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2019 NEW YORK INVESTMENT MANAGEMENT CONFERENCE

SEC Examination and Enforcement Priorities

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AGENDA

- SEC Enforcement and Exams in 2019
- Risk Alerts and Other Hot Button Issues
- Enforcement Priorities and Selected Actions Pertaining to Investment Management
- A Review of Recent SEC Statements and Developments in Areas of Regulatory Development, Including Cybersecurity and Digital Assets
- Being Smart about OCIE Exams: Rules of the Road for Avoiding Referrals to Enforcement

ENFORCEMENT TRENDS

DIRECTION OF THE AGENCY

- SEC's three-part mission under Chairman Clayton:
  - Protecting investors
  - Maintaining fair and efficient markets
  - Facilitating capital formation

- Primary focus remains on protecting Main Street, or retail, investors (including senior investors, and retirement accounts/products)
  - Private equity slightly out of proverbial bullseye

- FY19 budget allowed the SEC to lift its hiring freeze (in effect since 2016) and add 100 new positions, enabling staffing levels to return to those five years ago
- SEC is vigorously policing fraud
  - Chairman Clayton announced in April 2019 nearly $800 million was returned to harmed investors over past year

- Chairman Clayton expects recent victory in *Lorenzo v. SEC* to have "significant impact" on SEC's ability to enforce securities laws by targeting disseminators of misstatements

ENFORCEMENT PRIORITIES

- Continued focus on the Enforcement Division's five previously articulated principles:
  - Focus on the Main Street investor
    - Retail-focused investigations returned $794 million to harmed investors
    - Retail Strategy Task Force
    - Share Class Selection Disclosure (SCSD) Initiative announced in FY18
  - Focus on individual accountability
    - In FY18, individuals charged in more than 70% of stand alone enforcement actions
  - Keep pace with technological change
    - Digital assets and ICO misconduct
  - Impose remedies that most effectively further enforcement goals
  - Constantly assess the allocation of resources
    - Shift toward emerging risks, such as cyber threats, ICOs and SCSD

ENFORCEMENT PRIORITIES AND FACTS

- Enforcement Division is not pursuing cases against advisers as aggressively as broken windows approach, but still active
  - Focus on advisers' conflicts of interest (e.g., revenue sharing agreements, undisclosed commissions, expense avoidance practices)
  - Focus also on suitability of complex investment recommendations

- General focus on widespread problem of affinity fraud (e.g., offering frauds, Ponzi schemes, market manipulation schemes)
- Adviser themes and 2019 pipeline:
  - Misappropriation
  - Cherry-picking (with increased data-driven initiatives)
  - Undisclosed compensation
  - Mark-ups on products
  - "Double-dipping"
  - High-risk compliance issues, including custody and cross transactions
  - Misrepresentations of services provided and historical performance

ENFORCEMENT STATISTICS (FIRST HALF FY 2019)

- 216 new stand alone actions filed in the first six months of FY 2019
  - Compared to 149 during the first six months of FY 2018
  - Of these, 79 actions were filed on the same day (investment adviser misconduct)
  - Excluding these 79 actions, only 137 stand alone cases have been filed
- Compared to FY 2018, more cases have been filed involving:
  - Issuer reporting / audit and accounting
  - FCPA
  - Investment adviser misconduct
- Compared to FY 2018, fewer cases have been brought involving:
  - Broker dealer misconduct
  - Insider trading
  - Public finance abuse

ENFORCEMENT STATISTICS (FY 2018)

- 821 enforcement actions during FY 2018
  - 490 stand alone proceedings
  - 210 follow-on proceedings
  - 121 delinquent filings against public companies
  - 8.8% increase from FY 2017
- $1.439 billion in penalties ordered
  - $832 million in FY 2017
  - 72.9% increase
- $2.506 billion imposed in disgorgement of profits
  - $2.957 billion in disgorgement in FY 2017
  - 15.2% decrease
- Division is dedicated to increasing the number of actions filed, despite operating with fewer resources

ENFORCEMENT STATISTICS BY CATEGORY (FIRST HALF FY 2019)

	# of Cases Filed in the First Half of FY 2019	% of Total Cases Filed in the First Half of FY 2019	# of Cases Filed in the First Half of FY 2018	Change in First Half of FY 2019 vs. First Half of FY 2018
Investment Advisers / Investment Cos.	106	49%	28	+279%
Securities Offering	35	16%	39	-10%
Issuer Reporting / Audit & Accounting	30	14%	25	+20%
Broker Dealer	17	8%	23	-26%
Insider Trading	8	4%	13	-38%
Market Manipulation	9	4%	10	-10%
Public Finance	3	1%	5	-40%
FCPA	8	4%	2	+300%
Other (Exchanges, NSROs, Transfer Agents, Misc.)	0	0%	4	-100%
Total	**216**	**100%**	**149**	**+45%**

