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2022 Year-End Review of Investment Adviser Compliance Trends & Best Practices

Download Today's Slides

<https://www.ria-compliance-consultants.com/2022-Compliance-Review>

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- 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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- **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.
- **Practice Quizzes** – You will need to complete a practice quiz on each lesson.
- **Final Quiz** - You must complete each lesson and receive a score of **100%** on the final quiz 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:

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Your Instructor



Bryan Hill, President
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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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Agenda

- Best Year-End Compliance Practices
 - Supervised Persons
 - Annual Review
 - Compliance Calendar
 - Investment Advisor Managing Private Fund
- IAR CE Rule
- Questions

Year-End Compliance Best Practices for Supervised Persons

- Compliance Training for Supervised Persons
 - New Rules
 - ✓ DoL PTE 2020-02 for IRA Rollovers
 - ✓ SEC New Marketing Rule 206(4)-1
 - Other Training Topics
 - ✓ Phishing/Spearfishing
 - ✓ Red Flags Identity Theft
 - ✓ Indicators of Elder Abuse
 - ✓ Use of Texting/Messaging for Communication with Clients, Portfolio Management & Trading
 - Sample Case Studies

Year-End Compliance Best Practices for Supervised Persons

- Code of Ethics Acknowledgement
- Outside Business Activity Disclosure Form
- Review of Your Rep's Licenses & Professional Designations in Good Standing
- Review Form U4 and ADV Part 2B
 - Check for Accuracy
 - Compare Against OBA Disclosure & Professional Designations in Good Standing
 - Verify ADV Part 2B Given Out to Clients Who Are Receiving Services From Such Rep

Year-End Compliance Best Practices for Supervised Persons

- IAR Compliance Attestation (e.g., gifts given/received, client complaint, political contributions, family members who are insiders, PST, digital assets/crypto in personal accounts, texting/messaging with clients or traders, bankruptcy, any U4 “Yes” answer event)
- Verify Quarterly PST Reports/Annual Holdings Report Have Been Received (Including Digital Assets/Crypto)
- Review for Unauthorized Meme Stock Promotion Activities & Assisting Clients with Digital Assets/Crypto

Year-End Compliance Best Practices for Annual Review

- Utilize Tools Available from Your Compliance Consultant
 - Interactive Wizards, Sample Spreadsheets & Examples of Document Requests/Deficiency Letters from Regulators
- Review Notice Filings/State Registrations Against Office & Client Locations
- If SEC Registered Firm, Need to Review Existing Ongoing Advertising Under SEC's New Marketing Rule

Year-End Compliance Best Practices for Annual Review

- Review Form ADV
 - Are Disclosures Accurate & Consistent with Actual Practices, Agreements and Advertising?
 - Has IRA Rollover Conflict and Fiduciary Status under ERISA Been Added to Form ADV Part 2A?
 - If SEC Registered Firm, Has Reference to Old Solicitor Rule Been Removed or Updated to SEC's New Marketing Rule?
 - If SEC Registered Firm, Has Form ADV Part 3 Been Posted to Website?

Year-End Compliance Best Practices for Annual Review

- Review Client Agreement
 - Is Firm Following Terms of Client Agreement?
 - Are Terms Consistent with Actual Practices and Form ADV Part 2A Disclosures?
 - Are Fee Terms in Client Agreement Consistent with Form ADV Part 2A Item 5?
 - If SEC Registered Firm, Have Liability Hedge Clauses Been Eliminated?
See Webinar Earlier This Year.

Year-End Compliance Best Practices for Annual Review

- Review & Revise Compliance Manual
 - Determine Whether Actually Following Policies & Procedures
 - Compare Against Regulatory Risk Alerts & Sample WSP Sections from RCC
 - Verify DoL's PTE 2020-02 Impartial Conduct Standards Have Been Added/Updated to Compliance Manual for IRA Rollovers
 - If SEC Registered Firm, Has the Advertising & Solicitor Sections Been Updated

Year-End Compliance Best Practices for Annual Review

- Verify Cybersecurity Policy Is Consistent with Actual Practices
 - Is Two-Factor Authentication Turned-On for All Cloud Based Services?
 - Is Cybersecurity In Place for Employees Working from Home?
 - Are You Doing Phishing Training/Testing with Your Employees?
 - Is Your Firm Doing An Assessment (Annually or More Frequently) of Its Cybersecurity?

