COMPLIANCE INFORMER®

REGULATORY UPDATE

December 1, 2020

*Provided by Hardin Compliance Consulting LLC*

# Form CRS Roundtable Take-aways, Commissioner Peirce Talks Turkey on CCO Liability, New Executive Order Prohibits Investments Related to Chinese Military, OCIE Cites Top Compliance Program Failures and Risks of Branch Offices: Regulatory Update for December 2020

## General Industry Updates

- **What We Learned from the Regulation BI and Form CRS Roundtable.** The recent joint SEC/FINRA Roundtable on Regulation Best Interest ("BI") and Form CRS provides insight and guidance for firms to consider for improving their Reg BI and Form CRS compliance programs. Staff from the SEC's Office of Compliance Inspections and Examinations (OCIE), the Division of Trading and Markets, the Division of Investment Management and FINRA.

  Addressing Regulation BI's Compliance Obligation, the panelists all agreed that while they generally saw good faith efforts in implementing written policies and procedures, some firms written supervisory procedures (WSPs) merely restated the rules without including specific details, tailored to the firm's business model, to provide guidance regarding the "who," "when," and "how." The same was said for firm-element training plans. While firm training modules covered the regulatory requirements, in many cases, firms failed to sufficiently educate brokers on the process for compliance. The takeaways from this panel include making sure the firm's written procedures (1) distinguish between Reg BI and suitability, (2) address modifications to Rule 2111, and (3) include controls for testing their Reg BI procedures, and (4) compliance with Regulation BI recordkeeping requirements.

  As for the Care Obligation under Reg BI, SEC and FINRA Staff encouraged firms to address the cost and available investment alternatives, and how factors impact procedures on recommendations, disclosure, documentation, supervision, and training. Panelists also suggested that brokers would benefit from additional training and guidance about what constitutes a "recommendation."

  The panel highlighted commonly overlooked conflicts of interest, including those related to limited product menus, complex compensation arrangements, hiring incentives (forgivable loans), and expense reimbursements by third parties. Firms and brokers are encouraged to review the SEC's FAQs on regularly for additional guidance on how to handle conflicts of interest. The panel emphasized that disclosure alone does not satisfy the Conflict of Interest Obligation.

Finally, the panel noted industry-wide deficiencies in meeting Regulation BI's Disclosure Obligation, including a failure to comply with e-delivery requirements consistent with existing SEC guidance. Remember, access does NOT equal delivery. Each firm's WSPs should contain detailed procedures regarding e-delivery.

With respect to Form CRS, check out Hardin's November edition of Compliance Informer® for regulators' observations. Additionally, please note the following tips from Hardin consultants:

- Do not change the prescribed section headings – even in an attempt to make the form more visually appealing. If you use a marketing department to produce or file the Form CRS, we recommend that the compliance officer conduct a final review to confirm that no edits have been made to any prescribed text.
- Do not take liberties when responding to the disclosure history portion of the Form. The SEC expects a direct "Yes" or "No" answer with no additional explanatory language.
- Ensure your Form CRS is machine-readable and prominently displayed on your website. We recommend a link that appears directly on the home page of your firm's website. *Contributed by Rochelle A. Truzzi, Managing Director*.

➢ **U.S. Executive Order Bans Investment in Firms Benefiting Chinese Military.** President Trump issued an Executive Order on November 12, 2020, that prohibits U.S. persons from engaging in any transaction of publicly-traded securities of designated Communist Chinese military companies ("Chinese Military Companies"). The prohibition extends to financial products that are derivative of, or provide other investment exposure to, identified Chinese Military Companies. The order will become effective January 11, 2021 and currently applies to 31 entities that have been identified on a list of Chinese Military Companies published by the U.S. Department of Defense (DOD). U.S. investors will have until November 11, 2021 to fully divest from any shares or funds involving these 31 companies. As companies are added to the list, U.S. persons will have 365 days from the date of designation to divest of the securities/derivatives issued by the Chinese Military Company. The lists of companies in which U.S. persons cannot invest can be found on the DOD's website. Hardin recommends that you continue to monitor the DOD's website for releases until such time as we receive additional information regarding updating and notification procedures from the DOD. *Contributed by Rochelle A. Truzzi, Managing Director.*

