



INVESTMENT
MANAGEMENT

Regulatory &
Compliance
Calendar and
Guidebook
2022

WINSTON
& STRAWN
LLP

As the new year begins, it is important for investment managers, private funds, commodity pool operators and other investment management professionals to review the array of regulatory requirements they are obligated to fulfill.

We hope that this *Regulatory & Compliance Calendar and Guidebook 2022* and accompanying materials will be a useful tool for managing compliance requirements throughout the year.

Regulatory & Compliance Calendar and Guidebook 2022

In assessing your 2022 compliance strategy, it is important to keep in mind not only individual requirements and best practices, but also the larger themes defining the regulatory and enforcement environment.

These themes should be reviewed by advisers in light of operational and compliance challenges they have faced, including the continuing COVID-19 pandemic, and how they have modified their compliance programs to adapt to these changes.

In our view, last year's SEC enforcement actions and risk alerts continue to send three clear messages:

► **Transparency is a priority.** The SEC is quick to take action in cases where there is a lack of required disclosure or a conflict of interest, and in cases where an investment manager made a material misrepresentation. Firms should endeavor to be scrupulously transparent in their arrangements and transactions.

► **Policies and procedures are just the start.** Firms need to have a solid infrastructure that translates policies and procedures into actions and behaviors.

This includes controls, internal audit functions and appropriate and timely escalation protocols. Moreover, firms must act on and follow policies and procedures in a way that reasonably ensures compliance with such policies and procedures, and applicable law.

► **Compliance needs to be approached holistically.** Compliance procedures cannot be applied in a check-the-box fashion. Firms must implement a risk-based approach driven by thorough due diligence of clients, employees and vendors.

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

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

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SECTION 1

REGULATORY AND COMPLIANCE CALENDAR

A FEW NOTES ON THE REGULATORY AND COMPLIANCE CALENDAR

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

The calendar assumes the fiscal year is the calendar year; a fiscal year other than the calendar year will require the deadlines of some of the listed actions to be adjusted. For deadlines that fall on non-business days or holidays, please check the relevant filing site or contact a member of the Winston team for guidance. Regulatory requirements without fixed deadlines are listed at the end of the calendar. A Glossary of defined terms is included in Section 3 on page 29.

JANUARY 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early January	<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) by making the appropriate election.</p>	Person or entity that was a Large Trader of NMS Securities at any time during calendar year 2021
January 15	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Liquidity Fund Adviser during the third calendar quarter of 2021
January 28	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
January 28	Distribute monthly account statements for December 2021 to pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(3), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
<p>January 28</p>	<p>Distribute quarterly account statements for the quarter ending December 31, 2021 to pool participants.</p>	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO:</p> <ul style="list-style-type: none"> (i) Has specifically claimed the relief provided by CFTC Regulation 4.7(b)(3); OR (ii) Has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(3) but such pool had net assets of \$500,000 or less as of the beginning of 2021 <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2021</p>
<p>January 31</p>	<p>Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the fourth calendar quarter of 2021 involving a Reportable Security in which such Access Person had, or as a result of the transaction acquired, any direct or indirect Beneficial Ownership (subject to certain limited exceptions).</p>	<p>SEC-Registered Manager</p>

FEBRUARY 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
February 14	File annual CFTC Form CTA-PR for the year ending December 31, 2021 (by filing NFA Form PR for the year ending December 31, 2021) with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
February 14	File SEC Form 13F with the SEC for the year ending December 31, 2021.	Institutional Investment Manager that had Investment Discretion with respect to \$100 million or more of Section 13(f) Securities as of the last trading day of any month during calendar year 2021
February 14	File initial SEC Schedule 13G with the SEC.	Qualified Institutional Investor that did not previously report (and was not required to previously report) Beneficial Ownership of securities of a particular class of Covered Equity Securities on SEC Schedule 13G and that, during calendar year 2021, 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
February 14	File annual amendment to SEC Schedule 13G with the SEC for the year ending December 31, 2021.	Qualified Institutional Investor or Passive Exempt Investor that previously reported Beneficial Ownership of securities of a particular class of Covered Equity Securities on SEC Schedule 13G
February 14	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
February 14	File BE-605 Form with the BEA.	U.S. Person who is contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the U.S.," and whose fiscal year is the calendar year

