

The background features a dark blue triangle on the left side, containing a faint, stylized line graph. The rest of the background is a light blue gradient with several glowing, multi-colored lines (pink, yellow, and light blue) that create a sense of motion and depth.

INVESTMENT
MANAGEMENT

Regulatory &
Compliance
Calendar and
Guidebook
2023

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 2023* and accompanying materials will be a useful tool for managing legal and compliance requirements throughout the year.

Regulatory & Compliance Calendar and Guidebook 2023

In assessing your 2023 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 and how they have modified their compliance programs to adapt to these changes.

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

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

► **Policies and procedures are just the start.** Firms need to have a solid infrastructure that translates policies and procedures into actions and behaviors. This includes controls, internal audit functions and appropriate and timely escalation protocols. Moreover, firms must act on and follow policies and procedures in a way that reasonably ensures

compliance with such policies and procedures, and applicable law.

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

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

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

CONTACT OUR TEAM

BASIL GODELLAS
JACQUELINE HU
BETH KRAMER
SCOTT NAIDECH

KIM PRIOR
MICHAEL WU
COLE BEAUBOUF
KAREN NEUGROSCHL

BROOKE PARMALEE
NICHOLAS PEREZ
MELISSA SHERIDAN

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 nonbusiness 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 2023

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 2022
January 15 ¹	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 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 third calendar quarter of 2022
January 27	If Final Statement (available January 2, 2023) from the IARD indicates that additional funds are due in connection with annual renewals, such funds must be available to the IARD on or prior to this date.	<p>Exempt Reporting Adviser</p> <p>Investment Manager employing persons who are registered as Investment Adviser Representatives, or who are otherwise registered, with one or more states</p>
January 30	Distribute monthly account statements for December 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>

1. The deadline is still January 15, even though such date falls on a weekend. Consider filing with the SEC prior to January 15.

DEADLINE	ACTION	RESPONSIBLE PARTY
<p>January 30</p>	<p>Distribute quarterly account statements for the quarter ending December 31, 2022 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 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>
<p>January 30</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 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).</p>	<p>SEC-Registered Manager</p>

FEBRUARY 2023

DEADLINE	ACTION	RESPONSIBLE PARTY
February 14	File annual CFTC Form CTA-PR for the year ending December 31, 2022 (by filing NFA Form PR for the year ending December 31, 2022) 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, 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
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 2022, 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, 2022.	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 annual amendment to SEC Schedule 13H with the SEC for the year ending December 31, 2022 (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 2022
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 2023

DEADLINE	ACTION	RESPONSIBLE PARTY
March 1	File (or, if previously filed, amend) SEC Form PF for the quarter ending December 31, 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 third calendar quarter of 2022
March 1	File NFA Form PQR ² for the quarter ending December 31, 2022 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 2023 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 2023 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 2023
March 30	Distribute monthly account statements for February 2023 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 2023 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 2023

2. 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	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
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	File 2022 Annual Report for pool with the NFA through NFA’s EasyFile (Annual Reports) and distribute 2022 Annual Report for pool-to-pool participants.	CFTC-registered CPO of CFTC Regulation 4.7 Pool or Non-Exempt Pool whose fiscal year is the calendar year
March 31	Determine NFA membership status of exempt CPOs/CTAs for purposes of compliance with NFA By-Law 1101; contact any exempt CPOs/CTAs that have not filed a notice affirming their exemption and cease transacting with such entity if it is required to be registered.	NFA Member

APRIL 2023

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 2022
April 15	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2023 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 2022
April 18	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 2022 (subject to certain exceptions)
April 28	Distribute monthly account statements for March 2023 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 2023</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 2023</p>
April 28	Distribute quarterly account statements for the quarter ending March 31, 2023 to pool participants.	<p>CFTC-registered CPO of CFTC Regulation 4.7 Pool whose fiscal year is the calendar year and CPO:</p> <p>(i) Has specifically claimed the relief provided by CFTC Regulation 4.7(b)(3); OR</p> <p>(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 2023</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 2023</p>
April 30 ³	Deliver annual update of Part 2A of SEC Form ADV to existing clients.	SEC-Registered Manager whose fiscal year is the calendar year

3. Note the deadline is still April 30, even though date falls on a weekend. Consider delivering prior to April 30.

DEADLINE	ACTION	RESPONSIBLE PARTY
April 30 ⁴	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 ⁵	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 2022 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 2022
April 30 ⁶	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the first calendar quarter of 2023 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 ⁷	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 ⁸	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

4. Same comment as footnote 3.

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

6. Note the deadline is still April 30, even though date falls on a weekend. Consider obtaining reports prior to April 30.