➢ **SEC Enforcement Actions Down in 2020, but Record Year for Disgorgement and Penalties.** On November 2, 2020, the SEC's Division of Enforcement released its 2020 Annual Report detailing its activities and results for the SEC's fiscal year ended September 30, 2020. There were 715 enforcement actions, down from 862 in 2019. The drop in enforcement actions is attributed to the COVID-19 pandemic. Despite fewer cases, the SEC received a record $4.68 billion in disgorgement and civil monetary penalties, as compared to $4.3 billion the prior year. Matters related to securities offerings, investment advisers, and broker-dealers were three of the top five enforcement action categories. See the full report for more details on all of the Division of Enforcement's activities for the year. *Contributed by Doug MacKinnon, Senior Compliance Consultant.*

## For Investment Advisers

- **SEC Commissioner Peirce Has a Solution for CCO Liability: Set your Own Standards**. Similar to her remarks at the 2019 National Conference, SEC Commissioner Hester Peirce's keynote speech to the National Society of Compliance Professionals (NSCP) showed her sympathy for the compliance profession. She discussed her concerns about recent SEC actions imposing personal liability on compliance officers. She acknowledged that the SEC has not provided any new guidance on the topic since 2015, when Andrew Ceresney, then-director of the Division of Enforcement, cited three categories of cases where the SEC would compliance officers personally liable:

  1) cases where the compliance officer participated in the underlying misconduct unrelated to her compliance duties;
  2) cases where compliance officers obstructed or misled Commission staff; and
  3) cases where, "the CCO has exhibited a wholesale failure to carry out his or her responsibility."

  She found the third type of case particularly troublesome since the Commission has been interpreting the Compliance Program Rule (Rule 206(4)-7) using a strict liability standard, finding that compliance officers failed because the violations were not discovered. She said:

  > ***Compliance personnel are vital to a firm's compliance efforts, but an overly-aggressive approach to charging CCOs when something goes wrong shifts responsibility for compliance from the firm to the CCO...***
  >
  > ***I am concerned that we appear to assume that every securities violation we find indicates a problem with the firm's compliance program. A firm that has reasonably designed policies and procedures nevertheless can experience a securities violation.***

  She pointed out that the lack of a formal regulatory structure or a governing professional organization to set standards for CCOs increases the risk of personal liability. Adherence to nationally-recognized standards for CCO conduct would be a defense against personal liability.

  Commission Peirce recommended that CCOs take matters into their own hands by creating their own professional guidelines. She embraced a recommendation proposed by the New York City Bar in its Report on Chief Compliance Officer Liability in the Financial Sector to create a public-private advisory group of compliance officers "charged with meeting periodically to discuss current and potential regulatory, examination, and enforcement efforts, and to publish guidance and recommendations to compliance officers and regulators reflecting the insight of both regulators and the regulated." *Contributed by Jaqueline M. Hummel, Partner and Managing Director.*

- **Herding Cats: OCIE Provides Guidance on Supervising Branch Offices, a Must-Read for All Advisers Serving Retail Clients**. In a recent Risk Alert, OCIE highlights the difficulty investment advisers have supervising representatives in branch offices. The results should not be a surprise, since many firms grow by acquiring or merging with other advisory firms and may not feel the need to impose a consistent supervisory structure across all branch offices. OCIE identified these common deficiencies:

- Failure to recognize custody
- Failure to oversee the billing process
- Failure to impose standards on advertising materials
- Code of Ethics rule violations
- Failure to supervise portfolio management practices and oversee investment recommendations

OCIE included a list of practices firms should consider when updating their compliance programs. Although OCIE cannot come out and say it, it's clear that the SEC views these processes as best practices. Investment advisers should review this Risk Alert in detail as part of their annual review process to gauge whether their current policies and procedures are up to snuff. Key recommendations include:

