

2022, First Quarter

Compliance Newsletter

Because RIA 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 Exams of Private Fund Advisers
- Examination Priorities for 2022
- Proposed Cybersecurity Risk Management Rules and Amendments for Registered Investment Advisers and Funds
- Proposed Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies
- Proposed Rules to Enhance and Standardize Climate-Related Disclosures
- Proposed Amendments to Enhance Private Fund Reporting
- Proposed Enhancements of Private Fund Investor Protection
- Proposed Changes to Two Whistleblower Program Rules
- Proposed Rule Change to Reduce Risks in Clearance and Settlement
- Proposed Rule Amendments to Modernize Beneficial Ownership Reporting
- Proposed Short Sale Disclosure Rule, Order Marking Requirement, and CAT Amendments
- Proposed Rules to Include Certain Significant Market Participants as “Dealers” or “Government Securities Dealers”
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FINRA

- Examination Priorities for 2022

SEC

SEC Issues Risk Alert on Exams of Private Fund Advisers

The SEC recently issued this risk alert to highlight observations from exams of private fund advisers. The deficiencies observed include failure to act consistently with disclosures, use of misleading disclosures in performance data and marketing, due diligence failures relating to investments or service providers, and use of potentially misleading statements that may try to limit an adviser's liability (hedge clauses). For advisers with private funds, this is an important risk alert to review.

For more information: [SEC Risk Alert from Exams of Private Fund Advisers](#)

SEC Releases 2022 Examination Priorities

The SEC Division of Examinations announced its 2022 examination priorities that highlight key areas of focus, including private funds; environmental, social, and governance (ESG) investing; retail investor protections; information security and operational resiliency; and emerging technologies and crypto assets.

For more information: [SEC Announces 2022 Exam Priorities](#)

SEC Proposes Cybersecurity Risk Management Rules and Amendments for Registered Investment Advisers and Funds

The SEC proposed rules that would require advisers and registered funds to adopt and implement written cybersecurity policies and procedures to address cybersecurity risks. The rules would require advisers to report to the commission any significant cybersecurity incidents affecting their clients. Advisers and funds would also be required to disclose in their brochures and registration statements any cybersecurity risks and significant incidents from the last two years.

For more information: [SEC Proposes Cybersecurity Risk Management Rules and Amendments](#)

SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure by Public Companies

The SEC proposed amendments to rules to enhance and standardize disclosures of cybersecurity risk management, strategy, governance, and incident reporting by public companies. The proposal would require current reporting about material cybersecurity incidents and periodic updates about previously reported incidents. Additionally, registrants would periodically report about policies and procedures, the board of directors' oversight, and management's role and expertise in assessing and managing cybersecurity risk.

For more information: [SEC Proposes Rules on Cybersecurity Risk Management, Strategy, Governance](#)

SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures

The SEC proposed rule changes that would require registrants to include climate-related disclosures and periodic reporting about climate-related risks. The proposal would require registrants to disclose the following information:

- information about their climate-related controls and risk management processes;
- how the identified climate-related risks have had or are likely to have a material impact on business and financial statements;
- how these risks have affected or the likelihood of affecting business strategy, model, and outlook; and
- what impact climate-related events, such as severe weather, would have on financial statements, financial statement assumptions, and financial estimates.

For more information: [SEC Proposes Rules to Enhance and Standardize Climate-Related Disclosures](#)

SEC Proposes Amendments to Enhance Private Fund Reporting

The SEC proposed amendments to Form PF, which are designed to enhance regulatory oversight of private fund advisers. The proposed amendments would require more timely reporting for large hedge fund advisers and advisers to private equity funds. They would also decrease the reporting threshold for large equity advisers from \$2 billion to \$1.5 billion in private equity fund assets under management.

For more information: [SEC Proposes Amendments to Enhance Private Fund Reporting](#)

SEC Proposes to Enhance Private Fund Investor Protection

The SEC proposed new rules and amendments to enhance the regulation of private fund advisers and to protect private fund investors. The proposed rules include the following items:

- Advisers would have to provide investors with quarterly statements regarding fees, expenses, and performance.
- Advisers would be prohibited from providing certain types of preferential treatment to investors and would have to disclose all other preferential treatment.
- New requirements would apply to fund audits, books, and records as well as adviser-led secondary transactions.
- Advisers would be prohibited from seeking reimbursement, indemnification, exculpation, or limited liability for activities; charging certain fees and expenses; reducing the amount of clawback of certain taxes; charging fees or expenses related to a portfolio investment on a non-pro rata basis; and borrowing from a private fund client.