7. Note that since April 30 falls on the weekend, BEA staff have indicated that if a form is due on a nonbusiness day, a form may be submitted on the next business day.

8. Note that since April 30 falls on the weekend, BEA staff have indicated that if a form is due on a nonbusiness day, a form may be submitted on the next business day.

MAY 2023

DEADLINE	ACTION	RESPONSIBLE PARTY
May 15	File NFA Form PR for the quarter ending March 31, 2023 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
May 15	File SEC Form 13F with the SEC for the quarter ending March 31, 2023.	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 2023
May 15	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 30	File (or, if previously filed, amend) SEC Form PF for the quarter ending March 31, 2023 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 2022
May 30	Distribute monthly account statements for April 2023 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 2023
May 30	File NFA Form PQR for the quarter ending March 31, 2023 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the first calendar quarter of 2023
May 31	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." 2023 Form not yet available as of publication date.
May 31 EXPECTED; OR BY JUNE 30, 2023 FOR REPORTS SUBMITTED VIA EFILE	File BE-12 Form with the BEA (in lieu of the BE 15 annual survey).	U.S. affiliates in which foreign entities hold voting ownership interest (or the equivalent) of 10 percent or more that would normally file the BE-15 annual survey, are required to file the BE-12 instead for 2022 A response is required from entities subject to the reporting requirements of the BE-12, whether or not they are contacted by BEA

JUNE 2023

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 2023 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 2023 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 2023
June 30	File GIPS Compliance Notification Form with the CFA Institute, using data as of December 31, 2022.	Investment Manager that has previously claimed compliance with GIPS in connection with performance presentations
June 30 EXPECTED DUE DATE FOR E-FILINGS, BUT SEE BE-12 FILING ABOVE	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.” (2023 Form is not yet available as of publication date)

JULY 2023

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 2022
July 15 ⁹	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2023 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 2023
July 28	Distribute monthly account statements for June 2023 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 2023</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 2023</p>
July 28	Distribute quarterly account statements for the quarter ending June 30, 2023 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>

9. The deadline is still July 15, even though such date falls on a weekend. Consider filing with the SEC prior to July 15.

DEADLINE	ACTION	RESPONSIBLE PARTY
July 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
July 30 ¹¹	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 ¹²	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the second calendar quarter of 2023 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. Note that since July 30 falls on the weekend, BEA staff have indicated that if a form is due on a nonbusiness day, a form may be submitted on the next business day.

11. Same comment as footnote 10.

12. The deadline is still July 30, even though such date falls on a weekend. Consider obtaining reports prior to July 30.

AUGUST 2023

DEADLINE	ACTION	RESPONSIBLE PARTY
August 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
August 14	File NFA Form PR for the quarter ending June 30, 2023 with the NFA through EasyFile (CTA Filers).	CFTC-registered CTA that directs the commodity interest account(s) of one or more clients
August 14	File SEC Form 13F for the quarter ending June 30, 2023 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 2022
August 29	File (or, if previously filed, amend) SEC Form PF for the quarter ending June 30, 2023 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 2023
August 29	File NFA Form PQR for the quarter ending June 30, 2023 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the second calendar quarter of 2023
August 30	Distribute monthly account statements for July 2023 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 2023 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 2023

SEPTEMBER 2023

DEADLINE	ACTION	RESPONSIBLE PARTY
September 29	Distribute monthly account statements for August 2023 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 2023 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 2023

OCTOBER 2023

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 2022
October 15 ¹³	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2023 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 2023
October 30	Distribute monthly account statements for September 2023 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 2023</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 2023</p>
October 30	Distribute quarterly account statements for the quarter ending September 30, 2023 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 2023</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 2023</p>

13. The deadline is still October 15, even though date falls on a weekend. Consider filing with the SEC prior to October 15.

