



## Second Quarter Compliance Letter

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

Issued: June 30, 2020

*“Everything changes.”*

Legendary NBA coach Phil Jackson referred to this quote during “The Last Dance,” a TV documentary that chronicles the Chicago Bulls 1998 championship season and culmination of one of sport’s greatest dynasties. The story goes that Phil was describing an interaction between two Buddhist teachers in which a guy named Shunryu Suzuki summed up Buddhism in those two, powerful words.

“Those words, Suzuki said, contain the basic truth of existence: Everything is always in flux. Until you accept this, you won’t be able to find true equanimity.”

As a kid in the late 80s and 90s, I was an avid Detroit Pistons fan, which made Michael Jordan one of my greatest childhood adversaries. But it actually wasn’t until I watched The Last Dance that I began to appreciate the challenges the Bulls faced - tensions within the team, disconnect with the larger organization, and other outside pressures that threatened to derail –and ultimately broke up one of the most magical stories in all of sports. As a business owner in today’s climate, this resonated with me. The way we work, communicate, and socialize is in the midst of unprecedented change. Organizations are under added internal pressure as employees’ work and homelives adjust and external pressures as the economic outlook and markets continue to ebb and flow.

The ability to get comfortable with change and adapt to the evolving circumstances may now be one of the most valuable skills we can pull from the quiver. And according to good ol’ Phil and the Buddhists, it’s also pretty good practice for life.

**This quarter’s headlines.** The SEC staff issued the following risk alerts and updates during the quarter:

- On June 23, OCIE issued a risk alert titled, [Observations from Examinations of Investment Advisers Managing Private Funds Risk Alert](#), that focuses on common conflicts of interest and fees and expenses exam deficiencies that largely can be avoided with adequate disclosure to fund investors. The third area addressed in this alert discusses the Code of Ethics Rule and policies and procedures that, when implemented, can prevent the potential misuse of inside information.
- On June 18, OCIE issued a risk alert titled, [Examination Initiative: LIBOR Transition Preparedness](#), that announces upcoming examinations to focus on firms readiness for the discontinuation of LIBOR.
- On April 27, the SEC staff [updated information](#) concerning the SEC’s response to COVID-19, which included, updated FAQs on the use of Paycheck Protection Program and annual pooled investment vehicle audit delivery requirements.
- On April 7, OCIE issued two risk alerts, [Examinations that Focus on Compliance with Regulation Best Interest and Examinations that Focus on Compliance with Form CRS](#), that announced examinations focusing on compliance with new Regulation BI and Form CRS requirements. The compliance date for Regulation Best Interest and Form CRS went into effect June 30, 2020.

We encourage advisers to review their practices as they relate to the issues discussed in newly published guidance.

**Is that all?** See below for our Q2 Chronological List of Key Events and Upcoming Dates and Deadlines.

Have a wonderful summer,  
Brad

Get in touch at [Hello@HighCampCompliance.com](mailto:Hello@HighCampCompliance.com).



## Q2 Chronological List of Key Events

Issued: June 30, 2020

*We left off on March 30, 2020, in our First 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.*

### **June 23: Observations from Examinations of Investment Advisers Managing Private Funds**

This OCIE Risk Alert discusses common examination and enforcement issues for private fund advisers relating to conflicts of interest, fees and expenses, and code of ethics.

### **June 18: Examination Initiative: LIBOR Transition Preparedness**

This OCIE Risk Alert announces upcoming examinations to focus on firms readiness for the discontinuation of LIBOR. The Risk Alert includes a sample document request list intended to assist compliance officers with questions to help prepare for the transition away from LIBOR.

### **May 26: Private Equity Firm Ares Management LLC Charged With Compliance Failures**

A private equity firm, Ares Management LLC, settled charges with the SEC for allegedly failing to implement and enforce its insider trading policies and procedures.

### **May 22: SEC Charges Investment Adviser with Custody Rule and Related Violations**

The SEC settled charges against an Adviser for repeated late delivery of annual audited financial statements to investors. The order goes on to state that the Adviser did not engage its auditor until well after 120 days following the fiscal year years. In addition to the Custody Rule violations, the order includes violations of the Compliance Program Rule for not adopting and implementing written policies and procedures reasonably designed to prevent Advisers Act violations.

### **May 6: SEC Charges Bloomberg Tradebook for Order Routing Misrepresentations**

The SEC settled charges against registered broker-dealer Bloomberg Tradebook LLC for order routing discrepancies between actual practices and representations in the broker-dealer's marketing materials. This case is a good reminder that registrants need to be vigilant to provide clients with accurate and to date information about their practices.

### **April 30: SEC Charges Private Fund Adviser and Its Principal for Misconduct Relating to Risk Management**

The SEC settled charges against Florida based Adviser and Chief Investment Officer for not applying risk management practices disclosed to fund investors.

### **April 30: SEC Charges Investment Adviser and Its Owner for Misappropriation of Fund Assets**

The SEC settled charges with Adviser and owner for misuse of fund assets. The Adviser's owner allegedly booked refundable business class tickets and less expensive non-refundable on the same dates. The owner then cancelled the refundable airline ticket, which was the expense submitted for reimbursement by the fund. In addition, the Adviser's owner used fund assets for a personal loan.

### **April 27: Division of Investment Management Coronavirus (COVID-19) Response FAQs**

The staff updated information concerning the SEC's response to COVID-19, which included, updated FAQs on the use of Paycheck Protection Program and annual pooled investment vehicle audit delivery requirements.



#### April 22: SEC Files Settled Charges Against Private Equity Fund Adviser with Conflicted Expense Reimbursements

The SEC settled charged with a private fund adviser for charging private fund portfolio companies for costs of operating partners' consulting and operations support services. By seeking reimbursements for these services, without full and fair disclosure, the adviser was able to reduce its costs. Advisers should closely review any fee reimbursement or arrangements with operating partners and any operations support individuals.

#### April 17: Private Fund Adviser to Pay \$1 Million for Advertising and Compliance Failures

This private fund adviser settled with the Commission for allegedly distributing misleading marketing materials relating to historical performance. According the order, the marketing materials misclassified a legacy investment in the track record that was managed by third-party adviser as a direct investment in oil and gas drilling. In doing so, the materials omitted information regarding how the investment's fund structure and role of the third-party differed from the marketed strategy and other early stage direct drilling investments included in the legacy portfolio track record.

#### April 7: SEC Office of Compliance Inspections and Examinations Publishes Risk Alerts Providing Advance Information Regarding Inspections for Compliance with Regulation Best Interest and Form CRS

OCIE issued two alerts: Examinations that Focus on Compliance with Regulation Best Interest and Examinations that Focus on Compliance with Form CRS. The compliance date for Regulation Best Interest and Form CRS went into effect June 30, 2020.

## Q3 Upcoming Events & Deadlines

*As discussed above, the SEC provided COVID-19 [FAQs](#) for, among other things, filings and delivering of audits. Please monitor updates closely as dates may continue to change. Below are the original filing dates.*

July 15	Form PF for Large Liquidity Fund Advisers Due
July 30	Employees' Personal Q2 Transaction Reports Due
July 30	Initial Form CRS to Retail Investors Due (aka, Form ADV Part 3)
August 15	Q2 Form 13F Due