

Quarterly Compliance Newsletter

2020, Second Quarter

Because compliance is constantly changing and evolving, we prepare this newsletter to keep you apprised of the latest rulings, guidance, proposals and more from the most recent quarter.

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

**** Update on COVID-19 Regulatory Relief ****

SEC

- SEC Issues No-Action Letter for TALF 2020
- SEC Issues Risk Alert for Private Fund Managers
- SEC Adopts Offering Reforms for BDCs and Closed-End Funds
- SEC Proposes Changes to Mutual Fund Valuation Practices
- SEC Responds to More FAQs on Regulation Best Interest and Form CRS
- The Second Circuit Court of Appeals Upholds Regulation Best Interest

FINRA

- FINRA Annual User Accounts Certification Process
- FINRA Responds to FAQs on Refiling of Retail Communications

CFTC / NFA

- NFA Releases a Revised Self-Exam Questionnaire
- NFA Permits Gross Performance in Advertisements by CTAs Also Registered as SEC Advisers
- CFTC Proposes Amendments to Form CPO-PQR

IRS

- IRS Issues Final Rules on RICs to Passthrough REIT Dividends
- IRS Releases Guidance on Dividend Relief for REITs and RICs

DOL

- DOL Releases Guidance on Private Equity in 401(k) Plans
- DOL Proposes New Fiduciary Rule

**** Update on COVID-19 Regulatory Relief ****

The pandemic continues to pose issues for the industry; therefore, the SEC, FINRA, and CFTC have updated guidance and continue to provide temporary relief from certain regulatory obligations. Here is a list of some noteworthy items from the recent quarter:

SEC:

- Relief from mailing certain regulatory communications to shareholders who have addresses outside of the United States
- Extended relief from certain notarization requirements and paper format submissions of regulatory documents
- Extended relief from conducting required in-person meetings (such as Board meetings)

FINRA:

- Guidance on how to document a firm's reliance on temporary relief provided as a result of the pandemic
- Updated process for reliance on the temporary relief from fingerprint requirements
- Relief from verification of certain Form U4 information
- Extending the timeframe (enrollment window) for passing certain qualification examinations

CFTC:

- Relief from fingerprint requirements
- Extension of comment periods for rulemaking

Each regulator has a website page that provides information on the guidance or temporary relief that has been issued: [SEC Pandemic Information](#) | [FINRA Pandemic Information](#) | [CFTC Pandemic Information](#)

SEC

SEC Issues No-Action Letter for TALF 2020

The SEC issued a no-action letter regarding the Federal Reserve Board's 2020 Term Asset-Backed Securities Loan Facility ("TALF 2020"). The no-action letter confirmed the same information that was included in two no-action letters that were issued back in 2009 for TALF 2008 and also expanded certain relief. The letter confirmed that registered investment companies ("RICs") who borrow from TALF 2020 will not be subject to certain senior security requirements of the Investment Company Act. The letter also confirmed that certain transactions with RICs and affiliated funds or accounts will not be subject to certain affiliated transaction requirements of the Investment Company Act.

For more information: [SEC No-Action Letter for TALF 2020](#)

SEC Issues Risk Alert for Private Fund Managers

OCIE issued a risk alert providing the most cited deficiencies observed in recent exams of advisers managing private funds. Many of the deficiencies noted centered around conflicts of interest, including conflicts with fees, allocation of investments, co-investments, and service providers. Other deficiencies mentioned involved Code of

Ethics requirements and insider trading. If you manage a private fund, use this alert as a checklist to make sure you have addressed each of the items (as applicable).

For more information: [SEC Risk Alert for Private Funds](#)

SEC Adopts Offering Reforms for BDCs and Closed-End Funds

The SEC adopted rules that will modify the registration, communications, and offering processes for business development companies (“BDCs”) and other closed-end investment companies. The new rules will allow these funds to use securities offering rules that have already been available to operating companies such as using short-form registration statements, the ability to qualify for well-known seasoned issuer status, and automatic effectiveness of certain filings. The changes are designed to help simplify the regulatory requirements, thus making it easier to launch and maintain the funds.

For more information: [SEC Final Rule for BDCs and Closed-End Funds](#)

SEC Proposes Changes to Mutual Fund Valuation Practices

The SEC proposed changes to valuation practices for securities held in registered investment companies and BDCs. The proposed rule focuses on fair value determinations including the fund board’s oversight responsibilities and the definitions regarding fair value and “readily available” market quotations. The proposal would officially allow a board to assign the fair value determination of a security to a fund’s adviser. Those advisers and service providers in the fund industry will note this proposal was long overdue and will bring the regulatory requirements up to date with what actually takes place in the fair valuation process.

For more information: [SEC Proposed Rule for Fund Valuation Changes](#)

SEC Responds to More FAQs on Regulation Best Interest and Form CRS

During the quarter, the SEC continued to provide responses and information to frequently asked questions regarding Regulation Best Interest and Form CRS (aka ADV Part 3) in anticipation of the June 30th deadline. The new FAQs address topics including delivery requirements, modification of wording in the Form CRS, affiliate relationships and wrap programs. The SEC has made it clear that it expects firms to move full steam ahead on these new regulatory requirements despite disruptions made by the COVID-19 pandemic.