OCTOBER 2023

CONTINUED

DEADLINE	ACTION	RESPONSIBLE PARTY
October 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
October 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
October 30	Obtain quarterly Transaction Report from each Access Person of the manager covering, at a minimum, all transactions during the third calendar quarter of 2023 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

NOVEMBER 2023

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, 2023 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, 2023.	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

DEADLINE	ACTION	RESPONSIBLE PARTY
November 29	File (or, if previously filed, amend) SEC Form PF for the quarter ending September 30, 2023 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 2023
November 29	File NFA Form PQR for the quarter ending September 30, 2023 through NFA EasyFile for Commodity Pool Operators (Quarterly Reports).	CFTC-registered CPO registered during the third calendar quarter of 2023
November 30	Distribute monthly account statements for October 2023 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 2023</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 2023</p>

DECEMBER 2023

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 29	Distribute monthly account statements for November 2023 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 2023</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 2023</p>

ANNUAL COMPLIANCE REQUIREMENTS NO FIXED DATES

ACTION	RESPONSIBLE PARTY
Deliver 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 percent 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 percent 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 form 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">(i) 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(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

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

If an Investment Manager manages Private Funds and/or other fund products, it should review and, if necessary, update offering documents and marketing materials relating to Private Funds and other fund products, even if not required by law or regulation.

If an Investment Manager participates in the offer and sale of securities of Private Funds pursuant to the exemption from Securities Act registration provided by Rule 506 of Regulation D under the Securities Act (or otherwise engages in the offer and sale of securities pursuant to that rule), it should conduct periodic due diligence into the “bad actor” status of certain parties in order to confirm the continuing availability of the Rule 506 exemption.

Review, test and update compliance policies and procedures, even if not required by law or regulation (and document such review, testing and updating). Specific focus should include policies and procedures related to:

- Conflicts
- Fees and expenses
- Cybersecurity
- Material nonpublic information
- Marketing materials

Review CFIUS, ERISA, and tax considerations.

Review “pay to play,” lobbyist, and gifts/entertainment considerations.

Review liability insurance considerations.

If applicable, review and monitor changes in law and regulation in foreign jurisdictions, including filing obligations.

SEC-Registered Managers

Redistribute Code of Ethics to all Supervised Persons and obtain acknowledgements of receipt.

Review compliance with the new Marketing rule.

Review compliance with Custody Rule.

SEC-Registered Managers That Are Also Broker-Dealers

OR HAVE AFFILIATES THAT ARE BROKER-DEALERS

Review allegations of sales practice violations made against a registered person in an arbitration or litigation – even in cases where the registered person is not a named party – and amend the registered person’s Form U4 to disclose such information as required.

PRACTICE TIP Supervision of recidivist representatives (*i.e.*, those with a track record of misconduct) has previously been listed by the Division as an examination priority.

NFA Members

Complete the NFA’s Self-Examination Questionnaire on an annual basis.

Review disclosure of virtual currency practices.

TIC FORMS

Investment Managers may be required to complete and submit various forms under the Treasury Department's Treasury International Capital ("TIC") system. TIC Form SLT aims to capture information regarding transactions between U.S. 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. U.S. 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 2023*.

A

ACCESS PERSON

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

ADVISERS ACT

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

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.

FUND 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

M

MARKETING RULE

Rule 206(4)-1 under the Advisers 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

2022 SEC DIVISION OF EXAMS (THE “DIVISION”) EXAMINATION PRIORITIES

On March 30, 2022, the Division released its annual list of examination priorities for 2022. 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.

These priorities are not exhaustive, and the Division’s examinations are likely to focus on many areas beyond this list. Moreover, the Division 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.

The Division focused primarily on the following areas:

- (1) Registered investment advisers to private funds, and specifically, the calculation of fees and expenses, potential preferential treatment of certain investors, compliance with the Custody Rule, disclosure and compliance practices related to cross trades, principal transactions or distressed sales, and liquidity conflicts;
- (2) Environmental, social, and governance (“ESG”) advisory services and investment products;
- (3) Standard-of-conduct issues;
- (4) Measures taken by firms to ensure information security; and

- (5) New services or new practices such as emerging technology and crypto-assets.

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

The list of examination priorities for 2023 is expected to be published shortly.