MARCH 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
March 1	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 2021 with the SEC through the PFRD.	SEC-Registered Manager whose fiscal year is the calendar year and that was a Large Hedge Fund Adviser during the third calendar quarter of 2021
March 1	File NFA Form PQR ¹ for the quarter ending December 31, 2021 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPOs
March 1	File annual reaffirmations of reliance on exemption(s)/exclusion from CPO/CTA registration through the NFA's Exemptions System.	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 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)
March 2	Distribute monthly account statements for January 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022 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 2022
March 30	Distribute monthly account statements for February 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022 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 2022

1. CFTC Regulations require CPOs to file Form CPO-PQR on a quarterly basis, and NFA rules separately require CPOs to file NFA Form PQR on a quarterly basis. However, CFTC Regulations permit CPOs to file NFA Form PQR in lieu of Form CPO-PQR, so we refer only to the requirement to file NFA Form PQR herein.

DEADLINE	ACTION	RESPONSIBLE PARTY
March 31	<p>Update SEC Form ADV -- Part 1A, Part 2A and Part(s) 2B.</p> <p>File updated Parts 1A and 2A with the SEC through the IARD.</p> <p>“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.</p>	SEC-Registered Manager whose fiscal year is the calendar year
March 31	<p>Update Items 1, 2, 3, 6, 7, 10 and 11 of Part 1A of SEC Form ADV.</p> <p>File updated Part 1A with the SEC and relevant states through the IARD.</p>	Exempt Reporting Adviser whose fiscal year is the calendar year
March 31	<p>File 2021 Annual Report for pool with the NFA through NFA’s EasyFile (Annual Reports) and distribute 2021 Annual Report for pool to pool participants.</p>	CFTC-registered CPO of CFTC Regulation 4.7 Pool or Non-Exempt Pool whose fiscal year is the calendar year

APRIL 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early April	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 2021.
April 15	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2022 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 2021
April 15	File Report of Foreign Bank and Financial Accounts ("FBAR") with FinCEN on FinCEN Form 114.	U.S. person who had a financial interest in, or signature authority over, one or more foreign financial accounts whose aggregate value exceeded \$10,000 at any time during a calendar year 2021 (subject to certain exceptions)
April 29	Distribute monthly account statements for March 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>
April 29	Distribute quarterly account statements for the quarter ending March 31, 2022 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO:</p> <ul style="list-style-type: none">(i) Has specifically claimed the relief provided by CFTC Regulation 4.7(b)(3); OR(ii) Has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(3) but such pool had net assets of \$500,000 or less as of the beginning of 2022 <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 2022</p>

DEADLINE	ACTION	RESPONSIBLE PARTY
April 30 ²	Deliver annual update of Part 2A of SEC Form ADV to existing clients.	SEC-Registered Manager whose fiscal year is the calendar year
April 30 ³	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
April 30 ⁴	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 2021 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 2021
April 30 ⁵	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the first calendar quarter of 2022 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
April 30	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
April 30	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

2. The deadline is still April 30, even though date falls on a weekend. Consider delivering prior to April 30.

3. See note 2.

4. The deadline is still April 30, even though date falls on a weekend. Consider filing with the SEC prior to April 30.

5. The deadline is still April 30, even though date falls on a weekend. Consider obtaining reports prior to April 30.

MAY 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
May 13	File NFA Form PR for the quarter ending March 31, 2022 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
May 15 ⁶	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
May 16	File SEC Form 13F with the SEC for the quarter ending March 31, 2022.	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 2022
May 28 ⁷ EXPECTED	File BE-11 Form with the BEA.	U.S. Person contacted by the BEA and informed that it is required to file an "Annual Survey of U.S. Direct Investment Abroad." 2022 Form not yet available as of publication date.
May 30	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2022 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 2021
May 30	Distribute monthly account statements for April 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2022
May 30	File NFA Form PQR for the quarter ending March 31, 2022 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the first calendar quarter of 2022

6. Since May 15 falls on a weekend, BEA staff have indicated that if a form is due on a non-business day, a form may be submitted on the next business day.