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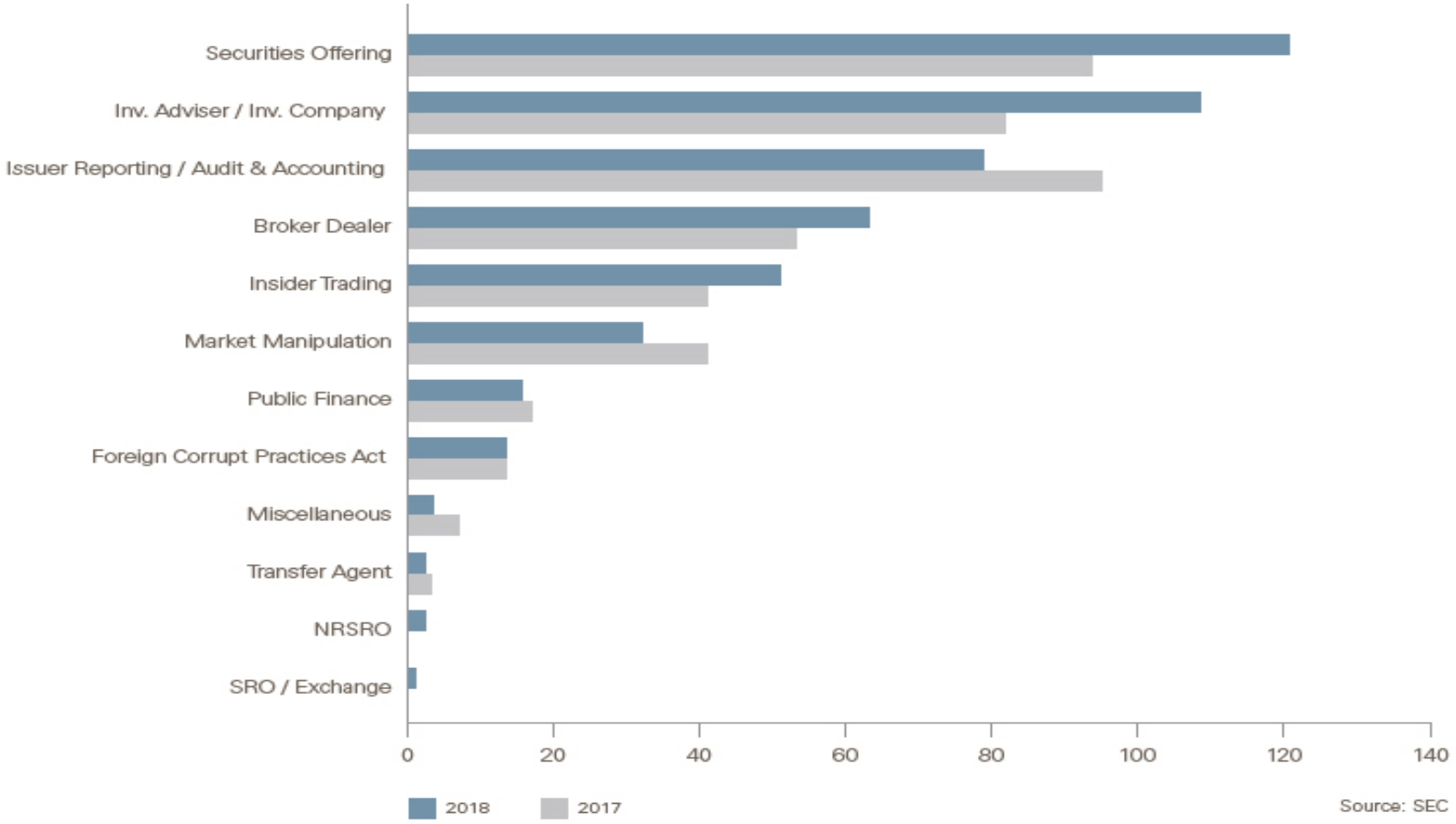
ENFORCEMENT STATISTICS BY CATEGORY (2018)



Breakdown of Classification of Stand Alone Enforcement Actions				
	FY 2018		FY 2017	
	Actions	Pct	Actions	Pct
Securities Offering	121	25%	94	21%
Investment Advisers / Inv. Company	108	22%	82	18%
Issuer Reporting & Disclosure	79	16%	95	21%
Broker Dealer	63	13%	53	12%
Insider Trading	51	10%	41	9%
Market Manipulation	32	7%	41	9%
Public Finance Abuse	15	3%	17	4%
FCPA	13	3%	13	3%
Miscellaneous	3	1%	7	2%
NRSRO	2	0%	0	0%
Transfer Agent	2	0%	3	1%
SRO or Exchange	1	0%	0	0%
Total	**490**	**100%**	**446**	**100%**

