Lowenstein Sandler

Client Alert

Investment Management

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Material Investment Management Developments and Template Annual Compliance Checklists for Registered Investment Advisers, Exempt Reporting Advisers, Commodity Pool Operators, Commodity Trading Advisors and Private Fund Managers

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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:

- SEC's 2022 Examination Priorities
- Proposed Amendments to Form PF Requirements
- Proposed New Rules Applicable to Private Fund Advisers and Requirement to Document Annual Reviews
- Proposed New Cybersecurity Risk Management Rules
- Proposed Regulation 13D and 13G Beneficial Ownership Reporting
- SEC Observations from Examinations of Private Fund Advisers
- Global Trade & National Security: Sanctions and Compliance
- SEC Chairman Gensler Speech on Cybersecurity
- 2021 Tax Developments and Future Considerations
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- NFA Amendments to Definition of Branch Office
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- NFA Bylaw 1101 and Compliance Rule 2-36(d)
- Common Deficiencies in NFA Examinations
- CFTC Chairman Behnam Testimony on Digital Assets
- DOL's Fiduciary Advice Rule
- DOL Issues Proposed Rules Addressing ESG Investing and Proxy Voting
- SEC Charges App Annie and its Founder with Securities Fraud
- SEC Case Alleges Insider Trading – Sympathy Trading
- SEC Raises the Dollar Threshold for Qualified Clients
- Privacy Updates

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

SEC Announces 2022 Examination Priorities

Synopsis: On March 30, 2022, Division of Examinations of the Securities and Exchange Commission (the "SEC") announced examination priorities for 2022.

Status: The Division of Examinations will focus on private funds, environmental, social and governance ("ESG") investing, retail investor protections, information security and operational resiliency, emerging technologies, and crypto-assets.

Private Funds

Examinations will review issues such as an adviser's fiduciary duty, and will assess risks, including a focus on compliance programs, fees and expenses, custody, fund audits, valuation, conflicts of interest, disclosures of investment risks, and controls around material nonpublic information. The Division of Examinations will also review private fund advisers' portfolio strategies, risk management, and investment recommendations and allocations, focusing on conflicts and disclosures around these areas. In addition, examinations will review the practices, controls, and investor reporting around risk management and trading for private funds with indicia or signs of systemic importance.

ESG

The Division of Examinations will continue its focus on ESG-related advisory services and investment products, including whether advisers and registered funds are accurately disclosing their ESG investing approaches and have adopted and implemented policies, procedures, and practices designed to prevent violations of the federal securities laws in connection with their ESG-related disclosures, including review of their portfolio management processes and practices. Examinations also will review the voting of client securities in accordance with proxy voting policies and procedures, including whether the votes align with their ESG-related disclosures and mandates, and whether there are misrepresentations of the ESG factors considered or incorporated into portfolio selection.

Retail Investors

The Division of Examinations will continue to address standards of conduct issues for broker-dealers and advisers to ensure that retail investors and working families are receiving recommendations and advice in their best interests. Examinations will include assessments of practices regarding consideration of investment alternatives, management of conflicts of interest, trading, disclosures, account selection, and account conversions and rollovers.

Information Security and Operational Resiliency

Examinations will continue to review whether firms have taken appropriate measures to safeguard customer accounts and prevent account intrusions, oversee vendors and service providers, address malicious e-mail activities, respond to incidents, identify and detect red flags related to identity theft and manage operational risk as a result of a dispersed workforce. In addition, the Division of Examinations will again be reviewing registrants' business continuity and disaster recovery plans, with particular focus on the impact of climate risk and substantial disruptions to normal business operations.

Emerging Technologies and Crypto-Assets

Examinations will focus on firms that are, or claim to be, offering new products and services or employing new practices to assess whether operations and controls in place are consistent with disclosures made and the standard of conduct owed to investors and other regulatory obligations, advice and recommendations are consistent with investors' investment strategies and the standard of conduct owed to such investors, and controls take into account the unique risks associated with such practices. Examinations of market participants engaged with crypto-assets will continue to review the custody arrangements for such assets and will assess the offer, sale, recommendation, advice, and trading of crypto-assets.

Investment advisers should continue to review their policies and procedures, ensure the robustness of their compliance programs, and remain attentive to examination priorities.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the examination priorities is available here. The SEC Press Release regarding the 2022 examination priorities is available here.

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SEC Proposes to Amend Form PF Requirements

Synopsis: The SEC has proposed to substantially expand Form PF reporting requirements.

Status: In a release issued on January 26, 2022, the SEC proposed rules containing significant changes to Form PF and its associated filing requirements, as described below:

New Current Reporting Requirement for Large Hedge Funds and Private Equity Funds

The proposed amendments to Form PF would require private fund advisers having at least $1.5 billion in regulatory assets under management attributable to hedge funds to file current reports within one business day of the occurrence of any of the following reporting events::

- Extraordinary investment losses.
- Significant margin and counterparty default events.
- Material changes in prime broker relationships.
- Changes in unencumbered cash.
- Operations events.
- Any event associated with withdrawals and redemptions.

In addition, the proposed amendments to Form PF would also require advisers to private equity funds to file current reports within one business day of the occurrence of any of the following reporting events:

- Execution of secondary transactions led by such advisers.

- Implementation of general partner or limited partner clawbacks.
- Removal of a private fund's general partner.
- Termination of a private fund's investment period, or termination of a private fund.

Large Private Equity Fund Reporting

The proposed amendments to Form PF would reduce the threshold for advisers reporting as large private equity advisers from $2 billion to $1.5 billion in private equity fund regulatory assets under management.

Large Liquidity Fund Reporting

The proposed amendments to Form PF would require advisers to large liquidity funds to report substantially the same information as money market funds (on Form N-MFP).

The Lowenstein Sandler LLP Investment Management Group alert analyzing the proposed amendments to Form PF is available here.

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SEC Proposes New Rules Applicable to Private Fund Advisers and Requirement to Document Annual Reviews

Synopsis: The SEC has proposed a number of new rules for private fund advisers along with a requirement to document annual reviews. Among other things, the proposed requirements are designed to provide investors with greater transparency and more detailed information with respect to the full cost of investing in private funds and the total compensation paid to private fund advisers, and to address certain conflicts of interests between private fund advisers and their investors that the SEC has identified as particularly acute.

Status: On February 9, 2022, the SEC set forth a number of proposed rules imposing new requirements on private fund advisers as described below.

