

## COMPLIANCE FLASH

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## A Publication of Seward &amp; Kissel Regulatory Compliance

**SEC Charges Adviser with Fraud for Rigging Client Auction**

The SEC charged a [registered investment adviser](#) and its [former chief operating officer](#) with violations of anti-fraud provisions of the Advisers Act. The SEC found that the adviser and COO had rigged the auction of a real estate asset held by one client in favor of another client that purchased the asset. The adviser and COO convinced two unwilling parties to bid on the asset by assuring the bidders that they would not win the auction. According to the SEC, as a result, the client that sold the asset was not given the opportunity to obtain multiple bona fide bids for the asset. The client that won the auction later sold the asset at a profit, resulting in the adviser receiving management and performance fees.

**NFA Amends Interpretive Notice Regarding Information Systems Security Programs and Adopts Interpretive Notice Regarding Internal Controls System**

The [NFA amended Interpretive Notice NFA Compliance Rules 2-9, 2-36 and 2-49: Information Systems Security Programs \(ISSP\)](#) to require NFA members to conduct at least annual training of employees relating to information security; have its ISSP approved by a senior officer with primary responsibility for information security or other senior official who is a listed principal and has the authority to supervise the Member's execution of its ISSP; and notify the NFA of certain cybersecurity incidents related to their commodity interest business. The NFA also adopted Interpretive Notice [NFA Compliance Rule 2-9: CPO Internal Controls System](#), which requires CPOs to implement an internal controls system designed to deter fraudulent activity; protect customer funds; and provide reasonable assurance that the books and records of the CPOs' commodity pools are reliable and that the CPOs are in compliance with all CFTC and NFA requirements. Seward & Kissel's client memorandum regarding these interpretive notices is available [here](#).

**Ninth Circuit Affirms Fraud Penalty on Former Executive of Adviser**

The Ninth Circuit Court of Appeals recently [affirmed](#) the CFTC's civil penalty against the former executive of an investment firm for violating the Commodity Exchange Act's prohibition on making fraudulent statements or producing false documents to the NFA. According to the court, the executive provided fraudulent accounting statements to the NFA during an examination. The court clarified that advisers can "willfully" commit fraud on self-regulatory organizations even when they don't know that statements are prohibited, so long as they knew they were false when made, or showed a reckless disregard for the truth.

**SEC Charges Adviser for Failing to Fully Disclose Affiliate Compensation Arrangement**

The SEC [settled](#) an enforcement action against an investment adviser for violating the anti-fraud provisions of the Advisers Act by making misleading statements in its Form ADV Part 2A and client investment advisory contracts regarding the services and prices offered by the adviser's in-house broker. The SEC found that the adviser's misleading disclosures led numerous clients to choose the in-house broker for brokerage services over other significantly less expensive external options.

**SEC Charges Adviser with Multiple Compliance Violations**

The SEC [charged](#) a registered investment adviser with failing to comply with the Compliance Rule, the Custody Rule, and the Books and Records Rule under the Advisers Act. The SEC found that the adviser (i) falsely stated in multiple Forms ADV that the adviser did not have custody of client assets; (ii) repeatedly named an individual as the adviser's CCO even though that individual was never responsible for administering any written compliance policies and procedures; and (iii) failed to make and keep books and records related to the adviser's business (e.g., a journal showing the adviser's cash receipts and disbursements, a general ledger and written compliance policies and procedures).

**OCIE Issues Risk Alert on Regulation S-P — Privacy Notices and Safeguard Policies**

The SEC's Office of Compliance Inspections and Examinations issued a [risk alert](#) detailing the most common deficiencies related to Regulation S-P, which requires registered investment advisers and broker-dealers to provide privacy policy notices to customers and to implement policies and procedures to protect customer data.

**Key Upcoming Compliance Dates**

- Periodic Report for CPOs (4/30, 5/30)
- Code of Ethics Quarterly Transaction Reports (4/30)
- Custody Rule Annual Audit Exemption – distribute audited financial statements of pooled investment vehicles to investors (4/30)<sup>1</sup>
- Annual Delivery of Form ADV Part 2A (4/30)<sup>2</sup>
- Form PF Annual Update due for all private fund advisers other than "large hedge fund advisers" and "large liquidity fund advisers." (4/30)
- Form 13F; BE-185; TIC Form S; Form CTA-PR (5/15)
- TIC Form SLT (5/23)
- Form PQR for all CPOs (5/30)

<sup>1</sup> For pooled investment vehicles with a December 31st fiscal year end.

<sup>2</sup> For SEC-registered investment advisers with a December 31st fiscal year end.

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