- Centralized, uniform processes for fee billing
- Centralized oversight for monitoring and approving advertising
- Uniform portfolio management policies and procedures
- Review of branch office supervision, including review of portfolio management decisions and suitability of investment recommendations
- Consolidation of the trading function
- Review of disciplinary events prior to hiring personnel and periodically
- Required compliance training for branch offices based on deficiencies found during audits

Firms may be reluctant to impose uniform policies and procedures, especially if the investment adviser representatives (IARs) running the offices are successful at bringing in assets, and adhering to a "if it ain't broke, don't fix it" philosophy. Some firms want to allow their IARs the freedom to run their own businesses. But managing people's money is a highly-regulated business for good reason, and adding controls to ensure the quality service is not only good for clients, it's good for business. *Contributed by Jaqueline M. Hummel, Partner and Managing Director.*

➢ **Read this Before Performing Your Annual Review of IA Policies and Procedures**. A Risk Alert issued by OCIE highlights issues advisers have implementing the compliance Program Rule (Advisers Act Rule 206(4)-7). Although OCIE's efforts to communicate common deficiencies is commendable, the necessity of publishing this alert about a rule that's been in place for 16 years indicates that the Commission has not provided adequate guidance. Specifically, criticisms like "not devoting sufficient resources to the compliance team" and "failing to grant the CCO sufficient authority to effectively manage the compliance program" seem to beg the question "Who is ultimately responsible?". Compliance should be a firm-wide responsibility; therefore, the SEC should impose greater liability on firm management for these failures. For example, if the firm does not provide its CCO with sufficient authority, then senior management should *de facto* be responsible for the compliance program.

Nonetheless, this Risk Alert is a great resource for compliance officers starting the annual review of their firm's compliance manual. For example, OCIE noted that advisers did not follow their policies and procedures, which required training employees, correcting trade errors per firm procedure, reviewing advertising materials to ensure accuracy, evaluating best execution, and analyzing conflicts of interest and developing accompanying disclosures.

The alert also discussed the nine areas traditionally associated with a compliance program and cited processes that firms should cover in their policies and procedures, to the extent applicable.

- Portfolio management, including oversight of outside managers, due diligence of investments, supervision of branch offices and investment advisory representatives (IARs) to ensure client assets are being managed per firm policies and procedures;
- Marketing, including oversight of solicitors and compliance review of marketing materials to ensure accuracy;
- Trading practices, including monitoring the allocation of soft dollars, evaluating best execution, and following firm policy on correction of trade errors;
- Disclosures, including ensuring the accuracy of Form ADV and client communications;
- Advisory fees and valuation, including implementing a detailed fee billing process that is monitored for accuracy, and adopting a process for valuation of client assets;
- Safeguards for client privacy, including compliance with Regulations S-P and S-ID, maintaining security of client information, implementing cybersecurity procedure and training employees on how to handle privacy breaches;
- Required books and records;
- Safeguarding of client assets, including implementing procedures to handle custody and to disbursements; and
- Business continuity plans, including implementing and testing business continuity plans.

The takeaway for advisers is to read this risk alert and compare the firm's policies and procedures against the list provided. Make sure that the firm's compliance manual addresses the areas mentioned and that it accurately portrays current practices. OCIE has provided a roadmap for compliance with Rule 206(4)-7; advisers just need to follow it. Need more help? Check out our blog post, Write the Best Compliance Manual Ever! *Contributed by Jaqueline M. Hummel, Partner and Managing Director.*

## For Broker-Dealers

- **FINRA Adopts New Rule for Brokers Named as Beneficiary or Holding a Position of Trust on Behalf of Customers.** Effective February 15, 2021, FINRA will limit registered persons from serving as a beneficiary, executor, trustee, or having power of attorney for or on behalf of Customers. FINRA Rule 3241 will not apply to customers that are "immediate family members," as defined in paragraph (c) of the rule. For purposes of Rule 3241, FINRA deems a "Customer" to include any customer that has, or in the previous six months had, a securities account assigned to the registered person at any member. The rule sets forth obligations of both the registered representative and the member firm.

Registered persons must:

1) Notify the member firm of any pre-existing positions within 30 days of becoming associated with the firm.

