

## **NSCP INTERACTIVE LABS AGENDA FOR NEW YORK – April 23, 2024**

8:00 AM – 9:00 AM: Registration & Breakfast

9:00 AM – 10:30 AM: Session 1

### **Session 1a. ALL - Risk Management Beyond Assessment**

As the regulatory, technological, and business environments continue to evolve, the need to identify, analyze and respond to the risk factors that may impact organizational objectives is ever increasing. This lab will equip attendees by exploring the 5 principal components of a successful risk management program once the risk assessment matrix has been created. The following learning objectives will be met, using case studies, examples, group discussions, and other application activities:

- Review, analyze and codify the identified risks and risk applicable assignments.
- Integrate and address adequate policies and procedures to cover key risk (KRI) and key performance (KPI) indicators.
- Strategically assist with high-low risk potential resolutions and proposed actions based on a top-down approach.
- Know how to properly take a holistic view of the plan for continual reassessment.
- Supplement the program with ongoing education relative to the riskiest weak areas.

### **Session 1b. ALL – Regulatory Considerations Surrounding Service Providers**

This lab will explore the importance of performing and conducting initial and ongoing due diligence reviews with respect, but not limited to sharing confidential client and firm-related information with service providers. The panel will discuss best practices, overriding regulatory provisions, and recent enforcement actions concerning service provider relationships. The session will use real world case studies, examples, group discussions, and other application activities to:

- Understand existing expectations and proposed rules for selection and oversight of third-party and fourth-party service providers.
- Understand the process of onboarding an outsourced service provider, including ensuring appropriate contractual obligations are in place.
- Discuss best practices with respect to an effective risk management program.
- Discuss best practices for handling red flags in service provider relationships.
- Explore the pros and cons of outsourcing vs. insourcing.

### **Session 1c. PF - New Private Fund Investor Reporting Requirements**

The SEC's push to foster greater disclosure to investors with the Private Fund Adviser Rule has yielded several new client reporting requirements for registered advisers. This interactive session will explore the new quarterly statement requirements for Private Funds. Attendees will discuss the SEC's requirement for a standardized approach to reporting to investors fund fees, expenses, and performance by a diverse universe of private funds as well as the intersection of requirements for performance presentations under the Private Fund Rule and the Marketing Rule. The following learning objectives will be addressed using examples of various types of private funds, group discussions, and other practical group application activities:

- Understand the new categories of Liquid and Illiquid Funds, including essential factors defining an Illiquid Fund.

- Identify the various types of fees and expenses that must be disclosed; common calculation methodologies to report accruals of performance fees, contingency funds and other accounting issues related to fees and expenses.
- Consider the type of associated disclosure necessary to make required investor reports complete and not misleading.
- Discuss commonalities and differences between presenting performance in a quarterly investor report and in an “advertisement” subject to the Marketing Rule.
- Analyze whether and when a quarterly report also may be deemed an “advertisement” under the Marketing Rule.

10:30 AM – 10:45 AM: Break

10:45 AM – 12:15 PM: Session 2

### **Session 2a. ALL – Bringing Off-Channel Communications On-Channel**

This lab will explore the strengths and limitations of various technological solutions to enable the use of various messaging systems in a compliant manner. This lab will also discuss methods of surveillance and testing. Facilitators will utilize case studies, hypothetical examples, group discussions, and other application activities to:

- Define the various channels that can be used for communication including social media, text messaging, and messaging apps.
- Learn the nuances of policies for corporate issued devices versus BYOD policies.
- Learn from your peers what is working and what is not working.
- Discover methods of surveillance and testing of firm policies regarding off-channel communications.
- Discuss the pros and cons of examining employees’ personal devices.

### **Session 2b. ALL – Emerging Compliance Challenges with Use of Artificial Intelligence (Intermediate)**

This lab will consider compliance considerations for the use of AI by investment adviser and broker dealers to conduct business and the challenges faced by compliance departments to review AI content. AI can be generative, analytical, or functional and the implications for each use vary. This lab will discuss ways to identify, assess, and manage the regulatory and compliance risks stemming from the use of AI. The session will use case studies, examples, group discussions, and other application activities to:

- Learn how to identify compliance risks associated with use of generative AI.
- Determine if the use of AI for conducting business is covered by existing compliance policies and procedures.
- Discuss best practices to update compliance policies and procedures for use of AI.
- New ways in how AI can assist with compliance reviews and testing.

### **Session 2c. PF - Preferential Treatment: Death of Side Letters and More**

SEC Rule 211(h)(2)-3 substantially restricts the ability of private funds to grant certain investors in those funds (or investors in *similar* pools of assets) better terms than those granted to other investors. The new rule also curbs a Private Fund's ability to grant preferential redemption or transparency to certain investors unless they offer it to all investors. Finally, the rule requires that if the Private Fund grants any preferential treatment to one investor, it must disclose this to all investors. This session will focus on the implications of these requirements in the context of

common historical practices that afforded some investors greater rights than other investors. It also will focus on how hedge funds and private equity managers are considering implementation of these requirements and potential associated compliance procedures. The session will use hypothetical examples, group discussions, and other application activities to:

- Identify common practices that may need to be reexamined in light of the new rule.
- Consider the analysis required to determine what preferential rights create a "material negative effect."
- Discuss considerations for compliance by peer managers and investors.
- Share your firm's potential responses to compliance with these new requirements.

