



# ORICAL CCO BRIEFING

INVESTMENT ADVISER COMPLIANCE ALERT

## ENFORCEMENT ACTIONS

### ***RIA Settles Charges for Failing to Disclose Conflicts of Interest***

On June 4, 2018, a New York-based investment adviser (“the Adviser”) [settled](#) charges for failure to disclose conflicts of interest to certain of its clients arising from agreements it had with two affiliated outside asset managers (“Third-Party Advisers”). The agreements called for the Third-Party Advisers to make payments to the Adviser based on the total amount of client assets the Adviser placed or maintained in certain funds advised by the Third Party Advisers. This arrangement was not disclosed and was in contravention of investment management agreements with two of the Adviser’s clients. The SEC also found the Adviser did not have proper policies and procedures to detect and prevent such a conflict, while also failing to account on its books and records for amounts owed and paid through these two arrangements. After settlement the Adviser agreed to pay a civil penalty of \$500,000.

### ***SEC Charges Investment Adviser and Two Former Managers for Misleading Retail Clients***

On June 4, 2018, the SEC issued a [Press Release](#) announcing a settlement against a New York-based investment adviser (the “Adviser”) for failure to disclose conflicts of interest to its retail clients. The Adviser failed to disclose agreements with overseas product and service providers that resulted in the Adviser and an overseas affiliate being compensated. Two former managers of the Adviser were also charged with misleading clients and perspective clients with the purpose of concealing material conflicts of interests that led to the managers receiving substantial compensation and financial incentives. The Adviser agreed to pay a \$8 million civil penalty, while the SEC’s complaint against the two managers seeks an injunction, disgorgement plus interest, and civil money penalties.

### ***SEC Charges 13 Private Fund Advisers for Repeated Filing Failures***

On June 1, 2018, the SEC issued a [Press Release](#) announcing settlements with 13 registered investment advisers for repeated failure to file annual reports of the Form PF. Private Fund advisers managing \$150 million or more of assets have been required to make annual filings on Form PF since 2012, and each of the 13 advisers identified in this release were delinquent in their filings over multi-year periods. Without admitting or denying the findings, the advisers agreed to be censured, to cease and desist, and to each pay a \$75,000 civil penalty. In addition, the advisers also remediated their failures by making the necessary PF filings for all previously missed periods.

## ORICAL COMPLIANCE CORNER

### ***Are You Ready for Your Next Regulatory Exam?***

It is anticipated that the SEC’s Office of Compliance Inspections and Examinations will examine more registered advisers this year than in any year past. Orical has extensive experience assisting clients through actual exams and providing SEC Exam Readiness Assessments and Mock Audits. Contact Orical at [info@orical.org](mailto:info@orical.org) or (212) 257-5790 for a detailed proposal.

## REGULATORY UPDATES

### ***Supreme Court Decides on Constitutionality of SEC’s ALJ Appointments***

On June 21, 2018, the United States Supreme Court [decided](#) in *Lucia v. SEC* that Administrative Law Judges (“ALJs”) are “inferior officers” subject the Appointments Clause of the U.S. Constitution and must be appointed by the President or a delegated officer. Therefore, the SEC’s appointment of the ALJ in this case was ultimately unconstitutional. This decision could have broad ramifications for an array of federal agencies that employ in-house judges, as well as on the numerous cases currently pending in the SEC’s administrative forum.

### ***SEC Releases Draft Strategic Plan for 2018-2022***

On June 19, 2018, the SEC issued a [Press Release](#) announcing the publication of its [Draft Strategic Plan](#) for 2018-2022 (the “Plan”). The Plan is set to focus on investors, innovation and performance as the SEC’s top goals in the years to come. The Plan highlights commitment to serving long-term interests of investors; becoming more innovation, receptive and resilient to activity in the market; and enhancing performance through the use of SEC staff expertise, data and analytics.

### ***NFA’s Swaps Proficiency Requirements Program***

On June 5, 2018, the NFA issued a [Press Release](#) announcing the NFA Board’s approval to develop a proficiency requirements program for individuals engaged in swaps activities (the “Program”). The Program will be online, will include an examination, and will apply to all associated persons engaged in swaps activities, including associated persons of commodity trading advisors and commodity pool operators. It is anticipated that the Program will be launched in early 2020.

### **Upcoming Deadline:**

[Comments](#) for the SEC’s [proposed interpretation](#) regarding standard of conduct for investment advisers should be received on or before August 7, 2018.

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