



2021  
Investment  
Management  
Regulatory  
and Compliance  
Calendar  
and Guidebook

WINSTON  
& STRAWN  
LLP



## 2021 Investment Management Regulatory and Compliance Calendar and Guidebook

As the new year begins, it is important for investment managers, private funds, commodity pool operators and other investment management professionals to review the array of regulatory requirements they are obligated to fulfill. We hope that this Regulatory and Compliance Calendar and accompanying materials will be a useful tool for managing compliance requirements throughout the year.

In assessing your 2021 compliance strategy, it is important to keep in mind not only individual requirements and best practices, but also the larger themes defining the regulatory and enforcement environment. As a result of the COVID-19 pandemic in 2020, these themes should be reviewed by advisers in light of operational and compliance challenges they have faced and how they have modified their compliance programs to adapt to these changes. In our view, last year's SEC enforcement actions and risk alerts continue to send three clear messages:

- **Transparency is a priority.** The SEC is quick to take action in cases where there is a lack of required disclosure or a conflict of interest, and in cases where an investment manager made a material misrepresentation. Firms should endeavor to be scrupulously transparent in their arrangements and transactions.
- **Policies and procedures are just the start.** Firms need to have a solid infrastructure that translates policies and procedures into actions and behaviors. This includes controls, internal audit functions and appropriate and timely escalation protocols. Moreover, firms must act on and follow policies and procedures in a way that reasonably ensures compliance with such policies and procedures, and applicable law.
- **Compliance needs to be approached holistically.** Compliance procedures cannot be applied in a check-the-box fashion. Firms must implement a risk-based approach driven by thorough due diligence of clients, employees and vendors.

Firms and managers that follow a rigorous application of requirements while keeping an eye on big-picture trends will be well-positioned to avoid both the tangible and intangible costs that come with compliance shortfalls.

We look forward to working with you in the year ahead.

### CONTACT OUR TEAM

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## Section 1: Regulatory and Compliance Calendar

### A Few Notes on the Regulatory and Compliance Calendar

This Regulatory and Compliance Calendar covers certain regulatory requirements applicable to all investment managers (including SEC-Registered Managers, Exempt Reporting Advisers, CPOs, and CTAs) and private funds. It does not cover CPO obligations with respect to CFTC Regulation 4.12 Pools, CFTC Regulation 4.13(a)(1) Pools, CFTC Regulation 4.13(a)(2) Pools or CFTC Advisory 18-96 Pools. If an SEC-Registered Manager is also a CPO and/or a CTA, it must consider the requirements applicable to CPOs and/or CTAs discussed below, and vice versa. Similarly, if an Exempt Reporting Adviser is also a CPO and/or a CTA, it must consider the requirements applicable to CPOs and/or CTAs discussed below, and vice versa.

The calendar assumes the fiscal year is the calendar year; a fiscal year other than the calendar year will require the deadlines of some of the listed actions to be adjusted. For deadlines that fall on non-business days or holidays, please check the relevant filing site or contact a member of the Winston team for guidance. Regulatory requirements without fixed deadlines are listed at the end of the calendar. A Glossary of defined terms is included in Section 3, below. Further, given the restructuring at the SEC during 2020, the terms “OCIE” and “Division of Examinations” are used herein interchangeably.

## January 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>Early January</b>	<p>File amended SEC Form 13H with the SEC promptly (generally, within 10 days) following the end of the preceding calendar quarter if any of the information contained in the Large Trader's immediately prior SEC Form 13H filing has become inaccurate for any reason.</p> <p>A Large Trader making this quarterly amendment filing may choose to satisfy its annual Form 13H amendment obligation (see calendar entry for February 16 discussed below) by making the appropriate election.</p>	Person or entity that was a Large Trader of NMS Securities at any time during calendar year 2020
<b>January 1</b>	Effective date for compliance with the California Consumer Privacy Act ("CCPA").	Person or entity subject to the CCPA
<b>January 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2020 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Liquidity Fund Adviser during the third calendar quarter of 2020
<b>January 22</b>	If Final Statement (available in early January) from the IARD indicates that additional funds are due in connection with annual renewals, such funds must be available to the IARD on or prior to this date.	<p>Exempt Reporting Adviser</p> <p>Investment Manager employing persons who are registered as <u>Investment Adviser Representatives</u>, or who are otherwise registered, with one or more states</p>
<b>January 30</b>	Distribute monthly account statements for December 2020 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2020</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2020</p>

## January 2021 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>January 30</b>	Distribute quarterly account statements for the quarter ending December 31, 2020 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO: (i) has specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2) but such pool had net assets of \$500,000 or less as of the beginning of 2020</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2020</p>
<b>January 31</b>	Complete NFA's <a href="#">Swaps Proficiency Requirements</a> available online.	Each individual who is approved as a swap associated person ("Swap AP") at a CPO or CTA NFA member firm must satisfy NFA's Swaps Proficiency Requirements

## February 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>February 1</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the fourth calendar quarter of 2020 involving a Reportable Security in which such Access Person had, or as a result of the transaction acquired, any direct or indirect Beneficial Ownership (subject to certain limited exceptions).	SEC-Registered Manager
<b>February 16</b>	File annual CFTC Form CTA-PR for the year ending December 31, 2020 (by filing NFA Form PR for the year ending December 31, 2020) with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that Directs the commodity interest account(s) of one or more clients
<b>February 16</b>	File SEC Form 13F with the SEC for the year ending December 31, 2020.	Institutional Investment Manager that had Investment Discretion with respect to \$100 million or more of Section 13(f) Securities as of the last trading day of any month during calendar year 2020
<b>February 16</b>	File initial SEC Schedule 13G with the SEC.	Qualified Institutional Investor that did not previously report (and was not required to previously report) Beneficial Ownership of securities of a particular class of Covered Equity Securities on SEC Schedule 13G and that, during calendar year 2020, after directly or indirectly acquiring the Beneficial Ownership of securities of such class, directly or indirectly became the Beneficial Owner of more than five percent of such class
<b>February 16</b>	File annual amendment to SEC Schedule 13G with the SEC for the year ending December 31, 2020.	Qualified Institutional Investor or Passive Investor that previously reported Beneficial Ownership of securities of a particular class of Covered Equity Securities on SEC Schedule 13G

## February 2021 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>February 16</b>	File annual amendment to SEC Form 13H with the SEC for the year ending December 31, 2020 (unless filed in early January per calendar entry for early January discussed above).	Person or entity that was a Large Trader of NMS Securities at any time during calendar year 2020
<b>February 16</b>	File SEC Form 5 with the SEC.	Investment Manager that has Beneficial Ownership (determined pursuant to Rule 16a-1(a)(2) under the Exchange Act) of securities issued by an issuer whose fiscal year is the calendar year if such manager has (i) not previously reported certain exempt transactions in respect of such securities or (ii) failed to report transactions in such securities that such manager was required to report previously
<b>February 16</b>	File BE-577 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of U.S. Direct Investment Abroad," and whose fiscal year is the calendar year
<b>February 16</b>	File BE-605 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the U.S.," and whose fiscal year is the calendar year

## March 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>March 1</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2020 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Hedge Fund Adviser during the third calendar quarter of 2020
<b>March 1</b>	File Schedules A, B and C of CFTC Form CPO-PQR for the quarter ending December 31, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Large CPO during the fourth calendar quarter of 2020
<b>March 1</b>	File annual reaffirmations of reliance on exemption(s)/ exclusion from CPO/CTA registration through the NFA's Exemptions System.	<p>CPO – whether registered with the CFTC or exempt from CFTC registration – that claims an exemption from CPO registration with respect to the operation of one or more pools under CFTC Regulation 4.13(a) (3) and/or an exclusion from CPO registration with respect to the operation of one or more pools under CFTC Regulation 4.5</p> <p>CTA – whether registered with the CFTC or exempt from CFTC registration – that claims an exemption from CTA registration with respect to the management of accounts under CFTC Regulation 4.14(a)(8)</p>
<b>March 2</b>	Distribute monthly account statements for January 2021 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021</p>
<b>March 30</b>	Distribute monthly account statements for February 2021 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year and that had net assets of more than \$500,000 as of the beginning of 2021</p>