7. Since May 28 falls on a weekend, BEA staff have indicated that if a form is due on a non-business day, a form may be submitted on the next business day.

JUNE 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
June 29	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
June 29	Distribute monthly account statements for May 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2021 CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of more than \$500,000 as of the beginning of 2022
June 30 ⁸	File GIPS Compliance Notification Form with the CFA Institute, using data as of December 31, 2021.	Investment Manager that has previously claimed compliance with GIPS in connection with performance presentations
June 30 ⁸ EXPECTED DUE DATE FOR E-FILINGS	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.” Form is not yet available as of publication date

⁸. Since July 30 falls on a weekend, BEA staff have indicated that if a form is due on a non-business day, a form may be submitted on the next business day.

JULY 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early July	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 2021
July 15	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2022 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 2022
July 29	Distribute monthly account statements for June 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>
July 29	Distribute quarterly account statements for the quarter ending June 30, 2022 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)(3), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(3) but such pool had net assets of \$500,000 or less as of the beginning of 2021</p> <p>CFTC-registered CPO of Non-Exempt Pool whose fiscal year is the calendar year if pool had net assets of \$500,000 or less as of the beginning of 2021</p>

DEADLINE	ACTION	RESPONSIBLE PARTY
July 30	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
July 30	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
July 30	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the second calendar quarter of 2022 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

AUGUST 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
August 14⁹	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
August 15	File NFA Form PR for the quarter ending June 30, 2022 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
August 15	File SEC Form 13F for the quarter ending June 30, 2022 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 2021
August 29	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2022 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 2022
August 29	File NFA Form PQR for the quarter ending June 30, 2022 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the second calendar quarter of 2022
August 30	Distribute monthly account statements for July 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022 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 2022

9. Since August 14 falls on a weekend, BEA staff have indicated that if a form is due on a non-business day, a form may be submitted on the next business day.

SEPTEMBER 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
September 30	Distribute monthly account statements for August 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>

OCTOBER 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early October	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 2021
October 15	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2022 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 2022
October 28	Distribute monthly account statements for September 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>
October 28	Distribute quarterly account statements for the quarter ending September 30, 2022 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)(3), or (ii) has not specifically claimed the relief provided by CFTC Regulation 4.7(b)(3) but such pool had net assets of \$500,000 or less as of the beginning of 2022</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 2022</p>

DEADLINE	ACTION	RESPONSIBLE PARTY
October 30 ¹⁰	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
October 30 ¹⁰	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
October 31	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the third calendar quarter of 2022 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

10. Since October 30 falls on a weekend, BEA staff have indicated that if a form is due on a non-business day, a form may be submitted on the next business day.

NOVEMBER 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early November	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
Early November	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
November 14	File NFA Form PR for the quarter ending September 30, 2022 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
November 14	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
November 14	File SEC Form 13F with the SEC for the quarter ending September 30, 2022.	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 2021

DEADLINE	ACTION	RESPONSIBLE PARTY
November 29	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2022 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 2022
November 29	File NFA Form PQR for the quarter ending September 30, 2022 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the third calendar quarter of 2022
November 30	Distribute monthly account statements for October 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>

DECEMBER 2022

DEADLINE	ACTION	RESPONSIBLE PARTY
Early December	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
Early December	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
December 30	Distribute monthly account statements for November 2022 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)(3), if pool had net assets of more than \$500,000 as of the beginning of 2022</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 2022</p>

