



2020  
Investment  
Management  
Regulatory  
Calendar and  
Annual  
Requirements

WINSTON  
& STRAWN  
LLP



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

In assessing your 2020 compliance strategy, it is important to keep in mind not only the compliance requirements and best practices for your business, but also the larger themes defining the regulatory and enforcement environment. In our view, last year's SEC enforcement actions and risk alerts sent 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 that has not been appropriately disclosed to investors. Firms should endeavor to be scrupulously transparent in their arrangements and transactions that create or could create a conflict of interest.
- **Policies and procedures are just the start.** Firms need to have a solid infrastructure that translates policies and procedures into compliant actions. This includes controls, internal audit functions and appropriate and timely escalation protocols.
- **Compliance needs to be approached holistically.** Compliance procedures cannot be applied in a check-the-box fashion. Firms must implement a holistic, risk-based approach that incorporates a thorough due diligence of clients, employees and vendors.

Firms and managers that follow a rigorous application of requirements while keeping an eye on the 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.

## A Few Notes on the Compliance Calendar

**This Compliance Calendar covers certain regulatory requirements applicable to investment managers (including CPOs and CTAs) and private funds.**

The Compliance Calendar 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 Compliance Calendar also does not include the various forms that may be required under the Treasury Department's Treasury International Capital ("TIC") system. A summary explanation of TIC Form SLT and TIC Form B can be found under the heading "TIC Forms" immediately after the Compliance Calendar and prior to the Glossary.

The Compliance 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 Compliance Calendar.

This Investment Management Regulatory Calendar and Annual Requirements is not intended to be exhaustive, nor is it intended to provide a complete review of compliance obligations under applicable tax, securities, commodities, self-regulatory organization, non-U.S. or U.S. federal, state and local laws, rules and regulations. It does not necessarily include all annual or periodic obligations applicable to all Investment Managers, and may not provide detailed statements in respect of the specifics of any particular obligation. Similarly, many of the obligations described in this Memorandum may not apply to all Investment Managers.

## January 2020

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 14 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 2019
<b>January 1</b>	Effective date for compliance with the California Consumer Privacy Act ("CCPA").	Person or entity subject to the CCPA
<b>January 1</b>	Effective date for the CFA Institute's Global Investment Performance Standards ("GIPS®") 2020 edition ("2020 Standards"), i.e., GIPS® Reports that include performance for periods ending on or after December 31, 2020 must be prepared in accordance with the 2020 Standards.	Investment Manager that has claimed compliance with GIPS® in connection with performance presentations
<b>January 1</b>	Effective date of amendments to NFA Rule 2-29 and related interpretive notices (relating to promotional materials).	CPO and CTA NFA Members
<b>January 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2019 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 2019

## January 2020 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>January 17</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.	Exempt Reporting Adviser Investment Manager employing persons who are registered as Investment Adviser Representatives, or who are otherwise registered, with one or more states
<b>January 30</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the fourth calendar quarter of 2019 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>January 30</b>	Distribute monthly account statements for December 2019 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 2019 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 2019
<b>January 30</b>	Distribute quarterly account statements for the quarter ending December 31, 2019 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 2019 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 2019
<b>January 31</b>	NFA's Swaps Proficiency Requirements launch and become accessible online.	Each individual who is approved as a swap associated person ("Swap AP") at a CPO or CTA NFA member firm on January 31, 2021 must satisfy NFA's Swaps Proficiency Requirements to remain approved as a Swap AP after that date

## February 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>February 1</b>	Effective date of amendments to NFA Rule 2-13 and related interpretive notice (requiring member to prepare and include a “break even” analysis in disclosure documents required by CFTC Regulation 4.21).	CPO NFA Member
<b>February 1</b>	Effective date of amendments to NFA Rule 2-34 and related interpretive notice (regarding CTA performance reporting and disclosures).	CTA NFA Member
<b>February 14</b>	File annual CFTC Form CTA-PR for the year ending December 31, 2019 (by filing NFA Form PR for the year ending December 31, 2019) with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that Directs the commodity interest account(s) of one or more clients
<b>February 14</b>	File SEC Form 13F with the SEC for the year ending December 31, 2019.	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 2019
<b>February 14</b>	File initial SEC Schedule 13G with the SEC.	Qualified Institutional Investor or an Exempt 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 2019, 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 14</b>	File initial SEC Schedule 13G with the SEC.	Exempt 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, as of the end of calendar year 2019, is or becomes directly or indirectly the Beneficial Owner of more than five percent of the securities of such class

**February 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>February 14</b>	File annual amendment to SEC Schedule 13G with the SEC for the year ending December 31, 2019.	Qualified Institutional Investor, Passive Investor or Exempt Investor that previously reported Beneficial Ownership of securities of a particular class of Covered Equity Securities on SEC Schedule 13G
<b>February 14</b>	File annual amendment to SEC Form 13H with the SEC for the year ending December 31, 2019 (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 2019
<b>February 14</b>	File SEC Form 5 with the SEC.	Investment Manager that has Beneficial Ownership 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 14</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 14</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>February 29</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2019 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 2019



**February 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>February 29</b>	File Schedules A, B and C of CFTC Form CPO-PQR for the quarter ending December 31, 2019 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 2019
<b>February 29</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>

## March 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>March 1</b>	Distribute monthly account statements for January 2020 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 2020  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
<b>March 30</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 30</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 30</b>	File Schedules A and B of CFTC Form CPO-PQR for the quarter ending December 31, 2019 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 2019
<b>March 30</b>	File Schedule A of CFTC Form CPO-PQR and NFA Form PQR for the quarter ending December 31, 2019 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 2019

## March 2020 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>March 30</b>	File 2019 Annual Report for pool with the NFA through NFA's EasyFile (Annual Reports) and distribute 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 30</b>	Distribute monthly account statements for February 2020 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 2020  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 2020
<b>March 30</b>	File BE-185 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that they are 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

## April 2020

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 2019
<b>April 1</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
<b>April 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 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 fourth calendar quarter of 2019
<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 calendar year 2019 (subject to certain exceptions)
<b>April 29</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 29</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 29</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 2019  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 2019