**March 2021** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>March 31</b>	File BE-185 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a “Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons,” and whose fiscal year is the calendar year
<b>March 31</b>	Update SEC Form ADV -- Part 1A, Part 2A and Part(s) 2B.  File updated Parts 1A and 2A with the SEC through the IARD.  “Notice file” updated Part 1A (and, if required, updated Part 2A and/or Part(s) 2B) with the states in which the manager has “notice filed” its SEC Form ADV.	SEC-Registered Manager whose fiscal year is the calendar year
<b>March 31</b>	Update Items 1, 2, 3, 6, 7, 10 and 11 of Part 1A of SEC Form ADV.  File updated Part 1A with the SEC and relevant states through the IARD.	Exempt Reporting Adviser whose fiscal year is the calendar year
<b>March 31</b>	File Schedule A and B of CFTC Form CPO-PQR for the quarter ending December 31, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Mid-Sized CPO during the fourth calendar quarter of 2020
<b>March 31</b>	File Schedule A of CFTC Form CPO-PQR and NFA Form PQR for the quarter ending December 31, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Small CPO during the fourth calendar quarter of 2020
<b>March 31</b>	File 2020 Annual Report for pool with the NFA through NFA’s EasyFile (Annual Reports) and distribute 2020 Annual Report for pool to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool or Non-Exempt Pool whose fiscal year is the calendar year
<b>March 31</b>	Determine NFA membership status of exempt CPOs/CTAs for purposes of compliance with NFA By-Law 1101; contact any exempt CPOs/CTAs that have not filed a notice affirming their exemption and cease transacting with such entity if it is required to be registered.	NFA Member

## April 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>Early April</b>	File amended SEC Form 13H with the SEC promptly (generally, within 10 days) following the end of the preceding calendar quarter if any of the information contained in the Large Trader's immediately prior SEC Form 13H filing has become inaccurate for any reason.	Person or entity that was a Large Trader of NMS Securities at any time during calendar year 2020
<b>April 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Liquidity Fund Adviser during the fourth calendar quarter of 2020
<b>April 15</b>	File Report of Foreign Bank and Financial Accounts ("FBAR") with FinCEN on FinCEN Form 114.	U.S. person who had a financial interest in, or signature authority over, one or more foreign financial accounts whose aggregate value exceeded \$10,000 at any time during a calendar year 2020 (subject to certain exceptions)
<b>April 30</b>	Deliver annual update of Part 2A of SEC Form ADV to existing clients.	SEC-Registered Manager whose fiscal year is the calendar year
<b>April 30</b>	Deliver annual audited financial statements to investors in Pooled Investment Vehicles (other than Funds of Funds).	SEC-Registered Manager that manages Pooled Investment Vehicles whose fiscal year is the calendar year, with respect to which vehicles the SEC-Registered Manager relies on the "audit exception" under the Custody Rule
<b>April 30</b>	File (or, if previously filed, amend) annual SEC Form PF with the SEC through the PFRD.	An SEC-Registered Manager whose fiscal year is the calendar year and that is a Large Private Equity Adviser as of the last day of 2020  An SEC-Registered Manager whose fiscal year is the calendar year and that had \$150 million or more of "assets under management" (determined in accordance with SEC Form ADV Part 1A, Instruction 5.b) attributable to Private Funds as of the last day of 2020

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>April 30</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the first calendar quarter of 2021 involving a Reportable Security in which such Access Person had, or as a result of the transaction acquired, any direct or indirect Beneficial Ownership (subject to certain limitations).	SEC-Registered Manager
<b>April 30</b>	Distribute monthly account statements for March 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021  CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021
<b>April 30</b>	Distribute quarterly account statements for the quarter ending March 31, 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO: (i) has specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2) but such pool had net assets of \$500,000 or less as of the beginning of 2021  CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2021
<b>April 30</b>	File BE-577 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of U.S. Direct Investment Abroad," and whose fiscal year is the calendar year
<b>April 30</b>	File BE-605 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the U.S.," and whose fiscal year is the calendar year

## May 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>May 17</b>	File SEC Form 13F with the SEC for the quarter ending March 31, 2021.	Institutional Investment Manager that had Investment Discretion with respect to \$100 million or more of Section 13(f) Securities as of the last trading day of any month during calendar year 2020
<b>May 17</b>	File BE-185 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a “Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons,” and whose fiscal year is the calendar year
<b>May 17</b>	File NFA Form PR for the quarter ending March 31, 2021 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that Directs the commodity interest account(s) of one or more clients
<b>May 28</b>	File BE-11 Form with the BEA	U.S. Person contacted by the BEA and informed that it is required to file an “Annual Survey of U.S. Direct Investment Abroad.”
<b>May 30</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year that was a Large Hedge Fund Adviser during the fourth calendar quarter of 2020
<b>May 30</b>	Distribute monthly account statements for April 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021
<b>May 30</b>	File Form PQR <sup>1</sup> for the quarter ending March 31, 2021 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the first calendar quarter of 2021

<sup>1</sup>Under a recent CFTC rulemaking (available [here](#)), CFTC Regulation 4.27 was amended to permit CPOs to file NFA Form PQR in lieu of CFTC Form CPO-PQR starting with March 31, 2021 filings, provided that NFA amends its form as planned to include questions regarding Legal Entity Identifiers or LEIs.

## June 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>June 29</b>	Deliver annual audited financial statements to investors in Funds of Funds.	SEC-Registered Manager that manages Pooled Investment Vehicles that are Funds of Funds whose fiscal year is the calendar year, with respect to which Funds of Funds the SEC-Registered Manager relies on the “audit exception” under the Custody Rule
<b>June 30</b>	Distribute monthly account statements for May 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021  CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021
<b>June 30</b>	File GIPS Compliance Notification Form with the CFA Institute, using data as of December 31, 2020.	Investment Manager that has previously claimed compliance with GIPS in connection with performance presentations (unless such manager first claimed compliance during calendar year 2021)
<b>June 30 (Expected)</b>	File BE-15 Form with the BEA.	U.S. Person contacted by the BEA and informed that it is required to file an “Annual Survey of Foreign Direct Investment in the U.S.”

## July 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>Early July</b>	File amended SEC Form 13H with the SEC promptly (generally, within 10 days) following the end of the preceding calendar quarter if any of the information contained in the Large Trader's immediately prior SEC Form 13H filing has become inaccurate for any reason.	Person or entity that was a Large Trader of NMS Securities at any time during calendar year 2020
<b>July 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Liquidity Fund Adviser during the first calendar quarter of 2021
<b>July 30</b>	File BE-577 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of U.S. Direct Investment Abroad," and whose fiscal year is the calendar year
<b>July 30</b>	File BE-605 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the U.S.," and whose fiscal year is the calendar year
<b>July 30</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the second calendar quarter of 2021 involving a Reportable Security in which such Access Person had, or as a result of the transaction acquired, any direct or indirect Beneficial Ownership (subject to certain limited exceptions).	SEC-Registered Manager

## July 2021 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>July 30</b>	Distribute monthly account statements for June 2021 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021</p>
<b>July 30</b>	Distribute quarterly account statements for the quarter ending June 30, 2021 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO: (i) has specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2) but such pool had net assets of \$500,000 or less as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2021</p>

## August 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>August 16</b>	File NFA Form PR for the quarter ending June 30, 2021 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
<b>August 16</b>	File BE-185 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons," and whose fiscal year is the calendar year
<b>August 16</b>	File SEC Form 13F for the quarter ending June 30, 2021 with the SEC.	Institutional Investment Manager that had Investment Discretion with respect to \$100 million or more of Section 13(f) Securities as of the last trading day of any month during calendar year 2020
<b>August 29</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Hedge Fund Adviser during the first calendar quarter of 2021
<b>August 30</b>	File Form PQR for the quarter ending June 30, 2021 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the second calendar quarter of 2021
<b>August 30</b>	Distribute monthly account statements for July 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021

## September 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>September 30</b>	Distribute monthly account statements for August 2021 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021</p>

## October 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>Early October</b>	File amended SEC Form 13H with the SEC promptly (generally, within 10 days) following the end of the preceding calendar quarter if any of the information contained in the Large Trader's immediately prior SEC Form 13H filing has become inaccurate for any reason.	Any person or entity that was a Large Trader of NMS Securities at any time during calendar year 2020
<b>October 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Liquidity Fund Adviser during the second calendar quarter of 2021
<b>October 30</b>	Distribute monthly account statements for September 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021
<b>October 30</b>	Distribute quarterly account statements for the quarter ending September 30, 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO: (i) has specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2) but such pool had net assets of \$500,000 or less as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2021