For more information: [SEC Proposes to Enhance Private Fund Investor Protection](#)

SEC Proposes Changes to Two Whistleblower Program Rules

The SEC proposed two amendments to rules governing the whistleblower program:

1. allowing the commission to pay whistleblower awards for certain actions brought by other entities, including federal agencies whose whistleblower programs might pay those awards

2. affirming the commission's authority to consider the amount of a potential award for the limited purpose of increasing (but not lowering) an award

For more information: [SEC Proposes Changes to Two Whistleblower Program Rules](#)

SEC Proposes Rule Change to Reduce Risks in Clearance and Settlement

The SEC proposed rule changes to the clearance and settlement of securities. This includes shortening the settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date. Additionally, the rule includes a new requirement to facilitate straight-through processing for certain types of clearing agencies.

For more information: [SEC Proposes Rule Change to Reduce Risks in Clearance and Settlement](#)

SEC Proposes Rule Amendments to Modernize Beneficial Ownership Reporting

The SEC proposed amendments to beneficial ownership reporting on Schedule 13D and 13G filings. The proposal would accelerate the filing deadlines for Schedule 13D reports from 10 days to 5 days and require amendments to be filed within one business day. The proposal would also expand the application of Regulation 13D-G to certain derivative securities, clarify "group" reporting requirements, and require Schedules 13D and 13G to be filed using a structured, machine-readable data language.

For more information: [SEC Proposes Amendments to Modernize Beneficial Ownership Reporting](#)

SEC Proposes Short Sale Disclosure Rule, Order Marking Requirement, and CAT Amendments

The SEC proposed changes to increase the information available to the public regarding short sales. Proposed Rule 13f-2 would require certain institutional investment managers who have investment discretion over short positions to report on the proposed Form SHO. The form would include information about month-end short positions and certain daily activity. Additionally, the SEC proposed a new provision to Regulation SHO which would establish a new "buy to cover" marking requirement and corresponding reporting.

For more information: [SEC Proposes Short Sale Disclosure Rule, Order Marking Requirement, and CAT Amendments](#)

SEC Proposes Rules to Include Certain Significant Market Participants as "Dealers" or "Government Securities Dealers"

The SEC proposed two rules that would require certain market participants to register with the SEC, become members of a self-regulatory organization (SRO), and comply with federal securities laws. The proposed rules would require proprietary or principal trading firms who assume certain dealer functions, such as acting as a liquidity provider in the market, to register as a "dealer" or a "government securities dealer." The release specifies the types of activities that would be applicable under the proposed rules.

For more information: [SEC Proposes Rules to Include Certain Significant Market Participants as "Dealers" or "Government Securities Dealers"](#)

SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections

The SEC proposed new rules and amendments to enhance disclosure in initial public offerings (IPOs) by special purpose acquisition companies (SPACs) and in business combination transactions involving shell companies and private operating companies. The goal of the rules is to align the financial statements of private operating companies in transactions involving shell companies with those required in registration statements for traditional IPOs. Additionally, the proposed rules would require disclosures about SPAC sponsors, conflicts of interest, and sources of dilution.

For more information: [SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to SPACs](#)

SEC Issues Guidance for Conducting Shareholder Meetings Amid COVID-19 Concerns

The SEC provided guidance for issuers on the possibility of changing the date, time, or location of a shareholder meeting, holding a virtual shareholder meeting, the presentation of shareholder proposals, and delays in printing and mailing proxy materials.

For more information: [SEC Guidance for Conducting Shareholder Meetings during COVID-19](#)

FINRA

FINRA Releases 2022 Examination Priorities

FINRA published its 2022 Report on FINRA's Examination and Risk Monitoring Program, which provides key information for firms to consider for their compliance programs. FINRA's areas of focus in this year's report include Reg BI and Form CRS, best execution and conflicts of interest, firms' supervision of mobile applications, and cybersecurity.

For more information: [FINRA Announces 2022 Exam Priorities](#)

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.