DEADLINE	ACTION	RESPONSIBLE PARTY
<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 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 limitations).	SEC-Registered Manager
<b>April 30</b>	Distribute monthly account statements for March 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>
<b>April 30</b>	Distribute quarterly account statements for the quarter ending March 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>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 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>May 1</b>	Window opens for filing SEC Form CRS with the SEC through the IARD.	SEC-Registered Manager whose registration with the SEC as an investment adviser is effective before June 30, 2020, and an Investment Manager whose application for registration with the SEC as an investment adviser is pending before June 30, 2020 must file SEC Form CRS no later than June 30, 2020 (if required)
<b>May 15</b>	File SEC Form 13F with the SEC for the quarter ending March 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 2019
<b>May 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>May 15</b>	File NFA Form PR for the quarter ending March 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>May 29</b>	File BE-10 Form with the BEA.	U.S. Person who has direct or indirect ownership of at least 10% of the voting stock of a foreign affiliate, regardless of the foreign affiliate and the U.S. Person’s size, and is filing fewer than 50 forms or filing a Claim for Not Filing. U.S. reporters are not required to report investments in foreign affiliates that are Private Funds if they meet BOTH of the following criteria: (i) the Private Fund does not own, directly or indirectly through another business enterprise, an “operating company” (i.e., business enterprise that is not a Private Fund or a holding company) in which the consolidated U.S. reporter owns at least 10 percent of the voting interest, AND (ii) if the U.S. reporter owns the Private Fund indirectly (through one or more other business enterprises), there are no “operating companies” between the consolidated U.S. reporter and the indirectly-owned foreign Private Fund

**May 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>May 30</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2020 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 2019
<b>May 30</b>	Distribute monthly account statements for April 2020 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 2020  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
<b>May 30</b>	File Schedules A, B and C of CFTC Form CPO-PQR for the quarter ending March 31, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Large CPO during the first calendar quarter of 2020
<b>May 30</b>	File NFA Form PQR for the quarter ending March 31, 2020 with the CFTC and NFA through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Mid-Sized CPO or Small CPO during the first calendar quarter of 2020
<b>May 31</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.”

## June 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>June 28</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>	File initial SEC Form CRS with the SEC through the IARD (if required).	SEC-Registered Manager whose registration with the SEC as an investment adviser is effective before June 30, 2020  Investment Manager whose application for registration with the SEC as an investment adviser is pending before June 30, 2020
<b>June 30</b>	Commence delivery of SEC Form CRS to each Retail Investor before or at the time the manager enters into a written or oral investment advisory contract with a Retail Investor.  Post initial SEC Form CRS prominently on manager’s public website (if manager has one), in a location and format that is easily accessible for Retail Investors (and thereafter post any updated SEC Form CRS no later than the time such manager files such updated form with the SEC).	SEC-Registered Manager whose registration with the SEC as an investment adviser is effective on or before June 30, 2020
<b>June 30</b>	Distribute monthly account statements for May 2020 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 2020  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



## June 2020 *continued*

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>June 30</b>	File BE-10 Form with the BEA.	U.S. Person who has direct or indirect ownership of at least 10% of the voting stock of a foreign affiliate, regardless of the foreign affiliate and U.S. Person's size, and is filing 50 or more forms
<b>June 30</b>	File GIPS® Compliance Notification Form with the CFA Institute, using data as of December 31, 2019.	Investment Manager that has previously claimed compliance with GIPS® in connection with performance presentations (unless such manager first claimed compliance during calendar year 2020)

## July 2020

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 2019
<b>July 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 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 first calendar quarter of 2020
<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>	Deliver initial SEC Form CRS to each existing client who is a Retail Investor.	SEC-Registered Manager whose registration with the SEC as an investment adviser is effective on or before June 30, 2020

**July 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<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 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>July 30</b>	Distribute monthly account statements for June 2020 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 2020  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
<b>July 30</b>	Distribute quarterly account statements for the quarter ending June 30, 2020 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 2020  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

## August 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>August 14</b>	File NFA Form PR for the quarter ending June 30, 2020 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that Directs the commodity interest account(s) of one or more clients
<b>August 14</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 14</b>	File SEC Form 13F for the quarter ending June 30, 2020 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 2019
<b>August 29</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 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 first calendar quarter of 2020
<b>August 29</b>	File Schedules A, B and C of CFTC Form CPO-PQR for the quarter ending June 30, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Large CPO during the second calendar quarter of 2020
<b>August 29</b>	File NFA Form PQR for the quarter ending June 30, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Mid-Sized CPO or a Small CPO during the second calendar quarter of 2020
<b>August 30</b>	Distribute monthly account statements for July 2020 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 2020  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

## September 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<b>September 30</b>	Distribute monthly account statements for August 2020 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 2020  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

## October 2020

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 2019
<b>October 1 (estimated)</b>	File the BE-180 Form with the BEA.	U.S. Person who is a financial services provider
<b>October 15</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 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 second calendar quarter of 2020
<b>October 30</b>	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the third 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>October 30</b>	Distribute monthly account statements for September 2020 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 2020 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

**October 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>October 30</b>	Distribute quarterly account statements for the quarter ending September 30, 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>October 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>October 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

## November 2020

DEADLINE	ACTION	RESPONSIBLE PARTY
<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 14</b>	File NFA Form PR for the quarter ending September 30, 2020 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that Directs the commodity interest account(s) of one or more clients
<b>November 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>November 16</b>	File SEC Form 13F with the SEC for the quarter ending September 30, 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 2019
<b>November 29</b>	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 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 second calendar quarter of 2020



**November 2020** *continued*

<b>DEADLINE</b>	<b>ACTION</b>	<b>RESPONSIBLE PARTY</b>
<b>November 29</b>	File Schedules A, B and C of CFTC Form CPO-PQR for the quarter ending September 30, 2020 with the CFTC through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Large CPO during the third calendar quarter of 2020
<b>November 29</b>	File NFA Form PQR for the quarter ending September 30, 2020 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO that was a Mid-Sized CPO or a Small CPO during the third calendar quarter of 2020
<b>November 30</b>	Distribute monthly account statements for October 2020 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 2020 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

## December 2020

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 2020 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 2020 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

## 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.	Every Investment Manager
Review “new issue” eligibility of clients/investors, if applicable.	Every Investment Manager
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
Update offering documents for Non-Exempt Pools and CFTC Regulation 4.7 Pools.	CFTC-Registered CPO

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

ACTION	RESPONSIBLE PARTY
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 requested by the BEA to submit a Form BE-13 can file a Claim for Exemption if the relevant business or affiliate is a Private Fund as long as: (i) the Private Fund does not own, directly or indirectly through another business enterprise, an “operating company” (i.e., 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 (ii) 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

## Compliance Tips

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

---

All Investment Managers	<ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li><li>• Review, test and update compliance policies and procedures, even if not required by law or regulation (and document such review, testing and updating).</li><li>• Review CFIUS, ERISA and Tax considerations.</li><li>• Review “pay to play,” lobbyist and gifts/entertainment considerations.</li><li>• Review liability insurance considerations.</li></ul>
SEC-Registered Managers	<ul style="list-style-type: none"><li>• Redistribute Code of Ethics to all Supervised Persons and obtain acknowledgements of receipt.</li><li>• Review compliance with Rule 206(4)-3 under the Advisers Act (Cash Solicitation Rule).</li><li>• Review compliance with Custody Rule.</li></ul>
SEC Registered-Managers that Are Also Broker-Dealers (or Have Affiliates that are Broker-Dealers)	<ul style="list-style-type: none"><li>• 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.</li><li>• Practice Tip: Supervision of recidivist representatives (i.e., those with a track record of misconduct) has been listed by OCIE as an examination priority.</li><li>• 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.</li></ul>
NFA Members	<ul style="list-style-type: none"><li>• Review disclosure of virtual currency practices.</li></ul>

