

**UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING  
File No. 3-19024**

**In the Matter of**

**ASCENSION ASSET  
MANAGEMENT, LLC**

**and**

**GRENVILLE M. GOODER, JR.,**

**Respondents.**

**SUPPLEMENTAL DECLARATION OF NICHOLAS A. PILGRIM IN SUPPORT OF THE  
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION  
AGAINST RESPONDENTS ASCENSION ASSET MANAGEMENT, LLC  
AND GRENVILLE M. GOODER, JR.**

NICHOLAS A. PILGRIM, pursuant to 28 U.S.C. § 1746, declares:

1. I am a member in good standing of the bar of the state of New York. I am employed by the Securities and Exchange Commission ("Commission" or "SEC") as an Assistant Chief Litigation Counsel with the Division of Enforcement ("Division") in the Commission's Home Office in Washington, D.C. I represent the Division as trial counsel in the above-captioned matter.
2. Except as otherwise stated, I have personal knowledge of the matters set forth in this Declaration, and, if called as a witness, I could and would competently testify under oath to the facts stated herein.

3. I make this Supplemental Declaration in support of the Division's Motion for Summary Disposition against Respondents Ascension Asset Management, LLC ("Ascension") and Grenville M. Gooder, Jr. ("Gooder") (collectively "Respondents").

4. The purpose of this Supplemental Declaration is to amend and supplement certain paragraphs of my Declaration in support of the Division's Motion for Summary Disposition against Respondents, filed in this matter on July 22, 2019 (the "Pilgrim Declaration").

5. Paragraph 7 of the Pilgrim Declaration is amended as follows: "Attached hereto as **Exhibit 3** is a true and correct copy of an Investment Adviser Association ("IAA") bulletin dated March 3, 2014 that I am advised by Division staff was produced to the Division by Ascension and marked as Exhibit 76 in Gooder's investigative testimony on December 12, 2017. The IAA business record certification accompanying Exhibit 3 should be disregarded because that version of the bulletin was produced to the Division by Ascension, not the IAA."

6. Attached as **Exhibit 3A** to this Supplemental Declaration is a true and correct copy of the same IAA bulletin dated March 3, 2014 that is referenced in paragraph 5 above, which was produced to the Division by IAA, along with an accompanying business record certification from the IAA.

7. Paragraph 9 of the Pilgrim Declaration is amended as follows: "Attached hereto as **Exhibit 5** is a true and correct copy of an IAA Alert dated January 7, 2010 that the Division staff has informed me it accessed via the Internet by using the following hyperlink:  
[http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct\\_key=ebcde3b1-6f2c-466e-ad22-c0cabfdcac9c&site=emailarch](http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=ebcde3b1-6f2c-466e-ad22-c0cabfdcac9c&site=emailarch) ("IAA Alert: January 7, 2010 – SEC Publishes New Adviser Custody Rule; IAA to Host Webinar"). The IAA business record certification accompanying Exhibit 5 should be disregarded because that version of the IAA Alert was not produced to the staff

by the IAA.” A copy of the document providing hyperlinks to IAA Alerts that the Division staff advised me they received from IAA is attached hereto as Exhibit 5A, which was marked as Exhibit 84 in Gooder’s investigative testimony on December 12, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 9, 2019.



---

Nicholas A. Pilgrim  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

COUNSEL FOR  
DIVISION OF ENFORCEMENT

**CERTIFICATE OF SERVICE**

**In the Matter of Ascension Asset Management, LLC and Grenville M. Gooder, Jr.**  
Administrative Proceeding File. No. 3-19024

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the foregoing **Supplemental Declaration of Nicholas Pilgrim in support of the Division of Enforcement's Motion for Summary Disposition Against Respondents Ascension Asset Management, LLC and Grenville M. Gooder, Jr.** was served on August 9, 2019 upon the following parties as follows:

**BY E-MAIL**

Thomas J. McGonigle  
Murphy & McGonigle  
1001 G Street, N.W.  
Seventh Floor  
Washington, DC 20001  
(202) 661-7010 Direct  
(202) 661-7059 Fax

thomas.mcgonigle@mmlawus.com  
Counsel for Respondents



\_\_\_\_\_  
*Counsel for the Division of Enforcement*

# EXHIBIT 3A

[FOR DOMESTIC U.S. RECORDS]

**DECLARATION OF GAIL C. BERNSTEIN CERTIFYING RECORDS  
OF REGULARLY CONDUCTED BUSINESS ACTIVITY**

I, the undersigned, Gail C. Bernstein, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by the Investment Adviser Association as General Counsel and by reason of my position am authorized and qualified to make this declaration, having supervised the records production.
2. I further certify that the documents submitted on October 31, 2017 and stamped IAA – 0000001-0003051 are true copies of records that were:
  - (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;
  - (b) kept in the course of regularly conducted business activity; and
  - (c) made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16, 2018.

  
Gail C. Bernstein

SEC-IAA-E-000001



## *Regulators Heighten Focus on Cybersecurity*

Recent developments at the SEC, the White House, and FINRA reflect regulators' growing interest in cybersecurity issues across financial markets and other sectors. "Regulators' increased focus on cybersecurity highlights the importance to investment advisers of effectively managing cybersecurity threats," said David Tittsworth, IAA Executive Director. "Cybersecurity breaches in the news serve as a reminder that these incidents are on the rise, and the asset management industry is no exception."

**SEC.** On January 30, Jane Jarcho, National Associate Director of the National Exam Program in the Office of Compliance Inspections and Examinations, spoke at the SEC's Compliance Outreach Program for investment adviser and investment company senior officers in Washington, D.C. Ms. Jarcho emphasized that an investment adviser's compliance policies and procedures need to adequately address both external and

*"Regulators' increased focus on cybersecurity highlights the importance to investment advisers of effectively managing cybersecurity threats."*

— David Tittsworth,  
IAA Executive Director

internal cybersecurity risks and threats to the firm and its clients.

The SEC staff recommended that an investment adviser's policies and procedures address ways to detect, prevent, and respond to cyber attacks. The staff suggested that these policies and procedures should specifically address: (1) adequate due diligence on the reliability of certain vendors to protect information technology

(IT) systems; (2) monitoring vendor access to internal systems; (3) managing employee usage of internal electronic systems, such as e-mail, particularly immediately before and after an employee leaves the firm; and (4) providing adequate IT training to employees so that they use a firm's systems responsibly during their employment. The archived webcast of the SEC's Compliance Outreach Program is available at <http://www.sec.gov/news/otherwebcasts/2014/complianceoutreachns013014.shtml>.



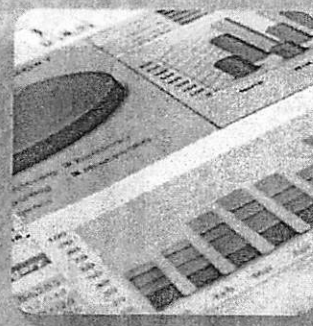
SEC Chair Mary Jo White

Congress has also expressed an interest in data security issues. On February 6, SEC Chair **Mary Jo White** testified before the Senate Banking Committee regarding data

*Continued on page 9*

**IN THIS ISSUE**

- ▶ Regulators Heighten Focus on Cybersecurity . . . . 1
- ▶ From the Executive Director . . . . . 3
- ▶ SEC Hosts Compliance Outreach Program . . . . . 4
- ▶ Form PF Developments . . . . . 6
- ▶ *In the Know*—Raising Awareness of the IAA . . . . 6
- ▶ 2014 IAA Annual Leadership Conference—Register Today! . . . . . 7
- ▶ Treasury’s Office of Financial Research Asset Management Report Criticized . . . . . 8
- ▶ NFA Seeks Comments on Potential Capital Requirement . . . . . 10
- ▶ SEC Releases Draft Strategic Plan for 2014-2018 . . . . . 10
- ▶ Upcoming Compliance Dates . . . . . 11
- ▶ House Committee Challenges Regulators on Volcker Rule Implementation . . . . . 12
- ▶ 2014 IAA Webinar Series . . . . . 13
- ▶ Regulatory Proposals . . . . . 14
- ▶ *Compliance Corner*—The SEC’s Never-Before Examined Initiative: Are You Ready? . . . . . 16
- ▶ 2014 IAA Compliance Conference . . . . . 19
- ▶ 7th Annual IAA Lobbying Day—June 12, 2014 . . 20
- ▶ *Legal & Regulatory Update* . . . . . 21
- ▶ *International Developments* . . . . . 24
  - FinCEN Extends FBAR Filing Deadline to June 30, 2015
  - ESMA Seeks European Commission Clarification of Derivatives Definition
  - The European Commission Proposes Restrictions on Credit Institution Investments in Hedge Funds and other “Alternative Investment Funds”
  - March 27 International Committee Meeting
- ▶ IACCP Compliance Training . . . . . 26
- ▶ *Inside the Beltway* . . . . . 27



## FROM THE EXECUTIVE DIRECTOR


 IAA INVESTMENT ADVISER  
ASSOCIATION


Last month, I notified our president and Board that I will step down from my position as IAA Executive Director early next year (February 6, 2015, to be precise).

It is a vast understatement to say that I have enjoyed and appreciated the opportunity to serve the IAA/ICAA. Since my first day on the job—October 16, 1996—I have had the privilege of working with hundreds of our members, as well as with a very talented and dedicated staff. It has been an extremely fulfilling professional and personal experience for me.

I am proud of what we have accomplished together. In 1996, the ICAA had two employees in New York, annual revenues of \$650,000, and 200 member firms that collectively managed \$1 trillion in assets. By the end of this year, the IAA will employ 17 full-time staff. The organization's revenues will exceed \$4 million and the IAA's membership will exceed 575 firms that collectively manage more than \$12 trillion in assets, in addition to more than 80 associate members. Most important, the broad range of advocacy, compliance, and educational resources and benefits provided by the Association to its membership has continued to evolve and expand as the organization has grown.

The IAA's future is very bright. The need for the services the IAA provides to its members has never been more compelling. In its most recent strategic plan (December 2012), our Board identified a number of focus areas that should be emphasized to fulfill the IAA's purpose of serving the interests of SEC-registered investment advisory firms. These key focus areas include advocacy, membership services, marketing, governance, and infrastructure.

The potential for future growth of the IAA is enormous. The IAA certainly could double or triple the size of its current membership. There are hundreds of advisory firms that should support the IAA's activities and that already benefit from our legislative and regulatory efforts. Growing the membership will give the IAA additional resources to provide more services to all members. I strongly encourage each of you to make an effort to recruit other investment advisory firms to empower the IAA to reach its full potential in future years.

In providing a year's notice, it is my intention to provide ample opportunity for the IAA Board to explore and exercise appropriate options to identify my successor. I look forward to working with each of you in the coming months and hope to connect with you at our Annual Leadership Conference in Palm Beach. Again, thank you for the opportunity to serve you and this terrific organization.

Best regards,

David G. Tittsworth  
IAA Executive Director

## SEC Hosts Compliance Outreach Program

On January 30, 2014, the SEC hosted its latest National Compliance Outreach Program for chief compliance officers (CCOs) and other senior officers of investment companies and investment advisers. Speakers and panelists included SEC staff from the National Examination Program (NEP), the Division of Enforcement, and the Division of Investment Management (IM), as well as a number of CCOs. The agenda included the SEC's examination and regulatory priorities for 2014, topics for private fund advisers and registered investment companies, valuation issues, and the obligations of CCOs.

### Examination Priorities

Reinforcing opening remarks made by SEC Chair **Mary Jo White**, **Jane Jarcho**, National Associate Director of the Investment Adviser/Investment Company examination program, stated that the **examination priorities for 2014** would include a focus on cybersecurity issues, with a planned review of the policies that asset managers have in place to prevent, detect, and respond to cyber attacks. Of the 2014 NEP examination priorities, Jarcho specifically addressed wrap fee programs, compliance with the requirements of the JOBS Act rules, issues presented by dually registered investment advisers and broker-dealers, and the initiative to examine advisers that have never been examined.

With respect to **wrap fee programs**, Jarcho said that the SEC staff plans to examine whether advisers' policies and procedures are being implemented in a manner to ensure that: (1) fiduciary and contractual obligations are being disclosed to clients; (2) they address suitability of wrap accounts for clients; (3) transaction fees are appropriately disclosed and applied, including any breakpoint discounts; and (4) clients who trade infrequently are not put in

**Thank You for Attending Our Open House!**



On January 29 at its Washington, D.C. office in Farragut Square, the IAA hosted a reception for IAA member firms attending the SEC's National Compliance Outreach Program for Investment Companies and Investment Advisers. The IAA would like to thank the many members who were able to attend. All who attended seemed to enjoy meeting one another and the IAA staff. We look forward to seeing you in connection with the SEC's next National Compliance Outreach Program for Investment Companies and Investment Advisers. ■

fee-based brokerage accounts (*i.e.*, reverse churning).

The NEP has established a **specialized working group** with experts in marketing and sales practices. According to Jarcho, this working group will train examiners to detect and prevent fraudulent or misleading **advertising practices**. In particular, Jarcho revealed that the NEP plans to conduct a **focused examination sweep** that will review practices within advisory firms **to verify accredited investor status**.

