

## 2023 Second Quarter Newsletter

### Rule Proposals, Risk Alerts, & More for Investment Advisers

At HighCamp, we believe that providing the best client experience hinges on hiring and retaining the best people. On that front, I'm pleased to highlight our continued investment in our amazing team this year.

In March, Joyce Martineau joined HighCamp as Director from Anchorage Capital Group, a large private credit manager. Before her time at Anchorage, Joyce was a Senior Principal Consultant at ACA Group where she spent five years advising a diverse group of clients on a wide range of compliance issues. Prior to that, Joyce was a Compliance Officer at investment advisers Och-Ziff Capital Management Group (now Sculptor Capital Management) and Tudor Investment Corporation. Joyce began her compliance career as a member of FINRA's Advertising Regulation Department.

In April, we promoted Tyler Hinytzke to Senior Associate. Tyler joined us in 2021 after completing the Investment Management Certificate Program at the University of Wisconsin-Milwaukee. Ever since he joined HighCamp, Tyler's been a fan favorite among the team and our clients due to his hard work, analytical rigor, and great initiative.

In June, we were excited to announce the promotion of Brian Roberts to the position of Partner. Brian has successfully managed key client relationships and projects since joining in 2022. He's a natural leader who pushes us toward our company's goals, while always maintaining HighCamp's principles and values. Brian not only obtains an answer to a question but ensures the right question is being asked. We're extremely lucky to have him in the partnership.

Most recently in July, we announced the addition of our fifth partner, Jeremy Vaughan. Jeremy's track record is unparalleled, and we are thrilled to add someone of his caliber to our team. Jeremy joins with deep regulatory experience at both FINRA and the SEC, including the SEC's Private Funds Unit. Most recently, Jeremy was CCO at Starwood Property Trust, Inc's SEC-registered investment adviser, STWD Investment Management. Located in Dallas, Jeremy also provides HighCamp with a presence in Texas, which is a key demographic for our private fund client base.

I'm extremely proud of the team that we are building. I know I speak for all of us when I say we remain as committed as ever providing our clients with the absolute best.

Please join us in congratulating Tyler and Brian on their well-deserved promotions, and welcoming Joyce and Jeremy to the HighCamp team.

With that, let's hop into the second quarter's headlines.

Brad Burgtorf

## Second Quarter Headlines

### **Risk Alert: Examinations Focused on Additional Areas of the Adviser Marketing Rule**

On June 8, the SEC's Division of Examinations ("EXAMS") **released** a Risk Alert providing background on the recent and planned areas of focus for EXAMS in regard to the new marketing rule. EXAMS has stressed the importance of advisers being able to substantiate statements of fact as well as ensuring their performance advertising complies with the requirements of the Marketing Rule. The Risk Alert indicated EXAMS will continue to review for compliance with the general prohibitions set forth by the Marketing Rule. Moving forward, additional attention will be spent on an adviser's use of testimonials and endorsements, third-party ratings, and responses to marketing-related questions and disclosures on Form ADV.

### **Risk Alert: Observations from Examinations of Investment Advisers and Investment Companies Concerning LIBOR-Transition and Preparedness**

On May 11, EXAMS **issued** a Risk Alert showcasing the different ideas and processes that various advisers are using to prepare for the retirement of the LIBOR interest-rate benchmark. Of note, many advisers are relying on guidance from the Alternative Reference Rates Committee and providing training to traders and portfolio managers concerning any LIBOR (and the adviser's successor benchmark) related internal policies. Advisers should also update disclosures accordingly to disclose the possible risks an adviser may face during the transition.

### **SEC Adopts Amendments to Enhance Private Fund Reporting**

On May 4, the Commission **adopted** amendments to Form PF that will allow the SEC to collect more real-time data on certain events affecting advisers. Large Hedge Fund advisers will have to file a "current report" within 72 hours of certain current reporting events including investment losses of over 20% in a 10-business-day holding period, counterparty default, prime broker relationship terminations, and redemption requests of 50% or more of a fund's NAV. Additionally, all PE advisers must file a "private equity event report" upon certain events within 60 calendar days after the end of the applicable quarter. These events include adviser-led secondary transactions and limited partner votes to remove a fund's general partner, terminate a fund's investment period, or terminate the fund.

## **Risk Alert: Safeguarding Customer Records and Information at Branch Offices**

On April 26, EXAMS [released](#) a Risk Alert highlighting common deficiencies EXAMS staff have observed with advisers' branch offices. EXAMS staff noted many advisers did not ensure their branch offices performed proper vendor due diligence and oversight. Additionally, branch offices often did not properly store customer records and information and access management was not as robust as it was at the main office. Finally, branch offices often did not have the same technological standards and safety measures that the advisers' main offices had.

## Did You Know?

"In the last five years alone, the number of separately managed accounts to registered investment advisers has grown 60 percent from 34 million to 53 million." - [Remarks](#) of Chair Gary Gensler before the Inaugural Conference on Emerging Trends in Asset Management, May 19, 2023.

## Q2 Key Enforcement Actions and News

We left off on March 31, 2023 in our [2023 First Quarter Newsletter](#). Please note all sources are hyperlinked rather than footnoted.

