



## 2020 Year-In-Review for Investment Advisers:

*Guidance, Enforcement, Hot Topics, & More*

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I learned most everything I know about business as a young teenager. I learned that grit and hard work can overcome most challenges. I learned the power of teamwork and benefited from the support of mentorship. I learned the importance of setting goals and how to develop strategies and execute plans to achieve them. I've been the underdog and the favorite. I've lost. I've won. I've cried. I've celebrated. The list goes on. It wasn't until this year that I realized I didn't learn these lessons from a professor or supervisor or entrepreneurial book, but actually much earlier in life through experiences playing sports as a kid. I had no idea then that trying to beat our rival high school's basketball team would help provide the tools to manage a business in a pandemic. But it did.

2020 threw a lot at us...at everybody. Hard choices were made throughout the year. There was the crushing weight of uncertainty and new obstacles each day - at home and at work. I'm extremely proud of our people and how they came together and responded. Namely, I'm proud of the compassion and support each displayed.

I believe the same will be true for 2021. The hardships of the past year won't disappear with the drop of a sparkling ball and a glass of champagne. We will have to continue to persevere through unpredictable circumstances. Right now, it's hard to know when, but I believe it will be possible to look back on this challenging time with gratitude. Whether it was the extra time spent at home, the hobbies that we were able to take up, the books that inspired us, our daily pace sloooowing down, or the deeper understanding of just how fleeting life can be, I think that we will have ultimately learned to better cherish each and every moment with each other.

I believe empathy and unity will have a whole new meaning for humanity. I believe people will look to their employers through a different lens based on how they carried and conducted themselves over the past year, which will result in better convergence of values. The business landscape has been rewritten and the way people live and work has forever changed. Some things will resume after the pandemic but there is no returning to 2019. And I believe that is a good thing.

I'm grateful for our clients and their continued trust in HighCamp. I have the best job in the world with a front row seat to so many great organizations. Whether it's democratizing education via their portfolio companies or acting as leading stewards on the diversity and inclusion front, we get to work with the best and brightest thinkers and leaders in the world.

Cheers to 2021,  
Brad Burgtorf, Partner

## Fourth Quarter Headlines

- [SEC Adopts Modernized Marketing Rule for Investment Advisers](#), which merges and replaces the Advertising and Cash Solicitation Rules. The SEC has adopted a delayed compliance date 18 months after the effective date to allow for adequate transition period. For additional information on the new Marketing Rule, check out our [regulatory update](#).
- SEC issues FY Reports, including: [Enforcement Annual Report 2020](#) and [2020 Agency Financial Report](#)
- Chairman Clayton, as well as other key SEC officials, [announce](#) plans to conclude tenure, which is customary as result of the election cycle
- Division of Examinations ([formerly Office of Compliance Inspections and Examinations or OCIE](#)) issues three risk alerts: [Observations from Examinations of Broker-Dealers and Investment Advisers: Large Trader Obligations](#), [OCIE Observations: Investment Adviser Compliance Programs](#), and [Observations from OCIE's Examinations of Investment Advisers: Supervision, Compliance and Multiple Branch Offices](#).

## 2020 SEC Examination and Enforcement Recap

**What were the SEC examiners up to?** During FY 2020, the Division of Examinations conducted over 2,950 examinations, covering 15 percent of all registered investment advisers, published eight risk alerts, and issued a report on cybersecurity and resiliency. As a result of the pandemic, examiners also sought to better understand operational risks associated with resiliency, business continuity, cyber and information security, and regulatory obligations, with a particular focus on investor protection and market integrity.

### What about enforcement?

- Enforcement brought 715 actions, obtaining financial remedies of more than \$4.5 billion, and awarded a record 39 individual whistleblowers approximately \$175 million
- 21% of standalone enforcement actions involved investment adviser/company issues, which is down from 36% in FY 2019
- 8% of standalone enforcement actions involved insider trading cases
- Notably, there were zero cybersecurity related enforcement actions involving investment advisers
- The *Kokesh v. SEC* decision, which limits any claim for disgorgement to five years, continues to impact adversely enforcement's ability to disgorge and return funds to harmed investors. However, the National Defense Authorization Act that was passed in December [appears](#) to have overturned this limitation, and doubled the five-year statute of limitations for disgorgement to ten years.
- Enforcement continues to respond to the Supreme Court's June 2018 decision in *Lucia v. SEC*, which found that the appointment of the SEC's administrative law judges violated the U.S. Constitution's Appointments Clause



Industry trends? Check out our year-end 2020 *By the Numbers* summary below.

