U.S. Regulatory Update

September 2023

Contents

Introduction

Welcome to our September Regulatory Update, where you will find practical thought leadership distilling the latest regulatory headlines. All firms will be interested in our analysis of the private fund reform rules, while investment advisers will find coverage of the U.S. Securities and Exchange Commission's (SEC's) recent risk alert with details about its risk-based approach to selecting firms for examination. Also, for investment advisers, the SEC explores private fund adviser use of artificial intelligence (AI), top examination deficiencies found in state-registered firms, and an update on the state-by-state status of Investment Adviser Representative Continuing Education requirements. For broker-dealers, check out the SEC's risk alert regarding anti-money laundering (AML) and Narrows Proprietary Trading Exemption. Finally, we share our "lessons learned" from recent enforcement activity and suggested resources for your additional research.

All Firms

The SEC Adopts Private Fund Reforms and Requires All Registered Advisers to Document their Annual Compliance Review

The SEC adopted its highly (although not eagerly) anticipated **private fund rule reforms**, summarized **here**. Buried in the adopting release was an amendment to the Compliance Program Rule, **Rule 206(4)-7** of the Advisers Act, which will now require all investment advisers registered with the SEC to document the annual review of the adequacy and effectiveness of their compliance policies and procedures. This amendment will be effective November 13, 2023, 60 days after the final rules were published in the Federal Register.

Briefly, the new rules require SEC-registered private fund advisers to (i) provide investors with quarterly statements disclosing fund fees, expenses, and performance, (ii) ensure that private funds undergo an independent financial statement audit, and (iii) obtain an independent fairness or valuation opinion when conducting an adviser-led secondary transaction. All private fund advisers, including exempt reporting advisers, will face significant limitations on their ability to obtain reimbursement from private funds for costs associated with government investigations. Finally, private fund advisers are also prohibited from engaging in "preferential treatment" and information sharing with fund investors.

For more detailed information about the new rules, please check out:

- **SEC Private Funds Rules – What Firms Should Know**
- **SEC Private Funds Reforms Rules: What Made the Cut**

Watch our webcast series to dive into what these reforms mean:

- **On demand:** **Demystifying the Private Funds Reform Rule**
- **On demand:** **Private Fund Reform Rule Deep Dive – Quarterly Investor Reporting**
- **October 5, 2023:** **Private Fund Reform Rule Deep Dive - Restricted Activities and Limitations to Preferential Treatment**
- **October 19, 2023:** **Private Funds Reform Rule Deep Dive - Audit Rule, Adviser-Led Secondaries, & Documenting of Annual Compliance Program Reviews**

Investment Advisers

SEC Offers Advisers a Document Request List and a Glimpse into the Examination Selection Process

by Jaqueline Hummel

The SEC's Division of Examinations (EXAMS) issued its seventh **risk alert** in 2023 describing its risk-based approach for selecting advisers for examination along with a typical document request list. The risk-based approach is not news, having been adopted in 2003 and described by Lori Richard, then director of the Office of Compliance Inspections and Examinations, in her **testimony** before the U.S. Senate Committee on Banking Housing and Urban Affairs in 2009. In this latest alert, EXAMS provides a list of 11 firm-specific factors that influence the selection process, including (i) "repetitive deficient practices" observed by the SEC staff in prior reviews, (ii) disciplinary history of the firm's representatives or affiliates, (iii) business activities of the firm and its personnel that create conflicts of interest, (iv) firms with custody of client assets, and (v) tips, complaints, and news articles about an adviser or its personnel. The alert also listed common examination areas, including an adviser's operations, disclosures, conflicts of interest, compliance practices covering custody and safekeeping of client assets, valuation, portfolio management, fees and expenses, and best execution.

The alert also included an attachment describing the "types of initial information, including documents, that staff may request and review during a typical examination of an adviser." This is the first time the SEC has publicly provided a sample request list. Advisers should review it closely and consider how they would respond.

> *"Now that this list has been released, examiners may expect firms to be better prepared when they come knocking."*

SEC Examiners Probe Advisers' Use of Artificial Intelligence

by Jaqueline Hummel

Over the past few months, our consultants have noticed that more initial document requests from SEC examiners have included questions about the use of artificial intelligence (AI) in private fund exams. The examinations staff has been asking for all "disclosure and marketing documents to clients where the use of AI by the adviser is stated or referred to specifically in disclosure." Additionally, the examiners have requested written descriptions of "all distinct artificial intelligence-based artificial intelligence models and artificial intelligence techniques developed and implemented" by the adviser to manage client portfolios or make investment decisions and transactions.

For the purposes of these requests, AI is defined as:

> A term used to describe computer systems and software programs designed to simulate human intelligence to perform tasks, such as investment analysis and decision-making, given a set of human-defined objectives. AI models reach conclusions through reasoning and self-correct to improve analysis. AI programs may autonomously execute trading decisions or may assist staff in making trading decisions. AI may include, but is not limited to, unsupervised machine-learning, supervised machine learning, deep learning, reinforcement learning, natural language processing, and neural networks. AI encompasses the idea of machines mimicking human intelligence, whereas (non-AI) computer algorithms are the specific instructions that enable computers to perform tasks. Algorithms are a component of AI, used to implement various AI techniques and approaches.

