Lowenstein Sandler

Client Alert

Investment Management

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2020 and Q1 2021 Developments and Annual Compliance Checklists

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Lowenstein Sandler's Investment Management Group is pleased to provide you with the summaries and checklists described below.

Summaries of recent legislative and regulatory developments with respect to:

- The SEC's Examination Priorities for 2021
- The SEC's Focus on Digital Asset Securities
- The SEC's New Marketing Rule
- The OCIE's Compliance Program Deficiencies Risk Alert
- New CFIUS Review Requirements
- 2020 Tax Developments
- The SEC Division of Enforcement's 2020 Results
- The SEC's Proposed Conditional Broker Exemption for Finders
- New York's Mandatory Registration for Investment Adviser Representatives
- The SEC's Updated Regulatory Framework for Fund of Funds Arrangements
- Expanded Accredited Investor and Qualified Institutional Buyer Definitions
- The Delaware Supreme Court's Decision in *Murfey v. WHC Ventures, LLC* re: Rights to Books and Records
- The SEC's Proposed Amendment of Form 13F Reporting Thresholds
- The Fiduciary Rule Prohibited Transaction Class Exemption
- The SEC's and FINRA's Reg. BI and Form CRS Guidance
- Form CRS Drafting Guide and Template
- The SEC's Order re: Ares Management with Respect to Alleged Compliance Failures
- The Second Circuit's Decision in *Packer v. Raging Capital Management* re: Beneficial Ownership
- Bureau of Economic Analysis and Treasury International Capital Filing Obligations
- Privacy and Cybersecurity Updates
- Government Sanctions Enforcement Actions

Checklists of compliance considerations for:

- Private Investment Funds and Their Advisers
- Registered Investment Advisers and Exempt Reporting Advisers
- Commodity Pool Operators and Commodity Trading Advisors

The checklists appear after the legal and regulatory summary. For more information regarding any matter covered in this update, please contact one of the attorneys in our Investment Management Group.

SELECT LEGAL AND REGULATORY DEVELOPMENTS

Translating SEC Exam Priorities Into Compliance Action Items

Synopsis: On March 3, 2021, the Securities and Exchange Commission (the "SEC") announced examination priorities for 2021.

Status: The SEC will focus on two characteristics: (i) Integrated Compliance Groups and (ii) Empowered Chief Compliance Officers. With regard to Integrated Compliance Groups, the SEC believes there should be a formalized line of communication between compliance and other firm sectors and seeks for compliance teams to become more proactive with material business developments. With regard to Empowered Chief Compliance Officers, the SEC believes that chief compliance officers must have sufficient seniority within the firm and support from the most senior executives. Therefore, the SEC will look to make sure firms provide their chief compliance officers ("CCOs") with enough seniority and power to implement compliance policies and programs.

The SEC will also prioritize the following:

- ESG Matters
  - The SEC will look for how investment advisers approach environmental, social, and governance ("ESG") matters, including whether ESG disclosures match ESG practices.
- Focus on Particular Categories of Retail Investors
  - The SEC will continue to focus on the protection of retail investors, but also warns that certain categories of retail investors will receive particular attention if marketing is aimed at them and/or if they comprise a significant proportion of a firm's investors:
    - Seniors, especially where the target audience is a retirement community;
    - Teachers;
    - Military personnel; and
    - Individuals saving for retirement.
  - The SEC will focus on the following issues for such categories of retail investors:
    - Fraud prevention policies;
    - Compliance with 2019's Regulation Best Interest, which, broadly speaking, required broker-dealers to act in retail investors' best interest;
    - Compliance with 2019's Interpretation Regarding Standard of Conduct for Registered Investment Advisers, which specified the fiduciary duties of broker-dealers; and
    - Form CRS, which requires certain disclosures to retail investors, which must in turn be filed with the SEC.
- Technological Innovators
  - **Fintech:** This includes robo-advisers, firms offering automated asset allocation, fractional share purchases, customized portfolios, and mobile applications. The focus will be compliance with applicable securities laws and regulations.
  - **Regtech:** The focus will be to ensure that firms employing regtech, or technology used to implement compliance with regulations, are doing so effectively.
  - **Alternative data:** Firms using alternative data, or "data gleaned from non-traditional sources," can expect scrutiny as well. Again, the focus will be on regulatory compliance–ensuring that firms properly address concerns related to, among other things, due diligence and material nonpublic information.
  - **Digital assets:** The SEC notes that the digital asset market is evolving, particularly the adoption of distributed ledger technology. Accordingly, as in prior years, the compliance programs of entities in the digital asset market will be a focus.
- Advisers to Private Funds
  - The SEC will scrutinize private funds, especially those with a higher concentration on structured products (e.g., mortgage-backed securities).
  - The SEC will especially look into the "preferential treatment of certain investors by advisers to private funds that have experienced issues with liquidity, including imposing gates or suspensions on fund withdrawals" and "portfolio valuations and the resulting impact on management fees."

The priorities echo the SEC's historical focus on industry risks and trends that the SEC believes most impact the U.S. capital markets. The priorities are not exhaustive, and while they articulate the focus of SEC examinations, the scope of any firm examination is determined through a risk-based approach that includes, among other things, analysis of a firm's history, operations, services, and products offered.

For additional information regarding the Exam Priorities, please see the below links:

- Article
- SEC Press Release

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SEC's Continued Focus on Digital Asset Securities

Synopsis: On February 26, 2021, the SEC released a risk alert detailing common observations with regard to investment advisers and broker-dealers' activities with regard to digital asset securities.

Status: The SEC defines "digital asset securities" as blockchain technology ("distributed ledger technology"), including, but not limited to, so-called "virtual currencies," "coins," and "tokens." The SEC will focus on the following activities for investment advisers and broker-dealers.

<u>Investment Adviser Risks</u>

- Portfolio Management
  - Classification of digital asset securities by investment advisers on behalf of clients, including whether they are classified as securities under federal law.
  - Due diligence on digital assets.
  - Evaluation and mitigation of trading venues and trading execution or settlement risks.
  - Management of "forked" and "airdropped" digital assets risks and complexities (e.g., allocations across client accounts, conflicts of interest, or other issues that may result from the fork or airdrop event).

    - Fulfillment of investment advisers' fiduciary duties across all client types.
- Books and Records
    - The SEC will examine whether investment advisers are making and keeping books and records in accordance with recordkeeping requirements given that digital asset trading platforms vary in reliability and consistency.
- Custody
    - The SEC will examine risks and practices related to the custody of digital assets under Rule 206(4)-2 of the Investment Advisers Act of 1940, as amended, including occurrences of unauthorized transactions and control around safekeeping digital assets.
- Disclosures
    - The SEC will examine disclosures to investors in a variety of media, such as solicitations and marketing material, regarding the unique risks of digital assets, including any risks that are heightened as a result of the digital nature of such assets.
- Pricing Client Portfolios
    - The SEC will examine valuation issues, such as valuation methodologies, including those used to determine principal markets, fair value, valuation after significant events, and recognition of forked and airdropped digital assets.
- Registration Issues
    - The SEC will examine how investment advisers calculate their regulatory assets under management and characterize the digital assets in the pooled vehicles it manages and the status of clients.
    - For private funds, the SEC will also examine how private funds determine applicable exemptions from registration as investment companies.

<u>Broker-Dealer Risks</u>

- Safekeeping of Funds and Operations
    - The SEC will examine operational activities, such as operations that are unique to the safety and custody of digital asset securities.
- Registration Requirements
    - The SEC will examine broker-dealers and their affiliates' compliance with registration requirements, such as if an affiliate engages in the business of effectuating digital asset securities transactions, then the affiliate will have to register as a broker-dealer.
- Anti-Money Laundering ("AML")
    - Certain aspects of ledger technology present unique challenges to creating and executing a strong anti-money laundering program. Among other things, the SEC has noticed that broker-dealers do not implement routine searches to check against the Specially Designated Nationals list maintained by the U.S. Treasury's Office of Foreign Assets Control.
    - The SEC also observed inadequate AML procedures, controls, and documentation for digital asset securities.
- Offerings
    - The SEC will examine disclosure and due diligence obligations for broker-dealers involved in underwriting private placements with respect to digital asset securities.
- Disclosure of Conflicts of Interest
    - Given that some broker-dealers may operate in multiple capacities when trading digital asset securities, such as on trading platforms and acting as proprietary traders, the SEC will examine the existence and disclosures of conflicts of interest of broker-dealers and compliance procedures related to such conflicts.
- Outside Business Activities
    - Given that representatives of broker-dealers may offer digital asset securities outside their capacity as representatives of such broker-dealers, Financial Industry Regulatory Authority ("FINRA")-member broker-dealers must evaluate the activities of their registered persons to determine whether such activity constitutes outside business activities or an outside securities activity that therefore should be subjected to the approval, supervision, and recordation of the broker-dealer.

It is the SEC's intent that by sharing these common risks, investment advisers and broker-dealers trading in digital asset securities will update their compliance policies, procedures, and programs and seek to monitor their affiliates accordingly.

For additional information regarding the Risk Alert, please see the below links:

- Risk Alert
- SEC Announcement

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SEC Modernizes Investment Adviser Marketing and Solicitor Rules

Synopsis: On December 22, 2020, the SEC announced a modernized rule (the "New Marketing Rule") governing (i) investment adviser advertisements and (ii) payments to solicitors.

Status: Under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), there are currently two separate rules governing advertising and cash solicitation, which have become obsolete in light of advances in technology and marketing communications. The New Marketing Rule replaces the legacy rules with a single, integrated principles-based rule to reflect current market practices. The New Marketing Rule is substantially similar (but not identical) to the proposed rule, which the SEC announced on November 4, 2019.

