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SEC Lists the Five Most Frequent Compliance Topics Identified in Examinations of Investment Advisers

On February 7, 2017, the Securities and Exchange Commission's ("SEC") Office of Compliance Inspections and Examinations ("OCIE") identified the following five areas of compliance deficiencies or weaknesses frequently found during its staff's examinations of SEC-registered investment advisers:

- compliance policies and procedures;
- required regulatory filings;
- the "Custody Rule";
- code of ethics; and
- books and records.

As investment advisers start to prepare their annual updating amendments to Form ADV and conduct their annual compliance reviews, they should consider whether their compliance programs need improvements in any of these areas. For more detailed information regarding the types of deficiencies found by the OCIE staff in each of these areas, please continue reading below.

Compliance Policies and Procedures

- *Compliance manuals not reasonably tailored to the investment adviser's business practices.* Investment advisers used "off-the-shelf" compliance manuals. Compliance programs did not take into account important individualized business practices, such as investment strategies, types of clients, trading practices, valuation procedures and advisory fees.
- *Annual reviews not performed or not properly performed.* Investment advisers did not conduct annual reviews of their compliance policies and procedures. When reviews were conducted, the reviews did not address the adequacy of the investment advisers' policies and procedures and the effectiveness of their implementation. Investment advisers did not address or correct problems identified in their annual reviews.
- *Compliance policies and procedures were not followed.* Investment advisers were not following their compliance policies and procedures, such as not performing internal reviews of their practices, not adhering to practices relating to marketing, expenses or employee behavior required by their compliance manual.
- *Compliance manuals were not current.* Compliance manuals contained information or policies that were no longer current, such as investment strategies that were no longer pursued, personnel no longer associated with the investment adviser and stale information about the firm.

Regulatory Filings

- *Inaccurate disclosures.* Investment advisers made inaccurate disclosures on Form ADV Part 1A or Part 2A, such as inaccurately reporting custody information, regulatory assets under management, disciplinary history, types of clients and conflicts.

- *Late Form ADV filings.* Investment advisers did not promptly amend their Form ADVs when certain information became inaccurate or timely file their annual updating amendments.
- *Incorrect Form PF filings.* Investment advisers did not complete Form PF accurately or completely.
- *Incorrect and untimely Form D filings.* Investment advisers did not accurately complete and timely file Form Ds on behalf of their private fund clients.

Custody Rule

- *Investment advisers did not recognize that they may have custody.* Investment advisers failed to recognize that they may have custody over client accounts as a result of (i) having (or related persons having) powers of attorney authorizing them to withdraw client cash and securities, including when investment advisers or their related persons served as general partners of pooled investment vehicles, or (ii) having access to online accounts using clients' personal usernames and passwords.
- *Surprise audit examinations did not meet the requirements of the Custody Rule.* Investment advisers did not provide independent public accountants performing surprise examinations with a complete list of accounts over which the investment adviser has custody or otherwise provide information to accountants to permit the accountants to timely file accurate Form ADV-Es. Staff also observed indications suggesting that surprise examinations may not have been conducted on a "surprise" basis (e.g., exams were conducted at the same time each year).

Code of Ethics

- *Untimely submission of transactions and holdings.* Access persons submitted transactions and holdings less frequently than required by the Code of Ethics Rule.
- *Access persons not identified.* Investment advisers did not identify all of their access persons (e.g., certain employees, partners or directors) for purposes of reviewing personal securities transactions.
- *Codes of ethics missing required information.* Investment advisers' codes of ethics did not specify review of the holdings and transactions reports, or did not identify the specific submission timeframes.
- *No description of code of ethics in Form ADVs.* Investment advisers did not describe their codes of ethics in their Part 2A of Form ADVs and did not indicate that their codes of ethics are available to any client or prospective client upon request.

Books and Records

- *Failure to maintain all required records.* Investment advisers failed to maintain all requisite books and records, such as trade records, advisory agreements and general ledgers.
- *Books and records were inaccurate or not updated.* Investment advisers had errors and omissions in their books and records, such as inaccurate fee schedules and client records or stale client lists.
- *Inconsistent recordkeeping.* Investment advisers maintained contradictory information in separate sets of records.

A copy of the SEC's Risk Alert entitled "The Five Most Frequent Compliance Topics Identified in OCIE Examinations of Investment Advisers" may be found [here](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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