Even in situations where firms were not using AI, the SEC appeared interested in the quantitative models and trading algorithms used by firms. The staff asked questions about models and algorithms used in the investment process, including how they were vetted, what data sets were being used, and whether the firm had policies and procedures to ensure that models and algorithms continued to work as intended. Based on these inquiries, private fund managers should expect, and be prepared for, further questions about the due diligence around quantitative models, data used to populate the models, and trading algorithms going forward. It may be a good time to go back and review lessons learned from prior "quantitative model" administrative actions, such as the SEC actions from **2018** and **2011**, when the SEC found that advisers were using flawed quantitative models and failed to disclose their errors to investors. Therefore, firms using quantitative tools may want to review and document their initial and ongoing due diligence efforts.

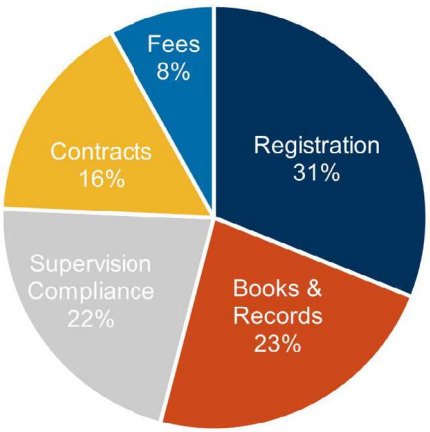
Keep in mind, however, that while the focus is on AI, the SEC will not pass up the opportunity to request and review an adviser's organizational chart, list of employees, policies and procedures, annual review, and potential conflicts of interest.

2023 State Investment Adviser Examination Sweep Identifies Compliance Deficiencies

by Cari Hopfensperger

The North American Securities Administrators Association (NASAA) recently published **results** of its biennial state investment adviser examination sweep, which analyzed the findings from 683 state-registered investment advisers that occurred between January 1, 2023 to July 31, 2023. Two interesting stats were that 30% of these exams were of firms that had never been examined before, and 72% of the firms were one-person shops.

Top Deficiency Categories



Top Findings Within Each Category

1. **Registration:** ADV & U4 inaccuracies
2. **Books & Records:** Suitability, Versions of ADV 2B
3. **Supervision & Compliance**: Lack of policies and procedures to protect vulnerable clients
4. **Contracts:** Improperly executed (e.g., unsigned), also issues with performance fees and hedge clauses
5. **Fees:** Fees charged do not match Agreement or ADV

Also Noteworthy:

1. **Privacy Notices**: Initial and Annual Delivery Failure
2. **Cybersecurity:** Weak or infrequently changed passwords, Lack of written information security program, Transmitting sensitive data unsecured

The report also offered the following tips that advisers should bear in mind.

- First, firms are reminded to review Form ADV at least annually for potential changes in business practices or regulations that may warrant a change, and for potential inconsistencies between the different parts of Form ADV, including Part 1, 2A, 2B and Form CRS (Part 3). Investment Adviser Representatives (IARs) are similarly reminded to review and maintain their U4 information.

- Second, advisers should review contracts for completeness, proper execution, and potential red flags with other issues mentioned in the report. Automated workflows (such as those executed within a firm's CRM) can be a useful control during client onboarding to reduce the chance of an improperly executed contract sneaking by, and a periodic sample test of client files can be an efficient way to test the process for potential errors. Additionally, advisers should maintain robust records, especially client files, and suitable documentation.

- Finally, firms should consider designing their compliance policies and procedures (including the business continuity plan and information security policies and procedures) to include the following formula in focus when designing policies and procedures:

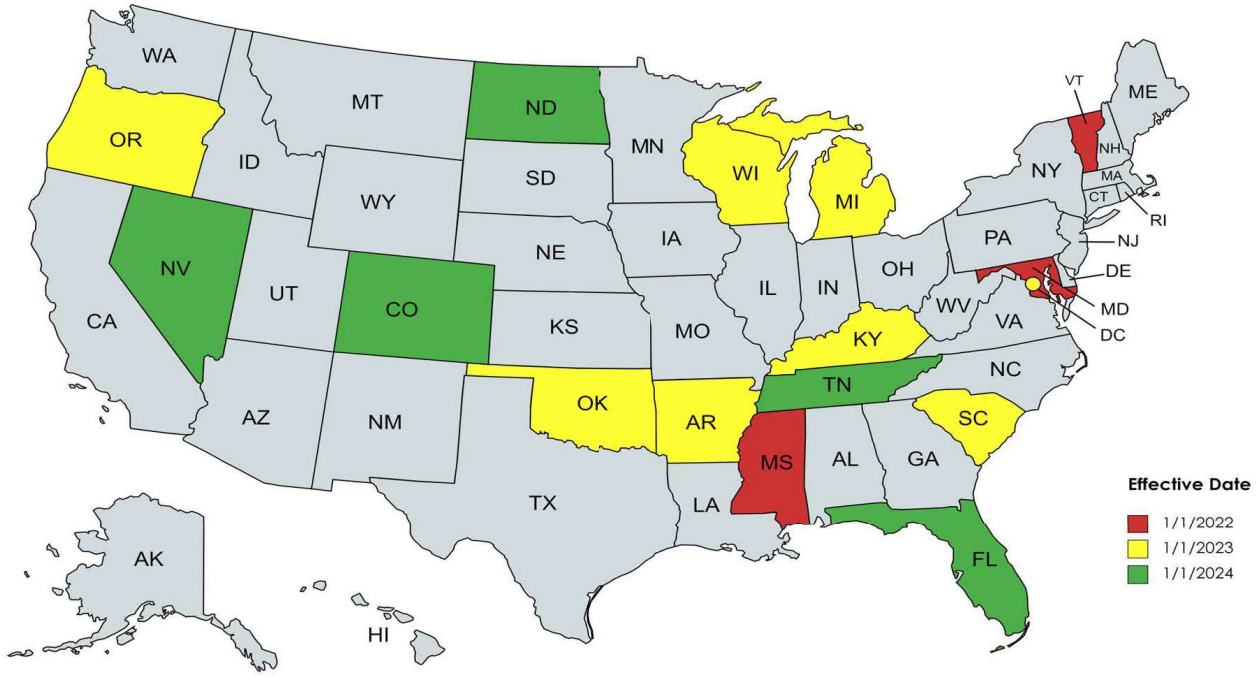
    1. What is the firm's policy?
    2. Who does the policy apply to?
    3. What is the procedure to follow?
    4. How often are procedures applied?
    5. How is compliance with the policy evidenced?