Source: U.S. SEC FY 2018 Division of Enforcement Annual Report, Appendix

SETTLEMENT AND WAIVER PROCESS

- In July 2019 ,Chairman Clayton announced a change regarding how the Commission will review settlement offers with waiver requests
- Regulators will now consider requests for disqualification simultaneously with proposed settlement agreements
  - A return to past practice
- Settlement and waivers are not a packaged deal and the Commission may still approve a settlement without granting a waiver
  - If the Commission approves the settlement offer, but not the waiver, the party can withdraw the settlement offer and will not be bound

LORENZO V. SEC

- The Supreme Court held that an individual who is not a "maker" of a false statement may nonetheless be held primarily liable under Rule 10b-5(a) and (c) if that individual disseminates a false statement with the intent to defraud
  - Court left open the possibility of narrowing the decision in the future
  - Individuals are now subject to both primary and secondary liability
- Chairman Clayton believes *Lorenzo* will be particularly helpful in regulating deceptive action in private placements and schemes involving offshore actors
  - Commissioner Pierce, however, cautions the Commission to exercise discretion when applying *Lorenzo*
- Potential expansion of 17(a)(3)
  - Apply *Lorenzo* scheme liability and only have to show negligence
- New avenue for private plaintiffs
  - Open the door to private aiding and abetting claims
  - Shareholder class action

PROPOSED LEGISLATIVE RESPONSE TO *KOKESH*

- The Commission's claims for disgorgement are subject to a five year statute of limitations
  - Division of Enforcement estimates the Commission could forgo up to $900 million in disgorgement

- Securities Fraud and Investor Compensation Act
  - Five year limitation on disgorgement remains
  - Amend the Exchange Act of 1934
  - Commission would have 10 years to file for restitution

EXAMINATION PRIORITIES

OCIE AND EXAMINATIONS

- Number of exams has increased under Chairman Clayton (but are more “business as usual” exams)
  - Use of data analytics is a key driver

- Exam priorities and initiatives include:
  - Advisory fees and expenses (e.g., mutual fund share class selections, consistency of advisory practices with disclosures)
  - Conflicts of interest
  - Portfolio management
  - Digital assets

2019 EXAMINATION PRIORITIES

- OCIE's annual priorities statement articulates six themes:
  - Main Street Investors (including seniors and those saving for retirement)
    - Exam focus areas include: fees and expenses (including disclosure of investing costs), conflicts of interest, senior investors and retirement accounts/products, and portfolio management processes
  - Registrants Responsible for Critical Market Infrastructure (clearing agencies)
  - FINRA and the MSRB
  - Digital Assets (crypto, coins, and tokens)
  - Cybersecurity
  - Anti-Money Laundering Programs

EXAMINATION PRIORITIES AND FACTS

- 3,150 examinations were completed in FY18 (10% increase from FY17)
- 17% of registered advisers were examined in FY18 (compared to 15% in FY17, and only 8% about five years ago)
- In 2018, number of registered advisers grew by 5%, assets increased to $84 trillion, 35% of registered advisers managed private funds, and more than 50% of registered advisers retained custody of client assets
- OCIE's Private Funds Unit remains active

EXAMINATION PRIORITIES AND FACTS

- Exams are risk-based (routine), sweep, or for cause
  - OCIE is increasingly leveraging data analytics and technology to select exam candidates
- Use of correspondence exams is increasing
  - More newly registered advisers are being examined
  - Correspondence exams can evolve into onsite exams
- Examiners are spending less time onsite during exams (however, supplemental requests and other correspondence by examiners are increasing)
- Importance of and need to be transparent, and organized, with examiners

EXAMINATION PRIORITIES AND FACTS

- OCIE's deficiency letter review project has identified the 'Top 10' list of adviser deficiencies:
  - Custody
  - Compliance program rule
  - Regulatory filings
  - Code of Ethics
  - Books and records
  - Best execution
  - Cash solicitation rule
  - Advisory fees and expenses
  - Advertising
  - Conflicts of interest

EXAMINATION PRIORITIES AND FACTS

- Percentage of investment advisers, investment companies and broker-dealers examined during the year

Fiscal Year	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Plan	FY 2018 Actual
Investment advisers	9%	10%	10%	11%	15%	15%	17%
Investment companies	11%	10%	15%	17%	11%	11%	15%
Broker-dealers	46%	49%	51%	50%	48%	48%	48%

Source: U.S. SEC FY 2018 Annual Performance Report

EXAMINATION PRIORITIES AND FACTS

- Percentage of exams that identify deficiencies, the percentage that result in a "significant finding" and the percentage referred to the Division of Enforcement

