CORE REGULATORY FORUM

Q2 UPDATE

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Q2 Regulatory Deadlines

- 13F Filings – May 17
- Form PF Large HF – May 30
- Form 13H – Promptly After June 30

Notable News Headlines

- Credit Suisse Takes $5.5Bln Archegos Hit… **The Street.com**
- Ponzi schemer Bernie Madoff dies in prison at 82… **AP News**
- Coinbase's…Coming-Out Party - **NY Times**

Upcoming Events

- Q2 CORE Regulatory Update Webinar
- Q2 CORE Virtual Roundtable Webinar

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COMPLIANCE: OUTSOURCED RESOURCES AND EXPERTISE

Regulatory Updates and Enforcement

Introduction

Gary Gensler was nominated by President Biden to Chair the Securities and Exchange Commission (***SEC***) on February 3, 2021, confirmed by the U.S. Senate on April 14, 2021, and sworn into office on April 17, 2021. Gensler was for the former chair of the Commodity Futures Trading Commission (***CFTC***) and lead the Obama Administration's reform of the $400 trillion swaps market following the financial crisis of 2008. Shortly after being sworn in, Chairman Gensler testified before the House Committee on Financial Services on the significant market volatility in January involving GameStop and the impact of mobile apps on access to capital markets, and social media and "gamification" on trading activities. He noted the financial incentive for broker-dealers from the payment for order flow, and the enforcement action against Robinhood (as summarized in the Enforcement Developments section below), as well as equity market structure, short selling and market transparency, clearance and settlement and system-wide risks. He stated that the SEC expects to publish a staff report over the summer addressing the January 2021 market events, and that examination and enforcement staff continue their evaluation of potential violations involving such activities.

A broad focus across the SEC prior to and since Chairman Gensler's confirmation has been climate and other environmental, social and governance (***ESG***) risks and opportunities. In March 2021, the SEC requested public input on climate change disclosures in follow-up to recommendations by the SEC Investor Advocacy Committee and SEC Asset Management Advisory Committee to adopt standards by which corporate issuers disclose material ESG factors and risks. SEC staff have conducted multiple meetings with industry representatives and market participants and received more than 30 comment letters since the request from comments, which are due by mid-July. The SEC further announced the creation of a Climate and ESG Task Force in the Division of Enforcement tasked with developing initiatives to proactively identify ESG-related misconduct and violations. The SEC's Office of the Investor Advocate published an ESG Investor Bulletin in February 2021 to educate investors on ESG investment funds and strategies. Finally, the Division of Examinations issued a risk alert in April (as summarized in the Exam Developments section below) noting focus areas, concerns and best practices related to ESG practices at investment advisers and private fund managers.

During Chairman Gensler's inaugural Congressional hearing, he was further questioned about digital assets and noted that the SEC would continue to exercise its jurisdiction in this area, including offering guidance on the custody of digital assets. He invited Congressional assistance in developing investor protection in the area of cryptocurrency exchanges. The SEC's Exam Staff previously issued a risk alert regarding digital assets further highlighting focus areas for investment advisers, broker-dealers, national securities exchanges and transfer agents, as summarized in the Exam Developments section below. In addition, the Division of Investment Management issued a recent statement strongly encouraging any investor interested in investing in a mutual fund with exposure to the Bitcoin futures market to carefully consider the risks and risk disclosures of such fund. The statement noted that the Division of Investment Management along with the Division of Economic and Risk Analysis and Division of Examinations expected to closely monitor the impact of mutual funds' investments in Bitcoin futures.

Recent SEC Rulemaking

There have been no final rules approved and no new or amended rules proposed in 2021 that are material to investment advisers or private fund managers. However, the Division of Investment Management did request comments from the industry related to investment company cross trading, which may impact future rulemaking. Specifically, the staff requested comments on 1) current cross trading practices; 2) pricing and liquidity; 3) cross trading systems; 4) controls related to cross trades; and 5) market transparency. Following are effective dates for rules that were adopted in 2020 but had not yet become effective as of the Q1 Update.

Regulatory Updates and Enforcement

Effective Dates

Investment Adviser Marketing

The amended Marketing Rule, as summarized in the Q1 Regulatory Update, became effective May 4, 2021 with a compliance date of November 4, 2022. On April 14, 2021, the Division of Investment Management issued guidance, in the form of Marketing Compliance Frequently Asked Questions (***FAQ***), which will be updated from time to time. The FAQ noted that advisers may not elect to comply with some of the new marketing rule requirements before the compliance date but not comply with others.

