission. Additionally, the adviser had a former employee sign a release with multiple provisions listed in it on reporting items to the SEC.

SEC Charges Adviser with Registration and Custody Rule Violations

On September 20, a private fund adviser was **charged** with failing to register with the SEC after it was found to be ineligible to rely on the Private Fund exemption. The private fund adviser allegedly had overlapping owners and executives with, and operated out of the same office space as, another adviser whose clients primarily consisted of individuals and trusts. This relationship with an adviser to non-private fund clients would have made the firm ineligible to rely on the Private Fund exemption. As the adviser should have been registered, the SEC found that the Custody Rule applied to it, but that it had failed to comply with the requirements thereunder.

SEC Charges Adviser with Compliance Program Failures

On September 20, the SEC **announced** charges against an adviser for allegedly failing to implement policies and procedures that were part of its compliance program. These policies called for annual compliance training, spot-checks of books and records, and periodic inspections of principal offices for its relying advisers, all of which the adviser allegedly failed to do.

SEC Charges Individual Over Cherry-Picking Scheme

On September 20, the SEC **charged** an individual that allegedly disproportionately allocated profitable trades to one or more of his three favored clients and unprofitable trades to his other client. The adviser is accused of placing large blocks trades for his clients throughout the day and then allocating them among clients before market close but after he could see the initial returns of the trades. The individual was a co-managing member and CCO of the adviser.

SEC Charges Adviser with Rule 105 Violations

On September 19, an adviser was **charged** with buying shares in a secondary stock offering of a publicly traded company shortly after short-selling that issuer's stock. The adviser allegedly shorted the shares from August 30 through September 1, and then bought shares in the secondary offering on September 7, within five business days, which is prohibited under Rule 105. The adviser self-reported the violations to the Commission and received a civil penalty of \$57,615.

SEC Charges 11 Institutional Investment Managers with 13F Violations

On September 17, the SEC **issued** a release announcing charges against 11 managers for failing to fulfill their Form 13F filing obligations after they crossed \$100M in certain securities. Nine of the 11 advisers were charged more than \$3.4M while two of the charged advisers received no monetary penalty after self-reporting the violations. Additionally, three advisers allegedly failed to file Forms 13H as required for large traders.

SEC Charges Private Fund Adviser with Custody Violations Relating to SPVs

On September 17, the SEC **announced** charges against an adviser that allegedly failed to obtain audits for its SPVs after purporting to rely on the annual audit exception of the Custody Rule. The adviser received and delivered audits for its main vehicles but failed to do so for its SPVs.

SEC Charges Individual for Alleged Role in Quarterly Newsletter Marketing Violations at Private Fund Adviser

On September 11, an individual was **charged** after the SEC alleged he helped create and ultimately signed off on quarterly investor newsletters that were misleading. The debt adviser allegedly stopped accruing interest on a loan to Company A and ultimately had Company B (another company that it had a loan to) purchase warrants in Company A. This agreement came with certain independent valuation stipulations and a lien on company A's intellectual property if the valuation was not sufficient. The adviser fully recognized this income upon the warrant sale and informed investors about the transaction. However, the adviser failed to properly disclose the stipulations on the warrants and the fact that it had stopped accruing interest prior to the sale.

SEC Charges Seven Public Companies with Violating Whistleblower Protection Rule

On September 9, the SEC **announced** charges against seven public companies for alleged violations of the Whistleblower Protection Rule. Although these were all public companies, this announcement serves as a reminder of the SEC's focus on whistleblowers in recent years, including with respect to RIAs.

SEC Charges Adviser with Custody Rule Violations

On September 9, the SEC **charged** a wealth manager with failing to obtain an independent annual surprise examination of client assets in two separate trusts for which he had custody. The adviser was a co-trustee with the ability to move money out of the trusts at his sole discretion and therefore had custody and was subject to Rule 206(4)-2 under the Advisers Act.

SEC Charges Nine Advisers with Various Marketing Rule Violations

On September 9, the SEC **announced** charges against nine advisers with various violations of the Marketing Rule. The alleged violations ranged from presenting untrue or altered third-party awards, third-party awards without disclosing the relevant time period, claims of "conflict-free" advisory services that could not be substantiated, and endorsements without disclosing payments from the adviser to the endorser, as well as incorrectly claiming something was a testimonial when it did not come from a current client.

SEC Charges Private Fund Adviser with Custody Rule Violations

On September 5, an adviser was **charged** after its Form ADV allegedly stated that it was relying on the annual audit exception to comply with the Custody Rule but delivered audited financial

statements to investors late in consecutive years for three separate private funds. The audits were allegedly delivered between five and 179 days after the applicable deadlines.

SEC Charges Adviser with Whistleblower Protection Violations

On September 4, the SEC **charged** an adviser after it allegedly had eleven brokerage customers and advisory clients sign confidentiality agreements that violated whistleblower protections under Rule 21F-17(a) of the Exchange Act of 1934. The agreements were signed in connection with compensation paid to the clients following losses arising from alleged breaches of federal securities laws, and contained provisions that impeded clients from reporting potential securities law violations to regulators.