Fiscal Year	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018 Actual
Percentage that identify deficiencies	80%	76%	77%	72%	72%	69%
Percentage that result in a "significant finding"	35%	30%	31%	27%	20%	20%
Percentage referred to the Division of Enforcement	13%	12%	11%	9%	7%	6%

Source: U.S. SEC FY 2018 Annual Performance Report

RISK ALERTS AND OTHER ISSUES

NATIONAL EXAM PROGRAM: RISK ALERTS

- Investment Adviser Compliance Issues Related to the Cash Solicitation Rule (Oct. 31, 2018)
- Observations from Investment Adviser Examinations Relating to Electronic Messaging (Dec. 14, 2018)
- Investment Adviser and Broker-Dealer Compliance Issues Related to Regulation S-P – Privacy Notices and Safeguard Policies (Apr. 16, 2019)
- Safeguarding Customer Records and Information in Network Storage – Use of Third Party Security Features (May 23, 2019)
- Observations from Examinations of Investment Advisers: Compliance, Supervision, and Disclosure of Conflicts of Interest (July 23, 2019)
- Investment Adviser Principal and Agency Cross Trading Compliance Issues (Sept. 4, 2019)

RISK ALERT (1 OF 6)

Investment Adviser Compliance Issues Related to the Cash Solicitation Rule (Oct. 31, 2018)

- Encourages advisers to review the adequacy and effectiveness of their solicitation agreements and client acknowledgements
- Frequently found deficiencies include:
  - Inadequate disclosures and missing terms in solicitor disclosure documents (e.g., nature of relationship to the adviser, compensation arrangements, and additional costs to the client)
  - Advisers failing to timely receive client acknowledgements
  - Payments of cash fees to solicitors without any solicitation agreements (or agreements lacking required provisions)
  - No bona fide efforts by advisers to ascertain solicitor compliance

RISK ALERT (2 OF 6)

Observations from Investment Adviser Examinations Relating to Electronic Messaging (Dec. 14, 2018)

- Focuses on advisers' compliance with the Books and Records Rule for electronic communications, such as use of personal devices, social media and texting/IM
- Practices that can assist advisers in meeting their record and retention obligations include:
  - Permitting or prohibiting certain forms of electronic communication
  - Monitoring social media, emails and websites that employees use for business purposes, and retain/archive such communications
  - Load security apps or other software on employee devices

RISK ALERT (3 OF 6)

Investment Adviser and Broker-Dealer Compliance Issues Related to Regulation S-P – Privacy Notices and Safeguard Policies (Apr. 16, 2019)

- Encourages advisers to review their policies and procedures, and their implementation, to ensure the security and confidentiality of client records
- Frequently found deficiencies include:
  - Not properly configuring personal devices to safeguard personally identifiable information (PII) stored on those devices
  - Not requiring outside vendors to keep clients' PII confidential
  - Inadequately training employees on handling client information
  - Disseminating client login credentials to unauthorized personnel
  - Failing to remove former employee access rights after their departures

RISK ALERT (4 OF 6)

Safeguarding Customer Records and Information in Network Storage – Use of Third Party Security Features (May 23, 2019)

- Focuses on risks with electronic storage of client records in the cloud and on other network storage solutions, such as:
  - Misconfigured security settings on network storage solutions
  - Inadequate oversight of vendor-provided network storage solutions
  - Insufficient data classification in advisers' policies and procedures
- Encourages firms to actively oversee vendors used for network or cloud storage
  - Non-industry specific example: Capital One data breach of 106 million card customers and applicants on Amazon's cloud (July 30, 2019)

RISK ALERT (5 OF 6)

Observations from Examinations of Investment Advisers: Compliance, Supervision, and Disclosure of Conflicts of Interest (July 23, 2019)

- In effort to protect retail investors, SEC conducted Supervision Initiative that focused on advisers':
  - Policies and procedures addressing activities by employees with disciplinary histories
  - Disclosures, including those relating to previously-disciplined employees
  - Conflicts of interests, particularly those regarding compensation arrangements and account management
- Nearly all examined advisers received deficiency letters, and frequently found deficiencies include:
  - No policies and procedures addressing risks associated with hiring/employing individuals with disciplinary histories; overreliance on such persons to self-report their histories
  - Undisclosed compensation arrangements, and other fees charged for services not delivered
  - Insufficient annual compliance program reviews (e.g., documentation, risk assessments)

RISK ALERT (6 OF 6)

Investment Adviser Principal and Agency Cross Trading Compliance Issues (Sept. 4, 2019)