These are great reminders for all investment advisers, not just those who are state-registered.

IAR Continuing Education Update

by Cari Hopfensperger

Year to date, Florida, Colorado, North Dakota, Nevada, and Tennessee have joined 12 other states and the District of Columbia in their adoption of the NASAA Model Rule on IARs Continuing Education (CE) registered in these jurisdictions. States adopting the rule with an effective date of January 1, 2024, are represented in green on the map below, meaning that the CE requirement must be completed by IARs registered in these states for the initial period by December 31, 2024. Additionally, consistent with the NASAA Model Rule, IARs registered in these states will be required to complete 12 credits of continuing education annually, 6 credits in Products and Practices, and 6 credits in Ethics and Professional Responsibility. NASAA maintains a **resource page** with links to the evolving list of states that have adopted the Model Rule, a Frequently Asked Questions page, and other resources to assist firms and IARs with meeting CE requirements. Firms are encouraged to monitor this developing topic and plan accordingly as new states join in.



Source: MapChart.com

Broker Dealers

Risk Alert on Broker-Dealers Anti-Money Laundering Program Compliance

Jaqueline M. Hummel

EXAMS issued a **risk alert** titled "Observations from Anti-Money Laundering Compliance Examinations of Broker-Dealers," citing issues with firms' anti-money laundering (AML) programs. In 2021, the SEC issued an **alert** addressing suspicious activity monitoring and reporting. The more recent alert warns broker-dealers that they are not devoting sufficient resources to their AML compliance program or implementing their procedures consistently.

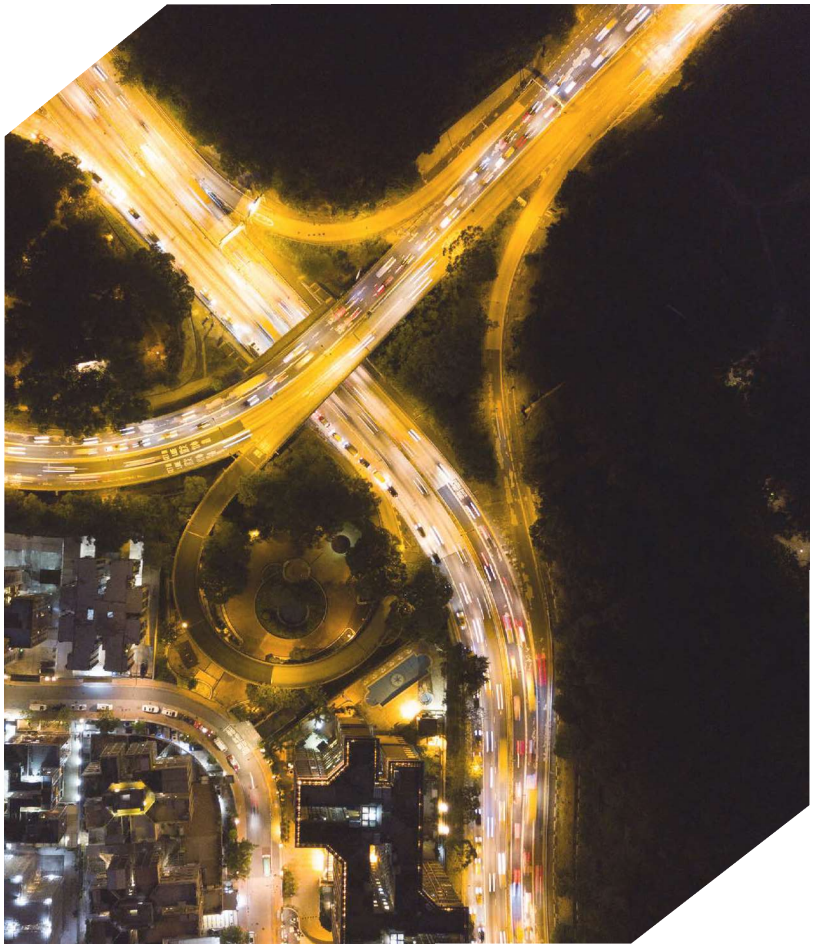
EXAMS cited weaknesses in both internal and independent testing of firms' AML programs, inadequate training, insufficient staffing, and inadequate customer identification programs (CIP). The risk alert also highlighted the failure by some broker-dealers to update their AML programs to meet the requirements of FinCEN's **Customer Due Diligence Rule**, adopted in 2016. EXAMS also recommended that firms review the **Anti-Money Laundering (AML) Source Tool for Broker-Dealers**.

