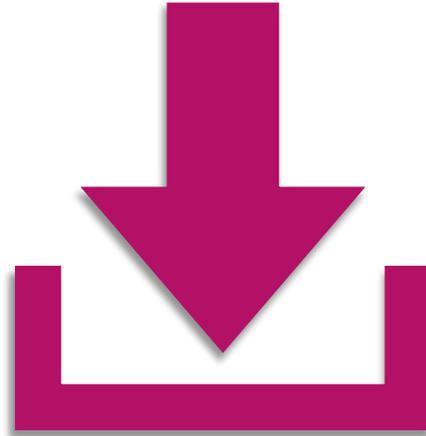


Current Trends in
Regulatory Exams
of Investment
Advisers



Download Our Slides

<https://www.ria-compliance-consultants.com/current-trends-2023-exams>



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Live Course
Not Yet
Submitted
to NASAA

RCC Has Not Yet Submitted
This Live Presentation to
NASAA for Approval as an
IAR CE Course

If Approved, RCC Will
Contact Attendees About
Next Steps for Obtaining IAR
CE Credit

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Live Course Requirements

- ▶ **Login** – You must be logged in during the live presentation under your email address.
- ▶ **View Entire Live Presentation** – You are required to watch the entire live presentation the course. If you do not watch the entire live presentation, you will have to watch the recorded version in its entirety.
- ▶ **Attendance Codes** - As you watch the live presentation, you will receive two attendance codes, each containing three alphanumeric characters. Save these codes. You will need to enter the full six-character attendance code prior to accessing the final quiz.
- ▶ **Purchase CE Course** – If the course is approved by NASAA for IAR CE, you will then need to purchase the course at <https://www.CE4Advisers.com> .
- ▶ **IAR Acknowledgement** – Sign the IAR CE Acknowledgement & Attestation.
- ▶ **Final Quiz** - You must complete each lesson and receive a score of **70%** on the final quiz (within 3 times) to receive IAR CE credit (assuming the course has been approved by NASAA).

Content Questions & Technical Help

If you have questions about the content of this course or need technical help, please contact us via the email address below:

ContEd@ria-compliance-consultants.com

Your Instructor



Bryan Hill, President
RIA Compliance Consultants, Inc.

Bryan has over 28 years of experience working with investment advisers, broker-dealers and investors as a compliance consultant, attorney and executive.

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Today's Panelists

- ▶ Jarrod James, Senior Vice President
- ▶ Teresa O'Grady, Senior Compliance Consultant
- ▶ Shelly Welch, Compliance Analyst

Course Overview

- Regulatory Resources
- Background - Exam Process
 - Type of Exams & Who Is Examining
 - Document Request
 - Onsite Visit & Interviews
 - After Interviews/Visit
 - Cooperation & Willful Failure to Permit Inspection
- Current Trends in Regulatory Exams
 - Custody
 - SEC's New Marketing Rule
 - Books & Records/Inconsistencies Between Docs
 - Form CRS/Form ADV Part 3
 - Issues Commonly Raised in State Exams
- Questions

Regulatory Resources

▶ **2023 SEC Examination Priorities (2/7/2023):**

<https://www.sec.gov/files/2023-exam-priorities.pdf>

▶ **SEC Risk Alert: Examinations Focused on Additional Areas of the Adviser Marketing Rule (6/8/2023):**

<https://www.sec.gov/files/risk-alert-marketing-rule-announcement-phase-3-060823.pdf>

▶ **Risk Alert: Observations from Examinations of Newly-Registered Advisers (3/27/2023):**

<https://www.sec.gov/files/risk-alert-newly-registered-ias-032723.pdf>

▶ **Risk Alert: Observations From Broker-Dealer and Investment Adviser Compliance Examinations Related to Prevention of Identity Theft Under Regulation S-ID (12/5/2022):**

<https://www.sec.gov/files/risk-alert-reg-s-id-120522.pdf>

Regulatory Resources (Continued)

▶ **SEC Enforcement Actions Against CCO for Obstructing Examiners:**

<https://www.sec.gov/news/speech/peirce-nscp-2020-10-19>

<https://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html>

https://www.sec.gov/litigation/litreleases/2022/lr25299.htm?utm_medium=email&utm_source=govdelivery

<https://www.sec.gov/litigation/complaints/2022/comp25299.pdf>

▶ **NASAA 2021 Investment Adviser Coordinated Exams:**

<https://www.nasaa.org/wp-content/uploads/2021/09/2021-Coordinated-IA-Exams-Public-Final-9-10-21.pdf>

Background

Type of Examinations

- New Adviser Exam
- Routine Exam
- Limited Scope/Sweep Exam
- For Cause Exam

Background

Who Is Examining You

- Check Whether from Enforcement or Examination Division
- If from Enforcement, Consider Retaining Legal Counsel

Document Request

- Carefully Review the Request List
 - ✓ If Unclear Ask for Clarification
 - ✓ Determine Whether Request Is Unreasonably Large
 - ✓ Do Not Hide, Destroy, Falsify, Alter or Backdate Signatures/Dates
- Notify All Supervised Persons to Refrain from Hiding, Destroying, Falsifying or Altering Documents
- Instruct All Supervised Persons to Cooperate Make Requests a High Priority, Provide Truthful Answers and Avoid Any Statements Which Are Misleading

Document Request (Continued)

