



COMPLIANCE ALERT

FEBRUARY 2017

OCIE Issues List of Most Frequently Identified Exam Topics

On February 7, 2017, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a [risk alert](#) (the "Risk Alert") providing a list of the five compliance topics that are most frequently identified in deficiency letters sent to registered investment advisers. Outlined below are typical examples of deficiencies or weaknesses highlighted in the Risk Alert under each topic.

1. Compliance Rule¹

- Compliance manuals are not reasonably tailored to the adviser's business practices.
- Annual reviews are not performed or did not address the adequacy of the adviser's policies and procedures.
- Adviser does not follow compliance policies and procedures.
- Compliance manuals are not current.

2. Regulatory Filings²

- Inaccurate disclosures on Form ADV.
- Untimely amendments to Form ADV.
- Incorrect and untimely Form PF filings.
- Incorrect and untimely Form D filings.

3. Custody Rule³

- Advisers did not recognize that they may have custody due to online access to client accounts.
- Advisers with custody obtained surprise examinations that do not meet the requirements of the Custody Rule.
- Advisers did not recognize that they may have custody as a result of certain authority over client accounts.

4. Code of Ethics Rule⁴

- Access persons not identified.
- Codes of ethics missing required information.
- Untimely submission of transactions and holdings.
- No description of code of ethics in Form ADVs.

5. Books and Records Rule⁵

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

SKRC Observations

SKRC has observed these deficiencies and weaknesses in assisting many clients during OCIE examinations. In addition to the foregoing, we have seen continued interest by the OCIE staff in the following areas:

- Conflicts of interest and adequacy of client disclosures relating to:
 - ▶ Allocation of expenses, including the cost of regulatory filings and insurance;
 - ▶ Allocation of investments;
 - ▶ Principal transactions;
 - ▶ Soft dollars, including proprietary broker research and broker provided corporate access; and
 - ▶ Outside business activities, including directorships.
- Insider trading and material nonpublic information with respect to trading for client and personal accounts.
- Resolution of issues identified in non-privileged external compliance audit reports.

In light of the topics identified in the Risk Alert, advisers may wish to review the adequacy and implementation of their compliance policies and procedures as most of these deficiencies and weaknesses can be avoided. SKRC offers mock audit and OCIE exam preparation services that are subject to attorney-client privilege.

¹ Rule 206(4)-7 under the Investment Advisers Act of 1940 (the "Advisers Act").

² The Risk Alert specifically mentioned Form ADV, Form PF and Form D.

³ Rule 206(4)-2 under the Advisers Act.

⁴ Rule 204A-1 under the Advisers Act.

⁵ Rule 204-2 under the Advisers Act.

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