U.S. Regulatory Update

Summer 2023

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Introduction

School's NOT Out for Summer

Welcome to our Regulatory Update newsletter, where you will find practical thought leadership distilling the latest regulatory headlines. For all firms this month, we highlight updates to the Securities and Exchange Commission's (SEC's) rulemaking calendar. For advisers, we break down the recent money market fund reforms, including new information that large liquidity funds will be required to report on Form PF. For broker-dealers, we share highlights of FINRA's recent financial reports. And for National Futures Association (NFA) member firms, we report on the Commodity Futures Trading Commission (CFTC) Division of Enforcement's creation of two new task forces. Finally, we share our "lessons learned" from recent enforcement activity and suggested resources for your additional research.

All Firms

Updated Rulemaking Calendar for Key SEC Proposals

by Jaqueline Hummel

While summer is usually a time to relax and take a vacation from normal activities, the SEC continues their agenda of proposing and implementing new rules and regulations. Below is a snapshot of recent rulemaking activity that may affect your firm.

Rule	Description	Proposal Date	Anticipated Implementation
Form PF Amendments - Large Private Equity Advisers and Large Liquidity Fund Advisers **Release No. IA-5950**	Proposed amendments to Form PF to decrease reporting threshold for large private equity advisers and require these advisers to provide additional information about the private equity funds they advise. These amendments require certain advisers to hedge funds and private equity funds to provide current reporting of events that could be relevant to financial stability and investor protection, such as extraordinary investment losses or significant margin and counterparty default event. Additional amendments require large private equity funds and large liquidity funds to provide more information to be used for risk assessment.	January 26, 2022	October 2023 **Amendment to Form PF Reporting for Large Liquidity Fund Advisers Adopted July 12, 2023** (See **Release No. 33-11211**)
Form PF Amendments - All Filers and Large Hedge Fund Advisers Release **No. IA-6083**	Proposed amendments to Form PF to require current reporting upon the occurrence of key events. This will decrease the reporting threshold for large private equity advisers and require reporting of certain additional information.	August 10, 2022	TBD
Safeguarding Advisory Client Assets (Amendments to the Custody Rule) **Release No. IA-6240**	**Proposed amendments** to existing rules and/or adopt new rules under the Investment Advisers Act of 1940 to improve and modernize the regulations around the custody of funds or investments of clients by Investment Advisers.	February 15, 2023	October 2023

Rule	Description	Proposal Date	Anticipated Implementation
Documentation of Registered Investment Adviser Compliance Reviews (Private Funds Reform Rule) **Release No. IA-5955**	Proposed rules under the Investment Advisers Act of 1940 to address lack of transparency, conflicts of interest, and certain other matters involving private fund advisers.	February 9, 2022	October 2023
Cybersecurity Risk Management **Release No. 33-11028, IA-5956**	**Proposed rules** under the Investment Advisers Act of 1940 to enhance fund and investment adviser disclosures and governance relating to cybersecurity risks. This includes requiring registered investment advisers and investment companies to adopt and implement written cybersecurity policies and procedures reasonably designed to address cybersecurity risks. These proposals also require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the SEC.	February 15, 2023	October 2023
Outsourcing by Investment Advisers **Release IA-6167**	**Proposed rules** related to the oversight of third-party service providers.	October 26, 2022	April 2024
Regulation S-P Amendments **Release No. 34-97141; IA-6262**	Proposed rule amendments requiring brokers and dealers, investment companies, and investment advisers registered with the SEC to adopt written policies and procedures for incident response programs to address unauthorized access or use of customer information, including procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately.	April 15, 2023	April 2024

Investment Advisers

SEC Drops "Swing Pricing" for Money Market Funds and Increases Liquidity Requirements

by Jaqueline Hummel

The SEC finalized **changes to Rule 2a-7**, the rule governing money market funds under the Investment Company Act of 1940. These changes were originally proposed to address concerns about institutional prime and institutional tax-exempt (i.e., municipal) money market funds, which experienced large outflows during the COVID-related market turbulence in March 2020. The goal of the changes, **according to the SEC**, is to "increase minimum liquidity requirements for money market funds to provide a more substantial liquidity buffer in the event of rapid redemptions" and "remove provisions in the current rule that permit a money market fund to suspend redemptions temporarily through a gate and allow money market funds to impose liquidity fees if their weekly liquid assets fall below a certain threshold."

The three key amendments include increased minimum daily and weekly liquidity requirements, removal of temporary redemption gates, and a modified liquidity fee framework instead of swing pricing. The effect of the changes will require institutional prime and institutional tax-exempt money market funds to impose mandatory liquidity fees when a fund experiences net redemptions that exceed five percent of net assets, unless its liquidity costs are de minimis (i.e., less than 1 basis point). Retail money market funds and government money market funds are not subject to this requirement. The amendments will become effective 60 days after publication in the Federal Register.

