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# SEC Drops Thorny Private Funds Rule Items, but Spurs New Questions

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Genna Garver

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Genna Garver, a partner in Troutman Pepper's Corporate Practice Group, was quoted in the August 30, 2023 *FundFire* article, "SEC Drops Thorny Private Funds Rule Items, but Spurs New Questions."

Exactly how far the SEC will go with any plans to enforce those provisions – especially the limitation on indemnification – is now on the minds of industry attorneys, said Genna Garver, a partner in the investment management and compliance law group at Troutman Pepper Hamilton Sanders.

"There are going to be 100 lawyers focusing [this week] on that question," she said. "They're going to be questioning whether the language [the SEC] used aligns with the interpretation [of existing rules]."

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But what managers still can indemnify themselves for under the 2019 guidelines is subject to interpretation, with some rules of the road less clear now, especially when looking at the language in last week's rule adopting release, Garver said. Contractual clauses hinged upon that 2019 language have "gotten quite fancy over the years," she noted.

Part of the discussion between Peirce and Birdthistle last week appeared to get at the question of what falls under a manager's fiduciary duty, and whether language in the adopting release may conflict with how managers have been applying the 2019 guidance, Garver said.

"Commissioner Peirce was getting to the point on this: 'Does your interpretation… align with the 2019 fiduciary duty interpretation or does it go beyond that?'" she said. "The million-dollar question is does the SEC's view expressed in the final adopting release align with my own understanding of what you could waive and not waive before?"

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