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## Recent Letter to SEC Chairman Highlights Importance of Valuation Issues for Private Fund Advisers

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Valuation of private fund assets has been a focus for SEC examinations and enforcement staff for over a decade, and a June 2025 letter sent by U.S. Representative Elise Stefanik to SEC Chairman Paul Atkins, and media coverage of that letter, once again highlight the importance of a private fund adviser's valuation process.

The SEC Division of Examinations has published risk alerts highlighting deficiencies in valuation processes of investment advisers.<sup>1</sup> The SEC Division of Enforcement meanwhile has brought numerous enforcement actions over the years in the valuation space.<sup>2</sup> In our experience, private fund advisers continue to face scrutiny during SEC examinations over issues related to valuation, and Enforcement staff will likely continue to respond opportunistically to referrals from Examinations, or to whistleblower complaints.

The Congresswoman's letter, which focused on whether there were misrepresentations in Harvard University's recent bond issuance, also expressed concern to Chairman Atkins that a "large portion of Harvard's endowment is invested in illiquid assets, private equity, venture capital, and real estate," sectors that she described as "often overvalued due to reliance on internal estimates and outdated transaction data." Rep. Stefanik added that interest rates and declining market valuations have led her to believe that "the real, realizable value of these assets is likely far below stated values."<sup>3</sup>

These concerns about private investment valuations are not new, but this June letter serves as a helpful reminder for advisers to re-examine valuation policies and procedures. It is also possible that valuations will attract enhanced regulatory attention to the extent retail investors gain additional exposure to private funds, which is a stated priority of this Commission.

<sup>1</sup> *OCIE Observations: Investment Adviser Compliance Programs*, Office of Compliance Inspections and Examinations (Nov. 19, 2020), <https://www.sec.gov/files/risk-alert-ia-compliance-programs.pdf>; *Division of Examinations Observations: Investment Advisers' Fee Calculations*, Division of Examinations (Nov. 10, 2021), <https://www.sec.gov/files/exams-risk-alert-fee-calculations.pdf>.

<sup>2</sup> See <https://www.sec.gov/enforce/ia-6315-s>; <https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25750>; <https://www.sec.gov/files/litigation/admin/2019/ia-5245.pdf>.

<sup>3</sup> *Stefanik Asks SEC to Investigate Harvard for Potentially Withholding Material Information from Bondholders*, Office of Elise Stefanik (June 17, 2025), <https://stefanik.house.gov/2025/6/stefanik-asks-sec-to-investigate-harvard-for-potentially-withholding-material-information-from-bondholders>. See also Jonathan Weil, *Private Equity Caught in Crosshairs of Elise Stefanik's Attack on Harvard*, Wall St. J. (July 1, 2025) (highlighting the portion of the letter concerning private fund valuation).

## Best Practices: Disclosures, Policies, Process, Fees and Audits

Although Rep. Stefanik's letter focuses on Harvard, it makes reference to an underlying practice that is not unique to the University – that is, investors' reliance on aged valuations generated by private equity funds.

Because valuations of level 3 assets of the sort held by private equity funds may be opaque to outside observers, those observers may question whether these valuations reflect the "real" value of assets, or whether that value is more accurately shown through other factors, such as the cost of assets on the secondary market. These concerns are not new and have been covered by the media fairly regularly,<sup>4</sup> but may still be the subject of scrutiny if valuation issues come to regulators' attention.

As attention on valuation continues during SEC examinations and enforcement investigations, private fund advisers should focus on the following issues:

- Valuation disclosures. The SEC's Marketing Rule requires that an adviser have a reasonable belief that it can substantiate statements of material fact in an advertisement upon demand by SEC staff.<sup>5</sup> SEC staff likely will view statements in advertisements that are related to valuation processes as material, so private fund advisers should take care to ensure they can substantiate any such statements made with respect to valuation.
- Valuation policies. The SEC's Compliance Rule requires that advisers maintain tailored policies and procedures. Valuation policies are likely to receive focus from SEC Examinations staff, so advisers should ensure such policies reflect what the adviser does in practice, are tailored to the adviser's business and, most importantly, are followed.
- Valuation process. Valuation committee meetings should be held in accordance with adviser policies and procedures. Meeting minutes may be reviewed carefully by SEC staff and should be accurate and demonstrate an adviser's robust valuation process.
- Valuation impacting fee calculations. Valuation issues that impact the calculation of fees will face particular scrutiny by SEC staff and should therefore be handled carefully by private fund advisers. Most notably, valuation issues related to post-commitment period management fees are likely to face significant SEC exam scrutiny.<sup>6</sup>
- Audits. Audited financial statements are incredibly important for valuation, investor agreements and the SEC's Custody Rule.<sup>7</sup> Private fund advisers should work closely with their auditor to ensure the audit process runs smoothly and without surprises.

## Final Takeaways

While the valuation issues raised in the Congresswoman's letter have been in the public domain for years, and it is unlikely that this Commission without further external pressure will launch a large scale investigation into the private equity industry over valuation, the letter serves as a helpful reminder for advisers to re-examine their practices around valuation. This will help mitigate the risk of the SEC Examinations staff finding deficiencies in valuation processes, or a whistleblower (e.g., counterparty, competitor, or former or current employee) reporting a potential issue, two scenarios which are likely to trigger an SEC investigation.

\* \* \*

<sup>4</sup> See, e.g., Jonathan Weil, *Should J.P. Morgan Set Rules for J.P. Morgan?*, Wall St. J. (Oct. 8, 2002) (discussing concerns with fair-value accounting).

<sup>5</sup> 17 C.F.R. § 275.206(4)-1.

<sup>6</sup> See <https://www.sec.gov/newsroom/press-releases/2023-112>; <https://www.sec.gov/newsroom/press-releases/2023-193>; <https://www.sec.gov/newsroom/press-releases/2022-107>.

<sup>7</sup> See <https://www.sec.gov/newsroom/press-releases/2023-168>.

If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to any of the following:

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