The SEC also adopted limited changes to Form PF section 3 that affect large private liquidity fund advisers, defined as SEC-registered investment advisers that advise at least one liquidity fund and manage at least $1 billion in liquidity fund and money market assets. The SEC's amendments require large liquidity fund advisers to report substantially the same information as required for registered money market funds on Form N-MFP. Essentially, these advisers will be required to provide "more granular information regarding large liquidity fund operational information and assets, portfolio holdings, financing, and investor information as well as a new item concerning the disposition of portfolio securities." The amendments to Form PF will become effective June 11, 2024.

Broker Dealers

SEC Proposes Amendments to Broker-Dealer Consumer Protection Rule

by Francios Cooke

If the **SEC's amendments to Rule 15c3-3** under the Securities Exchange Act of 1934 are adopted, carrying broker-dealers will be required to compute and make deposits into their customer reserve accounts daily instead of weekly, including the carry firm's computation and deposits required for broker-dealer's proprietary accounts carried by the firm, known as PAB account holders (PAB). The SEC noted that carrying broker-dealers could receive large cash inflows prior to the next weekly required customer and PAB reserve computations and accompanying deposits. In these instances, the value of the cash inflows might not equal the net cash owed to customers and PAB account holders previously calculated. The SEC felt this mismatch would pose a risk to the carrying broker-dealer's customers and PAB account holders in the event the carrying broker-dealer failed financially. The proposed daily computation would address this potential risk. The daily reserve computation requirement would apply to carrying broker-dealers with average total credits equal to or greater than $250 million as of the close of the previous business day. Comments are due 60 days after the proposal's publication on the SEC website, or 30 days after publication in the Federal Register, whichever is longer.

FINRA Reports its 2022 Annual Financial Results and Use of 2022 Fine Monies

by Doug MacKinnon

On June 28, 2023, the Financial Industry Regulatory Authority (FINRA) published its 2022 **Annual Financial Report,** which reported a net loss of $218.1 million for the year (compared to net income of $218.8 million for its fiscal year 2021). Drivers for the net loss include:

- Revenue declines attributed to "the decrease in the number of public offerings and lower Trading Activity Fees", and
- An increase in operating expenses attributed to "investments in staff and technology to strengthen our capabilities to fulfill long-standing regulatory responsibilities, address more recent expansions in the scope of our duties, and meet new challenges in the markets."

The publication of its annual financial report follows FINRA's May 31, 2023 publication of its **Report on Use of 2022 Fine Monies**, which offers additional insight into its financial matters. In 2022, FINRA issued $48.1 million in fines. FINRA can then use those fines to pay for certain expenditures, including:

- Capital initiatives and strategic expenditures, such as advanced analytics transformation, examination and investigation program tools, enforcement digital transformation and enforcement tools, and risk monitoring platform
- Investor and FINRA employee education
- Promotion of compliance by member firms through education

In 2022 FINRA reported fine eligible expenditures of $111.4 million. Expenses over and above the $48.1 million were funded from FINRA's reserves.

Finally, President and CEO, Robert Cook, earned $3.68 million in 2022, up from $3.3 million in 2021. Cook's base salary was also increased by $100,000 for 2023.

Interestingly, **FINRA's June 2023 disciplinary actions** reported several notably large fines:

- $3,000,000 for erroneously marking short sell orders as "long"
- $1,081,956 for failing to establish and maintain a reasonably designed supervisory system to comply with suitability obligations for the short-term sale of syndicate preferred stocks
- $2,500,000 for faulty reporting of option positions to the Large Options Positions Reporting system

For more insights into FINRA's recent financial reports, check out this article by Mason Braswell of AdvisorHub: **FINRA Posts $218 Million Net Loss for 2022; CEO Pay Jumps 11.5%**.

NFA Member Firms

CFTC Division of Enforcement Creates Two New Task Forces

by Grazia Gatti

On June 29, 2023, the CFTC **announced** the establishment of the Cybersecurity and Emerging Technologies Task Force and the Environmental Fraud Task Force, each comprised of attorneys and investigators who will prosecute cases and serve as subject matter experts. The CFTC decided to establish both task forces because of an increase in the potential for cybersecurity attacks and emerging technology security concerns, as well as fraudulent and manipulative environmental sustainability claims.

The Cybersecurity and Emerging Technologies Task Force's goal is to ensure CFTC registrants maintain adequate cybersecurity policies and controls for protecting customer information and accounts in the case of a cyber event. The Task Force will also prosecute any hacks, exploits, and account intrusions aimed at manipulating the commodities market, and any technology-enabled theft of material non-public information via a cyber event. The Cybersecurity and Emerging Technology Task Force will also explore the role that AI and machine learning may play in potential violations of the Commodity Exchange Act (CEA) and CFTC regulations.

