

## Lawsuit Filed Against the Securities and Exchange Commission Regarding Private Fund Adviser Rules and Reforms

On September 1, 2023, six trade associations filed a [Petition for Review](#) (the “Petition”) in the Court of Appeals of the Fifth Circuit alleging that the Securities and Exchange Commission (the “Commission”) exceeded its statutory authority and violated the agency rulemaking process in its adoption of the Private Fund Adviser Rules and Reforms under the Investment Advisers Act of 1940.

The Private Fund Adviser Rules and Reforms, which were approved by the Commission on August 23, 2023, introduced extensive regulatory changes for the private funds industry (please see Alston & Bird’s prior [Advisory](#) for additional information regarding these rules). The Petition asserts that the new rules exceed the Commission’s statutory authority, were adopted without proper notice-and-comment, and are “arbitrary, capricious, an abuse of discretion, and contrary to law,” in violation of the Administrative Procedure Act, 5 U.S.C. § 706, and that the Commission claimed to discover “a sweeping new power over private funds—in either a general anti-fraud provision (section 206(4) of the Advisers Act) or a statutory section that does not mention private funds, and that is focused on retail investors (section 913 of the Dodd-Frank Act),” calling such “discovery” “not plausible.”

In making their argument, the Petitioners describe the original proposal, which they contend was “ill-considered” and met with responses from commenters that the proposal “reflected basic misunderstandings of the market the Commission sought to regulate.” They contend that the Commission adopted the final rules without further notice-and-comment, that the final rules are contrary to Congress’s position that private funds do not require extensive regulation, and that the Commission has not shown any need for the regulatory requirements imposed by the rules.

The Petitioners requested that the court hold unlawful, vacate, and set aside the rules, but the commencement of the Petition does not delay compliance dates of the rules or operate as a stay of the Commission’s order unless specifically ordered by the court. The team at Alston & Bird will continue to monitor the Private Fund Adviser Rules and Reforms and any related litigation that is to follow.

The six trade associations include: National Association of Private Fund Managers; Alternative Investment Management Association Ltd.; American Investment Council; Loan Syndications and Trading Association; Managed Funds Association; and National Venture Capital Association (together, the “Petitioners”).

## Investment Funds Team

Kitan O. Ajanaku  
404.881.7409  
[kitan.ajanaku@alston.com](mailto:kitan.ajanaku@alston.com)

Austin Charles  
404.881.7883  
[austin.charles@alston.com](mailto:austin.charles@alston.com)

Kristin P. Hinson  
704.444.1332  
[kris.hinson@alston.com](mailto:kris.hinson@alston.com)

Sally Nicholas  
404.881.7438  
[sally.nicholas@alston.com](mailto:sally.nicholas@alston.com)

Mustafa Almusawi  
202.239.3176  
[mustafa.almusawi@alston.com](mailto:mustafa.almusawi@alston.com)

Siena Cornacchini  
212.210.9487  
[siena.cornacchini@alston.com](mailto:siena.cornacchini@alston.com)

Colby B. Jenkins  
704.444.1280  
[colby.jenkins@alston.com](mailto:colby.jenkins@alston.com)

Carlin O'Donnell  
212.210.9469  
[carlin.odonnell@alston.com](mailto:carlin.odonnell@alston.com)

David J. Baum  
202.239.3346  
[david.baum@alston.com](mailto:david.baum@alston.com)

Martin H. Dozier  
404.881.4932  
[martin.dozier@alston.com](mailto:martin.dozier@alston.com)

Saloni Joshi  
+44.20.2161.4377  
[saloni.joshi@alston.com](mailto:saloni.joshi@alston.com)

BJay Pak  
404.881.7816  
[bjay.pak@alston.com](mailto:bjay.pak@alston.com)

Amie Benedetto  
404.881.4830  
[amie.benedetto@alston.com](mailto:amie.benedetto@alston.com)

Blake E. Estes  
212.210.9415  
[blake.estes@alston.com](mailto:blake.estes@alston.com)

MaryKate Kustas  
212.210.9514  
[marykate.kustas@alston.com](mailto:marykate.kustas@alston.com)

Daniel M. Reach  
704.444.1272  
[danny.reach@alston.com](mailto:danny.reach@alston.com)

Juan Bernal  
404.881.7828  
[juan.bernal@alston.com](mailto:juan.bernal@alston.com)

Timothy J. Fitzmaurice  
404.881.4640  
[tim.fitzmaurice@alston.com](mailto:tim.fitzmaurice@alston.com)

Channing Lansdell  
404.881.7862  
[channing.lansdell@alston.com](mailto:channing.lansdell@alston.com)

MacRae Robinson  
704.444.1166  
[macrae.robinson@alston.com](mailto:macrae.robinson@alston.com)

Waylon Bryson  
919.862.2256  
[waylon.bryson@alston.com](mailto:waylon.bryson@alston.com)

David C. Fratto  
404.881.7832  
[david.fratto@alston.com](mailto:david.fratto@alston.com)

Megan Lau  
+44.20.8161.4349  
[megan.lau@alston.com](mailto:megan.lau@alston.com)

Jody Rosen  
202.239.3472  
[jody.rosen@alston.com](mailto:jody.rosen@alston.com)

Joseph Burby  
404.881.7670  
[joey.burby@alston.com](mailto:joey.burby@alston.com)

Brian D. Frey  
202.239.3067  
[brian.frey@alston.com](mailto:brian.frey@alston.com)

Branson Lee  
404.881.4773  
[branson.lee@alston.com](mailto:branson.lee@alston.com)

Mayuri Roy-Altenkirch  
+44.20.8161.4380  
[mayuri.roy-altenkirch@alston.com](mailto:mayuri.roy-altenkirch@alston.com)

Andrew Burton  
404.881.7362  
[andrew.burton@alston.com](mailto:andrew.burton@alston.com)

Mathew Gray  
212.210.9410  
[mathew.gray@alston.com](mailto:mathew.gray@alston.com)

Clay A. Littlefield  
704.444.1440  
212.210.9570  
[clay.littlefield@alston.com](mailto:clay.littlefield@alston.com)

Gina M. Russoniello  
704.444.1451  
[gina.russoniello@alston.com](mailto:gina.russoniello@alston.com)

Lauren Burton  
+44.20.8161.4372  
[lauren.burton@alston.com](mailto:lauren.burton@alston.com)

Katherine Doty Hanniford  
202.239.3725  
[kate.hanniford@alston.com](mailto:kate.hanniford@alston.com)

Dustin J. Littrell  
214.922.3475  
[dustin.littrell@alston.com](mailto:dustin.littrell@alston.com)

Timothy P. Selby  
212.210.9494  
[tim.selby@alston.com](mailto:tim.selby@alston.com)

George J. Cahill  
212.210.9412  
[george.cahill@alston.com](mailto:george.cahill@alston.com)

Jeff Hill  
212.210.9430  
[jeff.hill@alston.com](mailto:jeff.hill@alston.com)

Paul N. Monnin  
404.881.7394  
[paul.monnin@alston.com](mailto:paul.monnin@alston.com)

Albert B. Stieglitz, Jr.  
202.239.3168  
[albert.stieglitz@alston.com](mailto:albert.stieglitz@alston.com)

Katherine Carter  
704.444.1279  
[katherine.carter@alston.com](mailto:katherine.carter@alston.com)