2) Decline being named as a Beneficiary of a Customer's estate until the registered person provides written notification to its member firm and receives written approval from its member to being named as a Beneficiary. This also applies to Bequests from the Customer.

3) Decline being named as an Executor or Trustee, or holding a power of attorney for or on behalf of a Customer until the registered person provides written notification to its member firm and receives written approval from its member to holding such position. The registered person may not receive any financial benefit until he/she receives written approval. Any fees received must be reasonable and customary to the position.

4) Adhere to any limitations or restrictions established by the member firm. If the member firm disapproves the request, the registered person is prohibited from being named as beneficiary or acting in a trust capacity.

Member firms must:

1) Upon receipt of written notification from a registered person, conduct an assessment of the risks associated with the requested status/capacity to determine if it will compromise the registered person's responsibilities to the Customer.

2) Determine, based on the risk assessment, whether to approve, approve with limitations/conditions, or disapprove the request.

3) Provide a written response to the registered person that outlines the decision and any limitations or conditions, if approved.

4) Monitor the registered person's activities to ensure compliance with any stated limitations or conditions.

5) Document and maintain the procedures established by the firm to comply with this rule.

Beneficiary status and positions of trust held away from the member firm may trigger reporting, approval, and supervisory requirements of FINRA Rules 3210 and/or 3270. While many firms already have similar procedures in place in order to comply with FINRA Rule 3260 (Discretionary Accounts), firms need to adopt or amend, document, and implement additional procedures designed to comply with the specific requirements of new Rule 3241. *Contributed by Rochelle A. Truzzi, Managing Director.*

## For Mutual Funds

- **SEC Modernizes Fund of Funds Investing Rules.** The SEC recently adopted Rule 12(d)(1)-4 and amendments under the Investment Company Act of 1940 with the goal to "streamline and enhance the regulatory framework for funds that invest in other funds" ("i.e., fund of funds" arrangements). For context, registered funds are typically limited, under section 12(d)(1) of the Investment Company Act of 1940, in their invests in other registered funds. Specifically, Section 12(d)(1)(A) restricts funds from: (i) acquiring more than 3% of a fund's voting shares outstanding; (ii) investing over 5% of its total assets in any one fund; or (iii) investing over 10% of its total assets in other funds in aggregate. With the rise in prevalence of funds of funds over the years, the SEC implemented a practice that required each fund of funds to request an exemptive order in order to invest beyond these limits. And, with their continued popularity, this practice has resulted in a complex patchwork of exemptive orders that were simply slowing down the system. To answer this concern and with the goal to "streamline and enhance the regulatory framework for funds of funds", the SEC proposed the new Rule 12(d)(1)-4 in December 2018. This new rule will allow funds of funds to acquire shares of another investment company or BDC that exceed the limits established in section 12(d)(1) of the Investment Company Act without first obtaining an individual exemptive order from the SEC, subject to certain conditions focused on investor protection. These conditions include: limits on control and voting applicable to the acquiring fund, required evaluations and findings, required fund of funds investment agreements, and limits on complex structures.

In concert with the new rule, the SEC is rescinding rule 12(d)(1)-2, along with most previously granted exemptive relief (in favor of the new rule's requirements) and revising Form N-CEN to require disclosure by funds that previously relied on an exemptive order. The new rule is effective 60 days after publication in the Federal Register, while the compliance date for new rule, as well as the recission of 12(d)(1)-2 and previously granted exemptive orders, is one year after the new rule's effective date. *Contributed by Cari A. Hopfensperger, Managing Director.*

- **SEC Reestablishes Regulatory Framework for Investment Company Use of Derivatives**. Originally proposed in 2015, and re-proposed in November 2019, the SEC adopted Rule 18f-4 and related rule amendments largely as proposed with limited exceptions. The new rule, which the SEC notes is intended to modernize previous regulatory requirements, permits funds to invest in derivatives subject to certain conditions that include:

  - Funds must adopt a derivatives risk management program and appoint a sufficiently experienced person as administrator for the program, with approval and oversight provided by the fund's board of directors. As proposed, the program must include policies and procedures that (1) address certain specified elements, (2) are designed to manage the fund's derivatives risk and (3) to segregate the functions associated with the program from portfolio management.