ANNUAL COMPLIANCE REQUIREMENTS NO FIXED DATES

ACTION	RESPONSIBLE PARTY
Delivery annual privacy notice to applicable clients/investors, if required.	Every Investment Manager
Renew SEC Form D filings, if applicable. Form D amendments must be filed annually, on or before the first anniversary of the most recent previously filed notice, if the offering is continuing at that time.	Every Investment Manager
Review “new issue” eligibility of clients/investors, if applicable. Advisers should send confirmation letters to clients and private fund investors regarding restricted status, which may be accomplished by way of negative consent.	Every Investment Manager
File initial SEC Schedule 13G with SEC within 10 days of acquiring Beneficial Ownership of more than five percent of the securities of a particular class of Covered Equity Securities	Passive Investors
Review holdings of Covered Equity Securities to determine (i) if an amendment is due during the calendar year or (ii) if investment intent is no longer passive and an SEC Schedule 13D is due.	Qualified Institutional Investors and Passive Investors
Review and test and, if necessary, update compliance policies and procedures (and document such review, testing and updating).	SEC-Registered Manager
Provide Code of Ethics (or amendment) to Supervised Persons and obtain their acknowledgements of receipt.	SEC-Registered Manager
Obtain initial Holdings Report from each Access Person no later than 10 days after the person becomes an 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.	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
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).	NFA Member
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.	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 training programs, training providers, the format of training, the frequency of training and the manner in which the manager 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

ACTION	RESPONSIBLE PARTY
File appropriate Form BE-13 (<i>i.e.</i> , 13A, 13B, 13D, 13E or Claim for Exemption) with BEA within 45 days after qualifying transaction.	<ul style="list-style-type: none">• 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:<ul style="list-style-type: none">(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:<ul style="list-style-type: none">(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:<ul style="list-style-type: none">(i) the BEA contacted the enterprise but it does not meet the requirements for filling any of the forms; OR(ii) the enterprise, regardless of whether the BEA contacted it, meets all the requirements for filing one of the other forms, except the \$3 million reporting threshold (Claim for Exemption) • U.S. reporters who are asked by the BEA to submit a BE-13 form can file a Claim for Exemption if the relevant business or affiliate is a Private Fund as long as:<ul style="list-style-type: none">(1) the Private Fund does not own, directly or indirectly through another business enterprise, an “operating company” (<i>i.e.</i>, a business enterprise that is not a Private Fund or a holding company) in which the foreign parent owns at least 10 percent of the voting interest (directly or indirectly); AND(2) if the U.S. reporter owns the Private Fund indirectly (through one or more other U.S. business enterprises), there are no “operating companies” between the foreign parent and the indirectly-owned U.S. private fund. The foreign investment in the U.S. private fund may be required to be reported on TIC Surveys

SECTION 2

COMPLIANCE TIPS AND TIC FORMS

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

COMPLIANCE TIPS

RESPONSIBLE PARTY	TIP
All Investment Managers	<p>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.</p> <p>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.</p> <p>Review, test and update compliance policies and procedures, even if not required by law or regulation (and document such review, testing and updating). Specific focus should include policies and procedures related to:</p> <ul style="list-style-type: none"> • Conflicts • Fees and expenses • Cybersecurity • Material nonpublic information • COVID-19 <p>Review CFIUS, ERISA and tax considerations.</p> <p>Review “pay to play,” lobbyist and gifts/entertainment considerations.</p> <p>Review liability insurance considerations.</p> <p>If applicable, review and monitor changes in law and regulation in foreign jurisdictions, including filing obligations.</p>
SEC-Registered Managers	<p>Redistribute Code of Ethics to all Supervised Persons and obtain acknowledgements of receipt.</p> <p>Review compliance with and transition to new “marketing rule” – Rule 206(4)-1 under the Advisers Act. Note the deadline for compliance is November 4, 2022.</p> <p>Review compliance with Custody Rule.</p>
SEC-Registered Managers that are also Broker-Dealers OR HAVE AFFILIATES THAT ARE BROKER-DEALERS	<p>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.</p> <p>PRACTICE TIP Supervision of recidivist representatives (<i>i.e.</i>, those with a track record of misconduct) has previously been listed by the Division as an examination priority.</p>
NFA Members	<p>Complete the NFA’s Self-Examination Questionnaire on an annual basis.</p> <p>Review disclosure of virtual currency practices.</p>

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.

► **TIC Form SLT** Investment Managers subject to Form SLT reporting requirements must complete and file a Form SLT monthly. 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 home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/tic-slt-form-and-instructions.

► **TIC Form B** 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 home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/tic-b-forms-and-instructions.

SECTION 3

GLOSSARY

The following defined terms appear in *the Investment Management Regulatory & Compliance Calendar and Guidebook 2022*.

