



ORICAL REGULATORY UPDATE

RULE MAKING

CFTC Election Betting Proposal

05.15.24. The Commodity Futures Trading Commission (“CFTC”) has [proposed](#) to ban the trading of event contracts tied to things like the Superbowl winner, Academy Awards or election outcomes, collectively “political event contracts.” Event contracts are derivatives used to hedge risks on the outcome of certain events; events like war, gambling, or terrorism cannot be the basis for such a contract under the Commodity Exchange Act (“CEA”). The CFTC has proposed plans to define the term gaming in the Commodity Exchange Act with a definition broad enough to apply to any contest or game, including sports competitions, horse racing and auto racing. Resultingly, adding gaming to the CEA will liken gaming to terrorism or war, and will ultimately ban betting. The CFTC has opened its comment period until July 9, at which time, the Commissioners will decide whether to effect this rule. In the interim, several Commissioners are dissenting at the rule’s broad-reaching proposal, positing gaming and gambling laws are best left to states to decide.

FCA Relaxes Rules on Bundled Brokerage

05.08.24. The UK Financial Conduct Authority (“FCA”) [will lift](#) its ban on asset managers making bundled or joint payments to broker-dealers for third-party investment research and execution services. In 2014, the FCA prohibited investment managers from receiving services from broker-dealers paid for by charging the underlying client a higher rate of brokerage commissions, in practice, this resulted in research costs paid for separately from execution costs. After these changes were implemented and the markets adapted, the prohibition reduced the amount of research available and exempted research on companies with a market cap of under \$200 million. Resultingly, the ban hindered UK asset managers’ ability to purchase investment research, impairing their ability to compete globally. Now, the FCA will introduce a bundled payment option as well as give asset managers the option to pay out of pocket or via a research payment account.

SEC, FinCEN Propose Customer Identification Program Requirements for Registered Investment Advisers and Exempt Reporting Advisers

05.13.24. In a rare joint-rulemaking venture, the SEC and U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) [proposed a new rule](#) requiring registered investment advisers and exempt reporting advisers to establish, document, and maintain written customer identification programs (“CIPs”) to reinforce anti-money laundering standards. This proposed rule complements a FinCEN proposal from earlier this year that subjects RIAs and ERAs to suspicious activity reporting under the Bank Secrecy Act. If enacted, the proposed rule would require CIPs to include identity verification of each customer and record keeping of the information used to verify a customer’s identity.

REGULATORY UPDATE

SEC Spring Cleaning

05.24. Throughout May, the U.S. Securities Exchange Commission (the “SEC” or “Commission”) closed out more than twenty ongoing litigations and pursued enforcement actions against almost a dozen investment advisers and investment personnel. As the SEC hits its stride, the focus of the Commission during the Spring is: (i) investment advisers acting as unregistered securities dealers, like the charges against [Curt Kramer and Power Up Lending Ltd.](#) and [Michael Beck and Helen Robinson](#); (ii) violations of insider trading laws and fraud provisions in violation of Rule 10b-5, like the charges against [Gene Daniel Levoff](#), former Senior Attorney at Apple, or those against [Gainvest Legal Corp.](#), charged with willfully making false and misleading statements in its Form ADV filing; (iii) undisclosed conflicts of interest, like the final judgment against [Martin Sumichrast, Eastone Equities, LLC, Hudson Valley Wealth Management Inc,](#) and [Michael E. Lewitt](#), underscoring the importance of accurate conflict disclosure in offering documents; and (iv) Rule 105 violations, prohibitions on short selling as was the case with [Kershner Trading Americas, LLC.](#)

Director Grewal Says Self-Reporting Best Bet for No Penalties

05.06.24. "What we're doing is really underscoring that the cost of non-compliance is always going to be greater than the cost of compliance," said Director of Enforcement of the SEC, Gurbir Grewal, [highlighting](#) self-reporting as the most important factor that the SEC weighs in determining whether or not a firm should face a penalty. The other factors that determine the size of a penalty include cooperation during an investigation, remediation and self-policing, including the tone at the top of a firm.

In an attempt to encourage self-policing among smaller and mid-sized firms, who may not be able to pay substantial penalties or fully remediate, the SEC has implemented “springing orders,” allowing firms to acknowledge violations and agree to remediation plans moving forward or face a penalty after the specified period with no remedial actions taken. Grewal says penalties and cooperation are measures that not only assist a compliance department, but also emphasize cooperation.

SEC Adopts Rule Amendments to Regulation S-P to Enhance Protection of Customer Information

05.16.24. The SEC [introduced](#) amendments to Regulation S-P intended to modernize and enhance the requirements for broker-dealers, investment companies, transfer agents and registered investment advisers. These amendments will require entities to implement and maintain incident response policies and procedures designed to detect and appropriately respond when customer information is accessed without authorization and inform customers of potential breaches.



Are You Ready for Your Next Regulatory Exam? Oricol 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:

Form PF Quarterly: 5/30/2024

Form PQR: 5/29/2024

Form N-PX: First Report August 31, 2024