2018-19 Compliance Developments & Calendar for Private Fund Advisers

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Introduction

Despite the new administration, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) have both continued to make novel interpretations and to bring enforcement actions that break new ground.

Cryptocurrency Developments. There have been a number of developments in the cryptocurrency space as the law has started to catch up to the technology in 2018:

- The SEC staff made official statements regarding when a token may be a security and may no longer be a security
- The SEC continued to bring actions related to cryptocurrency offerings against market participants, including an adviser to a fund organized to invest in cryptocurrencies that was not structured to rely on Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, and a website that acted as a broker and a dealer in cryptocurrency offerings and secondary trading
- A court ruled that a particular cryptocurrency may be a security such that securities fraud claims may be brought
- Another court ruled that a cryptocurrency may be a commodity so that the CFTC would have jurisdiction
- The CFTC proposed an interpretation of what "actual delivery" constitutes for cryptocurrency forward contracts making it more difficult to trade in or offer cryptocurrency tokens in the spot markets on a delayed basis
- The National Futures Association (NFA) required immediate notice to the NFA if a member planned to engage in cryptocurrency or cryptocurrency derivatives transactions
- The NFA also required specified disclosure by its members to clients regarding cryptocurrency risks and regulation
- The SEC continues to reject the listing of exchange-traded funds that hold cryptocurrency.

In addition to the above, the SEC, the U.S. Department of the Treasury ("Treasury") and their respective staffs are still trying to determine how their current rules apply to cryptocurrency. The SEC staff sent a sweep letter to inquire into the current practices of investment advisers regarding cryptocurrencies, including with respect to custody practices and personal trading rules and valuation practices. The Treasury released a report on July 31, 2018 making several recommendations regarding emerging financial technologies (Fintech)—including cryptocurrencies—for anti-money laundering (AML) and counter-terrorism financing (CTF) purposes. However, unlike the SEC, the CFTC, the NFA and the Treasury's Financial Crimes Enforcement Network (FinCEN), the Internal Revenue Service (IRS) has not published new specific guidance since 2014.

For further information regarding cryptocurrency, see the alert entitled, "Developments in Cryptocurrency in 2018" available here.

Advertising. The SEC continues to focus on investment adviser misrepresentations in communications with potential clients or investors. On July 10, 2018, the SEC announced settlements involving improper testimonials on social media against registered investment advisers and their registered representatives. The two investment advisers hired the same marketing consultant, who contacted their advisory clients and solicited positive testimonials for publication on the firm websites, Google and other social media.[1] In addition, one of the firms published videos on its website and YouTube containing client statements about positive experiences with the firm.[2] Each of these settlements demonstrates the SEC's concerns about the potential for investment advisers to mislead investors by seeking out and "cherry-picking" positive statements from its clients.

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1 Advisers Act Release No. 4962 (Jul. 10, 2018) available here; Advisers Act Release No. 4961 (Jul. 10, 2018) available here; Advisers Act Release No. 4963 (Jul. 10, 2018) available here; Advisers Act Release No. 4964 (Jul. 10, 2018) available here.

2 Exchange Act Release No. 83613, Advisers Act Release No. 4965 (Jul. 10, 2018) available here.

The SEC also brought and settled an action against a registered investment adviser for including back-tested numbers in its advertisements. Beginning in 2003, the adviser used a mix of fundamental and quantitative analyses in making its investment recommendations.[3] The adviser included performance information labeled as "hypothetical" using the quantitative model developed in 2003 to generate back-tested performance for the period of 1995 to 2003. The SEC pursued the adviser despite the fact that the presentations were clearly labeled as "hypothetical" (instead of back-tested) and were exclusively made to institutional clients. The SEC also pursued the adviser for its ambiguous responses to a "request for proposal" that could be understood as claiming that it used quantitative inputs since 1995 instead of starting in 2003.

Quantitative Trading. The SEC also brought and settled an enforcement case against a sub-adviser to several registered investment companies (RICs) for launching a new quantitative investment system without adequate controls and failing to disclose that it ceased to use the system when it discovered the errors. The SEC also brought and settled claims against the adviser to the funds for, among other violations, failing to perform adequate diligence on the sub-adviser and for failing to disclose issues to the board or investors after being discovered.

The sub-adviser hired a recent MBA graduate who had no experience with modelling to design a new quantitative model. The sub-adviser's senior staff did not provide the junior analyst any "meaningful guidance, training or oversight" in modeling. The sub-adviser's internal audit function discovered in 2011 that models were not independently validated, which was about the same time that a fund with the new model was being offered. Despite being aware of the failure to validate the models, management decided to proceed with the new fund and later launched other funds based on the same system still without having validated the model. During later validation of the model, the sub-adviser determined that models included numerous errors in logic, methodology and math, and were not fit for use. The sub-adviser subsequently no longer used the models or largely ignored them. The investment adviser learned of the model's errors in 2014 and recommended terminating the sub-advisory arrangement in 2015 to the RICs' boards without informing them of the errors discovered or the reasons for the terminations.[4] The SEC brought actions for violations of the duty to supervise, the advertising rule, the compliance policies rule and other violations of the Investment Company Act of 1940.

Cross Trades and Principal Transactions. The SEC pursued a number of cases on cross trades and transactions between clients and principals in 2018, focusing particularly on the price used and the depth of the trading markets. In the first action, the SEC brought and settled an action against an investment adviser that priced cross trades of bonds using the bid price (instead of a midpoint between the bid and the ask spread) and challenged the broker to increase the bid prices.[5] In the second action, the SEC pursued an investment adviser and its principal for the principal's purchase of interests in advisory clients in connection with the wind down of the fund client using the previous December's net asset value (NAV). The SEC claimed that the use of the previous December's NAV for the purchase despite subsequently receiving indications that the NAV had increased without informing the limited partners of the increase was a violation of the Advisers Act and related rules.[6] In the third action, the SEC brought an action against the investment adviser to a registered investment company for separate open market transactions involving the registered fund and a private fund client that were conducted one hour apart and using differing brokers. Despite the details of the trade, the SEC believed that, due to the relative illiquidity of the market, the trade was a cross trade under the Investment Company Act of 1940. In the final action, the SEC pursued a registered investment adviser for (i) investing one of its fund clients into another of its fund clients and receiving a fee based on that acquisition without disclosure and consent and (ii) selling receivables from a fund wholly owned by the adviser to another fund client without obtaining disclosure as a principal transaction. The SEC pursued the investment adviser despite the subject securities being receivables relating to defaulted consumer debt, as it viewed the receivables as securities for the purposes of this action.[7]

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3 Advisers Act Release No. 4999 (Aug. 31, 2018) available here.

4 Securities Act Release No. 10539, Advisers Act Release No. 4996 (Aug. 27, 2018) available here.

5 Advisers Act Release No. 4983 (Aug. 10, 2018) available here.

6 Advisers Act Release No. 5001 (Sep. 7, 2018) available here.

7 Advisers Act Release No. 5041 (Sept. 21, 2018) available here.

Advisory Fee Computations. The SEC's Office of Compliance Inspections and Examinations (OCIE) published a risk alert in April of 2018[8] describing repeated compliance failures in the calculation of fees in advisory fees and adequacy of policies. Specifically, the OCIE references frequent deficiencies relating to:

- Using a valuation process that differs from the relevant governance agreement, or improperly using original cost instead of current market value
- Billing fees in a manner contrary to the agreement by billing in advance, with improper frequency or using an improper rate
- Improperly computing advisory fees, through failing to apply the discounts to which the adviser agreed
- Failing to disclose that there were mark ups over expenses or certain fees
- Misallocation of expenses—including distribution and marketing expenses or regulatory filing expenses—to the client (instead of the manager) in contravention of the agreement with the client.

This alert demonstrates OCIE's focus on recalculating amounts charged. As part of its focus on fees, the SEC continued its practice of pursuing investment advisers to private equity funds relating to the acceleration of monitoring fees.