According to Jarcho, the SEC staff is also concerned about the migration away from the broker-dealer business model towards the investment adviser model. The staff is particularly concerned that clients do not fully appreciate the differences between commission-based brokerage accounts and advisory accounts. Jarcho noted that **dual registrants** should be cognizant of the differences in regulations that apply, particularly with respect to supervisory responsibilities (*e.g.*, oversight of branch offices and representatives), the books and records requirements, the fiduciary duty of advisers versus the suitability requirements for broker-dealers, and disclosures made to clients. Jarcho indicated that the NEP's examination focus in this area is intended, in part, to inform Commis-

sioners as they consider **harmonization** issues more broadly.

Jarcho also stated that, over the course of the next two years, the staff plans to examine **25 to 40 percent of advisers** that have been registered for more than three years but have **never previously been examined**. She noted that the staff from each regional office has discretion to conduct either **risk assessment examinations** (*i.e.*, in order to assign "risk ratings" to firms after reviewing requested records) or **presence examinations** where the staff selects certain focus areas.

### Enforcement and Regulatory Priorities

Priorities highlighted by senior staff from the Division of Enforcement's Asset Management Unit included misallocation of funds, side-by-side management of multiple private funds by a single investment adviser, valuation of assets, soft dollars, best execution, and whether advisers had adequate compliance policies and procedures in place. **David Grim**, Deputy Director of IM, stated that the Division's rulemaking initiatives for 2014 include reviewing comments received

*Continued on page 5*

### SEC Hosts Compliance Outreach Program—continued from page 4

regarding the 2013 money market fund rule proposals and considering whether certain exemptive orders for exchange traded funds should be codified. Non-rulemaking initiatives cited by Grim include service provider oversight, where the staff plans to focus on the diligence required for investment in “alternative strategies.” In particular, the staff will consider the appropriate oversight of sub-advisers that should be required, particularly for private fund advisers that manage assets of retail funds and that are not familiar with the requirements applicable to registered investment companies. Grim also revealed that IM staff is actively considering amendments to Form ADV to allow for “umbrella” registration for related advisers of a registered adviser consistent with the guidance the Division had issued in 2012. See American Bar Association, Business Law Section, SEC No-Action Letter (Jan. 18, 2012), available at <http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm>.

#### Highlights of Panel Discussions

Among the topics covered by the panels were the SEC staff’s observations from the presence examination initiative for private fund advisers including certain industry trends, compliance risks associated with the various fund structures (including fee accelerations and expense shifting), potential conflicts of interest, and the risks of “favoritism” of one client to another without appropriate disclosure (i.e., allocations of co-investments). The speakers on the valuation panel discussed the various issues raised by differing valuation practices, including methodologies and the use of pricing service vendors.

Panelist also discussed the obligations of CCOs, including the role the



Top: Doug Scheidt and panelists addressing CCO audience; Right: Question and answer period for advisers with more than \$1 billion RAUM

CCO plays within the advisory firm. According to the SEC staff, the CCO should be someone who is empowered, has access to needed information, and has the “ear of management.” The SEC staff also discussed recent enforcement actions involving CCOs. The staff noted that while CCOs have been charged in recent SEC enforcement actions, it has usually been the case that these CCOs were wearing multiple hats within the firm and the charges usually related to conduct involving these other capacities. With respect to liability for failing to supervise, the staff emphasized that they would look at the CCO’s various responsibilities within the firm to see if there is a supervisory role among them.

There was also some discussion about self-reporting material violations where the SEC staff implied that risk assessments would be more favorable for advisers that self-report. **Mark Dowdell**, Assistant Director in the SEC’s Philadelphia Regional Office, encouraged advisers to self-report material errors discovered during reviews of policies and procedures. Dowdell stated that the report to the staff should include the steps the adviser has taken



to “fix” the problem and, if applicable, reimburse investors. According to Dowdell, advisers that self-report are looked at more favorably for purposes of risk-assessments and foster a “good relationship of trust” with the staff. Industry panelists added that it is not always a clear decision to self-report and that advisers should consult counsel.

In his closing remarks, the Director of the SEC’s examination program, **Drew Bowden**, emphasized that the SEC is “not targeting compliance officers” and that the staff does not consider the examinations as a “gotcha exercise.” Bowden added that he views CCOs as “partners” in the staff’s efforts to improve compliance in the industry.

The presentation materials and handouts from the SEC’s program are available at <http://www.sec.gov/info/cco/cccons2014.htm>. Please contact a member of the IAA legal team with any questions. ■

## Form PF Developments

The SEC recently addressed Form PF in two arenas: the SEC staff updated its FAQs and SEC Chair Mary Jo White testified about Form PF before a congressional committee.

### Updated FAQs

On February 12, the SEC's Division of Investment Management updated the Form PF Frequently Asked Questions (FAQs) to provide additional guidance to SEC-registered advisers fulfilling their periodic reporting requirements on Form PF.

The updated FAQs addressed the following matters:

- Classification of a **private equity fund** for reporting purposes. (Section D.1)
- **Aggregation** and the reporting of **parallel managed accounts**. (Section E.2)
- A clarification of **Instruction 7** on whether filers should report if they include or disregard the reporting of **fund investments in other private funds**. (Section F.5)
- **Question 7** and whether to report

certain information regarding the value of the **reporting fund's borrowings** for qualifying hedge funds. (Section 12.3)

- Reporting the aggregate value of all outstanding **derivative positions** for qualifying hedge funds for **Questions 13 and 44**. (Section 13.2)
- Whether **assets and liabilities that are not reported at fair value** and therefore are not reflected in the fair value hierarchy, such as certain receivables and payables, should be included in the cost-based column in **Question 14**. (Section 14.2)
- Whether **cash and cash equivalents** should be included when providing a summary of a reporting fund's assets and liabilities in **Question 14**. (Section 14.3)
- Whether responses to the **"% of NAV" column in Question 20** should add up to more than 100%. (Section 20.1)
- Whether filers should report the value of a reporting fund's **Reverse Repos** as the Short Value in the "Repo" sub-asset class in **Questions 26 and 30**. (Section 26.5)
- For qualifying hedge funds, reporting the aggregate dollar amount

of **borrowings and cash financing** available in **Questions 46(a) and 43**. (Section 46.2)

Filers should periodically review the FAQs for the latest guidance on Form PF. The FAQs are available at: <http://www.sec.gov/divisions/investment/pfrd/pfrd-faq.shtml>.

### Chair White Provides a Report on Form PF during Congressional Testimony

SEC Chair White's testimony before the Senate Banking Committee on February 6 included a report on the progress of Form PF data gathering. In written testimony, Chair White noted that the Commission first received a full complement of Form PF filings last year due to the staggering of filing dates. To date, approximately 2,400 investment advisers have filed reports on approximately 7,000 hedge funds, 66 liquidity funds, and 6,000 private equity funds. Chair White noted that the protection of Form PF data is subject to enhanced confidentiality provisions established

*Continued on page 12*



## IN THE KNOW *Raising Awareness of the IAA*

The IAA invites members to request copies of a new brochure to share with other investment advisory professionals. The 8-page **"Welcome to the IAA"** provides a brief overview of the Association and highlights the variety of resources available to members. The brochure was developed as part of an ongoing effort to



raise awareness of the IAA with SEC-registered firms and gives members a practical tool to explain the benefits for a firm to join the Association. The brochure is available online and accompanies the printed newsletter.

A growing membership further strengthens the IAA's advocacy efforts

and allows the Association to expand its services to members. One of the most effective means for growth is through the personal referrals by members with their peers in the industry. The brochure is a convenient "leave behind" piece that reinforces membership value and return on investment. Contact Alex Aderton, Director of Membership and Marketing, to obtain any number of copies of the brochure. ■

**IAA ANNUAL LEADERSHIP CONFERENCE**  
 2014  
 PALM BEACH, FL • MAY 7-9, 2014  
*Moving Forward*



The Investment Adviser Association is hosting its **2014 Annual Leadership Conference in Palm Beach, Florida, May 7-9.** Join executives from a variety of investment advisory firms for a special opportunity to advance your firm and develop valued relationships.

**Strategic Focus**

Experience high-level sessions that will broaden your thinking and help you position your company for success. Learn about emerging global and domestic trends, gain insights from thought leaders about how to foster high-performing teams, and share ideas with peers from investment advisory firms similar to yours.

- Hear from business experts and industry thought leaders
- Acquire fresh perspectives from peers on shared concerns
- Learn about emerging economic and investment issues
- Benchmark your firm and shape your business strategy
- Discuss your business challenges and gain new ideas

- Understand developments and impacts of federal policy changes
- Position your company and your employees for growth

**Executive Participants**

Attendees include IAA Members and IAA Associate Members. Non-member senior staff with SEC-registered investment advisory firms also are invited to register.\*

- Chief Executive Officers and Presidents
- Firm Partners and Owners
- Managing Directors
- Vice Presidents and Senior Staff
- Chief Financial Officers
- Chief Operating Officers
- Chief Legal Officers
- Chief Investment Officers

**Conference Registration**

Get more conference details and register at: [www.investmentadviser.org](http://www.investmentadviser.org) >> Events

	IAA Member	IAA Associate Member	Spouse/Guest of Attendee
Regular Rate (Register on or after March 1)	\$1,295	\$1,695	\$395

See the conference web page for additional registration options, event rates and cancellation policies.

\*Not an IAA Member? Senior staff with SEC-registered investment advisory firms are invited to attend the conference. Choose the special "RIA" rate when registering.

## Treasury's Office of Financial Research Asset Management Report Criticized

At two recent Congressional hearings, the Director of the Treasury Department's Office of Financial Research (OFR), **Richard Berner**, faced questions and criticisms relating to the quality of OFR's Asset Management and Financial Stability Report released last fall. Some of the prominent areas of focus included:

- The absence of adequately solicited input of experiences and perspectives from the asset management industry. Committee members noted disapprovingly that those who had participated in meetings with OFR felt that there was little effective two-way communication.
- The perceived poor working relationship with the SEC, as demonstrated by the SEC's decision to make the report available for comment. Members claimed these actions illustrated the SEC's view that sufficient industry input was missing from the development of the report.
- OFR's data gathering and methodological limitations evidenced an apparent OFR failure to obtain data directly from asset management firms and OFR's lack of robust information-sharing mechanisms with other agencies.
- The OFR report's failure to grasp certain fundamental dynamics of the asset management industry might lead to a flawed justification for labeling asset managers and



their managed funds as "systemically important."

Committee members remained unsatisfied by Berner's responses to their questions regarding the report and its possible use by the Financial Stability Oversight Council (FSOC) to designate some of the principal participants in the asset management industry as non-bank systemically important financial institutions (SIFIs).

Some of these unanswered questions include:

- Why systemic risk would result from malfeasance or incompetence on the part of asset managers since investors and clients can easily shift their investments from one manager or fund to another?
- Why the asset management industry as a whole could pose a systemic risk for engaging in activities such as "herding" when the very nature of the industry includes certain firms taking positions opposite of other firms, such as through hedging and short-selling, which actually contributes to liquidity, stability, and diversity?
- Why the activities discussed in the report could not be effectively handled through additional industry-wide regulation by existing regulators, as opposed to the firm-specific prudential regulation that would flow from a SIFI designation?
- What the purpose of the OFR report had been since Berner's own argu-

ments note that the report's focus failed to contribute to the FSOC's mission of identifying systemically important entities that could benefit from prudential regulation?

The hearings also discussed OFR's annual report, as well as broader issues surrounding OFR's risk prioritization, process, and efforts at improving data standards. Nevertheless, the quality of the asset management report was a prominent area of focus. Significant congressional concern remained regarding the OFR report's content and conclusions, as well as what it signifies about OFR's progress as an organization in terms of its data gathering and analytic capabilities.

See *The Annual Report and Oversight of the Office of Financial Research: Hearing Before the Subcommittee on Economic Policy of the Committee on Banking, Housing and Urban Affairs of the United States Senate*, 113th Congress (Jan. 29, 2014), available at [http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=a94d96f9-cd80-45dc-b271-d4d730cb8c19](http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=a94d96f9-cd80-45dc-b271-d4d730cb8c19); see *The Annual Report of the Office of Financial Research: Hearing Before Oversight and Investigations Subcommittee of the Committee on Financial Services of the House of Representatives*, 113th Congress (Feb. 5, 2014), available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=368194>. ■

### *Regulators Heighten Focus on Cybersecurity—continued from front cover*

security. Part of Chair White's testimony concentrated on the SEC's efforts to protect customer data, including the SEC staff's discussions of cyber threats to the financial sector. In response to a question about the impact of the SEC's budget constraints, Chair White emphasized that data security remains a priority. She noted that despite the challenges, the SEC is devoting resources to its examination and enforcement programs that are directed at data security. *See Oversight of Financial Stability and Data Security, Before the United States Senate Committee on Banking, Housing, and Urban Affairs, Testimony of Mary Jo White, Chair (Feb. 6, 2014)*, available at <http://www.sec.gov/News/Testimony/Detail/Testimony/1370540757488#.UwPX6yso6id>. The archived hearing is available at [http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_ID=8a669045-f9b9-4c7e-b1df-1bb08e694e90](http://www.banking.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=8a669045-f9b9-4c7e-b1df-1bb08e694e90).