---

## 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>.

# Glossary

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

## A

### 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

### 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

### 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,” as defined in Section 1a(10) of the CEA, operated by a CFTC-registered CPO pursuant to CFTC Advisory 18-96

### CFTC-Registered CPO

A CPO registered with the CFTC under the CEA

### CFTC-Registered CTA

A CTA registered with the CFTC under the CEA

### CFTC Regulation 4.5 Pool

A “commodity pool,” as defined in Section 1a(10) of the CEA, operated pursuant to the exclusion from that definition provided by CFTC Regulation 4.5

### CFTC Regulation 4.7 Pool

A “commodity pool,” as defined in Section 1a(10) of the CEA, operated by a CFTC-registered CPO pursuant to CFTC Regulation 4.7

### CFTC Regulation 4.12 Pool

A “commodity pool,” as defined in Section 1a(10) of the CEA, operated by a CFTC-registered CPO pursuant to CFTC Regulation 4.12

### CFTC Regulation 4.13 Pool

A “commodity pool,” as defined in Section 1a(10) of the CEA, operated by a CPO pursuant to CFTC Regulation 4.13

### Covered Equity Security

Any equity security of a class that is registered pursuant to Section 12 of the Exchange Act, or any equity security issued by any insurance company which would have been required to be so registered except for the exemption contained in Section 12(g)(2)(G) of that Act, or any equity security issued by a closed-end investment company registered as such under the ICA; such term, however, does not include securities of a class of non-voting securities

### CFTC Regulation 4.21-Compliant Disclosure Document

A Disclosure Document of the type required to be delivered to prospective pool participants pursuant to CFTC Regulation 4.21

### CPO

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

## CTA

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

### Custody Rule

Rule 206(4)-2 under the Advisers Act

## D

### Direct

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

## E

### 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

### Exempt Investor

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

## F

### 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

### Holdings Report

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

## 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

## 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

## M

### Memorandum

This Memorandum, including links to the sources specified herein

### Mid-Sized CPO

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

## 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,” as defined in Section 1a(10) of the CEA, 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

## O

### OCIE

The SEC’s Office of Compliance Inspections and Examinations

### OFAC

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

## 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

---

**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

**Retail Investor**

A natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes. A natural person is a Retail Investor regardless of the net worth of such natural person

---

**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

## 2019 OCIE Risk Alerts

### INVESTMENT ADVISER (AND BROKER-DEALER) COMPLIANCE ISSUES RELATING TO REGULATION S-P

On April 16, 2019, OCIE provided a list of compliance issues related to Regulation S-P (the “Privacy Alert”) identified in deficiency letters from broker-dealer and adviser examinations completed during the past two years. The full text of the Privacy Alert is available at <https://www.sec.gov/files/OCIE%20Risk%20Alert%20-%20Regulation%20S-P.pdf>.

OCIE cautions that the Privacy Alert does not: (i) discuss all of the requirements of Regulation S-P; or (ii) discuss all types of deficiencies or weaknesses related to Regulation S-P that OCIE has observed.

The Privacy Alert provides the following examples of the most common deficiencies or weaknesses identified by OCIE in connection with Privacy and Opt-Out Notices:

- Registrants that did not provide Initial Privacy Notices, Annual Privacy Notices and Opt-Out Notices to their customers.
- Registrants that provided the requisite notices to their customers but such notices did not accurately reflect the registrants’ policies and procedures.
- Privacy Notices that did not provide notice to customers of their right to opt out of the registrants’ sharing customers’ nonpublic personal information with non-affiliated third parties.

With respect to the adoption of written privacy-related policies and procedures, OCIE observed registrants that, although they had adopted written policies and procedures that addressed the content and delivery of Privacy Notices, had not adopted written policies and procedures designed to implement the administrative, technical and physical safeguards required by the Safeguards Rule. The Privacy Alert makes it clear that having documents that simply restate the general requirements of the Safeguards Rule without including specific policies and procedures designed to implement those general requirements is not sufficient. OCIE

also observed policies and procedures that contained numerous blank spaces designed to be filled in by registrants – the type of “off the shelf” policies that OCIE frowns on (with ample justification).

With respect to the implementation and design of written policies and procedures adopted to implement the requirements of the Safeguards Rule, OCIE observed registrants that, although they had adopted written policies and procedures, sometimes appeared not to have implemented them, or that adopted policies and procedures that did not appear to be reasonably designed to (i) ensure the security and confidentiality of customer records and information, (ii) protect against anticipated threats or hazards to the security or integrity of customer records and information and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to customers. The Privacy Alert provides the following examples of deficiencies observed by OCIE:

- Policies and procedures that did not appear to be reasonably designed to safeguard customer information on personal devices. For example, OCIE observed registrants’ employees who regularly stored and maintained customer information on their personal laptops, but the registrants’ policies and procedures did not address how these devices were to be properly configured to safeguard the customer information.
- Policies and procedures that did not address the inclusion of customer personally identifiable information (“PII”) in electronic communications. For example, OCIE observed registrants that did not appear to have policies and procedures reasonably designed to prevent employees from regularly sending unencrypted emails to customers containing PII.
- Policies and procedures that required customer information to be encrypted, password-protected and transmitted using only registrant-approved methods but that did not provide for adequate employee training on these methods or for monitoring employee compliance with such methods.

## OCIE Risk Alerts *continued*

- Policies and procedures that did not prohibit employees from sending customer PII to unsecure locations outside of the registrants' networks.
- Registrants that failed to follow their own policies and procedures regarding outside vendors. For example, OCIE observed registrants that failed to require outside vendors to contractually agree to keep customers' PII confidential, even though such agreements were mandated by the registrants' policies and procedures.
- Policies and procedures that did not identify all systems on which the registrants maintained customer PII. According to the Privacy Alert, without an inventory of all such systems, registrants may be unaware of the categories of customer PII that they maintain, which could limit their ability to adopt reasonably designed policies and procedures and adequately safeguard customer information.
- Written incident response plans that did not address important areas, such as role assignments for implementing the plan, actions required to address a cybersecurity incident and assessments of system vulnerabilities.
- Customer PII that was stored in unsecure physical locations, such as in unlocked file cabinets in open offices.
- Customer login credentials that had been disseminated to more employees than permitted under registrants' policies and procedures.
- Instances where former employees of registrants retained access rights after their departure and therefore could access restricted customer information.