By the Numbers	2016	2017	2018	2019	2020
SEC Staffing (# of full-time employees) <sup>i</sup>	4,554	4,794	4,483	4,350	4,411
SEC Registered Investment Advisers <sup>ii</sup>	12,242	12,694	13,267	13,506	13,903
Exempt Reporting Advisers <sup>iii</sup>	3,302	3,588	3,911	4,223	4,568
Investment Adviser Examinations <sup>iv</sup>	11%	15%	17%	15%	15%
Broker-Dealers <sup>v</sup>	4,064	3,918	3,817	3,735	3,616
Private Equity Funds/Advisers <sup>vi</sup>	9,700/1,017(Q1 2016)	10,350/1,084 (Q1 2017)	11,532/1,147 (Q1 2018)	13,027/1,1,264 (Q1 2019)	14,470/1,359 (Q1 2020)
Hedge Funds/Advisers <sup>vii</sup>	8,897/1,689 (Q1 16)	9,036/1,676 (Q1 17)	9,175/1,729 (Q1 2018)	9,399/1,744 (Q1 2019)	9,370/1,728 (Q1 2020)
Real Estate Funds/Advisers <sup>viii</sup>	2,093/290 (Q1 16)	2,422/307 (Q1 17)	2,651/328 (Q1 2018)	2,850/349 (Q1 2019)	3,111/373 (Q1 2020)

**What's in the pipeline?** 2020 was a hallmark year for civil rights activism and climate justice. Money managers are being increasingly scrutinized by their Diversity and Inclusion (D&I) profiles and their Environmental, Social, and Governance (ESG) standards. For example, [the investment chief of Yale University's \\$31.2 billion endowment indicated to firms managing the endowment that they would be assessed according to their progress on D&I.](#)

Some investors also view D&I and ESG as beneficial to overall performance. According to [AIMA](#), many investors “view diverse staffing across teams, functions and seniority as a method to provide opportunities for historically underrepresented groups and to increase the intellectual and cultural capital of firms which may, in turn, lead to better decision-making and outcomes.”

Private fund and mutual fund managers should expect increasing pressure from institutional investors to incorporate D&I into their staffing decisions, and to adopt ESG standards for investment allocations in 2021 and beyond.

**Did you know?** In 2020, [Special Purpose Acquisition Companies \(SPACs\) exploded onto the scene.](#) This year [248 SPACs went public and raised \\$83 million](#), a massive increase from 59 IPOs and \$13.6 million respectively in 2019. That's a 420% increase in IPOs and a 610% increase in money raised by SPACs in a single year.

**Is that all?** See below for our [Q4 Chronological List of Key Events and Upcoming Dates and Deadlines](#). For a full recap of 2020 events, please also visit our previously published [Q1 Newsletter](#), [Q2 Newsletter](#), and [Q3 Newsletter](#).

## Q4 Chronological List of Key Events

As of December 31, 2020

*We left off on September 30, 2020, in our Third Quarter Compliance Letter for Investment Advisers. You can access it [here](#). For those printing this letter, please note that all sources are hyperlinked rather than footnoted.*

### October Events

#### [The Division of Economic and Risk Analysis \(DERA\) Issues Report on the Interconnectedness of U.S. Credit Markets and the Effects of the COVID-19 Economic Shock](#)

In light of the recent market stress from the COVID-19 global economic shock, DERA published an extensive report analyzing the relative size and characteristics of principal market segments within the U.S. credit market and their interconnectedness with the larger financial system.

#### [SEC Proposes Conditional Exemption for Finders Assisting Small Business with Raising Capital](#)

To assist small businesses with raising capital and provide clarity on the regulatory status of “Finders,” the SEC proposed a new exemption from broker registration requirements for Finders who assist issuers with raising capital from accredited investors. The proposed exemption would create two tiers of finders with conditions tailored to the scope of their respective activities. Both Tier I and Tier II Finders would be permitted to accept transaction-based compensation under the proposal.

#### [SEC Updates Auditor Independence Rules](#)

The Custody Rule requires advisers registered with the SEC that have custody of client assets to take steps to safeguard those assets. A private fund adviser may comply with the Custody Rule by having the financial statements of its funds audited annually by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. If the auditor is not independent, the adviser will not be in compliance with the rule. While not an Advisers Act amendment, this amendment provides greater flexibility for auditor relationships and services to affiliates (such as fund owned portfolio companies) that technically would have triggered breaches of the rules.

#### [SEC Charges EDG for Failure to Reduce Management Fees as a Result of Write Downs](#)

The SEC brought charges against EDG Management Company, LLC for failing to reduce management fees charged to a private fund it advises as required by adviser’s the Limited Partnership Agreement (LPA) with the fund. The order found that certain portfolio securities were subject to write downs and should have triggered reduced fees under the terms of the LPA, but EDG failed to adjust quarterly management fee calculations to account for these write downs. EDG settled the case, agreeing to pay a cease-and-desist order, to be censured, to pay disgorgement and prejudgment interest totaling \$1.03 million, to pay a civil fine of \$175 thousand, and to distribute over \$1 million to harmed investors.

#### [The Division of Investment Management Releases “Dear CFO Letter” on the Use of Combined Financial Statements to Satisfy the Custody Rule](#)

The Custody Rule requires advisers to obtain independent audits of financial statements for accounts held by qualified custodians. Paragraph (b)(4) of the Custody Rule (the “Audit Exception”) permits advisers to comply with the rule if an account of a pooled investment vehicle (“PIV”) is subject to audit. Advisers may seek to obtain audits of financial statements for multiple PIVs on a combined basis for operational reasons. In this “Dear CFO Letter” the Chief Accountants Office of the Division of Investment Management states that advisers cannot rely solely on the common management basis for the Audit Exception. Advisers must consider additional factors, such as whether the economics of each PIV are different, and whether they are pro rata.