Best Execution. OCIE published another alert in July 2018 regarding common deficiencies in investment advisers' policies and practices to ensure best execution obligations.[9] Specifically, OCIE highlighted the following issues:

- Investment advisers failing to document having evaluated the execution performance at the time of selecting a broker-dealer or on a periodic basis
- Failing to provide an informed review of those employees with knowledge of broker-dealer performance—such as traders—or failing to adequately compare broker-dealers
- Failing to fully disclose execution practices or impacts of soft dollar arrangements
- Insufficiently tailoring policies and procedures or failing to follow them.

Mergers and Acquisitions. The SEC brought and settled two enforcement actions relating to mergers and acquisitions transactions in July of 2018. The first action—against a Canadian acquirer of 16.5% of a New York Stock Exchange-listed issuer—involved failure to file a Schedule 13D on the required 10-day timeframe as part of its acquisition of the company.[10] In the second action, the SEC brought and settled an unusual enforcement action against an issuer for repeatedly failing to provide its unit holders with a recommendation of whether to accept or reject multiple tender offers in violation of the tender offer rules.[11]

SEC Withdraws Proxy Adviser No-Action Letters. On September 13, 2018, the SEC announced—in a sudden reversal—that it was withdrawing two 2004 no-action letters that provided guidance on advisers' use of proxy advisers who may receive compensation and a discussion of such proxy adviser's conflict of interest.[12] The SEC provided no reason for the sudden withdrawal, except that this subject will be discussed at a proxy roundtable discussion to be hosted by the SEC in November of this year. In light of this withdrawal of guidance, advisers are warned to use caution if and when proxy advisers are engaged.

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8 Office of Compliance Inspections and Examinations "National Exam Program Risk Alert" (Apr. 12, 2018) available here.

9 *See* Office of Compliance Inspections and Examinations "National Exam Program Risk Alert" (Jul. 11, 2018) available here.

10 Exchange Act Release No. 83626 (Jul. 13, 2018) available here.

11 Exchange Act Release No. 83627 (Jul. 13, 2018) available here.

12 *See* IM Information Update 2018-02 "Statement Regarding Staff Proxy advisory Letters" (Sep. 2018) available here.

Failure to Supervise Repeat Offender. The SEC also brought and settled an enforcement action against an adviser for failing to adequately supervise its employee, whom it was aware was sharing confidential research, holdings and trading information with his wife, the founder of a separate adviser.[13] Although the adviser had confidentiality policies and procedures in place generally, it did not implement subsequent reasonably-tailored policies and procedures once it repeatedly learned of its employee's continuous, unrelenting behavior.

Inadvertent Custody Clarification. In February 2017, the staff of the Division of Investment Management (the "Division") issued guidance[14] interpreting "custody," for purposes of the custody rule, to include deemed authority under a custodial agreement that does not explicitly restrict the adviser from instructing the custodian to disburse or transfer funds or securities. The Division viewed a registered investment adviser as having custody even if the investment advisory agreement between the investment adviser and its client prohibited the adviser from withdrawing assets in circumstances in which the adviser was not a party to and had not seen the custodial agreement.

In June of 2018, however, the Division limited the scope of its prior guidance.[15] The update clarifies that a registered investment adviser's custody hinges on the registered investment adviser's knowledge of the rights under the applicable custody agreement or constructive knowledge through receipt of the custodial agreement. Advisers that do not have a copy of the agreement or do not know or have reason to know about the agreement are not deemed to have custody due to the rights under the custodial agreement, so long as the adviser recommended, requested or required a client's custodian.

Referral Fees. The SEC brought and settled enforcement actions against two investment advisers that failed to disclose to their clients that they received referral fees from other entities. In the first case, the offending party received "payments . . . based on the total amount of . . . client assets placed or maintained in certain funds advised by the Third Party Advisers." This agreement "was not disclosed, and was in contravention of investment management agreements of two clients." The SEC also charged the adviser with violations of Sections 206(4) and 204(a) for failure to "implement policies and procedures reasonably designed to detect and prevent conflicts of interest and . . . to maintain accurate books." [16]

The second case involved an investment adviser that recommended third-party products to its clients but did not disclose fees it received when clients used those products. The adviser also "made statements concerning the benefits" of the recommended products "that were materially misleading or incomplete."[17] While the first case resulted in a relatively minor fine, the second adviser was forced to give notice to its clients of the proceedings, retrain its staff, submit to independent reviews and pay an $8 million fine.

Investment Advisers' Fiduciary Duties. As part of a group of three proposals regarding fiduciary obligations of investment advisers and broker-dealers, the SEC recently proposed a new interpretation (the "Proposed Interpretation")[18] of the fiduciary duties of investment advisers. Although not yet law, the Proposed Interpretation puts forth the SEC's views on the fiduciary duties of advisers and will likely be relied upon in future cases and enforcement actions by the SEC, even if the Proposed Interpretation is not approved by the SEC.

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13 Advisers Act Release No. 4819 (Dec. 5, 2017) available here. The SEC brought and settled separate actions, as well, with the adviser's employee and his wife, with whom he shared the adviser's confidential information.

14 *See* IM Guidance Update 2017-01 "Inadvertent Custody: Advisory Contract Versus Custodial Contract Authority" (Feb. 2017) available here.

15 *See* Division of Investment Management Staff Responses to Questions About the Custody Rule, Questions II.11 & II.12 available here.

16 Advisers Act Release No. 4932 (June 4, 2018) available here. We note that no case was brought on failure to register as a broker-dealer, but the adviser was affiliated with a broker-dealer.

17 Advisers Act Release No. 4933 (June 4, 2018) available here.

18 *See* "Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation," Advisers Act Release 4889 available here.

The Advisers Act does not explicitly refer to the fiduciary duties of investment advisers. Instead, the U.S. Supreme Court has held that the nature of the relationship and the Act's antifraud provision imply a requirement for investment advisers to act in their client's best interest and to avoid or disclose conflicts of interests.[19] The contours of being a fiduciary under the Advisers Act have been shaped by federal courts and by the Commission's interpretations and rules, which have historically focused on duties of loyalty and disclosure.[20] The Fiduciary Proposal signals a shift away from loyalty and disclosure-based views of fiduciary duties and toward a view focused on substantive duties, which could have far-reaching practical consequences for investment advisers.

The Proposed Interpretation explicitly states that all advisers owe a duty of care, which the SEC suggests includes the duties to (i) provide advice that is in the client's best interest, (ii) seek best execution and (iii) act and provide advice and monitoring over the course of the relationship. To provide advice that is in the client's best interest, the SEC believes that investment advisers must ensure that their advice is suitable (through inquiry of the financial sophistication and situation, risk tolerance and investment objectives) independently, and reasonably investigate all securities and update their advice when circumstances change. They must also seek best execution or strive to make "total costs or proceeds in each transaction [the] most favorable under the circumstances," taking into account qualitative factors like research capabilities. Finally, the SEC particularly focused on the obligation of advisers to monitor their clients' accounts, even if there is no trading in the account. However, this obligation can be limited through contracts or disclosure of the frequency of monitoring.

As part of the duty of loyalty, the SEC proposes more stringent requirements on advisers to seek to avoid conflicts and make full and fair disclosure of all material conflicts of interest that could affect the advisory relationship in a sufficiently specific manner, so that a client can decide whether to provide informed consent to conflicts. Accordingly, investment advisers' policies for allocation of trades would need to be fair, but do not need to be *pro rata*.[21]

The Proposed Interpretation further addresses an investment adviser's ability to disclose or negotiate around their fiduciary duty. The SEC would likely consider any broad release of an investment adviser from fiduciary duty unenforceable. Therefore, investment advisers with conflicts of interest must make full and fair disclosure, but according to the Proposed Interpretation, disclosure may not be sufficient to satisfy the duty of loyalty. The SEC suggests it would violate an adviser's duty of loyalty to infer or accept consent to a conflict where "(i) the facts and circumstances indicate that the client did not understand the nature and import of the conflict or (ii) the material facts concerning the conflict could not be fully and fairly disclosed." For further information, see here.