The Environmental Fraud Task Force was established to address fraud and other misconduct in the derivatives markets as well as spot markets, such as carbon credit markets. The Task Force will also look into fraud and misrepresentations by CFTC registrants about their environmental products and investment strategies. On June 20, 2023, the CFTC Whistleblower Office issued an **alert** about how whistleblowers can report fraud involving manipulative and wash trading, ghost credits, double counting, fraudulent statements about the material terms of the carbon credits, and potential manipulation of tokenized carbon markets.

Lessons Learned

Settlement Over Private Equity Fee Miscalculations Stemming from Permanent Impairment Policy

by Vivek Pingili

Over the last few years, the SEC has brought multiple enforcement actions against private markets fund managers for alleged lack of valuation-related conflict controls and limited partnership agreement (LPA) operational compliance failures involving permanently impaired investments that impacted their funds' post-commitment period management fee calculations. The **SEC announced** another set of charges involving a large private equity firm that invests in growth-stage software and internet businesses.

The **enforcement order** fleshes out the SEC's expectations about how private markets fund managers can effectively navigate conflicts in their valuation processes that could (and often do) have an impact on management fee revenue streams from their funds during their respective post-investment periods. More broadly, the enforcement order is a good example of at least two big-picture themes in the private markets fund manager space that the SEC has focused on to varying degrees over the last decade: (i) LPA operational compliance (focusing on fund economics and conflicts-related matters); and (ii) the SEC's evolving expectations about how to address vague LPA provisions. These themes have implications well beyond valuation conflicts and management fee calculations and, as such, the lessons from this enforcement action have broad application.

Highlighted below are the key allegations and takeaways.

- **Lack of Granularity in LPAs**: As is common in the closed-end fund space, the governing documents of multiple private equity funds managed by the firm specified that during these funds' post-investment period, the management fee base for a fund would be its invested capital (essentially the acquisition cost of portfolio company investments made by the fund). The governing documents also specified that in the event an investment in a portfolio company was "permanently impaired", the management fee basis would undergo a reduction to reflect the impairment. However, none of the LPAs defined what would constitute a "permanent impairment". Additionally, the fund's LPA granted the private equity firm the discretion to reverse permanent impairment decisions if the investment's value was deemed to have subsequently increased due to changed circumstances. However, the LPA addressed this at a "high level and without detail".
  - ***Takeaway***: This enforcement action further crystallizes the SEC's expectation that seemingly vague LPA provisions, especially around topics of material importance to the limited partners (LPs), must be rectified in writing – either via an LPA amendment (less common and more cumbersome approach) or internal written policies and procedures designed to "fill the gap". Further, as noted in greater detail below, transparency around internal policies and procedures (including their implementation on a case-by-case basis) is as critical as adopting such policies and procedures.

- *Takeaway:* Many private markets firms are currently evaluating how best to address the SEC's continued push for more granularity around impairment decisions. Notwithstanding these SEC-driven pressures, firms should be especially mindful that granularity can be a double edge sword - excessive detail in defining impairment criteria (or criteria for reversing an earlier impairment determination) may sometimes be counter-productive, leading to illogical results or unnecessary technical violations (as arguably no single set of criteria can adequately capture every situation that may arise across one or more funds' portfolios), and thus not further LP interests. Impairment decisions are inherently gray and complex, a fact well understood by most seasoned LPs in the private market sector. As such, the key challenge here is to: (i) strike an appropriate balance between detail in procedures (designed to provide basic structure but avoid the pitfalls of adopting arbitrary criteria) versus documentation designed to flesh out in robust detail how a permanent impairment decision was reached in a particular instance (and why such determination is reasonable and defensible) and (ii) a high level of transparency to LPs in real time around such a determination.

- **Issues with Complex and Seemingly Arbitrary Multi-Prong Permanent Impairment Criteria**: While the private equity firm sought to bring granularity to its permanent impairment decision-making process by, in practice, adopting a multi-prong set of criteria, the SEC took issue with this approach for multiple reasons. First, the SEC alleged that the criteria seemed to have been developed in a manner that was arbitrary, narrow, subjective, and essentially difficult to satisfy, thereby creating a situation where the firm had ample flexibility to avoid a permanent impairment determination. Such an approach gave rise to a material conflict of interest that should have been disclosed to LPs. Second, the firm did not adopt written policies and procedures memorializing the foregoing criteria or addressing the foregoing conflict would be mitigated.

  - *Takeaway*: As previously noted, adopting pre-defined valuation impairment criteria as a knee-jerk reaction to this case may not be the prudent approach for many firms. In fact, in multiple recent SEC exams where the SEC staff have pushed private markets fund managers to formalize their valuation practices on impairments (and seemingly even initially suggested such managers adopt pre-determined criteria for assessing valuation impairments), managers have successfully convinced the staff that the better approach is to develop written documentation of determination criteria on a case-by-case basis, along with the rationale for why such criteria are appropriate. Some firms have even sought to provide notification to their fund Limited Partner Advisory Committee (LPAC) as an additional conflicts' mitigation mechanism - allowing LPAC members to ask questions before such firms finalize their impairment-related valuation determinations.