The risk alert included an observation that some limited purpose broker-dealers failed to conduct due diligence to verify the true identity of their customers as required by the CIP Rule. Specifically, EXAMS observed that some limited purpose broker-dealers did not "perform any CIP procedures to investors in a private placement, where customer relationships established with the registrant to effect securities transactions appeared to be formal relationship for purposes of the CIP Rule."

Broker-dealers should read this alert closely and consider updates to their AML programs to address potential deficiencies.

The SEC Narrows Proprietary Trading Exemption

by Jaqueline M. Hummel



The SEC adopted amendments to Rule 15b9-1 of the Securities Exchange Act of 1934, which previously allowed broker-dealers to engage in proprietary trading of securities on any national securities exchange without having to become a member of a national securities association like FINRA. Consequently, proprietary trading firms must either become members of FINRA or limit their trading activities to those exchanges where they are members. The compliance date is one year after the amended rule has been published in the Federal Register.

The amended rule applies only to a broker-dealer that is a member of a national securities exchange, carries no customer accounts, effects transactions solely on the national securities exchanges of which it is a member with two narrow exemptions.

- The "routing exemption" allows a broker-dealer to effect off-member-exchange securities transactions that result solely from orders that are routed by an exchange where it is a member to comply with order protection regulatory requirements (e.g., Rule 611 of Regulation NMS and the Options Order Protection and Locked/Crossed Market Plan).
- The Stock-Option Order Exemption allows a broker-dealer to effect off-member-exchange securities transactions through another registered broker-dealer that are solely for the purpose of executing the stock leg of a stock-option order.

The FINRA application process can take up to six months or longer, and once membership is granted, firms will be subject to FINRA regulation and oversight, significant reporting obligations, and regulatory fees. Proprietary trading firms should evaluate their business model now to determine whether FINRA membership is required.

Lessons Learned

Performance May be Hypothetical, but Sanctions are Real

Jaqueline M. Hummel

The SEC wasted no time in bringing its **initial cases** under the Advisers Act New Marketing Rule **(Rule 206(4)-1)**, announcing charges against nine registered investment advisers for rule violations. The cases follow a similar pattern, with the advisers advertising hypothetical performance on their websites but failing to adopt or implement policies and procedures "reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of the intended audience." In most cases, the hypothetical performance was based on the application of a strategy during a time when the strategy was not being used. The firms paid $850,000 in combined penalties.

The SEC does not want investment advisers using hypothetical performance with retail clients and consequently included significant guardrails around its use in the New Marketing Rule. Firms using hypothetical performance should review their current practices and make sure they comply with the New Marketing Rule to the letter.

The SEC Charges FinTech Investment Adviser for Misrepresenting Hypothetical Performance of Investments and other Violations

Jaqueline M. Hummel

Although this **settlement** is the first enforcement action under the Advisers Act New Marketing Rule, it would have violated the SEC's prior advertising standards as well. The adviser in this case targeted retail investors using hypothetical performance of its cryptocurrency strategy advertising a staggering annualized return of 2,700 percent on its website. Although the performance data included hyperlinks that website visitors could click to get more information about how the hypothetical performance was calculated and some of the risks involved, the SEC found that these efforts fell woefully short of the "fair and balanced" standard required under the New Marketing Rule.

This adviser also managed to hit several of the SEC's other pet peeves, including inaccurate disclosure regarding cryptocurrency custody, hedge clauses in its retail advisory agreements, and failure to address conflicts of interest. Other bad practices included using clients' electronic signatures on certain documents without their knowledge or consent, and a failure to address conflicts of interest by employees who engaged in personal trading of crypto assets.

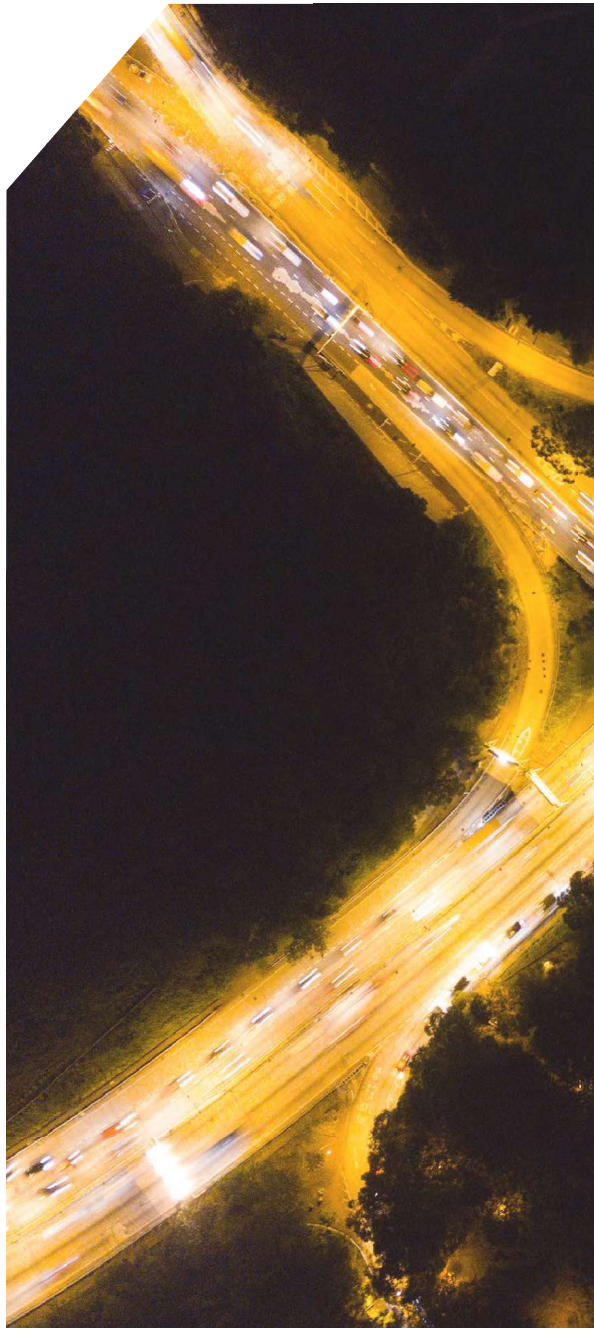
The big takeaway from this case is that the SEC does not approve advertising hypothetical performance on a public website using hypothetical performance with retail investors. Additionally, the SEC focused on the use of hyperlinks for providing additional disclosures, stating that in this case, "the advertisement itself included no information to alert retail investors of the necessity of clicking on the embedded links to view vital information about the criteria, assumptions, risks, and limitations of the hypothetical performance results" the firm advertised. Advisers using hyperlinks to include additional disclosures should consider highlighting their importance in evaluating performance data.

