

MEDIA MENTIONS

Schulte co-managing partner Marc Elovitz quoted in *The National Law Journal*

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Last month, the US Court of Appeals for the Fifth Circuit vacated the SEC's rule regulating private fund advisers, stating that the agency overstepped its statutory authority. The SEC's window for requesting an appeal has expired and the court issued a mandate.

Schulte Roth & Zabel co-managing partner Marc Elovitz offered his perspective on the US Securities and Exchange Commission's next course of action in *The National Law Journal* article titled, "SEC Will Keep Examining, Enforcing Private Fund Advisers' Actions Despite Vacated Rule, Securities Lawyers Say."

Marc described the rule as "effectively over and done with in this incarnation," but noted that the SEC's examination and enforcement of private fund advisers is still very active, stating, "We are absolutely aware that the SEC, in its examination and enforcement program, will continue to focus on expenses and fees and make efforts to carefully evaluate those issues."

The private fund adviser rule's quarterly reporting component is a potential provision the agency could restore as it "could be viewed as a type of disclosure requirement that is not unfamiliar in the securities laws," explained Marc.

"The Fifth Circuit didn't think that the SEC had laid the groundwork for the rulemaking. So, if they were going to do that, they would need to lay the

groundwork that would provide a sufficient basis for rulemaking with respect to quarterly reporting,” he added.

However, Marc clarified that it is unlikely that the SEC will petition the Supreme Court to overturn the Fifth Circuit’s decision.

“It was a bad ruling for the SEC, both in terms of the private fund advisers rules themselves, but also for the holding about the SEC’s authority under the [Investment] Advisers Act, which could influence other rules of the SEC, both existing rules, proposed rules and future rules. So to double down on that issue and take it to the Supreme Court and potentially get a precedent of the Supreme Court as to their authority under the Advisers Act would be highly, highly risky.”

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