12:15 PM – 1:00 PM: Lunch

1:00 PM – 2:30 PM: Session 3

### **Session 3a. ALL – Preparing for Regulatory Examinations**

This lab will focus on exploring best practices to prepare for and handle a regulatory exam from the time an exam is announced through the final exam report. Industry peers will discuss the importance of creating a rapport with the exam team and share tips on how to manage the record production process and prepare for on-site or virtual interviews. Lab facilitators will share perspectives on managing complex requests, understanding potential and actual expectations or deficiencies, and communicating with business leaders on exam outcomes. The following learning objectives will be met using case studies, examples, group discussions, and other application activities:

- Explore ways to be prepared for various types of regulatory exams by establishing processes for tracking requests, adopting a consistent process, engaging in mock exams, and reviewing recent exam priorities and enforcement actions.
- Share best practices for communicating exceptions across the enterprise once a regulatory exam has launched.
- Discuss how to manage and respond to difficult or voluminous requests, and what to do when a prior request needs to be amended or supplemented.
- Learn how to put the firm in the best position when managing issues that may lead to deficiencies and/or referrals to enforcement and when to involve legal counsel.

### **Session 3b. ALL - Promoting Ethics in Organizations: Fostering a Culture of Integrity and Responsibility**

Promoting ethics in organizations is designed to equip professionals with the essential knowledge, skills, and strategies to foster a culture of ethics, integrity, and responsibility within their organizations. In today's complex and competitive business landscape, ethical conduct is paramount for sustainable success and positive stakeholder relationships. The session will use case studies, examples, group discussions, and other application activities to:

- Identify key ethical principles and frameworks to guide decision making and behavior.
- Recognize common ethical challenges and dilemmas faced in organizational settings.
- Develop strategies to promote ethical behavior and a culture of integrity within their organizations.
- Implement effective ethics policies, procedures, and training programs to foster ethical leadership and empower employees to make ethical choices.
- Evaluate and assess the effectiveness of ethics initiatives within the organization.

### **Session 3c. IA/PF – Marketing: The Marketing Rule and Beyond**

The SEC created a sea change with the Marketing Rule and the resulting waves continue to drive the compliance agenda for private fund managers and traditional advisers alike. This interactive session will explore some of the more challenging elements of the Rule, including determining the net performance of one (or more) securities held in a fund or other portfolio and oversight of third-party marketing of a private fund or advisory services. This is an intermediate session and assumes a working knowledge of the Marketing Rule. The session will use case studies, examples, group discussions, and other application activities to:

- Identify thorny issues in the application of the Marketing Rule.
- Review the guidance on the Marketing Rule, including Risk Alerts, Sweep Exams, and enforcement.
- Learn how colleagues are addressing these issues.
- Apply learnings to case studies and examples and discuss alternative approaches.

2:30 PM – 2:45 PM: Break

2:45 PM – 4:15 PM: Session 4

### **Session 4a. ALL - Establishing a Cyber Incident Response Playbook**

The Financial industry is facing a plethora of unprecedented and sophisticated cyber-criminal activities, including threats of fraud, account takeovers, and bad actor malicious acts (e.g., ransomware attacks). Firms must be prepared to act swiftly in responding to an incident. Effectively managing an incident response program requires careful planning, effective deployment, and the ability to adapt to various circumstances. In this lab, participants will take a hands-on learning approach to designing and implementing a practical incident response playbook. The following learning objectives will be met using case studies, examples, group discussions, and other application activities:

- Develop a process for scoping, planning, and executing an incident response plan for internal and third-party breaches.
- Decipher common cyber-attacks and consider the enterprise-wide impacts.
- Explore preventative practices including testing with tabletop exercises to detect gaps and enhance incident response efforts.
- Review timing for involving insurance and outside counsel and develop an effective communication plan for regulators, employees, clients, vendors, and other critical stakeholders.
- Share best practices for staying informed on emerging cyber issues and incidents.

### **Session 4b. BD/IA – Understanding Reg BI Care Obligation vs. Fiduciary Duty of Care (Intermediate)**

In June 2019, the SEC described the Reg BI care obligation in the adopting release and separately issued an interpretation of an IA’s standard of care which addressed the duty of care. There were distinct differences, however, in April 2023 the SEC issued “Standards of Conduct for BDs and IAs Care Obligations” which blurred the distinction. This lab will explore the differences, if any, and offer practical advice on regulatory expectations and how firms should respond to the recent guidance with practical tools and takeaways.

- Discuss current regulatory expectations for the care obligation/duty of care.
- Examine the similarities and differences in articulations of the care standard.
- Learn how firms should address costs and reasonable alternatives.
- Explore methods of surveillance and testing for compliance with firm policies.

### **Session 4c. IA/PF - Compliance Testing, Surveillance, and Documentation: Regulatory Expectations**

We know that Rule 206(4)-7 requires advisers to adopt and implement policies and procedures reasonably designed to prevent violations of the Advisers Act, but how do we document effectiveness? Effective monitoring and testing require careful planning, conscious implementation, and program adaptability. The test and its results are then detailed in writing, for example, in a report accompanied by supporting records, periodic documentation aggregated at year end, memos, or informal notes. This lab will discuss regulatory expectations and use case studies, examples, and group discussions to:

- Draft an effective control framework for monitoring, testing, and surveillance.
- Learn what and when to test and identify who should help conduct the testing.
- Assess strengths and weaknesses of various testing methods and highlight testing opportunities for private fund managers (group A) and investment advisers (group B).
- Share best practices for capturing program outcomes (testing results, training, and mitigation efforts) in a written annual review report that is appropriate for sharing with regulators, senior management, and clients.

4:15 PM – 5:30 PM: Networking Reception