Form ADV 3. The SEC recently proposed that investment advisers and broker-dealers provide a brief (up to four pages) summary of their roles, services, fees, conflicts and disciplinary information to all clients that are individuals, even those of high net worth. For investment advisers, the disclosure would be included in a new ADV 3.[22] This proposed form would be in addition to the existing disclosure requirements for investment advisers and broker-dealers

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[19] *See SEC v. Capital Gains, et al.*, 365 U.S. 180 (1963).

[20] *See, e.g., Transamerica Mtg. Advisors, Inc. v. Lewis*, 444 U.S. 11 (1979); *Capital Gains, supra* note 3; Investment Advisers Act Release No. 3060 (July 28, 2010).

[21] For more information, see the Akin Gump Investment Management Alert on the Proposed Interpretation available here; *see also* here for comments submitted on the proposal.

[22] For more information, *see* Exchange Act Release No. 34-83063, Advisers Act Release No. 4888 (Apr. 18, 2018) available here. In addition to an introduction, the form would include disclosure relating to: (a) the relationships and services the firm offers to retail investors; (b) the standard of conduct applicable to those services; (c) the fees and costs that retail investors will pay; (d) comparisons of brokerage and investment advisory services (for standalone broker-dealers and investment advisers); (e) conflicts of interest; (f) where to find additional information (including whether the firm and its financial professionals currently have reportable legal or disciplinary events and who to contact about complaints) and (g) key questions for retail investors to ask the firm's financial professional. Subpart (f) would require firms to disclose if they or their employees have any reportable disciplinary issues, and to include language directing prospective customers to sources for more information.

and would point to the current filings for additional information. The SEC has proposed that the form be updated within thirty days of any event that makes the form materially inaccurate. [23]

Valuation. The SEC continues to make valuation concerns an enforcement focus. The SEC brought and settled an enforcement action against an investment adviser that used sham quotes from brokers to artificially increase the fund's net asset value.[24] Separately, the Department of Justice also brought a criminal complaint against an investment company that claimed to be following GAAP principles in valuations under Topic 820, but actually used non-GAAP methods and bid manipulation from friendly brokers to increase the perceived value of investments.[25]

Pay-to-Play Actions. The SEC continued to bring actions for the technical violations of the pay-to-play rule in 2018 against registered investment advisers and even "exempt reporting advisers." Each of the settlements involved contributions to candidates with influence over government entities that were already invested with the relevant adviser, and two of the actions involved an adviser that was able to have the contribution returned, but the returned amount was in excess of the available limit for returned contributions.[26] These actions are an important reminder of the SEC's focus on enforcement cases in this area and the importance of having a robust compliance program and training for employees.

Short and Distort Scheme. The SEC recently brought suit against a hedge fund adviser and his investment advisory firm for allegedly issuing false negative information about a company in which the defendants held short positions in order to drive down the price and reap more than $1.3 million in gains. The SEC noted that "[w]hile short-sellers are free to express their opinions about particular companies, they may not bolster those opinions with false statements. . . ."[27]

Unregistered Broker-Dealer Activity. The SEC continues to focus on unregistered broker-dealer activity, particularly when it comes to lawyers connected to the United States EB-5 Immigrant Investor Program. Last August, the SEC staff settled an enforcement action against a California lawyer for facilitating the purchase of U.S. securities by Chinese investors.[28] The lawyer helped to prepare solicitation materials, recommended and advised potential investors on the merits of the offerings, acted as liaison between the U.S. issuers and the investors, facilitated the execution of the offering documents, and facilitated the transfer of funds for the investment.

Regulation M Informational Barriers. The SEC brought and settled an enforcement action against an investment adviser to a fund with several sub-accounts and sub-managers for selling securities short for hedging purposes in the accounts that the adviser controlled while its sub-managers participated in a registered offering within the five business day period of Regulation M. The adviser had relied on the separate accounts exemption to Rule 105 of Regulation M due to the structure of sub-managers' authority and separate profit and loss centers. The SEC, however, viewed adviser's transparency into the sub-adviser's trades as disqualifying the manager for the "separate accounts" exception.[29]

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[23] Example forms are available here; and here.

[24] Exchange Act Release No. 83186, Advisers Act Release No. 4909 (May 8, 2018) available here.

[25] *See* here.

[26] Advisers Act Release No. 4960 (Jul. 10, 2018) available here; Advisers Act Release No. 4958 (Jul. 10, 2018) available here.

[27] *SEC v. Lemelson, et al.*, No. 1:18-cv-11926 (D. Mass. Sept. 12, 2018) available here.

[28] Exchange Act Release No. 81447 (Aug. 21, 2017) available here.

[29] In that same vein, last year the SEC provided guidance regarding Rule 200(g) of Regulation SHO of the Exchange Act. Rule 200(c) provides that a "person shall be deemed to own securities only to the extent that he has a net long position in such securities." The SEC stated that an adviser with various, independent third party-managed sub-accounts with separate and distinct investment strategies, who do not have transparency into each other's holdings or trade strategies during the trading day, was able to determine ownership under Regulation SHO by net position within such sub-account Exchange Act Release No. 34-80043 (Feb. 14, 2017) available here.

Disclosure of Variance from Redemption Notice Provisions. The SEC staff recently brought and settled an enforcement action against an adviser who—for over a decade—allowed investors to receive redemptions of their investments in less than the stated notice period in the fund's LPA and marketing materials.[30] Of note, in addition to alleging violations based on lack of policies and procedures, the staff pursued the enforcement action under Section 206(4)-8 of the Advisers Act as a disclosure issue, focusing on the adviser's failure to disclose its practice of varying from its stated redemption notice period.

CFTC Enforcement Actions. The Commodity Futures Trading Commission (CFTC) has been active in 2018 in bringing cases involving position limit reporting, registration issues and manipulation. In April 2018, the CFTC settled an enforcement action (the "CFTC Order") against a European agricultural processor of commodities based upon findings that its positions on multiple trading days in ICE Futures Cotton No. 2 contracts, on an aggregated basis, exceeded the speculative position limits established by the CFTC. In addition, the CFTC Order found that the firm and its affiliated accounts executed exchange of futures for physical transactions (EFPs) opposite each other's cotton futures trading accounts, even though their accounts were not independently controlled as required for such transactions not to constitute illegal wash trades. Finally, the CFTC Order found that the processor submitted to the CFTC a Form 304 that failed to represent accurately all required information, including its short cash sales commitments. The CFTC Order required the processor and its affiliates, jointly and severally, to pay a $2 million civil monetary penalty and to cease and desist from further violations of the Commodity Exchange Act, as amended, and CFTC Regulations.

CFTC Action for Cybersecurity Vendor's Actions. The CFTC and other regulatory agencies continue to focus on the policies and procedures of their regulated entities with respect to protecting their client's personally identifiable information and against any vulnerabilities to theft of that personally identifiable information, whether due to the regulated entity's failure or its vendors' failures. The CFTC brought and settled an enforcement action against a futures commission merchant for failing to adequately supervise its information technology provider who ran network infrastructure and was delegated responsibility over parts of the information systems security program. The IT provider installed a network drive that backed up data over the internet to an unprotected location, which was accessed by a third party.[31]

CFTC Proposed Regulations – Swap Dealer De Minimis Exception. On June 12, 2018, the CFTC published a proposed rule that would keep the *de minimis* exception from the definition of a ''swap dealer'' at USD $8 billion in swap dealing activity entered into by a person over the preceding 12 months, rather than decreasing such amount to $3 billion as of December 31, 2019.