2022 DIVISION RISK ALERTS

Observations from Broker-Dealer and Investment Adviser Compliance Examinations Related to Prevention of Identity Theft Under Regulation S-ID

On December 5, 2022, the Division published a risk alert after conducting examinations of registered investment advisers and broker-dealers required to comply with Regulation S-ID. SEC-regulated entities that under the Fair Credit Reporting Act are financial institutions or creditors are subject to Regulation S-ID. SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts include most registered broker-dealers, investment companies, and certain registered investment advisers. These entities are required to establish programs to detect, prevent, and mitigate identity theft related to covered accounts.

The Division found common deficiencies in the following areas:

- (1) Identifying covered accounts;
- (2) Developing and implementing written programs to comply with Regulation S-ID;

- (3) Establishing reasonable policies and procedures to periodically update the programs to reflect changes in risks; and
- (4) Providing for the continued administration of the programs.

Registered investment advisers and broker-dealers are encouraged to review their policies and practices to ensure that they are in compliance with Regulation S-ID.

The SEC's risk alert is available at www.sec.gov/files/risk-alert-reg-s-id-120522.pdf.

Observations Related to Regulation NMS Rule 606 Disclosures

On November 10, 2022, the Division published a risk alert after conducting examinations of broker-dealers required to comply with disclosure requirements under Regulation NMS Rule 606. Under this rule, broker-dealers must provide quarterly reports on their routing of non-directed orders from customers that are for NMS stock and on a held basis and for NMS securities that are option contracts with market values of less than \$50,000. The Division recommends that broker-dealers review their policies related to Regulation NMS Rule 606 and ensure the accuracy and specificity of the disclosures under this rule.

The SEC's risk alert is available at www.sec.gov/files/reg-nms-rule-606-disclosures-risk-alert.pdf.

Examinations Focused on the New Investment Adviser Marketing Rule

On September 19, 2022, the Division published a risk alert relating to the Marketing Rule. These reforms changed the rules governing investment adviser advertisements and payments to solicitors for the first time since 1961 and 1979, respectively. These reforms also amended certain Form ADV

and books and records requirements under the Advisers Act, thereby creating new obligations for investment advisers.

The Division noted that it will conduct examinations of investment advisers to ensure compliance with the Marketing Rule. Specifically, it intends to focus on the following areas:

- (1) Written policies and procedures designed to prevent violations of the Marketing Rule;
- (2) Methods for substantiating any material statements of fact;
- (3) Compliance with performance advertising requirements; and
- (4) Compliance with books and records requirements.

Registered investment advisers have been required to comply with the Marketing Rule since November 4, 2022.

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

On January 11, 2023, the SEC Division of Investment Management released a series of frequently asked questions ("FAQs") related to compliance with the Marketing Rule. Notably, the Division of Investment Management clarified that advisers must display the net performance of a single investment or group of investments if they are also displaying the gross performance. Furthermore, when displaying net and gross performance, the numbers must be presented in a manner that is fair and balanced.

The Division of Investment Management's FAQs are available at www.sec.gov/investment/marketing-faq.

Recent Observations from Municipal Adviser Examinations

On August 22, 2022, the Division published a risk alert to municipal advisers ("MAs") of common

deficiencies and weaknesses the Division had observed in MA examinations. The risk alert highlighted that MAs often fail to properly register and file required SEC forms, to keep accurate and current copies of books and records, establish, amend, or design written supervisory procedures, and disclose conflicts to their clients on all material conflicts of interest. The Division encouraged MAs to review their practices, policies, and procedures in these areas and consider improving their compliance programs.

The SEC's risk alert is available at www.sec.gov/municipal-advisor-risk-alert-2022.pdf.

Investment Adviser MNPI Compliance Issues

On April 26, 2022, the Division published a risk alert highlighting compliance issues relating to the handling of material nonpublic information (“MNPI”) pursuant to both Section 204A and Rule 204A-1 (the “Code of Ethics Rule”) under the Advisers Act. The risk alert emphasized three examples of conduct deficiencies and weaknesses associated with Section 204A and four areas of deficiencies associated with the Code of Ethics Rule. The risk alert offered suggestions for investment advisers to improve their code of ethics and compliance policies and procedures, such as considering including provisions into their codes to include “restricted lists” of issuers about which the investment adviser has inside information and incorporating procedures to confirm that investment opportunities are offered to clients before the investment adviser and its employees may act on them. The risk alert encouraged investment advisers to review their policies and procedures to confirm that they comply with the provisions and rules of the Advisers Act.