- **LPA Operational Compliance Failures**: In a violation of each applicable fund's LPA, the private equity firm applied its impairment criteria on a portfolio company-by-portfolio company basis as opposed to an investment-by-investment basis (as required by the LPA). While this may not have made a practical difference for other firms, it did in this instance as certain investments in a portfolio company were impaired while others in the same portfolio company were not. As a result of incorrectly making impairment determinations on an aggregated basis at the portfolio company-level, the firm overcharged management fees.
  - *Takeaway*: LPA compliance failures (especially those involving fund economics and other items of material relevance to LPs) have been central themes in many enforcement actions over the last decade. In this case, the SEC staff have not only demonstrated a keen interest in reviewing and testing complex provisions in fund governing documents, but an equally keen interest in assessing evolving valuation-related risks concerning investing in emerging and growth private companies during market dislocations. Here, the examination and enforcement staff have shown they are aware that during market dislocation, emerging and growth private companies may face greater business growth challenges, thereby often triggering later stage investments in such companies (often by the same funds that invested in earlier stages). Such later stage cash infusions usually involve investing at a more senior tier of a company's capital structure (i.e., on significantly preferential terms) that may further depress the outlook for earlier investments (thereby driving them into permanent impairment territory). This may explain why in this case only certain fund investments in a portfolio company were permanently impaired.
- **Remediation Efforts**: During the SEC exam, the firm sought to rectify these matters by: (i) adopting and disclosing to its LPs a new set of more objective permanent impairment criteria; (ii) waiving the firm's ability to reverse a permanent impairment determination due to changed circumstances; and (iii) applying the revised permanent impairment criteria to four portfolio companies that had been identified by the examination staff and reimbursing applicable funds for management fees with interest in the amount of approximately $3.8 million.
  - *Takeaway*: While these remediation efforts did not stave off an enforcement referral and subsequent action, the firm nevertheless seems to have received credit from enforcement staff for its prompt remediation efforts. This reinforces the long-standing notion that pro-active remediation of regulatory issues upon discovery typically lowers regulatory risk – including potentially having a positive impact on the outcome of a SEC exam or enforcement action.

Variation on a Theme - Vendor Failings Lead to Broker-Dealer Recordkeeping Violations

by Cari Hopfensperger

A large broker-dealer recently **settled** with the SEC over recordkeeping violations, but interestingly, they were not related to off-channel communications. Instead, the firm was found to have deleted approximately 47 million electronic communications over a roughly four-month period in 2018. Their deletion stemmed from a 2016 internal project to purge certain aged records no longer required to be retained. Fast forward to 2019 when the firm discovered that the 2016 purge didn't work correctly, and not all of those aged records were deleted as intended. In its troubleshooting and resolution of that issue, the team prepared new deletion tasks to purge the aged records. The firm received a written representation from its archiving vendor that records within the required retention period were default coded to prevent their deletion when planned deletion tasks were run. With the support of these representations, the team proceeded to execute their deletion tasks. Unfortunately, however, the vendor failed to apply its default retention settings to one of the firm's email domains. As a result, approximately 47 million electronic communications from a retail banking group were deleted and unrecoverable.

There are a few interesting nuances in this case. First, during the firm's several years tenure with the archiving vendor, the vendor represented multiple times that its media storage complied with **Rule 17a-4(b)** under the Securities Exchange Act, including the use of a default retention period of 36 months, which should have meant that records within that period could not be permanently deleted. Second, the domain lacking proper coding was associated with an acquired entity of the firm and somehow bypassed the vendor's default protections. Third, the firm identified the issue internally, undertook remediation steps, and self-reported the deletion event to the SEC. With respect to remediation, the firm implemented its own retention period coding and a procedure requiring prior approval from a senior level information officer before any employee could run a deletion task. Finally, the action notes that at least twelve regulatory investigations led to subpoenas for records that could not be produced due to their deletion. Of the eight investigations being conducted by the SEC, the firm only notified one investigative team of the deletion event.

The result is that the firm agreed to a $4 million civil penalty. This action reads like an unfortunate and frightening case of a critical vendor failing to deliver in a major way and the registrant missing it. Firms are cautioned not to passively rely on vendors without oversight. Although much of compliance policy and procedure development focuses on a firm's standard operating procedures, don't forget about potential gaps and exceptions when assessing risks and conducting oversight, such as when acquired firms bring legacy domains and recordkeeping locations.

