

Investment advisers cannot just “set it and forget it” when outsourcing

The Securities and Exchange Commission (“Commission” or “SEC”) is proposing a new rule [Release Nos. IA-6176) requiring registered or should be registered investment advisers to conduct due diligence on certain outsourced service providers. The SEC acknowledged the cost efficiencies and benefits of outsourcing by private fund managers without the resources or infrastructure to gain access to certain specializations or areas of expertise and reducing the risk of keeping a function in-house not equipped to perform, or otherwise offer efficiencies that are unavailable to or unachievable by an investment adviser alone.

Advisers will be required to oversee outsourced functions to ensure legal obligations are continuing to be met despite and Adviser not performing those functions itself targeting outsourced functions that meet two elements: (1) necessary to provide its investment advisory services in compliance with the Federal securities laws; and (2) those that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser’s clients or on the adviser’s ability to provide investment advisory services.

In general, due diligence should be documented across appropriate scope by professionals with the requisite skill set, experience and expertise to conduct due diligence for those outsourced functions such as: sub-advisors, providers relating to portfolio or risk management, valuation or compliance. Roles and responsibilities delegated such as Chief Compliance Officer should be performed by those with the appropriate skill set, experience and expertise to administer the role not just hold a title. The fiduciary responsibility to conduct due diligence on sub-advisers or covered service providers is nothing new but now the SEC may in the future broaden the scope of holding Advisers feet to the fire under the proposed release.

Alternative Fund, PLLC is a boutique hybrid law firm providing the legal and “business” expertise and know how to perform due diligence across the scope of an investment adviser’s role and responsibility. In addition to focusing on legal matters to fund managers across the spectrum of product offerings and structures (onshore and offshore) we also offer at a “high level of sophistication” benchmark to institutional level ad-hoc or dedicated outsourced support to private fund managers and registered adviser executives across the C-level functions.

Alternative Fund, PLLC, boutique legal and business advisory law firm to fund managers across hedge funds, private equity and venture capital firms. C-suite executive and law firm experienced lawyers with front to back-office legal and enterprise-wide business know-how working with conventional to complex institutional fund manager organizations and spectrum of typical to esoteric asset classes.

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