



# The SEC Focuses on Advisor-Led Secondary Transactions in New Private Fund Reforms

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On August 23, 2023, the U.S. Securities and Exchange Commission (SEC) adopted new rules under the Investment Advisers Act of 1940 to enhance the regulation of private fund advisors. The sweeping rules make several requirements of private fund advisors designed to protect their investors.

Included within the SEC's new rules is a requirement for fund advisors to obtain a fairness or valuation opinion in connection with advisor-led secondary transactions. For purposes of its new rules, the SEC defines advisor-led secondaries as "transactions initiated by the investment advisor or any of its related persons that offer the private fund's investors the choice between: (i) selling all or a portion of their interests in the private fund and (ii) converting or exchanging all or a portion of their interests in the private fund for interests in another vehicle advised by the advisor or any of its related persons." Examples of such transactions include single-asset continuation funds, multi-asset continuation funds, and strip sale continuation funds.

According to the SEC, advisor-led transactions can provide benefits to both advisors and investors, such as the ability for investors to receive liquidity or the ability to secure additional time and capital to maximize the value of fund assets. However, they also raise certain conflicts of interest given that the advisor is involved on both sides of the deal and can have interests in the transaction that are different than, or in addition to, the interests of investors. To mitigate the potential impact of such conflicts of interest, the SEC's new rule prohibits an advisor from completing an advisor-led secondary transaction without first obtaining a fairness or valuation opinion from an independent opinion provider.

Per the SEC, the fairness or valuation opinion requirement:

- Provides an important check against an advisor's conflicts of interest in structuring and leading a transaction from which it may stand to profit at the expense of private fund investors; and
- Is designed to help ensure that investors receive the benefit of an independent price assessment, which will improve their decision-making abilities and their overall confidence in the transaction.

The new rule requires these opinions to be issued only by an "independent opinion provider," which is defined as a person that provides fairness or valuation opinions in the ordinary course of its business and is not a related person of the advisor. The advisor is required to distribute the opinion to private fund investors prior to the due date of the election form and must prepare and distribute a written summary of any material business relationships between the advisor or its related persons and the independent opinion provider.

Earlier this year, the SEC adopted amendments to Form PF, the confidential reporting form for private funds, which provides the Commission with information about the basic operations and strategies of private funds. Included within the amendment was a requirement that all private equity fund advisors must report any advisor-led secondary transactions on a quarterly basis within 60 days of the end of each fiscal quarter, which includes the transaction closing date and a brief description of the transaction. This reporting requirement, in addition to the fairness or valuation opinion requirement, highlights the SEC's increased scrutiny of transactions with inherent conflicts of interest.

Houlihan Lokey is the market leader in providing fairness and valuation opinions to financial sponsors in connection with advisor-led secondary transactions and other potential conflict situations. We have been at the forefront of providing these opinions in many of the largest and most complex transactions. We are the only opinion provider with a fully dedicated team focused on sponsor-led transactions, and over the past several years, we have assisted hundreds of sponsors across a wide range of single-asset, multi-asset, and other cross-fund transactions.

## About Houlihan Lokey's Fund Opinions Practice

Houlihan Lokey's Fund Opinions practice is a leading advisor to many of the world's largest asset managers. We have assisted hundreds of financial sponsors with valuation and fairness opinions, including private equity funds, hedge funds, and credit funds, across a range of advisor-led transactions. We rapidly mobilize the right team for the job, drawing on our expertise in a wide variety of asset classes and industries along with our real-world transaction experience and market knowledge from the broader Houlihan Lokey platform. Our industry-leading experience and credentials, coupled with our ability to leverage the firm's broad capabilities, provide an unparalleled offering to the market and distinguish Houlihan Lokey as a trusted advisor to both GPs and LPs.

Transaction Types		Asset Classes	Industries	
Single-Asset Continuation Funds	Merger of Portfolio Companies	Buyout	Business Services	Healthcare
Multi-Asset Continuation Funds	Cross-Fund Equity Investments	Venture	Consumer, Food, and Retail	Industrials
Strip Sales Continuation Funds	Carve-Outs or Divestitures	Credit	Energy	Real Estate, Lodging, and Leisure
Fund-to-Fund Transfers	Fund Seeding	Infrastructure	Financial Services	Technology

## Featured Advisor-Led Secondary Transaction Fairness Opinions

 has completed a continuation fund transaction related to its investments in Focus Brands and Pirene and a portion of its investment in Inspire Brands Fairness Opinion	 has completed a continuation fund transaction related to its investments in Winston, Twin Rivers, Broadwell, Red Bull, Veritas, and Spark Fairness Opinion	 has completed a continuation fund transaction related to its investments in argano and improving Fairness Opinion	 has completed a continuation fund transaction related to its investments in KAVAK, hotmart, Gympass, and others Fairness Opinion	 has completed a continuation fund transaction related to its investment in INNOVEX Fairness Opinion	 has completed a continuation fund transaction related to its investments in neilson, MEADOWS, SPINAL, and MarketCost Group Fairness Opinion	 has completed a continuation fund transaction related to its investments in DISCOVERY and imagine360 Fairness Opinion	 has completed a continuation fund transaction related to its investments in SAVVAS and FTD Fairness Opinion	
 has completed its first Continuation Fund. The Continuation Fund is comprised of \$1.2 billion in capital commitments, which funded the purchase of portfolio companies from Audax Private Equity Fund IV. The transaction was led by Advisor Partners, Langston Partners, and Hamilton Lane. Largest Portfolio Companies: ICP, Justrite, 42NORTH Fairness Opinion	 has completed a continuation fund transaction related to its investment in shiftkey Fairness Opinion	 has completed a continuation fund transaction related to its investment in exterro Fairness Opinion	 has transferred four assets into a new investment vehicle, capitalized by Colter Capital Fairness Opinion	 has completed a continuation fund transaction related to its investment in EXCELITAS TECHNOLOGIES Fairness Opinion	 a portfolio company of WIND POINT PARTNERS has completed a recapitalization and acquired XPO Logistics Intermodal & Drayage Division Fairness Opinion	 Funds managed by GENERAL ATLANTIC have engaged in a recapitalization transaction involving sanfer Financial Opinion	 has sold certain investments to a new investment vehicle Fairness Opinion	 has sold certain investments to a new investment vehicle capitalized by AEP INVEST HARBOURVEST Fairness Opinion

Tombstones included herein represent transactions closed from 2019 forward.

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