**PRACTICE TIP:** *Investment Managers should review their written policies and procedures, including implementation of those policies and procedures.*

## SAFEGUARDING CUSTOMER RECORDS AND INFORMATION IN NETWORK STORAGE

On May 23, 2019, OCIE issued a risk alert (the "Network Storage Alert") identifying certain security risks associated with the storage of customer records and information by investment advisers (and broker-dealers) in various network storage solutions, including "cloud-based" solutions (i.e., electronic storage of information on infrastructure owned and operated by a hosting company or service provider). The full text of the Network Storage Alert is available at <https://www.sec.gov/files/ocie-risk-alert-network-storage>.

The overall theme of the Network Storage Alert is:

- The implementation of a configuration management program that includes policies and procedures governing data classification, vendor oversight, and security features will help to mitigate the risks incurred when implementing on-premise or cloud-based network storage solutions.

The Network Storage Alert explains that, during examinations of registrants, OCIE identified the following concerns that may raise compliance issues under Regulation S-P and Regulation S-ID:

- **Failure to use available security features.** OCIE observed that although the majority of the network storage solutions it examined offered encryption, password protection and other security features designed to prevent unauthorized access, registrants did not always use the available security features.
- **Misconfigured network storage solutions.** OCIE observed (i) registrants that did not adequately configure the security settings on their network storage solutions to protect against unauthorized access and (ii) registrants that did not have policies and procedures addressing the security configurations of their network storage solutions, and concluded that misconfigured settings often resulted from a lack of effective oversight when the storage solutions were initially implemented. The Network Storage Alert cautioned that weak or misconfigured security settings on a network storage device could result in unauthorized access to information stored on the device.

### OCIE Risk Alerts *continued*

- **Inadequate oversight of vendor-provided network storage solutions.** OCIE observed registrants that did not ensure (through policies, procedures, contractual provisions or otherwise) that the security settings on vendor-provided network storage solutions were configured in accordance with the registrants' standards.
- **Insufficient data classification policies and procedures.** OCIE observed that the policies and procedures of some registrants did not identify the different types of data stored electronically by the registrants and the appropriate controls for each type of data.

The Network Storage Alert is not entirely critical of registrants' network storage practices, noting that during examinations, OCIE observed several features of effective configuration management programs, data classification procedures and vendor management programs, including:

- Policies and procedures designed to support the initial installation, ongoing maintenance and regular review of network storage solutions.
- Guidelines for security controls and baseline security configuration standards designed to ensure that network solutions were properly configured.
- Vendor management policies and procedures that included, among other things, regular implementation of software patches and hardware updates followed by reviews to ensure that those patches and updates did not unintentionally change, weaken or otherwise modify the security configurations.

**PRACTICE TIP:** *The Network Storage Alert encouraged registrants to:*

- *review their practices, policies and procedures with respect to the storage of electronic customer information and to consider whether any improvements are necessary; and*
- *actively oversee any vendors they may be using for network storage to determine whether the services provided by the vendors are sufficient to enable registrants to meet their regulatory responsibilities.*

### COMPLIANCE, SUPERVISION AND DISCLOSURE OF CONFLICTS OF INTEREST

On July 23, 2019, OCIE issued a risk alert (the "Supervision and Disclosure Alert") highlighting the findings of a series of examinations conducted to assess the effectiveness of the supervisory practices of SEC-Registered Managers (the "Supervision Initiative"). The full text of the Supervision and Disclosure Alert is available at <https://www.sec.gov/files/ocie-risk-alert-supervision-initiative>.

The Supervision Initiative, which OCIE initiated as part of its focus on the protection of retail investors, examined topics including:

- **Compliance programs and supervisory oversight practices.** OCIE staff reviewed whether compliance policies and procedures were reasonably designed to detect and prevent violations of the Advisers Act by the firm and its supervised persons, particularly those policies and procedures addressing the activities of certain persons having a history of disciplinary events.
- **Disclosures.** OCIE staff focused on whether disclosures in public statements or documents (e.g., marketing materials) and filings were full and fair, included all material facts and were not misleading, placing particular emphasis on reviewing disclosures in these materials related to previously disciplined individuals and their prior disciplinary events.
- **Conflicts of interest.** OCIE staff assessed whether the firm identified, addressed and fully and fairly disclosed all material conflicts of interest that could affect the advisory relationship, particularly those conflicts dealing with compensation arrangements and account management.

The Supervision Initiative identified a variety of deficiencies across a range of topics, and nearly all of the firms examined received deficiency letters relating to compliance issues and/or undisclosed conflicts of interest.

### Findings with Respect to Failure to Exercise Appropriate Oversight Over Supervised Persons with Disciplinary Histories

With respect to oversight of supervised persons with disciplinary histories, OCIE staff observed deficiencies both with respect to full and fair disclosure and with respect to compliance programs.

### OCIE Risk Alerts *continued*

First, firms provided inadequate information regarding disciplinary events. Among other things, firms:

- Omitted material disclosures regarding disciplinary histories of certain supervised persons or the firm itself. Often, a firm's omission of disciplinary information relating to supervised persons arose because the firm relied on its supervised persons to self-report their disciplinary events and did not take additional measures to verify disciplinary histories.
- Included incomplete, confusing or misleading information regarding disciplinary events, for example, by not including the total number of events, the date of each event, the allegations, or whether the supervised persons were found to be at fault (i.e., whether fines, judgments or awards or other disciplinary sanctions were imposed), notwithstanding Item 11 of Part 1A of SEC Form ADV and the related Criminal Disclosure Reporting Page (DRP), which require firms to report details regarding certain disciplinary events.
- Did not timely update and deliver disclosure documents to clients, such as updating Form ADV for new disciplinary events of supervised persons reported on CRD (e.g., Form U5s), notwithstanding the General Instructions to Form ADV, which specify that a firm must promptly file an "other-than-annual amendment" to its Form ADV when certain information (including reportable disciplinary events) becomes inaccurate in any way.

Second, many firms did not adopt and implement compliance policies and procedures addressing the risks associated with hiring and employing individuals with prior disciplinary histories. Among other things, firms did not have processes reasonably designed to identify:

- Whether the supervised persons' self-attestations regarding disciplinary events completely and accurately described those events. For example, some self-attestations contained information that did not fully or clearly describe the disciplinary events.
- Whether supervised persons who self-attested that they were not the subject of reportable events or recent bankruptcies were in fact not the subject to such events or bankruptcies. For example, some supervised persons incorrectly reported to their firms that they

were not the subject of any reportable events during the reporting period or did not report information regarding recent bankruptcies.