CORE Summary
SEC Adopting Release

Good Faith Determinations of Fair Value

This new Valuation Rule applicable to registered investment companies, as summarized in the Q1 Regulatory Update, became effective March 8, 2021, with a compliance date of September 8, 2022.

SEC Adopting Release

Harmonization of Private Fund Offerings

The updated and harmonized private offering rules, as summarized in the Q1 Regulatory Update, became effective March 15, 2021.

SEC Adopting Release

Exam Developments

The SEC Division of Examinations published its 2021 Examination Priorities on March 3 and provided highlights from its 2020 fiscal year. In 2020, the Division of Examinations focused on the impact of the COVID pandemic on investment adviser operations, investment activities and the financial markets in general. Division of Examinations staff worked remotely for most of 2020 and continue to work remotely and have heavily utilized technology and data to oversee registrant operations as part of their mission to (1) improve compliance; (2) prevent fraud; (3) monitor risk; and (4) inform policy. The recently established Event and Emerging Risks Examination Team (***EERT***) was designed to proactively engage with the industry and address emerging threats and market events when critical matters arise (such as in the recent GameStop/Reddit market developments). EERT includes a cross section of people with SEC and industry backgrounds, different skills and expertise and will conduct risk analysis and special projects. We expect this group will likely scrutinize recent market activity, including potentially order flow and shorting irregularities.

2021 Exam Priorities

Private fund focus areas for 2021 will include the following:

- Compliance risks
- Disclosures of conflicts of interest
- Disclosures of investments risks, including portfolio impact from economic conditions (e.g., real estate), and use of structured products
- Preferential treatment of certain investors
- Liquidity considerations including imposing gates or suspending fund withdrawals
- Portfolio valuations and the impact on management fees
- Disclosures and compliance related to cross trades, principal investments or distressed sales

Regulatory Updates and Enforcement

- Conflicts around liquidity, such as adviser led fund restructurings and stapled secondary transactions
- Strategies that focus on sustainable, socially responsible investing and ESG and related practices and disclosures

In addition, compliance program core areas also continue to be a focus, including:

- Portfolio management practices
- Custody and safekeeping of client assets
- Best execution
- Fees and expenses
- Business continuity plans
- Valuation of assets

Finally, following are general focus areas for adviser and other exams:

- Fiduciary Duty – Assessment of whether advisers have fulfilled their duty of care and loyalty through:
    - Providing advice that is in the best interest of clients based on their objectives
    - Eliminating or making full and fair disclosure of conflicts of interest so clients can provide informed consent
- Fraud, Sales Practices and Conflicts – Continued focus on retail investors and appropriateness of recommendations and practices related to:
    - Various higher risk products, including private placements, structured products, REITs, municipal and fixed income securities, microcap securities and others
    - Compliance with recent changes to the definition of accredited investor
- Fees and Expenses – Continued focus on conflicts of interest related to fees and expenses including:
    - Revenue sharing arrangements with issuers, service providers and others
    - Direct and indirect compensation to personnel
    - Management fee calculations, tiered fees, breakpoints and refunds for terminated accounts
- Information Security and Operational Resiliency – Reviews regarding measures firms have taken and controls related to:
    - Safeguarding customer accounts and preventing account intrusions and unauthorized access
    - Overseeing vendors and service providers
    - Addressing malicious email activities including phishing
    - Responding to incidents, including ransomware attacks
    - Managing operational risks from remote work arrangements
    - Online and mobile application access to accounts/information
    - Electronic storage of books and records and personal information with third-party cloud storage
    - Policies and procedures to protect investor records and information
- Financial Technology & Innovation – Continued focus on the impact of technology on activities and compliance, including
    - Automated investment, asset allocation and trading tools and platforms
    - Use of technology to facilitate compliance with regulatory requirements (RegTech)
    - Use of alternative data in investment decisions and business
    - Digital assets and distributed ledger technology