Under the New Marketing Rule, the definition of "advertisement" includes two prongs: (i) communications traditionally covered by the (old) advertising rules and (ii) solicitation activities previously covered by the (old) cash solicitation rule (which has been rescinded). The first prong of the new definition of advertisement includes any direct or indirect communication undertaken by an investment adviser that (a) offers the adviser's investment advisory services concerning securities to *prospective* clients or private fund investors or (b) offers *new* investment advisory services concerning securities to *current* clients or private fund investors. This prong captures traditional advertisements under the current advertising rule. The first prong excludes (i) communications containing hypothetical performance information that are provided (a) in response to an unsolicited current or potential client or private fund investor request or (b) to a current or potential private fund investor in a one-on-one communication; (ii) extemporaneous, live, oral communications; and (iii) information contained in a statutory or regulatory notice, filing, or other required communication, provided that such information is reasonably designed to satisfy the requirements of such notice, filing, or other required communication. The second prong of the new definition encompasses any endorsement or testimonial for which an investment adviser provides cash or noncash compensation. This prong includes a similar scope of activity as traditional solicitations under the current solicitation rule, such as one-on-one solicitation activities and oral communications. The second prong excludes communications that provide required information in a statutory or regulatory notice, filing, or other required communications.

The SEC adopted related amendments in regard to the Books and Records Rule and Form ADV to reflect the New Marketing Rule's use of oral testimonials and endorsements. Investment advisers should review their forms of agreement and disclosures associated with solicitation arrangements and other arrangements that permit compensating (directly or indirectly) third parties in return for introducing new investors to their funds (including, for example, fee breaks to current private fund investors that introduce prospective investors).

The New Marketing Rule was published on the Federal Register on March 5, 2021, and will become effective on May 4, 2021. The compliance date for the New Marketing Rule is on November 4, 2022. For additional information regarding the New Marketing Rule and the other amendments, please see the below links:

- SEC 2019 Proposal (Nov. 4, 2019)
- SEC Press Release
- SEC Final Rule
- Federal Register

The Lowenstein Sandler LLP Investment Management Group alert analyzing the SEC's New Marketing Rule and other amendments is available here.

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The SEC Identifies Common Investment Adviser Compliance Program Deficiencies Consistent With Deficiencies Recognized by Other Regulators Overseeing Investment Advisers

Synopsis: On November 19, 2020, the SEC's Office of Compliance Inspections and Examinations ("OCIE") released a risk alert (the "OCIE Risk Alert") identifying common compliance issues related to Rule 206(4)-7 (the "Compliance Rule") under the Advisers Act.

Status: The Compliance Rule prohibits a registered investment adviser from providing investment advice unless the investment adviser has adopted and implemented written policies and procedures reasonably designed to prevent the investment adviser from violating the Advisers Act. The Compliance Rule requires investment advisers to designate a chief compliance officer ("CCO") to administer their compliance policies and procedures. A CCO should be knowledgeable about the Advisers Act and should be empowered with responsibility and authority to create and enforce appropriate policies and procedures for the investment adviser. The OCIE Risk Alert reflects a broader government effort, including notices by the U.S. Departments of the Treasury and Justice, to use effective compliance programs to control market and national security risks applicable to investment advisers and international commerce.

OCIE identified these six common deficiencies and weaknesses among investment advisers.

1. Inadequate Compliance Resources: Investment advisers failed to allocate adequate resources to their compliance programs. CCOs had other responsibilities and failed to devote sufficient time to their CCO roles or to develop their Advisers Act knowledge.
2. Insufficient Authority of CCOs: CCOs lacked sufficient authority to develop and enforce compliance programs. Senior management also limited interactions with CCOs, causing CCOs to have limited knowledge about the firm.
3. Annual Review Deficiencies: Investment advisers failed to provide evidence of any ongoing or annual compliance reviews or of identifying key risk areas, despite claiming to have performed such reviews
4. Implementing Actions Required by Written Policies and Procedures: Investment advisers did not develop or enforce actions mandated by their policies and procedures.
5. Maintaining Accurate and Complete Information in Policies and Procedures: Investment advisers' policies and procedures contained outdated or inaccurate information, including off-the-shelf policies that contained unrelated or incomplete information.
6. Maintaining or Establishing Reasonably Designed Written Policies and Procedures: Some investment advisers did not maintain written policies and procedures or failed to execute or tailor written policies and procedures that were reasonably designed to prevent Advisers Act violations. Some investment advisers that maintained written policies and procedures retained deficiencies in key compliance areas.

In addition to Advisers Act risks, the above deficiencies invite U.S. anti-corruption and sanctions violations for entities engaging in cross-border transactions as the SEC compliance observations follow both the existing sanctions compliance framework issued by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Justice guidance on corporate compliance evaluation.

For additional information regarding the OCIE Risk Alert and the importance of compliance in international business, please use the following links:

- Risk Alert
- Opening Remarks at Investment Adviser/Investment Company Compliance Outreach 2020
- Compliance Program "Must Haves" for Doing Business Abroad
- Internet Businesses Are Targeted by OFAC for Sanctions Violations: How to Reduce Risk

The Lowenstein Sandler LLP Investment Management Group alert analyzing the OCIE Risk Alert is available here.

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New Committee on Foreign Investments in the U.S. Regulations Require Early Review of Investments for National Security Vulnerabilities

Synopsis: Any investment must be reviewed for Committee on Foreign Investments in the U.S. ("CFIUS") jurisdiction, which includes any foreign investment in a U.S. business. Investment advisers need to determine if a transaction will involve foreign investors, particularly in businesses related to critical technologies, critical infrastructure, and sensitive data. In October 2020, CFIUS amended its requirements to mandate that parties file declarations involving noncontrolling foreign investment in U.S. businesses engaged in activities related to critical technology if that technology requires an export license.

Status: In 2020, the U.S. Department of the Treasury issued regulations mandating CFIUS filings in transactions where there is a noncontrolling foreign investment in U.S. businesses engaged in activity related to critical technology, critical infrastructure, and sensitive personal data ("TID U.S. Businesses"), unless an exemption applies.

The October 2020 changes tie determination of mandatory declarations to the export control classification of the U.S. business's products and technology. Specifically, transactions involving TID U.S. Businesses that produce, design, test, manufacture, fabricate, or develop critical technologies *require* a CFIUS filing if U.S. regulatory authorization is required to export the critical technology to the foreign investor. In other words, the parties must determine if a company's technology would normally be subject to a U.S. export license before they will know if a mandatory filing is required.

A companion law requires the U.S. government to review export control requirements for emerging and foundational technologies, which is expected to result in increased license requirements for U.S. exports to certain countries, such as China and Russia. Thus, investment deriving from such countries is more likely to face these mandatory filing requirements. Parties to any potential transactions that could trigger these requirements should initiate early discussions about whether there is a critical technology subject to export restrictions. Failure to do so could put the transaction at risk or reduce the value of the investment if mitigation requirements are significant.

There are exemptions to this requirement for Excepted Investors (certain investors from Australia, Canada, and the United Kingdom), as well as exemptions for funds:

- Where the private fund is managed exclusively by a U.S. national general partner, managing member, or equivalent
- Where an advisory board or committee does include a foreign person-limited partner, but that board or committee does not have the ability to control investment decisions of the fund, nor to control decisions made by the general partner, managing member, or equivalent related to entities in which the fund is invested
- Where the foreign person does not otherwise have the ability to control the investment fund

CFIUS has also received additional resources to investigate closed transactions to enforce its mandate to protect U.S. national security. Even if a filing is not mandated, CFIUS may at any time unilaterally initiate an investigation of a transaction, even if it has been closed for years. In doing so, CFIUS may impose conditions on the transaction to mitigate any national security vulnerability, or if it cannot be mitigated, block the transaction or direct the foreign investor to divest from the U.S. business.

CFIUS regulations provide an option to file a voluntary notice for a transaction:

- A voluntary filing can provide a "safe harbor" if CFIUS essentially approves the deal and concludes it will not take any further action.
- Once CFIUS provides the "safe harbor," the transaction is protected from subsequent CFIUS inquiry.
- Failure to make a voluntary filing could result in CFIUS identifying the transaction as a national security risk and blocking the transaction or requiring the foreign investor divest from the U.S. business.

Companies should consider proactive mitigation measures to address likely CFIUS concerns, such as restricting foreign access to technology or data. With proper planning and collaboration, companies can successfully navigate this complex regulatory framework to make the acquisitions and investments to improve and grow their businesses.

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2020 Tax Developments

Synopsis: There were a number of important tax developments relevant for private funds and their investment advisers in 2020, including with respect to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), issuance of final regulations governing withholding on dispositions of certain partnership interests by non-U.S. partners and final regulations addressing the three-year holding period for long-term capital gains.

Status: The CARES Act provided some relief, albeit temporary, from some of the less favorable provisions of the Tax Cuts and Jobs Act ("TCJA"), which generally went into effect in 2018, in some cases allowing refunds of taxes paid in prior years. For example, it generally (i) allowed business interest expense deductions up to 50 percent of adjusted taxable income (increased from 30 percent) for 2019 and 2020; allowed corporations to carry back net operating losses ("NOLs") from 2018, 2019, and 2020 for up to five years, possibly allowing refunds of tax paid by portfolio companies, and eliminated the 80 percent cap on NOL deductions for that period; and (iii) deferred the limitations on deducting "excess business losses" until 2021 (possibly allowing losses from trader funds, for example, to be used against nonbusiness income for 2018, 2019, and 2020). In addition, the Internal Revenue Service ("IRS") temporarily relaxed rules for qualified opportunity fund investments, including extending the time for investing in a qualified opportunity fund in order to defer gain and excluding the time from April through December 2020 for purposes of the 30-month period during which property may be substantially improved.