### **Other Findings with Respect to Compliance and Supervisory Failures**

Examinations revealed that many firms did not adequately supervise or set appropriate standards of business conduct for their supervised persons. In these instances, firm policies and procedures did not sufficiently document the responsibilities of supervised persons or did not clearly outline the expectations for these individuals. In this regard, certain firms failed to:

- Oversee whether fees charged by their supervised persons were disclosed or assess whether the services clients paid for were performed. The staff observed some instances in which clients paid for certain services they did not receive or were charged undisclosed fees.
- Adopt advertising policies and procedures that provided sufficiently specific guidance to supervised persons who prepared their own advertising materials and websites. In these cases, OCIE staff observed that these persons used advertisements that did not comply with the requirements of Rule 206(4)-1 under the Advisers Act – the so-called "Advertising Rule."
- Include policies for reviewing activities of supervised persons, including supervised persons with disciplinary histories, working from remote locations as part of a firm's ongoing monitoring activities. The staff observed that, in many instances, unbeknownst to firms, their geographically dispersed supervised persons were operating in a self-directed manner that was not consistent with the firms' policies and procedures.

Examinations also revealed that many firms did not confirm that supervised persons identified as responsible for performing certain compliance duties were executing those duties as prescribed. While these firms may have had policies and procedures that clearly assigned particular duties to particular individuals, they did not determine whether such individuals had in fact performed such duties, or did not document that the duties were

### OCIE Risk Alerts *continued*

performed according to the firms' policies and procedures. In some instances, the duties included key regulatory and business responsibilities relating to the management of client assets, such as:

- Monitoring the appropriateness of client account types. For example, notwithstanding the requirements of the firms' policies and procedures, the firms did not review whether, at account opening, the type of account selected was appropriate (e.g., wrap fee versus separately managed account), document that an assessment of the type of account took place or document the factors considered in making these assessments.
- Maintaining true, accurate and current books and records, including those necessary to provide investment supervisory or management services to clients (e.g., maintaining a list of all accounts in which the firm is vested with discretionary authority), to determine the financial standing of the firm, or to identify individuals with access to sensitive information.

#### **Finally, examinations revealed that:**

Based on the deficiencies observed during examinations, as well as effective compliance and supervisory policies and procedures the staff observed at certain firms, the Supervision and Disclosure Alert makes the following suggestions:

- Several firms had adopted policies and procedures that were inconsistent with their actual business practices and disclosures. Areas of inconsistent compliance practices most frequently observed involved those addressing commissions, fees and expenses (e.g., solicitation fees, management fees, compensation related to hiring personnel and oversight of firm compensation practices, including such practices within branch offices).
- Firms' annual reviews were insufficient because they did take steps to adequately document the reviews and appropriately assess the risk areas applicable to the firms, or identify certain risks at all.

#### **Undisclosed Compensation Arrangements**

Examinations revealed that several firms had undisclosed compensation arrangements, resulting in conflicts of interest that could have affected the impartiality of the advice their supervised persons gave to their clients. For example, some of these firms did not disclose that: (i) forgivable loans were made to the firms or their supervised persons, the terms of which were contingent upon certain client-based incentives that may have unduly influenced the investment decision-making process, resulting in higher fees and expenses for the affected clients or both and/or (ii) supervised persons were required to incur all transaction-based charges associated with executing client transactions, which created incentives for the supervised persons to trade less frequently on behalf of their clients.

#### **Suggestions for Improving Compliance**

Based on the deficiencies observed during examinations, as well as effective compliance and supervisory policies and procedures the staff observed at certain firms, the Supervision and Disclosure Alert makes the following suggestions:

Firms that hire or employ supervised persons with disciplinary histories may want to consider, among other things:

1. Adopting written policies and procedures that specifically address what must occur prior to hiring supervised persons that have reported disciplinary events to the firm. Such policies and procedures should provide for investigations of disciplinary events and determining whether barred individuals are eligible to reapply for their licenses.
  - Enhancing due diligence practices associated with hiring supervised persons to identify disciplinary events. Due diligence should include conducting background checks (e.g., confirming employment histories, disciplinary records, financial background and credit information), conducting internet and social media searches, fingerprinting personnel, utilizing third parties to research potential new hires, contacting personal references and verifying educational claims. Other measures might include:
    - (i) requesting that potential new hires provide the

## OCIE Risk Alerts *continued*

firm with copies of their Form U5s, when applicable; (ii) reviewing new hires' Form U5 filings 30 or more days after they are hired (for the purpose of identifying termination notices new hires failed to disclose and that were filed after the hiring decision had been made), when applicable; and (iii) initially checking CRD/IARD for supervised persons' filings, and re-checking the filing information after a designated period of time, such as three months.

- Establishing heightened supervision practices when overseeing supervised persons with certain disciplinary histories. Compliance policies and procedures should address the risks associated with employing supervised persons with prior disciplinary histories (e.g., disciplinary histories relating to misappropriation, unauthorized trading, forgery, bribery and making unsuitable recommendations).
2. All firms should adopt written policies and procedures addressing the handling (including the escalation) of client complaints relating to supervised persons.
  3. All firms having branch or remote offices should adopt compliance and supervisory programs providing for the appropriate oversight of supervised persons operating out of those offices (particularly when supervised persons with disciplinary histories are located in those offices).

**PRACTICE TIP:** *The Supervision and Disclosure Alert encourages SEC-Registered Managers to:*

- *“when designing and implementing their compliance and supervision frameworks, to consider the risks presented by, as well as the disclosure requirements triggered by, the hiring and employing of supervised persons with disciplinary histories and adopt policies and procedures to address those risks and disclosure requirements;” and*
- *“to reflect upon their practices, policies, and procedures and to consider ways that they may improve their supervisory practices and compliance programs.”*

## PRINCIPAL AND AGENCY CROSS TRADING COMPLIANCE ISSUES

On September 4, 2019, OCIE issued a risk alert (the “Principal/Cross Trade Alert”) highlighting certain issues – identified in select deficiency letters from examinations completed during the past three years – related to investment advisers' compliance with Section 206(3) of the Advisers Act and Rule 206(3)-2 thereunder. The full text of the Principal/Cross Trade Alert is available at <https://www.sec.gov/files/risk-alert-principal-cross-trading>.

OCIE cautions that the Principal/Cross Trade Alert does not: (i) discuss all of the requirements of Section 206(3) or Rule 206(3)-2; (ii) provide an exhaustive list of compliance considerations concerning those provisions; and (iii) discuss all types of deficiencies or weaknesses related to Section 206(3) and Rule 206(3)-2 that OCIE has observed.