- Encourages advisers to review their policies and procedures, and their implementation, regarding principal trades and agency cross transactions
- Frequently found deficiencies and weaknesses include advisers:
  - Not recognizing trades as being principal trades, not making sufficient disclosures to clients about conflicts of interest and transaction terms, not obtaining the required consents, or obtaining client consent after completing principal trades
  - Failing to obtain appropriate prior client consent for each principal trade
  - For affiliated private funds, not recognizing that >25% ownership interests lead to principal trades (and not obtaining effective consent from private funds before completing principal trades)
  - Engaging in agency cross transactions while affirmatively stating to clients they would not, and not being able to produce documentation in compliance with written consent, confirmation and disclosure requirements of Rule 206(3)-2

SEC PROXY GUIDANCE

- Advice from proxy advisory firms must be commiserate with one's fiduciary duties
- Proxy voting advice provided by proxy advisory firms is generally considered a "solicitation"
  - Firms can still rely on exemptions from federal proxy filing requirements
  - Firms are still subject to Rule 14a-19
- Firms can avoid Rule14a-19 in the following ways:
  - Disclose methodology used to formulate voting advice
    - Identify groups that helped create voting advice methodology
    - Identify why this group was chosen
    - Identify why this group is different than that selected by the registrant
  - Disclose private information used
    - This is information other than that provided by the issuer
  - Disclose conflicts of interest

ENFORCEMENT ACTIONS PERTAINING TO INVESTMENT MANAGEMENT

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ENFORCEMENT OVERVIEW

- Custody
- Brokerage Commissions
- Conflicts of Interest
- Advisory Fees
- Investment Allocation
- Fee Calculation and Allocation
- Share Class Selection

SELECTED ENFORCEMENT ACTIONS: CUSTODY

- **Hudson Housing Capital** (Sept. 25, 2018)

  Administrative Proceeding File No. 3-18837

  - The private fund adviser, which registered with the SEC in 2012, settled claims that it failed to distribute annual audited financial statements to investors in numerous private investment funds in each fiscal year from 2012 through 2017.
  - For 32 funds, the adviser failed to timely distribute the financials at least three times, and, for 6 funds, it never distributed them. (During the time period, the adviser managed between 68 and 79 funds.)
  - The SEC noted cooperation and remedial efforts, and it ordered the adviser to pay $65,000 in penalty.

SELECTED ENFORCEMENT ACTIONS: BROKERAGE COMMISSIONS

- **BB&T Securities / Valley Forge Asset Management** (March 5, 2019) *Administrative Proceeding File No. 3-19020*
  - BB&T, the successor to Valley Forge Asset Management, agreed to return more than $5 million to retail investors and pay a $500,000 penalty in order to settle claims that it misled its advisory clients into believing they were receiving discounted full-service in-house brokerage services despite the existence of other less expensive options.
  - The SEC alleged BB&T made misrepresentations and inadequate disclosures regarding its brokerage services and prices in order to convince purchases to select the in-house service. The SEC alleged BB&T's advisory clients using its in-house brokerage were not provided any additional services despite being charged higher commission rates than its customers using other brokerages.
  - The SEC order found BB&T violated Sections 206(2) and 207 of the Investment Advisers Act.

SELECTED ENFORCEMENT ACTIONS: CONFLICTS OF INTEREST

- **Commonwealth Equity Services** (Aug. 1, 2019)

  Civil Action No. 1:19-cv-11655

  - The SEC recently charged the Massachusetts-based registered investment adviser and broker-dealer with failing to disclose material conflicts of interest related to revenue sharing that it received for client investments.
  - The complaint alleges that Commonwealth received over $100 million from National Financial Services, an affiliate of Fidelity Investments, related to investments in certain share classes of "no transaction fee" and "transaction fee" mutual funds.
  - The SEC seeks a permanent injunction, disgorgement plus interest, a penalty, and any other relief the court deems proper.

SELECTED ENFORCEMENT ACTIONS: ADVISORY FEES

- **Richard T. Diver** (March 28, 2019) *Case No. 1:19-cv-02771*
  - The SEC alleged that, between 2011 and 2018, Diver stole roughly $6 million from his employer by inflating his salary thousands of dollars per year. According to the complaint, Diver defrauded investors by causing his firm to overbill more than 300 investment advisory client accounts by approximately $750,000.
  - Diver has been charged in the Southern District of New York for violating Sections 206(1) and 206(2) of the Investment Adviser's Act. The U.S. Attorney's Office filed criminal charges against Diver the same day.
- **Stephen Brandon Anderson** (March 28, 2019)

  Administrative File No. 3-19183
  - Stephen Anderson, former owner and operator of River Source Wealth Management, was charged with defrauding clients by overcharging advisory fees of at least $367,000. The SEC also alleged Anderson misled investors when stating River Source's separation from its long-time asset custodian was "amicable," when in fact the asset custodian ended the relationship after noticing irregular billing practices and failing to receive substantiating documentation. It is further alleged Anderson made material misstatements in reports filed with the Commission.

