

Anchin Alert

Anchin, Block & Anchin LLP
Accountants and Advisors



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SEC Identifies Top 5 Compliance Issues Found in OCIE Examinations

Call it a wake-up call for registered investment advisers—the Securities and Exchange Commission (SEC) issued a Risk Alert, highlighting the top five compliance issues found in deficiency letters sent to SEC-registered investment advisers.

The compliance issues, which were released in February by the SEC's Office of Compliance Inspections and Examinations (OCIE), stem from a sample of more than 1,000 investment adviser examinations during the last two years.

The registered entities within OCIE's oversight included more than 12,000 advisers, with nearly \$67 trillion in assets under management.

The Risk Alert encourages advisers to review their compliance programs.

Indeed, the SEC currently believes these deficiencies to be serious. The SEC has said that, "where appropriate, the staff referred examinations to the Division of Enforcement for further action."

With that in mind, here's the top five compliance issues, along with a few examples of typical deficiencies found in each of them.

- 1. Compliance Rule.** The Compliance Rule requires advisers to adopt and implement written policies and procedures reasonably designed to prevent Advisers Act violations. Below are typical examples of deficiencies or weaknesses in connection with the Compliance Rule identified by the review:
 - Compliance manuals are not reasonably tailored to the adviser's business practices.
 - Annual reviews are not performed or do not address the adequacy of the adviser's policies and procedures.
 - Compliance manuals are not current.
- 2. Regulatory Filings.** Advisers are obligated to accurately complete and timely file certain regulatory filings with the Commission. A few typical examples of deficiencies and weakness found in the review, with regard to properly filing are:
 - Inaccurate disclosures.
 - Untimely amendments to Forms ADV (the uniform form used by investment advisers to register with both the SEC and state securities authorities).
 - Incorrect and untimely Form PF filings, which report regulatory assets under management.
- 3. Custody Rule.** The Custody Rule prescribes several requirements designed to bolster the safety of client assets by protecting them from unlawful activities by the adviser. Two key instances of deficiencies or weaknesses regarding the Custody Rule follow:
 - Advisers did not recognize that they may have custody of asset because they had online access to client accounts.

- Advisers did not recognize that they may have custody as a result of certain authority over client accounts. For example, advisers may have custody of certain accounts as a result of having powers of attorney authorizing them to withdraw client cash or securities.

4. Code of Ethics Rule. The SEC Code of Ethics took effect in 2004. The review found some of the following deficiencies and weaknesses, with respect of the code:

- Access persons were not identified. This could include certain employees, partners or directors who review personal securities transactions.
- Codes of ethics is missing required information.
- No description of Code of Ethics in Forms ADV. Failing to describe Codes of Ethics in Part 2A of Forms ADV and no indication that Codes of Ethics are available to any client or prospective client upon request.

5. Books and Records Rule. Below are typical examples of deficiencies or weaknesses regarding the Books and Records Rule, which requires advisers to keep certain books and records available about their investment advisory business.

- Did not maintain all required records.
- Books and records are inaccurate or not updated.
- Inconsistent record keeping.

The examinations within the scope of the review resulted in a range of actions. The SEC said many advisers took remedial measures such as enhancing written compliance procedures, policies or processes, and devoting more resources to the area of compliance.

What's your action plan? For more information, contact your Anchin relationship partner, Jeffrey I. Rosenthal, or Peter L. Berlant of Anchin's Financial Services Practice at 212.840.3456.

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