On February 14, the SEC announced that it will host a **roundtable** on March 26 to discuss cybersecurity issues and challenges for market participants, including addressing those concerns and disclosing cybersecurity threats and incidents. The roundtable will be held at the SEC's headquarters in Washington, D.C. and will be webcast live on the SEC's website. The agenda and participants will be published in the coming weeks, and information about the roundtable is available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540793626#.UwQUss06ic>.

**The White House.** A 2013 Presidential Executive Order called for the development of a voluntary risk-based set of industry standards and best practices



to help organizations manage cybersecurity risks. On February 12, the National Institute of Standards and Technology published the resulting "Framework for Improving Critical Infrastructure Cybersecurity." The Framework aims to enable firms to apply risk management principles and best practices to address and manage cybersecurity risk based on business needs without imposing additional regulatory requirements. The NIST Framework is available at <http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214-final.pdf>.

**FINRA.** In other related news, in January the Financial Industry Regulatory Authority (FINRA) announced that it is conducting an assessment of firms' approaches to managing cyber-security threats. FINRA's focus is consistent with the SEC's National Examination Program published priorities for 2014. According to the SEC's list, one of the "core risks" that are specific to registered broker-dealers that the SEC staff will focus on is cybersecurity. According to FINRA, it is conducting this assessment "in light of the critical role information technology (IT) plays in the securities industry, the increasing threat to firms' IT systems from a variety of sources, and the potential harm to investors, firms, and the financial system as a whole that these threats pose." FINRA's goals in performing this assessment are to:

- Understand better the types of threats that firms face;
- Increase its understanding of firms' risk appetite, exposure and major areas of vulnerabilities in their IT systems;

- Understand better firms' approaches to managing these threats, including through risk assessment processes, IT protocols, application management practices and supervision; and
- Share observations and findings with firms, as appropriate.

The assessment will address a number of areas related to cybersecurity, including firms':

- Approaches to information technology risk assessment;
- Business continuity plans in case of a cyber-attack;
- Organizational structures and reporting lines;
- Processes for sharing and obtaining information about cybersecurity threats;
- Understanding of concerns and threats faced by the industry;
- Assessment of the impact of cyber-attacks on the firm over the past twelve months;
- Approaches to handling distributed denial of service attacks;
- Training programs;
- Insurance coverage for cybersecurity-related events; and
- Contractual arrangements with third-party service providers.

FINRA's announcement is available at <http://www.finra.org/Industry/Regulation/Guidance/TargetedExaminationLetters/P443219>.

As part of its 2014 webinar series, the IAA will hold a webinar on Cybersecurity for Investment Advisers on Wednesday, **April 30** from 1:00-2:15 pm ET. Additional information will follow.

Please contact a member of the IAA legal team with any questions on these matters. ■

## *NFA Seeks Comments on Potential Capital Requirement for CPOs/CTAs and Other Customer Protection Measures*

On January 23, the National Futures Association (NFA) issued a Notice to Members requesting comments regarding a potential capital requirement for NFA members that are commodity pool operators (CPOs) and/or commodity trading advisors (CTAs). NFA also is seeking feedback concerning whether to impose certain other customer protection measures on CPOs.

NFA's request follows 26 "Member Responsibility Actions" that NFA primarily issued to CPO and CTA members over the past three years involving misuse of customer funds, misstatement of net asset values, and misstatement of performance information. NFA stated that it is looking at ways to strengthen the regulatory structure governing CPO operations to provide greater protec-



tion for customer funds. Additionally, NFA is exploring ways to ensure that CPOs and CTAs have sufficient assets to operate as going concerns.

In its request, NFA seeks input on whether it should impose a minimum capital requirement on CPO or CTA members; if so, how to calculate and determine the required amount; and alternatives for ensuring that CPOs/CTAs have sufficient funds to operate as going concerns.

According to the notice, NFA also is considering the following areas to provide greater protection for customer funds: (1) independent third party au-

thorization for disbursements of pool funds; (2) independent third party preparation of NAV valuation and monthly or quarterly statements; (3) independent third party preparation of performance results; (4) independent third party verification of pool assets; and (5) whether it is appropriate for inactive CPOs and CTAs, of which there are hundreds, to remain NFA members.

Comments on the request for data must be submitted by April 15. If you would like to participate in the IAA's comment letter, please join the IAA's CFTC Working Group. The text of the request for comments is available at <https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377>. ■

## *SEC Releases Draft Strategic Plan for 2014-2018*

### *Plan Focus includes Analysis of Investment Adviser and Broker-Dealer Regulatory Requirements*

On February 3, the SEC released a draft of its Strategic Plan for 2014-18, pursuant to the Government Performance and Results Modernization Act of 2010. The document states the agency's Mission, Vision, Values, and Resources. It then identifies four overall strategic goals: the establishment and maintenance of an effective regulatory environment, detecting and deterring violations of the federal securities laws, increasing investors' access to information, and enhancing performance by more effective management of human information and financial capital.

As part of its first objective, the



document states that the SEC will "continue to analyze whether the different regulatory obligations that apply to broker-dealers and investment advisers providing personalized investment advice should be changed for the protection of investors." The draft also includes an initiative to "[m]odernize the regulatory treatment and valuation of certain portfolio holdings of registered investment companies," including the treatment of derivatives held by mutual funds, exchange-traded funds, and other investment companies. Two other initiatives outlined as part of the first objective include strengthening oversight of registered municipal

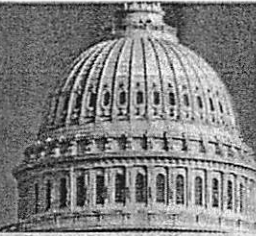
advisors and increased monitoring of disclosures related to asset-backed securities. Further, the SEC said it plans to implement "many of the recommendations highlighted in the July 2012 Report on the Municipal Securities Market" through joint initiatives with FINRA and MSRB "to enhance the market structure for fixed income securities," with a focus on facilitating liquidity and best execution.

Also part of the SEC's first objective is enhancing the transparency and fairness of capital markets by reviewing algorithmic and automated trading, enhancing post-trade transparency of dark pools, reducing reliance on credit rating agencies, enhancing oversight

*Continued on page 13*

## UPCOMING COMPLIANCE DATES

The following selected compliance dates are listed as a reminder for *IAA Newsletter* readers. If you have questions or need more information about any of the dates, please contact the IAA legal staff.



**March 3:** Large hedge fund advisers (with at least \$1.5 billion RAUM attributable to hedge funds) must *file Form PF* for the quarter ended December 31.\*

**March 3:** Large CPOs with between \$1.5 billion and \$5 billion AUM in commodity pools (as of the last day of the fiscal quarter most recently completed prior to December 15) must *file Form CPO-PQR* for the quarter ended December 31 (60 days after December 31).\*

**March 3:** NFA-member CPOs must *file NFA Form PQR* (or file CFTC Form CPO-PQR if a "large filer") for the quarter ended December 31. Mid-size CPOs that file CFTC Form CPO-PQR (Schedules A and B) by March 31 will satisfy this requirement. Small CPOs that file CFTC Form CPO-PQR (Schedule A plus Schedule of Investments) by March 31 will satisfy this requirement. Form PF filers that file CFTC Form CPO-PQR (Schedule A plus Schedule of Investments) by March 1 or March 30, depending on AUM, will satisfy this requirement.

**March 3:** A CPO that claims an exemption or exclusion under CFTC Regulation 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), or 4.13(a)(5) or a CTA that claims an exemption under 4.14(a)(8) must *reaffirm* the applicable notice of exemption through NFAs Electronic Exemption System (60 days after the end of the calendar year).

**March 31:** Calendar-year-filers' (including exempt reporting advisers') deadline to file an "annual updating amendment" to *Form ADV* which includes state notice filings and amendments to Form ADV, Part 2, if any (90 days after the end of the fiscal year).

**March 31:** All other CPOs must *file Form CPO-PQR* (90 days after December 31).\*

**March 31:** CPOs must file with the NFA and distribute an *Annual Report*, certified by an independent public accountant, to each participant in each pool it operates (90 days after the end of the pool's fiscal year). CPOs can submit a request for extension for a fund-of-funds.

**April 10:** If needed, *file an amended Form 13H* to reflect changes made during the first calendar quarter (promptly after the end of the quarter).

**April 15:** Large liquidity fund advisers (with at least \$1 billion RAUM attributable to liquidity funds and registered money market funds) must *file Form PF* for the quarter ended March 31.\*

**April 25:** Financial institutions must register on the IRS's new FATCA Registration Portal.

**April 30:** Private equity fund advisers and smaller private fund advisers must *file Form PF* for the year ended December 31.\*

**April 30:** Calendar-year-filers' deadline for delivering to clients a current *brochure* with a summary of material changes or a summary of material changes with an offer to provide the brochure (120 days after the end of the fiscal year).

**May 15:** Institutional investment managers that exercise investment discretion over \$100 million or more in Section 13(f) securities must *file Form 13F* (45 days after the quarter ended March 31).

**May 15:** NFA-member CTAs must *file NFA Form PR* for the quarter ended March 31.

**May 30:** Large hedge fund advisers (with at least \$1.5 billion RAUM attributable to hedge funds) must *file Form PF* for the quarter ended March 31.\*

**May 30:** Large CPOs must *file Form CPO-PQR* for the quarter ended March 31.

**May 30:** NFA-member CPOs must *file NFA Form PQR* (or file CFTC Form CPO-PQR if a "large filer") for the quarter ended March 31.

\*This deadline applies to advisers with a December 31 fiscal year-end. ■

## House Committee Challenges Regulators on Volcker Rule Implementation

On February 5, the House Financial Services Committee heard from the heads of five financial regulators on implementing the Volcker Rule—the Fed, OCC, FDIC, CFTC, and SEC. Some Committee members seemed in search of a **collaborative framework** adequate to address all of the implementation, interpretative, and enforcement issues relating to the Volcker Rule. The regulators responded that they have formed an **interagency working group** to achieve exactly that purpose. Some committee members observed the absence of structured leadership among regulators and questioned whether structural changes might help compensate for any inherent jurisdictional confusion that can arise as multiple entities and activities separately interpret the same extensive regulatory mandates.

The three banking regulators touted their established experience of interagency cooperation that could serve as a template for the working group. Committee members were skeptical whether that template based on prudential banking regulation and flexibility would work effectively with the more rules-based approach of the market regulators, such as the SEC and CFTC. These differences can complicate a simplistic overlay of a typical banking regulatory approach.

Committee members urged that the

regulatory processes for providing **interpretative guidance** be more formalized and that such guidance be publicly available. The Committee members acknowledged that the regulators face compliance challenges in integrating data regarding the activities of regulated entities across the agencies and suggested consideration of a centralized platform for information sharing, housed perhaps at the Department of Treasury's Office of Financial Research.

Members of Congress criticized the regulators' failure to include a formal **cost-benefit analysis** with the final rule adoption and the regulators' decision to omit a re-proposal of the rule as the terms of the rule became clearer. While the SEC was not formally obligated to prepare an official cost-benefit analysis as part of the collaborative rulemaking process, Chair **White** was grilled about departing from former Chair **Mary Schapiro's** agency practice of preparing a cost-benefit analysis for new rules. White countered that cost benefit considerations were interwoven throughout the rule, as the regulators incorporated the comments received during the rule proposal process in ways that minimized some of the identified costs. Committee members' criticism of failure to **re-propose the rule** pointed to the subsequent interim final rule providing relief for forced sales of collateralized debt ob-

ligations backed by trust protected securities (CDO TruPS) and similar issues regarding collateralized loan obligations (CLOs). According to some committee members, those remedial steps could have been avoided if community banks and other stakeholders could have identified such problems ahead of time.

Committee members addressed the global and interconnected nature of the **international financial markets** and expressed concern that the Volcker Rule might place the U.S. at a competitive disadvantage compared to other countries that choose not to adopt strict rules on proprietary trading and covered funds. The regulators responded that opportunities for regulatory arbitrage may exist since no other jurisdiction has adopted a carbon copy of the Volcker Rule, but the regulators had identified and eliminated certain elements in the final rule that might have hindered U.S. international competitiveness.