  - Funds will also be required to establish a limit on the amount of leverage-related risk that the fund may take on based on value-at-risk, or "VaR" and to monitor the fund's VaR daily.

  - Funds with limited derivatives exposure (no more than 10% of the fund's net assets, with certain exclusions) will be exempt from the above risk management program and VaR testing requirements. However, they will be required to adopt and implement written policies and procedures reasonably designed to manage the risk associated with the fund's investments in derivatives.

The above requirements will apply to funds' "derivatives transactions", which is defined in the rule and excludes transactions in derivatives "that do not impose any future payment obligation of a fund".

In addition to adopting Rule 18f-4, the SEC voted to amend Forms N-LIQUID (which will be re-named Form N-RN), N-PORT and N-CEN. Under these amendments, funds will be required to confidentially report breaches of the VaR-based limit on fund leverage risk that extend for more than five business days on Form N-RN (f/k/a Form N-LIQUID), and report additional details about its derivatives use on

Forms N-PORT and N-CEN. New and amended rules will be effective 60 days after they are published in the Federal Register, and the compliance date is 18 months after the effective date. The recission of Staff Release 10666 and the withdrawal of SEC staff letters and related guidance will also be effective 18 months after the effective date. All registered funds currently entering into derivative transactions will need to review, assess and update their policies and procedures regarding derivatives. *Contributed by Cari A. Hopfensperger, Managing Director.*

## Lessons Learned

- **'Tis the Season to Circle the State Registration Wagon.** Errors in registration or notice filings can be costly mistakes for broker-dealers and investment advisers and representatives. For example, the Pennsylvania Department of Banking & Securities ("Department") entered a Consent Agreement & Order with Ameritas Investment Company, LLC, a federally covered investment adviser, for failing to register at least one employee in Pennsylvania over a four-year period. Ameritas was fined $100,000 and now must publicly disclose the enforcement action. This penalty came despite Ameritas properly submitting its notice filing in Pennsylvania during the same period.

  While it is unclear from the Consent Agreement whether Ameritas had only one unregistered investment adviser representative in Pennsylvania or many, in the first ten months of 2020, Pennsylvania has taken several enforcement actions for registration failures against investment advisers, broker-dealers, and licensees. These matters generally include penalties ranging from $10,000 to $125,000. In some instances, out-of-state, state registered investment advisers failed to register in the Commonwealth. [*See* Department v. Blue Water Financial] In others, Pennsylvania state-registered investment advisers failed to register just one investment adviser representative (*See* Department v. Englebert Financial). And still other cases involved longer periods where representatives failed to register. Leaving no stone unturned, broker-dealers are also included in this mix of registration cases. (*See* Department v. Solium Financial Services, LLC).

  Renewal season is a great time to evaluate whether your firm and its investment adviser representatives (and/or broker-dealer and/or agents) are properly registered or notice filed to conduct business in every jurisdiction required. For more information about how to review and fix any registration gaps at your firm, double down on this topic by reading Jaqueline Hummel's recent blog post: State Regulators Not Feeling So Graceful Now: Investment Adviser Representatives Who Relocated to Other States for Pandemic May Have to Register as Grace Periods End.

  As a final thought, to err is human. As compliance professionals, we do our best to know where our clients and employees are located and conducting business and to understand the nuances of registration rules. The extra hour or two spent preventing an error from occurring is money well-spent. Additionally, consider speaking with your insurance broker and checking your liability policies regarding potential coverage for a registration issue – in case of an inadvertent error. 'Tis the season. *Contributed by Carolyn W. Mendelson, Senior Compliance Consultant.*

- **Another Private Fund Adviser Charged for Incentive Fee Errors.** In the latest in a string of enforcement actions against private fund managers for improper fee calculations, the SEC recently settled charges against private equity fund manager, EDG Management Company, LLC ("EDG") for errors in its incentive fee calculations. EDG's private equity fund offering documents described an incentive fee calculation that required it to reduce the incentive fees charged during any period based on certain triggering events. One such trigger was the write down of portfolio securities. Over a multi-year period, certain write downs occurred; however, the firm consistently did not accurately reduce the incentive fees to account for those events. As a result, incentive fees were repeatedly overcharged to fund investors.

