

CCO BRIEFING

INVESTMENT ADVISER COMPLIANCE ALERT

Amendments to Form ADV and Books & Records Rule

As of October 1, 2017, compliance with the SEC's [adopted amendments](#) to Form ADV and the Advisers Act books and records rule is required. The SEC [issued updates](#) to Form ADV FAQs, and an [information update](#) for advisers filing certain Form ADV Amendments. Most notably concerning the books and records rule, is the requirement that an adviser maintain materials circulated to *any person* (previously a 10 or more person requirement) demonstrating performance or rate of return.

SEC & CFTC Release FY 2017 Enforcement Results

The SEC and CFTC released enforcement action results for the fiscal year 2017. The [CFTC's Report](#) noted a total of 49 actions brought, and \$423 million in monetary sanctions from orders obtained. The [SEC's Report](#) noted that roughly 20% of the 446 standalone enforcement actions brought concerned investment advisory issues. The SEC's report also references priorities for the coming year as well.

Amendments to CFTC Record Keeping Rule

As of August 28, 2017, the CFTC's [amended recordkeeping obligations](#) for commodity pool operators and commodity trading advisers took effect. The rule changes provide a principles-based approach to ensuring authenticity and reliability of record retention programs. However, the amendments do not alter any existing requirements regarding the types of regulatory records to be inspected, produced, and maintained.

SEC on EU's MiFID II's Research Provision

On October 26, 2017, the SEC issued a [press release](#) describing 3 related no-action letters designed to provide relief for market participants complying with the research requirements of the European Union's (EU) Markets in Financial Instruments Directive (MiFID II). The SEC's position constitutes a temporary no action relief, currently set to expire thirty (30) months from MiFID II's implementation date (January 3, 2018).

SEC Risk Alert: Advertising Rule Compliance Issues

On September 14, 2017, the OCIE issued a [Risk Alert](#) providing a list of compliance issues relating to Rule 206(4)-1 under the Investment Advisers Act of 1940. The alert includes issues most frequently identified by OCIE staff in deficiency letters sent to registered investment advisers, and as part of the "Touting Initiative" – an examination initiative that focused on advisers' use of accolades in their marketing materials.

SEC Risk Alert: Top 5 Compliance Topics

On February 7, 2017, the SEC's Office of Compliance Inspections and Examinations (OCIE) issued a [Risk Alert](#) providing a list of the five compliance topics most frequently identified in deficiency letters sent to registered investment advisers. The topics addressed in the alert include: 1. Compliance Rule; 2. Regulatory Filings; 3. Custody Rule; 4. Code of Ethics Rule; and 5. Books and Records Rule.

Custody Guidance and Informational Updates

On February 21, 2017, the SEC issued and updated various guidance with respect to custody, particularly concerning separately managed accounts. A [no-action letter](#) provided that an adviser would have custody if it acts pursuant to a standing letter of authorization, *but* would not be required to have a surprise audit performed if certain conditions are met. Further, the SEC [issued updates](#) to Custody FAQs clarifying questions surrounding cross transactions and inadvertent custody.

ORICAL Compliance Corner

In 2016, the SEC reported a 25% increase in investment adviser inspections and examinations – a trend that continued throughout 2017. ORICAL assists multiple clients through such examinations each year and is familiar with the SEC's current examination practices.

BE PREPARED:

[Contact ORICAL](#) for an SEC Exam Readiness consultation.



ORICAL LLC
370 LEXINGTON AVENUE
NEW YORK, NY 10017
212-257-5790
INFO@ORICAL.ORG
WWW.ORICAL.ORG