



# SHARTSIS FRIESE LLP

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San Francisco, California 94111-3598

September 13, 2023

**VIA EMAIL**

To Our Investment Adviser Clients and Other Friends:

Re: **SEC Enforcement Actions for Custody Rule Violations**

On September 5, 2023, the Securities Exchange Commission (the “SEC”) [charged five advisory firms](#) with violations of Rule 206(4)-2 (the “Custody Rule”) under the Investment Advisers Act of 1940 (the “Advisers Act”), which marks the second round of SEC enforcement actions against private fund advisers for those types of violations in the past year. These SEC actions focus on failures by the advisers to (a) have audits performed, (b) deliver audited financials to investors in a timely manner, (c) ensure that a qualified custodian maintained client assets and (d) promptly file an amended Form ADV when they received audited financial statements.

Regarding amendments to Form ADV, if a private fund adviser responds, “Report Not Yet Received” to Question 23(h), Section 7.B.(1) of the Form ADV (“Do all of the reports prepared by the auditing firm for the private fund since your last annual updating amendment contain unqualified opinions?”), the adviser must promptly file an amended Form ADV when it receives its annual audit. The response to Question 23(h) must be changed to “Yes” or “No” in the amended Form ADV. Failing to do so may make private fund advisers vulnerable to SEC enforcement actions under the Custody Rule.

Please contact one of the Shartsis Friese attorneys in the [Investment Funds & Advisers Group](#) if you have any questions about your obligations under the Custody Rule.

**SHARTSIS FRIESE LLP**