- Maintain Notes of How Reports Are Prepared (e.g., Specific Databases, Reports, Searches and Report/Search Criteria), Who Was Interviewed and Where Documents Found
- Create Method for Organizing & Tracking Documents
 - ✓ Designate a Single Point of Contact for Document Delivery
 - ✓ Create a spreadsheet listing all documents requested by the regulator
 - ✓ Utilize numbers that match the regulator's request
 - ✓ Check off each document provided to the regulator
 - ✓ All documents should be reviewed by the CCO prior to delivery to regulator
 - ❑ Verify whether FOIA protection should be requested for each document
 - ❑ Verify whether a requested document is subject to attorney-client privilege
 - ✓ Keep a copy of each document provided to the examiner
 - ❑ Organize using folders which are tied to the number used by examiner

See <https://www.sec.gov/litigation/admin/2020/ia-5582.pdf>

Onsite Visit

- ▶ Designate CCO to Serve as Primary Liaison
- ▶ Notify Staff of Visit
- ▶ Ask How Many Staff Member Will Be Onsite
- ▶ Select a Comfortable, Private Room

Onsite Visit

- ▶ Prepare for a tour of the investment adviser firm by the examiners
 - Verify entrances are secure
 - Verify file cabinets with client documents are locked
 - Verify server is physically secure
 - Verify each employee has a clean desk: computers are locked and no confidential information on desk when employee is not there
 - Advise employees to keep business discussion in private areas of the office

Onsite Visit

- Prepare a brief overview of the investment adviser firm and business which covers
 - ✓ Overview of investment adviser firm
 - ✓ Investment advisory services
 - ✓ Statement about your investment adviser firm's culture of compliance

Interview

- ▶ When SEC Interviews Staff Member, Include CCO or GC to Take Notes
- ▶ Be Professional (e.g., Polite, Cordial, Calm, Friendly) During Interview
 - Avoid Defiant Demeanor
- ▶ Treat Questions or Document Requests As Serious
- ▶ Be Accurate & Honest – Do Not Mislead
- ▶ Do Not Speculate - Stay In Area of Expertise/Knowledge
- ▶ Keep Answers Accurate & Concise While Disclosing Material Facts
 - Avoid Long-Winded Answers If Possible
 - Request Clarification If Necessary
- ▶ Correct Any Inaccurate Answer or Information
- ▶ CCO should request exit interview with examiners
 - Confirming any outstanding requests and production deadlines
 - Clear up any misunderstandings

After Interview

- ▶ CCO Should Regularly Update Senior Leadership at Firm
- ▶ Provide Periodic Updates to Compliance Consultant and Outside Legal Counsel
- ▶ Any Errors, Deficiencies or Violations Identified Thus Far Should Be Considered Immediately for Corrective Action
 - ▶ Consult with Compliance Consultant & Legal Counsel

After Interview

- ▶ CCO should check back with examiners once back in their offices
- ▶ If deficiency letter is issued, consult with compliance consultant and legal counsel before responding
 - **RCC recommends investment adviser eliminate or correct any deficiencies identified in the final examination letter**
 - Refusal to correct a deficiency in the final letter can result in a referral to the enforcement
- ▶ Answer the deficiency letter by deadline and address all deficiencies
 - To the extent that the investment adviser firm accepts a finding by a securities regulator
 - Set forth remedial measures
 - Keep any promises made
 - Be prepared for another follow-up examination if deficiencies are identified and corrective actions are promised

Cooperation

Obstructing or Misleading the SEC
Examiner Has Resulted in Administrative
Enforcement Actions by the SEC Against
Chief Compliance Officers

Willful Failure to Permit Inspection

Willful failure to permit the SEC to inspect records and documents may result in criminal fines and imprisonment pursuant to Section 217 of the Investment Advisers Act of 1940 and Section 1001 of Title 18 of the United States Code.

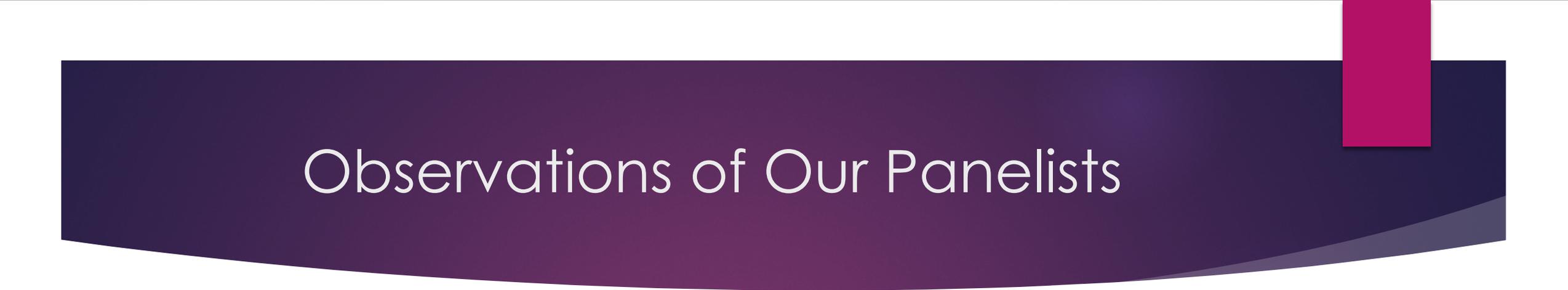
See <https://www.law.cornell.edu/uscode/text/15/80b%E2%80%9317> and <https://www.law.cornell.edu/uscode/text/18/1001> .

Intent to Obstruct Investigation

Additionally, Section 1519 of Title 18 of the United States Code provides the following:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

See <https://www.law.cornell.edu/uscode/text/18/1519>.



Observations of Our Panelists

Current Trends in Regulatory Exams

Questions

Please submit any question online or email with any questions about the content of this course.

ContEd@ria-compliance-consultants.com



Thank You