See *The Impact of the Volcker Rule on Job Creators, Part II: Hearing Before the Committee on Financial Services of the House of Representatives, 113th Congress (Feb. 5 2014)*, available at <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=368193>. Contact the IAA legal team with any questions or comments. ■

### Form PF Developments—continued from page 6

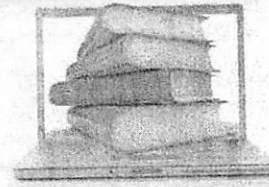
under the Dodd-Frank Act, and as a result (1) the filings are made on a secure filing system that encrypts data; and (2) Commission staff has designed and implemented controls for the handling of Form PF data across the agency. Chair White emphasized both the importance

of data protection, as well as the critical role that the information collected via Form PF plays, observing that the SEC staff "uses the data in connection with the Commission's regulatory mission, including in examinations, investigations and investor protection

efforts," and serves as a "helpful supplement to the staff's overall efforts to enhance monitoring of the investment advisory industry to identify trends and emerging risks." ■

## 2014 IAA Webinar Series

The 2014 IAA Webinar Series is about to begin. Save the dates for these important legal, regulatory, and compliance topics for investment advisers. **Online registration will open soon.**



### Volcker Rule

April 10, 2014, 1:30-3:00 pm (ET)

*Presenters:*

- Kevin Petrasic, Partner, Paul Hastings LLP
- Victor R. Siclari, Senior Managing Counsel & Managing Director, BNY Mellon
- Brian Johnson, SEC
- Paul Glenn, Special Counsel, IAA (Moderator)

### Custody Rule

May 14, 2014, 1:00-2:15 pm (ET)

*Presenters:*

- Mari-Anne Pisarri, Partner, Pickard & Djinis LLP
- David Vaughan, Partner, Dechert LLP
- Karen Barr, General Counsel, IAA (Moderator)

### Cybersecurity for Investment Advisers

April 30, 2014, 1:00-2:15 pm (ET)

*Presenters:*

- John R. ("Jack") Hewitt, Director, Gibbons P.C.
- Laura L. Grossman, Assistant General Counsel, IAA (Moderator)

### Other Upcoming Webinars

- SEC Examinations
- International Treasury Reporting

**?** Questions? For questions regarding the 2014 Webinar Series, email [IAAEvents@investmentadviser.org](mailto:IAAEvents@investmentadviser.org) or call (202) 293-4222.

### SEC Releases Draft Strategic Plan for 2014-2018—continued from page 10

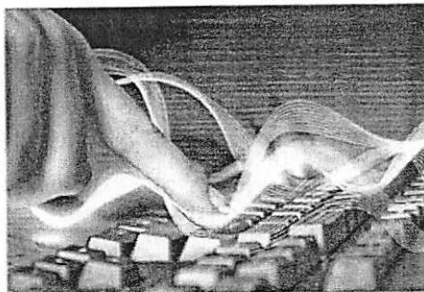
of derivatives, and considering new amendments to money market fund reforms (which would be designed to mitigate the likelihood of runs and facilitate shareholder redemptions during times of market stress).

The draft plan also outlines several specific performance metrics the SEC will use to gauge the progress of its second strategic goal (to promptly detect and deter violations of federal securities laws): (1) the percentage of investment advisers, investment companies, and broker-dealers examined annually, (2) the percentage of compliance exams concluded timely, according to OCIE's deadlines, and (3) the number of joint exams, information sharing, and meetings the SEC has with other regulators.

As part of its third objective of increasing investor access to information, the SEC aims to collect "investor focused data from a variety of sources" to target problematic sales practices, investment advisers, and brokers. The SEC plans to assess its progress towards achieving high-quality disclo-

sure to investors through a metric of comparing the percentage of disclosures made by public companies and investment companies that are reviewed annually.

*Planning for the Future*, the SEC Draft Strategic Plan 2014-2018, is available at <http://www.sec.gov/about/sec-strategic-plan-2014-2018-draft.pdf>. If you have questions or feedback, contact the IAA legal team. Comments to the SEC on the Strategic Plan can be directed to [performanceplanning@sec.gov](mailto:performanceplanning@sec.gov) and must be submitted by March 10. ■



## Regulatory Proposals

*Regulatory Proposals Open for Comment (as of March 3, 2014)*

The IAA intends to or is considering whether to file a comment letter regarding the regulatory proposals reflected in the following chart. If you have any questions or feedback about a regulatory proposal or potential IAA comments regarding a proposal, please contact the

member of the IAA legal staff listed below. This chart reflects only certain formally pending regulatory proposals. For a complete list of comment letters filed by the IAA, see the Comments & Statements section of our website.

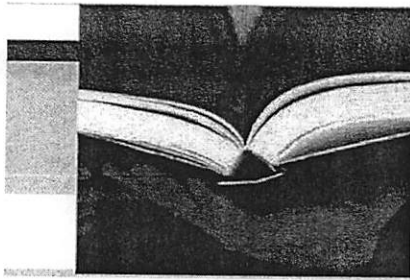
Regulatory Proposal	IAA Attorney Contact	Filing Deadline
<p><b>Canadian Regulators Propose Amendments to Sub-Adviser Regulations</b></p> <p>On December 5, the Canadian Securities Administrators (CSA) proposed for comment amendments to National Instrument (NI) 31-103. The significant changes relevant to investment advisers would be: (1) a new sub-adviser exemption; (2) relief from certain client obligations for registered sub-advisers under certain conditions; (3) a prohibition on a registered entity relying on an otherwise available exemption under certain circumstances; and (4) the removal of Canadian residency and incorporation requirements for the types of clients that international advisers are permitted to advise without registering pursuant to the international adviser exemption. Please see pages 20-21 of the February IAA Newsletter for more details. A copy of the proposed amendments is available at <a href="https://www.osc.gov.on.ca/en/SecuritiesLaw/ni_20131205_31-103_proposed-amendments.htm">https://www.osc.gov.on.ca/en/SecuritiesLaw/ni_20131205_31-103_proposed-amendments.htm</a>.</p>	<p>Paul Glenn <a href="mailto:paul.glenn@investmentadviser.org">paul.glenn@investmentadviser.org</a></p>	<p>March 5, 2014</p>
<p><b>CFTC Seeks Comments on Applying Cross-Border Requirements to Activity in the U.S.</b></p> <p>On January 3, the Commodity Futures Trading Commission (CFTC) requested comment on a November 14, 2013 staff advisory. The advisory addressed the applicability of transaction level requirements to transactions between CFTC-registered non-U.S. swap dealers (affiliated with a U.S. person or not) and non-U.S. persons, where the swaps are "regularly arranged, negotiated, or executed" by personnel located in the United States. The staff stated that certain requirements should apply to such dealers, even though both counterparties are located outside of the U.S. The advisory also proposed disallowing substituted compliance with a comparable foreign jurisdiction. The staff extended no-action relief until September 15, 2014. The CFTC is requesting comment on whether to adopt the November advisory as CFTC policy or to instead consider alternative approaches. The request for comment is available at <a href="http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2014-00080">http://www.cftc.gov/LawRegulation/FederalRegister/ProposedRules/2014-00080</a>.</p>	<p>Sanjay Lamba <a href="mailto:sanjay.lamba@investmentadviser.org">sanjay.lamba@investmentadviser.org</a></p>	<p>March 10, 2014</p>

MARCH 2014  
Confidential Treatment Requested

14  
IAA - 00001925

IAA NEWSLETTER

Regulatory Proposal	IAA Attorney Contact	Filing Deadline
<p><b>FSB and IOSCO Propose Methodologies to Assess Non-Bank Global SIFs</b></p> <p>On January 8, the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) proposed a framework for assessing whether non-banks should be considered global systemically important financial institutions (SIFIs), and requested comments on their proposal. The report proposes a materiality standard for investment funds of \$100 billion in AUM and an alternative threshold for hedge funds of \$400 to \$600 billion in gross notional exposure. The report also questions whether their proposed methodology should be broadened to include potentially systemically important asset managers, either on a stand-alone basis or along with their funds. The FSB/IOSCO report is available at <a href="http://www.financialstabilityboard.org/publications/r_140108.htm">http://www.financialstabilityboard.org/publications/r_140108.htm</a>.</p>	<p>Laura Grossman  <a href="mailto:laura.grossman@investmentadviser.org">laura.grossman@investmentadviser.org</a></p>	<p>April 7, 2014</p>
<p><b>NFA Seeks Comments on Potential Capital Requirement and Other Customer Protection Measures for CPOs/CTAs</b></p> <p>On January 23, the National Futures Association (NFA) issued a Notice to Members requesting comments on a proposed capital requirement for NFA members that are commodity pool operators (CPOs) and/or commodity trading advisors (CTAs). The NFA also is seeking feedback on whether to impose certain other customer protection measures on CPOs. The request follows 26 NFA-issued "Member Responsibility Actions" primarily involving CPO and CTA members over the past three years that misused customer funds, misstated NAVs, or misstated performance results. In its request, the NFA seeks input on whether it should impose a minimum capital requirement on CPO or CTA members; if so, how to calculate and determine the required amount; and alternatives for ensuring that CPOs/CTAs have sufficient funds to operate as going concerns. The NFA also is considering other areas to provide greater protection for customer funds, including independent third party authorization for disbursements of pool funds and independent preparation of NAV valuation and performance results. A copy of the request is available at <a href="https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377">https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4377</a>.</p>	<p>Laura Grossman  <a href="mailto:laura.grossman@investmentadviser.org">laura.grossman@investmentadviser.org</a></p>	<p>April 15, 2014</p>



## Compliance Corner

### The SEC's Never-Before Examined Initiative: Are You Ready?

By K. Susan Grafton, Partner, K&L Gates LLP\*

On January 9, 2014, the Securities and Exchange Commission's (the "SEC's") Office of Compliance Inspections and Examinations ("OCIE") published its 2014 National Exam Program ("NEP") priorities, available at <http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2014.pdf>, which included never-before examined investment advisers. Subsequently, on February 20, 2014, OCIE announced details regarding its initiative to conduct risk-based and focused examinations of these advisers (the "NBE Initiative"), available at <http://www.sec.gov/about/offices/ocie/nbe-final-letter-022014.pdf>. The NBE Initiative is separate from OCIE's "Presence Exam" initiative, which is directed at private fund advisers that were required to register following the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The NBE Initiative will particularly focus on advisers that have been registered three or more years without being subject to an exam. In a letter sent to registered investment advisers that the SEC has identified as having never been examined, Jane Jarcho, the National Associate Director IAIC Examinations, explained that the NBE Initiative will include (1) risk assessment exams and (2) focused reviews.

#### Risk Assessment Exams

Risk assessment exams are intended to provide the SEC staff with a better understanding of registrants. These types of examinations will consist of high level reviews of an adviser's compliance program and other essential documents so that the examiners can assess the representations made in the adviser's disclosure documents.

#### Focused Reviews

Focused reviews will involve more comprehensive, risk-based examinations of areas identified by the exam staff as posing higher risks for the adviser's business and operations. The five higher risk areas OCIE identified are:

##### 1. The Adviser's Compliance Program

Rule 206(4)-7 under the Investment Advisers Act of 1940, as amended (the "Advisers Act") requires registered investment advisers to adopt and implement written policies and procedures that are reasonably designed to prevent, detect, and promptly address any violations of the Advisers Act by the adviser and any of its "supervised persons," as defined in section 202(a)(25) of the Advisers Act. Rule 206(4)-7 also requires investment advisers to undertake an annual review to determine the

adequacy and effectiveness of their procedures in light of internal and external developments affecting the firm.

OCIE's examiners are expected to evaluate the effectiveness of the adviser's compliance program, including reviewing whether conflicts of interest and compliance-related risks are properly identified, mitigated, and disclosed. Examiners will also review whether a competent Chief Compliance Officer ("CCO") has been empowered to administer the compliance program, as the SEC has said is required by Rule 206(4)-7.

##### 2. Filings and Disclosures

As fiduciaries, investment advisers have duties of care and loyalty to their clients, which require disclosure of all material facts regarding conflicts of interest. This obligation is intended to allow clients and potential clients to make informed decisions before entering into or continuing a relationship with an adviser. OCIE has identified certain conflicts of interest that may be inherent in investment advisory business models, including:

- Compensation arrangements, particularly undisclosed compensation arrangements and their effect on recommendations;
- The allocation of investment opportunities;

*Continued on page 17*

- Controls and disclosure associated with side-by-side management of performance-based and purely asset-based fee accounts;
- Risk controls and disclosures; and
- Higher risk products or strategies targeted to retail investors.

Examiners are also likely to review an adviser's filings, marketing materials, and other disclosure documents for the content, accuracy, and completeness of disclosures, particularly regarding the full scope of the adviser's business, investment activities, and conflicts of interest.

### 3. Marketing

OCIE identified marketing and performance advertising as a 2014 exam priority generally for investment advisers, and specifically as part of the NBE Initiative. During focused reviews, examiners are expected to evaluate the accuracy and completeness of the adviser's claims about their business, investment objectives, and performance record.

Among other things, OCIE will likely review and test hypothetical and back-tested performance, the use and disclosure of composite performance figures, and performance record keeping. Examiners are also likely to review the adviser's compliance oversight of its marketing activities and, if applicable, marketing efforts related to securities offered and sold pursuant to exemptions afforded by the Jumpstart Our Business Startups (JOBS) Act.

### 4. Portfolio Management

OCIE has noted that examiners will review and evaluate the portfolio decision-making practices of the adviser, including the allocation of investment opportunities and whether the adviser's practices are consistent with its disclosures to clients.

### 5. Safety of Client Assets

During focused reviews, OCIE is expected to utilize a risk-based asset verification process to confirm the existence of assets, and test for the adviser's compliance with the Custody Rule, Rule 206(4)-2 under the Advisers Act, and other provisions designed to prevent the loss or theft of client assets. OCIE's March 2013 Risk Alert, available at <http://www.sec.gov/about/offices/ocie/custody-risk-alert.pdf>, discusses some of the most common Custody Rule violations that examiners have identified.

#### *Using the Risk Assessment Program to Prepare for Exams*

As noted above, Rule 206(4)-7(b) requires an adviser to undertake a review of the adequacy and effectiveness of its compliance program at least annually, or more often if appropriate due to internal and external developments. An adviser's risk assessment program can provide a useful tool for preparing for risk assessment and focused reviews.