The IRS issued final regulations governing withholding on dispositions of certain partnership interests by non-U.S. partners, which generally would include interests in hedge funds and private equity funds. Withholding generally is required on proceeds from the sale by a non-U.S. person of an interest in a partnership that is engaged in a trade or business in the U.S. While many hedge funds and private equity funds are not so treated, the regulations generally require withholding unless a certification is provided indicating that an exception applies. Exceptions include transfers by U.S. persons, transfers for which no gain is recognized, and transfers for which the amount of income "effectively connected" with a U.S. trade or business would be less than 10 percent of the total. If the transferee fails to withhold, the partnership (that is, the fund itself) may be liable for the withholding and may be required to satisfy it from distributions to the transferee. This secondary liability for the partnership is not effective until 2022.

The IRS issued final regulations addressing the three-year holding period applicable in order to be eligible for long-term capital gains rates for carried interests. Generally, the three-year holding period requirement would apply to gains with respect to a carried interest, which for this purpose is an interest granted in connection with the performance of investment management services. The regulations are extremely detailed and complex, but some of the more important provisions include (i) clarification regarding the applicability of an exception for capital interests held by the general partner (service provider), which is expected to make it easier than it appeared under the proposed regulations for this exception to apply to gain resulting from investments a general partner makes into a fund; (ii) a limit on the capital interest exception for interests acquired by loans made by the partnership, its partners, or certain related people unless, with respect to loans from a partner (or any related person other than the partnership), the borrower is personally liable; and (iii) a change to a provision in the proposed regulations so that certain otherwise tax-free transfers of carried interests to related persons (such as gifts and contributions to partnerships) will not be subject to immediate taxation, but instead will maintain their character as being subject to the three-year holding period in the hands of the transferee.

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The SEC Division of Enforcement Publishes 2020 Results

Synopsis: On November 2, 2020, the SEC's Division of Enforcement (the "Enforcement Division") published its 2020 Annual Report, which details the Enforcement Division's accomplishments, significant actions, and areas of strategic change for its 2020 fiscal year ending September 30, 2020.

Status: The number of enforcement actions in Fiscal Year 2020 was lower compared to Fiscal Year 2019, but both the financial remedies ordered and whistleblower amounts awarded far exceeded those in prior years. The Enforcement Division brought 715 enforcement actions, 405 of which were stand-alone actions. The Enforcement Division obtained judgments and orders of over $4.68 billion in disgorgement and penalties and returned $692 million to harmed investors. Total monetary relief ordered was $330 million higher than in Fiscal Year 2019, representing roughly an eight percent increase. Fiscal Year 2020 was record-breaking for the Enforcement Division's whistleblower program, which resulted in issuance of awards totaling approximately $175 million to 39 individuals.

The Enforcement Division's initiatives and areas of focus in Fiscal Year 2020 included:

- **Focus on financial fraud and issuer disclosure.** The Enforcement Division continued to prioritize matters involving financial statement misstatements, including materially misleading and incomplete disclosures, and focused on the individual executives responsible for those violations. The Enforcement Division also brought actions against issuers that distort non-Generally Accepted Accounting Principles ("GAAP") metrics, key performance indicators, and related disclosures.
- **Focus on investment professionals.** Identifying misconduct on the part of individual investment professionals, who owe fiduciary duties to retail investors, remains an important area of focus for the Enforcement Division. Other areas of concern and focus for the Enforcement Division involved advisers' use of cash sweep arrangements and the transparency of fee structures of adviser accounts.

Investment advisers should continue to review their policies and procedures and ensure the robustness of their compliance programs, and to remain attentive in light of the unique challenges of the pandemic and the Division's priorities and enforcement activities targeted at maintaining the integrity of the markets and protecting investors.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the Enforcement Division's Report is available here.

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SEC Proposes Conditional Broker Exemption for Finders

Synopsis: On October 9, 2020, the SEC released a proposed Exemptive Order (the "Proposal") to exempt "Finders," who traditionally connect potential investors to issuers seeking to raise capital, from broker-dealer registration under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Under the Exchange Act, a "broker" is any person engaged in the business of effecting transactions in securities for the account of others. Brokers are prohibited under the Exchange Act from effecting any transactions or inducing or attempting to induce the purchase or sale of any security unless such brokers are registered. The Proposal creates two exempt classes.

Status: To qualify as either a Tier I or Tier II Finder, an individual must satisfy basic requirements, including, without limitation, (i) the issuer is not required to file reports under Section 13 or Section 15(d) of the Exchange Act; (ii) the issuer is seeking to conduct the securities offering in question in reliance on an applicable exemption from registration under the Securities Act of 1933, as amended (the "Securities Act"); and (iii) the Finder does not engage in general solicitation. If enacted, the Proposal would benefit private funds and other private issuers in capital-raising activities and provide much-needed certainty regarding Finder arrangements.

A Tier I Finder is one who meets the conditions above and whose activity is limited to providing the contact information of potential investors in connection with *only one* capital-raising transaction by a single issuer within a 12-month period, provided that the Finder does not have any contact with the potential investors about the issuer (i.e., soliciting securities sales or purchases). The contact information may include, among other things, names, telephone numbers, email addresses, and social media information.

A Tier II Finder is a Finder who may solicit potential investors only if the Finder provides to the potential investors, prior to or at the time of the solicitation, disclosures that include: (i) the name of the Tier II Finder; (ii) the name of the issuer for the transaction; (iii) a description of the relationship between the Tier II Finder and the issuer, including any affiliation; (iv) a statement that the Tier II Finder will be compensated for their solicitation activities by the issuer and a description of the terms of such compensation arrangement; (v) any material conflicts of interest resulting from the arrangement or relationship between the Tier II Finder and the issuer; and (vi) an affirmative statement that the Tier II Finder is acting as an agent of the issuer, is not acting as an associated person of a broker-dealer, and is not undertaking a role to act in the investor's best interest.

For additional information regarding the Proposal, please see the below links:

- SEC Press Release
- SEC Proposed Exemptive Order

The Lowenstein Sandler LLP Investment Management Group alert analyzing the Proposal is available here.

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New York State Guidance on Mandatory Registration for Investment Adviser Representatives

Synopsis: The New York State Department of Law recently adopted new regulations, effective February 1, 2021, governing registration and examination requirements of natural persons representing investment advisers such as principals, supervisors, and representatives thereof; solicitors and representatives thereof; and certain investment adviser representatives of federally registered investment advisers.

Status: The new regulations provide for (i) an implementation period allowing persons who permissibly operated under the rules in existence prior to this revision to continue to do so until December 2, 2021, so long as they apply for registration by August 31, 2021; (ii) a new examination special waiver category and new Form NYIASW, for persons currently serving permissibly as investment adviser representatives and having two years of experience in that capacity prior to the rule's effective date, excluding those previously acting solely as solicitors or those with disciplinary history; and (iii) an extended period to comply with the examination requirement for those persons permissibly operating under the rules in existence prior to this revision, but who do not qualify for an examination waiver.

Generally, investment adviser representatives must meet examination requirement deadlines or obtain a waiver. In addition to the implementation period, industry participants who currently are permissibly engaged in the investment advisory business, who do not qualify for a waiver, have until December 2, 2021, to pass the required examinations. Alternatively, investment adviser representatives who satisfy minimum service and experience qualifications and who have no disciplinary history may apply for a new special waiver exempting them from the examination requirements. Waivers for persons who satisfy prior registration requirements in other jurisdictions, or who possess certain specified certifications, also remain available under the new regulations.

The new regulations only affect representatives of federally registered investment advisers if such investment advisers have more than five natural person clients or a client base of which more than 10 percent is made up of natural persons. So long as federally registered investment advisers do not meet this threshold, their supervised persons are not subject to the examination requirements. As such, federally registered investment advisers advising private funds and managed accounts are largely unaffected.

For additional information regarding the new regulations, please see the below link:

- Investment Adviser Representative Guidance

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SEC Updates Regulatory Framework for Fund of Funds Arrangements, but Private Funds Remain Subject to Limits on Purchases of Investment Company Shares

Synopsis: On October 7, 2020, the SEC voted to adopt Rule 12d1-4 under the 1940 Act and related amendments to streamline and enhance the regulatory framework which governs registered funds that invest in other investment companies and private funds that invest in other registered funds ("fund of funds" arrangements). The SEC is also rescinding Rule 12d1-2 and most exemptive orders granting relief from sections 12(d)(1)(A), (B), (C), and (G) of the 1940 Act and adopting related amendments to Rule 12d1-1 under the 1940 Act.

Status: Section 12(d)(1) of the 1940 Act limits a registered fund's investments in other investment companies and a private fund's investments in registered funds. Section 12(d)(1)(A) proscribes a registered fund (and companies, including funds, it controls) (the "acquiring fund") from acquiring more than three percent of another investment company's (the "acquired fund's") outstanding voting securities, investing more than five percent of its total assets in any one acquired fund, or investing more than 10 percent of its total assets in an acquired fund and other investment companies generally.

Rule 12d1-4 will permit registered investment companies or business development companies to acquire securities of any other registered investment company or business development company in excess of the limits prescribed in section 12(d)(1) of the 1940 Act, subject to certain conditions, without obtaining an individual exemptive order from the SEC. The conditions include (i) limits on the control and influence an acquiring fund can exert on the acquired fund, (ii) limits on certain fees charged to the acquiring fund and its shareholders, and (iii) limits on the acquired fund's ability to invest in other investment companies and private funds.