Below are examples of the most common deficiencies or weaknesses identified by OCIE staff in connection with Section 206(3) and Rule 206(3)-2:

- A. Section 206(3) requirements not followed. OCIE staff observed advisers that did not appear to follow the specific requirements of Section 206(3). For example, OCIE staff observed:
  - Advisers that, acting as principal for their own accounts, had purchased securities from and sold securities to individual clients without recognizing that such principal trades were subject to Section 206(3). Thus, these advisers did not make the required written disclosures to the clients or obtain the required client consents.
  - Advisers that had recognized that they engaged in principal trades with a client, but did not meet all of the requirements of Section 206(3), such as:
    - Failing to obtain appropriate prior client consent for each principal trade.
    - Failing to provide sufficient disclosure regarding the potential conflicts of interest and terms of the transaction.
  - Advisers that had obtained client consent to a principal trade after the completion of the transaction or failed to obtain appropriate prior client consent for each principal trade.



**OCIE Risk Alerts** *continued*

B. Principal trade issues related to pooled investment vehicles. OCIE staff observed advisers that engaged in certain transactions involving pooled investment vehicle clients where such advisers did not appear to follow the requirements of Section 206(3). For example, OCIE staff observed:

- Advisers that effected trades between advisory clients and an affiliated pooled investment vehicle but failed to recognize that the advisers' significant ownership interests in the pooled investment vehicle would cause the transaction to be subject to Section 206(3).
- Advisers that effected principal trades between themselves and pooled investment vehicle clients, but did not obtain effective consent from the pooled investment vehicle prior to completing the transactions.
- Advisers that effected principal trades between themselves and pooled investment vehicle clients but that did not obtain effective consent from the pooled investment vehicle clients prior to completing the transactions.

C. Agency cross transactions. OCIE staff observed advisors' practices that gave rise to compliance issues in connection with agency cross transactions. For example, OCIE staff observed:

- Advisers that disclosed to clients that they would not engage in agency cross transactions, but in fact engaged in numerous agency cross transactions in reliance on Rule 206(3)-2.
- Advisers that effected numerous agency cross transactions and purported to rely on Rule 206(3)-2, but could not produce any documentation that they had complied with the written consent, confirmation or disclosure requirements of the rule.

D. Policies and procedures related to Section 206(3). OCIE staff observed advisers that did not have policies and procedures relating to Section 206(3) even though the advisers engaged in principal trades and agency cross transactions. OCIE staff also observed advisers that established—but failed to follow—policies and procedures regarding principal trades and agency cross transactions.

**PRACTICE TIP:** *In response to the issues identified in the deficiency letters, many of the advisers modified their written policies, procedures and practices to address the issues identified by OCIE staff. OCIE encourages advisers to review their written policies and procedures and the implementation of those policies and procedures to comply with the principal trading and agency cross transaction provisions of the Advisers Act and the rules thereunder.*

## 2020 OCIE Examination Priorities

On January 7, 2020, the U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations (“OCIE”) released its annual list of examination priorities for 2020. Investment Managers would be well advised to take these priorities into consideration when designing or updating their supervisory and compliance programs as useful indicators of areas of special focus that may present a higher enforcement risk. As has been true for several years now, OCIE continues to focus on issues relating to retail investors, including risks specific to elderly investors and investors saving for retirement, and information security. OCIE has also expanded its focus from last year on digital assets to include financial technology (“FinTech”) more broadly, including electronic investment advice.

Of course, these priorities are not exhaustive, and OCIE’s examinations are likely to focus on many areas beyond this list. Moreover, OCIE continues to characterize its examination selection process and scope determinations as a risk-based approach that provides it with sufficient flexibility to allow for coverage of emerging and exigent risks as they arise.

### Retail Investors, Including Senior Investors and Retirement Investments

Areas of particular focus related to retail investors include:

1. **Fraud, Sales Practices and Conflicts.** Areas of concern include proper disclosures, including those relating to fees and expenses, and conflicts of interest. OCIE examinations will focus on advice provided to retail investors, particularly (i) seniors and retirement communities, and (ii) teachers and military personnel. OCIE will also focus on products it considers higher risk, including private placements and securities of issuers in new and emerging risk areas, such as securities that (a) are complex or non-transparent, (b) have high fees and expenses or (c) involve an issuer that is affiliated with or related to the registered firm making the recommendation.

2. **Retail-Targeted Investments.** Areas of concern include the elevated risks when securities are marketed or sold to retail investors, whether these risks are due to the characteristics of the securities, market dynamics or the concentration of retail investors’ assets invested in a product. OCIE will continue to prioritize examinations of investments targeted to retail investors, including mutual funds and exchange traded funds (“ETFs”), municipal securities and other fixed income securities and microcap securities.
3. **Standards of Care.** In June 2019, the SEC adopted Regulation Best Interest: The Broker-Dealer Standard of Conduct. This new regulation requires broker-dealers and their associated persons to, among other things, not place their financial or other interests ahead of the interests of their retail customers, but instead to act in the best interest of their retail customers when recommending securities transactions or investment strategies. OCIE intends to engage with broker-dealers during examinations before and after the June 30, 2020 compliance date for Regulation Best Interest to assess implementation of the new rules.

### Information Security

OCIE is focused on working with firms to identify and address information security risks, including cybersecurity risks. The concern is that a breach in information security may have consequences that reach beyond the compromised firm and may harm other market participants and retail investors, who may not be well informed of the risks and consequences of such a breach. Accordingly, OCIE will continue to prioritize information and cybersecurity in its examinations. Examinations will focus on, among other things, (1) governance and risk management, (2) access controls, (3) data loss prevention, (4) vendor management, (5) training and (6) incident response and resiliency.

## **FinTech and Innovation, Including Digital Assets and Electronic Investment Advice**

FinTech innovations and advancements continue to progress rapidly and impact areas including methods of capital formation, market structures and investor interfaces. OCIE is focused on keeping up with these developments, and examinations will focus, among other things, on digital assets and electronic investment advice. With respect to digital assets, a primary concern is that these investments present risks to retail investors who may not adequately understand the differences between digital assets and more traditional investments. OCIE examinations will focus on (1) investment suitability, (2) portfolio management and trading practices, (3) safety of client funds and assets, (4) pricing and valuation, (5) effectiveness of compliance programs and controls and (6) supervision of employees' outside business activities. With respect to electronic investment advice, OCIE will continue to focus on RIAs that use automated investment tools and platforms to provide client services ("robo-advisers"). OCIE examinations will focus on, among other things, (1) SEC registration eligibility, (2) cybersecurity policies and procedures, (3) marketing practices, (4) adherence to fiduciary duties including adequacy of disclosures and (5) effectiveness of compliance programs.

