

PUBLICATIONS

Private Funds Regulatory Update June 2020

June 2020

SEC Charges Manager with MNPI-Related Compliance Failures

On May 26, 2020, the SEC issued an order against a large private equity sponsor for failing “to implement and enforce” compliance policies sufficient “to prevent the misuse of potentially material nonpublic information” obtained by holding a seat on a portfolio company’s board and being party to a loan agreement with that portfolio company.

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SEC Charges Private Fund Manager with Advertising Rule Violations and Compliance Failures

On April 17, 2020, the SEC settled charges against a registered investment adviser for distributing allegedly misleading advertising materials. From 2014 through early 2015, while marketing for a private fund, the manager utilized marketing materials that contained a track record of its principals’ investment decisions while employed by a prior firm. This track record included an investment in a private fund managed by a third party (where the principals had rights to veto certain investments for the first three years of the term), which was described as an early-stage “direct” oil and gas drilling interest.

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SEC Charges Audit Partners with Misconduct

On May 18, 2020, the SEC settled charges against three partners of an international accounting firm for improperly sharing answers to questions contained in internal training examinations required by the accounting firm and for subsequent wrongdoing in the context of the firm's investigation into their actions (including deleting incriminating text messages following a document preservation notice and making misrepresentations to the investigators).

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CFTC Issues Guidance on Enforcement Penalties

On May 20, 2020, the CFTC Division of Enforcement recently issued a memorandum from James McDonald, its Director, that outlined various factors that the Division of Enforcement staff "will consider in recommending an appropriate civil monetary penalty to the Commission in an enforcement action, whether administrative or injunctive." This memo represents the first published guidance of this kind since penalty guidelines were first published in 1994, and comes in the context of active and muscular CFTC enforcement activity.

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CFTC Proposes Relief for Non-US Managers

On May 28, 2020, the Commodity Futures Trading Commission proposed amendments to CFTC Rule 3.10(c)(3), which currently provides a registration exemption for non-U.S. commodity pool operators managing qualifying non-U.S. funds with non-U.S. investors. Rule 3.10(c)(3), however, is applied on an "all-or-nothing" basis, meaning that a non-U.S. fund manager can only rely on it if every commodity pool that it operates satisfies each element of the rule.

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EU Short-Selling Restrictions

On May 18, 2020, financial regulators in Austria, Belgium, France, Greece, Italy and Spain lifted their short-selling bans. However, managers should be cognizant of the fact that the lower initial threshold of 0.1% for reporting net short positions in EU-listed shares, which was announced in March 2020 by ESMA as a temporary emergency measure, remains in effect.

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Reopening of London Offices

The U.K. Financial Conduct Authority has updated its statement and guidance on key workers and responsibilities of senior managers in light of the recent easing of the lockdown measures announced by the U.K. government. Managers considering reopening their London offices should take account of this guidance, including the indicative list of the types of roles considered to provide essential services.

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