- Anti-Money Laundering – Focus particularly for broker-dealers and investment companies to confirm whether firms:
    - Have appropriate customer identification programs
    - Are satisfying obligations to file suspicious activities reports
    - Are conducting due diligence on customers
    - Are complying with beneficial ownership requirements
    - Are conducting robust and timely independent tests of their AML programs

SEC 2021 Exam Priorities

ESG Risk Alert

Consistent with the SEC's cross-agency emphasis on ESG, as highlighted in the introduction above, the SEC Division of Examinations issued a risk alert in April 2021 highlighting focus areas in examinations of firms claiming to engage in ESG investing including the following:

- ESG-related policies and terminology;
- The due diligence process for selecting and investing in and monitoring investments in view of a firm's disclosed ESG investing approaches;
- Consistency of proxy voting decisions with ESG disclosures;
- Review of regulatory filings, websites, reports to sponsors of ESG frameworks, client presentations, responses to due diligence questionnaires, and other marketing materials; and
- Implementation of written policies, compliance oversight and review of ESG investing practices and disclosures.

The Division further noted the following observations during examinations of investment advisers and private funds engaged in ESG investing:

- Portfolio management practices inconsistent with disclosures about ESG;
- Inadequate controls to maintain, monitor, and update clients' ESG-related investing guidelines, mandates, and restrictions;
- Proxy voting that may have been inconsistent with advisers' stated approaches.
- Unsubstantiated or otherwise potentially misleading claims regarding ESG approaches and inadequate controls to ensure that ESG-related disclosures and marketing are consistent with firm practices; and
- Compliance programs that did not adequately address relevant ESG issues and compliance personnel who had limited knowledge of ESG investment analyses.

Finally, the Division noted the following helpful compliance practices:

- Disclosures that are clear, precise, and tailored to the firm's approach to ESG investing and aligned with the firm's actual practice;
- Explanations regarding how investments are evaluated;
- Policies and procedures that address ESG investing and cover key aspects of the firm's relevant practices; and
- Compliance personnel who are knowledgeable about the firm's specific ESG practices.

CORE Summary
SEC Risk Alert

Digital Asset Risk Alert

The Division of Examinations published a risk alert in February 2021 outlining observations made during examinations of investment advisers, broker-dealers, and transfer agents regarding Digital Asset Securities that may assist firms in developing and enhancing their compliance practices. The Risk Alert defined "Digital Asset Securities" as assets that are securities and issued and/or transferred using distributed ledger or blockchain technology, including but not limited to, "virtual currencies," "coins," and "tokens," noting that digital assets may or may not need the definition of "security" under the federal securities laws.[1] The SEC noted that examinations of advisers and private fund managers utilizing Digital Asset Securities, as well as other digital assets and derivative products, will focus on the following policies, procedures, and practices, which advisers should likewise consider:

- Portfolio Management
    - Securities classification
    - Due diligence
    - Risk management
    - Fiduciary duty requirements
- Books & Records
    - Execution, settlement and trade records
- Custody
    - Custody Rule compliance
    - Safeguarding controls
- Disclosures
    - Risk disclosures
- Valuation/Pricing
    - Valuation methodologies
    - Disclosures
- Registration
    - Investment Advisers Act of 1940 & Investment Company Act of 1940
    - Calculation of RAUM

For many advisers, the primary compliance consideration related to digital assets is the impact of the firm's Code of Ethics and personal trading policies and procedures. However, for those advisers and private fund managers that invest in digital assets, the risk alert provides useful guidance on areas that should be addressed in compliance policies, procedures and disclosures.

CORE Summary
SEC Risk Alert

Enforcement Developments

After his confirmation, Chairman Gensler promptly appointed a new Director of the Division of Enforcement, Alex Oh, a partner at Paul Weiss, Rifkind, Wharton & Garrison LLP who also previously served as an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office for the Southern District of New York. Less than a week later, Ms. Oh resigned following criticism from progressives over her work as a corporate defense lawyer. In particular, a federal judge reprimanded her and others defending oil firm ExxonMobil in a class action lawsuit

[1] See SEC publication, Framework for "Investment Contract" Analysis of Digital Assets (Apr. 3, 2019), available at https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets.

brought by Indonesian villagers. "In light of the time and attention it will take from me, I have reached the conclusion that I cannot address this development without it becoming an unwelcome distraction to the important work of the division," Oh said in her resignation letter. Oh’s departure reportedly followed a letter to Gensler from progressive advocacy groups urging him to withdraw her hiring questioning whether Oh would “change her entire legal philosophy toward fully enforcing the laws and regulations whose enforcement she has built a career of defending against.” The group asked that Gensler “instead select an attorney with a proven track record of public-oriented service,” notwithstanding that Oh did indeed spend time working as a federal prosecutor. The former Acting Director of the Division, Melissa Hodgman, who had acted in that capacity since December 2020, resumed her duties until a future appointee is named.