CFTC Weighs in on Insider Trading. The CFTC filed a new enforcement action involving "insider trading" in the energy markets, charging an introducing broker and one of its registered Associated Persons with misusing material , nonpublic information in connection with block trades of energy futures contracts, as well as disclosing material nonpublic information to others. [32] This marks the agency's third energy market insider trading case since 2015. The CFTC also created an Insider Trading and Information Protection Task Force to focus on misuse of confidential information in commodities markets, which presumably may result in more insider trading enforcement actions by the agency.

Volcker Rule Exemption – Investment by Banks. On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act, which, among other things, amends the "Volcker Rule" to create an exemption from the Volcker Rule for banks with less than $10 billion in assets and with total trading assets and trading liabilities of less than 5 percent of the entity's total consolidated assets.

In addition, the federal banking agencies, along with the CFTC and the SEC, proposed several changes to the custody rule that would allow banks to operate in a slightly broader capacity in their traditional market making role and would make compliance more streamlined. There is not yet a concrete

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[30] Advisers Act Release No. 4991 (Aug. 22, 2018) available here.

[31] *See* CFTC Docket No. 18-10 (Feb. 12, 2018) available here.

[32] *CFTC v. Eox Holdings LLC, et al.*, Case No. 1:18-cv-08890 (S.D.N.Y. Sep. 28, 2018) available here.

proposal for changing the definition of "covered fund" or to contract the limitations of the Volcker Rule for bank investments in private funds, but the proposals do request comments regarding the definition of "covered funds."[33]

SEC Administrative Law Judges. Also in June 2018, The United States Supreme Court ruled that the SEC's administrative law judges (ALJs) are "officers" of the United States subject to the Appointments Clause of the U.S. Constitution, which requires that "inferior officers" be appointed by the president, the courts of law, or the heads of departments.[34] The Court found that ALJs are "inferior officers" under the Appointments Clause because they (1) hold a continuing office established by law and (2) exercise the same "significant discretion" when carrying out the same "important functions" as special trial judges.[35] Because the ALJ in question was hired by the SEC staff instead of appointed by the Commission (the head of the department), the Court found proceedings presided over by that ALJ were invalid. This decision will likely have broad-reaching implications for ALJs across several federal agencies.

Guidance on MiFID II Compliance. The new legislation under the Markets in Financial Instruments Directive (MiFID II)—the framework of European Union legislation governing the organization and business operations of investment firms that provide investment services to clients relating to financial instruments and the trading of financial instruments—became effective on January 3, 2018. MiFID II and a related Delegated Directive require the "unbundling" of execution and research payments made by investment advisers to broker dealers.[36] However, an adviser may obtain research from third parties if it pays for the research directly from its own resources or if the research is paid for from a MiFID II-compliant research payment account ("RPA"). On October 26, 2017, the SEC staff issued a series of no-action letters providing guidance to clarify certain potential conflicts faced by U.S. advisers subject to MiFID II and U.S. federal securities laws, providing that:

- Investment managers that enter into research payment arrangements required by MiFID II may continue to aggregate orders for their advisory clients, including mutual funds, in reliance on previous no-action guidance[37]
- Providing relief allowing investment advisers to rely on the soft dollar safe harbor in Section 28(e) of the Exchange Act even if they separately pay for research through RPAs, as required under MiFID II[38]
- Providing temporary relief for 30 months from the effective date of MiFID II for broker-dealers that receive MiFID II-compliant research payments, from RPAs or otherwise, from becoming subject to the Advisers Act by being deemed to have provided research services that constitute investment advice under Section 202(11) of the Advisers Act.[39]

National Institute of Standards and Technology Update. In April 2018, the National Institute of Standards and Technology ("NIST") issued its first major update to its Framework for Improving Critical Infrastructure Cybersecurity, more commonly known as the Cybersecurity Framework.[40] The revised

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33 For more information regarding the proposals, see 83 Fed. Reg. 33432 (Jul. 17, 2018) available here.

34 *Lucia v. SEC*, 585 U.S.__ (2018).

35 *Id.* The Court noted that ALJs have nearly all the tools of federal trial judges.

36 *See* Directive 2014/65, of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments and Amending Commission Directive 2002/92 and Council Directive 2011/61, O.J. (L 173) 57, 349 (available here) and equivalent national rules of member states.

37 *See* Division of Investment Management No-Action Letter, Investment Company Institute (Oct. 26, 2017) available here.

38 *See* Division of Trading and Markets No-Action Letter, Securities Industry and Financial Markets Association (Oct. 26, 2017) available here.

39 *See* Division of Investment Management, Securities Industry and Financial Markets Association (Oct. 26, 2017) available here.

40 Framework for Improving Critical Infrastructure Cybersecurity (Apr. 16, 2018) available here.

framework provides more detailed updates on authentication, cybersecurity risk assessments, supply chain management and vulnerability disclosure. In September 2018, NIST further announced that it will be developing a Privacy Framework to address privacy issues on an enterprise-wide basis.[41]

California Consumer Privacy Act of 2018. On June 28, 2018, California hastily passed a landmark act (CCPA) which goes into effect in 2020, granting California residents new, sweeping privacy rights, imposing a range of new requirements on businesses and creating a private right of action for California residents.[42] Then in September, the California Legislature passed additional last-minute revisions to the CCPA, including extending the deadline for the California Attorney General's Office to publish related regulations by six months, making the state preemptive provision effective immediately to avoid the potential effects of similar measures passed by other countries or cities, and clarifying and expanding exemptions related to medical information. It remains to be seen whether, and how, the CCPA may be amended further before it goes into effect on January 1, 2020.[43]

Customer Due Diligence Requirements for Certain Financial Institutions. On May 11, 2018, the U.S. Department of the Treasury's Financial Crimes Enforcement Network's final rule on "Customer Due Diligence Requirements for Financial Institutions" ("CDD Rule") became effective. The CDD Rule clarified and strengthened customer due diligence requirements for covered financial institutions—which includes U.S. banks, mutual funds, brokers or dealers in securities, futures commission merchants and introducing brokers in commodities. As a result, these covered financial institutions must establish and maintain written policies and procedures that are reasonably designed to meet four core requirements:

- Identify and verify the identity of customers
- Identify and verify the identity of beneficial owners of companies opening accounts
- Understand the nature and purpose of customer relationships to develop customer risk profiles
- Conduct ongoing customer due diligence.

With respect to beneficial ownership information, covered financial institutions are required to identify and verify the identity of at least one, and sometimes more than one, individual who controls the legal entity and any individual who owns, directly or indirectly, 25% or more of the legal entity. In conjunction with the effective date of the final rule, the Federal Financial Institution Examination Council (FFIEC) also published new and updated chapters of its BSA/AML Manual to provide additional guidance on the customer due diligence and beneficial ownership rules.

Fifth Circuit Vacates DOL Fiduciary Rule. On March 15, 2018, the U.S. Court of Appeals for the Fifth Circuit struck down the Department of Labor's Fiduciary Rule, which required advisers to act in their clients' best interests in managing retirement accounts, while allowing an exemption for otherwise prohibited transactions as long as financial professionals contractually affirmed their fiduciary status.[44] Accordingly, the various representations in fund offering documents addressing the Fiduciary Rule are unnecessary and should not be included for further offerings.

New Bill to Update AML Reporting and Information Sharing Requirements. On June 12, 2018, House Representatives Stevan Pearce (R-NM) and Blaine Luetkemeyer (R-MO) introduced the Counter Terrorism and Illicit Finance Act (H.R. 6068) to update the Bank Secrecy Act and other AML laws and regulations. This bill, which has been referred to the House Committee on Financial Services, would require the Secretary of Treasury to issue rules permitting any financial institution with an obligation to file suspicious activity reports (SARs) to share information on such reports with the institution's foreign branches, subsidiaries, and affiliates. The bill also proposes to raise the dollar amount thresholds for currency transaction reports ("CTRs") from $10,000 to $30,000 and for SARs from $5,000 to $10,000 and from $2,000 to $3,000. If passed, the bill also requires the Secretary of the Treasury to

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41 *See* here.