## **Other Areas of Focus**

- 1. RIA Compliance Programs.** OCIE will continue to review RIA compliance programs, including to determine whether the compliance programs and associated policies and procedures are reasonably designed, implemented and maintained. OCIE will also continue to prioritize examinations of RIAs that are dually registered as, or affiliated with, broker-dealers, or have supervised persons who are registered representatives of unaffiliated broker-dealers. OCIE examinations will focus on, among other things, whether the firms maintain effective compliance programs to address the risks associated with, and disclosure of, potential conflicts.
- 2. Never-Before and Not Recently-Examined RIAs.** OCIE will continue to conduct risk-based examinations of newly-registered advisers and RIAs that have been registered for multiple years but never examined. OCIE will also prioritize examinations of advisers that have grown substantially or changed business models since they were last examined.
- 3. Mutual Funds and ETFs.** Because such funds are commonly used by retail investors, OCIE will continue to prioritize examinations of these vehicles. Examinations will focus on, among other things, (1) RIAs that use third-party administrators to sponsor the mutual funds they advise or are affiliated with, (2) mutual funds or ETFs that have not previously been examined and (3) RIAs to private funds that also manage a registered investment company with a similar investment strategy.
- 4. RIAs to Private Funds.** Again due to their prevalent use by retail investors, OCIE will continue to focus on RIAs to private funds such as firms that manage separately managed accounts side-by-side with private funds. Areas of concern include compliance risks such as undisclosed or inadequately disclosed fees and expenses, conflicts of interest and the use of RIA affiliates to provide services to clients.

## 2019 Significant Regulatory Highlights

### **SEC Charges Registered Investment Adviser With Defrauding Client**

(Talinco, LLC)

**SUMMARY:** On March 15, 2019, the SEC charged a registered investment adviser and its Chief Operating Officer with manipulating the auction of a real estate asset on behalf of one client for the benefit of another client. The SEC alleged that the adviser breached its fiduciary duty under Section 206(2) of the Advisers Act by failing to seek out willing bidders. The adviser consented to a cease-and-desist order and a censure. It further agreed to a disgorgement of its fee of \$74,000 plus a penalty of \$325,000. A copy of the order is available at <https://www.sec.gov/litigation/admin/2019/ia-5202.pdf>.

**PRACTICE TIP:** *Advisers should adopt policies and procedures to mitigate conflicts of interest in trades between co-managed accounts. These policies should include a review of account agreements to confirm client agreed-upon procedures are followed.*

### **SEC Imposes Monetary Penalty and Issues Cease-and-Desist Order in Connection with Faulty Valuation of Fund Assets**

(Deer Park Road Management Company, LP, and Scott E. Burg)

**SUMMARY:** On June 4, 2019, the SEC issued an order in which it found that an investment adviser made improper valuation of client assets and failed to adopt and implement compliance policies and procedures reasonably designed to prevent violations of the federal securities laws stemming from such inaccurate valuations, in each case in violation of the Advisers Act. The adviser's policies were not reasonably designed for its business practices and did not address sufficiently how to conform the firm's valuations with Generally Accepted Accounting Principles ("GAAP"). Additionally, the adviser failed to implement its existing policy of maximizing the use of relevant observable inputs such as trade prices. As a result, the adviser may have undervalued certain client assets. The SEC imposed a civil money penalty of \$5 million against the investment adviser and \$250,000 against the adviser's Chief Investment Officer and issued a cease-and-desist order. A copy of the order is available <https://www.sec.gov/litigation/admin/2019/ia-5245.pdf>.

**PRACTICE TIP:** *Valuation remains a continued area of focus for the SEC. Advisers should carefully review (and follow) their valuation procedures, which should include policies that address the retention of an independent compliance consultant.*

### **SEC Imposes Disgorgement, Prejudgment Interest and Monetary Penalty and Issues Cease-and-Desist Order Against an Investment Adviser and Manager in Connection with Pre-IPO Company Securities**

(MVP Manager, LLC)

**SUMMARY:** On August 13, 2019, the SEC issued an order in which it found that an investment adviser violated the Advisers Act by failing to adequately disclose conflicts of interest. The adviser received brokerage commissions from counter parties to certain transactions with the adviser's clients without adequate disclosure to those clients or to investors in the client funds. The adviser's clients are private funds that it formed to invest in venture-backed companies that had not yet conducted an initial public offering. In three instances, the adviser arranged to receive a brokerage commission from the counter party that was selling pre-IPO company securities to the adviser's advisory client. The arrangement created a potential or actual conflict of interest for the adviser, which the adviser failed to adequately disclose. The SEC imposed a cease-and-desist order and a disgorgement of \$150,058.88, prejudgment interest of \$19,681.42 and a civil money penalty of \$80,000. A copy of the order is available at <https://www.sec.gov/litigation/admin/2019/ia-5319.pdf>.

**PRACTICE TIP:** *Advisers should review all disclosures regarding arrangements that may create a potential or actual conflict of interest. Advisers should disclose the existence of an actual conflict instead of disclosing that the conflict "may" occur.*

### **SEC Settles Charges Against Registered Investment Advisor for Failure to Disclose Conflicts of Interest**

(Lefavi Wealth Management, Inc.)

**SUMMARY:** On September 3, 2019, the SEC issued an order against a registered investment adviser for allegedly violating Sections 206(2) and 206(4) of the Advisers Act.

The SEC alleged that the adviser failed to disclose conflicts of interest related to its receipt of additional compensation from its recommendation and sales of alternative investments to its clients. According to the SEC, the adviser invested client assets in alternative investments that included a seven percent commission embedded in the alternative investments' share price. Most of these investments could have been purchased at lower share prices that did not include any commission or at a discount for volume purchases. According to the SEC, the adviser did not disclose a conflict of interest that stemmed from its receipt of additional compensation for investing in alternative investments at higher share prices. The SEC also alleged the adviser did not seek best execution when recommending and investing client assets in certain alternative investments. The adviser agreed to a cease-and-desist order and further agreed to pay approximately \$1 million in disgorgement and prejudgment interest, and a \$150,000 civil money penalty. A copy of the order is available at <https://www.sec.gov/litigation/admin/2019/ia-5336.pdf>.

**PRACTICE TIP:** *Advisers should review all disclosures with respect to any additional compensation received and conflicts that result when personnel are dual hatted with an affiliated broker dealer. Advisers that are dual registered or use an affiliated broker dealer should pay careful attention to policies and procedures to address conflicts of interest related to additional compensation.*

**SEC Imposes Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 203(k) of the Investment Advisers Act of 1940**  
(ECP Manager LP)

SUMMARY: On September 27, 2019, the SEC issued an order in which it found that a private equity fund adviser violated Section 203(k) of the Advisers Act when it allegedly charged its clients excessive management fees. The adviser was prohibited from taking management fees from the fund on invested capital contributions that were written off as a result of certain triggering events. The adviser, however, included approximately \$3.41 million of invested capital contributions that had been written off, when calculating management fees. As a result,

the Fund and its shareholders paid over \$100k more in management fees than it should have. The SEC issued a cease-and-desist order and an order to pay \$122,656 in disgorgement and prejudgment interest, as well as a civil money penalty of \$75,000. A copy of the order is available at <https://www.sec.gov/litigation/admin/2019/ia-5373.pdf>.