Stop Me If You Think You've Heard this One Before

by Cari Hopfensperger

The SEC recently **settled** with five private fund advisers for custody rule and related Form ADV disclosure violations. The settlements totaled more than $500,000 in combined penalties. If this is starting to sound at least slightly familiar, the SEC reached similar settlements back in **September 2022** with another batch of private fund advisers. When an adviser is deemed to have custody of client funds, the custody rule requires that the account's securities be held with a qualified custodian, among other requirements. One exception to this rule applies to privately offered securities. The exception "extends to pooled investment vehicles… when such pooled investment vehicles are audited and audited financial statements are distributed as described under Advisers Act Rule 206(4)-2(b)(4)." Consistent with the September 2022 settlements, the advisers claimed to rely on this privately offered securities exception, but failed to satisfy the annual audit requirement and/or deliver the audited financial statements to fund investors. In one case, the adviser only delivered the audited financial statements upon request, and in another variation, the accountant engaged was not registered with or subject to regular inspection by the Public Company Accounting Oversight Board (PCAOB), and the audited financials were not prepared according to generally accepted accounting principles (GAAP). Additionally, in three of the cases, the advisers initially reported in Section 7.B.23.(h) of Form ADV that one or more of its funds' audit reports were "not yet received" and then failed to amend their ADV upon the audits' completion.

Advisers to funds with privately offered securities should ensure that fund audits are completed and the audited financial statements are delivered to investors in a timely manner. Additionally, firms that must report in Section 7.B.23.(h) that audit reports are "not yet received" should take extra steps to ensure the ADV is promptly amended upon completion of the audit. A compliance calendar can be a useful tool to monitor this deliverable and head off issues.



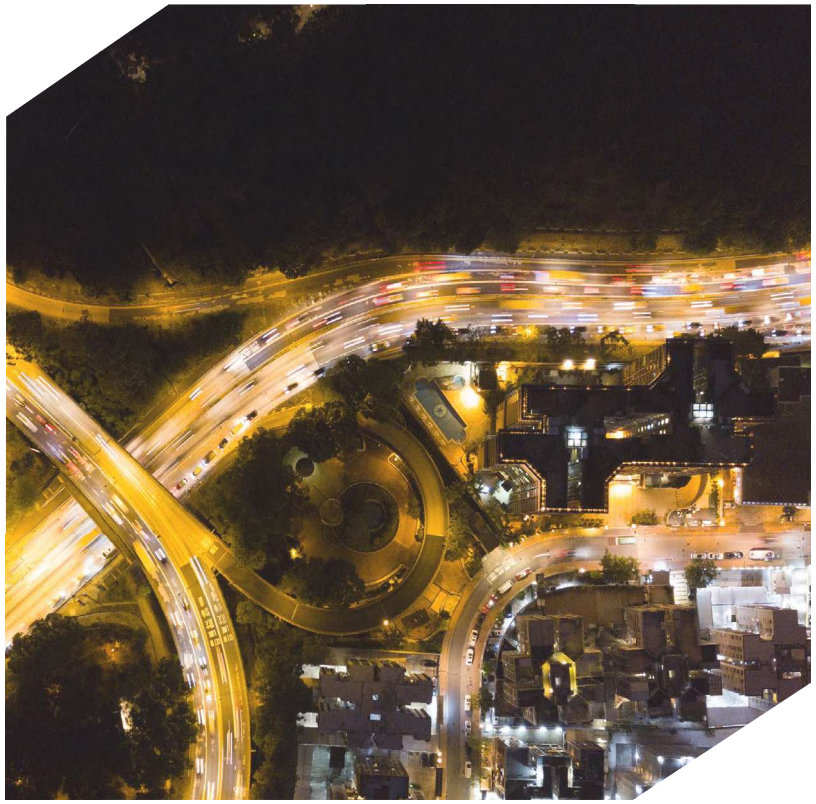
Major Firm Settles with SEC for Excessive Advisory Fees

by Cari Hopfensperger

This major firm is no stranger to regulatory issues, and most recently **settled** with the SEC for overcharging more than 10,900 investment advisory accounts more than $26.8 million in advisory fees. The firm agreed to a $35 million civil penalty.