Mutual Fund Adviser Overcharges Shareholders and Fails to Disclose Material Use of Paired Interest Rate Swaps

by Cari Hopfensperger

In two related cases, a mutual fund adviser was **charged** with multiple failings. First, the firm overcharged shareholders in one of its fund-of-funds because it did not appropriately waive the management fees of the fund's affiliated sub-advisers, resulting in double charging management fees. Second, a closed-end fund advised by the same firm invested heavily in paired interest rate swaps without proper disclosures. The firm increased its use of the paired interest rate swaps over time with the goal of maintaining the fund's distribution rate, however, the firm failed to properly disclose to shareholders that the practice had become material to sustaining the fund's distributions. As is often the case when reading enforcement actions, a decline in the fund's NAV served as a red flag to the SEC, triggering further inspection. A regular and periodic review of the fund's investments against investment strategy disclosures in the prospectus and statement of additional information can help firms mitigate this risk.

Worth Reading, Listening and Watching

- **The CFTC adds 45 entities to its RED List:** On June 12, 2023, the CFTC added 45 unregistered entities to its Registration Deficient List (RED List). An entity is added to the RED List when the CFTC, following investigative leads and questions from the public, determines that such entity appears to be acting in a capacity requiring registration with the CFTC, but is not actually registered. Unregistered firms pose a great risk to customers because they are not subject to regulatory scrutiny.
- **Form U4: Common Missteps and Best Practices for RIAs:** Michael Kitces' Nerds Eye View blog addresses common U4 issues.
- **Preventing Financial Exploitation: Steps for Safeguarding Senior Investors:** FINRA's podcast looks at FINRA Rules 2165 and 4512, the first uniform National Senior Investor Protection Standards.
- **Changing Tides or a Ripple in Still Water? Examining the SEC v. Ripple Ruling:** A 'ripped from the headlines' topic, Ropes & Gray breaks down the recent SEC action against Ripple Labs.
- **The Managed Funds Association (MFA) recently submitted a comment letter** to the SEC expressing concern over the aggregate costs associated with the agency's aggressive proposal and rulemaking agenda. It joins similar letters submitted by industry advocacy organizations, such as the **Investment Advisor Association (IAA)**, as well as remarks made by **SEC Commissioner Mark Uyeda**.
- **NSCP Regulatory Interchange - Catching Up with the SEC's Division of Examinations:** ACA's Cari Hopfensperger summarizes exam insights discussed during a panel discussion with SEC speakers.
- **NSCP Regulatory Interchange - Catching Up with the SEC's Division of Enforcement:** ACA's Cari Hopfensperger summarizes exam insights from a second panel discussion with SEC speakers.

Recent ACA thought leadership:

Below are select ACA articles over the past month we think are worth reading. Find all updates on the **Insights** section of our website.

Recent and Upcoming Webcasts:

We're pleased to announce the launch of our new webcast series "Building a Gold Standard Compliance Program." In this series, we'll discuss the framework for creating a best-in-class compliance program, including the initial setup, formalization, implementation, testing and internal controls, reporting, and engagement with regulators.

- **Part 1: Organization**
- **Part 2: Formalization**

Articles:

- **SEC Marketing Rule Continues to Dominate Investment Advisers' Compliance Concerns, Survey Reveals**
- **Private Fund Managers Should Reevaluate their Approach to Side Letter Management Amidst Increased Scrutiny**
- **Court Decision Pushes Back Enforcement for the California Privacy Rights Act**
- **SEC Proposes Rule to Limit Conflicts of Interest in AI-Based Investor Engagement Tools**
- **Regulation Best Interest Assessment and the Next Frontier**
- **Navigating SEC Scrutiny: Enhancing The Accuracy of Fee Calculations for Private Funds**
- **MiFID Research Bundling: Will the Expired Relief for U.S. Broker-Dealers be Reinstated?**

To Do Checklists for the Months of July / August 2023

Investment Advisers

July / August

- [ ] **Form 13H:** Following an initial filing of Form 13H, all large traders must make an amended filing to correct inaccurate information promptly (within ten days) following the quarter-end in which the information became stale.

  Recommended due date: July 10, 2023. *(Note: Neither the SEC nor its staff has provided guidance on the definition of "promptly" for Form 13H.)*

- [ ] **Form 13F:** Quarterly Filing for Q2 2022 is due for advisers within 45 days after the end of the calendar quarter.

  Due August 14, 2023

Hedge / Private Fund Advisers

July / August

- [ ] **Form PF for Large Fund Advisers:** Large liquidity fund advisers must file Form PF with the SEC on the IARD system within 15 days of each fiscal quarter-end.

  Due July 15, 2023.

- [ ] **Blue Sky Filings (Form D):** Advisers to private funds should review fund blue sky filings and determine whether any amended or new filings are necessary. Generally, most states require a notice filing (blue sky filing) within 15 days of the first sale of interests in a fund, but state laws vary.

  Due July 15, 2023 and August 15, 2023

- [ ] **Form PF for Large Hedge Fund Advisers:** Large hedge fund advisers must file Form PF within 60 days of each quarter-end on the IARD system.

