

# Investment Adviser Custody Rule Causing Headaches for Advisers

by Bettina Eckerle

The SEC is warning advisers that it is increasingly finding violations of the custody rule, which is designed to protect advisory clients from the misuse or misappropriation of their funds and securities. In fact, a review of recent examinations that contained significant deficiencies revealed that approximately one-third (over 140) included custody-related issues.

According to the [SEC Risk Alert](#), the custody-related deficiencies can be grouped into four categories:

- Failures to recognize that it has “custody” as defined under the custody rule, i.e. when authorized to write or sign checks for clients or make withdrawals from a client’s account as part of bill-paying services;
- Failures to comply with the rule’s “surprise exam” requirement;
- Failures to comply with the “qualified custodian” requirements, i.e. by commingling client, proprietary and employee assets in a single account; and
- Failures to comply with the audit approach for pooled investment vehicles.

Advisers cited by the SEC have been required to take remedial measures, including enhancing their written compliance procedures; changing their business practices; or devoting more resources or attention to the area of custody. Some violations have also been referred to the Division of Enforcement.

“We take deficiencies in this area very seriously and want to put advisers on alert about the importance of complying with the custody rule. It is a key component of our investment adviser examination program,” Carlo di Florio, director of the SEC’s Office of Compliance Inspections and Examinations, stated.

You should review your business practices and remedy any potential compliance problems outlined in the Risk Alert. For any questions regarding details of the facts or legal conclusions of these actions or any comments on the post, please call, e-mail or tweet me. You will find all my contact information on my website at [www.eckerlelawyers.com](http://www.eckerlelawyers.com). Or, to make it real easy, just subscribe to my newsletter, also on my website.

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