According to the SEC's order, financial advisers sometimes agreed with clients to reduce the firms' standard fees on the "shelf" investment agreements used with incoming clients. Financial advisers often recorded this lower negotiated rate in handwritten or typed changes on the client agreement. Operations personnel then manually entered the negotiated fee rates into the onboarding system, which in turn fed into the billing system. This practice dates to accounts opened before 2014. Unfortunately, in certain instances, the reduced fee rates did not accurately find their way into the billing system, and the standard rate was erroneously applied to the billing calculation. Adding fuel to this regulatory fire, the firm failed to adopt and implement written compliance policies and procedures reasonably designed to determine whether their billing systems were accurate. Financial advisers received a report to review the fee rates entered during set up. However, the firm had no policies or procedures requiring the advisers to acknowledge any receipt or review of the information. The action further notes that no reviews or periodic testing were performed. In total, the erroneous fee calculations went undetected through the end of December 2022. Finally, the issue was only discovered after the firm received an inquiry from the Connecticut Department of Banking about three potentially overcharged accounts. The firm launched multiple internal investigations into the issue. Each time the scope widened, yet the firm did not implement periodic testing.

This case demonstrates the value of effective testing as a tool to catch issues before they spread out of control. It also highlights the risk associated with exceptions and manual workflows, as well as with acquired firms with differing operating practices and the risk. Firms can benefit from a thoughtful and rigorous risk assessment process to ensure proper controls are in place and executed accordingly, especially in areas identified as higher risk.



SEC Charges 11 Wall Street Firms with Widespread Recordkeeping Failures

by Andrea Penn

The SEC continues its **aggressive stance** against recordkeeping failures resulting from firms' use of unarchived, off-channel communications. These latest **11 settlements** bring the total of recordkeeping and supervision-related enforcement actions to 30 and total penalties to over $1.5 billion. Like prior cases, employees at these firms used messaging apps for business purposes on personal devices without properly archiving those communications. The apps noted in these actions included iMessage, WhatsApp, and Signal. Employees at multiple levels violated firm policies and procedures, including supervisors and senior executives. In addition to penalties, each firm agreed to retain an independent compliance consultant to conduct a comprehensive review of policies and procedures related to retention of electronic communications on personal devices and the framework to address instances of employee non-compliance.

Gurbir S. Grewal, Director of the SEC's Division of Enforcement said, "While some broker-dealers and investment advisers have heeded this message, self-reported violations, or improved internal policies and procedures, today's actions remind us that many still have not. So here are three takeaways for those firms who haven't yet done so: self-report, cooperate and remediate. If you adopt that playbook, you'll have a better outcome than if you wait for us to come calling."

The SEC shows no signs of slowing this probe. Firms should consider how they would demonstrate their assessment of this risk and controls designed to test and manage the risk, if asked. Firms should also continue taking a hard look in the mirror to determine what type of policy is reasonable and realistic for the firm to follow. A policy prohibiting use of all off channel communications coupled with executives that continue to use off channel communications anyway is a dangerous combination.

Private Fund Gatekeeper Nailed for Failing to Follow up on Red Flags

by Andrea Penn

In this **action**, the SEC charged a private fund administrator for following valuation instructions for a fair valued security provided by the fund's adviser. The fund had suffered major trading losses and the adviser had cooked up a plan to hide the losses, directing the administrator to book losses as expense reimbursements "due from the adviser," resulting in a net zero impact to the net asset value (NAV). The action notes that the administrator followed the adviser's direction without evaluating its appropriateness and despite other red flags, including the adviser's failure to engage an independent auditor to review the fund's financial statements. The adviser also failed to arrange for the administrator to receive monthly bank statements for the fund. Finally, the SEC found that the administrator had minimal policies and procedures for NAV calculation and customer/adviser due diligence.

Worth Reading, Listening and Watching

- **IAR CE: Continuing Education Requirements For Investment Adviser Representatives And How Different States Adopt NASAA's Model Rule** Michael Kitces' Nerds Eye View blog recently covered IAR CE requirements.
- **SEC Proposes Rule to Eliminate or Neutralize Conflicts in the Use of "Predictive Data Analytics" Technologies** Compliance & Enforcement, a blog sponsored by New York University's School of Law - Program on Corporate Compliance and Enforcement offers its analysis of the SEC's proposal of the use of artificial intelligence by broker-dealers and investment advisers.
- **Introduction to OFAC Series** Curious about the Office of Foreign Asset Controls (OFAC) and its role in preventing money laundering? Check out this webinar training series to learn more. The Department of Treasury also provides additional information on the series **here**.

Recent ACA thought leadership:

Below are select ACA articles over the past month we think are worth reading. Find all updates on the **Insights** section of our website.

Building a Gold Standard Compliance Program Webcast Series:

We're pleased to continue our new webcast series "Building a Gold Standard Compliance Program." In this series, we'll discuss the framework for creating a best-in-class compliance program, including the initial setup, formalization, implementation, testing and internal controls, reporting, and engagement with regulators.

