

2021, Second Quarter

Compliance Newsletter

Because investment management compliance is constantly changing, we prepare this newsletter to summarize the latest rulings, guidance, proposals, and more from the most recent quarter.

To speak to a compliance expert on any of these topics, please contact us at info@joot.io.

HEADLINE SUMMARY

SEC

- Risk Alert on ESG Investing
- Additional FAQs on the New Investment Adviser Marketing Rule
- Announced Annual Regulatory Agenda
- Approved Registration of First Security-Based Swap Data Repository
- Raised Threshold Requirements for Qualified Clients

FINRA

- Free Resource Offered to Securities Firms to Assist in Detection, Prevention, and Reporting of Financial Exploitation of Seniors
- Reminder of Requirements Concerning Best Execution and Payment of Order Flow
- Practices to Protect Customers from Online Account Takeover Attempts
- Reminder About Requirements When Using Pre-Dispute Arbitration Agreements for Customer Accounts

- Annual User Accounts Certification Process Underway
- New and Improved Fund Analyzer Tool

NFA

- New Operational Requirements Instituted for Members

DOL

- US Department of Labor Releases FAQs on the new Prohibited Transaction Exemption 2020-02

SEC Issues Risk Alert on ESG Investing

The SEC issued this risk alert to highlight observations from recent exams of investment advisers, registered investment companies, and private funds offering Environmental, Social, and Governance (ESG) products and services. Items noted in the alert include portfolio management, performance advertising and marketing, and compliance procedures. If your firm offers or is thinking about offering ESG products or services, this alert is a must read.

For more information: [SEC Risk Alert: ESG Investing](#)

SEC Adds to the FAQs on New Investment Adviser Marketing Rule

The staff has prepared additional responses to questions related to the adoption of amendments on the new Investment Adviser Marketing Rule. The staff intends to update this document from time to time to include responses to additional questions.

For more information: [FAQs for New Investment Adviser Marketing Rule](#)

SEC Announces Annual Regulatory Agenda

The Office of Rulemaking and Regulatory Affairs released the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions. The report lists short- and long-term regulatory actions that administrative agencies plan to take. Here are a few proposed and final items:

- disclosure relating to climate risk, human capital, and cybersecurity risk;
- market structure modernization within equity markets, treasure markets, and other fixed income markets;
- transparency around stock buybacks, short sale disclosure, securities-based swaps ownership, and the stock loan market; and
- investment fund rules, including money market funds, private funds, and ESG funds.

To view the full list and for more information: [SEC Announces Regulatory Agenda](#)

SEC Approves Registration of First Security-Based Swap Data Repository

The SEC has approved the registration of its first security-based swap data repository (SDR). The registration creates the first SDR that can accept transaction reports for the security-based swap market. This action sets November 8, 2021, as the first compliance date for Regulation SBSR, which governs regulatory reporting and public dissemination of security-based swap transactions.

For more information: [SEC Approves Registration of First SDR](#)

SEC Raises Threshold Requirements for Qualified Clients

Effective August 16, 2021, the thresholds for the definition of qualified client will increase. A qualified client will be a client that (i) has at least \$1.1 million in assets under management with the investment adviser immediately

after entering into the advisory contract; or (ii) has a net worth (together, in the case of a client that is a natural person, with assets held jointly with a spouse) that the investment adviser reasonably believes to be in excess of \$2.2 million immediately prior to entering into the advisory contract.

For more information: [SEC Changes Qualified Client Thresholds](#)

FINRA

FINRA, SEC, and NASAA Offer Free Resource to Securities Firms to Assist in Detection, Prevention, and Reporting of Financial Exploitation of Seniors

In recognition of World Elder Abuse Day, FINRA, the SEC, and the NASAA announced a new resource intended to assist securities firms in implementing the training requirements of the Senior Safe Act. The training program, Addressing and Reporting Financial Exploitation of Senior and Vulnerable Adult Investors, can be used by firms to train associated persons on how to detect, prevent, and report financial exploitation of senior and vulnerable adult investors.

