

The Paradoxes of SEC Registration

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Genna Garver

Genna Garver, a partner with Troutman Pepper, was quoted in the December 2023/January 2024 Private Funds CFO article, [“The Paradoxes of SEC Registration.”](#)

The combination of circumstances might be thought of as an industry stress test. Or more optimistically: growing pains. “I tell my clients, ‘You’ve arrived. You’re so important now, and so big now that you are of interest to the SEC,’” says Genna Garver, a partner with Troutman Pepper. ““So, congratulations. Now it’s time to get to work.””

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As firms approach registration, fund managers should be extra sensitive about the culture shocks it can send, Troutman Pepper’s Garver says.

“It can be scary for the firms to take on additional liability,” she says. “It’s particularly scary for people who are stepping into a CCO role, because it is personal to them. It’s important to understand that as a firm, your culture is not just the tone you set, but how your people feel.”

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Troutman Pepper’s Garver says there’s another way to read that suit, too.

“This case, as alleged, is really about operating an unregistered business that cannot be a family office and is not prohibited from SEC registration on the basis that their activities rose to the level of regulatory assets under management,” Garver says.

It’s possible to read against the commission’s complaint, Garver says, to see the task regulators claim Matlin and Concord were conducting — everything from portfolio management to negotiating side letter terms — to get an idea of what regulators view to be continuous and regular supervisory or management services for purposes of calculating regulatory assets under management; ie, an investment adviser who should be registered with the commission.

“They break down the individual tasks that they were allegedly performing in pretty solid detail, and I don’t believe I’ve seen anything similar to this,” she says.

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