The SEC is rescinding Rule 12d1-2, which permits acquiring funds that primarily invest in affiliated funds, in reliance on section 12(d)(1)(G), to invest in unaffiliated funds and non-fund assets. The SEC is also rescinding the exemptive orders, which permit fund of funds arrangements, except with respect to relief related to interfund lending arrangements. The SEC's updates to the regulatory framework for fund of funds arrangements will be helpful to registered investment companies, but does not cover private funds. Private funds should be aware of the prescribed limitation set forth under section 12(d)(1) and implement policies and procedures to monitor and ensure that they do not exceed the limit. Registered investment companies should also adjust their compliance programs to account for the SEC's updated regulatory framework.
The Lowenstein Sandler LLP Investment Management Group alert analyzing Rule 12d1-4 is available here.

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SEC Expands the Accredited Investor and Qualified Institutional Buyer Definitions

Synopsis: On August 26, 2020, the SEC adopted amendments to the "accredited investor" definition to broaden the category of potential investors in private offerings of securities exempt from registration pursuant to Regulation D under the Securities Act.

Status: Under the current definition, natural persons must have an individual net worth exceeding $1 million (excluding the value of their primary residence), or an individual income exceeding $200,000, or a joint income with a spouse exceeding $300,000. Accredited investor entities are restricted to an enumerated list of entities. Also, the current accredited investor definition used wealth as the sole indicator of financial sophistication. The amendments create an alternative route for persons without the necessary income to invest in private funds based on the belief that those with sufficient licensing and knowledge can adequately assess risks, including:

- Knowledgeable employees of the private fund offering securities (i.e., high-level executives, heads of principal business units, or qualifying investment personnel)
- Holders of Series 7, 65, or 82 licenses

The amendment expands the list of entities that would qualify as accredited investors, including:

- Family offices with $5 million in assets not specifically formed for the specific purpose of acquiring the securities offered and whose investment is directed by a person with financial and business knowledge and experience
- Family clients of such qualified family offices
- Limited liability companies with more than $5 million in assets not specifically formed for the specific purpose of acquiring the securities offered
- Federally and state-registered investment advisers as well as venture capital or midsize private fund exempt reporting advisers under the Advisers Act
- Entities not covered by the current rule owning more than $5 million in "investments" (as defined under the 1940 Act) not specifically formed for the specific purpose of acquiring the securities offered

The SEC also adopted amendments to the "qualified institutional buyer" definition in Rule 144A under the Securities Act to expand the list of entities that are eligible to qualify as qualified institutional buyers, including:

- Limited liability companies
- Rural business investment companies ("RBICs")
- Entities not covered under the current accredited investor rule (such as sovereign funds and non-U.S. plans)

For additional information regarding the amendments to the "accredited investor" and "qualified institutional buyer" definitions, please see the below links:

- SEC Press Release
- SEC Proposed Amendment

The Lowenstein Sandler LLP Investment Management Group alert analyzing these amendments is available here.

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Delaware Supreme Court Clarifies Limited Partner Rights to Books and Records: The Decision Will Have a Meaningful Impact on All Hedge, Private Equity, and Venture Funds

Synopsis: On July 13, 2020, in *Murfey v. WHC Ventures, LLC*, the Delaware Supreme Court declined to infer that materials requested pursuant to a books and records request regarding a Delaware limited partnership must be "necessary and essential" to the purpose of the request. Instead, the Delaware Supreme Court reiterated the importance of freedom of contract and the ability of general partners and limited partners to contract for the terms of their relationship, including limitations on books and records requests that extend beyond those set forth in Delaware's Revised Uniform Limited Partnership Act.

Status: Under the ruling, unless a limited partnership agreement expressly requires it, a limited partner seeking the books and records of a Delaware limited partnership is not required to show that the materials requested are "necessary and essential" to the purpose of the request. As a result, the potential scope of such requests has been expanded, and the threshold that must be satisfied to entitle a limited partner (including investors in hedge, private equity, and venture funds) to information regarding the partnership and the other partners has been lowered. Importantly, in this case, the result permits two investors to access the Schedules K-1 ("K-1s") of other investors in the fund, information that typically is considered confidential within the asset management industry.

The plaintiffs, trustees for trusts with ownership interests in multiple funds structured as Delaware limited partnerships, requested to inspect the partnerships' books and records. The legal dispute centered on the plaintiffs' access to and the retention of copies of the other limited partners' K-1s. The Delaware Supreme Court held that the "necessary and essential" standard need not apply without the express condition being set forth in the partnership agreements. The limited partnership agreements provided that limited partners could request: (i) the partnerships' tax returns and (ii) information related to the name, address, capital contributions, and partnership percentage of each limited partner. According to the plain terms of the partnership agreements, the Delaware Supreme Court held the K-1s were reasonably related to the trusts' purpose of valuing their ownership interests; thus, the trusts were entitled to the K-1s under the terms of the partnership agreements.

For additional information regarding the *Murfey v. WHC Ventures, LLC* ruling, please see the below link:

- *Murfey v. WHC Ventures, LLC*

The Lowenstein Sandler LLP Investment Management Group alert analyzing the ruling is available here.

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SEC Proposes to Amend Form 13F Reporting Thresholds for Institutional Investment Managers

Synopsis: On July 10, 2020, the SEC proposed to raise the Form 13F reporting threshold for institutional investment managers from $100 million to $3.5 billion. Currently, investment managers must file quarterly reports if they have investment discretion over public equity securities with an aggregate fair market value of at least $100 million.

Status: The SEC uses Form 13F to monitor larger institutional managers' influence and impact on the U.S. equity market using data collected from the filed Form 13Fs. Noting that the market grew from $1.1 trillion in 1978 to $35.6 trillion today, the SEC believes that raising the reporting threshold from $100 million to $3.5 billion will preserve the original intent of Section 13(f), which was to monitor larger institutional managers, while alleviating the reporting burden and attendant compliance costs on smaller managers.

In addition to raising the reporting threshold, the SEC proposes to (a) direct its staff to review the reporting threshold every five years and recommend an appropriate adjustment, if necessary; and (b) eliminate the omission threshold (which permits an investment manager to omit holdings worth less than 10,000 shares (or less than $200,000 principal amount of convertible debt securities) and less than $200,000 aggregate fair market value). The proposal also seeks to amend the process for requesting confidential treatment of information contained in Form 13F disclosures.

If the proposal is ultimately adopted by the SEC, institutional investment managers with investment discretion covering less than $3.5 billion in public equity securities will no longer be required to file Form 13F. Larger investment managers who meet or exceed the reporting threshold will continue to file and will have to provide further information in return for confidential treatment.

For additional information regarding the Form 13F proposal, please see the below links:

- SEC Press Release
- SEC Proposed Amendment
- Statement on SEC Proposal

As a reminder, confidential treatment may be available for Form 13F filings as discussed as part of the SEC's Frequently Asked Questions About Form 13F, available here.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the Form 13F proposal is available here.

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Fiduciary Rule Prohibited Transaction Class Exemption Released by the DOL

Synopsis: On December 15, 2020, the U.S. Department of Labor (the "DOL") released a final prohibited transaction exemption for certain fiduciary investment advice actions. The final exemption is broader than proposed exemption issued by the DOL on June 29, 2020. The proposed exemption is relevant to financial institutions subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), providing advice to employment benefit plans ("ERISA Plans") and/or individual retirement accounts ("IRAs"), or for institutions involved with selling or purchasing securities to and from ERISA Plans or IRAs.

Status: Absent an exemption, a fiduciary may not deal with the income or assets of an ERISA Plan or IRA in his or her own interest or for his or her own account, and may not receive payments from any party dealing with an ERISA Plan or IRA in connection with a transaction involving assets of the ERISA Plan or IRA. The DOL's newly issued "Improving Investment Advice for Workers & Retirees Exemption" (the "Exemption") will allow registered investment advisers, broker-dealers, banks, and insurance companies, and their agents, employees, and representatives (collectively, "Financial Institutions") that provide fiduciary investment advice to retirement plan investors to receive compensation from third parties in connection with such advice without violating prohibited transaction restrictions. The Exemption reinserts a five-part test to be used to determine whether a Financial Institution is considered an investment advice fiduciary.

To qualify for the Exemption, a Financial Institution that serves as an investment advice fiduciary must: (i) adhere to Impartial Conduct Standards (as described below); (ii) provide the retirement investor with a written description of the services to be provided; (iii) if applicable, document the reasons that a rollover recommendation is in the best interest of the retirement investor (and provide such documentation to the retirement investor); (iv) adopt policies and procedures designed to ensure compliance with the Impartial Conduct Standards; (v) conduct a retrospective review of compliance; and (vi) maintain records of compliance.

To meet the Impartial Conduct Standards, a Financial Institution must satisfy a best-interest standard and a "no misleading statements" standard, and charge no more than reasonable compensation. The *Best-Interest Standard* requires investment advice provided by a Financial Institution to be in the best interest of retirement investors. The *No Misleading Statements Standard* requires a Financial Institution's statements to a retirement investor about a recommended transaction and other relevant matters to not be materially misleading at the time the statements are made. The *Reasonable Compensation Standard* prohibits the Financial Institution from receiving excessive compensation for providing financial services.

For additional information regarding the Proposed Exemption, please see the below link:

- Proposed Exemption Release

The Lowenstein Sandler LLP Investment Management Group alert analyzing the Proposed Exemption is available here.

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SEC and FINRA Provide Reg. BI and Form CRS Guidance

Synopsis: The SEC and FINRA published guidance to assist and inform firms in their preparedness for the implementation of both Reg. BI and Form CRS on June 30, 2020. The SEC published two Risk Alerts, one summarizing the areas of focus for a Reg. BI examination and another summarizing the areas of focus for a Form CRS examination. FINRA also published common practices it observed from broker-dealers during preparedness reviews it conducted regarding Reg. BI and Form CRS.

