

2021 First Quarter Compliance Letter

Guidance, Enforcement, Hot Topics, & More for Investment Advisers

As of: March 31, 2021

We hope this letter finds you well. It has been an active quarter for compliance; new faces at the SEC, the 2021 priorities were announced, firms began the ramp up for the amended marketing rule, and more...

This quarter's headlines.

- President Biden has nominated Gary Gensler as the next chair of the SEC. Mr. Gensler is a former Goldman banker and chair of the CFTC from 2009-2014. The industry expects Biden appointees, including Mr. Gensler, to take a tougher approach to regulating and policing banks, asset managers and entities seeking to raise money from public investors. The number of new enforcement investigations [fell](#) every year during the Trump administration, from 1,063 in 2016 to 827 in 2019.
- On March 3, the SEC's Division of Examinations released their [2021 exam priorities](#). The staff continues to focus on operational, technological, and other challenging impacts stemming from the pandemic. You can read HighCamp's summary [here](#). As it relates to private fund managers, the staff will focus on compliance risks relating to:
 - Preferential treatment of certain investors by advisers to private funds that have experienced issues with liquidity (e.g., imposing gates or suspensions on fund withdrawals);
 - Advisers with a higher concentration of structured products (e.g., collateralized loan obligations or mortgage backed securities) and adequate disclosures of risks associated with non-performing loans;
 - Scenarios that create conflicts around liquidity such as adviser-led fund restructurings, including stapled secondary transactions;
 - Cross trades, principal investments, or distressed sales and whether advisers are providing adequate disclosures and complying with regulatory requirements;
 - Fund valuation consistency and methodology appropriateness, and impact to management fees; Compliance with the recent changes to the definition of accredited investor when recommending and selling certain private offerings.
- On March 4, the SEC [announced](#) the creation of a Climate and ESG Task Force in the Division of Enforcement that will focus on identifying ESG related misconduct, including compliance issues related to advisers' and funds' ESG strategies. ESG was also included in the 2021 exam priorities.

What is in the pipeline? On March 18, the staff of the Division of Investment Management [clarified](#) in an FAQ that advisers can elect to comply with the amended marketing rule in its entirety on the May 4, 2021 effective date. The staff reminds firms that policies and procedures will need to be amended to in light of the new regulatory requirements. The delayed compliance date of the amended rule is November 4, 2022.

Did you know? The number of SEC registered investment advisers has grown from 12,000 to more than 13,900 in the past five years and 36 percent of advisers manage private funds. In 2020, the SEC examined 15 percent of advisers but cautioned that its coverage with current staffing, without drop in quality and effectiveness, will not keep pace with industry growth.

Is that all? See below for our Q1 Chronological List of Key Events and Upcoming Dates and Deadlines.



Q1 Chronological List of Key Events

As of: March 31, 2021

We left off on December 31, 2021, in our 2020 Year-In-Review for Investment Advisers. You can access it [here](#). For those printing this letter, please note that all sources are hyperlinked rather than footnoted.

January 27: [Joint Statement Regarding Ongoing Market Volatility](#)

The SEC issues statement expressing that they are aware of the market volatility around positions affected by the r/WallStreetBets forum on Reddit and are reviewing the activity. The House Financial Services Committee subsequently held hearings on the January market volatility, including impact commission-free apps.

February 26: [The Division of Examinations' Continued Focus on Digital Asset Securities](#)

This risk alert provides risks from recent examinations of investment advisers and broker-dealers managing or involved in digital assets. The term "digital asset" is defined in the alert as "an asset that is issued and/or transferred using distributed ledger or blockchain technology ("distributed ledger technology"), including, but not limited to, so-called "virtual currencies," "coins," and "tokens." A particular digital asset may or may not meet the definition of "security" under the federal securities laws. For investment advisers, the compliance risks identified involve challenges relating to portfolio management, books and records, custody, disclosures, and registration.

February 22: [United States of America v. Elliot Smerling](#)

This criminal complaint alleges a principal of an exempt reporting adviser falsified audit letter and subscription documents to secure a subscription credit facility.

March 3: [2021 Examination Priorities](#)

The Division of Examinations announced its examination priorities for fiscal year 2021.

March 15: [In the Matter of Ettro Capital Management Corp. and Peter Ettro](#)

This enforcement action highlighted a real estate manager's mistakes relating to material misrepresentations around: (1) past performance; (2) assets under management; and (3) investment experience. This matter also included a private offering Rule 506 violations for engaging in general solicitation through its website, as well as not taking reasonable steps to verify investors are accredited after it amended its offering exemption to 506(c).

March 24: [SEC Charges Former Private Fund Managers for Disclosure and Management Failures, and Investment Adviser with Failing to Disclose Conflicts of Interest](#)

The SEC settled charges against a private fund manager for various misrepresentations and omissions to investors about due diligence and valuation process. The settlement included that manager issued investor letters that disclosed interest revenue on loan investments without disclosing that several borrowers were delinquent on payments. Also, the manager valued investment holdings internally at cost despite prior disclosures that the manager would obtain independent valuations of Fund holdings.



Q2 Upcoming Key Reporting and Disclosure Deadlines

April 30	Distribute Updated Form ADV Part 2A to Clients and Fund Investors Deadline for Distribution of Audited Financial Statements to Fund Investors
April 30	Employees' Transaction Reports Due for Q1
April 30	Annual Form PF Due
May 30	Hedge Fund Quarterly PF Due
June 29 Investors	Deadline for Distribution of Audited Financial Statements to Fund of Fund Investors

About HighCamp Compliance

HighCamp Compliance is a premier, boutique compliance consulting and outsourcing firm helmed by former SEC examiners, CCOs, and proven consulting professionals. HighCamp specializes in regulatory compliance and operational support for SEC-registered alternative and institutional investment managers. The team includes specialists in private equity, real estate, and hedge funds.

Get in touch at Hello@HighCampCompliance.com.