



ORICAL REGULATORY UPDATE

RULE MAKING

NFA Increases Frequency of Member Questionnaire Submissions

06.03.24. Effective October 15, 2024, a [new NFA rule](#) sets conditions that will now require members to file other-than-annual amendments to their Member Questionnaire (“MQ”), in addition to the existing requirement to submit a MQ annually. There are two triggers for a mid-year amendment to the MQ. First, upon request, members must submit an amended MQ within 30 days; failure to do so is deemed a request to withdraw from NFA membership. Second, members must promptly update their MQ upon material changes in operations from its previous MQ. Material changes include, but are not limited to, engaging or disengaging in activities relating to commodity interest products, micro-contracts, retail forex or digital assets, algorithmic trading activities, or cloud computing; a significant increase or decrease in customer accounts; an IB’s revenue change that affects CFTC Regulation 1.35(a)(1)(iii) compliance; or, if a CPO has a pool that has just commenced operations.

SEC Shortens Settlement Cycles

05.27.24. As of May 28, 2024, [settlement cycles on stock trades](#) and other securities are reduced from two days (T+2) to one (T+1). A settlement cycle is the period between the execution of a trade and the final transfer of assets— securities to the buyer’s account and cash to the seller’s. This amendment, which applies to stocks, corporate bonds, ETFs, mutual funds, REITs, MLPs, and options aims to fortify market resilience and enhance liquidity by making the settlement process more efficient and reliable. Shortening the settlement time is intended to reduce the risk of a failure to deliver, which can arise if, for example, the buyer lacks the necessary funds, or the seller lacks the bought-for shares. This change has been synchronized with concurrent adjustments in Canada and Mexico, marking a broader move towards modernizing the financial infrastructure.

REGULATORY UPDATE

Advisory Firm Charged with False Statements & Undisclosed Conflicts

05.29.24. The [SEC reached a settlement](#) with Mass Ave Global Inc. (“Mass Ave”), a hedge fund adviser with \$1.1 billion under management, and co-founder Winston M. Feng. The firm was charged with distributing false information to its investors in breach of the Investment Advisers Act of 1940 (“Adviser’s Act”); between 2020 and 2022, Mass Ave was found to have misrepresented its funds’ holdings in investor communications, a result of Feng’s manipulation of portfolio data. The misrepresentation involved showing positions in the portfolio that were not held during the point in time referenced. Further, the firm reported “Average Gross” and “Average Net” as net exposure figures adjusted for beta, instead of exposure figures representing the dollar-for-dollar value of the funds’ positions. Moreover, the firm failed to report a conflict of interest stemming from another co-founder’s management of a separate fund in China. Mass Ave will incur a \$350,000 fine, while Feng is subject to a \$250,000 fine and a one-year suspension from any industry-related activities.

SEC Charges Investment Advisers with Misleading Disclosures

06.11.24. The [SEC charged Anson Funds Management, L.P.](#) (“Anson”) with violating the Advisers Act based on its dealings with activist short publishers, those who issue reports presenting bearish views of target securities. Anson omitted from its private placement memorandum given to investors a description of the coordination with activist short publishers: trading in target securities and Anson’s paying a portion of trading profits to these short publishers, who shared their work before posting it publicly. The SEC alleges this omission violated Anson’s policy to “clearly articulate” its short strategy. Additionally, because Anson’s payments to the short publishers were recorded as research services not actually performed, Anson violated its policies regarding the accuracy of records.

SEC Charges Robert Murray and Trillium Capital in Stock Manipulation Action

05.31.24. [The SEC charged](#) Robert Murray and his firm, Trillium Capital LLC, with engaging in a scheme to manipulate Getty Images Holdings Inc. stock (“Getty,”) offloading his position after orchestrating a “sham offer” intended to drive up its stock price. After amassing a position in Getty securities, Trillium announced its intent to buy all outstanding Getty stock for nearly twice the prior day’s closing price, causing its stock price to spike. Despite publicly pledging to hold his shares, Murray liquidated his holdings within minutes of market open the following day, before Getty even responded to his offer. The SEC alleges this behavior, along with the absence of a genuine effort to fund the proposed transaction, demonstrated Murray’s false and misleading intent. Murray and Trillium agreed to a judgment permanently enjoining them from participating in certain securities-related conduct and banning Murray from serving as a public company director or officer; the court has yet to determine monetary damages. In a parallel action, the U.S. Attorney’s Office for the District of Massachusetts has announced criminal charges against Murray.

UPCOMING COMPLIANCE DEADLINES:

Form 13H-Q: 7/10/2024

Form 13F-Q: 8/14/2024

Form PR-Q: 8/14/2024

Form PQR: 8/29/2024

Form PF-Q: 8/29/2024

Form N-PX: 8/31/2024

Beneficial Ownership Information Rule

The Financial Crimes Enforcement Network’s (“FinCEN”) [beneficial ownership information rule](#) (“BOI Rule”) took effect on January 1, 2024. The BOI Rule requires entities to file reports regarding the reporting entity and the individuals who (a) exercise substantial control over it or (b) own or control 25%+ of it. Importantly, the BOI Rule provides 23 categories of exemptions from the definition of a “reporting entity” including, in part, registered investment advisers (“RIAs”), exempt reporting advisers advising only venture capital funds (“VC ERAs”), and certain pooled investment vehicles of RIAs and VC ERAs. Firms should inventory all entities (including SPVs) within their organizational structure to determine whether any exemptions can be met or otherwise ensure timely filings.

Court of Appeals Strikes Down Private Fund Rule

06.05.24. In a highly anticipated decision, the [United States Court of Appeals for the Fifth Circuit](#) struck down the entire private fund rule adopted by the SEC late last year. The Fifth Circuit said, “The [SEC] has exceeded its statutory authority in adopting the Final Rule... [N]o part of it can stand.” It is presently unclear whether the SEC will appeal the decision to the U.S. Supreme Court.

Are You Ready for Your Next Regulatory Exam? Oricol has extensive experience assisting clients on sweep exams, routine regulatory exams and facilitating SEC or CFTC exam readiness assessments.

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 first sale. Contact us to file yours.