For more information: [FINRA, SEC, NASAA Offer Free Resource to Assist in Detection, Prevention, and Reporting of Financial Exploitation of Seniors](#)

FINRA Reminds Firms of Requirements Concerning Best Execution and Payment of Order Flow

FINRA issued this notice to remind member firms of SEC and FINRA rules regarding best execution and payment for order flow. Member firms may not let payment for order flow interfere with their duty for best execution. The duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer transaction.

For more information: [FINRA Reminds Firms of Requirements for Best Execution and Payment of Order Flow](#)

FINRA Shares Practices Firms Use to Protect Customers from Online Account Takeover Attempts

FINRA has received an increase in reports regarding customer account takeover (ATO) incidents, which involve bad actors using compromised customer information, such as login credentials, to gain unauthorized entry into customers' online brokerage accounts. This notice outlines the recent increase in ATO incidents, reiterates firms' regulatory obligations to protect customer information, and discusses common challenges firms identified in safeguarding customer accounts. This is a great reminder to review your regulatory obligations—and to update your cybersecurity programs.

For more information: [Protect Customers from Online Account Takeover Attempts](#)

FINRA Reminds Members About Requirements When Using Pre-Dispute Arbitration Agreements for Customer Accounts

FINRA issued this notice to remind member firms who use mandatory arbitration clauses in their customer agreements about the requirements. FINRA rules establish minimum disclosure requirements regarding the use of such clauses and prohibit pre-dispute arbitration agreements from including conditions that, among other things, limit or contradict FINRA rules. Take some time to review your customer agreements to ensure they fully comply with FINRA rules.

For more information: [FINRA Reminds Members About Requirements When Using Pre-Dispute Arbitration Agreements](#)

FINRA's Annual User Accounts Certification Process Is Underway

The FINRA user account certification process for Super Account Administrators (SAA) is currently underway. Annually, SAAs must certify that a review of access to systems on the FINRA Entitlement Platform for all users and administrators within their organization has been completed. The 2021 certification period is April 19 through July 19.

For more information: [FINRA's Annual User Account Certification Process Is Underway](#)

FINRA Introduces a New and Improved Fund Analyzer Tool

FINRA has introduced a new and improved Fund Analyzer tool to help investors and financial professionals better understand the impact of fees and potential discounts on mutual funds, exchange-traded funds, exchange-traded notes, and money market funds. The tool's enhancements enable users to better calculate how a fund's fees, expenses, and discounts impact the value of a fund over time. This tool can be a good resource when determining share class choice. FINRA examiners have been known to request documentation of this analysis in exams.

For more information: [FINRA's New Fund Analyzer Tool](#)

NFA

NFA Institutes New Operational Requirements for Members

Effective June 30, 2021, NFA Compliance Rule 2-50 will require registered CPOs to file notice when a market or other significant adverse event affects a commodity pool's ability to fulfill its financial obligations to commodity pool participants. A notice filing must be promptly submitted to the NFA if a firm operates a pool that cannot meet its margin calls, is unable to satisfy redemption requests in accordance with its subscription agreements, halts redemptions, or receives notice from a swap counterparty that a pool it operates is in default.

For more information: [NFA Institutes New Reporting Requirements](#)

Department of Labor (DOL)

US Department of Labor Releases FAQs on the New Prohibited Transaction Exemption 2020-02

The US Department of Labor (DOL) has issued a set of FAQs to address questions regarding the new Prohibited Transaction Exemption, PTE 2020-02, that took effect on February 16, 2021. The FAQs provide clarity regarding background of the rule, compliance dates, definition of fiduciary investment advice, and compliance with PTE 2020-02.

For more information: [DOL Issues FAQs on New Prohibited Transaction Exemption](#)

About Joot

Joot is a fintech company that provides web-based technology and services to registered investment advisers, broker-dealers, and funds. Joot's clients include retail advisers, institutional managers, private fund managers, and mutual fund advisers.

For more information about us, please visit our website at joot.io or contact us at info@joot.io.