## November 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>November 1</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the third calendar quarter of 2021 involving a Reportable Security in which such Access Person had, or as a result of the transaction acquired, any direct or indirect Beneficial Ownership (subject to certain limited exceptions).	SEC-Registered Manager
<b>Early November</b>	If a manager has determined that it no longer engages in any activities in a particular state that would require it to “notice file” its SEC Form ADV with such state, it should update Part 1A of its SEC Form ADV to reflect that determination as soon as practicable (early in November) (stating that such termination in such state shall become effective on December 31) to avoid the IARD’s December assessment of annual fees relating to renewal in such state.	SEC-Registered Manager or Exempt Reporting Adviser that has “notice filed” SEC Form ADV with one or more states
<b>Early November</b>	If a manager has determined in the case of particular persons that renewal of such persons’ registrations in particular states is no longer necessary, it should take appropriate actions to terminate such registrations as soon as practicable (early in November) (stating that such terminations shall become effective on December 31) to avoid the IARD’s December assessment of annual fees relating to renewal of such registrations in those states.	Investment Manager employing persons who are registered as Investment Adviser Representatives, or who are otherwise registered, with one or more states
<b>November 1</b>	File BE-577 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a “Quarterly Survey of U.S. Direct Investment Abroad,” and whose fiscal year is the calendar year
<b>November 1</b>	File BE-605 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a “Quarterly Survey of Foreign Direct Investment in the U.S.,” and whose fiscal year is the calendar year

## November 2020 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>November 15</b>	File NFA Form PR for the quarter ending September 30, 2021 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
<b>November 15</b>	File BE-185 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a “Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons,” and whose fiscal year is the calendar year
<b>November 15</b>	File SEC Form 13F with the SEC for the quarter ending September 30, 2021.	Institutional Investment Manager that had Investment Discretion with respect to \$100 million or more of Section 13(f) Securities as of the last trading day of any month during calendar year 2020
<b>November 29</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Hedge Fund Adviser during the second calendar quarter of 2021
<b>November 29</b>	File Form PQR for the quarter ending September 30, 2021 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the third calendar quarter of 2020
<b>November 30</b>	Distribute monthly account statements for October 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021

## December 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>Early December</b>	Fund annual “notice filing” renewal fees with the appropriate states through the manager’s IARD account.	SEC-Registered Manager or Exempt Reporting Adviser that has “notice filed” SEC Form ADV with one or more states
<b>Early December</b>	Fund annual renewal fees with the appropriate states through the manager’s IARD account.	Investment Manager employing persons who are registered as Investment Adviser Representatives, or who are otherwise registered, with one or more states
<b>December 30</b>	Distribute monthly account statements for November 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(2), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021

## Annual Compliance Requirements – No Fixed Dates

ACTION	RESPONSIBLE PARTY
Deliver annual privacy notice to clients/investors, if required.	Every Investment Manager
Renew SEC Form D filings, if applicable. Form D amendments must be filed annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time.	Every Investment Manager
Review “new issue” eligibility of clients/investors, if applicable. Advisers should send confirmation letters to clients and private fund investors regarding restricted status, which may be accomplished by way of negative consent.	Every Investment Manager
File initial SEC Schedule 13G with SEC within 10 days of acquiring Beneficial Ownership of more than five percent of the securities of a particular class of Covered Equity Securities	Passive Investors
Review holdings of Covered Equity Securities to determine (i) if an amendment is due during the calendar year or (ii) if investment intent is no longer passive and an SEC Schedule 13D is due	Qualified Institutional Investors and Passive Investors
Review and test and, if necessary, update compliance policies and procedures (and document such review, testing and updating).	SEC-Registered Manager
Provide Code of Ethics (or amendment) to Supervised Persons and obtain their acknowledgements of receipt.	SEC-Registered Manager whose registration with SEC becomes effective in 2020, or that amends its Code of Ethics during 2020
Obtain initial Holdings Report from each Access Person and obtain subsequent Holdings Reports from each Access Person at least once every 12 months, on a date selected by the manager.	SEC-Registered Manager
An SEC-Registered Manager or an Exempt Reporting Adviser (or an SEC-registered broker-dealer that is affiliated with such manager/adviser) that, in reliance on Rule 206(3)-2 under the Advisers Act, effects “agency cross transactions” for any advisory client of the manager/adviser must (among other things) send to each such client, at least annually, a written disclosure statement identifying the total number of such transactions effected for such client during the period since the date of the last such statement, and the total amount of all commissions or other remuneration received or to be received by the manager/adviser (and/or such affiliated broker-dealer) in connection with such transactions during such period. Special considerations apply where the advisory client is a Private Fund or other type of commingled investment vehicle.	SEC-Registered Manager Exempt Reporting Adviser

## Annual Compliance Requirements – No Fixed Dates *continued*

ACTION	RESPONSIBLE PARTY
Update offering documents for Non-Exempt Pools.	CFTC-Registered CPO
Update Disclosure Documents relating to non-exempt accounts.	CFTC-Registered CTA
Review compliance with NFA-required internal control system requirements; no mandated due date, but should be performed at least once every calendar/fiscal year; self-imposed due date should be the same as possible from year to year.	CFTC-Registered CPO
<p>Complete annual electronic Registration Update with the CFTC and the NFA through the NFA's Online Registration System (ORS), when notified to do so on the NFA's Dashboard (typically, within 30 days of the anniversary of the registrant's registration).</p> <p>Complete the NFA's Annual Questionnaire using the NFA's Annual Questionnaire System, and pay annual NFA membership dues (and annual records maintenance fee for each category of registration), within 30 days of anniversary date of NFA membership.</p>	NFA Member
Complete annual NFA Self-Examination Questionnaire (together with applicable supplement(s) and attest to such completion; no mandated due date, but should be performed at least once every calendar/fiscal year within 12 months of the last annual self-examination.	NFA Member
Review written information systems security (cybersecurity) program using either in-house staff with appropriate knowledge or by engaging an independent third-party information security specialist; no mandated due date, but should be performed at least once every calendar/fiscal year; self-imposed due date should be the same as possible from year to year.	NFA Member
Review written ethics training procedures, the content of its training programs, its training providers, the format of its training, the frequency of its training and the manner in which it documents compliance with its training procedures; assess whether any associated persons are in need of additional ethics-related training; no mandated due date, but should be performed at least once every calendar/fiscal year; self-imposed due date should be the same as possible from year to year.	NFA Member
Review and "stress test" business continuity/disaster recovery plan to assess its effectiveness and make any necessary adjustments; no mandated due date, but should be performed at least once every calendar/fiscal year; self-imposed due date should be the same as possible from year to year.	NFA Member

## Annual Compliance Requirements – No Fixed Dates *continued*

### ACTION

### RESPONSIBLE PARTY

File appropriate Form BE-13 (i.e., 13A, 13B, 13D, 13E or Claim for Exemption) with BEA within 45 days after qualifying transaction.

- U.S. business enterprise when a foreign entity acquires a voting interest (directly or indirectly through an existing U.S. affiliate) in the enterprise, segment or operating unit, and the acquisition meets the following criteria: (i) the total cost of the acquisition is more than \$3 million; AND (ii) the foreign entity now directly or indirectly owns at least 10% of the voting interest in the acquired enterprise. (BE-13A)
- U.S. business enterprise when a foreign entity or an existing U.S. affiliate of a foreign entity establishes a new legal entity in the United States, and the establishment of the new entity meets the following criteria: (i) the projected total cost to establish the new legal entity is more than \$3 million; AND (ii) the foreign entity now directly or indirectly owns at least 10% of the voting interest in the newly established business enterprise. (BE-13B)
- Existing U.S. affiliate of a foreign parent that expands its operations to include a new facility where business is conducted, and the projected total cost of the expansion is more than \$3 million (cost is in the aggregate, according to BEA representative). (BE-13D)
- U.S. business enterprise that previously filed forms BE-13B or BE-13D and the established or expanded entity is still under construction. (BE-13E)
- U.S. business enterprise that meets any of the following criteria: (i) the BEA contacted the enterprise but it does not meet the requirements for filling any of the forms; OR (ii) the enterprise, regardless of whether the BEA contacted it, meets all the requirements for filing one of the other forms, except the \$3 million reporting threshold. (Claim for Exemption)
- U.S. reporters who are asked by the BEA to submit a BE-13 form can file a Claim for Exemption if the relevant business or affiliate is a Private Fund as long as: 1) the Private Fund does not own, directly or indirectly through another business enterprise, an “operating company” (i.e., a business enterprise that is not a Private Fund or a holding company) in which the foreign parent owns at least 10 percent of the voting interest (directly or indirectly) AND 2) if the U.S. reporter owns the Private Fund indirectly (through one or more other U.S. business enterprises), there are no “operating companies” between the foreign parent and the indirectly-owned U.S. private fund. The foreign investment in the U.S. private fund may be required to be reported on TIC Surveys.