#### *Step One: Establish the Review Protocol*

##### 1. Identify Responsible Personnel

The size and complexity of an investment adviser and its business will inform who should conduct the review. Smaller firms may well determine that it is appropriate for the compliance department, under the direction of the CCO, to conduct the review. Larger advisers may find it beneficial to establish a standing risk committee that is responsible for directing the performance of the annual review and for meeting periodically to consider and address business, compliance, operational, financial, and reputational risks. If the adviser has never-before been examined, significant compliance issues have been identified, or significant

changes in the adviser's organization or activities have occurred, it may be appropriate for the adviser to have the review conducted under the direction of outside counsel.

##### 2. Gather Relevant Documents

To prepare for the review, the responsible personnel will want to compile a file of relevant information, such as:

- The current Form ADV, brochure, and policies and procedures, including its Code of Ethics;
- The last annual review, including any planned remediation;
- Communications with the SEC;
- Employee or client complaints;
- Internal reports or documentation relating to a compliance event and its resolution;
- Relevant supervisory or compliance logs, deficiency reports, or similar other documentation;
- Management reports;
- A checklist of relevant legal or regulatory developments that are required to be reflected in the adviser's policies and procedures;
- Copies of current disclosures and marketing materials; and
- Negative news articles or publicity.

##### 3. Determine Who Should Be Interviewed

A list of personnel to be interviewed should be developed. The list should not be limited to compliance professionals, but should include relevant business, operations, technology, and financial personnel who are knowledgeable about changes in the adviser's activities as well as events that should be factored into the review. Business personnel should include portfolio managers, investment committee members, trading personnel, and research analysts.

*Continued on page 18*

### Identifying Risks and Conducting the Review

Advisers should use the annual review to test the effectiveness of its compliance policies and procedures since the last review, consider internal and external developments over the past year, evaluate the compliance risks that they pose for the adviser, and confirm the implementation of appropriate controls for managing and mitigating these risks. See, e.g., the SEC staff's "Risk Inventory Guide," available at [http://www.sec.gov/info/cco/red\\_flag\\_legend\\_2007.pdf](http://www.sec.gov/info/cco/red_flag_legend_2007.pdf), which identifies 12 of the risks that investment advisers typically experience as part of their day-to-day operations. New developments that advisers will want to consider are:

#### 1. Organizational and Personnel Changes

An investment adviser should regularly confirm that it has addressed organizational and personnel changes, if needed. Among other things, an adviser will want to review its Form ADV, organizational chart, and policies and procedures to ensure that new ownership or affiliate relationships and key personnel changes are reflected, and that any gaps in management or supervision resulting from new business lines or employee departures are addressed. Disclosures should be reviewed and revised as necessary to reflect any additional conflicts of interest as a result of organizational and personnel changes.

#### 2. Changes in Business Activities or Clients

The review should consider whether the adviser needs to update its disclosures, policies, or internal controls to address conflicts of interest, or compliance and other risks arising from changes in its activities—or its affiliates' activities—or changes in its clients or

their circumstances. Care should be taken to be sure that any new strategies or activities are consistent with stated objectives or restrictions, and any inconsistencies should be reconciled promptly. New developments that may need to be reflected include new lines of business and products, new compensation practices, changes in executing brokers, new soft dollar practices, new types of clients, and changes in client and counterparty ownership or credit risks.

#### 3. Operational and Financial Issues

The adequacy of the adviser's operational systems, infrastructure, and financial controls should be reviewed and tested at least annually to make sure that they remain effective and keep pace with overall developments. Among other things, the adviser may wish to:

- Test information security and privacy controls;
- Review whether any restructuring of the trading floor or office moves creates actual or apparent risks of insider trading or misappropriation of client information; and
- Test the performance of execution and order management systems, information systems, and trade allocation systems.

#### 4. Regulatory Developments

The adviser's review should take into account legal and regulatory developments applicable to the adviser's business, confirm that its policies and procedures have been updated to reflect those developments, and verify that appropriate training was provided to relevant personnel. In addition to new rules, the assessment should take into account relevant SEC enforcement cases and private litigation as well as informal SEC guidance, such as staff interpretations, statements about exami-

nation priorities, and commissioners' speeches.

#### 5. Compliance Issues

The risk assessment review should confirm that any compliance issues identified since the last review were addressed, and that all regulatory deadlines were met. Supervisory logs should be checked to determine the resolution of any identified red flags.

#### Post Review Follow-Up

Following completion of the risk assessment review, advisers will need to consider:

##### 1. Documentation

Advisers Act Rule 204-2 requires a registered investment adviser to make and keep records documenting its annual review of policies and procedures conducted pursuant to Rule 206(4)-7(b). Although the adviser will want to create a record of its review and document the remediation of any identified compliance issues, careful consideration should be given to the detail included in the written report because the SEC staff and potentially some clients will request a copy of the report. Accordingly, careful consideration should be given to whether the report should be prepared under the direction of legal counsel, and the final report should be distributed internally only to responsible persons with a need to know. An exit interview can provide a useful forum for discussing any complicated issues identified in the review.

##### 2. Disclosures and Consents

The adviser will want to update any disclosures that are found to be inaccurate or incomplete, including the adviser's Form ADV, marketing materials, and

Continued on page 20



MARCH 6-7, 2014  
CRYSTAL GATEWAY MARRIOTT  
ARLINGTON, VA

LAST  
CHANCE TO  
REGISTER

IAA INVESTMENT ADVISER  
**compliance**  
CONFERENCE/2014

Effective Strategies  
*and* BEST PRACTICES

SPONSOR SUPPORTER ADVENT

**Date and Location:**

March 6-7, 2014  
Crystal Gateway Marriott  
1700 Jefferson Davis Highway  
Arlington, VA 22202  
(703) 920-3230

**Registration:**

Go to [www.investmentadviser.org](http://www.investmentadviser.org) >>  
Events.

**Continuing Education Credit:**

This conference is approved for NRS Investment Adviser Certified Compliance Professional® (IACCP®) continuing education credit. Conference attendance will also be eligible for CLE in certain states. For more information or to request that your state be included, contact Lisa Gillette at [lisa.gillette@investmentadviser.org](mailto:lisa.gillette@investmentadviser.org) or (202) 293-4222.

The IAA invites you to register for the 2014 Investment Adviser Compliance Conference, March 6-7, in Arlington, Virginia.

This comprehensive two-day program will address effective strategies and best practices for maintaining a successful compliance program. The distinguished roster of speakers includes investment adviser professionals, legal experts, and SEC staff. The program also offers an excellent opportunity to connect with peers.

- Privacy/Data Security/Red Flags Rule
- Hot Topics and Capitol Hill Update
- International Issues for Advisers
- Hot Topics in CPO/CTA and Derivatives Regulation
- ERISA 101 for Advisers
- Compliance Break-Out Sessions

**Topics**

- SEC Examinations
- SEC Enforcement Priorities
- Code of Ethics and Personal Trading
- Conflicts of Interest and Disclosures
- Advertising and Social Media
- Custody Rule
- Business Continuity

**Who Should Attend?**

- Chief Compliance Officers
- Compliance Professionals
- General Counsel
- Legal Professionals
- Outside Counsel
- COOs and CFOs
- Marketing Officers
- Advisory Consultants
- Industry Regulators


Conference Fees*	Non-Members	IAA Associate Members	IAA Members
Rate	\$1,599	\$1,399	\$1,199

\* Cancellation policy and related topics are on the IAA website.



Information and Registration: [www.investmentadviser.org](http://www.investmentadviser.org) >> Events

**7th Annual IAA Lobbying Day**  
June 12, 2014 • Washington, D.C.



SAVE  
THE  
DATE!

FINRA is planning to renew its lobbying effort to gain authority over advisers. This makes it all the more critical that you join with other IAA members in speaking up and educating our elected representatives during the 7th Annual IAA Lobbying Day.

Please make plans to attend this important event. Registration and additional information will be available soon. Contact IAA Vice President for Government Relations Neil Simon if you have any questions. ■

*Compliance Corner—continued from page 18*

disclosures of conflicts of interest, fees, or soft dollar practices. Consideration should be given if any client consents are required to be obtained.

### 3. Policies and Procedures

The adviser's compliance policies and procedures should be updated if they are determined to be outdated, incomplete, inaccurate, or insufficient. Prior to discarding any outdated policies and procedures, registered advisers should consider that Advisers Act Rule 204-2 requires advisers to make and keep copies of all policies and procedures that are in effect or were in effect at any time during the last five years.

### 4. Training

As part of the adviser's regular compliance protocol, personnel should routinely receive training in the event of material changes in business, procedures, or operations. If the adviser's procedures are updated as a result of review findings, or if compliance issues are discovered, compliance training should be provided to relevant personnel.

### 5. Mitigation and Self-Reporting

If any deficiencies are uncovered during the review, responsibility for remediation should be assigned, and remedial action should promptly be taken

and documented. If the deficiency is material, the adviser, in consultation with counsel, should determine whether to self-report the issue to the SEC.

*\*K. Susan Grafton is a partner in the Washington, DC and New York offices of K&L Gates LLP. Ms. Grafton may be reached at (202) 778-9498 or [susan.grafton@klgates.com](mailto:susan.grafton@klgates.com). This article is intended to provide general information on the matters discussed herein. It should not be relied upon for legal advice on any matter. ■*



*K. Susan Grafton,  
Partner, K&L Gates  
LLP*

# Legal & Regulatory

## update

### **SEC's Stein Examines U.S. Securities Markets, Their Challenges and Regulators**

On February 5, SEC Commissioner Kara Stein addressed in a speech the tremendous challenges faced by the SEC and other regulators in regulat-



Kara Stein, SEC Commissioner

ing increasingly complex securities markets and making them more efficient. She posed numerous difficult questions, including:

- What steps can be taken to ensure that markets can withstand computer-driven glitches?
- How can the markets be made more fair including in analyzing trade execution?
- Do high frequency traders supply important liquidity to the markets; how do they affect volatility?
- While the exchanges are highly scrutinized at considerable cost, do dark pools (that also bring together buyers and sellers) shoulder their fair share of regulatory burden and expense?

In addressing these issues, Commissioner Stein suggested that the SEC consider whether to initiate a tick size pilot program that would aid in learning what connection there is, if any, between the tick size and the research coverage or market making

of issuers. She also identified that a reappraisal of the role of self-regulatory organizations (SROs) needs to be undertaken, observing that "in a world where trading occurs in hundreds of places, which are for-profit enterprises, the exchanged-based SRO model warrants significant reconsideration." Finally, Commissioner Stein noted that the SEC needs to "better understand and clarify the role of the FINRA, which has taken on more and more regulatory functions." FINRA now runs many critical market surveillance functions, such as monitoring for insider trading and looking for cross-market manipulations. She noted that FINRA's involvement in an increasingly complex market creates new challenges, "including how to effectively oversee a very important, but private regulator" and that the SEC needs to examine interactions among "FINRA and its customers, other market participants, the Commission, and regulators and participants in related markets."

*See Remarks before Trader Forum 2014 Equity Trading Summit, Speech by SEC Commissioner Kara M. Stein, (Feb. 6, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370540761194#UwJV-vld-WVM>.*

### **SEC Staff Provides Guidance on "Knowledgeable Employee" Definition Under Rule 3c-5**

On February 6, the SEC's Division of Investment Management issued guidance in the form of a no-action letter

defining "knowledgeable employee" under Rule 3c-5 of the Investment Company Act in response to an inquiry by the Managed Funds Association. Rule 3c-5 permits a "knowledgeable employee" to invest in a private fund without counting towards the 100-person limit under § 3(c)(1) or being a "qualified purchaser" under § 3(c)(7). Thus, the exemptive status of a private fund could be jeopardized if its investment manager misapplies the knowledgeable employee definition.

Rule 3c-5 divides "knowledgeable employee" into two categories for purposes of exclusion from beneficial ownership determinations: (1) senior management and executives, and (2) non-executive employees of the fund actively participating in its investment activities.

**Executive Officers:** Rule 3c-5(a)(4)(i) defines the first category of knowledgeable employees as any natural person who is an "Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity" of a private fund. The definition of Executive Officer is further subdivided as: (1) an employee who is "the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance)," or (2) "any other officer who performs a policy-making function" for the investment manager, the fund, or affiliated management person of the private fund.

*Continued on page 22*

## LEGAL &amp; REGULATORY UPDATE

continued from page 21

• **Principal Business Unit:** In the first instance, the SEC stated that whether an individual is "in charge of a principal business unit" depends on the facts and circumstances of the investment manager's business. A business unit or function does not need to be part of the fund's investment activities to be considered "principal," and the size of the manager or number of its business units is not necessarily determinative. In fact, the SEC acknowledged that an investment manager using electronic trading models and heavily relying on technology professionals might consider its IT department a "principal business unit."

• **Policy-Making Employees:** Secondly, regarding whether an individual qualifies as an Executive Officer by virtue of performing policy-making functions, the SEC said a senior management title is not necessarily required, and individuals may qualify as part of a group or committee that steers policy.

**Participating in Investment Activities:** The second category of knowledgeable employees includes employees regularly participating in the investment activities of either the private fund or of investment companies managed by an affiliated management person of the fund. The SEC expanded on its previous guidance that this category of non-executive employees may extend to certain research analysts, traders, tax professionals, and attorneys.