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

Observations from Examinations of Private Fund Advisers

On January 27, 2022, the Division published a risk alert detailing observations of compliance issues from examinations of private fund advisers. The risk alert reminded private fund advisers of their fiduciary duties to clients and focused on four overarching topics:

- (1) Conduct that is inconsistent with disclosures;
- (2) Misleading disclosures regarding performance and marketing;
- (3) Due diligence failures relating to investments or service providers; and
- (4) Use of potentially misleading “hedge clauses”.

In identifying common deficiencies within these topics, the risk alert provides a roadmap of potential examination priorities and should be considered in connection with a private fund adviser's review and implementation of compliance and disclosure policies and programs.

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

2022 PROPOSED SEC RULES

Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting

On November 2, 2022, the SEC proposed amendments to Rule 22e-4, Rule 22c-1, and certain reporting and disclosure forms under the ICA with the goal to better prepare open-end funds for stressed conditions and to mitigate dilution of shareholders' interests. These proposed amendments are designed to improve liquidity risk management and publicly report liquidity information by:

- (1) Requiring most open-end funds to incorporate stress into their liquidity classifications as well as other minimum standards for liquidity

classifications to provide clearer guidance for investors;

- (2) Amending liquid categories; and
- (3) Requiring funds to maintain a minimum amount of highly liquid assets as 10 percent of net assets.

The proposed amendments also seek to mitigate the dilution of shareholders by:

- (1) Requiring that open-end funds, other than money market funds or exchange traded funds, adjust their net asset value (“NAV”) per share by a swing factor so that the transaction price effectively passes on costs to investors; and
- (2) Requiring open-end funds to hard close, or, for an investor, its transfer agent or registered clearing agency to purchase or redeem a fund’s shares at a given day’s price, they must place the order before the time at which the fund calculates its NAV.

The proposed amendments also seek to increase the reporting of fund information so as to provide investors with more timely portfolio information by requiring that funds file their monthly reports within 30 days after the month-end, which will become public 60 days after the month-end.

The SEC’s fact sheet is available at www.sec.gov/files/33-11130-fact-sheet.pdf.

Outsourcing by Investment Advisers

On October 26, 2022, the SEC proposed new Rule 206(4)-11 in response to the growing use of outsourcing for certain services or functions by registered investment advisers. The main goals of the proposed rule are to ensure that investors are properly protected from potential harms that could result from advisers outsourcing certain services and functions to service providers. This rule would require registered investment advisers to:

- (1) Implement new due diligence requirements specific to outsourcing;
- (2) Keep books and records related to those new due diligence requirements;
- (3) Comply with amendments to Form ADV to collect information on use of service providers; and
- (4) Require advisers to conduct due diligence and monitor third-party recordkeepers.

The proposed rule would establish an oversight framework for covered functions, or functions or services that are necessary for advisory services to be in compliance with federal securities laws, and which, if not performed or performed negligently, can cause a material financial loss to the adviser’s clients or a disruption in its services. If a covered function is implicated under the proposed rule, the adviser would then need to conduct due diligence to ensure that the outsourcing is appropriate. Advisers that rely on third-party recordkeepers would also need to conduct due diligence and obtain reasonable assurances that the third party is able to meet certain requirements that would safeguard records as well as ensure the practices used are in compliance with recordkeeping rules.

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

Amendments to Form PF

On January 26, 2022, the SEC proposed the following amendments to Form PF:

- (1) Requiring large hedge fund advisers and private equity fund advisers to file current reports of reporting events within one business day;
- (2) Decreasing the reporting threshold for large private equity advisers from \$2 billion to \$1.5 billion; and

- (3) Requiring the reporting by large liquidity fund advisers of essentially the same information that money market funds report on Form N-MFPs.

On August 10, 2022, the SEC and CFTC jointly proposed the following amendments to Form PF:

- (1) Enhancing reporting on qualifying hedge funds by large hedge fund advisers;
- (2) Requiring reporting by advisers and the private funds they advise on additional information;
- (3) Removing duplicative questions as well as requiring more details on hedge funds;
- (4) Requiring advisers to separately report component funds in complex fund structures; and
- (5) Removing the aggregate reporting requirement for large hedge fund advisers.

