

2021, First 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.

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**** COVID-19 Regulatory Relief ****

The SEC, FINRA, and CFTC continue to maintain temporary relief provisions for some regulatory obligations and guidance due to the pandemic. Key items that are still in place include:

SEC: [no change from last quarter]

- 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: [no change from last quarter]

- Temporary relief for fingerprint requirements
- Offering an online testing service for certain qualification examinations
- Extending the timeframe (enrollment window) for passing certain qualification examinations

CFTC:

- Limited Extension to Certain Relief for Futures Commission Merchants (FCMs) and Introducing Brokers (IBs)

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 Announces 2021 Examination Priorities

The SEC Division of Examinations announced its 2021 examination priorities, which includes a greater focus on climate-related risks. The Division will also focus on conflicts of interest for brokers (Regulation Best Interest) and investment advisers (fiduciary duty), and attendant risks relating to FinTech in its initiatives and examinations. It also lays out key risk areas for Retail Investors, Information Security and Operational Resiliency, and focus areas for Investment Advisers and Investment Companies, Broker-Dealers and Municipal Advisors and Market Infrastructure.

For more information: [SEC 2021 Examination Priorities](#)

SEC's Response to Climate and ESG Risks and Opportunities

The SEC launched a new page on its website to bring together agency actions and the latest information about climate and environmental, social and governance (ESG) investing. In addition, the SEC has created a Climate and ESG Task Force in the Division of Enforcement. This is consistent with the message in the SEC's exam priorities about focusing more on ESG investments.

For more information: [SEC Responds to Investor Demands to Climate and ESG Risks](#)

SEC issues Risk Alerts on...

Investments in Communist Chinese Military Companies

The SEC issued this risk alert to notify the industry of recent actions relating to investments in securities associated with Communist Chinese military companies (CCMCs). An executive order was signed by the President of the United States that effectively prohibited U.S. persons and entities from investing in CCMCs for a specified period of time.

For more information: [Risk Alert: CCMCs](#)

Digital Asset Securities

The SEC issued this risk alert to provide their observations in exams regarding digital asset securities. The risk alert provides areas of focus for investment advisers, broker-dealers and transfer agents to consider. Items noted in the alert include portfolio management, books and records, AML and custody. If your firm manages digital assets for clients, or is thinking about doing so, this alert is a must read.

For more information: [Risk Alert: Digital Asset Securities](#)

Suspicious Activity Monitoring and Reporting at Broker-Dealers

The SEC issued this risk alert to remind broker-dealers of their obligations under AML rules and regulations. Topics include the monitoring and reporting of suspicious activity to law enforcement and financial regulators as well as policies and procedures.

For more information: [Risk Alert: AML Suspicious Activity Monitoring for Broker-Dealers](#)

SEC issues FAQs on...

Form CRS

The staff of the Division of Investment Management and the Division of Trading and Markets have prepared new responses to questions about Form CRS. The new FAQs focus on CRS filing for affiliate firms and disclosing material changes to clients.

For more information: [SEC Issues FAQs for Form CRS](#)

New Investment Adviser Marketing Rule

The staff of the Division of Investment Management has prepared responses to questions related to the adoption of amendments on the new Investment Adviser Marketing Rule. The new FAQ focuses on how firms must implement all aspects of the new rule, and not just some of them. The staff intends to update this document from time to time to include responses to additional questions.

For more information: [SEC Issues FAQs on Investment Adviser Marketing Rule](#)

FINRA Issues 2021 Examinations and Priorities Report

FINRA published the [2021 Report on FINRA's Examination and Risk Monitoring Program](#). The report combines and replaces two previously published annual reports. The report addresses 18 regulatory areas organized into four categories: Firm Operations, Communications and Sales, Market Integrity and Financial Management.

For more information: [FINRA 2021 Examination and Risk Priorities](#)

FINRA Retires Classic CRD Filing for Form U4

“Classic” CRD filing capabilities for Form U4 were retired on April 5, 2021 and will now be available on the FINRA Gateway. Other changes will take effect over the course of the next few quarters. Make sure to check the FINRA site regularly for updates.