For more information: [SEC FAQ on Best Interest](#)

The Second Circuit Court of Appeals Upholds Regulation Best Interest

The U.S. Court of Appeals for the Second Circuit unanimously found that the SEC had the authority to adopt Reg BI and that, as adopted, the rule is not arbitrary and capricious. Reg BI took effect on June 30, 2020 and adopts a new standard of conduct for broker-dealers when they make recommendations to retail customers. Reg BI was challenged by an organization of investment advisers, an individual investment adviser, seven states, and the District of Columbia.

For more information: [The Second Circuit Upholds Reg BI, National Law Review](#)

FINRA

FINRA Annual User Accounts Certification Process

FINRA's Annual User Accounts Certification Process is underway and will conclude July 20, 2020. During this period, Super Account Administrators (SAAs) for organizations with more than one user and/or administrator account must certify that individuals have the appropriate level of access to FINRA systems required to perform their job responsibilities or remove access if no longer required. This is the perfect time to delete old users or make sure everyone has the proper credentials.

For more information: [FINRA Accounts Certification Process](#)

FINRA Responds to FAQs on Refiling of Retail Communications

What you need to know: FINRA has published a new FAQ to address whether firms are required to re-file retail communications with FINRA that eliminate references to "adviser" or "advisor" in order to comply with the SEC's Regulation Best Interest rule.

For more information: [FINRA FAQ on Retail Communications](#)

CFTC / NFA

NFA Releases a Revised Self-Exam Questionnaire

The NFA released a revised version of its self-exam questionnaire in June 2020. The revisions include topics such as financial requirements, supervision, communications with the public, and notices regarding bunched orders. The NFA also provided a summary of the revisions. If the questionnaire applies to your firm, makes sure to address the revisions and adopt new written procedures if needed.

For more information: [NFA Releases Revised Questionnaire](#)

NFA Permits Gross Performance in Advertisements by CTAs Also Registered as SEC Advisers

On April 22, 2020, the NFA amended NFA Compliance Rule 2-29: Communications with the Public and Promotional Material and Interpretive Notice 9003 - NFA Compliance Rule 2-29: Communications with the Public and Promotional Material. Previously, the rule required that commodity trading advisor ("CTA") present past performance in promotional materials as net of all commissions, fees, and expenses. Under the new rule, CTAs that are also registered with the SEC as investment adviser can present past performance results to eligible contract participants (ECPs) on a gross basis in non-public, one-on-one presentations. To rely on the limited exception, the CTA must:

For more information: [NFA Provides Relief to Permit CTAs to Present Gross Past Performance to ECPs](#)

CFTC Proposes Amendments to Form CPO-PQR

The CFTC proposed amendments to Form CPO-PQR to help facilitate data collection from commodity pool operators. The amendments include the elimination of certain questions and information requests, including schedules B and C, and a requirement to report legal entity identifiers in the Form. In addition to shortening the Form, the proposal would eliminate the differences in information and timing between the CFTC's Form PQR and the NFAs Form PQR.

For more information: [CFTC Proposed Rule for Form CPO-PQR](#)

IRS

IRS Issues Final Rules on RICs to Passthrough REIT Dividends

The IRS released final rules that permit Registered Investment Companies ("RICs") to report to its shareholders the portion of dividends paid from dividend income from Real Estate investment Trusts ("REITs"). This will allow certain shareholders of the RIC to take advantage of a 20% deduction against the REIT dividend income for tax purposes.

For more information: [IRS Final Rule for REIT Dividends Passthrough](#)

IRS Releases Guidance on Dividend Relief for REITs and RICs

The IRS released guidance temporarily allowing publicly offered REITs and RICs to meet shareholder distribution requirements with a lower amount of cash. The guidance limits the cash component of the dividend to a maximum of 10% if certain procedures are followed. The relief is intended to allow REITs and RICs to preserve their cash liquidity.

For more information: [IRS Guidance on Dividends for REITs and RICs](#)

DOL

DOL Releases Guidance on Private Equity in 401(k) Plans

The DOL released guidance on the inclusion of private equity investments as an investment option in 401(k) plans. The guidance specifies that the private equity investment must be part of a diversified asset allocation fund that will also include other types of investments. This appears to indicate that direct investments in private equity are still prohibited. The guidance outlines the information and steps plan fiduciaries will need to follow to allow the private equity component in a plan. This has the potential to create a demand for asset allocation funds that have a private equity component and that can be used in 401(k) plans.

For more information: [DOL Guidance on Private Equity in 401\(k\)](#)

DOL Proposes New Fiduciary Rule

The DOL is proposing a new regulation to govern investment advice in retirement accounts to replace a rule that was vacated more than two years ago by a federal court. The proposed rule would provide exemptions under ERISA law that would allow fiduciaries to receive compensation for advice that would otherwise be prohibited if they act in a retirement saver's best interests. The proposal would also reinstate the five-part test under ERISA to determine who is a fiduciary. The proposed rule would apply to investment advisers, broker-dealers, banks, and insurance companies. The collective response from the industry on this proposal can probably best be described as "Here we go again."

For more information: [DOL Proposed Rule for Fiduciaries](#)

About Joot

Joot is a fintech company that provides web-based technology and services to registered investment advisers, broker-dealers, and funds. Joot has over 40 clients around the U.S. who collectively manage over \$33 billion. Joot's clients include retail advisers, institutional managers, private fund managers, and mutual fund advisers.

We hope this newsletter is informative and valuable.

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