This case almost seems too simple - the action does not describe any other violations. There is no reference to a failure of any compliance policies or procedures, and no mention of any attempt to obscure the errors or failure to take swift corrective action once the errors were identified. In fact, the action states that the SEC took EDG's cooperation into consideration in its settlement offer. The action is also silent on whether the calculation errors were made internally at EDG or if they were made by a third-party administrator. Regardless, this case serves as another cautionary tale that firms must ensure they have robust oversight over fee calculations (regardless of who calculates them). In addition to potential errors in the mechanics of the fee calculation, private fund managers should also ensure that the parties responsible for the calculation take all applicable terms in the offering documents into account. Funds that use an external administrator should ask them to review the fund offering documents and acknowledge their understanding of all relevant terms in those documents, as well as conduct oversight of the calculations performed. *Contributed by Cari A. Hopfensperger, Managing Director.*

- **SEC Slaps Multiple Firms with Suitability Violations.** The SEC charged three RIAs and two dually registered RIA – BDs with suitability violations in connection with their use of certain volatility-linked exchange traded products ("ETPs") in client accounts. Investment adviser representatives ("IARs") of each firm used their discretionary authority to buy and hold a specific complex ETP in client accounts for "time periods that were inconsistent with the purpose of the product as described in its offering materials". And by doing so, the increased risk associated with the longer holding periods ended up resulting in material losses to those client accounts. In each case, the SEC found that, although the firms had adopted policies and procedures to address suitability for this type of security, the firms did not properly supervise or train their IARs on the use of this complex product. This finding was compounded by the SEC's discovery that the firms had not completed proper new product diligence on the product or even identified it as a complex product to its IARs. Firms that utilize complex products for their clients are cautioned to ensure their product review, training and supervisory processes are sufficiently robust to address the elevated complexity and risks. *Contributed by Cari A. Hopfensperger, Managing Director.*

## Worth Reading

- State Regulators Not Feeling So Graceful Now: Investment Adviser Representatives Who Relocated to Other States for Pandemic May Have to Register as Grace Periods End. With year-end and IARD renewals fast approaching, check out this thorough and practical analysis of state considerations from Hardin's own Jaqi Hummel, Partner and Managing Director.

- Results of the presidential election and potential impacts on financial services. Sherman Sterling shares its views on how the outcome of the presidential election stands to impact the financial service industry.

- Two Recent SEC Cases Involving Cryptocurrency Offerings. Faegre Drinker highlights recent enforcement activity in the digital asset sphere.

- Despite Unprecedented Challenges, SEC's Division of Enforcement's 2020 Annual Report Presents Healthy Enforcement Results. New York University's School of Law Blog, *Compliance and Enforcement,* offers its analysis of the SEC's recent 2020 Annual Report on enforcement activities.

- The Role of the CCO – Empowered, Senior and With Authority. Peter Driscoll, Director of OCIE, delivered Opening Remarks at the SEC's recent National IA/IC CCO Outreach Webinar. With his message equally tailored towards other C-suite team members as to CCOs themselves, he addressed challenges faced by CCOs, among other topics.

- Letter from 30 State Securities Administrators SEC Regarding Proposed Federal BD Exemption for Private Placement Finders. 30 states collaborated to submit a comment letter regarding the proposed finder's exemption expressing their concern that the proposed exemption does not go far enough to protect retail investors. NASAA submitted its own similar letter of concern, a copy of which is available here.

- Industry opposition to the proposed amendments to 13F filing requirement. Ortenca Aliaj and Eric Platt of the Financial Times, report that the SEC "has received almost unanimous opposition from companies and investors" against the proposal, which would raise the filing trigger from $100 million in discretionary 13F securities (set at the rule's inception in 1975) to $3.5 billion. Opponents include issuers and other investment firms, who argue that the amendments would dramatically reduce transparency with little efficiency to be gained by firms since the flings are generally already a "simple" process for most firms.