## November Events

### [Investment Adviser Association \(IAA\) and National Regulatory Services \(NRS\) Publish 2020 Evolution Revolution Report](#)

The 2020 Evolution Revolution report was the 20<sup>th</sup> annual report profiling the investment adviser profession published by IAA and NRS. The report details the state of the profession, including the number of advisers and employees, regulatory assets under management, the growth and composition of clients and investors, and industry trends (e.g., private equity funds are gaining popularity relative to hedge funds).

### [Division of Examinations Issues Risk Alert Regarding Multi-branch Office Supervision and Compliance](#)

In 2020, the Division of Examinations conducted a series of exams focusing on advisers operating from numerous branch offices. The risk alert highlights the most common deficiencies related to the Compliance Rule and portfolio management, as well as practices that were helpful for compliance programs for multi-branch offices.

### [Division of Examinations Issues Risk Alert Concerning Large Trader Obligations](#)

Rule 13h-1 under the Exchange Act requires “Large Traders” whose transactions in national market system (NMS) securities meet or exceed the daily or monthly thresholds to self-identify with the SEC on Form 13H. Advisers who qualify as Large Traders are also subject to recordkeeping and reporting requirements under Rule 13h-1. The Division of Examinations issued a risk alert detailing their observations from examinations of Large Traders, noting that many advisers were either not aware of the rule or with certain requirements of the rule. Advisers were urged to review their compliance policies and procedures around promptly identifying the adviser’s status as a Large Trader and fulfilling the obligations of Rule 13h-1.

### [Division of Examinations Issues Risk Alert Highlighting Observations of Adviser Compliance Programs](#)

The Compliance Rule requires advisers to adopt and implement written policies and procedures reasonably designed to prevent violation of the Advisers Act, conduct an annual review of their policies and procedures, and designate a CCO to administer their compliance programs. The Division of Examinations issued a risk alert detailing the most common compliance program deficiencies.

## December Events

### [SEC Orders BlueCrest to Pay \\$170 Million to Harmed Fund Investors](#)

An SEC order found that BlueCrest Capital Management Limited made inadequate and misleading disclosures concerning the existence of a proprietary fund, BSMA Limited, and about the transfer of live traders to the proprietary fund, who were replaced by an underperforming algorithm. Charged with willfully violating the antifraud provisions of the Securities Act, BlueCrest settled the case, agreeing to a cease-and-desist order imposing a censure, and to pay a prejudgment interest of \$132.75 million and a penalty of \$37.29 million to be returned to harmed investors.

### [SolarWinds Breach Impacts Government Agencies and Businesses Worldwide](#)

SolarWinds Corporation submitted an SEC filing disclosing a major cyber-attack that exploited a vulnerability in its Orion software, which was trojanized to download malware along with software updates from March to June 2020. The breach affected numerous U.S. Government agencies and companies, including Microsoft, giving bad actors back door access to systems using Microsoft Office 365. Firms with systems that may have been compromised should immediately follow the recommendations provided by CISA in its [emergency directive](#), ensure that SolarWinds Orion software is updated to its latest version, and assess their [Office 365 configurations](#) to ensure protection against the threat.



## Q1 Upcoming Events & Deadlines

<b>January 30, 2021</b>	Q4 2020 Quarterly Transaction Reports Due
<b>February 16, 2021</b>	Form 13F Due Annual Form 13H Due Schedule 13G (and any amendments) due
<b>March 1, 2021</b>	Quarterly Form PF for Large Hedge Fund Advisers (for Q4 2020) NFA PF for Large Hedge Fund Advisers
<b>March 31, 2021</b>	Form ADV Annual Amendment Due State notice filings (if any required by states) due
<b>April 30, 2021</b>	Annual Form PF Due Distribute Audited Financial Statements to Private Fund Investors Distribute updated Form ADV Part 2A (or summary of material changes) to investors Q1 2021 Quarterly Transaction Reports due

### 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.

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<sup>i</sup> [https://www.sec.gov/files/sec-2020-agency-financial-report\\_1.pdf](https://www.sec.gov/files/sec-2020-agency-financial-report_1.pdf)

<sup>ii</sup> Registered Investment Advisers, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>

<sup>iii</sup> Exempt Reporting Advisers, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>

<sup>iv</sup> [https://www.sec.gov/files/sec-2020-agency-financial-report\\_1.pdf](https://www.sec.gov/files/sec-2020-agency-financial-report_1.pdf)

<sup>v</sup> Company Information About Active Broker-Dealers, <https://www.sec.gov/help/foiadocsbdfoiahtm.html>

<sup>vi</sup> Private Funds Statistics, December 1, 2020, <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q1-accessible.pdf>

<sup>vii</sup> Private Funds Statistics, December 1, 2020, <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q1-accessible.pdf>

<sup>viii</sup> Private Funds Statistics, December 1, 2020, <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q1-accessible.pdf>