The SEC's fact sheets are available at www.sec.gov/files/ia-6083-fact-sheet-0.pdf and www.sec.gov/files/ia-5950-fact-sheet.pdf.

Environmental, Social, and Governance Disclosures for Investment Advisers and Investment Companies

On May 25, 2022, the SEC proposed reforms to help investors make more informed decisions about their ESG investments and to prevent funds from overstating their commitment to ESG factors. Because ESG strategies have drawn more investor interest in recent years, the SEC has recently proposed amendments to the rules and disclosure forms for ESG-related investment products. The main proposed changes to disclosures for registered funds are the following:

- (1) Using a new framework for classifying funds with an ESG focus into one of three fund types: Integration Funds, ESG-Focused Funds, and Impact Funds;

- (2) Requiring Unit Investment Trusts to provide investors with information regarding how they select portfolios using ESG factors; and
- (3) Requiring registered funds to disclose additional information in annual reports.

Additionally, the proposed rules would require registered investment advisers to include mandatory disclosures on Form ADV Part 2A. These reforms would also amend Form N-CEN for registered funds and Form ADV Part 1A for registered investment advisers and exempt reporting advisers.

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

Investment Company Names

On May 25, 2022, the SEC proposed amendments to Rule 35d-1 of the ICA (the “Names Rule”). Under the Names Rule, the names of registered investment companies and business development companies must accurately reflect the investments of the fund to ensure that a fund meets its stated purpose and that investors are protected. The SEC’s recent proposed amendments to the Names Rule seek to modernize the rule by expanding its reach and including certain ESG considerations.

Under the current Names Rule, a fund must implement a policy to commit 80 percent of its assets to investments that are related to its actual name. The SEC’s proposed amendments will expand the current rule by making it apply to names suggesting the fund has certain characteristics (for example, fund names including words such as “growth,” “value,” or terms related to ESG factors). Under the new proposals, it would be “materially deceptive” or “misleading” if such a fund were to use ESG in its name without having ESG factors as a central focus of the fund. The proposed amendments would also outline the circumstances under which a fund could abandon its policy to commit 80 percent of its assets to investments

related to its name. The proposals also seek to promote greater transparency by requiring that more information be disclosed to investors.

The Division's fact sheet is available at www.sec.gov/files/ic-34593-fact-sheet.pdf.

Short -Position and Short -Activity Reporting by Institutional Investment Managers

On February 25, 2022, the SEC proposed new Rule 13f-2 and amendments to Regulation SHO and CAT seeking to increase market transparency for short selling by:

- (1) Requiring that institutional money managers file confidential Proposed Form SHO with the SEC's EDGAR system monthly; and
- (2) Requiring that broker-dealers submit additional short -sale data and assert Regulation SHO's bona fide market -making exceptions to increase visibility into market activity related to short selling.

The SEC's fact sheet is available at www.sec.gov/files/34-94314-fact-sheet.pdf.

Modernization of Beneficial Ownership Reporting

On February 10, 2022, the SEC proposed amendments to Regulation 13D-G, the rules governing beneficial ownership reporting, in an effort to modernize and clarify the current regulation. The proposed amendments include:

- (1) Accelerating the filing and amendment deadlines for both Schedules 13D and 13G;
- (2) Expanding those considered to be beneficial owners to include those who hold cash-settled derivative securities;

- (3) Clarifying when two or more persons formed a "group," such as in "tipper-tippee" relationships, when a person shares nonpublic information about an upcoming Schedule 13D filing with another person who then uses that information to purchase the issuer's securities based on that information. The amendments would also permit, in certain circumstances, investors to work with each other to engage in transactions without being subject to regulations; and
- (4) Requiring the Schedule 13D and 13G filings to use a structured, machine-readable data language.