## Filing Deadlines and To-Do List for December 2020

### *INVESTMENT ADVISERS*

- Annual Renewal Program for IARD System: The IARD Renewal Program facilitates the annual renewal of investment adviser (IA) firms and their IA representatives' (IARs) registrations with jurisdictions/states. Preliminary renewal statements were available on the IARD system on November 16, 2020. Renewal statements reflect the registration renewal fees and annual system processing fees for all IARs and state-registered IA firms. The deadline for the receipt of the preliminary statement payment is **December 14, 2020**. Questions? Check out the FAQs for more information.

### *HEDGE/PRIVATE FUND ADVISERS*

- Blue Sky Filings (Form D). Advisers to private funds should review fund blue sky filings and determine whether any amended or new filings are necessary. Generally, most states require a notice filing ("blue sky filing") within 15 days of the first sale of interests in a fund, but state laws vary. Did you know that Hardin Compliance Consulting offers a convenient and economical blue sky filing service to help firms manage this complicated monthly task? Learn more here and give us a call to discuss your needs further. Due **December 15, 2020**.

### *BROKER-DEALERS*

- Supplemental Inventory Schedule ("SIS"): For the month ending October 31. The SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period. **Due December 1, 2020.**
- Statement Regarding Independent Public Accountant: Due no later than December 10th of each year, unless your engagement is continuing, providing for successive engagements. **Due December 10, 2020.**
- FINRA 2021 Renewal Program Preparations: Consult the FINRA website to access important dates and information regarding the 2021 Renewal Program. Be sure to update your calendars and ensure your Renewal Account is sufficiently funded. **Preliminary Renewal Statement Payments are due December 14, 2020.**
- Rule 17a-5 Monthly and Fifth FOCUS Part II/IIA Filings: For the period ending November 30, 2020. For firms required to submit monthly FOCUS filings and those firms whose fiscal year-end is a date other than a calendar quarter. **Due December 23, 2020.**
- Supplemental Inventory Schedule ("SIS"): For the month ending November 30. The SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period. **Due December 29, 2020.**
- Annual Audit Reports for Fiscal Year-End October 31, 2020: FINRA requires that member firms submit their annual audit reports in electronic form. Firms must also file the report at the regional office of the SEC in which the firm has its principal place of business and the SEC's principal office in Washington, DC. Firms registered in Arizona, Hawaii, Louisiana, or New Hampshire may have additional filing requirements. **Due December 30, 2020.**
- Supplemental Inventory Schedule ("SIS"): For the month ending November 30. The SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period. **Due December 30, 2020.**
- SIPC-3 Certification of Exclusion from Membership: For firms with a Fiscal Year-End of November 30 ***AND*** claiming an exclusion from SIPC Membership under Section 78ccc(a)(2)(A) of the Securities Investor Protection Act of 1970. This annual filing is due within 30 days of the beginning of each

fiscal year. **Due December 30, 2020.**

- SIPC-6 Assessment: For firms with a Fiscal Year-End of May 31. SIPC members are required to file for the first half of the fiscal year a SIPC-6 General Assessment Payment Form together with the assessment owed within 30 days after the period covered. **Due December 30, 2020.**
- SIPC-7 Assessment: For firms with a Fiscal Year-End of October 31. SIPC members are required to file the SIPC-7 General Assessment Reconciliation Form together with the assessment owed (less any assessment paid with the SIPC-6) within 60 days after FYE. **Due December 30, 2020.**

## *MUTUAL FUNDS*

- Form N-MFP. Form N-MFP (Monthly Schedule of Portfolio Holdings of Money Market Funds) reports information about the fund's holdings as of the last business day of the prior calendar month and must be filed no later than the fifth business day of each calendar month. Due date is **December 7, 2020**.

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### Partner with Hardin Compliance



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*Hardin Compliance Consulting provides links to other publicly-available legal and compliance websites for your convenience. These links have been selected because we believe they provide valuable information and guidance. The information in this e-newsletter is for general guidance only. It does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.*