## Section 2: Compliance Tips and TIC Forms

The following best practices reflect current regulatory and enforcement priorities, as well as our experience advising investment managers, private funds and commodity pool operators on compliance issues. Although not exhaustive, this list provides a useful framework for assessing the strength of your compliance program.

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### All Investment Managers

- If an Investment Manager manages Private Funds and/or other fund products, it should review and, if necessary, update offering documents relating to Private Funds and other fund products, even if not required by law or regulation.
- If an Investment Manager participates in the offer and sale of securities of Private Funds pursuant to the exemption from Securities Act registration provided by Rule 506 of Regulation D under the Securities Act (or otherwise engages in the offer and sale of securities pursuant to that rule), it should conduct periodic due diligence into the “bad actor” status of certain parties in order to confirm the continuing availability of the Rule 506 exemption.
- Review, test and update compliance policies and procedures, even if not required by law or regulation (and document such review, testing and updating). Specific focus should include policies and procedures related to:
  - o COVID-19
  - o Cybersecurity
  - o Material nonpublic information
- Review CFIUS, ERISA and Tax considerations.
- Review “pay to play,” lobbyist and gifts/entertainment considerations.
- Review liability insurance considerations.
- If applicable, review and monitor changes in law and regulation in foreign jurisdictions, including filing obligations.

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### SEC-Registered Managers

- Redistribute Code of Ethics to all Supervised Persons and obtain acknowledgements of receipt.
- Review compliance with and transition to new Rule 206(4)-1 under the Advisers Act (the Marketing Rule)).
- Review compliance with Custody Rule.

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### SEC-Registered Managers that Are Also Broker-Dealers (or Have Affiliates that are Broker-Dealers)

- Review allegations of sales practice violations made against a registered person in an arbitration or litigation—even in cases where the registered person is not a named party—and amend the registered person’s Form U4 to disclose such information as required.
- Practice Tip: Supervision of recidivist representatives (i.e., those with a track record of misconduct) has been listed by OCIE as an examination priority.
- OCIE also published Risk Alerts in July 2019 and September 2016 about the examination of supervision practices of SEC-Registered Managers who employ individuals with a history of disciplinary events.

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### NFA Members

- Complete the NFA’s Self-Examination Questionnaire on an annual basis.
- Review disclosure of virtual currency practices.

## TIC FORMS

Investment Managers may be required to complete and submit various forms under the Treasury Department's Treasury International Capital ("TIC") system. TIC Form SLT aims to capture information regarding transactions between United States residents and foreign entities involving long-term securities. Long-term securities are securities without a stated maturity date (such as equities) or with an original term-to-maturity greater than one year. United States resident Investment Managers, whether for their own portfolios or on behalf of their clients (including hedge funds, private equity funds and commingled funds) that either issue long-term securities to foreign residents and/or hold long-term securities issued by foreign entities, are required to file a TIC Form SLT if the amount of such securities exceeds \$1 billion, excluding such securities that are held by a U.S.-resident third party custodian.

Investment Managers subject to Form SLT reporting requirements must complete and file a Form SLT on a monthly basis. Additionally, once the \$1 billion threshold is met in a month, the reporting entity must provide a TIC Form SLT each month for the remainder of the calendar year, regardless of whether the \$1 billion threshold is met in later months of that calendar year. For detailed instructions on TIC Form SLT, see <https://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-slt.aspx>

TIC Form B aims to gather timely and reliable information on the levels of, and changes in, U.S. international portfolio capital positions that do not include long-term securities and derivatives, such as swaps and futures. There are a number of TIC Form Bs, each with either monthly or quarterly filing obligations and subject to aggregate and individual country reporting thresholds. Investment Managers do not include "reportable claims" and "reportable liabilities" that are held by a U.S.-resident custodian. For detailed instructions on TIC Form B, see <https://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-b.aspx>

## Section 3: Glossary

The following defined terms appear in the 2020 Investment Management Regulatory Calendar and Guidebook.

### A

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#### Advisers Act

The U.S. Investment Advisers Act of 1940, as amended

#### Access Person

An “access person,” as defined in Rule 204A-1(e)(1) under the Advisers Act

### B

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#### BEA

The Bureau of Economic Analysis of the U.S. Department of Commerce

#### Beneficial Owner or Beneficial Ownership

As defined in Rules 13d-3 and 13d-5 under the Exchange Act; Rule 16a-1(a)(2) under the Exchange Act or Rule 204A-1(e)(3) under the Advisers Act, as applicable

### C

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#### CEA

The U.S. Commodity Exchange Act, as amended

#### CFTC

The U.S. Commodity Futures Trading Commission

#### CFTC Advisory 18-96 Pool

A Commodity Pool operated by a CFTC-registered CPO pursuant to CFTC Advisory 18-96

#### CFTC-Registered CPO

A CPO registered with the CFTC under the CEA

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#### CFTC-Registered CTA

A CTA registered with the CFTC under the CEA

#### CFTC Regulation 4.5 Pool

A Commodity Pool operated pursuant to the exclusion from that definition provided by CFTC Regulation 4.5

#### CFTC Regulation 4.7 Pool

A Commodity Pool operated by a CFTC-registered CPO pursuant to CFTC Regulation 4.7

#### CFTC Regulation 4.12 Pool

A Commodity Pool operated by a CFTC-registered CPO pursuant to CFTC Regulation 4.12

#### Commodity Pool

A “commodity pool,” as defined in Section 1a(10) of the CE3

#### CPO

A “commodity pool operator,” as defined in Section 1a(11) of the CEA

#### CTA

A “commodity trading advisor,” as defined in Section 1a(12) of the CEA

#### Custody Rule

Rule 206(4)-2 under the Advisers Act

### D

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#### Direct

“Direct” is defined in the context of commodity interest accounts in Rule 4.10(f) under the CEA

#### Division of Examinations

The SEC’s Division of Examinations, previously known as OCIE

### E

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#### EasyFile

The EasyFile electronic filing system operated by the NFA

#### ERA or Exempt Reporting Adviser

An Investment Manager that relies (and is entitled to rely) on the Private Fund Adviser Exemption or the Venture Capital Fund Adviser Exemption

#### Exchange Act

The U.S. Securities Exchange Act of 1934, as amended

### F

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#### FinCEN

The Financial Crimes Enforcement Network of the U.S. Department of the Treasury

#### FINRA

The U.S. Financial Industry Regulatory Authority, Inc.

#### Funds of Funds

A Pooled Investment Vehicle that invests 10 percent or more of its total assets in other Pooled Investment Vehicles that are not, and are not advised by, a “related person” of the pool, its general partner, or its adviser

### H

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#### Holdings Report

A report containing the information described in Rule 204A-1(b)(1) under the Advisers Act

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**I****IARD**

The Investment Adviser Registration Depository, operated by FINRA

**ICA**

The U.S. Investment Company Act of 1940, as amended

**Institutional Investment Manager**

An “institutional investment manager,” as defined in Section 13(f)(6) of the Exchange Act

**Investment Adviser Representative**

An “investment adviser representative,” as defined in Rule 203A-3(a) under the Advisers Act

**Investment Discretion**

“Investment discretion,” as defined in Section 3(a)(35) of the Exchange Act

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**L****Large CPO**

A “Large CPO,” as defined in the Definitions of Terms of CFTC Form CPO-PQR

**Large Hedge Fund Adviser**

An SEC Registered Manager that is required to file Section 2a of SEC Form PF per the SEC Form PF General Instructions

**Large Liquidity Fund Adviser**

An SEC Registered Manager that is required to file Section 3 of SEC Form PF per the SEC Form PF General Instructions

**Large Private Equity Adviser**

An SEC Registered Manager that is required to file Section 4 of SEC Form PF per the SEC Form PF General Instructions

**Large Trader**

A “large trader,” as defined in Rule 13h-1 under the Exchange Act

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**M****Mid-Sized CPO**

A “mid-sized CPO,” as defined in the Definitions of Terms of CFTC Form CPO-PQR

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**N****NFA**

The U.S. National Futures Association

**NMS Security**

An “NMS security,” as defined in Rule 600(b)(46) under the Exchange Act

**Non-Exempt Pool**

A Commodity Pool operated by a CFTC-registered CPO, other than a CFTC Regulation 4.5 Pool, a CFTC Regulation 4.7 Pool, a CFTC Regulation 4.12 Pool, a CFTC Regulation 4.13 Pool or a CFTC Advisory 18-96 Pool