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

Cybersecurity Risk Management

On February 9, 2022, the SEC proposed additional rules and amendments to ensure that investment advisers and investment companies maintain more robust cybersecurity policies. The proposed rules and amendments include the following:

- (1) Proposing Rule 206(4)-9 under the Advisers Act and Rule 38a-2 under the ICA, which would require funds and their advisers to address cybersecurity risks in their policies and procedures;
- (2) Proposing Rule 204-6 under the Advisers Act, which would require advisers to report all material cybersecurity incidents to the SEC by submitting a new Form ADV-C;
- (3) Requiring investment advisers to include cybersecurity incidents in Part 2A of their Form ADVs and funds to include cybersecurity-related disclosures in Form N-1A, Form N-2, Form N-3, Form N-4, Form N-6, Form N-8B-2, and Form S-6; and
- (4) Amending Rule 204-2 under the Advisers Act (the "Books and Records Rule") requiring

advisers to record cybersecurity management rules and incidents in their books and records.

On March 9, 2022, the SEC proposed new rules and amendments under the Exchange Act that would expand disclosure requirements for public companies related to cybersecurity.

This new cybersecurity reporting regime would require incident and risk management reporting. For incident reporting, public companies would be required to disclose all material cybersecurity incidents, as well as all immaterial cybersecurity incidents that, in the aggregate, can be considered material, in their Form 8-Ks. For risk management reporting, public companies would be required to describe their policies and procedures for monitoring and protecting themselves against cybersecurity threats. Public companies would also be required to disclose information about board members' individual cybersecurity expertise and the board's oversight of cybersecurity risks.

The SEC's fact sheets are available at www.sec.gov/files/33-11028-fact-sheet.pdf and www.sec.gov/files/33-11038-fact-sheet.pdf.

Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews

On February 9, 2022, the SEC proposed new rules and amendments under the Advisers Act that would impact private fund advisers. These amendments would impose more regulations on investment advisers and require additional disclosures to the SEC.

Under these new rules and amendments, advisers would be required to do the following:

- (1) Produce quarterly statements that contain information including the compensation paid to advisers, accounting of fees and expenses and related persons, and the fund's overall performance;

- (2) Commit to an annual financial statement audit and to distribute financial statements to investors; and
- (3) Produce fairness opinions in all adviser-led secondary transactions and opinion providers themselves would have to produce a disclosure if there is any material business relationship with the advisers.

Additionally, under these proposals, advisers would also be barred from doing the following:

- (1) Partaking in a number of activities that go against the public interest, including charging fees for unperformed services, borrowing and receiving a credit extension from a private client of the fund, and reimbursing, indemnifying, exculpating, or limiting liability for certain activities; and
- (2) Granting preferential terms to certain investors and requiring all registered investors (even those that do not advise private funds) to document their annual review in writing.

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

OTHER NOTABLE REGULATORY DEVELOPMENTS

SEC, CFTC, and DOJ Crack Down on Unapproved Messaging Apps

On September 27, 2022, the SEC issued settlement orders against 15 broker-dealers and one investment adviser for violating recordkeeping requirements that resulted in civil monetary penalties of collectively more than \$1.1 billion. On the same day, the CFTC issued \$710 million in fines to 11 swap dealers and futures commission merchants for similar violations. Specifically, these enforcement actions were related to violations of requirements under Rule 17a-4(b)(4) under the Exchange Act, Rule 204-2(a)(7) under the Advisers Act and Rules 1.35, 23.201, and 23.202 under

the CEA. Under these rules, regulated entities are required to preserve communications and documents related to the regulated businesses. The SEC and CFTC alleged that employees at these companies frequently used unapproved methods of communication (e.g. WhatsApp, personal email and text messages) for business purposes without monitoring, reviewing or archiving the communications.

Additionally, on September 15, 2022, the Department of Justice issued a memorandum on Corporate Criminal Enforcement Policies indicating that all corporate entities are held to similar recordkeeping standards. The memorandum encourages prosecutors to consider whether corporate entities have implemented sufficient policies regarding the use of third-party messaging platforms and personal devices when sending business communications.

All companies, both regulated and unregulated, should review their policies and procedures to ensure that they address the use of various messaging applications and preserve communications and records that are required by applicable laws.

