

Press Coverage | June 24, 2024

The Death of the Private Funds Rule – And the Aftermath (Part 4)

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[Genna Garver](#)

Genna Garver, a partner with Troutman Pepper, was quoted in the June 24, 2024 *Private Funds CFO* article, “[The Death of the Private Funds Rule – And the Aftermath \(Part 4\)](#).”

“The SEC has focused on the anti-fraud provisions under 206(4) and rule 206(4)-8 and now the Fifth Circuit says there’s no duty to disclose to investors, so no duty to disclose means no deception under the Advisers Act,” she says. “It’s going to be hard for the SEC to continue to rely on 206(4).”

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“I struggle to understand how the SEC can say whether that’s fraud depending on the size of the fund,” Garver says, referring to the AUM thresholds for when fund managers must register with the commission. “Fraud for one manager should be fraud for all managers. Communications should not be viewed as fraudulent or not fraudulent based on the manager’s registration status.”

“Sec. 206(4) is not the SEC’s only power,” Garver adds. “If the SEC wants to protect investors, it also has tools under the Securities Act, the Investment Company Act and the Exchange Act. They have power to regulate all of it.”

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