Quarterly Statement Rule

Proposed Rule 211(h)(1)-2 would, if adopted, require private fund advisers to distribute a quarterly statement to the underlying investors in each private fund they manage within 45 days of the relevant quarter end. The statement would contain a detailed accounting of all fees (e.g., management, sub-advisory, performance-based compensation, and similar fees or payments) and expenses (e.g., organizational, accounting, legal, administration, audit, tax, due diligence, and travel expenses) paid by the private fund to the adviser during the relevant period. The statement would include information regarding compensation or other amounts paid by the private fund's portfolio investments/companies to the private fund adviser or any of its related persons. Finally, the statement would disclose certain information regarding the performance of the private fund, including:

- For illiquid funds, the gross and net internal rate of return, and gross and net multiple of invested capital for the illiquid fund, to capture performance from its inception through the end of the current calendar quarter, with the realized and unrealized portions of the illiquid fund's portfolio performance shown separately.
- For liquid funds, the annual net total returns from inception, average annual net total returns over specified time periods (e.g., one, five, and ten years), and quarterly net total returns for the current calendar year.

The rule would require consolidated reporting for substantially similar pools of assets to the extent that doing so would provide more meaningful information to investors and would not be misleading.

Mandatory Private Fund Adviser Audits Rule

Proposed Rule 206(4)-10 would require private fund advisers to cause the private funds they advise to undertake a financial statement audit at least annually and upon liquidation.

Adviser-Led Secondaries Rule

Proposed Rule 211(h)(2)-2 would require private fund advisers to obtain a fairness opinion in connection with a secondary transaction which they propose to lead. In secondary transactions, existing investors are offered the option to sell or exchange their interests in the private fund for interests in another vehicle advised by the manager. If adopted, the rule would require an independent opinion provider to opine on the fairness of the price being offered to the private fund for any assets being sold as part of the transaction. The new rule would also require private fund advisers to prepare and distribute to investors a summary of any material business relationships between the independent opinion provider and the manager within the past two years in order to enable investors to assess any potential conflicts of interest associated with the procurement of the opinion.

Prohibited Activities Rule

Proposed Rule 211(h)(2)-1 sets forth a list of activities and practices by private fund advisers which the SEC believes are contrary to the public interest and to the protection of investors. Under this rule, private fund advisers would be prohibited from engaging, directly or indirectly, in the following activities and practices:

- • Charging fees and expenses to a private fund or its portfolio investments/companies for unperformed services (g., accelerated monitoring fees) and fees associated with an examination or investigation of such private fund advisers.
- • Seeking reimbursement, indemnification, exculpation, or limitation of its liability from the private fund or its investors for the private fund adviser's breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund.
- • Reducing the amount of the private fund adviser's clawback by the amount of taxes (actual, potential, or hypothetical) applicable to the private fund adviser, its related persons, or their respective owners or interest holders.
- • Charging fees or expenses related to a portfolio investment on a non-pro rata basis (including non-pro rata allocations of "broken deal" expenses with respect to co-investment vehicles).
- • Borrowing money, securities, or other assets, or receiving a loan or receiving an extension of credit from a private fund they manage.

Preferential Treatment Rule/Side Letters

Proposed Rule 211(h)(2)-3(a)(1) and (2) would prohibit private fund advisers from providing preferential terms to particular investors unless disclosed to current and prospective investors. Specifically, private fund advisers would be prohibited from the following (unless adequately disclosed):

- • Providing information regarding the portfolio holdings or exposures of a private fund, or of a substantially similar pool of assets, if the adviser reasonably expects that providing that information would have a material, negative effect on the other investors.
- • Providing preferential terms relating to redemptions to an investor in a private fund or a substantially similar pool of assets that the adviser reasonably expects to have a material, negative effect on other investors or substantially similar pool of assets.

These terms are often captured in side letters between private fund advisers and investors.

Amended Annual Review Requirements

A proposed amendment to the Rule 206(4)-7(b) under the Investment Advisers Act of 1940 (the "Advisers Act"), applicable to all SEC-registered investment advisers, requires such advisers to document their annual review of compliance policies and procedures in writing.

The Lowenstein Sandler LLP Investment Management Group alert analyzing these proposed new rules is available here.

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SEC Proposes New Cybersecurity Risk Management Rules

Synopsis: The SEC has proposed new rules related to cybersecurity risk management applicable to federally-registered investment advisers and registered investment companies.

Status: In a release issued on February 9, 2022, the SEC outlined proposed rules related to cybersecurity risk management for federally-registered investment advisers, registered investment companies, and business development companies, as well as amendments to certain rules that govern their disclosures.

Cybersecurity Risk Management Rules

Proposed Rule 206(4)-9 under the Advisers Act and Proposed Rule 38a-2 under the Investment Company Act of 1940 (the "Investment Company Act") would require federally-registered investment advisers, registered investment companies, and business development companies to adopt and implement policies and procedures that are reasonably designed to address cybersecurity risks and associated operational risks that could harm clients and investors, or lead to the unauthorized access to or use of information, including the personal information of their clients or investors.

Reporting of Significant Cybersecurity Incidents

Proposed Rule 204-6 would require federally-registered investment advisers to report significant cybersecurity incidents to the SEC by submitting a new Form ADV-C. Form ADV-C would include both general and specific questions related to the significant cybersecurity incident, such as the nature and scope of the incident, as well as whether any disclosure has been made to any clients or investors.

Disclosure of Cybersecurity Risks and Incidents

Proposed amendments to the Form ADV Part 2A narrative disclosure requirements would mandate disclosure of cybersecurity risks and incidents to an adviser's clients and prospective clients. It also includes a proposed amendment to Investment Company Act rules which would require a description of any significant cybersecurity incidents that have occurred in the past two fiscal years.

Recordkeeping

Related amendments would require federally-registered investment advisers, registered investment companies and business development companies to maintain records related to the proposed cybersecurity risk management rules and the occurrence of cybersecurity incidents and other related records.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the proposed cybersecurity risk management rules is available here.

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SEC Proposes Changes to Regulation 13D and 13G Beneficial Ownership Reporting

Synopsis: On February 10, 2022, the SEC released proposed rules which alter certain aspects of beneficial ownership reporting under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (the "Exchange Act"), and Regulation 13D-G thereunder. The proposed rules accelerate certain filing deadlines and amend the treatment of cash-settled derivative securities, among other things.

Status:

Accelerated filing deadlines for Schedules 13D and 13G

For Schedule 13D, the initial filing would be required within five days (rather than ten days) of acquiring 5% beneficial ownership or losing Schedule 13G eligibility and amendments would be required within one business day. Schedule 13G filing requirements would be similarly accelerated depending upon the type of filer.

Cash-Settled Derivative Securities

The amendments would deem holders of certain cash-settled derivative securities to be beneficial owners of the reference equity securities if the derivative is held with the purpose or effect of changing or influencing the control of the issuer. In addition, amendments to Item 6 to Schedule 13D would require disclosure of all interests in derivative securities (including cash-settled derivative securities) that use the issuer's equity security as a reference security.