**PRACTICE TIP:** *Advisers should review fee arrangements in all client agreements, including fund documents, and adopt policies and procedures to confirm compliance with those arrangements.*

**SEC Settles with Investment Adviser for Alleged Misuse of Private Equity Fund's Assets**

(Corinthian Capital Group, LLC, Peter B. Van Raalte and David G. Tahan)

SUMMARY: On May 6, 2019, the SEC issued administrative proceedings pursuant to Sections 203(e), 203(f) and 203(k) of the Advisers Act against an investment adviser, its CEO, CFO and CCO. The SEC alleged that the adviser misused the assets of a private equity fund it advised to benefit itself and three of its principals, failed to issue timely financial statements for the fund, and to implement written policies and procedures reasonably designed to prevent such misconduct. The investment adviser allegedly failed to comply with the fund's limited partnership agreement by not applying a \$1.2 million management fee offset, improperly using the fund's assets to fund its advisory operations, and causing the fund to overpay in organizational expenses. The SEC issued a cease-and-desist order, charged a civil money penalty of \$100,000 and issued a censure. The CEO agreed to pay a civil money penalty of \$25,000 and the CFO/CCO agreed to pay a civil money penalty of \$15,000. A copy of the order is available at <https://www.sec.gov/litigation/admin/2019/ia-5229.pdf>.

**PRACTICE TIP:** *Advisers should implement policies to confirm that management fee offsets are in compliance with relevant LPAs and be aware of the SEC's increased focus on personal accountability and willingness to hold a company's executives and CCO liable for alleged violations.*

# Winston & Strawn Investment Management Attorneys and Related Professionals

---

## Chicago

---

**BASIL GODELLAS**

*Partner*

[BGodellas@winston.com](mailto:BGodellas@winston.com)

**MEGAN DEVANEY**

*Partner*

[MDevaney@winston.com](mailto:MDevaney@winston.com)

**CHRISTINE EDWARDS**

*Partner*

[CEdwards@winston.com](mailto:CEdwards@winston.com)

**RICHARD GINSBERG**

*Partner*

[RGinsberg@winston.com](mailto:RGinsberg@winston.com)

**AMY GORDON**

*Partner*

[AMGordon@winston.com](mailto:AMGordon@winston.com)

**BRIAN KOZLOWSKI**

*Partner*

[BKozlows@winston.com](mailto:BKozlows@winston.com)

**MARGARET LOMENZO FREY**

*Partner*

[MFrey@winston.com](mailto:MFrey@winston.com)

**BRAD MANDEL**

*Partner*

[BMandel@winston.com](mailto:BMandel@winston.com)

**KATE PRICE**

*Partner*

[KPrice@winston.com](mailto:KPrice@winston.com)

**ZACHARIAH ROBERT**

*Partner*

[ZRobert@winston.com](mailto:ZRobert@winston.com)

**ALAN ROTH**

*Partner*

[ARoth@winston.com](mailto:ARoth@winston.com)

**ALESSANDRA SWANSON**

*Partner*

[ASwanson@winston.com](mailto:ASwanson@winston.com)

**J. WADE CHALLACOMBE**

*Of Counsel*

[JChallacombe@winston.com](mailto:JChallacombe@winston.com)

**JERRY LOESER**

*Of Counsel*

[JLoeser@winston.com](mailto:JLoeser@winston.com)

**JOSEPH NESLER**

*Of Counsel*

[JNesler@winston.com](mailto:JNesler@winston.com)

**DANIA SHARMA**

*Of Counsel*

[DSharma@winston.com](mailto:DSharma@winston.com)

**AIMEE ALBRIGHT**

*Associate Attorney*

[AAlbright@winston.com](mailto:AAlbright@winston.com)

**DANIEL FILSTRUP**

*Associate Attorney*

[DFilstrup@winston.com](mailto:DFilstrup@winston.com)

**WINSTON GU**

*Associate Attorney*

[WGu@winston.com](mailto:WGu@winston.com)

**BRAD SCHLOTTER**

*Associate Attorney*

[BSchlotter@winston.com](mailto:BSchlotter@winston.com)

---

## New York

---

**MORTON GROSZ**

*Partner*

[MGrosz@winston.com](mailto:MGrosz@winston.com)

**RACHEL INGWER**

*Partner*

[Ringwer@winston.com](mailto:Ringwer@winston.com)

**BETH KRAMER**

*Partner*

[BKramer@winston.com](mailto:BKramer@winston.com)

**SCOTT NAIDECH**

*Partner*

[SNaidech@winston.com](mailto:SNaidech@winston.com)

**GREG WESTON**

*Partner*

[GWeston@winston.com](mailto:GWeston@winston.com)

**COLE BEAUBOUF**

*Associate Attorney*

[CBeaubouef@winston.com](mailto:CBeaubouef@winston.com)

**JACQUELINE HU**

*Associate Attorney*

[JPHu@winston.com](mailto:JPHu@winston.com)

**SHARON MORI**

*Associate Attorney*

[SMori@winston.com](mailto:SMori@winston.com)

**MERAV WATSON**

*Associate Attorney*

[MFWatson@winston.com](mailto:MFWatson@winston.com)

---

## Washington, D.C.

---

**MICHAEL LOESCH**

*Partner*

[MLoesch@winston.com](mailto:MLoesch@winston.com)

**JON AMMONS**

*Of Counsel*

[JAmmons@winston.com](mailto:JAmmons@winston.com)

**FRANCESCA GUERRERO**

*Of Counsel*

[FGuerrero@winston.com](mailto:FGuerrero@winston.com)

**HALIMA NGUYEN**

*Associate Attorney*

[HANguyen@winston.com](mailto:HANguyen@winston.com)

**JENNIFER PARRY**

*Associate Attorney*

[JParry@winston.com](mailto:JParry@winston.com)

---

## San Francisco

---

**JAY GOULD**

*Partner*

[JGould@winston.com](mailto:JGould@winston.com)

**MICHAEL WU**

*Partner*

[MGWu@winston.com](mailto:MGWu@winston.com)

---

## Charlotte

---

**DAN DIAMOND**

*Associate Attorney*

[DDiamond@winston.com](mailto:DDiamond@winston.com)

VISIT [WINSTON.COM](https://www.winston.com)

If You Would Like More Information About Our Legal Services, Our Experience, Or The Industries We Serve.

Attorney Advertising Materials. Winston & Strawn Is A Global Law Firm Operating Through Various Separate And Distinct Legal Entities.