42 For more information, *see* Akin Gump's cybersecurity alert available here.

43 For further information, *see* Akin Gump's cybersecurity alert available here.

44 *Chamber of Commerce of the U.S., et al. v. Department of Labor*, No. 17-10238, 2018 WL 1325019 (5th Cir. Mar. 15, 2018).

undertake a formal review of CTR and SAR reporting requirements to potentially streamline and reduce regulatory burdens and ensure that the information collected is of a "high degree of usefulness" to law enforcement.

Pending AML Requirements for Registered Investment Advisers. FinCEN has yet to issue a rule to finalize its August 25, 2015 proposed rule to include certain investment advisers in the definition of "financial institutions" that are subject to the anti-money laundering (AML) requirements of the Bank Secrecy Act. This proposed rule would apply to investment advisers that are registered with the SEC or required to be registered with the SEC (collectively, "registered investment advisers" or RIAs) under Section 203 of the Investment Advisers Act of 1940. Once this rule is finalized, RIAs will have six months to develop and implement an AML program, report suspicious transactions to FinCEN, and comply with certain existing reporting, recordkeeping and information-sharing requirements. We understand that FinCEN may be continuing to review this proposed rule, but the agency has not publicized any timeline for issuing a final rule.

EU Promulgates 5AMLD to Extend AML/CFT Rules to Virtual Currency Exchanges and Other Businesses, Imposes Enhanced Due Diligence for High-Risk Countries, Among Other Changes. On July 9, 2018, the EU's Fifth AML Directive (5AMLD) went into effect. Among other changes, 5AMLD extends or adjusts the scope of the EU's AML regime relating to virtual currency exchanges and wallet providers, as well as certain art dealers, tax advisory services, and estate agents. The Directive also reduces the threshold to identify customers using prepaid cards from EUR 250 to EUR 150 (or EUR 50 in the case of remote payment), and it imposes enhanced due diligence measures on transactions involving certain high-risk countries, including Iran and North Korea. Member States have 18 months, or until January 10, 2020, to implement 5AMLD into national law.

GDPR Guidance for U.S. Advisers. The new European General Data Protection Regulation ("GDPR") took effect in May of this year and expands and clarifies the EU's existing personal data protection framework. GDPR applies not only to EU investment advisers, but also to advisers in a non-EU country who process personal data of persons who are based in the EU. Accordingly, U.S. advisers should perform the following steps to confirm their compliance, if necessary, with GDPR:

- Determine whether any goods or services (including investment services through a fund or a segregated account) are offered to clients or investors that are EEA persons, in particular EEA individuals (including where they operate or participate through a corporate vehicle)
- If so, establish what personal data is held with respect to such investors, how that data is held, and whether any service providers (including administrators, email archiving providers etc.) have access to that personal data
- Action points include ensuring that the relevant service agreements have been updated to reflect the GDPR, where applicable, providing mandatory disclosures to relevant EEA individuals where required (for example, by including updates to the subscription documents) and updating internal policies and procedures.[45]

Updated CRS Diligence with respect to Controlling Persons. The Cayman Islands and certain other jurisdictions currently participating in the Common Reporting Standard ("CRS") regime have lowered the threshold percentage that investment funds must take into account when determining reportable "controlling person" status with respect to entity investors that are, or are treated as, "passive nonfinancial entities" (NFEs) from 25% to 10% of ownership. Thus:

- Existing funds should contact their CRS administrators and confirm the correct "passive NFE" investor information is on file by December 31, 2018
- Controlling persons of new "passive NFE" investors must be documented by reference to the new 10% threshold
- The 2019 CRS filing will need to reflect any reportable controlling person information by reference to the new 10% threshold.

[45] For more information, *see* Akin Gump's alert available here.

FATCA Responsible Officer Certifications. Responsible officers of non-U.S. investment funds that are FATCA compliant foreign financial institutions (FFIs) in jurisdictions without intergovernmental agreement (IGA) (e.g., the Marshall Islands) or with a Model 2 IGA in effect (e.g., Bermuda or Hong Kong) may need to make a one-time certification regarding their diligence with respect to "pre-existing" investors (COPA), and must certify each three-year period that they have met ongoing FATCA compliance requirements. The due date for FFIs required to make these certifications is:

- December 15, 2018, for the first certification period in case of an FFI that was registered on or before December 31, 2014
- July 1 of the third full calendar year following the date an FFI first registered for its FATCA compliance, for future registration periods.

September 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	**3** **Labor Day**	**4**	**5**	**6**	**7**	**8**
9	**10**	**11**	**12**	**13**	**14**	**15**
16	**17** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**18**	**19**	**20**	**21**	**22**
23	**24** TIC Form SLT due date for TIC SLT Filers	**25**	**26**	**27**	**28** Final date for taxpayers to disclose to the IRS under the Offshore Voluntary Disclosure Program (OVDP) certain exposure to criminal or civil liabilities due to willful noncompliance with foreign financial asset or interest reporting requirements	**29**
30						

October 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Amendment to Form 13H due promptly[46] if any changes to information for Form 13H Filers	**2**	**3**	**4**	**5**	**6**
7	**8** **Columbus Day**	**9**	**10**	**11**	**12**	**13**
14	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers (E) FinCEN Form 114 due by FBAR Filers by October 15 following the year being reported (automatic extension from regular April 15 deadline)	**16**	**17**	**18**	**19**	**20**
21	**22** (A) TIC Form SLT due date for TIC SLT Filers (B) TIC Form BQ-1 for TIC BQ-1 Filers (C) TIC Form BQ-2 for TIC BQ-2 Filers (D) TIC Form BQ-3 for TIC BQ-3 Filers	**23**	**24**	**25**	**26**	**27**
28	**29**	**30** (A) Due date for quarterly transaction reports from access persons of RIAs, unless exception or alternate reporting method is used (B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs* [47] (C) Due date for Form BE-577 for all BE-577 Filers* (D) Due date for Form BE-605 for all BE-605 Filers*	**31**			

[46] The Form 13H amendment is due promptly if there are any changes. Some have interpreted "promptly" as up to 10 days under certain other filing regimes, but neither the SEC nor its staff has provided guidance on the definition of "promptly" for Form 13H.

[47] (*) denotes deadlines set by fiscal quarter or year. Adjust deadlines if fiscal year does not end December 31.

November 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	**2**	**3**
4	**5**	6	7	8	**9**	**10**
11	**12 Veteran's Day**	13	14 (A) Form 13F due for Form 13F Filers (B) Form CTA-PR due for all registered CTA Filers (C) Form BE-185 due for BE-185 Filers*	15 (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**
18	**19** TIC D report submission due date for TIC D Filers	20	21	22 Thanksgiving Day	**23** TIC Form SLT due date for TIC SLT Filers	**24**
25	**26**	27	28	29 (A) CFTC Form CPO-PQR due date for Large CPOs* (B) NFA Form CPO-PQR for all but Large CPOs (C) PF due date for Large Hedge Fund Advisers *	**30**	

December 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	**3**	**4**	**5**	**6**	**7**	**8**
9	**10**	**11**	**12**	**13**	**14**	**15** Due date for Model 2 IGA FFIs and non-IGA FFIs FATCA certifications regarding (i) pre-existing investor accounts and (ii) periodic FATCA compliance, for the certification period that ended on December 31, 2017
16	**17** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**18**	**19**	**20**	**21**	**22**
23	**24** Form SLT due date for TIC SLT Filers	**25** **Christmas Day**	**26** If adviser is an RIA, ensure that independent public auditor that is registered with, and subject to inspection by, the PCAOB is engaged for next year for audited financial statements and satisfies independence tests	**27**	**28**	**29**
30	**31** Due date for existing Cayman and certain other investment funds to update existing investor information on file to determine any "controlling persons" they may be required to report for CRS purposes in 2019 by reference to the reduced 10% ownership threshold in any of their entity investors that are, or are treated as, passive nonfinancial entities (NFEs)					