Formation of 'Group'

A person who shares information about an upcoming Schedule 13D filing that such person will be required to make, to the extent this information is not yet public and communicated with the purpose of causing others to make purchases, and a person who subsequently purchases the issuer's securities based on this information will be deemed to have formed a "group" within the meaning of Section 13.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the amendments with respect to Schedule 13D and 13G is available here.

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SEC Observations from Examinations of Private Fund Advisers

Synopsis: On January 27, 2022, the SEC's Division of Examinations published a risk alert providing an overview of compliance issues observed in examinations of registered investment advisers that manage private funds. In addition to noting the continued relevance of prior risk alerts, the risk alert emphasized the following issues: (A) failure to act consistently with disclosures; (B) use of misleading disclosures regarding performance and marketing; (C) due diligence failures relating to investments or service providers; and (D) use of potentially misleading "hedge clauses."

Status:

Conduct Inconsistent with Disclosures

The Division of Examinations observed the following failures to act consistently with material disclosures to clients or investors:

- Failure to obtain informed consent from Limited Partner Advisory Committees, Advisory Boards or Advisory Committees (collectively "LPACs") required under fund disclosures. For example, certain private fund advisers failed to bring conflicts to their LPACs for review and consent, did not obtain consent for certain conflicted transactions from the LPAC until after the transaction had occurred or obtained approval after providing the LPAC with incomplete information in contravention of fund disclosures.
- Failure to follow practices described in fund disclosures regarding the calculation of post-commitment period fund-level management fees. Such failures resulted in investors paying more in management fees than they were required to pay under the terms of the fund disclosures. For example, private fund advisers did not reduce the cost basis of an investment when calculating their management fee after selling, writing off, writing down or otherwise disposing of a portion of an investment. Other private fund advisers used broad, undefined terms in the limited partnership agreement or similar governing document ("LPA"), such as "impaired," "permanently impaired," "written down," or "permanently written down," but did not implement policies and procedures reasonably designed to apply these terms consistently when calculating management fees, potentially resulting in inaccurate management fees being charged.
- Failure to comply with LPA liquidation and fund extension terms. Certain advisers extended the terms of private equity funds without obtaining the required approvals or without complying with the liquidation provisions described in the funds' LPAs, which, among other things, resulted in potentially inappropriate management fees being charged to investors.
- Failure to invest in accordance with fund disclosures regarding investment strategy. Certain private fund advisers did not comply with investment limitations in fund disclosures. For example, the staff observed private fund advisers that implemented an investment strategy that diverged materially from fund disclosures. Certain advisers caused funds to exceed leverage limitations detailed in fund disclosures.
- Failures relating to "recycling" of realized investment proceeds back to the capital commitments of investors. Certain private fund advisers did not accurately describe the "recycling" practices utilized by their funds or omitted material information from such disclosures.
- Failure to follow fund disclosures regarding adviser personnel and "key person" provisions.

Disclosures Regarding Performance and Marketing

The Division of Examinations observed private fund advisers providing to investors or prospective investors misleading track records or other marketing statements that appear to violate Rule 206(4)-8. In addition, Advisers Act Rule 204-2(a)(16) requires advisers to maintain all accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of any performance or rate of return of any or all managed accounts or securities recommendations. The Division of Examinations also observed failures by private fund advisers to maintain these required records.

The Division of Examinations observed the following failures:

- Misleading material information about a track record, including how benchmarks were used, how the portfolio for the track record was constructed, marketing a favorable or cherry-picked track record of one fund or a subset of funds, failure to disclose material information about the material impact of leverage on fund performance, the use of stale performance information and failure to accurately reflect fees and expenses.
- Inaccurate performance calculations.
- Failure to support adequately, or omissions of material information about, predecessor performance, including advertised performance that persons at the adviser were not primarily responsible for achieving at the prior adviser.
- Misleading statements regarding awards or other claims, including failure to make full and fair disclosures about the awards, such as the criteria for obtaining them, the amount of any fee paid by the adviser to receive them, and any amounts paid to the grantor of the awards for the adviser's right to promote its receipt of the awards. Certain advisers incorrectly claimed their investments were "supported" or "overseen" by the SEC or the United States government.

Due Diligence

As a fiduciary, an investment adviser must have a reasonable belief that the advice it provides is in the best interest of the client based on the client's objectives. A reasonable belief that investment advice is in the best interest of a client also requires that an adviser conduct a reasonable investigation into the investment that is sufficient to ensure that the adviser is not basing its advice on materially inaccurate or incomplete information.

The Division of Examinations observed potential failures to conduct a reasonable investigation into an investment, to follow the due diligence process described to clients or investors, and to adopt and implement reasonably designed due diligence policies and procedures.

Observed failures included:

- Lack of a reasonable investigation into underlying investments or funds.
- Failure to perform adequate due diligence on important service providers, such as alternative data providers and placement agents.
- Inadequate policies and procedures regarding investment due diligence.

Hedge Clauses

Whether a clause in an agreement, or a statement in disclosure documents provided to clients and investors, that purports to limit an adviser's liability (a "hedge clause") is misleading and would violate Sections 206(1) and 206(2) of the Advisers Act depends on all of the surrounding facts and circumstances. The Division of Examinations observed private fund advisers that included potentially misleading hedge clauses in documents that purported to waive or limit their fiduciary duty except for certain exceptions, such as a non-appealable judicial finding of gross negligence, willful misconduct, or fraud.

Private fund advisers should review their practices, fund documentation, marketing materials, and written policies and procedures, including implementation of those policies and procedures, with respect to the issues identified in this risk alert.

For additional information regarding the risk alert, please see the below:

- Risk Alert

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Global Trade & National Security Update: Sanctions and Compliance

Synopsis: As the recent events in Russia and Ukraine suggest, geopolitical risk continues to mount and global trade and national security issues present increasing compliance challenges to all U.S. entities.

Status: Increased enforcement by the U.S. Office of Foreign Assets Control ("OFAC") has led to an increased emphasis on U.S. investment funds' sanctions compliance across the industry. These requirements are not just AML/KYC requirements. Treasury Department OFAC sanctions carry strict liability for all U.S. persons located anywhere in the world and potentially change on a daily basis. U.S. persons are prohibited from doing business with any restricted party anywhere in the world. This includes Russian and Belarusian entities recently sanctioned and any entity owned 50% or more by one or more sanctioned person or entity. These lists include individuals and entities in countries across the world, who have been sanctioned for a number of reasons, including terrorism, narcotics trafficking and cyber theft. Additionally, investment funds must ensure they don't transact with companies or individuals in certain embargoed regions, such as Cuba and Iran, including as investors. These regulatory requirements demand attention to specific details of all parties investment funds and investment managers (among others) do business with, including investors.