Status: The *Reg. BI Risk Alert* reiterates that firms should make good faith efforts to have policies and procedures reasonably designed to achieve compliance with Reg. BI and have made reasonable progress toward implementing those policies and procedures. The *Reg. BI Risk Alert* highlights document requests for each of Reg. BI's enumerated obligations: a Disclosure Obligation (broker-dealers must disclose all material facts relating to the scope of their customer relationship as well as the conflicts of interest associated with a recommendation), a Care Obligation (broker-dealers must exercise reasonable diligence, care, and skill when making a recommendation that is in the best interest of a retail customer, taking into account their investment profile and the attendant risks, rewards, and costs), a Conflict of Interest Obligation (broker-dealers must establish, maintain, and enforce written policies and procedures to reasonably address conflicts of interest associated with recommendations to retail customers), and a Compliance Obligation (broker-dealers must establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg. BI as a whole).

The *Form CRS Risk Alert* stated that examinations for compliance with the Form CRS will focus on four areas: Delivery and Filing (all firms subject to Form CRS must file their Form CRS with the SEC through either Web Central Registration Depository ("Web CRD") or the Investment Adviser Registration Depository ("IARD") system, or both, and must post their Form CRS on their public website by June 30, 2020), Content (the Form CRS must fully and fairly describe a firm's operation), Formatting (the Form CRS must be written in Plain English and adhere to prescribed formatting instructions), and Updates (the Form CRS must remain accurate, and should be updated, if necessary, in a timely manner).

For additional information regarding the *Reg. BI Risk Alert* and the *Form CRS Risk Alert,* please see the below links:

- FINRA Reg. BI Website
- FINRA Broker-Dealer Practices and Preparedness Review
- SEC Reg. BI and Form CRS Statement
- SEC Reg. BI: A Small Entity Compliance Guide
- SEC Reg. BI: FAQs
- SEC Reg. BI: Risk Alert
- SEC Form CRS: A Small Entity Compliance Guide
- SEC Form CRS: Instructions
- SEC Form CRS: FAQs
- SEC Form CRS: Risk Alert

The Lowenstein Sandler LLP Investment Management Group alert analyzing the *Reg. BI Risk Alert* and the *Form CRS Risk Alert* is available here.

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Form CRS Drafting Guide and Template

Synopsis: Starting on June 30, 2020, all investment advisers, broker-dealers, or dual registrants that service retail investors must distribute Form CRS to all existing and prospective clients. Firms may deliver Form CRS to existing and prospective clients beginning on April 6, 2020.

Status: Each firm may only have one Form CRS, with only dual registrants permitted to have two Form CRSs, one for each registrant. Form CRS is a uniform disclosure document prescribed by the SEC; it is intended to enhance investor protection by providing succinct and relevant information to retail investors, thus enabling comparability between broker-dealers and investment advisers and operating as a resource regarding fees, conflicts, and services provided.

The SEC has provided a drafting guide with advice on the substance, formatting, and submission of a Form CRS. Topics include scope of the Form CRS (applying to all broker-dealers, investment advisers, or dual registrants that offer services to retail investors), distribution (the Form CRS must be delivered to existing retail customers within 30 days of filing with the SEC), length (the Form CRS for either a broker-dealer or an investment adviser may be up to two pages and the Form CRS for dual registrants, affiliated broker-dealers, and investment advisers may be up to four pages), layout (the Form CRS requires (i) an Introduction; (ii) Relationships and Services; (iii) Fees, Costs, Conflicts, and Standards of Conduct; (iv) Disciplinary History; and (v) Additional Information), and Plain English is required (e.g., short sentences and active voice).

For additional information regarding Form CRS, please see the below links:

- SEC Form CRS: A Small Entity Compliance Guide
- SEC Form CRS: Instructions
- SEC Form CRS: FAQs
- FINRA Reg. BI Website

The Lowenstein Sandler LLP Investment Management Group alert analyzing the Form CRS updates is available here.

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SEC Order Re: Alleged Compliance Failures

Synopsis: The SEC's order issued on May 26, 2020, regarded Ares Management LLC's compliance policies and procedures in relation to a representative placed on a portfolio company's board. The SEC did not allege actual misuse of material nonpublic information ("MNPI"), but focused on policies and procedures.

Status:
Status: The order found that Ares's compliance policies failed to account for the special circumstances presented by having an employee serve on the portfolio company's board while that employee continued to participate in trading decisions regarding the portfolio company. The order further found that Ares did not require its compliance staff, prior to approving the trades, to sufficiently inquire and document whether the board representative and members of his Ares team possessed material nonpublic information relating to the portfolio company.
The SEC emphasized the importance of having proper policies and procedures in place to address these types of risks and to prevent the misuse of information obtained under these circumstances. Investment advisers should consider implementing detailed policies and procedures to address specific risks and prevent the misuse of information obtained under similar exceptional circumstances.

The SEC's order and related press release are available here and here.

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Second Circuit Decision Re: Beneficial Ownership Determination

Synopsis: A Second Circuit Court of Appeals opinion in *Packer v. Raging Capital Management* addresses the determination of beneficial ownership for purposes of Section 16(b) of the Exchange Act and is of importance to investment managers who may advise funds that collectively own greater than 10 percent of the shares of an issuer.

Status: The Second Circuit reversed a lower court ruling that pointed to the intertwined nature of Raging Capital Management's fund structure and agency issues, among other things, in finding that the relevant fund possessed beneficial ownership of greater than 10 percent of the shares of 1-800-Flowers.com Inc., subjecting the fund to disgorgement of short-swing profits on summary judgment.

The Second Circuit overturned and pointed to various corporate formalities, most importantly the fact that the investment management agreement could only be terminated on 61 days' notice and the fact that the fund's board was comprised of a majority of independent directors, and remanded the case for further factual determinations regarding beneficial ownership.

The Second Circuit's ruling emphasizes the importance of proper termination provisions in the investment management agreement (along with SEC registration of the investment adviser) in potentially avoiding short-swing profit recapture.

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Summary of Bureau of Economic Analysis and Treasury International Capital Filing Obligations

Synopsis: Periodic filings of Bureau of Economic Analysis (the "BEA") and Treasury International Capital ("TIC") forms may be required of investment advisers. The BEA forms include a benchmark form, an annual form, a quarterly report, and a transaction form. The BEA forms may be due, as applicable, within 45 days of a relevant transaction or quarterly, annually, or every five years. TIC forms include monthly reports and benchmark surveys. TIC forms may be due on a monthly, quarterly, or annual basis and are subject to frequent updates. Please note that the below is only a summary of certain forms that are often implicated by private funds and their advisers and that must be completed even if the reporter is not contacted by the BEA or TIC when the applicable thresholds are otherwise met.

Status: BEA benchmark forms are required if the criteria described in such forms are met, even if the reporter is not contacted by the BEA. A response to the reporting requirements of the BE-13 (survey of new foreign direct investments in the U.S.) is also required whether or not a reporter is contacted by the BEA. Note that the BEA has also issued special reporting instructions for private funds, such that reporting on some BEA forms is only due if the private funds themselves have 10 percent voting ownership of operating companies (as opposed to, for example, only reporting a U.S. entity holding the general partner interests of a foreign limited partnership that serves as a private fund).

Form BE-10: Benchmark Form. A BE-10 report is required of any U.S. reporter that had a foreign affiliate–that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise. The last benchmark form was filed in 2020, for the fiscal year ending in 2019. The next benchmark form will be due in May 2025, for the fiscal year ending in 2024.

Form BE-12: Benchmark Form. The BE-12 is a comprehensive survey of the value of foreign direct investments in the U.S. The BE-12 is filed every five years; the last BE-12 covered the fiscal year ending in 2017. The next benchmark form will be due in May 2023, for the fiscal year ending in 2022.

Form BE-180: Benchmark Form. This benchmark survey is filed every five years. A U.S. person (including an individual or an entity) is required to make a BE-180 filing if the U.S. person (i) is a "Financial Services Provider"; and (ii) had either combined sales to, or combined purchases from, foreign persons of "Financial Services" that exceeded $3 million during the relevant fiscal year. The last benchmark survey was due September 30, 2020, for the 2019 fiscal year. The next benchmark form will be due on September 30, 2025, for the fiscal year ending in 2024.

Form BE-13: Survey of New Foreign Direct Investments in the U.S. The purpose of the survey of new foreign direct investment in the United States is to capture new investment transactions when a foreign direct investment relationship is created or when an existing U.S. affiliate of a foreign parent establishes a new U.S. legal entity, expands its U.S. operations, or acquires a U.S. business enterprise. The initial report must be filed no later than 45 days after the date of the investment transaction. A U.S. entity is required to report if (1) it is acquired or established by a foreign person or entity resulting in the creation of a foreign direct investment relationship; or (2) it is an existing U.S. affiliate of a foreign parent and establishes a new U.S. legal entity, expands its U.S. operations, or acquires a U.S. business enterprise. Foreign direct investment is defined as the ownership or control, directly or indirectly, by one foreign person of 10 percent or more of the voting securities of an incorporated U.S. business enterprise, or an equivalent interest of an unincorporated U.S. business enterprise, including a branch.

Four important TIC forms for private funds and their advisers are described below:

Form S: Report of Purchases and Sales of Long-Term Securities by Foreign Residents. Form S is a monthly report filed by all U.S.-resident entities that purchase or sell long-term securities directly from or to foreign residents to provide data on foreigners' purchases and sales of all long-term securities, including equities and shares of mutual funds; it must be filed no later than 15 calendar days following the last business day of the month; this reporting requirement applies to entities whose total reportable transactions in purchases or sales of long-term securities are $350 million *or* greater during the reporting month; if the $350 million threshold is met in any month, reporting is required for the remainder of the calendar year irrespective of the level of transactions in subsequent months; reporting is required for sales *and* purchases even if only one meets the $350 million threshold.

