

# 2021, Fourth 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](mailto:info@joot.io).

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### HEADLINE SUMMARY

#### SEC

- Risk Alert on Investment Advisers' Fee Calculations
- Risk Alert from Exams of Registered Investment Companies
- Risk Alert from Exams of Advisers that Provide Electronic Investment Advice
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- Statement Regarding Form CRS Disclosures
- Proposed Amendments to Rule 10b5-1 Regarding Insider Trading Plans
- Proposed Amendments to Money Market Fund Rules
- Proposed Amendments to Electronic Recordkeeping Requirements
- Proposed Rule 10c-1: Transparency in the Securities Lending Market
- Modernized Filing Fee Disclosure and Payment Methods
- Enforcement Results for 2021

#### FINRA

- Renewal Statements for 2022
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## **SEC Issues Risk Alert on Investment Advisers' Fee Calculations**

The SEC recently issued this risk alert to highlight observations from exams of investment advisers' fee calculations for retail investors. The deficiencies observed included advisory fee calculation errors, inaccurate calculations of tiered or breakpoint fees, and inaccurate calculations due to incorrect householding of accounts. Other items identified were fee-related compliance and disclosure issues. Advisers should take the time to review their fee calculation procedures and disclosures.

For more information: [SEC Risk Alert: Investment Advisers' Fee Calculations](#)

## **SEC Issues Risk Alert from Exams of Registered Investment Companies**

The SEC recently issued this risk alert to provide observations noted during exams of fund complexes and fund advisers (such as mutual funds and ETFs). The frequent deficiencies and weaknesses identified include

- ineffective compliance policies and procedures of the funds and their advisers to address risks in the areas of disclosures, portfolio management compliance, and conflicts of interest and ineffective oversight responsibilities of the funds' compliance programs by the funds' board;
- lack of proper disclosures by the funds regarding risks and conflicts; and
- inconsistent fund governance practices, specifically related to a fund board's oversight of the fund compliance program and assessing the practices and controls related to risks in these areas.

This risk alert provides detail on how registered investment companies can strengthen their compliance programs, as well as a fund board's oversight responsibilities.

For more information: [SEC Risk Alert: Examinations of Registered Investment Companies](#)

## **SEC Issues Risk Alert for Observations from Exams of Advisers that Provide Electronic Investment Advice**

The SEC issued this risk alert to raise awareness of certain compliance issues identified after conducting a series of exams of advisers who provide services online and through mobile apps—that is, robo-advisers. The bulk of deficiencies identified were in the areas of

- compliance programs, including policies, procedures, and testing;
- portfolio management, including an adviser's fiduciary obligation to provide advice that is in each client's best interest; and
- marketing/performance advertising, including misleading statements and inadequate disclosure.

For more information: [SEC Risk Alert: Observations from Exams of Robo-Advisers](#)

## Withdrawal and Modification of Staff Letters Due to the New Marketing Rule

With the passage of the new marketing rule in December 2020, the SEC staff is withdrawing certain staff statements (such as no-action letters) relating to current Rule 206(4)-1, the advertising rule, and Rule 206(4)-3, the cash solicitation rule. The withdrawals and modifications to the statements identified will be effective as of November 4, 2022, the compliance date of the marketing rule. Click the following link for a complete list of withdrawn and modified staff letters and statements.

For more information: [SEC Information Update: Withdrawal and Modification of Staff Letters Related to New Marketing Rule](#)

## SEC Issues Statement Regarding Form CRS Disclosures

The SEC conducted a review of Form CRS (aka Form ADV, Part 3) and observed areas where improvements could be made. Areas in need of improvement highlighted by the SEC include using highly technical business terms and disclosures; omitting required information and failing to follow formatting requirements; lack of specific references; and not prominently displaying the relationship summary on the firm's website. Advisers should take time to review their Form CRS, compare it against SEC observations, and make any necessary adjustments.