Moreover, in addition to OFAC sanctions, other national security restrictions require similar enhanced diligence and compliance for investment managers. National security experts within both the government and private sectors are extremely concerned about supply chain risks and Chinese expropriation of technology and data. Lowenstein Sandler anticipates that new supply chain transparency and concerns about trade with China will migrate from the current military sales channels to the private sector. If companies are operating with Chinese technology, future planning should consider a shift to alternative non-Chinese technology. These issues are permeating smart C-suite discussions. These issues are also relevant to sales of portfolio investments. If a company has Russian, Chinese or Hong Kong investors or components, buyers and other investors are insisting on disclosure and divestiture.

The bottom line for certain investment advisers is that it is vital to understand their obligations and protect their client's investments by ensuring and insisting that portfolio companies are taking action to mitigate these risks. All companies (including investment funds) must have sanctions and related trade compliance programs in place to provide the best defense for mitigating violations and public disclosure.

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SEC Chairman Gensler Speech on Cybersecurity

Synopsis: On January 24, 2022, SEC Chairman Gary Gensler gave a speech at the Northwestern Pritzker School of Law's Annual Securities Regulation Institute on Cybersecurity and Securities Laws.

Status: In his speech, Chairman Gensler emphasizes the importance of cyber hygiene and preparedness, cyber incident reporting to the government and, in certain circumstances, disclosure of cyber incidents to the public and goes on to discuss specific industry participants.

Financial Sector SEC Registrants

Chairman Gensler highlighted the need to refresh Regulation Systems Compliance and Integrity ("Reg SCI"). Reg SCI helps ensure that large and important entities have, among other things, sound technology programs, business continuity plans, testing protocols, and data backups.

Given changes since the adoption of Reg SCI, Chairman Gensler has asked the SEC staff to look into how the SEC might broaden and deepen this rule. For example, the SEC might consider applying Reg SCI to other large, significant entities it doesn't currently cover, such as the largest market-makers and broker-dealers and may consider bringing large Treasury trading platforms under the SCI umbrella. Similarly, Chairman Gensler highlighted that

there might be opportunities to deepen Reg SCI to further shore up the cyber hygiene of important financial entities.

Funds, Advisers, and Broker-Dealers

With respect to this broader group of financial sector registrants, including investment companies, investment advisers, and broker-dealers, beyond those covered by Reg SCI, Chairman Gensler has asked the SEC staff to make recommendations around how to strengthen cybersecurity hygiene and incident reporting. Such reforms could reduce the risk that these registrants lose critical operational capability during a significant cybersecurity incident. Chairman Gensler believes these reforms could give clients and investors better information with which to make decisions, create incentives to improve cyber hygiene, and provide the Commission with more insight into intermediaries' cyber risks.

Data Privacy

Congress addressed this issue in the Gramm-Leach-Bliley Act of 1999. The SEC adopted Regulation S-P in the wake of the Gramm-Leach-Bliley Act of 1999. Chairman Gensler expressed his view that there may be opportunities to modernize and expand in this area. In particular, he has asked the SEC staff for recommendations about how customers and clients receive notifications about cyber events when their data has been accessed, such as their personally identifiable information. Recommendations may include proposing to alter the timing and substance of notifications currently required under Reg S-P.

Public Companies

Chairman Gensler has asked the SEC staff to make recommendations around companies' cybersecurity practices and cyber risk disclosures. This may include their practices with respect to cybersecurity governance, strategy, and risk management and required disclosures to investors when cyber events have occurred.

Service Providers

Service providers can include investor reporting systems and providers, middle-office service providers, fund administrators, index providers, custodians, data analytics, trading and order management, and pricing and other data services, among others. Many of these entities may not be registered with the SEC. Chairman Gensler has asked the SEC staff to consider recommendations around cybersecurity risk that comes from service providers. This could include a variety of measures, such as requiring certain registrants to identify service providers that could pose such risks. Further, it could include holding registrants accountable for service providers' cybersecurity measures with respect to protecting against inappropriate access and investor information. This could help ensure important investor protections are not lost and key services are not disrupted as financial sector registrants increasingly rely on outsourced services.

For additional information regarding the Chairman Gensler's cybersecurity speech, please see here.

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2021 Tax Developments and Future Considerations

Synopsis: After a number of years in which there were significant developments related to the taxation of private funds, 2021 was a comparatively quiet year. The Internal Revenue Service (the "IRS") issued regulations with respect to certain foreign corporation and passive foreign investment company matters and the Biden administration recently released its tax proposals for the fiscal year 2023.

Status: The IRS issued final regulations regarding controlled foreign corporation matters and proposed new regulations for passive foreign investment companies that, if enacted, would require certain elections to be made by partners in U.S. partnerships rather than by the partnerships themselves. New Schedules K-2 and K-3 to IRS Form 1065 were introduced. These schedules finally provide a format for partnerships to provide their partners with certain information relating to international matters, such as foreign tax credits, beginning with their 2021 taxable years. More states continued to enact state and local tax deduction workarounds that allow partnerships to elect to pay state tax at the entity level. Manager and general partner entities have been eager to elect into these provisions, though they require close consideration, particularly when partners reside in multiple states.

The Biden administration recently released its tax proposals for the fiscal year 2023, including a proposal to tax carried interest in investment services partnerships as ordinary income for taxpayers with incomes above $400,000. The proposals also include a number of provisions regarding taxation of cryptocurrency transactions, such as clarifying when a loan of cryptocurrency will be a recognition event and allowing mark-to-market elections to be made by certain traders in respect of digital assets. Other provisions that were included in a proposed reconciliation bill in late 2021 may be revisited this year.

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CFTC Staff Publishes Updated Responses to FAQs Regarding Commission Regulation 4.27 and Form CPO-PQR

Synopsis: On May 26, 2021, the Commodity Futures Trading Commission's ("CFTC's") Market Participants Division published updated responses to frequently asked questions regarding CFTC Regulation 4.27 and Form CPO-PQR.

Status: These FAQs update the 2015 FAQs and address issues on Form CPO-PQR from filing mechanics and deadlines to more technical questions.

For additional information regarding the FAQs, please see here.

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NFA Amends Definition of Branch Office

Synopsis: Effective September 23, 2021, the National Futures Association ("NFA") redefined "branch office" to exclude any remote working location not held out to the public as a Commodity Pool Operator ("CPO") or Commodity Trading Advisor ("CTA") office where one or more associated persons ("APs") from the same household work remotely.