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

CFTC REGULATION 4.7 POOL

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

CFTC REGULATION 4.12 POOL

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

COMMODITY POOL

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

CPO

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

CTA

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

CUSTODY RULE

Rule 206(4)-2 under the Advisers Act

D

DIVISION

The SEC’s Division of Examinations, previously known as the SEC’s Office of Compliance Inspections and Examinations

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

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)(1) under the Advisers Act

INVESTMENT DISCRETION

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

L

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

N

NFA

The U.S. National Futures Association

NMS SECURITY

An “NMS security,” as defined in Rule 600(b)(47) under the Exchange Act

NON-EXEMPT POOL

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

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 investment vehicle that is an investment company as defined in section 3(a) of the ICA or a Private Fund. See Rule 206(4)-8 under the Advisers Act

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

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

SUPERVISED PERSON

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

T

TRANSACTION REPORT

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

V

VENTURE CAPITAL FUND ADVISER EXEMPTION

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

SECTION 4

NOTABLE REGULATORY DEVELOPMENTS AND PUBLICATIONS

SEC DIVISION OF EXAMS (THE “DIVISION”) RISK ALERTS

Focus on Investment Advisers’ Fee Calculations

On November 10, 2021, the Division published a risk alert relating to certain fee calculation deficiencies found during the course of investment adviser examinations and suggested best practices for industry participants. Fee calculations and disclosures relating to fee practices have been a continued area of focus for the SEC in the past and will continue to be a hot topic for examinations.

The risk alert notes that deficiencies uncovered during the course of examinations often resulted in financial harm to clients. Additionally, the risk alert notes that investment advisers that fail to follow the terms of client agreements or deviate from client disclosures may violate their fiduciary duties and the Advisers Act.

Among the deficiencies uncovered by the SEC in its examinations were the following:

- Charging fees inaccurately, including double billing, using inaccurate fee calculation percentages, failing to aggregate related accounts for the purposes of fee breaks, and using incorrect valuations;
- Failing to refund prepaid fees on terminated accounts and not assessing fees for new accounts on a pro-rata basis;
- Providing false, misleading, or otherwise omitting disclosures relating to fee practices;
- Missing or otherwise maintaining incomplete policies and procedures; and
- Issuing inaccurate financial statements.

Recognizing that there is no “one-size fits all” approach for investment advisers, the risk alert notes the following as examples of policies and practices that investment advisers should consider in order to mitigate deficiencies noted in its examinations:

- ▶ Adopt and implement written policies and procedures addressing advisory fee billing processes and validating fee calculations.
- ▶ Centralize the fee billing process and validate that the fees charged to clients are consistent with compliance procedures, advisory contracts, and disclosures.
- ▶ Ensure resources and tools established for reviewing fee calculations are utilized.
- ▶ Properly record all advisory expenses and fees assessed to and received from clients.

The Division’s risk alert is available at www.sec.gov/files/exams-risk-alert-fee-calculations.pdf.

Focus on Digital Asset Securities

On February 26, 2021, the Division published a Risk Alert highlighting its continued focus on digital assets that are securities (“Digital Asset Securities”). The Division emphasized that the offer, sale, and trading of Digital Asset Securities present unique risks to investors and encouraged firms to consider the distinct features of distributed-ledger technology when designing their regulatory-compliance programs. The Risk Alert provides observations made by Division staff during recent examinations of industry participants that may assist firms in developing their compliance practices and

policies. The Risk Alert also provides transparency about areas of focus for the Division's future examinations.

Please see our [client alert](#) on this subject.

ESG Investing

On April 9, 2021 the Division released a Risk Alert highlighting observations from recent examinations of investment advisers, registered investment companies, and private funds offering investment products and financial services that incorporate environmental, social, and governance ("ESG") factors.

Please see our [client alert](#) on this subject.

Fixed Income Principal and Cross Trades

The Division published a Risk Alert on July 21, 2021 detailing certain observations made during the course of an "examination initiative," or sweep, of registered investment advisers that engaged in cross trades, principal transactions (or both) involving fixed income securities. The Risk Alert follows and expands upon a 2019 risk alert that highlighted the most common compliance issues observed by the staff related to principal and agency cross trades under the Investment Advisers Act of 1940.

