

RIA Regulatory Review

by David Tang and Michael Schmieder

This RIA Regulatory Review highlights certain key regulatory developments affecting investment advisers. Please feel free to contact us with any questions on the topics covered below.

Form N-PX Reporting by 13F Reporting Managers

Beginning with the period of July 1, 2023 to June 30, 2024, institutional investment managers subject to the reporting requirements of section 13(f) of the Securities Exchange Act of 1934 are required to report annually on how they voted on executive compensation, or so-called “say-on-pay” matters, on Form N-PX. Institutional investment managers will be required to file their first report on amended Form N-PX by August 31, 2024.

SEC Risk Alert on Marketing Rule Focus Areas

The SEC’s Division of Examinations issued a risk alert to inform registered investment advisers of additional areas of emphasis during examinations focused on Investment Advisers Act Rule 206(4)-1 (the “Marketing Rule”). The Division’s additional areas of focus include whether advisers: (i) are in compliance with the Marketing Rule requirements regarding the use of testimonials and endorsements in an advertisement; (ii) are in compliance with the Marketing Rule requirements regarding the use of third-party ratings in advertisements; and (iii) accurately completed additional questions regarding their marketing practices in their annual Form ADV amendments.

SEC Risk Alert on Safeguarding Customer Records and Information at Branch Offices

The SEC’s Division of Examinations issued a risk alert on the importance of investment advisers establishing and following written policies and procedures aimed at safeguarding customer records and information, particularly in branch offices. The SEC observed from examinations that although most advisers uphold their policies and

Related People

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Related Capabilities

- Investment Funds
- Investment Management

procedures relating to the safeguard of customer records and information in their main offices, many firms failed to apply or adopt these policies and procedures for remote or branch offices resulting in data and cybersecurity breaches.

SEC Charges Investment Adviser for Valuation Compliance Failures

The SEC settled charges against an investment adviser for failing to adopt and implement reasonably designed written valuation policies and procedures of private fund portfolio investments. The fund primarily held level 3 assets, including distressed debt, high yield debt, bank debt, capital structure arbitrage, rescue financing, and direct lending. The SEC found that the adviser's compliance manual did not provide guidance on how to calculate the value of level 3 assets on a consistent basis and did not address potential conflicts of interest arising from the adviser valuing investments and receiving fees based on the adviser's valuation of the funds' assets.

SEC Staff Bulletin on Care Obligations of Investment Advisers to Retail Investors

The SEC released a bulletin addressing the standard of care for registered investment advisers when providing investment advice to retail investors. According to the bulletin, the care obligations of investment advisers when providing investment advice to retail investors generally include three components: (i) understanding the potential risks, rewards, and costs associated with an investment strategy; (ii) having a reasonable understanding of the specific retail investor's investment profile; and (iii) having a reasonable basis to conclude that the recommendation or advice provided is in the retail investor's best interest. Whether investment advice to a retail investor satisfies the care obligations is an objective evaluation, turning on the facts and circumstances of the particular advice and the investment profile of the particular retail investor at the time the advice is provided.

Key Upcoming Compliance Obligations

- Code of Ethics Quarterly Transaction Reports due July 30, 2023
- Quarterly Form 13F due August 14, 2023
- Quarterly Update to Form PF for all "Large Hedge Fund Managers" due August 29, 2023