### **SEC Charges Adviser for Overcharging Fees**

On June 21, the SEC [charged](#) an adviser with overcharging management fees in the post-commitment period due to the inaccurate application of its impairment policy. The adviser allegedly used a four-pronged test to analyze permanent impairment at the "portfolio company" level rather than at the level of each "portfolio investment" (terms as defined in the fund's limited partnership agreement) that made up the funds' aggregate investment in the portfolio company. During the post-commitment period there were alleged to have been instances where some of the portfolio investments in a portfolio company should have been marked as permanently impaired, which would have reduced the adviser's management fee basis, but the adviser failed to do so. This error allegedly resulted in the adviser overcharging management fees in excess of \$750,000.

### **SEC Chair Gary Gensler Announces the SEC's Spring 2023 Regulatory Agenda**

On June 13, the SEC [announced](#) the release of its Spring 2023 Regulatory agenda which includes a total of 55 rules. Of these, 37 are at the final rulemaking stage while 18 are at the proposed rulemaking stage. Among many other things, the agenda indicated advisers can expect a final rule on climate change disclosures, cybersecurity rules, and safeguarding advisory client assets by October of 2023.

### **SEC Charges Adviser in Abusive Naked Short Selling Scheme**

On June 12, the SEC [charged](#) an adviser for allegedly mismarking sales of securities as long even though the adviser did not have a net long position prior to selling the securities. Additionally, the adviser is accused of selling securities short when it had not borrowed or located

the shares prior to selling short. The enforcement action stated the adviser would not have been able to carry out the trades and profit the way it did had it followed the rules governing long and short sales.

### **SEC Files 13 Charges Against Binance Entities and its Founder**

On June 5, the SEC [filed](#) charges against Binance for operating as an exchange, broker-dealer, and clearing agency without registering with the SEC. Additionally, the SEC alleged that Binance commingled customer assets or diverted customer assets to an entity owned and controlled by Binance's owner.

### **SEC Charges Adviser with Policy Failure Regarding Valuation of Private Fund Portfolio Investments**

On May 24, the SEC [announced](#) charges against an adviser who primarily held Level 3 investments but had minimal policies and procedures governing the valuation of these investments. The SEC alleged that the adviser should have known its valuation policies were insufficient as the adviser received multiple qualified opinions from its auditors who were unable to obtain sufficient evidence supporting the fair value of a material Level 3 portfolio.

### **Fort Worth Regional Office ("FWRO") Virtual Meeting**

On May 24, Marshall Gandy of the SEC's FWRO joined the Houston CCO Roundtable monthly meeting to discuss EXAMS's FY-23 examination priorities and summarize observations from recent exams. Of note, Gandy indicated that EXAMS would try to issue Exam Priorities at the beginning of the SEC's fiscal year, that compliance professionals can expect to see risk alerts forthcoming on the new marketing rule, electronic communications, and the overall examination process, and that the ongoing marketing examination sweep is continuing as planned with phases two and three under way. If Advisers are picked up in the sweep, they can expect EXAMS to review policies and procedures, the disclosures and information provided on Form ADV, performance reporting accuracy and completeness, and use of third-party ratings, among other areas of focus.

### **SEC Charges Broker Dealers for Widespread Recordkeeping Failures**

On May 11, the SEC [announced](#) charges against two broker-dealers for failure to maintain or preserve electronic communications. Employees of these firms allegedly communicated via off-channel platforms (e.g., WhatsApp) about securities business matters on their personal devices. Both such broker-dealers self-reported the recordkeeping failures after completing internal investigations.

### **SEC Issues Largest-Ever Whistleblower Award**

On May 5, the SEC [announced](#) a \$279 million reward to a whistleblower, its largest ever such award. Previously, the SEC's highest reward given out was \$114 million in October of 2020. The Chief of the SEC's Office of the Whistleblower stated that the information that led to the whistleblower award did not prompt the opening of the investigation but expanded the scope of the misconduct charged.

### **SEC Charges Adviser with Improper Fixed-Income Securities Trading**

On April 3, the SEC **charged** an adviser with overcharging fees to its clients due to its fixed income trading practices. The SEC alleged this overcharge resulted from the adviser’s execution of rebalancing trades in which one client of the adviser would sell bonds while another client would purchase the same bonds through a third-party broker at prices the adviser had proposed. This practice allegedly increased the prices of the bonds relative to similar securities traded at arms’ length. These inflated prices allegedly resulted in the adviser charging higher fees, which were calculated based on each client’s NAV.

## Q3 Upcoming Key Reporting & Disclosure Deadlines

<b>July 30, 2023</b>	Q2 2023 Quarterly Transaction Reports Due
<b>August 14, 2023</b>	Form 13F Due for Q2 2023
<b>August 29, 2023</b>	Form PF Due for Large Hedge Fund Advisers for Q2 2023

## Key Rulemaking Tracker

Rule	Effective Dates	Brief Description
Form N-PX	July 1, 2024 Compliance date: Aug. 31, 2024 (covers period of July 1, 2023 to June 30, 2024)	Institutional investment managers subject to Section 13(f) reporting requirements need to file an annual Form N-PX showing how they voted proxies relating to certain executive compensation matters
Form PF	Dec. 11, 2023 for current event reporting; June 11, 2024 for the remainder of the requirements	Hedge funds need to report current reporting events with 72 hours of occurrence and private equity fund advisers need to report private equity reporting events within 60 days of quarter-end

## About HighCamp Compliance

**HighCamp** is a 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 private equity, real estate, venture capital, hedge fund, and institutional alternative managers. HighCamp is 100-percent employee owned, with a gender-balanced leadership team. The company has locations in New York City (Metro), Los Angeles, Denver, Dallas, Milwaukee, Delaware and Bozeman.