Form SLT: Report of Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents. Form SLT is a monthly report filed by all U.S. persons who are U.S.-resident custodians (including U.S.-resident central securities depositories), U.S.-resident issuers, or U.S.-resident end-investors whose consolidated total of all reportable long-term U.S. foreign securities is a fair value equal to or more than $1 billion on the last business day of the reporting month; it must be filed no later than the 23rd calendar day of the month following the report as-of date; if the $1 billion threshold is met in any month, reporting is required for the remainder of the calendar year irrespective of the level of transactions in subsequent months.

Form SHC: Report of U.S. Ownership of Foreign Securities, Including Selected Money Market Instruments. Form SHC is a benchmark survey filed approximately every five years; reporters must provide detailed security-by-security information on their holdings of foreign securities; the reporting requirement applies to significant U.S.-resident custodians of foreign securities and U.S.-resident investors holding securities without using U.S.-resident custodians. The next full Benchmark survey will be as of December 31, 2021. Reports are due no later than the first Friday of March 2022.

Form SHL: Report of Foreign Residents' Holdings of U.S. Securities, Including Selected Money Market Instruments. Form SHL is a benchmark survey filed approximately every five years; the report is used to gather information on foreign residents' holdings of U.S. securities, including money market instruments, to provide aggregate information to the public on foreign portfolio investments, and to meet international reporting commitments. The next full Benchmark survey will be as of June 30, 2024. Reports are due no later than the last business day of August 2024.

The BEA provides a webpage offering specific guidance to private funds here. The U.S. Treasury Department provides a resource center with respect to TIC Forms and Instructions here. The Lowenstein Sandler LLP Investment Management Group alert analyzing Form BE-180 is available here.

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Privacy and Cybersecurity Updates

Synopsis: It has been an eventful year for privacy and cybersecurity around the globe. In the U.S., states continue to take the lead in responding to escalating concerns about personal privacy, with dozens of legislatures adopting or considering laws regarding personal information, artificial intelligence, data breach, and cybersecurity. Consistent with past years, the U.S. Congress has introduced but failed to pass any significant privacy legislation.

Status: With millions of Americans forced by the pandemic to transition their professional and personal lives online, cybercriminals capitalized on the opportunity by exploiting technological vulnerabilities and escalating phishing, ransomware, and other cyberattacks. With remote working apparently here to stay in some form, businesses are tackling the privacy complexities of hybrid work environments including proof of vaccination, use and retention of personal health information such as temperatures, and the detailed knowledge regarding travel and personal associations shared by employees and visitors.

Further afield but no less relevant to U.S. business interests, the Court of Justice of the European Union released an opinion in August 2020, calling into question the legality of future data transfers from the EU to the U.S. The case, referred to as Schrems II, invalidated the Privacy Shield and hinted that the Standard Contractual Clauses could be next. The resulting uncertainty has created significant challenges for any U.S. entity that conducts business in the EU, with the complexities magnified for U.S. multinationals. Further, Brexit may compel U.S. companies to appoint a UK Representative under the UK GDPR in addition to the EU Representative required by the GDPR. Brazil has recently adopted a GDPR-like national privacy law, and India is slated to follow suit later in 2021.

The Lowenstein Sandler LLP Investment Management Group and Privacy and Cybersecurity Group alert analyzing the CCPA is available here. The Lowenstein Sandler LLP Privacy and Cybersecurity Group alert analyzing the recent CCPA amendments in relation to patient information is available here. The Lowenstein Sandler LLP Privacy and Cybersecurity Group alert analyzing Virginia's new privacy law is available here. The Lowenstein Sandler LLP Privacy and Cybersecurity Group alert analyzing Schrems II and other post-Brexit issues is available here.

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U.S. Investment Firms Targeted by Government Sanctions Enforcement Actions

Synopsis: Any entity owned or controlled by a U.S. person is subject to U.S. jurisdiction for purposes of the OFAC sanctions programs.

Status: U.S. investment firms that either have majority stakes in or otherwise control foreign companies are on the hook for U.S. sanctions violations committed by these overseas portfolio companies. For example, OFAC brought an enforcement action against a foreign company owned by a U.S. investment firm for an engineering analysis conducted in Cuban territorial waters and associated workshops held in Cuba. In an associated enforcement action, OFAC penalized a New York-based global investment firm and its foreign portfolio company because the company's subsidiary rented or sold equipment to customers that used it on vessels in Iranian territorial waters. To avoid such pitfalls, all U.S. investment firms should ensure that the U.S. and foreign entities they own or control are compliant with OFAC's sanctions, as these relationships can lead to hefty penalties for the entities and the funds.

The Lowenstein Sandler LLP Global Trade & Policy Group alert analyzing these issues is available here.

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COMPLIANCE CHECKLISTS

PRIVATE INVESTMENT FUNDS AND THEIR ADVISERS

- ☐ **Conduct periodic review of compliance policies.**
- ☐ **Provide/collect new issues certifications regarding whether funds/investors are "restricted persons."**
- ☐ **Conduct periodic review and update of offering documents.**
- ☐ **Consult counsel regarding annual Form D amendments and blue-sky and local securities matters in connection with offers or sales.**
- ☐ **Make certain Schedule 13G filings by February 16, 2021.**
- ☐ **File Schedule 13G year-end amendments by February 16, 2021.**
- ☐ **File Schedule 13H year-end amendments by February 16, 2021.**
- ☐ **File Form 13F for fourth quarter of 2020 by February 16, 2021.**
- ☐ **File Form PF quarterly updates and annual updates.**
- ☐ **Conduct periodic review of Section 13 and Section 16 filings.**

- ☐ **Conduct periodic review of BEA and TIC forms.**
- ☐ **Monitor compliance with 25 percent ERISA limitation with respect to benefit plan investors.**
- ☐ **Prepare annual VCOC Certification (if required) for benefit plan investors.**
- ☐ **Prepare Form 5500 Schedule C fee disclosures for ERISA plan investors.**
- ☐ **Prepare year-end audits and distribute financial statements as appropriate.**
- ☐ **Collect annual holdings reports and annual certifications from access persons and other personnel.**
- ☐ **Renew "bad actor" questionnaires, and conduct placement agent verifications.**
- ☐ **Conduct annual training of personnel.**
- ☐ **Update risk assessment.**
- ☐ **Conduct periodic anti-money laundering verifications (e.g., OFAC verifications).**
- ☐ **Reevaluate state privacy obligations.**
- ☐ **Distribute privacy notices, if required.**

Discussion:

Compliance Policies. The compliance and operating requirements pertaining to registered investment advisers and unregistered advisers (including exempt reporting advisers) have continued to merge, and more and more unregistered managers are adopting best practices and upgrading their compliance policies to meet the demands of regulators and/or investors. Whether your firm is currently federally registered or will be required to register in the future, you should review your compliance policies periodically to verify that they are adequate and appropriately tailored to your business risks and that your firm is adhering to them.

New Issues Certifications. If you purchase "new issues" (i.e., equity securities issued in an initial public offering), your broker (or, if you are a fund of funds that invests indirectly in new issues, the underlying funds) will require that you certify each year as to whether the fund is a "restricted person" within the meaning of FINRA Rules 5130 and 5131. To make the certification, you must determine the status of investors in your fund as either restricted persons or unrestricted persons. The Lowenstein Sandler LLP Investment Management Group alert analyzing FINRA's amendments effective January 1, 2020, to FINRA Rules 5130 and 5131 is available here.

Offering Documents. Offering documents should be reviewed from time to time to verify that they: (i) contain a current, complete, and accurate description of the fund's strategy, management, and soft-dollar and brokerage practices; (ii) comply with current laws and regulations; and (iii) reflect current disclosure best practices.

Form D Amendments and Blue Sky and Local Securities Matters. You should continue to inform counsel of all offers or sales of fund interests. Ongoing offerings may necessitate an amendment to a private fund's Form D (typically required on an annual basis on or before the first anniversary of the most recent notice previously filed). Additionally, offers to U.S. persons may trigger filing obligations in a given investor's state of residence, while offers to foreign persons may require filings in the country of an investor's residence.

Beneficial Ownership Reporting Requirements. Certain Schedule 13G filings pursuant to Sections 13d-1(b) and 13d-1(d) of the Securities Exchange Act of 1934 (as amended, the "Exchange Act") are required to be filed by February 16, 2021. If you have filed Schedule 13G previously and the information reflected in the schedule is different as of December 31, 2020, from that previously reported, you are generally required to have amended the schedule by February 16, 2021. Form 5 must be filed within 45 days of the end of the issuer's fiscal year (February 16, 2021, for issuers with a December 31, 2020 fiscal year-end). Year-end serves as a convenient time to confirm that all relevant Section 13 and Section 16 filings are current and complete.

BEA and TIC Forms. The beginning of the calendar year is a good time to conduct a review of the BEA and TIC forms and filing requirements applicable to your firm. See detailed discussion above of certain BEA and TIC forms and filing requirements often applicable to private investment funds and their advisers.

Form 13H. Section 13(h) of the Exchange Act established a reporting system and filing requirements for "large traders," i.e., persons effecting transactions in certain securities in amounts equal to two million shares or $20 million (determined by fair market value of the shares) in one calendar day, or 20 million shares or $200 million in one calendar month. Persons meeting these thresholds must file Form 13H no later than 10 days after the identifying activity level is reached. Amended filings must be effected promptly after the end of a calendar quarter during which any of the information contained in Form 13H becomes outdated or inaccurate. Large traders may file amended filings more often than quarterly but are not required to do so. Annual amendments (regardless of the number of amended filings previously effected) are due within 45 days of the end of each calendar year. Persons may now satisfy both the amended fourth-quarter filing and the annual update to Form 13H, as long as such filing is made within the period permitted for the fourth-quarter amendment (i.e., promptly after the fourth quarter's end).