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**O****OCIE**

The SEC’s Office of Compliance Inspections and Examinations, which is now known as the Division of Examinations

**OFAC**

The Office of Foreign Assets Control of the U.S. Department of the Treasury

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**P****Passive Investor**

A person or entity entitled to file an SEC Schedule 13G pursuant to Rule 13d-1(c) under the Exchange Act

**PFRD**

The Private Fund Reporting Depository of the IARD

**Pooled Investment Vehicle**

A limited partnership, limited liability company or other type of pooled investment vehicle

**Private Fund**

Any entity or fund that would be an “investment company” as defined in Section 3 of the ICA but for either or both of the “exclusions” from that definition provided by Section 3(c)(1) of the ICA or Section 3(c)(7) of the ICA

**Private Fund Adviser Exemption**

The exemption from registration with the SEC as an investment adviser provided by:

- Rule 203(m)-1(a) under the Advisers Act, for an Investment Manager that is U.S.-based

(that is, has its “principal office and place of business” in the “United States”) and that advises solely “qualifying private funds” having aggregate “assets under management” of less than \$150 million, regardless of whether the manager manages such “qualifying private funds” from a “place of business” in or outside the “United States” or

- Rule 203(m)-1(b) under the Advisers Act, for an Investment Manager that is not U.S.-based (that is, has its “principal office and place of business” outside the “United States”) and that has no client that is a “United States person” except for one or more “qualifying private funds,” provided that all assets managed by the manager at a “place of business” in the “United States” are solely attributable to “qualifying private funds,” and the total value of such assets (including assets attributable to “qualifying private funds” that are not “United States persons” if such assets are managed by the manager at a “place of business” in the United States), is less than \$150 million

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**Q****Qualified Institutional Investor**

A person or entity entitled to file an SEC Schedule 13G pursuant to Rule 13d-1(b) under the Exchange Act

**R****Reportable Security**

A “reportable security,” as defined in Rule 204A-1(e)(10) under the Advisers Act

**S****SEC**

The U.S. Securities and Exchange Commission

**SEC-Registered Manager**

An investment adviser registered with the SEC under the Advisers Act

**Section 13(f) Securities**

A “Section 13(f) security,” as defined in Rule 13f-1(c) under the Exchange Act

**Securities Act**

The U.S. Securities Act of 1933, as amended

**Small CPO**

A “small CPO,” as defined in the Definitions of Terms of CFTC Form CPO-PQR

**Supervised Person**

A “supervised person,” as defined in Section 202(a)(25) of the Advisers Act

**T****Transaction Report**

A report containing the information described in Rule 204A-1(b)(2) under the Advisers Act

**V****Venture Capital Fund Adviser Exemption**

The exemption from registration with the SEC as an investment provided by Rule 203(l)-1 under the Advisers Act for an Investment Manager that advises solely “venture capital funds”

## Section 4: Notable Regulatory Developments And Publications

### OCIE RISK ALERTS

#### Cybersecurity and Resiliency Observations

On January 27, 2020, OCIE published a list of examination observations related to market participants' cybersecurity and operational resiliency practices (the "Cybersecurity Alert"). The full text of the Cybersecurity Alert is available [here](#).

The Cybersecurity Alert highlights certain approaches taken by market participants to combat cybersecurity risk and maintain and enhance operational resiliency. The Cybersecurity Alert highlights specific examples of ways in which market participants have enhanced their cybersecurity preparedness and operational resiliency, while recognizing that different organizations may have different needs and thus the practices outlined in the alert may not be appropriate for all market participants. The practices described in the Cybersecurity Alert include the following:

- **Governance and Risk Management.** A key element of many effective programs is the incorporation of a governance and risk management program that generally includes, among other things: (1) a risk assessment which identifies, analyzes, and prioritizes cybersecurity risks to the organization; (2) written cybersecurity policies and procedures to address the identified risks; and (3) effective implementation and enforcement of the organization's cybersecurity policies and procedures.
- **Access Rights and Controls.** Organizational systems should be limited to appropriate users based on delineated job responsibilities and controls should be deployed to limit access to authorized users. Access controls generally include (1) understanding the location of data, including client information, throughout the organization; (2) restricting system and data access to authorized users; and (3) establishing appropriate controls to prevent and monitor for unauthorized system and data access.
- **Data Loss Prevention.** Data loss prevention involves tools and processes, such as vulnerability scanning and perimeter security, to ensure that sensitive data, including client information, is not lost, misused, or accessed by unauthorized users.
- **Mobile Security.** Mobile devices and applications may create unique security vulnerabilities for organizations. Organizations may address these issues through targeted measures such as managing the use of mobile devices, implementing security measures, establishing policies and procedures for the use of mobile devices, and appropriately training employees on these security measures.
- **Incident Response and Resiliency.** Appropriate incident response includes (1) the timely detection and appropriate disclosure of material information regarding incidents and (2) assessing the appropriate corrective actions to take in response to incidents. Business continuity and resiliency is an important aspect of an incident response plan.
- **Vendor Management.** Appropriate practices and controls related to vendor management include policies and procedures around activities such as (1) conducting due diligence for vendor selection; (2) monitoring and overseeing the activities of vendors and establishing contracts with vendors; (3) assessing how vendor relationships and due diligence are considered as part of the organization's overall ongoing risk assessment processes; and (4) assessing how vendors protect any client information to which they have access.
- **Training and Awareness.** Training provides employees with the information they need to assess cybersecurity risks and responsibilities and heightens awareness of security threats.

#### Examinations that Focus on Compliance with Regulation Best Interest and Form CRS

On April 7, 2020, OCIE published a risk alert to provide firms with information about the scope and content of initial examinations after the compliance date for Regulation Best Interest ("Reg BI") and another risk alert for Form CRS. With respect to Reg BI, OCIE will begin examining broker-dealers to assess implementation. Initial examinations will likely occur during the first year after the compliance date, and will primarily evaluate whether firms have established policies and procedures reasonably designed to achieve compliance with Reg BI and whether firms have made reasonable progress in implementing

## **Notable Regulatory Developments And Publications** *continued*

such policies and procedures. With respect to Form CRS, OCIE will begin examining broker-dealers and investment advisers to assess whether firms have made a good-faith effort to implement Form CRS. Our client briefing on both risk alerts is available [here](#).

### **Examination Initiative: LIBOR Transition Preparedness**

On June 18, 2020, OCIE published a risk alert announcing a new examination initiative around LIBOR transition preparedness (the “LIBOR Alert”). The full text of the LIBOR Alert is available [here](#).

LIBOR, formerly the London Interbank Offered Rate, is extensively used as a “benchmark” or “reference rate” for commercial and financial contracts, such as corporate and municipal bonds and loans, floating rate mortgages, asset-backed securities, consumer loans, and interest rate swaps and other derivatives. LIBOR is expected to be discontinued after this year. This may have a significant impact on financial markets and may present a material risk for certain market participants such as SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents, and clearing agencies (collectively, “registrants”). As such, the LIBOR Alert emphasizes the importance of registrants preparing for the transition from LIBOR to minimize any potential adverse impacts. OCIE plans to engage with registrants through the examination process to assess the registrants’ preparedness for the transition from LIBOR to another alternative reference rate.

Among other things, OCIE will review whether and how registrants have evaluated the potential impact of the LIBOR transition on the organization’s (1) business activities; (2) operations; (3) services; and (4) customers, clients and/or investors. OCIE also encourages registrants to visit the Alternative Reference Rates Committee website at <https://www.newyorkfed.org/arrc> to view information about the latest transition-related developments and best practices.

### **Private Fund Adviser Observations**

On June 23, 2020, OCIE published a list of examination observations related to certain compliance issues identified in examinations of registered investment

advisers that manage private equity funds or hedge funds (collectively, “private fund advisers”). OCIE focused on three general areas in which it noted deficiencies in its examinations of private fund advisers: conflicts of interest, fees and expenses and policies and procedures relating to material non-public information and codes of ethics. Please see our client briefing on this issue [here](#).

### **Cybersecurity: Ransomware Alert**

On July 10, 2020, OCIE published a risk alert to encourage registrants, as well as other financial services market participants, to monitor the cybersecurity alerts published by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA). OCIE described various measures that registrants are taking to monitor and guard against address ransomware attacks, including: incident response and resiliency policies, procedures and plans; operational resiliency; conducting awareness and training programs; implementing vulnerability scanning and patch management programs; access management through systems and procedures; and, implementing perimeter security capabilities. The full text of the alert can be found [here](#).

