



COMPLIANCE FLASH

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SEC Division of Enforcement Releases Fiscal Year 2018 Annual Report

The SEC's Division of Enforcement (the "Enforcement Division") released its [Annual Report](#) for Fiscal Year ("FY") 2018 providing updates on its core principles and initiatives and enforcement action statistics. In FY 2018, the Enforcement Division brought 490 "stand alone" enforcement actions (up from 446 in FY 2017), of which 108 or 22% related to investment advisers and investment companies (up from 82 or 18% in FY 2017). The Enforcement Division obtained \$3.945 billion in disgorgement and penalties in FY 2018 (up from \$3.789 billion in FY 2017). The Enforcement Division reported about a 10% decrease in staff and contractors since an agency-wide hiring freeze in late 2016.

Adviser Sanctioned for Cybersecurity Deficiencies

The SEC [settled](#) charges against a dually registered investment adviser and broker-dealer for violations of Regulation S-P and Regulation S-ID. The SEC found that one or more persons impersonating the firm's independent contractor representatives contacted the firm's technical support line to request password resets to a proprietary web portal that contained personally identifiable information of customers. According to the SEC, the technical support staff reset the passwords and provided temporary passwords over the phone, and, on two occasions, also provided the representative's username. The SEC concluded that, in violation of Regulation S-P, the firm's policies and procedures with respect to resetting representatives' passwords, identifying higher-risk representatives and customer accounts for additional security measures, and creation and alteration of customer profiles were not reasonably designed to protect customer information and to prevent and respond to cybersecurity incidents. Further, the SEC found that the firm violated Regulation S-ID by failing to review and update its identity theft prevention program in response to changes in risks to its customers or provide adequate training to its employees, and failed to adopt reasonable policies and procedures to respond to identity theft red flags.

SEC Issues Risk Alert on Compliance Issues Related to the Cash Solicitation Rule

The SEC's Office of Compliance Inspections and Examinations recently issued a [Risk Alert](#) on the most common compliance issues relating to the Cash Solicitation Rule under the Investment

Advisers Act of 1940. These issues included third-party solicitors providing inadequate solicitor disclosure documents to prospective clients; advisers failing to timely receive a signed client acknowledgement of receipt of the adviser's Form ADV Part 2 and solicitor disclosure document; and advisers paying cash fees to a solicitor without a solicitation agreement in effect. Seward & Kissel's memorandum on the Risk Alert is available [here](#).

NFA Penalizes CPO/CTA for Late Filings

The NFA [settled](#) an enforcement proceeding against a CPO/CTA for failing to timely file forms CPO-PQR and CTA-PR as well as annual pool financial statements. The NFA permitted the CPO/CTA to redress its first untimely filing without taking action but imposed a \$30,000 civil penalty upon subsequent late filings.

SEC Upholds FINRA's Findings that CCO Failed to Review Electronic Communications

The SEC [upheld](#) disciplinary action taken by FINRA against the chief compliance officer of a FINRA member firm for violating FINRA, NASD and MSRB rules by, among other things, failing to reasonably review electronic correspondence. FINRA found that the firm's written supervisory procedures lacked detail about the criteria for reviewing electronic correspondence, such as the frequency and sample size of the reviews. Further, FINRA found that the chief compliance officer only sporadically reviewed emails and did not review any Bloomberg messages or Bloomberg chats, which comprised the vast majority of the firm's electronic correspondence.

Key Upcoming Compliance Dates

- Quarterly Form PF for large hedge fund advisers (11/29)
- Form CPO-PQR (11/29)
- Periodic Report for CPOs (11/30, 12/30)
- State Notice Filings Annual IARD Renewal Payment (12/17)
- TIC Form S (12/17)
- TIC Form SLT (12/24)

Online Compliance Subscription Service

SKRC's 2018 Compliance Calendar and other compliance tools and resources are available on our [Online Compliance Subscription Service](#), which is free to our investment adviser clients.

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One Battery Park Plaza | New York, NY 10004
212-574-1200 | 212-480-8421 (fax) | sknyc@sewkis.com

901 K Street, NW | Washington, DC 20001
202-737-8833 | 202-737-5184 (fax) | skdc@sewkis.com

www.compliance.sewkis.com

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