Form 13F. Section 13(f) of the Exchange Act requires "institutional investment managers" with investment discretion over $100 million or more of certain equity securities to file quarterly reports on Form 13F. Form 13F must be filed within 45 days of the end of each calendar quarter. An initial Form 13F must be filed at the end of the first year in which an institutional investment manager exceeds the $100 million threshold. To the extent that you have a Form 13F filing obligation, you were required to file your Form 13F for the fourth quarter of 2020 by February 16, 2021.

Form PF. Many smaller private advisors and large private equity advisors will be required to file an annual update to Form PF by April 30, 2021 (120 days after the end of their fiscal year). Quarterly updates to Form PF are required of large hedge fund advisors (by March 1, 2021, or 60 days after the end of their fiscal quarter) and large liquidity fund advisors (by January 15, 2021, or 15 days after the end of their fiscal quarter).

Monitor Compliance With 25 Percent ERISA Limitation on Benefit Plan Investors. If the aggregate amount invested in a fund by "benefit plan investors" (e.g., employee benefit plans, individual retirement accounts, and Keogh plans and entities–the underlying assets of which include "plan assets"–but excluding governmental plans, foreign plans, and certain church plans) equals 25 percent or more of the total value of any class of equity interests in the fund (excluding investments by the fund's managers who are not benefit plan investors), the fund will generally be deemed to hold plan assets subject to various ERISA requirements and prohibitions, unless the venture capital operating company ("VCOC") exception (described below) or another regulatory exception applies. Accordingly, many funds (particularly those that do not qualify as VCOCs, such as hedge funds) limit equity participation by benefit plan investors to less than 25 percent. If you sponsor such a fund, you should continuously monitor (i.e., upon subscriptions, capital calls, redemptions, and transfers) the level of investments by benefit plan investors to ensure the 25 percent threshold is not exceeded.

Annual VCOC Certification. Prior to investing in a venture fund or a private equity fund, ERISA plan investors often require the fund to provide an annual VCOC certification stating that the fund qualifies as a VCOC. A venture fund or a private equity fund that qualifies as a VCOC will not be deemed to hold plan assets subject to ERISA, even if equity participation by benefit plan investors exceeds the 25 percent threshold (described above). In general, a fund will qualify as a VCOC if: (i) at any time during the fund's annual valuation period at least 50 percent of the fund's assets (other than short-term investments pending long-term commitment or distribution to investors), valued at cost, are invested in venture capital investments in operating companies for which the fund has management rights; and (ii) the fund, in the ordinary course of its business, actually exercises substantial management rights with respect to one or more of the operating companies in which it invests on an annual basis.

Form 5500 Schedule C Fee Disclosures. Funds that have ERISA plan investors (including funds that do not allow equity participation by benefit plan investors to exceed the 25 percent threshold (described above) and thus are not subject to ERISA), excluding VCOCs and other entities treated as operating companies, are required to provide plan administrators of their ERISA plan investors with certain fee-related information that is necessary for the completion of Schedule C to the plan's annual report on Form 5500 in advance of the filing deadline for the annual report. The Lowenstein Sandler LLP alert analyzing the Form 5500 Schedule C rules is available here.

Year-End Audit. Now is the time to begin all necessary year-end audits so that funds can distribute financials to investors on a timely basis as required by relevant governing documents and, in certain instances, as required to comply with the custody rule under the Advisers Act and/or Commodity Future Trading Commission ("CFTC") requirements.

Annual Holdings Reports and Annual Certifications. The beginning of the calendar year is a good time for investment advisers to have all "access persons" provide their annual holdings reports regarding securities ownership required pursuant to Rule 204A-1 of the Advisers Act. It is also a good time to have all personnel provide their annual certifications of compliance with firm policies and conflict-of-interest questionnaires.

"Bad Actor" Questionnaires and Placement Agent Verifications. The beginning of the calendar year is a good time to have certain personnel and service providers (e.g., directors of offshore private funds) recertify their status with respect to the SEC's "bad actor" rules in order to rely on the private placement exemption under Rule 506. This bad actor certification is often combined with the annual certification of compliance with firm policies discussed above. It is also a good time to have placement agents recertify their status with respect to such rules and certain other disciplinary matters.

Conduct Annual Training of Personnel. As a best practice under the Advisers Act, investment advisers should hold annual training sessions with existing employees to remind them of their obligations under the firm's compliance manual and code of ethics.

Update Risk Assessment. As a best practice under the Advisers Act, investment advisers should annually reevaluate their "risk assessment" (i.e., evaluation of how the firm's activities, arrangements, affiliations, client base, service providers, conflicts of interest, and other business factors may cause violations of the Advisers Act or the appearance of impropriety) to determine that new, evolving, or resurgent risks are adequately addressed.

Periodic Anti-Money Laundering Verifications. Private investment funds and their advisors have ongoing anti-money laundering compliance obligations that necessitate periodic verifications, the frequency of which depend on such funds' and advisers' operations. The beginning of the calendar year is a good time to assess such obligations and to conduct renewed verifications such as comparing investor bases with the U.S. Treasury Department's Office of Foreign Assets Control lists.

Privacy Notices. In accordance with applicable federal law, investment advisers and investment funds must have a privacy policy in place. In addition to being provided at the time of initial subscription, privacy notices must generally be distributed at least annually, and more frequently if there are any changes to the policy/notice. An exception provides that annual notice is not required where an adviser or fund (i) only shares nonpublic personal information ("NPPI") with nonaffiliated third parties in a manner that does not require an opt-out right be provided; and (ii) has not changed its policies and practices with regard to disclosing NPPI since its most recent distribution of its privacy notice. Now is an opportune time for advisers and funds to determine whether they can rely on this exception and to review their privacy notices in light of the recent OCIE risk alert on privacy notices, discussed above. We believe that the best time for the annual distribution of the notice, if required, is with a fund's annual financial statements and/or tax reports. Additionally, recently enacted state privacy laws and regulations such as California's CCPA may subject investment advisers and investment funds to additional and/or more stringent privacy requirements.

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REGISTERED INVESTMENT ADVISERS AND EXEMPT REPORTING ADVISERS (WHERE INDICATED)

- ☐ **Prepare annual updating amendments to Form ADV (for registered investment advisers and certain "Exempt Reporting Advisers").**
- ☐ **Update investment policy statements and investment management agreements.**
- ☐ **Deliver Form ADV Part 2A (or portions thereof) to clients and fund investors (for registered investment advisers).**
- ☐ **Review Form ADV Part 3 (Form CRS) updates and delivery requirements.**
- ☐ **Comply with state annual filing requirements.**
- ☐ **Conduct periodic review of compliance policies and code of ethics.**
- ☐ **Comply with custody rule annual surprise examination.**
- ☐ **File Form 13F for fourth quarter of 2020 by February 16, 2021.**

- ☐ **Distribute privacy notices, if required.**
- ☐ **Prepare Form 5500 Schedule C fee disclosures for ERISA plan accounts.**
- ☐ **Comply with ERISA Section 408(b)(2) fee disclosure requirements for Covered Plans.**
- ☐ **Conduct periodic vendor due diligence updates, including in respect of proxy advisory firms.**

Discussion:

Annual Updating Amendments to Form ADV. An investment adviser that (i) is registered with the SEC or (ii) is considered an "Exempt Reporting Adviser" (i.e., an investment adviser relying on the private fund adviser exemption or the venture capital adviser exemption), in each case as of December 31, 2020 (and with a December 31, 2020 fiscal year-end), must file an annual updated amendment of items on the form by March 31, 2021.

Updates in Respect of New Issue Distribution Restrictions. Certain amendments to FINRA Rules 5130 and 5131 were made in 2020, as described above. Investment advisers should update their investment policy statements and investment management agreements, taking into account 2020 changes to FINRA Rules 5130 and 5131. The Lowenstein Sandler LLP Investment Management Group alert analyzing FINRA's amendments to FINRA Rules 5130 and 5131 is available here.

Deliver Form ADV Part 2. An investment adviser that is registered with the SEC and whose Form ADV Part 2A has materially changed since such adviser's last annual amendment must deliver either an amended Part 2A (which must include a summary of such material changes) or a summary of such material changes (which must include an offer to provide a copy of the amended Part 2A). Although such delivery requirements expressly apply only to "clients" (as defined in federal securities laws), we recommend that advisers to private funds deliver such items to their fund investors. For advisers with a December 31, 2020 fiscal year-end, such items must be delivered by April 30, 2021.

Review Form ADV Part 3 (Form CRS) Update and Delivery Requirements. An investment adviser that is registered with the SEC must amend its Form ADV Part 3 within 30 days whenever any information therein becomes materially inaccurate by filing an additional other-than-annual amendment or by including such amended information as part of an annual updating amendment. An investment adviser firm must deliver the most recent Form ADV Part 3 to each new retail investor before or at the time of entering into an investment advisory contract and to each existing retail investor before or at time when (i) a new account is opened that is different than the retail investor's existing account, (ii) the investment adviser firm recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment, or (iii) the investment adviser firm recommends new investment advisory service.

State Filing Requirements. Applicable state law may require a federally registered investment adviser to make notice filings and to pay fees in the state if he or she has clients or a place of business therein. Laws vary significantly from state to state. There also may be certain licensing or qualification requirements for representatives of investment advisers. Please contact counsel with any state-specific questions.

Compliance Policies and Code of Ethics. Federally registered investment advisers must adopt and maintain comprehensive compliance policies and a code of ethics and also must appoint a chief compliance officer. If you have not already done so, please contact counsel immediately for assistance in creating and/or documenting compliance procedures appropriately tailored to your business. In addition, compliance policies and procedures must be reviewed by the adviser at least annually. The compliance policies and procedures review should focus on an evaluation of the effectiveness of the policies and procedures in light of current risks and the need for revisions as a result of: (i) any compliance issues that arose during the prior year; (ii) any changes in the business activities of the investment adviser; and/or (iii) any regulatory changes. We recommend that this review be conducted relatively early in the year or staggered throughout the year so that it does not interfere with other time-sensitive activities when quarter-end or year-end matters are pressing. Policies that are materially changed as a result of such review should be redistributed to all appropriate personnel. In addition, Item 11 of Form ADV Part 2A must contain a current description of the code of ethics and a statement that the investment adviser will provide the code of ethics to any current or prospective client upon request.