SEC Sues Advisers for Unclear Performance Presentation, Registration Violations, and Compliance Program Failures

On September 3, the SEC **sued** two advisers alleging that they were operationally integrated and under common control, and therefore, should have counted assets on an aggregate basis and registered with the Commission. Instead, the firms allegedly calculated their RAUMs separately and relied on the Private Fund exemption to avoid registration. Additionally, the adviser allegedly failed to make Form PF filings as required of firms that must be registered with the Commission. The firm is also alleged to have violated the Marketing Rule by presenting an "enterprise value growth" statistic, which the Commission deemed to be performance reporting, in its marketing materials without disclosing whether it was gross or net and whether it reflected the full portfolio or a subset of investments. Finally, the firm, without proper disclosure, allegedly advertised its "Principal Historical Track Record" that contained company stats from the principal's time as a board member at multiple firms prior to the adviser being formed.

SEC Charges Crypto Adviser with Custody and Preferential Treatment Violations

On September 3, the SEC **announced** charges against an adviser that managed a private fund trading in cryptocurrency. The SEC alleged that the cryptocurrencies in which the adviser had invested were securities and should have been held at a qualified custodian rather than the online trading accounts on crypto trading platforms. Additionally, the SEC alleged the adviser offered preferential treatment to select investors when it informally communicated shorter investor redemption timelines to some investors than was stated in the private fund's partnership agreement.

SEC Charges Adviser with Disclosure and Approval Failures for Expenses Charged to Affiliates

On September 3, the SEC **charged** an adviser for allegedly failing to comply with the requirements of numerous fund LPAs, including that the adviser provide advance disclosure in writing to the funds' limited partners of compensation paid to affiliated service providers and receive approval from their respective advisory boards. One fund's financial statements also allegedly excluded payments to an affiliated service provider that were equivalent to over 2% of the fund's reported net income that year.

SEC Charges Private Fund Adviser with Custody and Hedge Clause Violations

On September 3, an adviser was **charged** after the SEC alleged that a partnership agreement for one of its private funds contained hedge clauses purporting to broadly limit the firm's liability, in violation of Section 206(2) of the Advisers Act. Another private fund's operating agreement included similar language. Finally, the adviser is alleged to have violated the Custody Rule by not obtaining annual audits, not having evidence of the audit delivery to investors, not obtaining liquidation audits, and delivering audits late to investors in some of its private funds.

SEC Charges Adviser Over MNPI Controls for its Trading in CLOs

On August 26, the SEC **announced** a settlement with an adviser that managed CLOs and traded the tranches it and third-party advisers managed. Through loans it had made in the CLO to a borrower, the adviser allegedly had MNPI about a likely failure of an expected major asset sale by the borrower. After learning of this news, the adviser allegedly traded portions of two CLO equity tranches that contained loans to the borrower. The next day, after the information became public, the price of the loans dropped significantly and the two CLO tranches declined in value by over 10%. The adviser had general insider trading protections in place that allegedly did not contemplate trading tranches of its CLOs.

SEC Charges Adviser with Custody Violations

On August 23, the SEC **charged** an adviser for allegedly stating in its Form ADV that it was relying on the annual audit exception under the Custody Rule without procuring audits for two of its private funds until as many as 730 days after the deadline. Additionally, the adviser allegedly failed to amend its Form ADV to mark the audits as having been received for a third, separate fund.

SEC Charges Adviser Over Fees to Affiliated Service Provider and Custody Issues

On August 19, the SEC **announced** charges against an adviser that had affiliated property management and construction service providers. The adviser allegedly disclosed to investors that fees paid to affiliates were "lower or comparable to those that would be charged in arms' length transactions with third parties" and that it had policies and procedures to monitor the comparability of its fees with respect to those of unaffiliated third parties. The adviser had policies for such comparability testing but failed to incorporate them into its actual business practice. Additionally, the adviser allegedly failed to have audits performed on second-level feeder funds, a violation of the Custody Rule annual audit exception that the adviser purported to rely upon.

SEC Charges Investment Adviser for Alleged "Pay-to-Play" Violations

On August 19, the SEC **charged** an adviser after an employee allegedly made a political contribution, prior to their employment with the adviser, to a government official who had influence over a government entity already invested with the adviser. The individual was found to be soliciting government entities due to their participation in meetings with such entities. The individual requested and received a return of the contribution, but it was both over the \$350 exception limit and not within the required timeframe.

SEC Charges Adviser Over Advertising Hypothetical Performance on Website

On August 9, a wealth manager was **charged** with advertising hypothetical performance on its website, using data derived from model portfolios, to a mass audience rather than tailoring the presentation to the likely financial situation and investment objectives of the intended audience.

SEC Sues Individual and His Firm for Alleged Years-Long Short Selling Fraud

On July 26, the SEC **sued** an activist short seller after he allegedly created research reports and published price targets on social media that supposedly aligned with current positions he had in the subject companies, but then immediately traded in the opposite direction of his recommendations. Following the individual's posts and research reports, the price of the stocks moved on average more than 12%, allegedly allowing the individual to generate \$20 million in illegal profits.

Q4 Key Reporting & Disclosure Deadlines

11/29/24 Quarterly Form PF for Large Hedge Fund Advisers Due; Quarterly Form PF Event Reporting

12/09/24 Preliminary Statement for IARD Renewal Program Due

Key Rulemaking Tracker

HighCamp maintains a Key Rulemaking Tracker with effective dates and pending rule proposals on its [website](#).

About HighCamp Compliance

HighCamp is a boutique compliance consulting and outsourcing firm helmed by former SEC examiners, CCOs and proven consulting professionals. The firm specializes in regulatory compliance and operational support for SEC-registered private equity, real estate, venture capital, hedge fund, and institutional alternative managers. HighCamp is 100-percent employee owned, with a gender-balanced leadership team. The company has locations in New York City (Metro), Los Angeles, Denver, Dallas, Milwaukee, and Bozeman.