

Investment Advisers – Five Most Frequent Compliance Topics Identified by the SEC

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The Securities and Exchange Commission's Office of Compliance Inspections and Examinations ("OCIE") published a [risk alert](#) on February 7, 2017, identifying the five most frequent compliance areas identified during OCIE examinations of registered investment advisers ("RIAs").¹ The risk alert highlights topics compiled from more than 1,000 RIA examination deficiency letters in the previous two years. The five most frequent compliance topics are deficiencies involving (1) the "Compliance Rule"²; (2) required regulatory filings; (3) the "Custody Rule"³; (4) the "Code of Ethics Rule"⁴; and (5) the "Books and Records Rule."⁵

The Compliance Rule sets forth the requirements for an RIA to adopt, implement, and regularly review compliance policies and procedures. Further, the Compliance Rule requires an RIA to designate a chief compliance officer who is responsible for overseeing and administering the RIA's compliance policies and procedures. During its examination of RIAs, the OCIE found the following types of weaknesses or deficiencies related to the Compliance Rule to be among the most common: (i) compliance manuals were not reasonably tailored to the business practices of the RIA; (ii) annual reviews of compliance policies and procedures were not conducted or omitted an evaluation of the adequacy of the policies and procedures; (iii) RIAs were acting in contradiction to enacted compliance policies and procedures; and (iv) the compliance manuals were out of date.

RIAs are subject to certain regulatory filings and the four most common deficiencies OCIE found with RIAs in this area were: (i) inaccurate disclosures on Form ADV Part 1A and Part 2A; (ii) delinquent Form ADV amendments; (iii) incorrect and untimely Form PF filings; and (iv) incorrect or late Form D filings.

Under the Custody Rule, RIAs with custody of client assets must comply with certain requirements designed to protect investors from unlawful activities or financial problems of the RIA. The most common deficiencies noted by OCIE with respect to the Custody Rule included: (i) RIAs were unaware that online access to a client account amounted to custody; (ii) the surprise examinations required under the Custody Rule did not meet the requirements of the Custody Rule; and (iii) RIAs did not realize they had custody as a result of certain authority over client accounts.

RIAs are required to adopt and maintain a code of ethics, pursuant to the Code of Ethics Rule. OCIE noted four areas where common deficiencies were observed: (i) improperly identifying access persons; (ii) missing

required information from the code of ethics; (iii) access persons delinquent in submitting transactions and holdings reports; and (iv) missing description of code of ethics in the Form ADV.

RIAs must maintain their books and records in compliance with the Books and Records Rule. OCIE found typical deficiencies in maintaining all required records, inaccurate or outdated books and records, and inconsistent recordkeeping.

Many of the compliance shortcomings OCIE found in its recent examinations can be easily prevented. Please contact your Winston & Strawn attorney if you would like assistance preparing a compliance calendar or a memorandum covering any of the rules discussed above. Also, please feel free to download and review our publication, “Reminder of Annual Requirements for Investment Managers,” which can be found [here](#).

¹ The SEC may conduct examinations of both RIAs and Exempt Reporting Advisers (“ERAs”). This client briefing will generally use the term “RIA”; however, it should be noted that the obligation to annually file Form ADV and to comply with the Books and Records Rule, each discussed below, also apply to ERAs.

² Rule 206(4)-7 under the Investment Advisers Act of 1940 (the “Advisers Act”). Adopting release: <https://www.sec.gov/rules/final/ia-2204.htm>.

³ Rule 206(4)-2 under the Advisers Act. Adopting release: <https://www.sec.gov/rules/final/ia-2176.htm>. FAQs on the Custody Rule can be found here: https://www.sec.gov/divisions/investment/custody_faq_030510.htm.

⁴ Rule 204A-1 under the Advisers Act. Adopting release: <https://www.sec.gov/rules/final/ia-2256.htm>.

⁵ Rule 204-2 under the Advisers Act. Adopting release of recent amendments to the Books and Records Rule: <https://www.sec.gov/rules/final/2016/ia-4509.pdf>.

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