According to the Risk Alert, nearly two-thirds of the examined advisers received deficiency letters, and the vast majority of the deficiencies identified were related to:

- (1) Compliance programs (e.g., policies and procedures adopted pursuant to the "Compliance Rule"),
- (2) Conflicts of interest, and
- (3) Written disclosures, in each case as they relate to principal transactions and cross trades.

The Risk Alert describes the common deficiencies identified and recommends certain best practices related to these topics.

Please see our [client alert](#) on this subject.

Securities Investments that Finance Communist Chinese Military Companies

On January 6, 2021, the Division published a risk alert to notify investment advisers, broker-dealers, and other market participants of a recent action relating to investments in securities associated with Communist Chinese military companies, as well as investors transacting in such securities. Executive Order 13959, "Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies" (the "EO") stated that beginning January 11, 2021, U.S. persons, which includes both individuals and entities, will be prohibited from transacting in certain securities and derivatives of Communist China military companies, unless such transactions are for purposes of divestment and occur through November 11, 2021.

The Division's risk alert is available at www.sec.gov/files/risk-alert-securities-investments-finance-communist-chinese-military-companies.pdf.

Wrap Fee Programs

On July 21, 2021, the Division issued a Risk Alert focused on prioritizing examinations of wrap fee programs in light of the growth of investor assets investing in these programs. The Division highlighted, among other areas, the omission or inadequacy of disclosures regarding conflicts of interest and fees and expenses.

The Division's Risk Alert is available at www.sec.gov/files/wrap-fee-programs-risk-alert_0.pdf.

Registered Investment Companies

On October 26, 2021, the Division issued a Risk Alert that provides observations from examinations of 50 fund complexes covering more than 200 funds and approximately 100 advisers describing risk areas to assist funds and advisers in order to enhance their compliance programs. The Division highlighted that funds and their advisers should also address disclosures relating to portfolio management compliance and conflicts of interest.

The Division's Risk Alert is available at www.sec.gov/files/exams-registered-investment-company-risk-alert.pdf.

Providing Electronic Advice

The Division issued a Risk Alert on November 9, 2021 that highlighted observations relating to investment advisers that provide their clients with automated digital investment advisory services, such as robo-advisers. The Staff identified deficiencies which included failure to have customized procedures and recommended that advisers test algorithms to confirm they are operating as expected.

The Division's Risk Alert is available at www.sec.gov/files/exams-eia-risk-alert.pdf.

OTHER NOTABLE REGULATORY DEVELOPMENTS

SEC Increases Thresholds for Qualified Client Status

Effective as of August 16, 2021, the Securities and Exchange Commission (SEC) has amended the definition of “qualified client” to increase the dollar-amount thresholds under both the assets-undermanagement and the net-worth tests for qualified-client status. Consequently, the assets-undermanagement test increased from \$1,000,000 to \$1,100,000, and the net-worth test will increase from \$2,100,000 to \$2,200,000.

Please see our [client alert](#) on this subject.

SEC Unanimously Approves New Investment Adviser Marketing Rule

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

The Marketing Rule applies a principles-based approach to regulating advertisements that is designed to accommodate the use of technology in connection with providing investment advice and has specific requirements for various types of advertisements. As an example:

- (1) Certain aspects of a performance presentation must be standardized under the Marketing Rule, so that investors are able to evaluate and compare investment opportunities, and

- (2) Certain types of performance presentations are subject to specific requirements under the Marketing Rule.

In addition, if an advertisement includes third-party ratings, it will need to have specific disclosures to ensure that such third-party ratings are not misleading. Finally, subject to certain conditions, the Marketing Rule would allow the use of testimonials and endorsements, including traditional referral and solicitation activity.

The SEC also adopted related amendments to Form ADV and the Advisers Act’s books and records rule. The SEC also has withdrawn certain no-action letters and other guidance pertaining to the application of the advertising and cash solicitation rules. The Marketing Rule became effective on May 4, 2021, but investment advisers subject to the Marketing Rule will have until November 4, 2022 to transition their practices to comply with the new rule.

Please see our [client alert](#) on this subject.

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