**Related Advisers:** The SEC staff also considers knowledgeable employees of a "filing adviser" that files a single Form ADV on behalf of itself and other "relying advisers" as a single advisory business to be knowledgeable employees of the private fund that is managed

by the filing adviser or relying advisers, provided they meet the other conditions of the rule.

The SEC also reminded investment managers to maintain "in their books and records a written record of the employees" it considers to be knowledgeable employees. The SEC staff no-action letter with a link to the incoming letter is available at [http://www.sec.gov/divisions/investment/noaction/2014/managed-funds-association-020614.htm#\\_ftnref1](http://www.sec.gov/divisions/investment/noaction/2014/managed-funds-association-020614.htm#_ftnref1).

#### **SEC Charges Advisory Firm and its Principal for Misleading Advertisements in Social Media**

On January 30, the SEC announced settlement of administrative proceedings against an investment adviser and its majority owner/president/CCO for making false claims through Twitter, newsletters, and other communications about the success of their investment advice and a mutual fund they manage. In addition to outright misstatements as to annual return of the mutual fund and how it compared to other funds, the adviser presented cherry-picked past recommendations that selectively highlighted successes while omitting failures. The SEC alleged such activities violated the anti-fraud provisions of the Advisers Act and the advertising rules. The principal agreed to pay a penalty of \$100,000, and he and the firm agreed to be censured and comply with certain undertakings including the retention of an independent compliance consultant for three years.

See *SEC Charges N.Y.-Based Money Manager and Firm for Misleading Advertisements*, SEC. Rel. No. 2014-18 (Jan. 30, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540701988#Uuq6jPldV1Y>.

See also *In Re Navigator Money*

*Management, Inc. and Mark A. Grimaldi*, SEC Order, IA Rel. No. 3767 (Jan. 30, 2014), available at <http://www.sec.gov/litigation/admin/2014/33-9521.pdf>.

#### **SEC Obtains "Admission" to Recordkeeping Violation**

On January 29, a large broker-dealer admitted to violating "blue sheet" information requirements by failing to provide the SEC with complete and accurate information about trades made by the firm and its customers as part of an SEC investigation into an instance of unauthorized account intrusion. The SEC's decision to seek an "admission" of a recordkeeping violation, especially when the broker claims the problem resulted from a coding error, illustrates the SEC's heightened insistence on pushing for admissions. In a September 26 speech, SEC Chair White said admissions will be sought when "the harm is extensive" and "the conduct poses a significant risk." The admission in this case appears to indicate that harm may not need to be felt directly by investors, such as in a fraud or insider trading case, but may now be expected to include hindrance of the SEC's ability to protect investors through investigations.

SEC Enforcement Director **Andrew J. Ceresney** expressed the seriousness of the violation, stating "Blue sheet information is the lifeblood of many SEC investigations and examinations... when firms fail to provide us with accurate or complete trade data, it risks compromising our ability to detect and investigate securities law violations."



Andrew J. Ceresney, SEC Enforcement Director

Continued on page 23

continued from page 22

## LEGAL &amp; REGULATORY UPDATE

In addition to a \$2.5 million penalty, the broker-dealer agreed to undertake such remedial measures as retaining an independent consultant to review its supervisory, compliance, and other policies and procedures designed to detect and prevent securities laws violations related to blue sheet submissions.

See *Scottrade Agrees to Pay \$2.5 Million and Admits Providing Flawed "Blue Sheet" Trading Data*, Sec. Rel. No. 2014-17 (Jan. 29, 2014), available at <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540696906#UvumafldV1a>; see also *Deploying the Full Enforcement Arsenal* (Sept. 26, 2013), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370539841202#UvuoPldVIY>.

**DOL and SEC Announce \$21 Million Settlement with Investment Adviser for Disclosure and Compliance Program Rule Violations and Improper Cross Trading**

On January 27, the SEC announced the settlement of two administrative proceedings against a California-based investment adviser with over \$440 billion in assets under management for violations related to cross trading and failure to disclose client losses related to a coding error. The \$21 million settlement also resolves related charges by the U.S. Department of Labor (DOL) that the investment adviser made prohibited securities purchases resulting in losses to 99 ERISA-covered accounts.

The first SEC order stated that a coding error occurred when a portfolio compliance officer changed a classification of a private placement investment in the adviser's automated

compliance system but did not recognize that this caused the investment to be coded internally as ERISA-eligible, even though the issuer's offering memorandum precluded investments by ERISA plans. The adviser subsequently purchased \$90 million worth of the security for 99 ERISA clients. The adviser's staff discovered the security was misallocated into ERISA accounts in December of 2008, but did not promptly disclose the error to clients. Instead, it conducted a three-month investigation into the matter, including consultation with in-house and outside counsel, and concluded that the error did not breach client guidelines and was not a "trading error" within the meaning of its policies and procedures. The firm sold the position over two years at substantial losses, and did not make its clients aware of the purchase of the restricted security until August 2010, by which time the SEC was investigating. The SEC charged the adviser with violation of its fiduciary duty under Section 206(2) by failing to disclose to clients the misallocation of the security. The SEC also charged the firm with violating Advisers Act Rule 206(4)-7 based on its failure to implement policies and procedures reasonably designed to ensure that errors are promptly corrected and disclosed. The SEC censured the adviser and ordered payment of disgorgement (\$8,111,582), interest (\$1,508,810), and a civil penalty (\$1 million).

In another order involving a separate set of client accounts, the SEC found the adviser aided and abetted and caused violations of the Investment Company Act by arranging cross trades involving registered investment companies and ERISA plans. The SEC alleged that during a liquidation of mortgage backed securities in 2007,

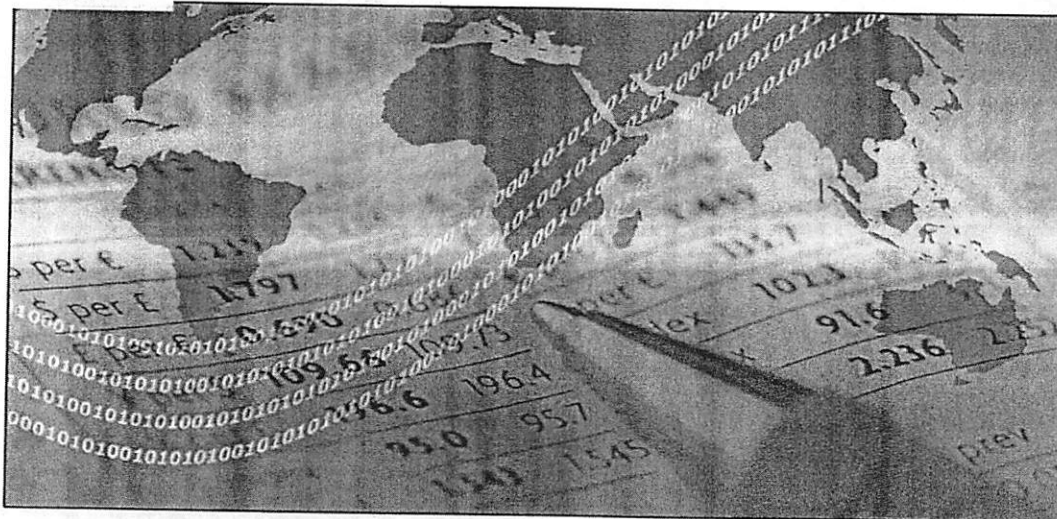
the adviser formed agreements with dealers to enter into prearranged sale and repurchase transactions which benefitted the adviser's buying clients at the expense of its selling clients. The adviser executed the sales of the securities at the highest current independent bid price available, while executing the purchases at a markup over the sales price, instead of at the average between the highest bid and lowest independent offer. This caused the full benefits of the \$12.4 million in market transaction cost savings to be allocated to the buying clients. The SEC found that, because the adviser failed to determine a "current market price" for the assets pursuant to Rule 17a-7, it violated Sections 17(a)(1) and 17(a)(2) of the Investment Company Act as well as Section 408 of ERISA. The SEC also charged the adviser with violation of its fiduciary duty under Section 206(2) and the compliance program rule, Rule 206(4)-7. The adviser agreed to hire a compliance consultant to review its systems and controls to prevent improper cross trading, and the SEC directed payment of \$7,440,881 to compensate clients and satisfy the related DOL proceeding, as well as a \$1 million civil penalty to the SEC and a \$607,717 penalty to the DOL.

The press release and two SEC orders are available at: <http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540675955#UupiRvldWVM>.

*If you have questions or comments about matters in the Legal & Regulatory Update column, contact the IAA legal team. ■*



## INTERNATIONAL DEVELOPMENTS



### *FinCEN Extends FBAR Filing Deadline to June 30, 2015*

On December 17, the U.S Treasury's Financial Crimes Enforcement Network (FinCEN) extended the deadline to June 30, 2015 for certain individuals required to file Form TD F 90-22.1, also known as the Report of Foreign Bank and Financial Accounts (FBAR). FinCEN took this action in light of its ongoing consideration of questions on the application of the filing requirement to individuals with signature authority over (but no financial interest in) certain types of accounts.

FinCEN is further extending the filing due date from June 30, 2014 to June 30,

2015 for individuals whose filing due date for reporting signature authority was previously extended by Notice 2012-2, which include (i) employees and officers of certain financial institutions who have signature authority over (but no financial interest in) one or more foreign financial accounts; and (ii) certain employees or officers of SEC-registered investment advisers that have signatory or other authority over (but no financial interest in) foreign financial accounts of persons that are not registered investment companies.

The extension applies to the

reporting of signature authority held during calendar year 2013 as well as all reporting deadlines previously extended by earlier notices. For all other individuals with an FBAR filing obligation, the filing due date remains unchanged. See *FinCEN Notice 2013-1 FBAR Filing Requirement—Extended Filing Date Related to Notice 2012-2*, Dec. 17, 2013, available at [http://www.fincen.gov/forms/files/FBAR%20Notice%20re%20Extended%20Filing%20Date%20\(532-2013\).editSig.pdf](http://www.fincen.gov/forms/files/FBAR%20Notice%20re%20Extended%20Filing%20Date%20(532-2013).editSig.pdf).



### *ESMA Seeks European Commission Clarification of Derivatives Definition*

On February 14, the European Securities and Markets Authority (ESMA) sent a letter to the European Commission highlighting a problem on an absence of a single, commonly

adopted definition of "derivative" or "derivative contract" under European Union law. The absence of a uniform definition may prevent consistent application of the European Market

Infrastructure Regulation (EMIR) that cross-refers to the list of financial instruments mentioned in the Markets

*Continued on page 25*

continued from page 24

## INTERNATIONAL DEVELOPMENTS

in Financial Instruments Directive (MiFID), across member countries.

One of the primary discrepancies is that the United Kingdom does not consider foreign exchange (FX) transactions with a settlement period up to seven days, or entered into for commercial purposes, to be derivatives while other member countries take the position that FX transactions would need to be reported if the settlement period is for more than two days. Since EMIR imposes a reporting obligation to trade repositories for all derivatives, different classifications of what constitutes a derivative contract may lead to the reporting of certain transactions in one member country



and not in others.

Clearing obligations for OTC derivatives face a similar problem because the calculation of the clearing threshold by non-financial counterparties is made on the basis of positions on OTC derivatives. ESMA now requests the Commission to clarify the definitions contained in MiFID to help ensure the uniform application of EMIR. The particular points in need of clarification include (1) the definition of current derivatives in relation to the frontier between spot and forward and their conclusion for commercial purposes, and (2) the definition of commodity forwards that can be physically settled.

ESMA also conveyed to the Euro-

pean Commission that national securities regulators will not implement the relevant EMIR provisions for contracts that are not clearly identified as derivatives contracts without appropriate Commission clarification. ESMA specifically identifies FX forwards with a settlement date up to seven days, FX forwards concluded for commercial purposes, and physically settled commodity forwards as contracts subject to the delay.

See *Classification of financial instruments as derivatives*, ESMA/2014/184 (Feb. 14, 2014), available at [http://www.esma.europa.eu/system/files/2014-184\\_letter\\_to\\_commissioner\\_barnier\\_classification\\_of\\_financial\\_instruments.pdf](http://www.esma.europa.eu/system/files/2014-184_letter_to_commissioner_barnier_classification_of_financial_instruments.pdf). ■



### **The European Commission Proposes Restrictions on Credit Institution Investments in Hedge Funds and other "Alternative Investment Funds"**

On January 29, the European Commission proposed rules to limit credit institutions' investments in hedge funds and other alternative investment funds in its continuing effort to address the status of certain banks that "remain too-big-to-fail, too-big-to-save and too-complex-to-resolve." While the U.S. has adopted its Volcker Rule, international organizations continue the debate on business structures and business models.

As proposed, certain EU banks would be prohibited from proprietary trading or investing in or holding shares in "alternative investment funds"

(AIFs), such as hedge funds, or entities that sponsor AIFs. These restrictions would not apply to closed-ended and unleveraged AIFs or qualifying venture capital funds established in the EU and that adhere to certain marketing requirements. The restrictions would be subject to the discretion of national competent authorities who can require legal and economic separation of these activities within the banking group if certain metrics are exceeded, e.g., (1) total assets of at least €30 billion, and (2) have trading activities amounting to at least €70 billion or 10% of its total assets.

