

## Update: Fairness or valuation opinion to be required by SEC in GP-led secondary transactions.

BY: Scott Rogers, Senior Manager

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On August 23, 2023 the Securities and Exchange Commission (“SEC”) voted to adopt new rules and amendments under the Investment Adviser Act of 1940 (the “Advisers Act”).<sup>1</sup> Under the new regulations, SEC-registered advisers will be required to satisfy certain requirements when they initiate a transaction that offers fund investors the option between selling all or a portion of their interest in the private fund and converting or exchanging them for new interest in another vehicle advised by the adviser or any of its related persons (an “adviser-led secondary transaction”).

### Requirements

- The advisor must obtain a fairness opinion or a valuation opinion from an independent opinion provider and distribute the opinion to private fund investors prior to the due date of the election form.
- The adviser is required to prepare and distribute a written summary of any material business relationships between the adviser (or related persons) and the independent opinion provider.



This definition of advisor-led secondary transactions generally includes advisor-initiated transactions in which a fund sells one or more assets to another vehicle managed by the adviser only if investors have the option between obtaining liquidity and rolling all or a portion of their interests into another vehicle. According to the SEC, “Generally, if an investor is allowed to retain its interest in the same fund with respect to the asset subject to the transaction under the same terms (i.e., the investor is not required to either sell or convert/exchange), as many tender offers permit investors to do, then the transaction would not qualify as an adviser-led secondary transaction.”

According to the SEC, the final “rules are designed to protect investors who directly or indirectly invest in private funds by increasing visibility into certain practices involving compensation schemes, sales practices, and conflicts of interest through disclosure; establishing requirements to address such practices that have the potential to lead to investor harm; and restricting practices that are contrary to the public interest and the protection of investors.”

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<sup>1</sup> *Private Fund Advisers; Documentation of registered Investment Adviser Compliance Reviews, Investment Advisers*

## What's Next...

Advisors will have at least 12 months to comply with new rules related to advisor-led secondary transactions. The rule requires an adviser to obtain the opinion from an independent opinion provider, which is defined as a person who provides fairness opinions or valuation opinions in the ordinary course of its business and is not a related person of the adviser.

## How Empire Can Help

Empire Valuation Consultants has grown into one of the nation's leading and most respected independent valuation consulting firms, preparing 45,000 valuations over its 35-year history. While fairness opinions are widely sought for public company mergers and acquisitions, they may also be prepared for a wide range of public and private company transactions, both on the buy-side and sell-side, for situations such as the ones described in this article. The team of experts at Empire Valuation Consultants has established a track record as a leading transaction advisor and opinions provider. These opinions help companies, funds, and advisors understand and maximize value. If you lead or influence companies or funds undergoing a secondary market transaction, our team of experts is here to help simplify the complexities of the transaction by delivering the financial opinions that create sustainable value.



Scott Rogers is a Senior Manager at Empire Valuation Consultants. With over 15 years of corporate finance experience, including preparing valuations for the purposes of fairness and solvency opinions, financial reporting, corporate strategy, tax planning, M&A, and estate and gift tax purposes, Scott is a leading expert in business valuation. Additionally, Scott assists his clients on ad hoc consulting projects. He received his BS degree and later earned an MBA from Saint Bonaventure University.

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