SELECTED ENFORCEMENT ACTIONS: INVESTMENT ALLOCATION

- **Laurel Wealth Advisors, Inc. & Joseph C. Buchanan** (Aug. 26, 2019) *Administrative Filing No. 3-19377*
  - Laurel Wealth Advisors and Joseph Buchanan, a former investment adviser representative, agreed to settle charges resulting from Buchanan's cherry-picking scheme.
  - The SEC alleged Buchanan disproportionately allocated profitable trades to his personal accounts while disproportionately allocating losing trades to his client's accounts.
  - The SEC order also found Laurel Wealth failed to properly supervise Buchanan despite receiving warnings about Buchanan's allocations. Laurel Wealth is also alleged to have failed to implement internal procedures aimed at preventing these allocations.

SELECTED ENFORCEMENT ACTIONS: FEE CALCULATION AND ALLOCATION

- **ECP Manager LP** (Sept. 27, 2019) *Administrative Proceeding File No. 3-19535*
  - The SEC issued a Cease-and-Desist order alleging ECP charged its clients excessive management fees.
  - In 2010, ECP received warrants on the common stock of an African mining company and attributed $3.41 million of invested capital to the warrants. The warrants expired with no value. Nevertheless, ECP included the $3.41 million of invested capital when calculating its management fees. As a result, clients paid an additional $102,304.
  - The SEC is seeking disgorgement plus interest and penalties.

SELECTED ENFORCEMENT ACTIONS: SHARE CLASS SELECTION

- **Share Class Selection Disclosure Initiative**
  - On March 11, 2019, the SEC settled charges with 79 investment advisers alleged to have failed to adequately disclose conflicts of interests.
  - The SEC found the settling investment advisors placed their clients in mutual fund classes charging 12b-1 fees without informing them that lower cost share classes of the same fund were available and that the higher cost share classes were selected.
  - Since the SEC found the 12b-1 fees were paid to the investment advisers in their capacity as brokers, the SEC determined a conflict of interest existed.

SELECTED ENFORCEMENT ACTIONS: CRYPTOCURRENCY AND DIGITAL ASSETS

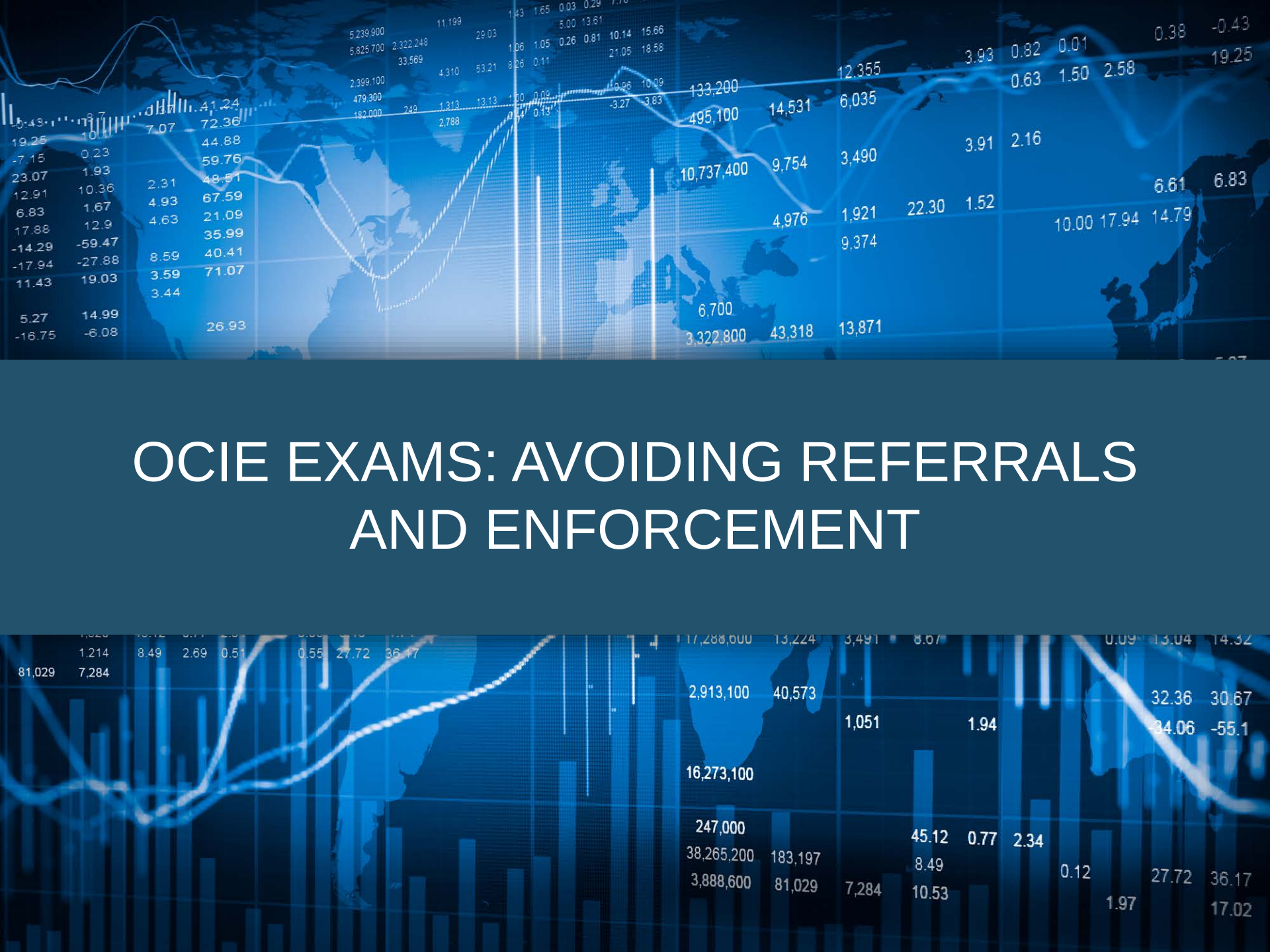
- **Kik Interactive** (June 4, 2019) *Civil Action No. 19-cv-5244*
  - The SEC recently charged the private Canadian company for conducting an illegal $100 million securities offering of digital “Kin” tokens without registering the offer and sale as required by U.S. securities laws. More than $55 million was raised from U.S. investors.
  - Kin tokens traded at about half the value that public investors paid in the offering, yet Kik allegedly told investors that the rising demand would drive up the value of Kin. Kik also allegedly claimed that it would keep three trillion Kin tokens, the Kin tokens would immediately trade on secondary markets, and Kik would profit alongside investors from the increased demand that it would foster.
  - The SEC seeks a permanent injunction, disgorgement plus interest, and a penalty.