Enforcement Case Summaries

Maxwell Drever (May 5, 2021) – Undisclosed Fees & Misrepresentations

The SEC charged an 80-year-old real estate developer in the San Francisco Bay area with misleading investors in a real estate fund that he managed that raised $53 million for the purpose of purchasing and redeveloping a commercial building purchased out of bankruptcy in Dallas, Texas into a mixed-use property with residential and retail space. The SEC charged Drever with failing to disclose receipt of $10.2 million in fees and use of such undisclosed fees to take an equity state in the project for himself. Drever’s firm provided investment management services for the fund and per the private placement memorandum was entitled to a fee of $1,000 per month. In addition to such fees, Drever caused the fund to pay $1.16 million in consulting fees to an affiliated entity and $9 million characterized as a “proprietary equity credit fee” in connection with a purported agreement with another affiliated entity. Drever reinvested the $9 million into the project and characterized such investment as his own personal investment in the project demonstrating that he had “skin in the game.” Drever later secured construction financing in a deal that included a third-party real estate developer receiving a preferred equity stake in the project and replacing Drever as the developer. Drever was ordered to pay disgorgement and penalties of approximately $1.5 million and undertook to cancel his equity stake in the project.

SEC Release

Andrew T. Franzone and FF Fund Management, LLC (April 23, 2021) – Fund Fraud

A former owner of a race car team and private fund manager was charged with making misrepresentations regarding the fund’s strategy and investments and failing to eliminate or disclose conflicts of interest, misappropriating fund assets and falsely representing that the fund would be audited. Franzone and his partner, a well-known day trader who had previously run a private preferred stock arbitrage fund, represented that the fund would maintain a highly liquid portfolio focused on options and preferred stock trading. However, the partner later withdrew all his capital and discontinued trading on behalf of the fund. Subsequently, fund assets were increasingly used to make highly illiquid investments in a limited number of private companies and real estate ventures. The composition of the fund’s investment portfolio was not disclosed to investors, noting that the firm’s investment techniques were “proprietary” and would be made available to auditors and accountants instead. Despite the fundamental change in investment strategy, the firm continued to represent that the fund had a highly liquid diversified strategy focused on equities, options and preferred stock, and disseminated statements to investors claiming false valuations and trading returns. The SEC further alleged that the fund was subject to numerous undisclosed conflicts, including personal loans received from the founders of companies in which the fund invested, fund assets pledged to secure personal loans, and misappropriation of fund assets for personal use, including the purchase of a garage to store his private race car collection. While fund documents provided for an annual audit, the fund did not obtain any audit after fiscal year 2014. The fund filed for bankruptcy and the case is being litigated by the SEC, and the U.S. Attorney’s Office for the Southern District of New York filed parallel criminal charges.

SEC Release

Regulatory Updates and Enforcement

Tyler Sadek, Scott Wolfrum, Troy Marchand (March 24, 2021) – Disclosure and Conflicts of Interest

Several principals of a state-registered investment adviser were charged with making misrepresentations and omissions to fund investors about the status of holdings and projected revenue. The firm's fund was established to generate cash from interest on loans made to private companies. In the relevant period the individuals prepared, reviewed, and sent to investors a newsletter which contained misrepresentations and omissions around the status of companies that received the loans. The letter failed to disclose that some of the companies were struggling and delinquent on their payments. The firm and its individuals misrepresented to investors that the firm would obtain independent valuations of fund holdings when they had actually decided against it and chose to value the holdings at cost. The individuals also misled investors about the due diligence process for fund investments. One of the individuals was charged with failure to disclose the full extent of his conflicts of interest in receiving finder's fees from certain fund holdings and the familial connection to certain fund holdings. The individuals were collectively ordered to pay around $260,000 in disgorgement and penalties.