Status: This proposal is in response to the ongoing COVID-19 pandemic creating a long lasting work-from-home culture. APs must not meet with customers or physically handle customer funds from such locations, and

any records created at the location must be accessible from the firm's main location. CPOs and CTAs should consider delisting any branch office location that is not scoped into this amended definition.

For registered investment advisers, it is worth noting that these changes do not affect how the SEC defines "branch office."

For additional information regarding the branch office changes, please see here.

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Private Fund Advisers Registered as CPOs or CTAs Are Now Required to Supervise Third-Parties Performing Regulatory Functions

Synopsis: Effective September 30, 2021, under a new NFA interpretative notice, private fund advisers registered as CPOs or CTAs are required to demonstrate effective supervision over third-parties conducting regulatory work.

Status: The new guidance explicitly states that registered CPOs/CTAs may be subject to discipline for compliance failures caused by third-parties. Registered CPOs/CTAs should determine the appropriate functions to outsource and conduct risk assessments.

Risks to assess include:

- The types of information the third-party will have access to and how such information will be safeguarded, including confidential information and personally-identifiable information.
- How catastrophic a third-party compliance failure would be for registered CPOs/CTAs.
- Whether the third-party has adequate resources to fulfill its obligations to the adviser and the ability to provide records upon request.

Registered CPOs/CTAs (among others) should conduct due diligence on any potential third-party service provider to confirm they are aware and compliant with applicable laws, are experienced in the industry, and have sufficient operational capabilities. Diligence areas to consider include information technology security, financial stability, key employees, regulatory history and contingency plans (especially in light of COVID-19).

Registered CPOs/CTAs (among others) should conduct ongoing due diligence and include appropriate representations and warranties from the third-party in contracts, such as requiring notice of any material changes to the third-party's business.

For additional information regarding the NFA's interpretive notice, please see here.

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NFA Notice to Members re: Obligations under NFA Bylaw 1101 (and related NFA Compliance Rule 2-36(d))

Synopsis: On January 12, 2022, the NFA published a notice to members regarding the reasonable steps NFA members must take to determine whether a previously exempt CPO/CTA continues to be eligible for an exemption.

Status: The CFTC requires any person that claims an exemption from CPO registration under CFTC Regulation 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), 4.13(a)(5), an exclusion from CPO registration under CFTC Regulation 4.5 or an exemption from CTA registration under 4.14(a)(8) to annually affirm the applicable notice of exemption within 60 days of the calendar year end (e.g., by March 1, 2022 for affirmations due in 2022). Since exempt CPOs/CTAs have until such date to complete the process, the NFA recognizes that it may be difficult for a member to conclusively determine prior to that date whether a previously exempt CPO/CTA continues to be eligible for a current exemption.

Members should compare their list of exempt CPOs/CTAs with which the member transacts (including investors in pools) to the information NFA makes available. Members can review exemption information either by using the NFA's BASIC system or by accessing a spreadsheet (found in the member's Annual Questionnaire) that includes a list of all persons or entities that have exemptions on file with NFA that must be affirmed on an annual basis.

Members transacting with a person that previously claimed an exemption from CPO/CTA registration, and that has not filed a notice affirming the exemption, not filed a notice of exemption for another available exemption, or not properly registered and become an NFA member by December 31st of the applicable year, should promptly contact such person to confirm whether the person will file a notice affirming the exemption.

If the person does not intend to file a notice affirming the exemption, or the person does not, in fact, file an affirmation within 60 days of year end (e.g., by March 1, 2022 for affirmations due in 2022), then the member must promptly obtain a written representation as to why the person is not required to register or file a notice of exemption and evaluate whether the representation appears adequate. If the member determines that this written representation is inadequate and the person is required to be registered, then the member must cease transacting with the person.

The NFA states that any member that acts in accordance with the information provided in this notice will not be charged with violating NFA Bylaw 1101 (or related Compliance Rule 2-36(d) applicable to forex transactions) if, between January 1 and March 31 of the applicable year, they transact customer business with a previously exempt person.

For additional information regarding the NFA's notice, please see here.

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NFA Notice to Members re: Regulatory Obligations Related to Common Deficiencies

Synopsis: On January 13, 2022, the NFA published a notice to CPO/CTA members describing a number of regulatory obligations related to common deficiencies noted during NFA examinations.

Status: The NFA highlighted the following:

<u>Third-party Service Providers</u>

- Adopt and implement a written supervisory framework over outsourced functions to mitigate outsourcing-related risks (see discussion above of the interpretive notice regarding supervision of third

party service providers).
- Maintain records demonstrating that they have addressed the items in the interpretive notice through such supervisory framework and are following established procedures.

Cybersecurity

- Members must adopt a written information systems security program (ISSP) to address the risk of unauthorized access to or attack of their information technology systems and to respond appropriately should unauthorized attacks occur.
- Notify the NFA of cybersecurity incidents via NFA's Cyber Notice Filing System.
- Provide cybersecurity training to employees upon hiring and at least annually thereafter..

Pool Financial Reporting Notification Requirements

- CPOs are required to file notice with NFA (by 5:00 p.m. CT the next business day) when a market or other event affects a commodity pool's ability to fulfill its participant obligations.
- If a CPO elects to change its fiscal year end, it must give written notice of the election to all participants and file notice at least 90 calendar days before the change.
- Notice must be filed within 15 days after the resignation or dismissal of the a pool's CPA.
- When a pool ceases trading, the CPO must promptly update the Annual Questionnaire and file a final annual report within 90 days.
- Swap dealer members are required to make and keep daily trading records of all swaps executed.

Calculation of Financial Ratios

- CPO and CTA members must compute financial ratios using the accrual method of accounting and in accordance with U.S. GAAP or another internationally recognized accounting standard.

Ongoing Updates

- On an ongoing basis, each member must update its Annual Questionnaire in the event of a material change to its operations. For example, if a member begins soliciting for virtual currency or micro contract products or begins doing business, the member must immediately update its Annual Questionnaire.

For additional information regarding the NFA's notice, please see here.

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Testimony of CFTC Chairman Regarding Digital Assets

Synopsis: On February 9, 2022, CFTC Chairman Rostin Behnam appeared before the U.S. Senate Committee on Agriculture, Nutrition, and Forestry providing testimony entitled "Examining Digital Assets: Risks, Regulation, and Innovation" and highlighting the CFTC's efforts in relation to digital assets.