### **Select COVID-19 Compliance Risks and Considerations for Broker-Dealers and Investment Advisers**

On August 12, 2020, OCIE released a Risk Alert addressing certain COVID-19-related compliance risks and considerations for SEC-registered investment advisers and broker-dealers. OCIE’s observations and recommendations in this Risk Alert fall into six broad categories: (1) protection of investors’ assets; (2) supervision of personnel; (3) practices relating to fees, expenses and financial transactions; (4) investment fraud; (5) business continuity; and (6) the protection of investor and other sensitive information. Please see our client briefing on this issue [here](#).

### **Investment Adviser Observations: Supervision, Compliance and Multiple Branch Offices**

On November 9, 2020, OCIE published a list of examination observations related to SEC-registered investment advisers operating out of multiple branch

## Notable Regulatory Developments And Publications *continued*

offices and with operations geographically dispersed from the adviser's principal or main office. OCIE conducted examinations of nearly 40 investment adviser main offices plus one or more of the associated branch offices. These examinations identified deficiencies in two main areas: (1) adoption and implementation of appropriate compliance programs under the Compliance Rule in both their main offices and branch offices and (2) appropriate evaluation of the processes used by supervised persons located in branch offices to provide investment advice to advisory clients of the firm. Our client briefing on this issue is available [here](#).

### **Investment Adviser Observations: Compliance Programs**

On November 19, 2020, OCIE published a list of examination observations related to notable compliance issues related to Advisers Act Rule 206(4)-7 (the "Compliance Rule"). OCIE identified numerous deficiencies and weaknesses in connection with the Compliance Rule. These issues fall into six general categories: (1) inadequate compliance resources; (2) insufficient CCO authority; (3) annual review deficiencies; (4) failure to implement actions required by written policies and procedures; (5) failure to maintain accurate and complete information in policies and procedures; and (6) failure to maintain or establish reasonably designed written policies and procedures. Our prior client briefing on this issue is available [here](#).

### **Observations from Examinations of Broker-Dealers and Investment Advisers: Large Trader Obligations**

On December 16, 2020, OCIE published examination observations related to compliance with large trader reporting obligations under Rule 13h-1. The Rule requires persons whose transactions in national market system securities exceed daily or monthly thresholds to file Form 13H with the SEC and imposes certain recordkeeping requirements on broker dealers. OCIE noted that during examinations some investment advisers and broker dealers were either not aware of the Rule or were not in full compliance with all of the Rule's requirements. The full text of the alert can be found [here](#).

### **Executive Order on Securities Investments that Finance Communist Chinese Military Companies**

On January 6, 2021, OCIE published a risk alert to notify investment advisers and broker dealers of Executive Order (E.O.) 13959, "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies" (the "Executive Order"), which prohibits U.S. persons from transacting in certain listed Communist China military companies ("CCMCs"). On November 12, 2020, President Trump signed the Executive Order which prohibits transactions in CCMCs beginning on January 11, 2021 unless the transaction is for the purpose of divestment. The Executive Order, as amended, prohibits the holding of CCMCs after November 11, 2021. OFAC has published information related to the Executive Order and sanctions against CCMCs [here](#). OFAC also has published FAQs [here](#). The full text of the alert can be found [here](#).

## RELEVANT SEC CLIENT ALERTS

### **SEC Proposes Conditional Exemption for Small Business "Finders"**

On October 7, 2020, the SEC proposed a new limited conditional exemption from the broker registration rules to allow natural persons to act as "Finders" to assist small businesses to raise capital in private markets from accredited investors. The Proposed Exemptive Order would create two classes of Finders, Tier I Finders and Tier II Finders, with different conditions for each class. Tier I and Tier II Finders would both be permitted to accept transaction-based compensation, but Tier I Finders would be limited to providing contact information of potential investors in connection with only a single capital raising transaction by a single issuer in a 12-month period. A Tier I Finder could also not have any contact with a potential investor about the issuer. Tier II Finders, on the other hand, could solicit investors on behalf of an issuer, but the solicitation-related activities would be limited to: (1) identifying, screening and contacting potential investors; (2) distributing issuer offering materials to investors; (3) discussing issuer information included in any offering materials, provided that the Tier II Finder does not provide advice as to the valuation or advisability of the investment;

## **Notable Regulatory Developments And Publications** *continued*

and (4) arranging or participating in meetings with the issuer and investor. Please see our client alert on this subject [here](#).

### **New SEC Rule Will Require Updates to Private Fund Documentation and Policies**

On August 26, 2020, the SEC adopted a final rule to amend the definitions of “accredited investor” and “qualified institutional buyer” (QIB) for purposes of the Securities Act, generally by expanding both definitions to include additional categories of eligibility. Because of the wide range of private offerings that must be restricted to accredited investors, the Final Rule will affect many, if not most, private fund managers, including managers of hedge funds, private equity funds, loan funds, venture funds, and real estate funds. Please see our client alert on this subject [here](#).

### **Delegation of Discretionary Authority to an Investment Advisor Insufficient to Confer “Insider” Status Upon Clients**

On May 20, 2020, the U.S. Court of Appeals for the Second Circuit addressed the scope of “insider” status under Section 13(d) of the Exchange Act in connection with two cases related to the SEC’s “short-swing profit rule.” In affirming the decision of the lower courts, the court held that non-insider clients of investment advisers who entered a discretionary, non-issuer-specific, investment management agreement with their adviser were not liable for disgorgement of short-swing profits solely by virtue of their adviser’s insider status. Please see our client alert on this subject [here](#).

### **By Enforcement, SEC Clarifies Prohibition on Re-Distribution of 144A Securities**

On July 16, 2020, the SEC fined Colorado-based investment advisory firm First Western Capital Management Company for allegedly purchasing hundreds of millions of dollars in securities that were sold to First Western Capital in reliance on Rule 144A but were purchased for clients who were not qualified institutional buyers (QIBs). This enforcement action therefore makes clear that advisers who purchase 144A securities on behalf

of clients must verify that each such client is a QIB, and not just an “accredited investor” or other form of sophisticated investor. Please see our client alert on this subject [here](#).

### **Private Fund Advisers Have Additional Time to Distribute Audited Financial Statements Under SEC Custody Rule**

On April 27, 2020, the SEC’s Division of Investment Management (“IM”) issued responses to certain frequently asked questions about Rule 206(4)-2 under the Investment Advisers Act (i.e., the Custody Rule). In this release, IM clarified that (among other things) it would not recommend enforcement action for a violation of the Custody Rule against an adviser that relies on the Audited Pool Exception for failure to distribute its audited financial statements within the required timeframe, if the adviser: (1) “reasonably believed” that the pool’s audited financial statements would be distributed by the applicable deadline (120 days, 180 days for funds of funds, or 260 days for “top tier” pooled investment vehicles that invest in one or more funds of funds), and (2) failed to have the audited financial statements distributed in time due to “certain unforeseeable circumstances.” Please see our client alert on this subject [here](#).

### **SEC Unanimously Approves New Investment Adviser Marketing Rule**

On December 22, 2020, the SEC amended Rule 206(4)-1 under the Advisers Act to modernize the rules that govern investment adviser advertisements and payments to solicitors (the “Marketing Rule”). The Marketing Rule replaces the existing advertising and cash solicitation rules, which have not been significantly amended since their adoption over 40 years ago, and will comprehensively regulate the marketing communications of investment advisers.

The Marketing Rule applies a principles-based approach to regulating advertisements that is designed to accommodate the use of technology in connection with providing investment advice and has specific requirements for various types of advertisements. As an example, (1) certain aspects of a performance presentation must be standardized under the Marketing Rule, so that

## **Notable Regulatory Developments And Publications** *continued*

investors are able to evaluate and compare investment opportunities, and (2) certain types of performance presentations are subject to specific requirements under the Marketing Rule. In addition, if an advertisement includes third-party ratings, it will need to have specific disclosures to ensure that such third-party ratings are not misleading. Finally, subject to certain conditions, the Marketing Rule would allow the use of testimonials and endorsements, including traditional referral and solicitation activity.

The SEC also adopted related amendments to Form ADV and the Advisers Act's books and records rule. The SEC is expected to withdraw the no-action letters and other guidance pertaining to the application of the advertising and cash solicitation rules. The Marketing Rule becomes effective 60 days after publication in the Federal Register (which has not occurred at the time of this publication). Investment advisers subject to the Marketing Rule will have 18 months after the date the new rule becomes effective to transition their practices to comply with the new rule. Please see our client alert on this subject [here](#).

