



ORICAL CCO BRIEFING

INVESTMENT ADVISER COMPLIANCE ALERT

REGULATORY UPDATES

OCIE Risk Alert: Compliance Issues Related to Best Execution by Investment Advisers

On July 11, 2018 OCIE issued a [Risk Alert](#) focusing on the most common deficiencies relating to best execution found by the SEC staff in recent examinations of investment advisers. The Risk Alert provides a snapshot of OCIE's expectations regarding a fund manager's best execution policies and procedures.

FAQ Update: Staff Responses to Questions about the Custody Rule

In June 2018, the SEC issued and updated the [Staff Responses to Questions about the Custody Rule](#) to clarify when an investment adviser is considered to have "inadvertent custody" of client assets. In response to the [updated FAQs](#), the Staff stated that an adviser that does not have a copy of a client's custodial agreement, and does not know, or have reason to know, whether the agreement would give the adviser inadvertent custody, does not need to comply with the Custody Rule, or indicate that it has custody in its Form ADV, with respect to that client's account if inadvertent custody would be the only basis for custody.

NFA Issues New Disclosure Requirements for Members Engaging in Virtual Currency Activities

On July 20, 2018, the National Futures Association ("NFA") issued [new disclosure requirements](#) for registered commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") to address certain risks stemming from the recent growth of the virtual currency and virtual currency derivatives markets. The NFA announced the effective date of its [interpretive notice](#) that establishes the virtual currency disclosure requirements will become effective October 31, 2018.

SEC Withdraws Two Proxy Voting No-Action Letters

On September 13, 2018, the SEC issued a [public statement](#) announcing the withdrawal of two proxy voting no-action letters in advance of its upcoming roundtable on the proxy process expected to be in November 2018. The two no-action letters withdrawn were Egan-Jones Proxy Services and Institutional Shareholder Services, Inc. which have been the basis for a "safe-harbor" with respect to the use of third parties to vote hedge fund proxies.

ENFORCEMENT ACTIONS

SEC Charges Investment Advisers and Representatives for Violating the Testimonial Rule Using Social Media and the Internet

On July 10th, 2018 the SEC instituted five separate settled proceedings against two SEC registered investment advisers, three adviser representatives, and a marketing consultant who committed and/or caused [violations of the Testimonial Rule](#) under the Investment Advisers Act of 1940 through their use of social media and the internet. The SEC found that the marketing consultant was hired to solicit testimonials from clients and publish them on various public social media websites including Yelp, YouTube and Facebook.

SEC Issues Administrative Order Against Adviser for Violating Anti-Fraud Provisions of the Advisers Act.

On August 17th, 2018 the SEC issued an [order](#) instituting administrative and cease-and-desist proceedings against an SEC registered investment adviser alleging the adviser engaged in fraudulent trade allocation, or "cherry picking" by unfairly allocating purchases of securities between his favored accounts (including his personal and family accounts) and his other clients' accounts. The order states that from at least January 2012 to November 2017, the adviser disproportionately allocated profitable trades to the favored accounts, and disproportionately allocated unprofitable trades to the accounts of certain advisory clients. The adviser was censured and order to pay a \$75,000 fine.

ORICAL COMPLIANCE CORNER

UPCOMING DEADLINES:

- Form D due annually with the SEC and State Blue Sky filings due within 15 days of first sale in most States.
- Rule 206(4)-7 Review to be completed annually

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 or (212) 257-5790 for a detailed proposal and for assistance with regulatory filings

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