Year-End Compliance Best Practices for Annual Review

- Fee Audit – If Your Firm Hasn't Been Conducting Quarterly Audits of Fee Calculations, A Once-Year Fee Audit Is a Must
 - Utilize the RCC Spreadsheet and Checklist for Fee Audits
- Custody - Review Whether Firm or Related Persons Have Custody (e.g., trustee, PR, full PoA, SLA)
 - If Custody, Has This Been Disclosed on Form ADV and Have The Surprise Audit Been Completed Under ADV-E

Year-End Compliance Best Practices for Annual Review

- Review Every IRA Rollover Transaction Since 1/31/2022
 - Confirm Form ADV Part 2A and Client Agreement Updated with IRA Rollover Conflict Disclosure & Fiduciary Acknowledgement
 - Confirm Compliance Manual Updated with Impartial Conduct Standards
 - Verify Each Client Subject to Rollover Received Disclosure of Conflict of Interest, Fiduciary Acknowledgement, Advantages/Disadvantages of Each Option and Cost Benefit Analysis Including Actual (or Bench Mark if Actual Not Available) Fees/Expenses at Current Plan versus IRA Rollover
 - Identify Any Deficiencies in Written Retrospective Review & Take Corrective Action Per PTE 2020-02 – Senior Executive Must Sign Retrospective Review

PTE 2020-02 Conditions

- Investment Adviser and Rep Acknowledge their fiduciary status under ERISA in writing,
- Exemption is only available for non-discretionary advice (e.g., only client can make decision to rollover, switch from commission to fee account or invest in a proprietary fund)
- Disclose their services and material conflicts of interest,
- Adhere to Impartial Conduct Standards requiring that they
 - Investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would (i.e., their recommendations must be “prudent”),
 - Act with undivided loyalty to retirement investors when making recommendations (in other words, they must never place their own interests ahead of the interests of the retirement investor, or subordinate the retirement investor’s interests to their own),
 - Charge no more than reasonable compensation and comply with federal securities laws regarding “best execution,” and
 - Avoid making misleading statements about investment transactions and other relevant matters,
- Adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and to mitigate conflicts of interest that could otherwise cause violations of those standards;
- Document and disclose the specific reasons that any rollover recommendations are in the retirement investor’s best interest; and
- Conduct an annual retrospective compliance review

Year-End Compliance Best Practices for Advisors Managing Private Funds

- Has There Been A Review of Whether an Expense Has Been Properly Allocated to the Fund versus the Advisor?
- Has the Annual Financial Audit Been Conducted?
- Was the Financial Statement Delivered to All Investors within the Prescribed Timeline?
 - Is There A Procedure to Make Sure that the Financial Statement Is Delivered Timely Each Year?

Year-End Compliance Best Practices

Compliance Calendar

- Review Sample Compliance Calendars & Checklist and Incorporate Into Your Calendar/Task Management System

Solicitor/Promoter Due Diligence

- Verify Solicitor/Promoter Is Following SEC Registered Investment Adviser's New P&P for Promoters
- Provide Written Promoter Disclosure Statement
- Update Annual Due Diligence for Solicitor/Promoter
- Update Solicitor Arrangement Agreement



Status of IAR CE Rule by Jurisdiction

Effective 1/1/2022

Maryland
Mississippi
Vermont

Effective 1/1/2023

Arkansas
Kentucky
Michigan
Oklahoma
South Carolina
Washington, DC
Wisconsin

Proposed

Nevada
Rhode Island

Who Must Comply with IAR CE Requirements?

- If IAR Registered in Any State That Adopted NASAA Model IAR CE Rule, Then IAR Must Comply with Requirement
 - If IAR Registered in Multiple States But Home State Doesn't Have Rule, Must Comply with Other State Which Has Adopted IAR CE Rule
- Includes IARs of State and SEC Registered Firms if IAR Is Registered in State with an IAR CE Rule
- Applied on Individual Licensing Basis (Not Firm Basis)
 - Some Reps May Have Requirement While Others Do Not Have Requirement While Working Within Same Firm

What Are the Requirements of the New IAR CE Rule?

- IAR Must Complete 12 Hours of IAR CE from Approved IAR CE Provider Each Calendar Year
 - 6 Hours Devoted to Products & Practices
 - 6 Hours Focused on Ethics & Professional Responsibility
- IAR Cannot Take the Same Course in Subsequent Years

Regulatory Resources

Final Rule Release for SEC's New Marketing Rule (Actual Rule Starts on Page 405):

<https://www.sec.gov/rules/final/2020/ia-5653.pdf> .

SEC's Marketing Compliance Frequently Asked Questions:

<https://www.sec.gov/investment/marketing-faq> .

PTE 2020-02:

<https://www.federalregister.gov/documents/2020/12/18/2020-27825/prohibited-transaction-exemption-2020-02-improving-investment-advice-for-workers-and-retirees> .

FAQs on New Fiduciary Advice Exemption:

<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption> .

Risk Alert: Division of Examinations Observations: Investment Advisers' Fee Calculations:

<https://www.sec.gov/files/exams-risk-alert-fee-calculations.pdf> .

Risk Alert: Observations from Examinations of Private Fund Advisers:

<https://www.sec.gov/files/private-fund-risk-alert-pt-2.pdf> .

SEC Charges Two Advisory Firms for Custody Rule Violations, One for Form ADV Violations, and Six for Both

<https://www.sec.gov/news/press-release/2022-156> .

SEC Rule 206(4)-7:

[https://www.law.cornell.edu/cfr/text/17/275.206\(4\)-7](https://www.law.cornell.edu/cfr/text/17/275.206(4)-7) .

FAQs: Investment Adviser Representative Continuing Education:

<https://www.nasaa.org/industry-resources/investment-advisers/resources/iar-ce-faq/> .

Questions

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

ContEd@ria-compliance-consultants.com

Thank You