Custody Rule Annual Surprise Examination. With certain limited exceptions, where the adviser (or its related person) possesses or may possess client funds and securities, the adviser is required to undergo an annual surprise examination by an independent public accountant.

Form 5500 Schedule C Fee Disclosures. Advisers managing ERISA plan accounts are required to disclose certain fee-related information necessary for plan administrators to complete Schedule C to the plan's annual report on Form 5500 in advance of the date such annual report is required to be filed. The Lowenstein Sandler LLP alert analyzing the Form 5500 Schedule C rules is available here.

Compliance With ERISA Section 408(b)(2) Fee Disclosure Requirements. Advisers providing services directly to an ERISA-covered defined contribution or defined benefit plan as either a fiduciary or a registered investment adviser (as well as fiduciary services to a first-tier ERISA "plan asset" fund in which a covered plan has a direct investment, brokerage and record-keeping services to certain participant-directed plans to which investment alternatives are made available, and certain other services) are generally required to make detailed fee disclosures to a plan fiduciary in advance of the date the underlying contract or arrangement is entered into, extended, or renewed. Additionally, changes to such required fee disclosures must be disclosed as soon as practicable, but in no event more than 60 days from the date on which the adviser becomes informed of such change. Advisers providing such services should monitor ongoing compliance with the ERISA Section 408(b)(2) disclosure requirements. The Lowenstein Sandler LLP alert analyzing the Section 408(b)(2) Fee Disclosure Requirements is available here.

Vendor Due Diligence Updates. As part of an effective third-party risk management program, advisers are encouraged to implement an effective due diligence process with respect to service providers utilized by the adviser, consisting of both an initial due diligence assessment and periodic reviews thereafter. Such periodic reviews may include tailored certifications from the vendor in light of the services provided by each such vendor; review of the vendor's regulatory history, public filings, registrations, and licenses (as applicable); a review of the vendor's financial statements; and (as necessary) conference calls and on-site visits. Advisers should document the due diligence process and results.

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COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

- ☐ **Registered Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs") must conduct annual regulatory compliance reviews and complete certain regulatory requirements, which include preparation of annual questionnaires and annual registration updates (applies to registered CPOs and CTAs).**
- ☐ **NFA Member CPOs must prepare and file certain portions of NFA Form PQR by March 31, 2021.**
- ☐ **Prepare and file certain portions of Form CTA-PR by February 14, 2021.**
- ☐ **Annual affirmation of CPO registration exemption under Sections 4.5, 4.13(a)(1)-(3), or 4.13(a)(5), or exemption from CTA registration under Section 4.14(a)(8), by March 1, 2021.**
- ☐ **Review CPO delegations in connection with annual pool financial statement filings.**

Discussion:

Annual Compliance Reviews/Regulatory Requirements. Registered CPOs and CTAs must conduct annual compliance reviews. These reviews and requirements include: (i) the preparation and filing with the NFA of Annual Questionnaires and Annual Registration Updates within 30 days of the anniversary date of their registration; (ii) completion of the NFA's Self-Examination Checklist; (iii) sending Privacy Policies to every current customer, client, and pool participant; (iv) testing disaster recovery plans and making necessary updates; (v) providing ethics training to staff, and inspecting the operations of branch offices; (vi) for registered CPOs, preparation of Pool Quarterly Reports within 45 days after the end of the year (and within 45 days after the end of each quarter); and (vii) for registered CTAs that are NFA Members, the filing of Form CTA-PR, required within 45 days after the end of the year (and within 45 days after the end of each quarter). Finally, unless the applicable fund(s) qualify for an exemption, registered CPOs and CTAs must update their disclosure documents periodically, as they may not use any document dated more than 12 months prior to the date of its intended use. Disclosure documents that are materially inaccurate or incomplete must be promptly corrected, and the correction must be promptly distributed to pool participants. The NFA's Notice to Members regarding these regulatory compliance matters is available here.

Prepare and File Portions of NFA Form PQR. NFA Member CPOs must file NFA Form PQR by March 31, 2021.

Prepare and File Portions of Form CTA-PR. CTAs are required to have completed Form CTA-PR by February 14, 2021 (45 days after the end of the calendar quarter for CTAs who are NFA Members, and 45 days after the end of the calendar year for other CTAs).

Annual Affirmation of CPO or CTA Exemption. Each person who has filed a notice of exemption from CPO registration under Sections 4.5, 4.13(a)(1)-(3), or 4.13(a)(5), or exemption from CTA registration under Section 4.14(a)(8), must have affirmed such notice of exemption by March 1, 2021, through the NFA's exemption system.

Review of CPO Delegations. All CPO delegation agreements entered into by registered CPOs must comply with specific criteria set forth by the CFTC and must be retained as part of the relevant CPO's records. As part of their annual pool financial statement filings through the NFA website, CPOs should ensure that all necessary CPO delegations are in place and appropriately documented.

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RECENT PUBLICATIONS AND COMMENTARY

Below are links to recent articles and publications featuring or authored by members of the Investment Management Group.

CLIENT ALERTS AND NEWSLETTERS

- **Translating SEC Exam Priorities Into Compliance Action Items**
  Investment Management, Securities Litigation & White Collar Criminal Defense Law360 Article
  Rachel Maimin, H. Gregory Baker, Scott H. Moss, David L. Goret
  March 12, 2021

- **New Registration and Examination Requirements for New York Investment Adviser Representatives**
  Investment Management Client Alert
  Scott H. Moss, Manas Kumar
  March 10, 2021

- **SEC Modernizes Investment Adviser Marketing and Solicitor Rules**
  Investment Management Client Alert
  Scott H. Moss, David L. Goret, Brian Nistler, Manas Kumar
  January 22, 2021

- **Fiduciary Rule Prohibited Transaction Class Exemption Released by the DOL**
  Employee Benefits & Executive Compensation Client Alert
  Andrew E. Graw, Scott H. Moss, Megan Monson
  January 21, 2021

- **The SEC Identifies Common Investment Adviser Compliance Program Deficiencies Consistent With Deficiencies Recognized by Other Regulators Overseeing Investment Advisers**
  Investment Management and Global Trade & Policy Client Alert
  Scott H. Moss, Doreen M. Edelman, Manas Kumar, Christian C. Contardo
  December 4, 2020

- **The SEC Division of Enforcement Publishes 2020 Results**
  Investment Management and White Collar Criminal Defense Client Alert
  H. Gregory Baker, David L. Goret, Rachel Maimin, Scott H. Moss
  November 9, 2020

- **Form BE-180 Deadline Is Fast Approaching for Electronic Filers, Including Private Fund Managers**
  Investment Management Client Alert
  Scott H. Moss, Lauren A. Schwartz
  October 27, 2020

- **SEC Proposes Conditional Broker Exemption for Finders**
  Investment Management Client Alert
  Scott H. Moss, Ethan L. Silver, Manas Kumar
  October 20, 2020

- **SEC Updates Regulatory Framework for Fund of Funds Arrangements, but Private Funds Remain Subject to Limits on Purchases of Investment Company Shares**
  Investment Management Client Alert
  Scott H. Moss, Lauren A. Schwartz
  October 20, 2020

- **SEC Expands the Accredited Investor Definition**
  Investment Management Client Alert
  Scott H. Moss, Bettina C. Elstroth, Manas Kumar
  September 3, 2020

- **Delaware Supreme Court Clarifies Limited Partner Rights to Books and Records: The Decision Will Have a Meaningful Impact on All Hedge, Private Equity, and Venture Funds**
  Investment Management Client Alert
  Eileen Overbaugh, Amanda C. Lutick
  July 28, 2020

- **SEC Proposes to Amend Form 13F Reporting Thresholds for Institutional Investment Managers**
  Investment Management Client Alert
  Scott H. Moss, Bettina C. Elstroth, Daniel C. Porco, Manas Kumar
  July 20, 2020

- **U.S. Department of Labor Proposes New (Simpler) Fiduciary Rule Exemption**
  Employee Benefits & Executive Compensation and Investment Management Client Alert
  Andrew E. Graw, Megan Monson, Alexander D. Zozos
  July 16, 2020

- **Form CRS Drafting Guide and Template**
  Investment Management Client Alert
  Ethan L. Silver, Lauren A. Schwartz, Alexander D. Zozos
  April 21, 2020

- **SEC and FINRA Provide Reg. BI and Form CRS Guidance as the Implementation Date Approaches**
  Investment Management Client Alert
  Ethan L. Silver, Lauren A. Schwartz, Alexander D. Zozos
  April 21, 2020

- **The California Consumer Privacy Act: An FAQ for Investment Managers**
  Privacy & Cybersecurity and Investment Management Client Alert
  Mary J. Hildebrand CIPP/US/E, Peter D. Greene, Scott H. Moss, Eileen Overbaugh, Edgar R. Hidalgo CIPP/US
  February 27, 2020

UPCOMING EVENTS

Below is information regarding upcoming events sponsored by or featuring members of the Investment Management Group. For more information regarding any of these events, please contact events@lowenstein.com.

MFA Legal & Compliance Conference 2021
July 20-21, 2021
Virtual Conference
Peter D. Greene

GAIM Ops NY Edition
September 27-30, 2021
New York, NY
Benjamin Kozinn, panelist

MFA DATA 2021
September 2021
Virtual Conference
Peter D. Greene

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