  Due August 29, 2023

Registered Commodity Trading Advisers

August

- [ ] **Form CTA-PR (June 30 Quarter End):** Commodity Trading Advisors are required to file Form CTA- PR quarterly with the NFA.

  Due August 14, 2023

Registered Commodity Pool Operators

August

Form CPO-PQR (June 30 Quarter End): Small, Mid-Sized and Large Commodity Pool Operators are required to file Form CPO-PQR quarterly with the NFA.

Due August 29, 2023

Broker-Dealers

July / August

- [ ] **Supplemental Liquidity Schedule (SLS)**: For the month ending May 31, 2023, the SLS must be filed by each carrying member with $25 million or more in free credit balances, and by each member whose aggregate amount outstanding under repurchase agreements, securities loan contracts and bank loans is equal to or greater than $1 billion, as reported on the member's most recently filed FOCUS Report, unless otherwise permitted by FINRA in writing. The SLS must be completed as of the last business day of each month and filed within 24 business days after the end of the month. A member need not file the SLS for any period where the member does not meet the $25 million or $1 billion thresholds.
Due July 6, 2023

- [ ] **Customer Complaint Quarterly Statistical Summary:** For complaints received during the second quarter, FINRA Rule 4530 requires firms to submit statistical and summary information regarding complaints received during the quarter by the 15th day of the month following the calendar quarter.
Due July 15, 2023

- [ ] **Quarterly FOCUS Part II/IIA Filings:** For Quarter ending June 30, FINRA requires that member firms file a FOCUS (Financial and Operational Combined Uniform Single) Report Part II or IIA quarterly. Clearing firms and firms that carry customer accounts file Part II and introducing firms file Part IIA.
Due July 26, 2023

- [ ] **Quarterly Form Custody**: The SEC requires that member firms file Form Custody under Securities Exchange Act Rule 17a-5(a)(5) for the quarter ending June 30.
Due July 26, 2023

- [ ] **Supplemental Statement of Income (SSOI)**: For the quarter ending June 30, FINRA requires firms to submit additional, detailed information regarding the categories of revenues and expenses reported on the Statement of Income (Loss) page of the FOCUS Report Part II/IIA.
Due July 31, 2023

- [ ] **Supplemental Inventory Schedule (SIS)**: For the month ending June 30, the SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period.
Due July 31, 2023

- [ ] **SIPC-3 Certification of Exclusion from Membership**: For firms with a Fiscal Year-End of June 30 **AND** claiming an exclusion from SIPC Membership under Section 78ccc(a)(2)(A) of the Securities Investor Protection Act of 1970, this annual filing is due within 30 days of the beginning of each fiscal year.
Due July 31, 2023

- [ ] **SIPC-6 Assessment**: For firms with a Fiscal Year-End of December 31, SIPC members are required to file for the first half of the fiscal year a SIPC-6 General Assessment Payment Form together with the assessment owed within 30 days after the period covered.
Due July 31, 2023.

Broker/Deakers (continued)

- [ ] **SIPC-7 Assessment**: For firms with a Fiscal Year-End of May 31, SIPC members are required to file the SIPC-7 General Assessment Reconciliation Form, together with the assessment owed (less any assessment paid with the SIPC-6) within 60 days after the Fiscal Year-End.
  Due July 31, 2023

- [ ] **Annual Reports for Fiscal Year-End May 31:** FINRA requires that member firms submit their annual reports in electronic form. Firms must also file the report at the regional office of the SEC in which the firm has its principal place of business and the SEC's principal office in Washington, DC. Firms registered in Arizona, Hawaii, Louisiana, or New Hampshire may have additional filing requirements.
  Due July 31, 2023 *(Conditional 30-Day Extension may be available)*

- [ ] **Form OBS:** For the Quarter ending June 30th, unless subject to the de minimis exception, all clearing, self-clearing, and carrying firms, and those firms that have a minimum dollar net capital requirement equal to or greater than $100,000 and at least $10 million in reportable derivatives and other off-balance sheet items, must submit Form OBS as of the last day of a reporting period within 22 business days of the end of each calendar quarter via eFOCUS. Firms that claim the de minimis exemption must affirmatively indicate through the eFOCUS system that no filing is required for the reporting period.
  Due August 2, 2023

- [ ] **Rule 17a-5 Monthly and Fifth FOCUS Part II/IIA Filings:** For the period ending July 31, and for firms required to submit monthly FOCUS filings and those firms whose fiscal year-end is a date other than a calendar quarter.
  Due August 23, 2023

- [ ] **Supplemental Inventory Schedule (SIS):** For the month ending July 31, the SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000, or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period.
  Due August 28, 2023