January 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1 **New Year's Day** (A) Effective date for U.S. withholding with respect to investors who are non-U.S. individuals who have provided an otherwise valid IRS Form W-8BEN signed before January 1, 2018 and have not yet updated such form to include their date of birth (B) Until further notice, effective date for 30% FATCA withholding in respect of gross proceeds from the sale or other disposition of any property of the type that can produce US source dividends or interest (e.g., US equities or bonds)	**2** Amendment to Form 13H due promptly if any changes to information for Form 13H Filers[48]	**3**	**4**	**5**
6	**7**	**8**	**9**	**10**	**11**	**12**
13	**14**	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**	**18**	**19**
20	**21** **Martin Luther King, Jr. Day**	**22** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers	**23** TIC Form SLT due date for TIC SLT Filers	**24**	**25**	**26**
27	**28**	**29**	**30** (A) Due date for quarterly transaction reports from access persons of an RIA, unless exception or alternate reporting method is used (B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPO*	**31**		

[48] According to Response 2.5 to the SEC's "Frequently Asked Questions Concerning Large Trader Reporting," Form 13H Filers may file an amendment and an annual amendment together if any changes occurred during the fourth quarter to the information contained in Form 13H.

February 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	**2**
3	**4**	**5**	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	**14** (A) Due date for amendments to Schedule 13G if any changes have occurred (B) Form 13F due for Form 13F filers (C) Due date for annual amendment to Form 13H[49] (D) Due date for Form 5 (likely inapplicable) (E) CFTC and NFA Form CTA-PR due for all registered CTAs (F) Due date for Form BE-577 for BE-577 Filers* (G) Due date for Form BE-605 for all BE-605 Filers*	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**
17	**18** **Presidents' Day**	**19** TIC D report submission due date for TIC D Filers	**20**	**21**	**22**	**23**
24	**25** TIC Form SLT due date for TIC SLT Filers	**26**	**27**	**28**	-	

[49] Not required if quarterly amendment was filed for the fourth quarter.

March 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 (A) TIC Form SHC(A) due date (if requested) (B) CFTC Form CPO-PQR (all schedules) due date for all Large CPOs (C) Form PF due date for Large Hedge Fund Advisers* (but may file for only hedge funds and file for other funds by amendment 120 days after the fiscal year) (D) Deadline to reaffirm exemptions under 4.13(a)(3) and 4.14(a)(8)	**2**
3	**4**	**5**	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	**14**	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers (E) Updated IRS Forms 1042-S due by certain U.S. withholding agents with respect to non-U.S. investors' income subject to U.S. withholding, reflecting such investors non-U.S. taxpayer identification number (Foreign TIN)	**16**
17	**18**	**19**	**20**	**21**	**22**	**23**
24	**25** TIC Form SLT due date for TIC SLT Filers	**26**	**27**	**28**	**29**	**30**
31 (A) Form ADV annual updates due date for RIAs and ERAs* (B) 4.7 Exempt CPOs must electronically file audited annual reports, including statements of financial condition, statements of operations and appropriate footnotes, for their pools with the NFA and distribute them to their investors* (C) Due date for non-U.S. investment funds in non-IGA or Model 2 IGA jurisdictions to complete their FATCA reports and file with the IRS with respect to the immediately preceding calendar year						

April 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 (A) Amendment to Form 13H due promptly if any changes to information for Form 13H Filers (B) CFTC Form CPO-PQR Schedule A due date for all registered CPOs other than Large CPOs (C) NFA Form CPO-PQR for all other NFA members (other than Large CPOs) (D) Form BE-185 due for BE-185 Filers (E) CFTC Form CPO-PQR Schedule B* due date for Mid-Sized CPOs according to the CFTC	**2**	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11**	**12**	**13**
14	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**	**18**	**19**	**20**
21	**22** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers Form SLT due date for TIC SLT Filers	**23**	**24**	**25**	**26**	**27**
28	**29**	**30** (A) Form PF due date for all RIAs with more than $150 million in AUM attributable to private funds (including Large Private Equity Fund Advisers)* (B) Required date for RIAs who are not registered CPOs of funds to have delivered annual audited financial statements (other than funds of funds)*[50] (C) Delivery Date for ADV Part 2A brochure* (D) Due date for quarterly transaction reports from access persons of RIA, unless exception applies or alternate reporting method is used (E) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs* (F) Due date for Form BE-577 for all BE-577 Filers* (G) Due date for Form BE-605 for all BE-605 Filers* (H) Due date for Cayman TIA notification by Cayman investment funds required to submit FATCA and/or CRS report for the first time in respect of calendar year 2018				

[50] If annual audited financial statements are not prepared and distributed to investors, or if the client is not a limited partnership, limited liability company or other pooled investment vehicle, an RIA with custody over the client's account must (A) arrange for a surprise inspection by an independent public accountant, (B) take reasonable steps at least each quarter to ensure that statements are delivered and (C) notify clients/investors of the opening of new accounts.

May 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	**2**	**3**	**4**
5	**6**	**7**	**8**	**9**	**10**	**11**
12 .	**13**	**14**	**15** (A) Form 13F due for Form 13F Filers (B) TIC Form S due for TIC S Filers (C) TIC Form BC due for TIC BC Filers (D) TIC Form BL-1 due for TIC BL-1 Filers (E) TIC Form BL-2 due for TIC BL-2 Filers (F) NFA Form CTA-PR due for all registered CTAs (G) Form BE-185 due for BE-185 Filers*	**16**	**17** .	**18**
19	**20** TIC D report submission due date for TIC D Filers	**21**	**22**	**23** TIC Form SLT due date for TIC SLT Filers	**24**	**25**
26	**27** **Memorial Day**	**28**	**29**	**30** (A) CFTC Form CPO-PQR due date for Large CPOs (B) NFA Form CPO-PQR for all but Large CPOs (C) Form PF due date for Large Hedge Fund Advisers*	**31** (A) Due date for Form BE-11 for all BE-11 Filers (B) Due date for Form BE-15 for all BE-15 Filers (if not e-filing) (C) Due date for Cayman investment funds to complete their applicable FATCA and CRS reports and file with the Cayman TIA with respect to the immediately preceding calendar year (Note: as of 2019 the CRS report will need to reflect any reportable controlling person information with respect to passive NFE investors by reference to the new 10% ownership threshold)	

June 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	**3**	**4**	**5**	**6**	**7**	**8**
9	**10**	**11**	**12**	**13**	**14**	**15**
16	**17** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**18**	**19**	**20**	**21**	**22**
23	**24** TIC Form SLT due date for TIC SLT Filers	**25**	**26**	**27**	**28**	**29** (A) Required date for RIAs to have delivered audited financial statements to fund of funds clients* (B) Required date for 4.7 Exempt CPOs to fund of funds that have filed for an extension to electronically file and distribute audited annual reports to their investors*
30						

July 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 Amendment to Form 13H due promptly if any changes to information for Form 13H Filers	**2**	**3**	**4** Independence Day	**5**	**6**
7	**8**	**9**	**10**	**11**	**12**	**13**
14	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**	**18**	**19**	**20**
21	**22** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers (D) TIC Form SLT due date for TIC SLT Filers	**23**	**24**	**25**	**26**	**27**
28	**29**	**30** (A) Due date for quarterly transaction reports from access persons of RIA, unless exception applies or alternate reporting method is used (B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs (C) Due date for Form BE-577 for all BE-577 Filers* (D) Due date for Form BE-605 for all BE-605 Filers	**31**			

August 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	**2**	**3**
4	**5**	**6**	**7**	**8**	**9**	**10**
11	**12**	**13**	**14** (A) Form 13F due for Form 13F Filers (B) NFA Form CTA-PR due for all registered CTAs (C) Form BE-185 due for BE-185 Filers*	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**
18	**19** TIC D report submission due date for TIC D Filers	**20**	**21**	**22**	**23** Form SLT due date for TIC SLT Filers	**24**
25	**26**	**27**	**28**	**29** (A) NFA Form CPO-PQR for all but Large CPOs (B) CFTC Form CPO-PQR due date for Large CPOs (C) Form PF due date for Large Hedge Fund Advisers*	**30** Form SHL due date	**31**