SELECTED ENFORCEMENT ACTIONS: CRYPTOCURRENCY AND DIGITAL ASSETS (CONT.)

- **Blockvest** (February 14, 2019) *Civil Action No. 3:18-cv-02287*
  - A preliminary injunction was entered against Blockvest and its founder, Reginald Buddy Rinngold, for making fraudulent offers of securities.
  - The SEC alleged defendants attempted to raise money through an ICO that misrepresented the firm's regulatory status. The SEC further alleged defendants made unauthorized use of the SEC seal, falsely claimed their crypto fund was "licensed and regulated," and promoted the ICO with the name of a fictitious regulatory agency.
  - The Court held defendants made an unregistered offering of securities in violation of Section 17(a) of the Securities Act and determined the SEC established the token was a security and satisfied the *Howey* test.

SELECTED ENFORCEMENT ACTIONS: CRYPTOCURRENCY AND DIGITAL ASSETS (CONT.)

- **1Pool** (November 1, 2018) *Civil Action No: 1:18-cv-02244*
  - The SEC alleged a bitcoin-funded securities dealer and its CEO solicited investors from the U.S. and around the world to buy and sell security-based swaps on its platform.
  - An undercover FBI agent purchased security-based swaps on the broker's U.S. platform despite failing to meet the discretionary investment threshold. The SEC contends the broker and CEO failed to transact business on a registered national exchange and properly register as a security-based swaps dealer.
  - The SEC charged the broker and CEO with violating registration provisions of the federal securities laws and has sought permanent injunctions, disgorgement plus interest, and penalties.



OCIE EXAMS: AVOIDING REFERRALS AND ENFORCEMENT

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RULES OF THE ROAD AND BEST PRACTICES

Before

- Resource compliance adequately, and conduct periodic trainings.
- Review examination focuses periodically, both annual letters and alerts.
- Identify conflicts of interest, and remediate or disclose fully.

During

- Be professional and courteous.
- Provide a primary point of contact to examination staff.
- Provide precisely what is requested.

After

- Respond quickly and fully.
- Follow through on examination recommendations.


QUESTIONS

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ENFORCEMENT PRIORITIES AND FACTS

- Leadership changes: in 2019, several experienced Enforcement Division lawyers advanced to senior leadership roles
- Hiring has resumed since freeze lifted, but not yet at prior staffing levels
- Chairman Clayton announced in July 2019 that practice on settlement offers with waiver requests is changing (returning to historical practice prior to change during last administration)
- Significant awards to whistleblowers continue

ENFORCEMENT PRIORITIES AND FACTS

- Recent remarks by senior leadership reflect views toward Enforcement
  - Commissioner Jackson noted insider trading law has not been reviewed in-depth in a long time; time to think through existing regulations
  - Commissioner Peirce highlighted downsides when staff-level guidance is not made public; transparency is essential to maintaining trust
  - Charu Chandrasekhar (head, Retail Strategy Task Force) stated his group very focused on affinity fraud
  - Kurt Gottschall (regional director, Denver Regional Office) reiterated focus on conflicts of interest
    - Focus areas include revenue sharing agreements with clearing firms, undisclosed commissions, and expense avoidance practices
- Actions against advisers remain active!