Status: Chairman Behnam stated that, although the CFTC's core responsibility is regulating the commodity derivatives market (as opposed to cash markets), there are several unique elements of the digital asset commodity cash market that distinguish it from other cash commodity markets, suggesting it would benefit greatly from CFTC oversight. By way of example, Chairman Behnam highlighted the following:

- Unlike most cash commodity markets, which are dominated by wholesalers and large financial institutions, the cash market for digital assets is currently characterized by a high number of retail investors mostly engaged in price speculation.
- The speculative fervor around digital assets has led many investors to regularly take on high levels of leverage when trading, leading to volatility and cascading liquidations during price downturns.
- Most investors entrust their digital assets to the platforms upon which they trade, failing to differentiate this type of custody arrangement from that offered by the traditional regulated banking industry. The technical complexities around securing and transacting in digital assets, particularly issues around custody, have resulted in numerous platforms losing funds to hacks, exploits, and poor cyber security.

Chairman Behnam highlighted that CFTC's history, since 2014, in aggressively using its limited fraud and manipulation authority in the digital asset space. These efforts include bringing nearly 50 enforcement actions, overseeing an increasing number of registrants offering digital asset based derivative products, and established dedicated internal functions to stay abreast of the technical innovations fueling this market. Chairman Behnam expressed his view that the CFTC would be well-situated to play an increasingly central role in overseeing the digital asset commodity market.

For the text of Chairman Benham's testimony, please see here.

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DOL's Fiduciary Advice Rule Became Effective February 1, 2022

Synopsis: In December 2020, the U.S. Department of Labor (the "DOL") released a final prohibited transaction exemption called the "Improving Investment Advice for Workers & Retirees Exemption" (the "Exemption"). The Exemption, which became effective February 1, 2022, allows 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 subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA") to receive compensation from third parties in connection with such advice without violating ERISA's prohibited transaction restrictions. The Exemption also reinstates a five-part test used to determine whether a Financial Institution is considered an investment advice fiduciary.

Status: 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.

Limited Enforcement Relief

The exemption was initially scheduled to be effective in February 2021, but its effectiveness was deferred by the incoming Biden administration until December 20, 2021. In order to allow Financial Institutions additional time to comply with the Exemption, on October 25, 2021, the DOL issued the following relief::

- Through January 31, 2022, the DOL will not pursue prohibited transactions claims against investment advice fiduciaries who are working diligently and in good faith to comply with the Impartial Conduct Standards.
- Through June 30, 2022, the DOL will not enforce the specific documentation and disclosure requirements for rollovers in the Exemption.
- Effective February 1, 2022, all other requirements of the Exemption are subject to full enforcement..

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

- Proposed Exemption Release

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DOL Issues Proposed Rules Addressing ESG Investing and Proxy Voting

Synopsis: On October 14, 2021, the DOL issued a proposed rule called the Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights, which would enable fiduciaries of defined contribution (i.e., 401k) and defined benefit pension plans to consider climate change and other ESG factors in determining whether an investment is prudent.

Status: While the proposed rule clearly authorizes consideration of climate change and other ESG factors, some read the proposed rule as not merely authorizing plan fiduciaries to consider ESG factors, but requiring them to do so.

The proposed rule also includes a number of standards that fiduciaries would need to consider with respect to the exercise of proxy voting rights. Among other things, the proposed rule would prohibit a fiduciary from adopting a practice of following the recommendations of a proxy advisory firm or other service provider without a determination that such firm or service provider's proxy voting guidelines are consistent with the procedures and considerations that the fiduciary would undertake if the fiduciary were exercising the voting rights.

With respect to pooled investment vehicles subject to ERISA in which investing plans may have conflicting proxy voting policies, the proposed rule provides that the investment manager must vote (or abstain from voting) the relevant proxies to reflect such policies in proportion to each plan's economic interest in the pooled investment vehicle. The proposed rule allows, however, that such an investment manager may develop a proxy voting policy that the investors are required to accept before they are allowed to invest.

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SEC Charges App Annie and its Founder with Securities Fraud

Synopsis: On September 14, 2021, the SEC announced that App Annie, Inc. and its former CEO agreed to settle securities fraud charges for engaging in deceptive practices and material misrepresentations regarding how alternative data was derived. App Annie and its CEO agreed to pay more than $10 million in penalties.

Status: App Annie is one of the largest sellers of market data on mobile apps. Such data includes estimates on app downloads, frequency of use and app revenue.

Companies shared confidential app performance data with App Annie with the understanding that App Annie would only be using such data on an aggregated and anonymized basis. However, from 2014 through 2018, App Annie did not aggregate and anonymize data in all cases in order to make its market data estimates more valuable for trading purposes.

The SEC also found that App Annie misrepresented to their trading firm customers that the estimates were generated in a manner consistent with consents obtained from companies that shared their confidential data.

For fund managers, the key takeaway from the App Annie case is the importance of due diligence, along with adequate contractual representations and warranties and other protections, in vendor agreements with alternative data providers.

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SEC Case Alleges Insider Trading – Sympathy or Shadow Trading

Synopsis: August 17, 2021, the SEC filed a first-of-its-kind complaint, alleging insider trading against Matthew Panuwat, a former employee of Medivation Inc., a California-based biopharmaceutical company, based on Panuwat's purchase of stock options in InCyte Corp., a competitor to Medivation, days before the announcement that Pfizer Inc. would acquire Medivation. Panuwat allegedly purchased the InCyte options within minutes of learning confidential information concerning the Medivation-Pfizer merger from Medivation's Chief Executive Officer. On January 14, 2022, the trial court judge denied Panuwat's motion to dismiss.

Status: The SEC's case alleges that Panuwat owed Medivation a duty of trust and confidence, including a duty to keep the information regarding the pending acquisition confidential and to refrain from using Medivation's

proprietary and confidential information for personal gain. Consequently, Panuwat breached his duty of trust and confidence, thereby defrauding Medivation. As a result of these allegations, the SEC charged Panuwat with violating Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 thereunder.

Until this case, insider trading cases under Section 10(b) and Rule 10b-5 have been based on three long-standing theories of liability: (i) the "classical" theory, (ii) the "tipper-tippee" theory, and (iii) the "misappropriation" theory. All of these well-established theories involve situations in which the insider, tippee, or misappropriator traded in securities of the company with respect to which the information directly related.

The SEC's case against Panuwat seeks to expand on these theories of insider trading liability to include trading in the securities of a company other than the company to which the information directly relates. The SEC's complaint against Panuwat therefore seeks to expand the basis for insider trading liability to "sympathy" or "shadow" trading, whereby a person uses confidential information about one company to trade in the securities of an "economically linked" company, such as a competitor in the same industry, with respect to which he did not have confidential information. While this is the first time the SEC is bringing a case under this theory, sympathy or shadow trading is not a new concept, and its potential for insider trading liability has long been discussed among securities law practitioners, academics, and others, including in Lowenstein Sandler's annual insider trading and compliance training seminars.