For more information: [FINRA Gateway Information](#)

FINRA issues guidance on...

Red Flags for Potential Fraud

FINRA released a regulatory notice regarding procedures and red flags of potential securities fraud involving low-priced securities. The notice reminds firms that low priced securities, such as penny stocks, are prone to volatile trading and can be targets for fraudulent activity. The notice encourages firms that deal in low priced securities to update their procedures to help identify red flags and other activity that might lead to manipulation.

For more information: [FINRA Guidance: Low Priced Securities](#)

Sales Charge Discounts and Waivers

FINRA released a regulatory notice reminding firms of their obligation to apply sales charge discounts and waivers on applicable products, such as mutual funds, for eligible customers. The notice describes issues found in exams and enforcement actions, including inadequate supervisory systems and procedures to help identify when customers are eligible for discounts or sales charge waivers.

For more information: [FINRA Guidance: Sales Charge Discounts](#)

Handling Obligations During Extreme Market Conditions

FINRA released a regulatory notice reminding firms of their obligations during extreme market conditions with respect to handling customer orders, maintaining appropriate margin requirements and managing liquidity. The notice is a reminder that firms must maintain procedures to ensure they can continue to provide investors access to the securities market during times of extreme market volatility.

For more information: [FINRA Guidance: Extreme Market Conditions](#)

Recent Increase in ACH Abuse

FINRA released a regulatory notice warning firms that they have observed a sharp increase in new customers opening online brokerage accounts and engaging in Automated Clearing House (ACH) abuse while trading. Some firms provide new account holders instant access to funds which allows the customer to trade before payments settle. This increases the likelihood of abusive short-term trading and losses for the firm. Firms are encouraged to mitigate the risks involved with this type of arrangement.

For more information: [FINRA Guidance: ACH Abuse](#)

Congress

Congress Enacts Significant Changes to the U.S. Anti-Money Laundering Regime

In January, Congress passed the National Defense Authorization Act (NDAA), which included the Anti-Money Laundering Act of 2020 (AML Act). The AML Act includes the most significant changes to the Bank Secrecy Act of 1970 since the USA Patriot Act of 2001. The key points in the AML Act include enhanced beneficial ownership reporting requirements, expanded authorities for enforcement, subpoenas and whistleblower protection, and expanded coordination and transparency efforts.

This link takes you to the [full NDAA legislation for 2020](#). The AML Act is covered in Section F.

NFA

Remote Online Testing for Candidates Seeking to Take NFA Proficiency Examinations

FINRA administers the futures industry proficiency exams on behalf of NFA including the Series 3, Series 30, Series 31, Series 32 and Series 34. Beginning January 19th, candidates may choose to take these exams either at a local test center or remotely proctored online. Online testing will be delivered and remotely proctored by FINRA's testing provider, Prometric.

For more information: [Remote Online Testing Available](#)

Department of Labor (DOL)

US Department of Labor Announces Prohibited Transaction Exemption (PTE) 2020-02

The US Department of Labor (DOL) announced that Prohibited Transaction Exemption (PTE) 2020-02, which governs conduct by ERISA fiduciaries, took effect on February 16, 2021. This exemption allows investment advice fiduciaries to provide advice to roll over plan assets from a qualified plan to an IRA. In order to avoid conflicts of interest, there are certain conditions that a financial institution and investment professional must comply with, such as the Impartial Conduct Standards and a 5-part test to determine if the investment professional is an ERISA fiduciary. However, it does appear that firms may continue to rely on Field Assistance Bulletin (FAB) 2018-02 until December 20, 2021.

For more information: [US DOL Prohibited Transaction Exemption \(PTE\) 2020-02](#)

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 50 clients around the U.S. who collectively manage over \$15 billion. 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 www.joot.io or contact us at info@joot.io.