- [ ] **Annual Reports for Fiscal Year-End June 30:** FINRA requires that member firms submit their annual reports in electronic form. Firms must also file the report at the regional office of the SEC in which the firm has its principal place of business and the SEC's principal office in Washington, DC. Firms registered in Arizona, Hawaii, Louisiana, or New Hampshire may have additional filing requirements.
  Due August 29, 2023 *(Conditional 30-Day Extension may be available)*

- [ ] **SIPC-7 Assessment:** For firms with a Fiscal Year-End of June 30, SIPC members are required to file the SIPC-7 General Assessment Reconciliation Form together with the assessment owed (less any assessment paid with the SIPC-6) within 60 days after the Fiscal Year-End.
  Due August 29, 2023

- [ ] **SIPC-3 Certification of Exclusion from Membership:** For firms with a Fiscal Year-End of July 31 AND claiming an exclusion from SIPC Membership under Section 78ccc(a)(2)(A) of the Securities Investor Protection Act of 1970, this annual filing is due within 30 days of the beginning of each fiscal year.
  Due August 30, 2023

- [ ] **SIPC-6 Assessment:** For firms with a Fiscal Year-End of January 31, SIPC members are required to file for the first half of the fiscal year a SIPC-6 General Assessment Payment form together with the assessment owed within 30 days after the period covered.
Due August 30, 2023

Mutual Funds

July / August

- [ ] **Form N-MFP:** Form N-MFP (Monthly Schedule of Portfolio Holdings of Money Market Funds) reports information about the fund's holdings as of the last business day of the prior calendar month and must be filed no later than the fifth business day of each calendar month.
Due July, 10, 2023

- [ ] **Form N-MFP:** Form N-MFP (Monthly Schedule of Portfolio Holdings of Money Market Funds) reports information about the fund's holdings as of the last business day of the prior calendar month and must be filed no later than the fifth business day of each calendar month.
Due August 7, 2023

- [ ] **Form N-PORT:** Funds with a fiscal quarter end of June 30 must file Form N-PORT reporting month end information for each month-end in each fiscal quarter no later than 60 days after fiscal quarter-end.
Due August 29, 2023 Funds must also prepare the information reported on Form N-PORT within 30 days after every month-end and retain these records, which are subject to SEC inspection.
Due August 29, 2023

- [ ] **Form N-PX:** Registered investment companies (other than small business investment companies) are required to annually file Form N-PX, containing the fund's proxy voting record for the most recent twelve-month period ended June 30.
Due August 31, 2023

About ACA

ACA Group (ACA) is the leading governance, risk, and compliance (GRC) advisor in financial services. For over 20 years, we've empowered our clients to reimagine GRC to protect and grow their business. Our global team includes former regulators and practitioners with a deep understanding of the regulatory landscape. Our innovative approach integrates advisory, managed services, distribution solutions, and analytics with our ComplianceAlpha® technology platform.

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About the Authors

Francois Cooke

Francois Cooke is a Managing Director for the Broker-Dealer Services Division of ACA Compliance Group (ACA). Francois is responsible for the day-to-day operations of the broker-dealer services which include mock regulatory examinations; compliance risk assessments and testing; preparation and reviews of policies and procedures related to operational, financial, trading, sales and compliance processes; and development of enterprise-wide compliance programs. François has 30 years of experience with broker-dealers, investment advisers, and transfer agents. Previously, Francois led the securities segment of the Financial Services Regulatory Practice as a partner of KPMG, a Big 4 accounting firm, where he was employed for over 8 years.

Francois has expertise with financial and operational regulatory requirements, sales practice monitoring and surveillance controls, design and development of compliance and supervisory frameworks, and mitigating trading regulatory risks for both fixed income and equity products. Francois also understands the unique environments of insurance and bank affiliated broker-dealers, private placement agents, foreign affiliated broker-dealers, mutual fund distributors, self-clearing operations, dually registered investment advisers and broker-dealers, and has conducted many due diligence reviews on broker-dealers representing both buyers and sellers. Francois has an M.B.A. from the University of Virginia, and a B.S. in Communications from Cornell University. He currently is an active Certified Anti-Money Laundering Specialist ("CAMS").

Grazia Gatti

Grazia Gatti joined ACA in September 2019. As a Senior Principal Consultant in the Investment Adviser and NFA divisions, Grazia leads mock regulatory examinations and compliance program reviews, reviews policy and procedures, drafts compliance reports and manuals, and advises clients on a broad range of compliance issues pertaining to SEC, CFTC, and NFA regulatory requirements.

Grazia has more than 17 years of experience in compliance consulting. Before ACA, she served as a compliance manager for Affiliated Managers Group, Inc. and MFS Investment Management, Boston. In these roles, Grazia advised on CFTC regulations and NFA compliance rules applicable to commodity pool operators and commodity trading advisers. She also assisted with annual compliance procedure reviews in accordance with Rule 206(4) 7 of the Investment Advisers Act of 1940 and Rule 38a-1 of the Investment Company Act of 1940. Grazia has also served as a senior compliance examiner for the Swaps Group of the NFA's New York office. Grazia also worked in London as an associate for Dewey & LeBoeuf, LLP, and as a compliance adviser for large investment banks.