September 2019

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	**2** **Labor Day**	**3**	**4**	**5**	**6**	**7**
8	**9**	**10**	**11**	**12**	**13**	**14**
15	**16** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**17**	**18**	**19**	**20**	**21**
22	**23** TIC Form SLT due date for TIC SLT Filers	**24**	**25**	**26**	**27**	**28**
29	**30**					

List of Floating Compliance Dates

Requirement	Timing
Review the adequacy of the policies and procedures and the effectiveness of their implementation (including, but not limited to, Regulation S-ID) and make a written record of the review and any actions taken as a result	No less frequently than annually.
Annual Amendment to Form D	Annually on or before the first anniversary of the last filed Form D or amendment.
Annual holdings requirement from "access persons" of RIA	Once every 12-month period.
Request new "covered associates" to report prior political contributions	Prior to hiring.
Retain PCAOB registered and inspected independent auditor to prepare internal control report within six months and once per calendar year	If related person serves as qualified custodian for an RIA.
Distribution of annual privacy notice	RIAs must distribute a clear and conspicuous notice to customers, not less frequently than annually, that accurately reflects the RIA's policies and practices. RIAs may determine when they will distribute the notice, but they must apply to the customer on a consistent basis. An exception applies to these annual delivery obligations if the RIA does not share nonpublic personal information (other than to certain necessary service providers) and has not changed its policies or practices since the privacy notice was previously distributed to customers. Similar requirements apply to registered CPOs and CTAs under Part 160 of the CFTC's regulations and to exempt investment advisers under the FTC's regulations.
New issue certification under FINRA Rules 5130 and 5131	A person wishing to receive an allocation of an initial public offering that is a "new issue," as defined under FINRA rules, from a broker-dealer must be able to represent to the broker-dealer that it is not (i) a "restricted person," consisting of financial industry insiders; (ii) a "covered person," consisting of persons that are executive officers or directors of public companies or covered nonpublic companies that are, or may be, investment banking clients of the "broker-dealer"; or (iii) an entity with direct or indirect ownership by persons described in (i) or (ii) above the limits described in the FINRA rules. A fund manager must receive a certification at least every 12 months from the relevant fund's investors that they do not fall into the above restricted categories. The certification may be by "negative consent."
NFA Self-Examination Checklist	NFA members must complete a self-examination checklist at least once per year and retain it in their records.
NFA Annual Update of Registration Information and Payment of Dues	NFA members must update their NFA registration information via NFA's online registration system and pay annual NFA dues on or before the anniversary date that the CPO's or CTA's registration became effective.

Requirement	Timing
Follow-up Confirmation of Bad-Actor Status	Staff interpretations require that issuers conducting long-term offerings periodically confirm that persons that could cause a "bad-actor" disqualification have not committed a bad act. This confirmation may be by "negative consent" or, depending on the potential bad actor, by database searches.
Initial filing of partial Form ADV Part 1A for ERAs	Sixty days after relying on the exemption for private fund advisers in Section 203(m) or venture capital advisers in Section 203(l) of the Advisers Act.
Transition from ERA to RIA status	Midsized fund advisers generally must apply for registration within 90 days after filing the first annual ERA update showing fund RAUM in excess of $150 million, but must be fully registered prior to accepting any client that is not a private fund. Venture capital advisers must be registered prior to accepting any client that is not a venture capital fund.
State Blue Sky Filings	Within 15 days of sale, depending on requirements of state of residence of investor.

List of Forms Without Fixed Filing Dates

Filings Not Included on Calendar or Above List	Timing
Exchange Act Forms	
Form 3	Either (i) within 10 days after a person becomes (a) a 10 percent beneficial owner of a class of voting equity securities that is registered under Section 12 of the Exchange Act or (b) a director or executive officer of the issuer of such securities, or (ii) in the case of an issuer that is registering securities for the first time under the Exchange Act, no later than the effectiveness of the registration statement under the Exchange Act.
Form 4	By the end of the second business day following a reportable transaction.
Initial Schedule 13D	Within 10 days after a direct or indirect acquisition of a voting equity security of a class that is registered under the Exchange Act that results in the beneficial ownership of more than 5 percent of the class. Note that a Schedule 13D or 13G may be required, depending on the facts and circumstances surrounding the investment. See Regulation 13D-G.
Schedule 13D Amendment	Promptly[51] after a material change.
Initial Schedule 13G	Varies, depending on type of filer, from 45 days after calendar year to 10 days after date of acquisition.
Interim Schedule 13G Amendment	Depending on the type of filer, amendment is required either 10 days following the end of the month or promptly after a reporting person's beneficial ownership exceeds 10 percent, and subsequently for any increase or decrease in beneficial ownership by 5 percent.
Initial Form 13H	Promptly after being a Form 13H Filer.
Form BE-13	Within 45 days of establishment of position or increase in investment to $3 million.
Securities Act Forms	
Initial Form D	Within 15 days after sale to SEC and many states.
Form 144	Filed with the SEC on the trade date if selling as an affiliate under Rule 144 under the Securities Act.
HSR Act	
HSR Filings	Prior to purchasing securities in excess of filing threshold.

[51] The materiality of the change dictates the required promptness of the amendment.

List of Forms and Obligations in Future Years

Form or Obligation	Due	Description
TIC SHC	March 2022	Report of U.S. Ownership of Foreign Securities (as of December 31, 2021).
TIC SHL(A)	August 2020-2023	Report of Foreign Residents' Holdings of U.S. Securities.
BE-10	May 2020	Benchmark Survey of U.S. Direct Investment Abroad.
BE-12	May 2023	Benchmark Survey of Foreign Direct Investment in the United States.
BE-180	October 2020	Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons.

"***4.7 Exempt CPO***" means a registered CPO that has filed for reporting disclosure and recordkeeping relief under Regulation 4.7.

"***4.13 Exempt CPO***" means any person who claims an exemption from registration under CFTC Regulation 4.13 and has made the appropriate notice filing with the NFA.

"***BE-11 Filer***" means any person contacted by the Bureau of Economic Analysis (BEA) and informed that it is required to file an "Annual Survey of U.S. Direct Investment Abroad (Form BE-11)."

"***BE-13 Filer***" means a U.S. person that (i) has a non-U.S. person acquire a more than 10 percent interest or (ii) such foreign person makes a new investment, in each case, resulting in a value of $3 million.

"***BE-15 Filer***" means any person contacted by the Bureau of Economic Analysis (BEA) and informed that it is required to file an "Annual Survey of Foreign Direct Investment in the United States (Form BE-15)."

"***BE-180 Filer***" means a U.S. person that sold or "purchased" more than $3 million in financial services to or from a non-U.S. person.

"***BE-185 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons."

"***BE-577 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of U.S. Direct Investment Abroad (Form BE-577)."

"***BE-605 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the United States (Form BE-605)."

"***Cayman TIA***" means the Cayman Islands tax information agency.

"***CRS***" means the "Common Reporting Standard," a multilateral system of automatic exchange of information introduced by the Organization for Economic Co-operation and Development (OECD) and that imposes a variety of diligence and reporting requirements on financial institutions, including investment funds, located in participating jurisdictions.

"***ERA"*** or ***"Exempt Reporting Adviser***" means an investment adviser that qualifies for exemption from registration as an investment adviser with the SEC under either (i) Section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, as defined in Rule 203(l)-1 under the Advisers Act, or (ii) Rule 203m-1 under the Advisers Act because it is an adviser solely to private funds and has regulatory AUM in the United States of less than $150 million.