For more information: [SEC Statement on Form CRS Disclosures](#)

## Proposed Amendments to Rule 10b5-1 Insider Trading Plans

The SEC has proposed amendments to Rule 10b5-1 to enhance disclosure requirements and investor protections against insider trading. The proposal includes

- updating the requirements for the affirmative defense, imposing a cooling-off period before trading, and prohibiting overlapping trading plans;
- requiring directors and officers to furnish written certifications that they are not aware of any material nonpublic information when they enter into plans;
- requiring issuers to have more comprehensive disclosures about their policies and procedures and their practices around the timing of options grants and the release of material nonpublic information.

For more information: [SEC Proposed Amendments to Rule 10b5-1 Insider Trading Plans](#)

## Proposed Amendments to Money Market Fund Rules

The SEC has proposed amendments to certain rules that govern money market funds. The proposal is designed, in part, to address concerns about prime and tax-exempt money market funds highlighted by the impact of the COVID-19 pandemic. The proposal would increase liquidity requirements and remove provisions in the current rule permitting or requiring a money market fund to impose liquidity fees or to suspend redemptions. Institutional prime money market funds and tax-exempt money market funds would be required to implement swing pricing policies and procedures. The proposal would amend certain reporting requirements to improve the availability of information about the funds.

For more information: [SEC Proposed Amendments to Money Market Fund Rules](#)

## **Proposed Amendments to Electronic Recordkeeping Requirements**

The SEC proposed amendments to the electronic recordkeeping and prompt production of records requirements for broker-dealers, security-based swap deals, and major security-based swap participants. The proposal provides an audit-trail alternative allowing electronic records to be preserved in a manner that permits the recreation of an original record if it is altered, overwritten, or erased.

For more information: [SEC Proposed Updates to Electronic Recordkeeping Requirements](#)

## **Proposed Rule 10c-1: Transparency in the Securities Lending Market**

The SEC has proposed Exchange Act Rule 10c-1 which focuses on increasing transparency for market participants, the public, and regulators by giving timely access about the market for securities lending. The key item in the rule would require lenders of securities to provide the terms of securities lending transactions to a registered national securities association, such as FINRA, who would then make the terms available to the public.

For more information: [SEC Proposed Rule: Transparency in the Securities Lending Market](#)

## **SEC Modernizes Filing Fee Disclosure and Payment Methods**

The SEC announced it is modernizing most fee-bearing forms, schedules, and related rules to require companies and funds to include all required information for filing fee calculation in a structured format. This also includes new payment options like ACH, debit, and credit card payment and eliminates infrequently used options like paper checks and money orders. The amendments will be effective on January 31, 2022.

For more information: [SEC Modernizes Filing Fee Disclosure and Payment Methods](#)

## **SEC Announces Enforcement Results for 2021**

The SEC announced enforcement results for 2021, noting significant actions in traditional and emerging areas, such as crypto and SPAC spaces. The SEC stated the whistleblower program was critical in the enforcement efforts and surpassed \$1 billion in awards.

For more information: [SEC Enforcement Results for 2021](#)

# **FINRA**

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## **FINRA Issues Renewal Statements for 2022**

In November, FINRA made preliminary renewal statements available online in E-Bill. The payment deadline was December 13, 2021, but payments could be made up until December 26th. The final renewal reports were available on January 2, 2022, and full payment is due by January 28, 2022. Broker-dealers and investment advisers should check their E-Bill accounts to make sure payments have been made.

For more information: [FINRA Issues Renewal Statements for 2022](#)

## FINRA Guidance on How to Incorporate the Government-Wide AML and Countering the Financing of Terrorism Priorities into AML Programs

Financial Crimes Enforcement Network (FinCEN) issued the first government-wide priorities for anti-money laundering (AML) and countering the financing of terrorism (CFT) policy, which was mandated by the Anti-Money Laundering Act of 2020. FinCEN is required to issue the AML/CFT priorities that are intended to assist covered financial institutions in their efforts to meet their obligations under laws and regulations designed to combat money laundering and counterterrorist financing. Covered institutions should examine the priorities and incorporate them, as appropriate, into their risk-based AML compliance programs.

For more information: [FINRA Encourages Firms to Consider How to Incorporate AML Priorities into Their AML Programs](#)

## About Joot

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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](https://joot.io) or contact us at [info@joot.io](mailto:info@joot.io).