In denying the motion to dismiss, the trial court judge found a breach of a duty owed to Medivation through Medivation's broadly-worded insider trading policy. The trial court judge also found, in rejecting due process arguments, that, although unique, the SEC's theory of liability was within the bounds of the misappropriation theory and the language of the applicable law.

The outcome of this case of first impression and whether the SEC's attempt at expanding the reach of insider trading liability will succeed are unclear, and it may take some time for the courts to reach a conclusion.

Investment advisers and securities market participants are on notice that sympathy or shadow trading is now being pursued by the SEC, demonstrating a more expansive and aggressive enforcement and prosecution approach to insider trading cases. Firms should ensure that their insider trading policies and procedures reflect the most current interpretation of the law. At least until the Panuwat case is finally adjudicated by the courts, market participants should carefully consider updating their monitoring and testing programs in respect of insider trading, including considering an analysis of economically linked companies and whether such securities should be monitored and added to restricted lists.

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

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SEC Raises the Dollar Threshold for Qualified Clients

Synopsis: Effective August 16, 2021, the SEC raised the dollar thresholds by which investors are considered qualified clients.

Status: The SEC adjusted the dollar thresholds by which investors are considered qualified clients pursuant to Section 205-3 of the Advisers Act effective on August 16, 2021.

Pursuant to Section 205-3 of the Advisers Act, registered investment advisers may charge performance-based compensation solely from clients that are qualified clients. This restriction also extends to investors in private funds that rely on Section 3(c)(1) of the Investment Company Act. With the increased dollar thresholds, a client is considered a qualified client if (i) it has at least $1.1 million in assets under management with the applicable investment adviser immediately after the time of its initial investment (Assets-Under-Management Test) or (ii) the investment adviser reasonably believes, immediately prior to the time of the client's initial investment, that the investor has a net worth of more than $2.2 million (Net Worth Test).

Registered investment advisers should update their various offering documents and agreements, including subscription agreements for private funds and forms of advisory contracts and managed account agreements, to reflect the new thresholds. However, registered investment advisers may continue to take performance-based compensation from existing clients and existing private fund investors who satisfied the relevant dollar thresholds at the time of their initial investment with the adviser.

The Lowenstein Sandler LLP Investment Management Group alert analyzing the new qualified client thresholds is available here.

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Privacy Updates

Synopsis: U.S. state legislatures accelerated efforts in 2021 to fill the gap created by the absence of national data protection legislation. California, Virginia, Colorado and Utah passed or amended comprehensive data protection laws which protect the privacy and security of their residents' personal information.

Status: The California Privacy Rights Act ("CPRA") amends and expands the California Consumer Privacy Act of 2018 ("CCPA"), and aligns more closely with the EU General Data Protection Regulation ("GDPR"). Like the CCPA, the CPRA protects the data privacy rights of consumers, which it defines as all California residents and their households. The CPRA is effective on January 1, 2023, with a look-back period beginning on January 1, 2022; enforcement is slated to begin on July 1, 2023. The CPRA introduced key changes to the CCPA, including with respect to threshold requirements, consumer rights to know, delete, correct and/or opt-out, required disclosures, data security, flow down requirements and establishing a new California regulator.

The Virginia Consumer Data Protection Act ("VCDPA") became effective in March 2021, with an enforcement date of January 1, 2023 (aligned with the CPRA effective date). The VCDPA reflects core principles from the CCPA and the CPRA (the "CA Privacy Laws"), and continues the trend of U.S. data privacy laws moving closer to the GDPR. However, there are some key differences from the CA Privacy Laws, such as the absence of a consumer private right of action.

On July 7, 2021 the Colorado Privacy Act ("CPA") became law, with an effective date of July 1, 2023. The CPA confers certain rights on Colorado consumers to control their personal data. Under the CPA, Colorado consumers will have rights that are similar to those granted to California consumers under the CA Privacy Laws, and the rights of Virginia residents under the VCDPA.

On March 24, 2022, the Utah governor signed a consumer privacy law, the Utah Consumer Privacy Act ("UCPA"), marking the fourth state law to create enhanced data privacy rights and protections for consumers. The law will go into effect on December 31, 2023.

Despite grace periods of a year or more, the time left to comply with the CPRA, VCDPA, the CPA and the UCPA is relatively short. After reconciling the laws as they apply to your business, compliance may necessitate modifications to business processes, technological infrastructure, customer-facing websites, apps, brick-and-mortar locations, security measures, and other critical operations.

The Lowenstein Sandler LLP Privacy and Cybersecurity Group alert analyzing the U.S. State Privacy Developments 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 within 45 days of calendar year-end (e.g., February 14, 2022 for filings due in 2022).**
- □ **File Schedule 13G year-end amendments within 45 days of calendar year-end (e.g., February 14, 2022 for filings due in 2022).**
- □ **File Schedule 13H year-end amendments within 45 days of calendar year-end (e.g., February 14, 2022 for filings due in 2022).**
- □ **Amend Schedule 13H quarterly as applicable.**
- □ **File Form 13F within 45 days of quarter-end (e.g., by February 14, May 15, August 14 and November 14 for filings due in 2022).**
- □ **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 conflict assessments and risk assessments.**
- □ **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.

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 within 45 days of calendar year-end (e.g., by February 14, 2022 for filings due in 2022). If you have filed Schedule 13G previously and the information reflected in the schedule is different as of calendar year-end from that previously reported, you are generally required to have amended the schedule within 45 days of calendar year-end. Form 5 must be filed within 45 days of the end of the issuer's fiscal year-end (e.g., for issuers with a December 31, 2021 fiscal year-end, by February 14, 2022 for filings due in 2022). All relevant Section 13 and Section 16 filings should be reviewed periodically to ensure they are current and complete.

BEA and TIC Forms. Firms should periodically review the BEA and TIC forms and filing requirements applicable to such firm.

BEA

BEA forms include a benchmark form, an annual form, a quarterly report, and a transaction form. 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 reported 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% 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: The 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% 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: The 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 5 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: The Benchmark Form.** The benchmark survey is filed every 5 years. A U.S. person (including an individual or an entity) is required to make a BE-180 Filing if the U.S. person (1) is a "Financial Services Provider" and (2) 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.

TIC

- **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 each 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. 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. Form SLT 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.
- **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 most recent survey was due in March 2022 (as of December 31, 2021).
- **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 survey will be as of June 30, 2024, with reports are due no later than the last business day of August 2024.

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 (e.g., by February 14, 2022 for filings due in 2022). 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 (e.g., by February 14, May 16, August 15 and November 14 for 2022). 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.