Grazia is admitted to practice law in Italy and is a solicitor of the Supreme Court of England and Wales. She earned her Master of Law degree in American Law with a concentration in Business Transactions at Boston University School of Law. Grazia is also a Certified Fraud Examiner and holds a Derivatives Level III Certificate from the Chartered Institute for Securities & Investment.

About the Authors

Cari A. Hopfensperger

Cari A. Hopfensperger is a Director for ACA's US Regulatory Advisory Group. She has an extensive background in regulatory compliance and provides compliance consulting services to retail and institutional focused registered investment advisers, including private and registered fund managers. She works with clients to develop effective compliance programs and solve complex regulatory issues, including serving as an Outsourced CCO.

Prior to joining ACA, Cari was a managing director at Hardin Compliance Consulting, LLC, which was purchased by Foreside in June 2021. Before that, she served in various compliance and operational leadership roles for a Chicago-based registered investment adviser, including Chief Compliance Officer, head of fund services and operations. Previously, Cari managed operations and client service for a Chicago-area boutique registered investment adviser.

Cari received a B.A. in English from the University of Wisconsin-Madison and a master of business administration from Keller Graduate School of Management. She is a member of the National Society of Compliance Professionals (NSCP) and currently serves as co-chair of the NSCP Publications Committee and chair of its professional development subcommittee.

Jaqueline M. Hummel

Jaqueline M. Hummel is Director Director of Thought Leadership, Regulatory Compliance. She is a securities attorney and regulatory compliance consultant with extensive experience as an in-house attorney working in the areas of investment adviser, broker-dealer, and investment company regulation and compliance. Ms. Hummel provides compliance consulting services to registered investment advisors, working to develop effective compliance programs and solve complex regulatory issues, including serving as an Outsourced CCO.

Before joining ACA, she served as a partner at Hardin Compliance Consulting LLC, which was purchased by Foreside in June 2021. Before that, Ms. Hummel held the position of Chief Compliance Officer for PNC Capital Advisors and PNC Realty Investors, investment adviser affiliates of PNC Financial Services Group, Inc. She also served as in-house counsel for National City Corporation's investment adviser and broker-dealer affiliates where her responsibilities included being the Chief Compliance Officer for Allegiant Asset Management Company. Prior to joining National City, Ms. Hummel served many years as in-house counsel for MassMutual Financial Group, a diversified financial services organization, where she advised the investment management division, including affiliated registered investment advisers and registered investment companies.

Ms. Hummel holds the designation of Investment Adviser Certified Compliance Professional (IACCP®) from National Regulatory Services, Inc. She received a B.A. from the University of Wisconsin-Madison and a J.D. from Emory University School of Law.

About the Authors

Doug MacKinnon

Doug MacKinnon has 23 years of securities industry experience and has been focused on regulatory compliance roles for the last 17 years. He specializes in the development and testing of compliance programs, drafting policies and procedures, and counseling clients on regulatory matters.

Prior to joining ACA Foreside, Doug was a Senior Compliance Consultant with Hardin Compliance, and a Senior Compliance Program Manager, Vice President at PNC supporting the compliance programs for the bank's affiliated broker-dealers. Specific responsibilities included management of PNC's Control Room and running the compliance programs for PNC's institutional advisory broker-dealers. Prior to PNC, he was a Compliance Manager at Hilliard Lyons, a dually registered investment advisor and broker-dealer. Doug has extensive experience with developing written supervisory procedures, coordinating regulatory examinations, managing securities registrations and testing supervisory controls.

Doug has a BA from Center College, holds the designation Investment Adviser Certified Compliance Professional (IACCP®) from National Regulatory Services, Inc., and the FINRA Series 7, 9, 10, 24, 63 and 79 licenses.

Vivek Pingili

Vivek Pingili is a Director of ACA's Private Funds Practice and focuses on corporate governance, operational and regulatory compliance matters relating to private markets investment managers. As a private markets specialist, Vivek helps a broad range of domestic and international private markets investment managers (including venture capital, private equity, private real estate, private credit, and private equity fund-of-funds managers) successfully implement and maintain comprehensive regulatory and operational compliance programs (including joint FCA and SEC compliance programs). Vivek also helps clients prepare for SEC audits.

Prior to joining ACA, Vivek was senior counsel in the Private Investment Funds practice group at Proskauer Rose LLP. While at Proskauer, Vivek represented a broad range of illiquid asset managers, including managers of buy-out funds, secondary funds, venture capital funds, private real estate funds and fund-of-funds, in regulatory compliance matters as well as in connection with the structuring, formation, offering and ongoing operations of such funds.

Vivek received a J.D. from Northeastern University School of Law and a B.A., magna cum laude, from Brandeis University.