The regulation would apply to EU branches of credit institutions established in third countries and foreign subsidiaries of EU parents, but only if not subject to an equivalent regulatory requirement in their home jurisdiction.

See *Proposal for a Regulation of the European Parliament and of the Council On Structural Measures Improving the Resilience of EU Credit Institutions*, COM (2014) 43 (Jan. 29, 2014), available at [http://ec.europa.eu/internal\\_market/bank/docs/structural-reform/140129\\_proposal\\_en.pdf](http://ec.europa.eu/internal_market/bank/docs/structural-reform/140129_proposal_en.pdf). ■



### **March 27 International Committee Meeting**

The next International Committee meeting will be held by conference call on March 27. In addition to Committee discussion, the meeting will include a presentation by **Prema K.R. Thiele**,

a partner at Borden Ladner Gervais LLP in Toronto, concerning recent regulatory developments in Canada. Please contact IAA Associate General Kathy D. Ireland at [kathy.ireland@](mailto:kathy.ireland@investmentadviser.org)

[investmentadviser.org](http://investmentadviser.org) or (202) 293-4222 if you have any questions about the International Committee. ■



## IACCP COMPLIANCE TRAINING



Cosponsored by the IAA, the Investment Adviser Certified Compliance Professional® (IACCP®) program was established by National Regulatory Services in 2004 and is designed to advance investment adviser compliance as a profession. Requirements of the certification program include education, work experience, examination, ethics, and continuing education requirements.

To learn more about the program or view the complete 2014 schedule go to the IAA website under "Events" and IACCP, or see <http://www.nrs-inc.com/Education-Solutions/Investment-Adviser-Certified-Compliance-Professional/>. For more information contact IAA Special Counsel Paul Glenn, (202) 293-4222.

### UPCOMING EVENTS

- |          |  |
|----------|--|
| March 4  | Governance, Risk Management and Compliance <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| March 11 | Books and Records Requirements for Investment Advisers <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| March 13 | SEC Examinations for Investment Advisers <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| March 18 | Insider Trading, Advisory Contracts and ADV Delivery Requirements for Investment Advisers <i>Online 1:00 pm - 3:00 pm (ET)</i>   |
| March 20 | Understanding Fiduciary Duties and a Sweep of Anti-Fraud Provisions of the Advisers Act <i>Online 1:00 pm - 3:00 pm (ET)</i>   |
| April 3  | Selected Advisers Act Anti-Fraud Rules: Custody, Political Contributions, Solicitors and Proxy Voting Requirements <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| April 8  | Investment Company Regulatory Update <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| April 17 | Compliance Programs Rules and Strategies for Managing Your Annual Review <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| April 22 | Broker-Dealer Risk Assessment and Testing <i>Online 1:00 pm - 3:00 pm (ET)</i>   |
| April 29 | Mandates Beyond the Advisers Act: Anti-Money Laundering and Data Security <i>Online 1:00 pm - 3:00 pm (ET)</i>   |
| May 13   | Critical Skills: How Compliance Can Work Effectively with All Departments of the Firm <i>Online and at NRS Spring 2014 Compliance Conference, Orlando, FL 10:00 am - noon (ET)</i>   |
| May 13   | Professional Ethics: Ethical Decision-Making for Compliance Professionals (approved for IACCP CE Ethics credit) <i>Online and at NRS Spring 2014 Compliance Conference, Orlando, FL 1:30 pm - 3:30 pm (ET)</i>   |
| May 29   | Investment Adviser Regulatory Update <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| June 3   | IACCP Examination Study Session (optional) <i>Online 1:00 pm - 4:00 pm (ET)</i>  |
| June 10  | Investment Adviser Compliance Symposium: <i>San Francisco</i> <ul style="list-style-type: none"> <li>• Introduction to the Advisers Act: Framework Registration, Exclusions and Exemptions; Exempt Reporting Advisers; Private Fund Advisers and More <i>8:30 am - 10:30 am (PT)</i></li> <li>• Books and Records Requirements for Investment Advisers <i>10:45 am - 12:45 pm (PT)</i></li> <li>• Insider Trading, Advisory Contracts and ADV Delivery Requirements for Investment Advisers <i>2:00 pm - 4:00 pm (PT)</i></li> </ul> |
| June 11  | Investment Adviser Compliance Symposium: <i>San Francisco</i> <ul style="list-style-type: none"> <li>• Understanding Fiduciary Duties and the Sweep of the Anti-Fraud Provisions of the Advisers Act <i>8:30 am - 10:30 am (PT)</i></li> <li>• Selected Advisers Act Anti-Fraud Rules: Custody, Political Contributions, Solicitors and Proxy Voting Requirements <i>10:45 am - 12:45 pm (PT)</i></li> <li>• Compliance Programs Rules and Strategies for Managing Your Annual Review <i>2:00 pm - 4:00 pm (PT)</i></li> </ul>       |
| June 19  | Safely Embracing the Power of Social Media <i>Online 1:00 pm - 3:00 pm (ET)</i>  |
| June 24  | A Tailored Compliance Testing Program for Investment Advisers <i>Online 1:00 pm - 3:00 pm (ET)</i>   |

# INSIDE

---

## *the Beltway*



### **Sen. Tester Stepping Down as Senate Banking Subcommittee Chairman**



Sen. John Tester  
(D-Mont.)



Sen. Mark Warner  
(D-Va.)



Sen. Jeff Merkley  
(D-Ore.)

Sen. **Jon Tester** (D-Mont.) will step down as chairman of the Senate Banking Subcommittee on Securities, Insurance, and Investment, the subcommittee with primary jurisdiction over investment adviser issues.

Tester became chairman of the Senate Indian Affairs Committee on February 13, prompting the change.

Tester has been subcommittee chairman since February 2013, taking over for Sen. **Jack Reed** (D-R.I.). He is expected to formally resign the post in late February.

As the Newsletter goes to press, it is uncertain who will succeed Tester as chairman of the Securities Subcommittee. Possible successors include Senators **Mark Warner** (D-Va.) and **Jeff Merkley** (D-Ore.).

### **Bipartisan Tick Size Reform Bill Adopted by House**

A bill to widen tick sizes for small companies was adopted by the House on February 11 in a 412-4 vote.

The Small Cap Liquidity Reform Act (H.R. 3448) would allow "emerging growth companies" to increase their stock tick size to increments of five or 10 cents, for prices at or greater than \$1.00. The legislation would implement changes over a five-year pilot program.

Its backers have said the move would facilitate capital raising for small businesses, but banking industry groups and the SEC's Investor Advisory Committee have expressed skepticism over the increase saying it will raise costs for retail customers and only benefit financial intermediaries.

The bill was introduced by Reps. **Sean Duffy** (R-Wis.) and **John Carney** (D-Del.). It passed the House Financial Services committee unanimously in November.

Its prognosis in the Senate is unclear as the Banking Committee, to which the House-passed bill was referred, is focused on housing finance reform.

### **House Members Ask for Volcker CLO Guidance**

Democrats on the House Financial Services Committee have asked regulators to issue guidance saying their agencies won't prohibit certain collateralized loan obligations under the Vol-

cker Rule bank proprietary trading ban.

Seventeen Democrats including 15 on the Financial Services Committee and Ranking Member **Maxine Waters** (D-Calif.) urged the agencies in a February 12 letter to "find a solution that, to the extent possible, avoids the need for unduly disruptive, market-wide renegotiations of existing CLOs."

The House Democrats suggest a "narrowly-tailored interpretation" that aligns with Congressional intent "while also guarding against evasion" of restrictions in the rule.

They sent the letter to the heads of the Federal Reserve, FDIC, SEC, OCC, and CFTC.

Federal Reserve Governor **Daniel Tarullo** told lawmakers in early February that addressing industry concerns around CLOs is "at the top of the list" of an inter-agency Volcker Rule working group that is coordinating implementation.

The lawmakers' request for guidance follows letters that groups including the Securities Industry and Financial Markets Association have sent to the agencies asking for specific guidance on CLOs.

### **New Senate Finance Chair Committed to Extending Tax Breaks**

The new head of the Senate Finance Committee wants to renew more than 50 tax breaks that expired at the end

*Continued on back cover*

## CONTACT IAA

## INSIDE THE BELTWAY

*continued from page 27***MAILING ADDRESS:**

1050 17th Street, N.W., Suite 725  
Washington, DC 20036

**TELEPHONE:**

(202) 293-4222

**FAX:**

(202) 293-4223

**INTERNET:**

[www.investmentadviser.org](http://www.investmentadviser.org)

**EMAIL ADDRESSES:****Alex Aderton**

Director of Membership and Marketing  
[alex.aderton@investmentadviser.org](mailto:alex.aderton@investmentadviser.org)

**Karen L. Barr**

General Counsel  
[karen.barr@investmentadviser.org](mailto:karen.barr@investmentadviser.org)

**Benjamin R. Coffinberger**

Administrative Associate  
[ben.coffinberger@investmentadviser.org](mailto:ben.coffinberger@investmentadviser.org)

**Lisa Gillette**

Director of Meetings and Events  
[lisa.gillette@investmentadviser.org](mailto:lisa.gillette@investmentadviser.org)

**Paul D. Glenn**

Special Counsel  
[paul.glenn@investmentadviser.org](mailto:paul.glenn@investmentadviser.org)

**Laura L. Grossman**

Assistant General Counsel  
[laura.grossman@investmentadviser.org](mailto:laura.grossman@investmentadviser.org)

**Garrett Honea**

Member Services and IT Manager  
[garrett.honea@investmentadviser.org](mailto:garrett.honea@investmentadviser.org)

**Alex R. Ioannidis**

Member Services Coordinator  
[alex.ioannidis@investmentadviser.org](mailto:alex.ioannidis@investmentadviser.org)

**Kathy D. Ireland**

Associate General Counsel  
[kathy.ireland@investmentadviser.org](mailto:kathy.ireland@investmentadviser.org)

**Sanjay Lamba**

Assistant General Counsel  
[sanjay.lamba@investmentadviser.org](mailto:sanjay.lamba@investmentadviser.org)

**Linda Mackey**

Director of Finance and Operations  
[linda.mackey@investmentadviser.org](mailto:linda.mackey@investmentadviser.org)

**Megan Olson**

Member Services and Events Coordinator  
[megan.olson@investmentadviser.org](mailto:megan.olson@investmentadviser.org)

**Andrea T. Owens**

Operations Coordinator  
[andrea.owens@investmentadviser.org](mailto:andrea.owens@investmentadviser.org)

**Neil A. Simon**

Vice President for Government Relations  
[neil.simon@investmentadviser.org](mailto:neil.simon@investmentadviser.org)

**David G. Tittsworth**

Executive Director  
[david.tittsworth@investmentadviser.org](mailto:david.tittsworth@investmentadviser.org)



Sen. Ron Wyden  
(D-Ore.)

of 2013 as his first goal in the post.

Sen. Ron Wyden (D-Ore.) said on Bloomberg TV's "Political Capital" that the measures, known as tax extenders, will be the first in a "two-step

drill" toward more comprehensive tax reform.

"My first choice would be to first go to comprehensive tax reform, rather than to have to proceed with the extenders," he said.

"But the reality is, when the House leadership last November, in effect, declared that Obamacare was their primary issue, that changed the timetable. So I am not going to sacrifice important matters like research and development and innovation on the altar of perhaps some inaction on comprehensive reform."

The current tax code, he said, is a "rotten, dysfunctional mess," but renewing the tax extenders can be a "bridge" on which both Democrats and Republicans can agree.

Wyden did not give a specific timeframe for renewing the tax breaks, but indicated that he would like to tackle the issue in the next few months.

More comprehensive reform, meanwhile, may take much longer.

"It would be obviously a big lift to enact a comprehensive reform package this year, but we can make a lot of headway," he said on the TV program.

To reform the tax code, Wyden said he would begin with groundwork that was laid in the 1980s with former President Ronald Reagan and a number of Democratic senators. That plan would set a threshold for people to count some of the money they made from investments as ordinary income under the tax code, instead of capital gains.

Wyden took over the Finance Committee when former Sen. Max Baucus (D-Mont.), the previous chairman, was confirmed as the next U.S. ambassador to China in early February.

Contact Neil Simon, IAA Vice President for Government Relations, to share your views or to obtain more information about these and other government relations matters. ■

# EXHIBIT 5A

[FOR DOMESTIC U.S. RECORDS]

**DECLARATION OF GAIL C. BERNSTEIN CERTIFYING RECORDS  
OF REGULARLY CONDUCTED BUSINESS ACTIVITY**

I, the undersigned, Gail C. Bernstein, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by the Investment Adviser Association as General Counsel and by reason of my position am authorized and qualified to make this declaration, having supervised the records production.
2. I further certify that the documents submitted on October 31, 2017 and stamped IAA – 00000001-00003051 are true copies of records that were:
  - (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;
  - (b) kept in the course of regularly conducted business activity; and
  - (c) made by the regularly conducted business activity as a regular practice.

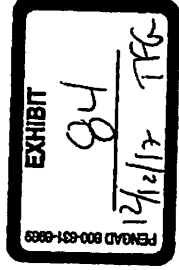
I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16, 2018.