## **RELEVANT CFTC CLIENT ALERTS**

### **CFTC Finalizes Expansion to Position Limits Regime**

On October 15, 2020, the CFTC finalized amendments to its position limits rules in a 3-2 vote. These amendments extend federal positions limits, which previously applied only to futures on certain agricultural commodities, to 25 physically settled futures contracts and their linked cash-settled futures, options on futures, and economically equivalent swaps. The final rule also amends and expands certain aspects of the exemptions from position limits, such as the types of hedging practices that qualify as enumerated bona fide hedges. Please see our client alert on this subject [here](#).

### **CFTC's Enforcement Division Issues Guidance on Corporate Compliance Programs**

On September 10, 2020, the CFTC's Division of Enforcement issued a guidance memorandum outlining several factors that Division staff will consider when

evaluating corporate compliance programs in connection with enforcement matters. This was the first such guidance to be issued by the Division and has been incorporated into the CFTC Enforcement Manual. Please see our client alert on the subject [here](#).

### **CFTC Proposes to Streamline Reporting Requirements for CPOs**

On April 14, 2020, the CFTC unanimously approved a proposal to amend certain compliance requirements for commodity pool operators (CPOs) in Regulation 4.27 and Form CPO-PQR. The proposal would amend and, in certain circumstances, eliminate certain pool-specific reporting requirements in the prior Form CPO-PQR. Further, the proposed rule would require all CPOs to file the amended Form CPO-PQR on a quarterly basis, but would allow CPOs to file NFA Form PQR in lieu of the revised Form CPO-PQR. Conversely, the CFTC would no longer accept filing Form PF by dual registrants in lieu of the revised Form CPO-PQR. This proposal was finalized largely as proposed on November 10, 2020. Please see our client alert on the subject [here](#).

### **CFTC Finalizes Guidance on the Actual Delivery Exception to Virtual Currency Retail Commodity Transactions**

On March 24, 2020, the CFTC approved final interpretive guidance addressing the application of the "actual delivery" exception to certain digital assets that are commodities. The Dodd-Frank Act granted the CFTC the authority to subject "retail commodity transactions" to certain enumerated provisions of the CEA "as if" such transactions were futures contracts. However, the statute also provides an exception from this treatment for transactions that "result in actual delivery within 28 days." The CFTC's interpretive guidance details the CFTC's interpretation of the term "actual delivery" as used in the statute, and provides examples of transactions that would and would not result in "actual delivery" under that interpretation. Please see our client alert on the subject [here](#).

## Section 5: Representative SEC And CFTC Enforcement Actions

### 1. SEC Settles Charges Against Registered Investment Adviser for Ineffective Controls to Prevent Insider Trading (Cannell Capital, LLC)

SUMMARY: On February 4, 2020, the SEC issued an order against a registered investment adviser for allegedly violating Section 204A of the Advisers Act. The SEC alleged that Cannell Capital, LLC (“Cannell Capital”) failed to establish, maintain, and enforce policies and procedures reasonably designed to prevent the misuse of material, nonpublic information. According to the SEC, Cannell Capital failed to follow its written policies and procedures by not maintaining a list of securities that members, officers and employees and their family household members were prohibited from trading after the investment adviser came into possession of potential material nonpublic information. Additionally, the SEC alleged that Cannell Capital’s policies and procedures were not reasonably designed to prevent misuse of material nonpublic information because they did not address any business-specific risks and lacked any guidance regarding when trading in securities should be restricted. The investment adviser agreed to a cease-and-desist order, a censure, and further agreed to pay a \$150,000 civil money penalty. A copy of the order is available [here](#).

**PRACTICE TIP:** *Even in the absence of insider trading, controls surrounding MNPI are critical. Advisers should review their policies and procedures to examine their controls and reviews of restricted lists. Advisers with representatives on the boards of public companies must scrutinize their MNPI policies and procedures for adequate safeguards and information barriers as the SEC is and will continue to examine such advisers thoroughly.*

### 2. SEC Charges Investment Advisers with Failure to Disclose Financial Conflicts of Interest (Criterion Wealth Management Ins. Services, Inc., Robert Allen Gravette and Mark Andrew MacArthur)

SUMMARY: On February 12, 2020, the SEC charged Criterion Wealth Management Ins. Services, Inc. and its co-owners with failing to disclose significant financial conflicts of interest when recommending investments. The SEC alleged that the investment advisers breached their fiduciary duty to their clients under Sections 206(1) and

206(2) of the Advisers Act by failing to disclose that they were receiving additional compensation in connection with certain investment funds that the investment advisers recommended to their clients. In its civil action in the Central District of California, the SEC is seeking permanent injunctions from future violations of these provisions, disgorgement and prejudgment interest, and civil penalties from the investment advisory firm and its co-owners. A copy of the complaint is available [here](#).

**PRACTICE TIP:** *Advisers should focus on disclosures relating to fees, compensation and remuneration, because the SEC continues to focus on conflicts of interest and disclosures related to any actual or potential conflicts of interest.*

### 3. SEC Charges Investment Adviser with Failure to Disclose Principal Trades (Lone Star Value Management LLC and Jeffrey Eberwein)

SUMMARY: On February 24, 2020, the SEC charged Lone Star Value Management LLC (“Lone Star”) and its founder, Jeffrey Eberwein, with failing to disclose that they were executing principal trades. The SEC alleged that Lone Star and Eberwein effected various trades between two funds, and because Eberwein’s ownership interest in one of those funds was more than 35%, the trades between the funds were principal trades in violation of Section 206(3) of the Advisers Act. The SEC further alleged that the investment adviser violated the same section of the Advisers Act by failing to disclose in writing the principal trades and related conflicts of interest. Lone Star consented to a cease-and-desist order and a censure. It further agreed to pay a civil money penalty of \$100,000 and Eberwein agreed to pay a civil money penalty of \$25,000. A copy of the order is available [here](#). See also, *Order, In the Matter of Palmer Square Capital Management LLC*, Rel. No. 5586 (Sept. 21, 2020)

**PRACTICE TIP:** *In addition to finding a disclosure violation under the antifraud rules, the SEC charged the firm and its founder under the Advisers Act’s compliance rule. Advisers should carefully consider the ownership, consent and disclosure requirements relating to principal transactions, as well as the implementation of principal transaction procedures.*

#### **4. SEC Settles Charges Against Investment Adviser for Distribution of Misleading Marketing Materials (Old Ironsides Energy LLC)**

SUMMARY: On April 17, 2020, the SEC settled charges against Old Ironsides Energy LLC (“Old Ironsides”) for allegedly violating Section 206(4) and Rules 206(4)-1 and 206(4)-7 of the Advisers Act. The SEC alleged that Old Ironsides distributed misleading marketing materials purporting to show its historical performance for managing direct drilling investments, when the marketed performance actually included investments in private funds managed by third parties. The SEC further alleged that Old Ironsides failed to implement its policies and procedures in its compliance manual concerning the use of investment performance results in marketing materials. Old Ironsides agreed to a cease-and-desist order and a censure, and further agreed to pay a \$1,000,000 civil money penalty. A copy of the order is available [here](#). See also, Order, In the Matter of Everest Capital LLC and Marko Dimitrijevic, Rel. No. 5491 (April 30, 2020); Order, SEC v. Navellier & Associates, Inc., No. 17-cv-11633 (D. Mass. August 31, 2017), Rel. No. 24826 (June 4, 2020).

**PRACTICE TIP:** *Accuracy and completeness in advertising remains a continued focus area of the SEC. Advisers should carefully review their presentations of past performance in marketing materials.*

#### **5. SEC Settles Charges Against Private Equity Fund Adviser for Insufficient Disclosure of Conflicted Expense Reimbursements (Monomoy Capital Management, L.P.)**

SUMMARY: On April 22, 2020, the SEC settled charges against a private equity fund adviser for allegedly violating Section 206(2) of the Advisers Act. According to the SEC, Monomoy Capital Management, L.P. (“Monomoy”) provided fund portfolio companies with certain services through a group of its employees known as the Operations Group, and billed those portfolio companies for Monomoy’s costs of providing the Operations Group services rather than covering the costs out of its management fee. The SEC alleged that this amounted to an undisclosed conflict of interest because it was not fully disclosed and because Monomoy did not obtain informed consent with respect

to such payments. Monomoy agreed to a cease-and-desist order and a censure, and further agreed to pay disgorgement of \$1,521,972 and prejudgment interest of \$204,606, and a civil penalty of \$200,000. A copy of the order is available [here](#).