- **Part 1: Organization**
- **Part 2: Formalization**
- **Part 3: Implementation**
- **Part 4: Implementation Part 2**

Articles:

- **SEC Adopts Private Fund Rules – What Firms Should Know**
- **Advisory Firm Settles Cherry Picking Fraud Charges With the SE**
- **SEC Proposes Rule to Limit Conflicts of Interest in AI-Based Investor Engagement Tools**
- **Private Fund Managers Should Reevaluate their Approach to Side Letter Management Amidst Increased Scrutiny**
- **The Increasing Importance of Robust Insider Trading Controls at Private Markets Fund Managers**
- **General Solicitation Under Regulation D – Recent Trends and Enforcement Activity**

To Do Checklists for the Months of Septmeber / October 2023

Investment Advisers

September / October

- [ ] **Form 13H:** Following an initial filing of Form 13H, all large traders must make an amended filing to correct inaccurate information promptly (within ten days) following the quarter-end in which the information became stale. Note: Neither the SEC nor its staff has provided guidance on the definition of "promptly" for Form 13H.

  Recommended due date: October 13, 2023.

Hedge / Private Fund Advisers

September / October

- [ ] **Blue Sky Filings (Form D):** Advisers to private funds should review fund blue sky filings and determine whether any amended or new filings are necessary. Generally, most states require a notice filing (blue sky filing) within 15 days of the first sale of interests in a fund, but state laws vary.

  Due September 15, 2023

- [ ] **Form PF for Large Liquidity Fund Advisers:** Large liquidity fund advisers must file Form PF with the SEC on the IARD system within 15 days of each fiscal quarter-end. Filing for Q3 2022.

  Due October 15, 2023

- [ ] **Blue Sky Filings (Form D):** Advisers to private funds should review fund blue sky filings and determine whether any amended or new filings are necessary. Generally, most states require a notice filing (blue sky filing) within 15 days of the first sale of interests in a fund, but state laws vary.

  Due October 15, 2023

Broker-Dealers

- [ ] **Rule 17a-5 Monthly and Fifth FOCUS Part II/IIA Filings:** For the period ending August 31. For firms required to submit monthly FOCUS filings and those firms whose fiscal year-end is a date other than a calendar quarter.

  Due September 26, 2023

- [ ] **Annual Reports for the Fiscal Year-End July 31:** FINRA requires that member firms submit their annual audit reports in electronic form. Firms must also file the report at the regional office of the SEC in which the firm has its principal place of business and the SEC's principal office in Washington, DC. Firms registered in Arizona, Hawaii, Louisiana, or New Hampshire may have additional filing requirements.

  Due September 29, 2023 *(Conditional 30-Day Extension may be available)*

- [ ] **Supplemental Inventory Schedule (SIS):** For the month ending August 31. The SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period.

  Due September 29, 2023

- [ ] **SIPC-7 Assessment:** For firms with a Fiscal Year-End of July 31. SIPC members are required to file the SIPC-7 General Assessment Reconciliation Form, together with the assessment owed (less any assessment paid with the SIPC-6) within 60 days after the Fiscal Year-End.

  Due September 29, 2023

Broker/Deakers (continued)

- [ ] **SIPC-6 Assessment:** For firms with a Fiscal Year-End of February 29. SIPC members are required to file for the first half of the fiscal year a SIPC-6 General Assessment Payment Form together with the assessment owed within 30 days after the period covered.
  Due September 30, 2023

- [ ] **SIPC-3 Certification of Exclusion from Membership:** For firms with a Fiscal Year-End of August 31 AND claiming an exclusion from SIPC Membership under Section 78ccc(a)(2)(A) of the Securities Investor Protection Act of 1970. This annual filing is due within 30 days of the beginning of each fiscal year.
  Due September 30, 2023

- [ ] **FINRA Accounting Support Fee:** Quarterly invoice to support the GASB budget. Based on the municipal securities the firm reported to the MSRB. De Minimis firms (that owe less than $25) will not receive an invoice. Invoices are sent to the firm via WebCRD's E-Bill.
  Due date to be determined

- [ ] **Customer Complaint Quarterly Statistical Summary:** For complaints received during the third Quarter. FINRA Rule 4530 requires Firms to submit statistical and summary information regarding complaints received during the quarter by the 15th day of the month following the calendar quarter.
  Due October 15, 2023

- [ ] **Quarterly FOCUS Part II/IIA Filings:** For Quarter ending September 30. FINRA requires member firms to file a FOCUS (Financial and Operational Combined Uniform Single) Report Part II or IIA quarterly. Clearing firms and firms that carry customer accounts file Part II and introducing firms file Part IIA.
  Due October 25, 2023

- [ ] **Quarterly Form Custody:** SEC requires that member firms file Form Custody under Securities Exchange Act Rule 17a-5(a)(5) for the quarter ending September 30.
  Due October 25, 2023

- [ ] **Supplemental Statement of Income (SSOI):** For the quarter ending September 30. FINRA requires firms to submit additional, detailed information regarding the categories of revenues and expenses reported on the Statement of Income (Loss) page of the FOCUS Report Part II/IIA.
  Due October 30, 2023

- [ ] **SIPC-3 Certification of Exclusion from Membership:** For firms with a Fiscal Year-End of September 30 AND claiming an exclusion from SIPC Membership under Section 78ccc(a)(2)(A) of the Securities Investor Protection Act of 1970. This annual filing is due within 30 days of the beginning of each fiscal year.
  Due October 30, 2023

