

# CCO BRIEFING

## INVESTMENT MANAGEMENT COMPLIANCE ALERTS

### Reminder: Amendments to Form ADV and Books and 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 will be required. The amendments to Form ADV are designed to provide additional information regarding advisers, including information about their separately managed account business, incorporate a method for private fund adviser entities operating a single advisory business to register using a single Form ADV, and make clarifying, technical and other amendments to certain Form ADV items and instructions. The SEC has [issued updates](#) to Form ADV FAQs to reflect the changes in the rule. Further, the Investment Management Division has also issued an [information update](#) for advisers filing certain Form ADV Amendments.

The amendments to the Advisers Act books and records rule will require advisers to maintain additional materials related to the calculation and distribution of performance information. The first amendment requires maintaining materials that demonstrate the calculation of the performance or rate of return in communications circulated to *any person*, rather than the "ten or more persons" threshold previously required. Second, an adviser is now required to maintain originals of all written communications received, and copies of written communications sent relating to the performance or rate of return of any or all managed accounts or securities recommendations.

#### SEC Settles Adviser's Short Selling Scheme

The SEC recently [settled](#) with a registered investment adviser for short selling in advance of stock offerings. The adviser shorted U.S. stocks in companies planning follow-on offerings and then illegally bought shares in the follow-on offerings. The SEC found that the adviser's activity failed to qualify for the separate accounts exception. Notably, the ability for adviser's management personnel to review each PM Group's portfolio holdings and trading activity, and the authority to set trading strategies that were executed in the Firm's trading accounts, disqualified eligibility for the exception.

#### SEC No-Action Letters: EU's MiFID II's Research Provisions

The SEC issued a [press release](#) describing three 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). Subject to various terms and conditions: (1) broker-dealers, on a temporary basis, may receive research payments from money managers in hard dollars or from advisory client's research payment accounts; (2) money managers may continue to aggregate orders from mutual funds and other clients; and (3) money managers may continue to rely on an existing safe harbor when paying broker-dealers for research and brokerage. 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 Names Peter B. Driscoll as OCIE Director

SEC recently issued a [Press Release](#) naming Peter B. Driscoll as the Director of the agency's Office of Compliance Inspections and Examinations (OCIE). Mr. Driscoll has served as OCIE's Acting Director since January 2017. In March 2016, Mr. Driscoll was named OCIE's first Chief Risk and Strategy Officer after previously serving as OCIE's Managing Executive from February 2013 through February 2016. Mr. Driscoll first joined the SEC as a staff attorney in the Division of Enforcement in 2001.

#### ORICAL Compliance Corner

In 2016, the SEC reported a twenty-five percent increase in investment adviser inspections and examinations – a trend that has continued throughout 2017. ORICAL assist 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.



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