OTHER SELECTED ENFORCEMENT ACTIONS

SELECTED ENFORCEMENT ACTIONS: EXPENSE ALLOCATIONS

- **Corinthian Capital** (May 6, 2019) *Administrative Proceeding File No. 3-19159*
  - The PE adviser settled claims that it failed to apply a $1.2 million fee offset to its fund, used fund assets to fund advisory operations, and caused the fund to overpay $600,000 in organizational expenses.
  - The SEC ordered the adviser and its principals to collectively pay $140,000 in penalty.
- **Lightyear Capital** (Dec. 26, 2018) *Administrative Proceeding File No. 3-18958*
  - The PE adviser settled claims that it failed to properly allocate expenses to employee co-investment funds, and to properly offset management fees in connection with undisclosed fee-sharing agreements with certain co-investors.
  - The SEC noted cooperation, and it ordered the adviser to pay $400,000 in penalty.
- **Yucaipa** (Dec. 13, 2018) *Administrative Proceeding File No. 3-18930*
  - The PE adviser settled claims that it allocated unpermitted personnel expenses to its funds, failed to appropriately allocate expenses among clients, and misallocated expenses to clients that should have been borne by the adviser or a principal.
  - The SEC noted cooperation and remedial efforts, and it ordered the adviser to pay nearly $2 million in disgorgement and $1 million in penalty.

SELECTED ENFORCEMENT ACTIONS: DISCLOSURES

- **The Robare Group** (April 30, 2019) *Civil Action No. 16-1453*
  - The D.C. Court of Appeals upheld a SEC decision that the word *may* in a conflicts of interest disclosure related to revenue sharing is not sufficient when the firm is in fact receiving such compensation.
  - The adviser from 2002 to 2013 received nearly $400,000 from Fidelity, which performed execution, custody, and clearing services. In its Form ADV, the adviser stated it *may* receive selling compensation as a result of the facilitation of certain securities transactions on behalf of clients. The disclosure did not describe the revenue sharing agreement in effect with Fidelity, through which the adviser received payments of shareholder servicing fees when clients invested in certain funds.
  - The Court found the adviser's conduct to be negligent, but not "willful." This runs in conflict with the SEC's historical position on what constitutes "willful" conduct (and may potentially impact its charging decisions in months and years to come).

SELECTED ENFORCEMENT ACTIONS: ADVERTISING

- **Sterling Global Strategies** (Dec. 20, 2018)

  Administrative Proceeding File No. 3-18948

  - The adviser settled claims that it made material misstatements and omissions while advertising back-tested performance of its Sterling Tactical Rotation Index. The calculations contained material errors and deviated from the pricing methodology utilized, which inflated the advertised performance by approximately 41.2% for the period from 2000 to 2010. The adviser also failed to disclose that the back-tested performance was based in part on investment in a commodity index that was not available during the back-tested period.

  - The SEC ordered the adviser to pay $175,000 in penalty.

SELECTED ENFORCEMENT ACTIONS: BEST EXECUTION

- **Lefavi Wealth Management** (Sept. 3, 2019)

  Administrative Proceeding File No. 3-19411

  - The adviser settled claims that it (i) did not seek best execution when recommending and investing client assets in certain alternative investments with embedded commissions, (ii) failed to disclose it could have invested those client assets in the same alternative investments at lower share prices, and (iii) failed to disclose its investment adviser representatives' conflicts of interest related to receiving additional compensation for those investments. Client assets were invested at a share price reflecting a 7% commission.

  - The SEC ordered the adviser to pay nearly $1 million in disgorgement and $150,000 in penalty.

SELECTED ENFORCEMENT ACTIONS: ROBO-ADVISERS

- **Wealthfront Advisers** (Dec. 21, 2018)

  Administrative Proceeding File No. 3-18949

  - The adviser settled claims that it (i) falsely stated its proprietary tax loss harvesting program monitored all client accounts to avoid transactions that might trigger a wash sale, while the program did in fact permit such wash sales with rebalancing or client-directed transactions, (ii) retweeted client tweets on Twitter, which constituted client testimonials, without the related required disclosures, and (iii) paid bloggers for new client referrals based on amounts of assets initially deposited.

  - The SEC ordered the adviser to pay $250,000 in penalty.