SEC Release

Ettro Capital Management Corp, and Peter Ettro (March 15, 2021) – Unregistered Offering

An investment adviser and real estate development firm, and its founder and manager were charged with making materially false and misleading statements in connection with an unregistered offer and sale of membership units in a real estate fund. The marketing materials used by the firm during fundraising materially misrepresented the past performance of the fund, the capital raised and AUM, and the firm's investment management and real estate development experience. The firm consented to a cease-and-desist and was ordered to pay a $60,000 penalty and notify all investors.

SEC Release

Andrew L. Fassari (March 17, 2021) – Posting False Stock Tweets

A California-based trader used Twitter to post false statements about a software technology company with publicly traded securities. The trader began purchasing a significant amount of the company's shares before taking to Twitter with claims that the defunct company was reviving its operations, expanding its business, and being backed by huge investors. The trader also made false statements about his own trading in the company's stock, while continuing to publish false and misleading information. The share price increased over 4,000 percent and the trader sold his shares for profits exceeding $929,000. The investigation is ongoing. The SEC is seeking permanent injunction, disgorgement, prejudgment interest, and a civil penalty.

SEC Release

APEG Energy, Paul Harman, Patrick Duke (March 11, 2021) – Fraud and Misappropriation of Funds

A Texas-based investment adviser and its owners were charged with fraudulently raising money for an oil and gas investment fund they managed. The owners were charged with misappropriating millions from the fund. The owners made a series of false and misleading statements to investors about risks of investing, the owners' compensation and expertise in the industry. One of the owners guaranteed via email that an investor would not lose any principal on account of the safety measures the firm had in place. In reality, the firm had no measures in place to prevent principal losses. The firm is also charged with claiming that fees were limited to 2% management fee and failing to disclose so-called acquisition fees, which violated the terms of the fund's governing documents and the fiduciary duties owed to the fund. The case is being litigated.

SEC Release

AT&T, Inc. (March 5, 2021) – MNPI and Regulation FD

AT&T is charged with repeatedly violating Regulation FD by selectively disclosing material non-public information to research analysts. In order to avoid falling short of analysts' estimates for the quarter, investor relations executives made private calls to analysts at about 20 firms where they disclosed internal sales data and the impact of the data on internal revenue metrics. Such information is considered material to AT&T investors and therefore AT&T is prohibited from selective disclosure under Regulation FD. As a result of what they were told on the calls, the analyst substantially reduced their revenue forecasts leading to the overall consensus revenue estimate falling to below the level that AT&T ultimately reported to the public.

SEC Release

Robinhood Financial LLC (December 21, 2020) – Disclosure & Best Execution Failures

The SEC charged the popular app-based broker-dealer Robinhood with failure to disclose its receipt of payments from principal trading firms for routing customer orders to them and with failing to satisfy its duty to seek best execution. Robinhood launched its retail brokerage app in 2015 and quickly became one of the largest retail brokers in the United States based in part by advertising "commission free" services. In practice, like other retail broker-dealers, rather than sending customer orders directly to national exchanges, Robinhood routed its customer orders to other broker-dealers ("principal trading firms" or "electronic market makers") to either execute those orders or route them to other market centers. In return for routing orders through them, principal trading firms offered incentives to Robinhood in two forms: 1) monetary payments ("payment for order flow"); and 2) "price improvement" on customer executions. Payment for order flow is permitted by the SEC as long as it does not interfere with a broker's efforts to obtain best execution and is disclosed. However, the SEC case noted that Robinhood negotiated with principal trading firms to receive payment for order flow that significantly exceeded price improvement received for customer orders. As a result, notwithstanding its duty to customers to obtain "best execution," Robinhood customers' orders were executed at prices that were inferior to other brokers' prices. The SEC case noted that the majority of Robinhood's revenue was received from payment for order flow. While Robinhood initially did disclose such compensation, after receiving bad press related to such practices, it removed disclosure regarding such payments from prominent customer communications and specifically instructed customer service representatives to avoid talking about such payments. Moreover, the firm falsely stated that "execution quality and speed matches or beats what's found at other major brokerages." In settling the case, Robinhood agreed to pay a $65 million penalty and retain an independent consultant to review its policies and procedures related to customer communications, payment for order flow, and best execution of customer orders.

