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ORICAL REGULATORY UPDATE

REGULATORY UPDATE

Deficient Policies and Procedures: SEC v. OEP Capital Advisors, L.P.

12.26.2023. In a final order released against OEP Capital Advisors, L.P. ("OEP"), the Commission found that from 2019 to 2022, OEP failed to maintain and enforce written policies and procedures designed to prevent the misuse of potentially material nonpublic information ("MNPI") and misleading marketing materials. The SEC found that on numerous occasions, OEP officers and senior personnel disclosed merger related MNPI via email to current and potential investors and industry contacts; the SEC cited that OEP used non-disclosure agreements to protect against misuse of MNPI but did not always follow firm procedures which required a determination that disclosure of MNPI was "necessary for legitimate business purposes." Moreover, OEP was found to have not implemented written policies and procedures reasonably designed to prevent potentially misleading communications to current and prospective investors in its funds. OEP employees sent identical emails to more than one person, containing passages of performance-related content, sometimes including estimated performance based on valuations that had not been approved by OEP's valuation committee, despite the policy prohibiting this, without compliance preapproval and without requisite disclosures. As a result, the Commission charged OEP with violating Section 204A, 206(4) and 206(4)-7 of the Adviser's Act, censured the firm and imposed a fine of $4,000,000. To remediate the findings, OEP standardized its compliance policies and procedures regarding MNPI and enhanced compliance training related to investor communications.

MARKET UPDATE

SEC Approves Bitcoin ETFs in Watershed for Crypto Market

1.11.2024. The SEC approved the first U.S.-listed exchange-traded funds ("ETFs") to track bitcoin in a landmark decision for the cryptocurrency industry. The SEC approved 11 bitcoin ETFs including IBIT, ARKB, BTCW, BTCO, BITB, HODL, EZBC, FBTC, BRRR, GBTC and DEFI. Chair Gensler, historically a fierce opponent of crypto products, voted in favor of approving the ETFs, stating it was "the most sustainable path forward" for the market. These products are expected to draw $50 to $100 billion this year, alone. This historic announcement follows the January 10th hacking of the SEC's X account, in which a fake X post announced the approval of ETFs for bitcoin, causing bitcoin prices to spike.

Are You Ready for Your Next Regulatory Exam? Orical has extensive experience assisting clients on marketing rule sweeps, routine regulatory exams and facilitating SEC or CFTC exam readiness assessments or mock audits.

Do You Have New Investors? See if You Need to Make a Form D (federal) filing, or a Blue Sky (state) Filing, which must be filed by a fund relying on Regulation D within 15 days following the fund's first sale. Contact us to file yours.

UPCOMING COMPLIANCE DEADLINES

- **13F Quarterly:** 2/14/2024
- **13H Annual:** 2/14/2024
- **13G Annual Amendments:** 2/14/2024
- **Annual Compliance Certifications:** 2/14/2024
- **Form PF Quarterly:** 2/29/2024
- **Form PQR Quarterly:** 2/29/2024
- **Form ADV:** 3/30/2024

REGULATORY UPDATE

SEC Awards More Than $28 Million to Seven Whistleblowers; J.P. Morgan to Pay $18 Million for Violating Whistleblower Protection Rule

12.22.2023. Seven whistleblowers were awarded a combined $28 million for their assistance in a successful SEC enforcement action in December. Relatedly, in January, the Commission settled charges with J.P. Morgan for impeding advisory clients and brokerage customers from reporting potential securities law violations to the SEC by requiring clients to sign confidential release agreements which prohibited clients from voluntarily contacting the SEC. J.P. Morgan paid $18 million to settle these charges and agreed to be censured for violating the whistleblower protection rule. Whistleblower awards are paid out of an investor protection fund established by Congress and financed through monetary sanctions paid to the SEC. To receive a whistleblower award, a whistleblower must provide the SEC with original, timely and credible information that leads to an enforcement action by the Commission.

13F Filing Sweep

12.22.2023. The SEC's Department of Enforcement has recently engaged in a sweep relating to 13F filings—for a copy of the related request letter, reach out to a member of the Orical team. Investment advisers subject to the sweep should expect to be questioned on any 13F filings made within the relevant period, and if no filings were made, an explanation as to why they were not. Further, investment advisers may have to provide supporting documentation relating to any filings or exemptions. This 13F sweep follows the SEC's new rule adoption, Rule 13f-2 and Form SHO which require institutional investment managers that meet (or exceed) certain reporting thresholds to report short position data.

RULEMAKING

U.S. SEC Adopts Rules Requiring Central Clearing in the U.S. Treasury Market

12.13.2023. The SEC adopted a final rule requiring central clearing of certain secondary transactions—secondary market repurchase ("repo") and reverse repurchase transactions and secondary market purchase and sale transactions involving U.S. treasuries. Of particular note for investment managers and institutional investors, the new rule revises current practices; now, all U.S. treasury transactions must be cleared through a central clearing agency. Currently, the Fixed Income Clearing Corporation ("FICC") is the only operating clearing agency; this final rule requires FICC to adopt written policies and procedures reasonably designed to require direct participants to submit all repo transactions in U.S. treasuries. These new rules are "designed to protect investors, reduce risk, and increase operational efficiency in the U.S. Treasury securities markets." The compliance effective date for participation in repo transactions through a central clearing agency is June 30, 2026.

FinCEN's New Rule on Beneficial Ownership Information Reporting Requirements

01.01.2024. The beginning of this year marked the effective date for the Financial Crimes Enforcement Network's ("FinCEN") new beneficial ownership information ("BOI") rule ("BOI Rule"). Issued under the Corporate Transparency Act, this rule requires certain domestic and foreign corporations, limited liability companies or similar entities to report beneficial ownership information. Reporting information includes identifying information regarding the reporting entity and the individuals who directly or indirectly own or control such entity. The BOI Rule provides 23 categories of exemptions from the definition of a "reporting company." Provided all criteria of the relevant exemption category is met, exempt entities include, in part, registered investment advisers, exempt reporting advisers advising only venture capital funds, pooled investment vehicles relying on an exclusion from the definition of investment company in Section 3(c)(1) or 3(c)(7) of the Investment Company Act of 1940, and subsidiaries of certain exempt entities. Entities formed or registered to do business in the U.S. prior to January 1, 2024, have their initial BOI report due January 1, 2025. Entities formed between January 1, 2024, and January 1, 2025, have 90 calendar days after the registration has been accepted or is effective. Finally, reporting companies formed after January 1, 2025, have 30 calendar days to file their initial report.