Form PF. Many smaller private advisors and large private equity advisers will be required to file an annual update to Form PF by April 30, 2022 (120 days after the end of their fiscal year). Quarterly updates to Form PF are required of large hedge fund advisers within 60 days after the end of their fiscal quarter (e.g., for advisers with a December 31, 2021 fiscal year-end, by March 1, May 30, August 29 and November 29 for filings due in 2022) and large liquidity fund advisers within 15 days after the end of their fiscal quarter (e.g., for advisers with a December 31, 2021 fiscal year-end, by January 15, April 15, July 15 and October 15 for filings due in 2022).

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. All necessary year-end audits must be completed 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 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 Confict Assessments and Risk Assessments. As a best practice under the Advisers Act, investment advisers should annually reevaluate their "conflict assessment" and "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 advisers 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. Advisers and funds should periodically determine whether they can rely on this exception and review their privacy notices. 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, 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").**
- ☐ **Review new issue status of clients and investors.**
- ☐ **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.**
- ☐ **Review investment adviser representative state law compliance.**
- ☐ **Conduct periodic review of compliance policies and code of ethics.**
- ☐ **Comply with custody rule annual surprise examination.**
- ☐ **File Form 13F within 45 days of quarter-end (e.g., by February 14, May 16, August 15 and November 14 for filings due in 2022).**
- ☐ **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, 2021 (and with a December 31, 2021 fiscal year-end), must file an annual updated amendment of items on the form by March 31, 2022.

Review New Issue Status of Clients/Investors. Investment advisers should review the new issue status of clients and investors on an annual basis.

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. Such items must be delivered within 120 days of the end of the adviser's fiscal year (e.g., by April 30, 2022 for advisers with a December 31, 2021 fiscal year-end for 2022).

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. Exempt reporting advisers are also advised to have written compliance policies since they are subject to certain regulations.

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 CPOs and 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 within 90 days of year end (e.g., by March 31, 2022 for filings due in 2022).**
- ☐ **Prepare and file certain portions of Form CTA-PR within 45 days after the end of the calendar quarter for CTAs who are NFA Members (e.g., February 14, May 15, August 14 and November 14 for filings due in 2022), and 45 days after the end of the calendar year for other CTAs (e.g., February 14, 2022 for filings due in 2022).**
- ☐ **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, 2022.**
- ☐ **Review CPO delegations in connection with annual pool financial statement filings.**
- ☐ **Annual NFA Bylaw 1101 diligence.**

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 within 90 days of year end (e.g., by March 31, 2022 for filings due in 2022).

Prepare and File Portions of Form CTA-PR. CTAs are required to have completed Form CTA-PR within 45 days after the end of the calendar quarter for CTAs who are NFA Members (e.g., February 14, May 15, August 14 and November 14 for filings due in 2022), and 45 days after the end of the calendar year for other CTAs (e.g., February 14, 2022 for filings due in 2022).

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 within 60 days of calendar year end (e.g., March 1, 2022 for affirmations due in 2022) 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.

NFA Bylaw 1101 Diligence. NFA Bylaw 1101 prohibits NFA members from conducting futures-related business with non-members that are required to be registered with the CFTC but have not done so. Members should compare their list of exempt CPO/CTAs with which the member transacts (including investors in pools) to the information NFA makes available. Members can review exemption information either by using the NFA's BASIC

system or by accessing a spreadsheet (found in the member's Annual Questionnaire) that includes a list of all persons or entities that have exemptions on file with NFA that must be affirmed on an annual basis. Members transacting with a person that previously claimed an exemption from CPO/CTA registration, and that has not filed a notice affirming the exemption, not filed a notice of exemption for another available exemption, or not properly registered and become an NFA member by December 31st of each year, should promptly contact such person to confirm whether the person will file a notice affirming the exemption. If the person does not intend to file a notice affirming the exemption, or the person does not, in fact, file an affirmation within 60 days of year end (e.g., by March 1, 2022 for affirmations due in 2022), then the member must promptly obtain a written representation as to why the person is not required to register or file a notice of exemption and evaluate whether the representation appears adequate. If the member determines that this written representation is inadequate and the person is required to be registered, then the member must cease transacting with the person.

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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

- **"SEC's Division of Examinations Releases 2022 Examination Priorities for Investment Advisers, Broker-Dealers, and Other Financial Industry Professionals"**
  Investment Management Client Alert
  Scott H. Moss, David L. Goret, Kei Komuro
  April 28, 2022

- **"SEC Proposes New Rules and Amended Form PF Requirements for Private Fund Managers; Amended Annual Review Requirements and New Cybersecurity Rule for SEC-Registered Investment Advisers"**
  Investment Management Client Alert
  Scott H. Moss, David L. Goret, Scott Balterman, Zachary D. Furnald
  February 23, 2022

- **"SEC Proposes Changes to Regulation 13D and 13G Beneficial Ownership Reporting"**
  Capital Markets & Securities and Investment Management Client Alert
  Scott H. Moss, Daniel C. Porco
  February 15, 2022

- **"Reminder–Form SHC: Report of U.S. Ownership of Foreign Securities Due March 4, 2022"**
  Investment Management Client Alert
  Scott H. Moss, Eric DiFiore
  January 25, 2022

- **"The Buy Side's Blind Spot: Legal Trading Agreements"**
  Traders Magazine
  Boris Liberman
  December 9, 2021

- **"Investment Organizations Continue to Find Value in Alternative Data, Despite Challenges and Cost"**
  Lowenstein Sandler LLP
  December 1, 2021

- **"Sympathy Trading–SEC Seeks to Expand Insider Trading Liability"**
  Investment Management Client Alert
  Robert G. Minion, Scott H. Moss, Arik Hirschfeld
  August 31, 2021

- **"SEC Raises the Dollar Threshold for Qualified Clients"**
  Investment Management Client Alert
  July 19, 2021

- **"With Implications for Web Scraping by Hedge Funds: Supreme Court Adopts Narrow Definition of "Authorized Access" in Computer Fraud and Abuse Act Case"**
  Investment Management Client Alert
  June 4, 2021

- **"Let the Game(Stop) Begin—Unless You Are a Retail Investor"**
  Bloomberg Law
  Ethan L. Silver, William Brannan
  May 12, 2021

- **"SEC Highlights Need for Improvements in Investment Adviser and Private Fund ESG Policies, Procedures, and Practices"**
  Investment Management Client Alert
  Scott H. Moss, Kenneth D. Kirschenbaum
  April 29, 2021

- **"The Challenges of Managing a Customized Fund Structure: What Fund Managers Should Know about Single-Asset and Single-Investor Funds"**
  Investment Management Client Alert
  March 2021

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 2022
May 2022
Marie T. DeFalco, Scott H. Moss

2022 Woman of Color and Capital Conference
September 29-October 1, 2022
Ekwutozia U. Nwabuzor

MFA Digital Assets Conference 2022
Fall 2022

MFA DATA 2022
Fall 2022

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