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

WINSTON & STRAWN INVESTMENT MANAGEMENT ATTORNEYS AND RELATED PROFESSIONALS

CHARLOTTE

DANIEL DIAMOND
ASSOCIATE
ddiamond@winston.com

CHICAGO

BASIL GODELLAS
PARTNER
bgodellas@winston.com

MEGAN DEVANEY
PARTNER
mdevaney@winston.com

AMY GORDON
PARTNER
agordon@winston.com

BRIAN KOZLOWSKI
PARTNER
bkozlows@winston.com

MARGARET LOMENZO FREY
PARTNER
mfrey@winston.com

OLGA LOY
PARTNER
oloy@winston.com

BRAD MANDEL
PARTNER
bmandel@winston.com

KATE PRICE
PARTNER
kprice@winston.com

ALAN ROTH
PARTNER
aroth@winston.com

ALESSANDRA SWANSON
PARTNER
aswanson@winston.com

J. WADE CHALLACOMBE
OF COUNSEL
jchallacombe@winston.com

DANIA SHARMA
OF COUNSEL
dsharma@winston.com

MATTHEW BRUNMEIER
ASSOCIATE
mbrunmeier@winston.com

MIKE DOMANICO
ASSOCIATE
mdomanico@winston.com

JUSTIN HUNTER
ASSOCIATE
jhunter@winston.com

ALISTAIR MCKANE
ASSOCIATE
cmckane@winston.com

OMOTUNDE OKESANYA
ASSOCIATE
ookesanya@winston.com

ASHLEIGH RICARDO
ASSOCIATE
aricardo@winston.com

HOUSTON

TWAJI EWOOL
ASSOCIATE
tewool@winston.com

LOUIS SAVAGE
ASSOCIATE
lsavage@winston.com

MIAMI

CARL FORNARIS
PARTNER
cfornaris@winston.com

JUAN AZEL
PARTNER
jazel@winston.com

KIM PRIOR
PARTNER
kprior@winston.com

DANIEL STABILE
PARTNER
dstabile@winston.com

PAUL JEZIERNY
OF COUNSEL
pjezierny@winston.com

MONICA LOPEZ-RODRIGUEZ
OF COUNSEL
mlopezrodriguez@winston.com

VICTORIA CHANG
ASSOCIATE
vchang@winston.com

GABRIELA PLASENCIA
ASSOCIATE
gplascencia@winston.com

JANELLE RODRIGUEZ-MENA
ASSOCIATE
jrodriguezmena@winston.com

NEW YORK

JACQUELINE HU

PARTNER

jphu@winston.com

BETH KRAMER

PARTNER

bkramer@winston.com

SCOTT NAIDECH

PARTNER

snaidech@winston.com

DAVID STAUBER

PARTNER

dstauber@winston.com

GREG WESTON

PARTNER

gweston@winston.com

COLE BEAUBOUF

OF COUNSEL

cbeaubouef@winston.com

JENNY HU

PRACTICE COUNSEL

jehu@winston.com

SEAN BABAR

ASSOCIATE

sbabar@winston.com

SARA MONZET

ASSOCIATE

smonzet@winston.com

KAREN NEUGROSCHL

ASSOCIATE

kneugroschl@winston.com

SAN FRANCISCO/ SILICON VALLEY/ LOS ANGELES

MICHAEL WU

PARTNER

mgwu@winston.com

RACHEL CHANG

PRACTICE COUNSEL

rchang@winston.com

JOHN ALEXANDER

ASSOCIATE

jpalexander@winston.com

JULIANNE NGUYEN

ASSOCIATE

jnguyen@winston.com

WASHINGTON, D.C.

VICTORIA WILLIAMSON

ASSOCIATE

vwilliamson@winston.com

ABOUT WINSTON & STRAWN

Winston & Strawn LLP is an international law firm with 900+ attorneys across 16 offices in Brussels, Charlotte, Chicago, Dallas, Hong Kong, Houston, London, Los Angeles, Miami, Moscow, New York, Paris, São Paulo, San Francisco, Shanghai, Silicon Valley, and Washington, D.C. Additionally, the firm has significant resources devoted to clients and matters in Africa, the Middle East, and Latin America. The exceptional depth and geographic reach of our resources enable Winston & Strawn to manage virtually every type of business-related legal issue. We serve the needs of enterprises of all types and sizes, in both the private and the public sector. We understand that clients are looking for value beyond just legal talent. With this in mind, we work hard to understand the level of involvement our clients want from us. We take time to learn about our clients' organizations and their business objectives. And, we place significant emphasis on technology and teamwork in an effort to respond quickly and effectively to our clients' needs.

Visit 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.