SEC Release

SEC Guidance

SPAC Guidance

As described in our Q1 Update, special purpose acquisition companies, known as SPACs, are "blank check" companies that have become popular vehicles for various transactions including transitioning private companies to become publicly-traded companies. On March 31, 2021, the SEC's Division of Corporation Finance (***Corp Fin***), which handles securities registration, issued a Staff Statement on Select Issues Pertaining to Special Purpose Acquisition Companies (***SPAC guidance***) addressing "certain accounting, financial reporting and governance issues that should be carefully considered before a private operating company undertakes a business combination" with a SPAC. Investment advisers should be aware of this SPAC guidance and the limitations described in it should they sponsor or contemplate sponsoring SPACs. In the SPAC guidance, Corp Fin notes that as shell companies, SPACs are subject to certain financial and filing limitations that should be considered by SPACs and the private companies engaging in business combinations with SPACs before engaging in their undertakings. The SPAC guidance continues by indicating that SPACs, as issuers with reporting obligations under the Securities Exchange Act of 1934, are subject to, and must have or develop the necessary expertise with respect to:

- books and records requirements, prior and subsequent to the business combination, that entail accurately and fairly reflecting the issuer's transactions and dispositions of its assets;
- internal controls requirements in which the issuer must "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances about management's control, authority, and responsibility over the issuer's assets"; and
- requirements for effective and reliable financial reporting that include management's responsibility to establish and maintain 1) adequate internal controls over financial reporting, including periodically evaluating their effectiveness, and 2) disclosure controls and procedures.

The SPAC guidance notes that private operating companies may not have prior experience with public company reporting, application of SEC rules and disclosure requirements, and adoption of new accounting standards in financial statements. In addition, listing on a national securities exchange also requires satisfying initial standards upon consummation of the business combination including corporate governance requirements.

SEC Guidance

Other Regulatory Developments

Anti-Money Laundering Developments

The Corporate Transparency Act (***CTA***), discussed for years, became a reality in December when it was passed as part of the National Defense Authorization Act and enacted on January 1, 2021. The act requires the formation of a beneficial ownership registry applicable to corporations, limited liability companies (LLCs) and most partnerships, to be established and maintained by FinCEN.

The CTA imposes reporting requirements on corporations, LLCs, and other "similar entities" that are either (i) created by filing a document with a secretary of state or a similar office under the law of a state or Indian tribe, or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian tribe. Entities required to report are called "Reporting Companies" under the CTA.

Entities who will be **exempt** from reporting beneficial ownership include the following:

- Corporations, LLCs or similar entities with an operating presence at a physical office within the United States with over 20 full-time employees in the United States, and that filed Federal income tax returns demonstrating more than $5 million in gross receipts or sales in the previous year are exempt from reporting.
- Entities that are already regulated, such as banks, credit unions, insurance companies, broker/dealers, exchange or clearing agencies, registered investment companies and registered investment advisers, public accounting firms, public utilities, financial market utilities, certain pooled investment vehicles, 501(c) nonprofit organizations and any entity that is owned or controlled by, be it directly or indirectly, one or more of the exempt organizations mentioned above.
    - While hedge funds and private equity funds are not specifically identified within the CTA as being exempt, to the extent that such pooled investment vehicles are operated or advised by either: (i) an entity that is a registered investment company or a registered investment adviser or (ii) an investment adviser that is deemed an exempt reporting adviser in reliance on the exemption from registration under Section 203(l) of the Investment Advisers Act of 1940 and has filed a Form ADV with the SEC, such pooled investment vehicles will be exempt from the CTA.

In conjunction with the passage of the CTA was the Anti-Money Laundering Act of 2020 (***AMLA***) which, as discussed in the Q1 Update, is designed to reform and modernize AML and counter-financing of terrorism laws.

The AMLA will require the Treasury Department to revise the final Customer Due Diligence rules (***CDD***). CDD rules, which were enacted in 2016 and went into effect in 2018, require financial institutions to collect specific beneficial ownership and control information from their customers. The aim of the required CDD rule revisions is to bring the rules into conformance with the CTA and AMLA, account for access by financial institutions to the beneficial ownership registry in order to confirm beneficial information provided directly to the financial institutions, facilitate compliance, and reduce burdens on financial institutions and legal entity customers that would be unnecessary or duplicative.