**PRACTICE TIP:** *Private equity firms should carefully analyze their relationships with portfolio companies and make appropriate disclosure of adviser-related fees and compensation arrangements, which will be focused on by the SEC.*

#### **6. SEC Settles Charges Against a Registered Investment Adviser for Misallocation of Internal Expenses (Rialto Capital Management, LLC)**

SUMMARY: On August 7, 2020, the SEC settled charges against Rialto Capital Management, LLC (“Rialto”) for allegedly violating Sections 206(2) and 206(4) and Rules 206(4)-7 and 206(4)-8 of the Advisers Act. The SEC alleged that Rialto misallocated costs and expenses to certain funds that should have been allocated to co-investment vehicles. The expenses generally related to in-house employees performing “typical third party tasks,” such as asset level due diligence, accounting, valuation, and similar services. The SEC also criticized the manner in which the expenses were disclosed to the fund’s advisory committee for approval. The SEC further alleged that Rialto failed to adopt and implement written compliance policies and procedures reasonably designed to ensure that costs and expenses related to third party tasks were properly disclosed. Rialto agreed to a cease-and-desist order and a \$350,000 civil money penalty. A copy of the order is available [here](#).

**PRACTICE TIP:** *Expense allocations and related disclosures continue to be an area of focus for the SEC. Advisers should conduct robust reviews of their expense allocations (and policies and procedures relating thereto) and ensure that such allocations are properly disclosed to clients.*

### **7. SEC Charges Investment Adviser for Violating Beneficial Ownership Reporting Provisions (WCAS Management Corporation)**

SUMMARY: On September 17, 2020, the SEC settled charges against WCAS Management Corporation (“WCAS”) in connection with alleged violations by five private funds for failing to adhere to reporting provisions of Section 13(d) of the Exchange Act. The SEC alleged that WCAS caused the private funds to violate the beneficial ownership reporting provisions of Section 13(d) because, although the funds filed a Schedule 13D, they subsequently failed to file timely Schedule 13D amendments in two separate circumstances. WCAS agreed to a cease-and-desist order and to pay a penalty of \$100,000. A copy of the order is available [here](#).

**PRACTICE TIP:** *Failures to make regulatory filings (and amendments thereto) are often low-hanging fruit during SEC examinations, and even low-penalty enforcement actions can be costly to defend. Advisers should regularly review their business practices to determine their filing obligations, and ensure that their policies and procedures address such obligations.*

### **8. SEC Obtains Final Judgment Against Kik Interactive Inc. for an Unregistered Offering. (Kik Interactive Inc.)**

SUMMARY: On October 21, 2020, the SEC obtained a final judgment against Kik Interactive Inc. (“Kik”) in connection with a 2019 charge that Kik allegedly conducted an illegal securities offering. The SEC alleged that Kik sold digital asset securities to U.S. investors (i.e., by selling one trillion digital tokens in return for cash to fund company operations and a speculative new venture) without registering their offer and sale. Under the final judgment, Kik is required to provide notice to the SEC before engaging in enumerated future issuances, offers, sales, and transfers of digital assets for the next three years and must pay a \$5,000,000 penalty. A copy of the SEC’s complaint is available [here](#).

**PRACTICE TIP:** *The digital asset sector is dynamic, with new developments happening on almost a daily basis. However, the SEC’s position that the offering of such assets may be subject to the federal securities laws*

*is consistent. Any business looking to source funding by exchanging cryptocurrencies or other digital assets should therefore assess its potential obligations under the securities laws.*

### **9. SEC Settles Charges Against Investment Adviser in Connection with Inadequate Disclosures (Blue Crest Capital Management)**

SUMMARY: On December 8, 2020, the SEC settled charges against Blue Crest Capital Management (“Blue Crest”) for allegedly violating Sections 17(a)(2) and (3) of the Securities Act, Sections 206(2) and 206(4) of the Advisers Act and Rules 206(4)–7 and 206(4)–8 under the Advisers Act. The SEC alleged that Blue Crest made inadequate disclosures, material misstatements and misleading omissions concerning its transfer of top traders from its flagship client fund to a proprietary fund, and its use of a trading algorithm to which Blue Crest devoted between 17 percent and 52 percent of its allocated capital. Blue Crest agreed to a cease-and-desist order imposing a censure, and agreed to pay disgorgement and prejudgment interest of \$132,714,506 and a penalty of \$37,285,494, all of which will be returned to investors. A copy of the order is available [here](#).

**PRACTICE TIP:** *The SEC continues to emphasize proper disclosure of potential conflicts of interest during its examinations. Advisers should regularly review their business practices to determine potential and actual conflicts, and should ensure that such conflicts have been properly disclosed.*

### **10. CFTC Orders Commodity Pool Operator, CEO to Pay More Than \$10 Million for Misleading Statements, Supervision Failures (Catalyst Capital Advisors LLC and CEO Jerry Szilagyi)**

SUMMARY: On January 27, 2020, the CFTC settled charges against Catalyst Capital Advisors LLC and its CEO, Jerry Szilagyi. The CFTC found that Catalyst and one of its portfolio managers – Edward Walczak – made representations regarding risk management that were materially misleading. Specifically, the CFTC alleged that representations made by Catalyst regarding its stop-loss measures and protocols to review risk metrics on a daily basis were false and misleading. The CFTC also found

## Representative SEC and CFTC Enforcement Actions *continued*

that Szilagyi, as CEO of the CPO, was liable for these misrepresentations as a control person. Separately, the CFTC filed a complaint against Walczak for making false representations to investors, such as failing to hedge in the manner he said he did, allegedly resulting in at least \$500,000,000 of investor losses. A copy of the order is available [here](#).

**PRACTICE TIP:** *Investment advisors and portfolio managers must be diligent in ensuring that representations made to investors are accurate and that they have policies, procedures and controls in place to ensure the accuracy of such representation.*

### 11. CFTC Charges 10 Commodity Trading Advisors for Failing to Maintain NFA Memberships

SUMMARY: On September 3, 2020, the CFTC announced charges against 10 entities registered as CTAs for failing to maintain membership in the NFA (i.e., the only CFTC-registered futures association). Because the 10 respondents failed to maintain their membership with the NFA, the NFA had no ability to perform its regulatory oversight functions such as examinations related to qualifications, proficiency, financial condition, retail sales practices and business conduct. The press release associated with all 10 complaints is available [here](#).

**PRACTICE TIP:** *Generally speaking, all persons and entities required to register as CPOs, CTAs and introducing brokers must become members of the NFA as well.*

### 12. CFTC Fines Fund and its Trader for Spoofing (FNY Partners Fund LP)

SUMMARY: On September 28, 2020, the CFTC settled charges against Thomas Donino and his employer, FNY Partners Fund LP, for spoofing—bidding or offering with the intent to cancel the bid or offer before execution. Specifically, the CFTC found that over a three-year period of time, Donino placed multiple orders in soybean, gold and crude oil futures with the intent to cancel the orders before execution. The CFTC held FNY Partners Fund LP vicariously liable for Donino's actions, and required the firm to pay a \$135,000 civil monetary penalty. A copy of the order is available [here](#).

**PRACTICE TIP:** *It is difficult to prevent the actions of a rogue trader, but companies are often held liable for such actions, especially if they do not take proper precautions and implement effective oversight over their traders. Therefore, companies employing individuals to trade futures should maintain effective oversight over that trading by implementing (among other things) trade monitoring at the order level to detect high levels of cancellations (i.e., an indication of potential spoofing), risk limits and periodic compliance training.*

### 13. CFTC Revokes Registrations of Florida Company and its CEO for Fraud and Related Criminal Conviction (Phy Capital Investments LLC)

SUMMARY: Through a CFTC Judgment Officer, the CFTC revoked the CPO and CTA registrations of Phy Capital Investments LLC and the AP registration of its owner, Fabio Bretas de Freitas, after finding that both were subject to statutory disqualification due to convictions against the company and its CEO for fraud and conspiracy to commit commodities fraud. Specifically, in 2019, the U.S. District Court for the Southern District of New York found that Phy Capital Investments LLC had fraudulently solicited clients to participate in a trading program that purportedly achieved significant profits, but that the CPO and CTA actually devoted only a small fraction of client funds toward that trading program. A copy of the order is available [here](#).

**PRACTICE TIP:** *Given the CFTC's recently finalized rules that require persons or entities claiming an exemption from CPO registration under CFTC Regulation 4.13(a)(3) to ensure that neither the person claiming the exemption nor any of its principals are subject to statutory disqualification, it is important for any persons or entities involved in futures trading (including, for example, board members) to ensure that they are not disqualified from doing so.*

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