  
Gail C. Bernstein

SEC-IAA-E-0000001

IAA Member Alerts

Email Subject	Date Emailed	Email Link
IAA Alert: October 29, 2008	10/29/2008	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=4756dcd8-243c-43f8-9c62-df0376770f35&site=emallarch
IAA Alert: November 3, 2008	11/3/2008	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=ba4bb326-e922-4ea2-bd26-b301fd0a781&site=emallarch
IAA Alert: December 2, 2008 - SEC Staff Reminds Firms of Importance of Compliance Programs	12/2/2008	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=67eafafe-3fe5-4d3d-9848-74a1e78eff70&site=emallarch
IAA Alert: March 10, 2009 - SEC Contacting Adviser Clients to Confirm Account Balances	3/10/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=f7a02649-2320-4db1-a9b4-f12f6e1e6447&site=emallarch
IAA Alert: May 14, 2009 - SEC Proposes Amendments to Adviser Custody Rule	5/13/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=c14b5e9b-93bb-44e0-bde7-8892fbb23d18&site=emallarch
IAA Alert: May 18, 2009 - SEC Posts Model Letter re Confirming Client Account Balances	5/15/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=6343d27c-2bcf-457c-94e1-8eb6b1f62170&site=emallarch
IAA Alert: July 27, 2009 - IAA Files Comments on Custody Rule Proposal	7/14/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=ca4d2a37-6176-4006-8559-7b718db16b40&site=emallarch
IAA Alert: August 12, 2009 - IAA Prepares Sample Letter Regarding Client Account Balances	8/10/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=fbd56071-41a3-4a96-af26-7d55c0f21e1d&site=emallarch
IAA Alert: December 16, 2009 - SEC Adopts Amendments to Adviser Custody Rule	12/11/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=f406f229-7106-45f5-a0a5-b31807a84c30&site=emallarch
IAA Alert: January 4, 2010	12/16/2009	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=bb365a80-31ff-417c-ba57-4ab049a15dc3&site=emallarch
IAA Alert: January 7, 2010 - SEC Publishes New Adviser Custody Rule; IAA to Host Webinar	1/4/2010	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=ebcde3b1-6f2c-466e-ad22-c0cabfdcac9c&site=emallarch
IAA Alert: March 5, 2010 - IAA Issues FAQs on SEC's Custody Rule	2/24/2010	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=d0be6cfa-4257-47a7-9ebb-44978391224a&site=emallarch
IAA Alert: March 8 - SEC Staff Issues Responses to Questions About Amended Custody Rule	3/5/2010	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=6645392c-155b-4716-8e4f-b32db4875127&site=emallarch
IAA Alert: March 11, 2010 - SEC Staff Issues Additional FAQs About the Custody Rule	3/8/2010	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=d130e46b-05d7-4e72-b06e-264c23f36748&site=emallarch
IAA Alert: May 21, 2010 - SEC Staff Issues Additional Responses to Custody Rule Questions	5/18/2010	http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&cct_key=b416da6f-1806-473b-bc45-9a7a9645a7aa&site=emallarch



IAA Member Alerts

IAA Alert: Results of 2011 Investment Management Compliance Testing Survey Available	7/20/2011	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7d7a194e-fe59-4031-be8d-caad3ef3a944&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7d7a194e-fe59-4031-be8d-caad3ef3a944&amp;site=emallarch</a>
IAA Alert: SEC Staff Issues No-Action Letter on Pay to Play Recordkeeping Rule	9/13/2011	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=b0c562cb-8e2d-441d-9996-730db67065ed&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=b0c562cb-8e2d-441d-9996-730db67065ed&amp;site=emallarch</a>
IAA Alert: IAA Issues Updated Model Advisory Agreements for ERISA and Non-ERISA Accounts	10/26/2011	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=bdff5aaa1-37f1-4c9f-be63-9935e842fbc4&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=bdff5aaa1-37f1-4c9f-be63-9935e842fbc4&amp;site=emallarch</a>
IAA Alert: SEC Staff Issues First Social Media Guidance for Investment Advisers	12/19/2011	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=4c0f1f08-d7d2-4413-9623-784d31d8af54&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=4c0f1f08-d7d2-4413-9623-784d31d8af54&amp;site=emallarch</a>
IAA Alert: SEC Staff Issues First Social Media Guidance for Investment Advisers	1/4/2012	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=ac856b1b-3abe-4211-95a7-22878ec89665&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=ac856b1b-3abe-4211-95a7-22878ec89665&amp;site=emallarch</a>
IAA Alert: Results of 2012 Compliance Testing Survey Available on IAA Web Site	7/17/2012	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c86f5542-7e85-4bf9-87d3-15eb1801d316&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c86f5542-7e85-4bf9-87d3-15eb1801d316&amp;site=emallarch</a>
IAA Alert: SEC Announces Examination Priorities for 2013	2/22/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7daa6a0b-ed85-4570-a46b-98e240c7e6c8&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7daa6a0b-ed85-4570-a46b-98e240c7e6c8&amp;site=emallarch</a>
IAA Alert: SEC Issues Risk Alert on Custody Rule	3/5/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=017b67bc-8bb9-4bec-bd76-e5d369c47a00&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=017b67bc-8bb9-4bec-bd76-e5d369c47a00&amp;site=emallarch</a>
IAA Alert: SEC Changes How Form 13F is Submitted	4/4/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7d309879-b3ae-4cfe-836a-795f3a8e1341&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7d309879-b3ae-4cfe-836a-795f3a8e1341&amp;site=emallarch</a>
IAA Alert: Results of 2013 Compliance Testing Survey Available on IAA Web Site	7/11/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d9d42369-f06-4b47-9e24-620ae94bcc45&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d9d42369-f06-4b47-9e24-620ae94bcc45&amp;site=emallarch</a>
IAA Alert: SEC Staff Issues Custody Rule Guidance	8/2/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=90cd72f0-ae01-4270-9072-cb519c685776&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=90cd72f0-ae01-4270-9072-cb519c685776&amp;site=emallarch</a>
IAA Alert: IAA Files Comments Opposing Petition to Shorten the Form 13F Reporting Deadline	8/14/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d0c7dc50-da19-4f46-985f-a19795e2b1ba&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d0c7dc50-da19-4f46-985f-a19795e2b1ba&amp;site=emallarch</a>
IAA Alert: SEC Issues Risk Alert on Advisers' Business Continuity and Disaster Recovery	8/28/2013	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c0e640c9-fd28-4f67-9c64-a5d85cf0165a&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c0e640c9-fd28-4f67-9c64-a5d85cf0165a&amp;site=emallarch</a>
IAA Alert: SEC Announces Examination Priorities for 2014	1/9/2014	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c1eadb32-d1a4-4e35-bd77-3b522cd8c728&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=c1eadb32-d1a4-4e35-bd77-3b522cd8c728&amp;site=emallarch</a>
IAA Alert: SEC Issues Risk Alert on Due Diligence Processes for Alternative Investments	1/28/2014	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=096c34c8-9d8e-4c11-8862-798b7f3e420f&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=096c34c8-9d8e-4c11-8862-798b7f3e420f&amp;site=emallarch</a>
IAA Alert: SEC Announces Initiative to Examine Never-Before Examined Registered IAS	2/20/2014	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d6483c19-9912-491f-a80b-003e176ae8bb&amp;site=emallarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d6483c19-9912-491f-a80b-003e176ae8bb&amp;site=emallarch</a>

IAA Member Alerts

IAA Alert: SEC's Examination Office Issues Risk Alert on Cybersecurity Initiative	4/16/2014	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=61d6b166-43d0-428a-9d29-d62f264cd63e&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=61d6b166-43d0-428a-9d29-d62f264cd63e&amp;site=emailarch</a>
IAA Alert: Results of 2014 Compliance Testing Survey Available on IAA Website	7/2/2014	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d278985f-ccc1-48ed-ab22-3a71d4e4ec9d&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d278985f-ccc1-48ed-ab22-3a71d4e4ec9d&amp;site=emailarch</a>
IAA Alert: SEC's Examination Office Issues Risk Alert on Cybersecurity Exam Observations	2/3/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=f0f0c2f4-5ac8-4200-8174-8a7e0c678c&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=f0f0c2f4-5ac8-4200-8174-8a7e0c678c&amp;site=emailarch</a>
IAA Alert: SEC Staff Issues Cybersecurity Guidance for Investment Advisers	4/29/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=dc22677f-c6ce-492f-9fd2-daf928eb9c64&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=dc22677f-c6ce-492f-9fd2-daf928eb9c64&amp;site=emailarch</a>
IAA Alert: SEC Announces Schedule for Compliance Outreach Program for CCO's	5/1/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=26479b6a-6ce8-43d7-bc64-cffd846010da&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=26479b6a-6ce8-43d7-bc64-cffd846010da&amp;site=emailarch</a>
IAA Alert: SEC to Propose Enhanced Data Reporting Requirements for IAs and RICs	5/14/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=282118eb-72a4-4c2a-9048-8d35796a393e&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=282118eb-72a4-4c2a-9048-8d35796a393e&amp;site=emailarch</a>
IAA Alert: SEC Proposes Additional Reporting on Form ADV and Revised Recordkeeping Rules	5/20/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=cbe9aea-da8f-4dfa-b5c1-578a0c60faa0&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=cbe9aea-da8f-4dfa-b5c1-578a0c60faa0&amp;site=emailarch</a>
IAA Alert: SEC Warns Advisers with Outsourced CCOs to Review Business Practices	11/9/2015	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=adfc532b-c12d-46ac-bf59-784d183e813a&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=adfc532b-c12d-46ac-bf59-784d183e813a&amp;site=emailarch</a>
IAA Alert: SEC Announces Examination Priorities for 2016	1/12/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7b0b0d51-31ec-4a45-92e1-e846e440fca5&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=7b0b0d51-31ec-4a45-92e1-e846e440fca5&amp;site=emailarch</a>
IAA Alert: SEC to Hold National Compliance Outreach Seminar - Registration is Now Open	3/9/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=cf79b61c-3d14-4a9a-99bc-b2f83efb49c4&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=cf79b61c-3d14-4a9a-99bc-b2f83efb49c4&amp;site=emailarch</a>
IAA Alert: SEC Proposes Rule Requiring Business Continuity and Transition Plans for IAs	6/28/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=754259d0-2fab-4358-a4d6-25c34033ce8e&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=754259d0-2fab-4358-a4d6-25c34033ce8e&amp;site=emailarch</a>
IAA Alert: OCIE Announces Initiative to Examine for Conflicted Investment Recommendations	7/13/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=429a01fd-0510-4f0e-b153-e2a1d7052e37&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=429a01fd-0510-4f0e-b153-e2a1d7052e37&amp;site=emailarch</a>
IAA Alert: SEC Adopts Form ADV Part 1 Amendments	8/25/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=4681687a-ba90-4927-83fb-52b770f5222a&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=4681687a-ba90-4927-83fb-52b770f5222a&amp;site=emailarch</a>
IAA Alert: OCIE Examining for Whistleblower Rule Compliance	10/25/2016	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d5d221fa-f5dd-4741-888c-2da040d4395b&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=d5d221fa-f5dd-4741-888c-2da040d4395b&amp;site=emailarch</a>
IAA Alert: Top Five Compliance Topics Identified in OCIE Examinations	2/7/2017	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=351a9089-a6ec-4324-a7f1-3074930eb674&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=351a9089-a6ec-4324-a7f1-3074930eb674&amp;site=emailarch</a>
IAA Alert: SEC Staff Provides Custody Rule Guidance on SLOAs, First-Person Transfers, more	2/21/2017	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=ebe00bb3-0d82-4a28-978a-629911358d06&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=ebe00bb3-0d82-4a28-978a-629911358d06&amp;site=emailarch</a>
IAA Alert: IAA Urges New SEC Chairman to Address Adviser Regulatory Priorities	6/1/2017	<a href="http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=990df699-b900-460b-a98f-d16445980c76&amp;site=emailarch">http://64.211.220.137/eweb/Dynamicpage.aspx?webcode=demail&amp;cct_key=990df699-b900-460b-a98f-d16445980c76&amp;site=emailarch</a>

IAA Member Alerts

IAA Alert: SEC'S Examination Office Issues Risk Alert on Observations from Cybersecurity Exams	8/7/2017	<a href="http://links.investmentadviser.org/m/1/69122168/02-b17219-02089e3c8c3e497d816e12b8a4d32727/1/2/1d1ed8f6-85aa-47da-acc0-b6fef33011f2">http://links.investmentadviser.org/m/1/69122168/02-b17219-02089e3c8c3e497d816e12b8a4d32727/1/2/1d1ed8f6-85aa-47da-acc0-b6fef33011f2</a>
IAA Alert: OCIE Identifies Most Frequent Advertising Rule Compliance Issues in Examinations	9/14/2017	<a href="http://links.investmentadviser.org/m/1/69122168/02-b17257-4e7ef632ad7f4e3d87b3784df61b3f06/1/2/bb3631fa-83bb-4142-915b-41362ff765a6">http://links.investmentadviser.org/m/1/69122168/02-b17257-4e7ef632ad7f4e3d87b3784df61b3f06/1/2/bb3631fa-83bb-4142-915b-41362ff765a6</a>