- [ ] **SIPC-6 Assessment:** For firms with a Fiscal Year-End of March 31. SIPC members are required to file for the first half of the fiscal year a SIPC-6 General Assessment Payment Form together with the assessment owed within 30 days after the period covered.
  Due October 30, 2023

- [ ] **SIPC-7 Assessment:** For firms with a Fiscal Year-End of August 31. SIPC members are required to file the SIPC-7 General Assessment Reconciliation Form together with the assessment owed (less any assessment paid with the SIPC-6) within 60 days after the FYE.
  Due October 30, 2023

- [ ] **Supplemental Inventory Schedule (SIS):** For the month ending September 30. The SIS must be filed by a firm that is required to file FOCUS Report Part II, FOCUS Report Part IIA or FOGS Report Part I, with inventory positions as of the end of the FOCUS or FOGS reporting period, unless the firm has (1) a minimum dollar net capital or liquid capital requirement of less than $100,000; or (2) inventory positions consisting only of money market mutual funds. A firm with inventory positions consisting only of money market mutual funds must affirmatively indicate through the eFOCUS system that no SIS filing is required for the reporting period.

  Due October 30, 2023

- [ ] **Annual Reports for the Fiscal Year-End August 31:** FINRA requires that member firms submit their annual audit reports in electronic form. Firms must also file the report at the regional office of the SEC in which the firm has its principal place of business and the SEC's principal office in Washington, DC. Firms registered in Arizona, Hawaii, Louisiana, or New Hampshire may have additional filing requirements.

  Due October 30, 2023 *(Conditional 30-Day Extension may be available)*

Mutual Funds

September / October

- [ ] **Form N-MFP:** Form N-MFP (Monthly Schedule of Portfolio Holdings of Money Market Funds) reports information about the fund's holdings as of the last business day of the prior calendar month and must be filed no later than the fifth business day of each calendar month.

  Due September 7, 2023

- [ ] **Form N-MFP:** Form N-MFP (Monthly Schedule of Portfolio Holdings of Money Market Funds) reports information about the fund's holdings as of the last business day of the prior calendar month and must be filed no later than the fifth business day of each calendar month.

  Due October 6, 2023

About ACA

ACA Group (ACA) is the leading governance, risk, and compliance (GRC) advisor in financial services. For over 20 years, we've empowered our clients to reimagine GRC to protect and grow their business. Our global team includes former regulators and practitioners with a deep understanding of the regulatory landscape. Our innovative approach integrates advisory, managed services, distribution solutions, and analytics with our ComplianceAlpha® technology platform.

For more information, visit
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About the Authors

Andrea Penn

Andrea Penn is a Director with ACA Group where she provides regulatory advice and guidance to registered investment advisors. She also serves as an outsourced CCO. Andrea has extensive broker-dealer sales practice and supervision compliance experience relating to Global Wealth and Investment Management.

Previously, Andrea was a Vice President at Merrill Lynch and Associate Manager at UBS in both their corporate compliance departments in the New York metro region. She is also a former regulator with FINRA in New York (District 10) and conducted examinations of member firms' sales practice and supervisory compliance programs.

Andrea has a Bachelor of Arts from the University of Delaware.

Cari A. Hopfensperger

Cari A. Hopfensperger is a Director for ACA's US Regulatory Advisory Group. She has an extensive background in regulatory compliance and provides compliance consulting services to retail and institutional focused registered investment advisers, including private and registered fund managers. She works with clients to develop effective compliance programs and solve complex regulatory issues, including serving as an Outsourced CCO.

Prior to joining ACA, Cari was a managing director at Hardin Compliance Consulting, LLC, which was purchased by Foreside in June 2021. Before that, she served in various compliance and operational leadership roles for a Chicago-based registered investment adviser, including Chief Compliance Officer, head of fund services and operations. Previously, Cari managed operations and client service for a Chicago-area boutique registered investment adviser.

Cari received a B.A. in English from the University of Wisconsin-Madison and a master of business administration from Keller Graduate School of Management. She is a member of the National Society of Compliance Professionals (NSCP) and currently serves as co-chair of the NSCP Publications Committee and chair of its professional development subcommittee.

About the Authors

Jaqueline M. Hummel

Jaqueline M. Hummel is Director of Thought Leadership, Regulatory Compliance. She is a securities attorney and regulatory compliance consultant with extensive experience as an in-house attorney working in the areas of investment adviser, broker-dealer, and investment company regulation and compliance. Ms. Hummel provides compliance consulting services to registered investment advisors, working to develop effective compliance programs and solve complex regulatory issues, including serving as an Outsourced CCO.

Before joining ACA, she served as a partner at Hardin Compliance Consulting LLC, which was purchased by Foreside in June 2021. Before that, Ms. Hummel held the position of Chief Compliance Officer for PNC Capital Advisors and PNC Realty Investors, investment adviser affiliates of PNC Financial Services Group, Inc. She also served as in-house counsel for National City Corporation's investment adviser and broker-dealer affiliates where her responsibilities included being the Chief Compliance Officer for Allegiant Asset Management Company. Prior to joining National City, Ms. Hummel served many years as in-house counsel for MassMutual Financial Group, a diversified financial services organization, where she advised the investment management division, including affiliated registered investment advisers and registered investment companies.

Ms. Hummel holds the designation of Investment Adviser Certified Compliance Professional (IACCP®) from National Regulatory Services, Inc. She received a B.A. from the University of Wisconsin-Madison and a J.D. from Emory University School of Law.