

A Publication of Seward & Kissel Regulatory Compliance

SEC Proposes Changes to the Advertising Rule and Solicitation Rule

The SEC [proposed changes](#) to the advertising rule and the solicitation rule under the Investment Advisers Act of 1940 (“Advisers Act”). The proposed advertising rule would, among other things, broaden the definition of “advertisement;” permit, subject to certain conditions, reference to specific investment advice (i.e., past specific recommendations), testimonials, endorsements and third-party ratings; and establish requirements for the use of performance results depending on the intended recipients. The proposed solicitation rule would expand the current rule to cover solicitor arrangements involving all forms of solicitor compensation, not just cash, and arrangements to solicit private fund investors. Seward & Kissel will circulate a more detailed memorandum on the proposed rules.

SEC Proposes Changes to Proxy Rules for Proxy Voting Advice

The SEC [proposed amendments](#) to Rule 14a-1(l) of the Securities Exchange Act of 1934 to specify when a proxy advisory firm giving proxy voting advice would be engaging in solicitation, thereby subjecting itself to proxy rules. The proposed rule changes also codifies the SEC’s position that advice given by proxy advisory firms in response to unprompted requests is not considered solicitation.

SEC Extends Temporary Relief to Broker-Dealers Regarding MiFID II Research Requirements

The staff of the SEC’s Division of Investment Management [extended a temporary no action letter](#) that provided relief under the Advisers Act regarding compliance with the provisions relating to research in the Markets in Financial Instruments Directive II (“MiFID II”) to July 3, 2023. During the extended period, the SEC staff will not recommend enforcement action if a broker-dealer provides research services that constitute investment advice under the Advisers Act to an investment manager that is required by MiFID II and substantially similar national rules of member states to pay for the research services from its own money, from a separate research payment account funded with its clients’ money, or a combination of the two. During the extended period, the SEC staff will not consider such a broker-dealer to be an investment adviser.

California Consumer Privacy Act Proposed Regulations

California’s Attorney General [proposed regulations](#) outlining certain aspects of how companies will be expected to comply with the California Consumer Privacy Act (“CCPA”). Among other things, the proposed CCPA regulations provide detail on what notice businesses must provide to consumers and how businesses should handle consumer requests to delete or not share data collected.

SEC Enforcement of Cash Sweep Conflicts

SEC Division of Enforcement Co-Director Stephanie Avakian [stated](#) that the SEC will be tightening its enforcement of conflict of interest disclosures by firms that utilize cash sweep arrangements. Specifically, Ms. Avakian stated that if a dually-registered RIA/broker-dealer is involved in an arrangement in which it receives 12b-1 fees or revenue sharing payments for investing in or recommending a money market fund or bank deposit account in connection with a cash sweep program, this must be disclosed to investors as a conflict of interest.

SEC Division of Enforcement 2019 Annual Report

The SEC’s Division of Enforcement released its [2019 annual report](#). The report notes that the Division of Enforcement’s two main areas of focus were protecting retail investors, most notably through their share class initiative, and cyber-related misconduct and security threats in relation to digital assets. For fiscal year 2019, the Division of Enforcement reported 862 enforcement actions (up from 821 in fiscal year 2018) resulting in more than \$4.3 billion in disgorgement and penalties (up from over \$3.9 billion in 2018).

Key Upcoming Compliance Dates

- TIC Form S due (12/16/2019 and 1/15/2020)
- TIC Form SLT due (12/23/2019 and 1/23/2020)
- Periodic Report for CPOs due (12/30/2019 and 1/30/2020)
- Quarterly Form 13H Amendment due (1/10/2020)
- Code of Ethics Quarterly Transaction Reports due (1/30/2020)

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