"***FATCA***" means the U.S. Foreign Account Tax Compliance Act, which imposes a variety of diligence, reporting and withholding requirements on U.S. financial institutions and non-U.S. financial institutions (FFIs), including investment funds, as modified by certain intergovernmental agreements (IGAs) between the United States and its partner jurisdictions.

"***FBAR Filer***" means any U.S. person having certain financial interests in, or signatory or other authority over, a bank, securities or other type of financial account in a foreign country and that must electronically file a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

"***Form 13F Filer***" means any entity with investment discretion over at least $100 million in Section 13(f) securities (set forth on list) on the last trading day of any month in the prior year.

"***Form 13H Filer***" means any person with investment discretion over accounts with transactions of (i) 2 million shares, or $20 million in fair market value in NMS securities; or (ii) 20 million shares, or $200 million in fair market value in NMS securities.

"***FRBNY***" means the Federal Reserve Bank of New York and its staff.

"***Hedge Fund***" means any private fund that (i) has a performance fee or allocation, calculated by taking into account unrealized gains (other than unrealized gains taken into account for only the purpose of reducing fees or allocations to reflect unrealized losses), that is paid to an investment adviser (or its related person); (ii) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (iii) may sell securities or other assets short, other than short-selling, that hedge currency exposure or manage duration of investments. Vehicles established for the purpose of issuing asset-backed securities are explicitly excluded from the above definition, but commodity pools are included if they are also private funds.

"***IRS***" means the U.S. Internal Revenue Service.

"***Large CPOs***" means any registered CPO that had at least $1.5 billion in aggregated pool AUM as of the close of business on any day during the calendar quarter.

"***Large Hedge Fund Advisers***" means RIAs that have $1.5 billion[52] or more in regulatory AUM attributable to hedge funds (including private fund commodity pools) as of the end of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter.

"***Large Private Equity Fund Advisers***" means RIAs that have $2 billion or more in regulatory AUM attributable to private equity funds as of the last day of the most recent fiscal year.

"***Liquidity Fund***" means any private fund that seeks to generate income by investing in a portfolio of short-term obligations to maintain a stable net asset value per unit or minimize volatility.

"***MSP***" means a major swap participant that is registered with the CFTC.

"***Mid-Sized CPOs***" means any registered CPO that had at least $150 million in aggregated pool AUM as of the close of business on any day during the calendar year.

"***Private Equity Fund***" means any fund that does not provide redemption rights in the ordinary course and is not a hedge fund, liquidity fund, venture capital fund, real estate fund or securitized asset fund.

"***SD***" means a swap dealer that is registered with the CFTC.

"***TIC BC Filers***" means any U.S. resident financial institution that has either $25 million or more in U.S. dollar-denominated claims against persons in any one foreign country or $50 million in total claims against all foreign residents. The FRBNY has provided guidance that the claims reportable on Form BC for investment managers to private funds are the claims of the investment managers themselves. The claims may include loans and loan participations, foreign brokerage accounts and short-term securities.

"***TIC BL-1 Filers***" means any U.S. resident financial institution (including, but not limited to, private equity funds, hedge funds, investment advisers, broker-dealers and banks) that has either $25 million or more in U.S. dollar-denominated liabilities to persons in any one foreign country or $50 million in total liabilities to all foreign residents. The FRBNY has provided guidance that the liabilities reportable on Form BL-1 for investment managers to private funds are the liabilities of the investment managers themselves. Liabilities may include loans and loan participations from a foreign resident person and issuance of short-term securities.

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[52] The monetary value of the above thresholds must be calculated in accordance with the aggregation rules in Form PF. Under those rules, (1) assets attributable to funds with a similar strategy, (2) assets managed by related persons that are not separately operated, (3) any parallel managed accounts (unless greater in value than the relevant fund assets individually or in the aggregate) and (4) private funds in a master-feeder arrangement must be combined with the fund assets being determined. Investments in other private funds, however, may be excluded. For further information relating to aggregation, see Form PF Frequently Asked Questions (available at https://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml).

"***TIC BL-2 Filers***" means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either $25 million or more in U.S. dollar-denominated liabilities to persons in any one foreign country or $50 million in total liabilities to all foreign residents. Liabilities may include (i) short-term securities and negotiable certificates of deposit, which are liabilities of U.S. resident customers to a foreign resident and are held by the reporting person as custodian; (ii) liabilities of U.S. residents to foreign managed offices of the reporting person; (iii) liabilities to U.S. residents pursuant to loans serviced by the reporting person; and (iv) short-term negotiable securities issued by the reporter directly into a foreign market. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a "managed foreign office" of the manager.

"***TIC BQ-1 Filers***" means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either $25 million or more in U.S. dollar-denominated claims against persons in any one foreign country or $50 million in total claims against all foreign residents. Claims may include (i) short-term securities and negotiable certificates of deposit, which are liabilities of foreign residents to U.S. residents and are held by the reporting person as custodian; (ii) claims of U.S. residents against managed foreign offices of the reporting person; (iii) claims of U.S. residents against foreign offices of the reporting person due to sweep accounts; and (iv) brokerage balances of U.S. residents placed abroad through the reporting person. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a "managed foreign office" of the manager.

"***TIC BQ-2 Filers***" means any U.S. resident financial institution with direct claims or liabilities or customer accounts with claims or liabilities (including, but not limited to, investment advisers, broker-dealers and banks) that has either $25 million or more in foreign currency-denominated claims or liabilities to persons in any one foreign country or $50 million in total claims or liabilities against all foreign residents. Claims and liabilities are as defined above and include those for the investment manager itself and for its client funds.

"***TIC BQ-3 Filers***" means any U.S. resident financial institution with $4 billion in amounts reported on Forms BC, BL-1 and BQ-2.

"***TIC D Filers***" means all entities resident in the United States that have derivative contracts that exceed the following exemption levels: (i) the total notional value of worldwide holdings of derivatives (including contracts with U.S. and foreign residents, measured on a consolidated worldwide basis) for the reporter's own account exceeds $400 billion; or (ii) the amount reported by a TIC D reporter for grand net total settlements (as defined in the form) exceeds $400 million (either a positive or negative value).

"***TIC S Filers***" means U.S. entities who, during the reporting month, (i) conduct transactions in U.S. long-term securities directly from or to foreign residents; and/or (ii) conduct transactions in foreign long-term securities directly from or to foreign residents or have foreign-resident agents conduct transactions in these securities on their own behalf or on behalf of customers, if the total reportable transactions in purchases or sales of long-term securities amount to $350 million or more during the respective month.[53] If a reporting person's repayable transactions exceed the $350 million threshold for any month, it must report for the remainder of the year.

"***TIC SLT Filer***" means any person, when consolidated with any U.S. parts of its organization and any U.S. persons that it advises, that has $1 billion in (i) foreign long-term securities (including equity securities) that it owns, (ii) foreign long-term securities that it holds for others and (iii) long-term securities that it has issued to other persons.

[53] U.S. resident entities should consolidate all of their subsidiaries, except for foreign-resident offices and subsidiaries, in accordance with U.S. GAAP. If the level of transactions meets or exceeds the exemption level in any month, reporting is required for the remainder of the calendar year, regardless of the level of transactions in subsequent months, and for both purchases and sales even if only one meets or exceeds the exemption level. For further information, see Instructions for the Monthly TIC Form S (available at https://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-s.aspx).

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STRAUSS HAUER & FELD LLP

Akin Gump Strauss Hauer & Feld LLP is a leading global law firm providing innovative legal services and business solutions to individuals and institutions. Founded in 1945 by Richard Gump and Robert Strauss with the guiding vision that commitment, excellence and integrity would drive its success, the firm focuses on building lasting and mutually beneficial relationships with its clients. Our firm's clients range from individuals to corporations and nations. We offer clients a broad-spectrum approach, with over 85 practices that range from traditional strengths such as appellate, corporate and public policy to 21st century concentrations such as climate change, intellectual property litigation and national security