We expect that there will be additional guidance forthcoming before the CTA reporting date in 2022 and that implementation of the CTA and revisions to CDD requirements will take time as the Treasury Department and FinCEN engage in rulemaking.

Privacy Law Developments

On March 2, 2021, Virginia became the second state, behind California, to enact a comprehensive data privacy law – the Virginia Consumer Data Protection Act (***CDPA***). While the law does not take effect until January 1, 2023, companies doing business or marketing in Virginia should begin to reassess their need for compliance based on the new requirements. The CDPA applies to companies that conduct business in Virginia that during a calendar year control or process personal data of at least 100,000 consumers or at least 25,000 consumers and derive over 50% of gross revenue from the sale of personal data. The law requires that these businesses make disclosures and implement protections to secure personal data. Personal data is defined as "any information that is linked or reasonably linkable to an identified or identifiable natural person."

CDPA allows individual residents to control how companies use and protect personal data in their possession. Under the new law, residents have the right to, by request, access, correct, delete, know and opt-out of the sale and processing for targeted advertising purposes of their personal information. Businesses must respond to such consumer requests promptly within 45 days. The new law does not contain a private right of action. Therefore, consumers cannot take legal action against a business if they believe their rights have been violated. Businesses will be given 30 days to cure any noticed violation before they are fined up to $7,5000.00 for each violation.

Private fund managers will likely be exempt from compliance with CDPA as the new law does not apply to financial institutions or data subject to Title V of Gramm-Leach-Bliley Act (***GLBA***). However, managers that purchase alternative data from vendors will need to take account of the CDPA for data that will be collected after the CDPA goes into effect.

Since January, similar privacy legislation has been introduced in 26 states. Some are on their second, third, or fourth iterations with discussion around whether these laws will include private rights of action, how they should be enforced, and related issues. While the Virginia law passed, the bills in 10 states (Arizona, Florida, Kentucky, Maryland, North Dakota, Oklahoma, Mississippi, Utah, Washington, and West Virginia) have failed. Developments have slowed as state legislative sessions are closing for breaks. However, there are still active bills in Colorado, Alaska, Connecticut, Nevada, and New Jersey. The legislative sessions for these states are currently open, and so we may see movement on the proposed bills in the coming months. CORE-CCO will continue to monitor the progress of the proposed legislation.

Digital Asset Developments

On April 22, 2021, the House passed a bill mandating the SEC and the CFTC to establish a working group focused on purely digital assets. This development was prompted by the incredible growth of Bitcoin and other digital assets as well as the continuous innovations of the distributed ledger technology (e.g., Blockchain) that enables crypto-assets' existence in the first place.

The new legislation comes alongside the CFTC openly stating that bitcoin does meet the definition of a "commodity" as described under the Commodity Exchange Act (***CEA***), prompting many people to label the CFTC

Regulatory Updates and Enforcement

as the primary regulator of crypto assets. However, the CFTC emphasized that treating bitcoin as a commodity is no more surprising than treating corn, oil, or copper as a commodity, given the breadth of the CEA's definition of the term "commodity." During Texas A&M's bitcoin conference, Dawn Stump, CFTC commissioner, stated, "I want to be very clear that the CFTC regulates derivatives associated with the underlying commodities, but not the underlying commodities themselves. In other words, we regulate futures on bitcoin because bitcoin is a commodity—but we do not regulate bitcoin itself." The indecisiveness of the US regulatory agencies has kept the crypto markets in a poorly defined regulatory environment, creating demand for a clearer structure.

This bill, introduced by a pro-bitcoin Congressman Patrick McHenry, aims to create a collaborative relationship between regulators and the private sector to foster innovation and bring needed clarity to the crypto space.

Given the newness and complexity of this issue, the bill intently requires that the members of the working group include at least one representative from fintech companies that provide digital asset products or services, financial firms regulated by the SEC or CFTC, institutions engaged in academic research or advocacy relating to digital asset use, small fintech businesses, investor protection organizations, and institutions that support investment in historically underserved businesses.

The group shall submit a report no later than one year after the enactment of the bill to the SEC, the CFTC, and other relevant committees. The report is expected to introduce recommendations related to the crypto-market laws and regulations while improving the fairness, orderliness, integrity, efficiency, and transparency of such markets. The bill now heads to the Senate.

House Bill