

Riding the Regulatory Wave:

Navigating the Potential 2024 Surge for SEC Registered Investment Advisers

Presented By Bryan Hill & Jarrod James of RIA Compliance Consultants, Inc. on 10/26/2023



Course Overview

- SEC Rule Making Process
- Sampling of SEC Finalized Rules (Past 12 Months)
 - Amendments to Form PF
 - Edgar Reporting Proxy Voting on Executive Compensation
 - Private Fund Adviser Rules & Written Annual Review
 - 13D and 13G Amendments
 - Short Reporting
- Sampling of SEC Proposed Rules
 - Cybersecurity Risk Management & Update to Regulation S-P
 - Update to Custody Rule
 - Outsourcing by Investment Advisers
 - Conflicts of Interest with Use of AI & Other Tech
 - Internet Only Adviser
- Questions

Regulatory Resources Finalized Rules

Final Rule: Short Position and Short Activity Reporting by Institutional Investment Managers

https://www.sec.gov/rules/2022/02/notice-text-proposed-amendments-national-market-system-plan-governing-consolidated#34-98738

Final Rule: Modernization of Beneficial Ownership Reporting

https://www.sec.gov/rules/2022/02/modernization-beneficial-ownership-reporting#33-11253

Final Rule: Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews

https://www.sec.gov/rules/2022/05/private-fund-advisers-documentation-registered-investment-adviser-compliance-reviews#IA-6383

Final Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers

https://www.sec.gov/rules/2022/11/enhanced-reporting-proxy-votes-registered-management-investment-companies-reporting#33-11131

Final Rule: Conformed Form PF; Event Reporting for Large Hedge Fund Advisers and Private Equity Fund Advisers; Requirements for Large Private Equity Fund Adviser Reporting

https://www.sec.gov/rules/2022/01/amendments-form-pf-require-current-reporting-and-amend-reporting-requirements-large#IA-6297

Regulatory Resources Proposed Rules

Proposed Rule: Safeguarding Advisory Client Assets

https://www.sec.gov/rules/2023/02/safeguarding-advisory-client-assets#IA-6384

Proposed Rule: Exemption for Certain Investment Advisers Operating Through the Internet

https://www.sec.gov/rules/2023/07/s7-13-23#IA-6354

Proposed Rule: Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers

https://www.sec.gov/rules/2023/07/s7-12-23#34-97990

Proposed Rule: Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information

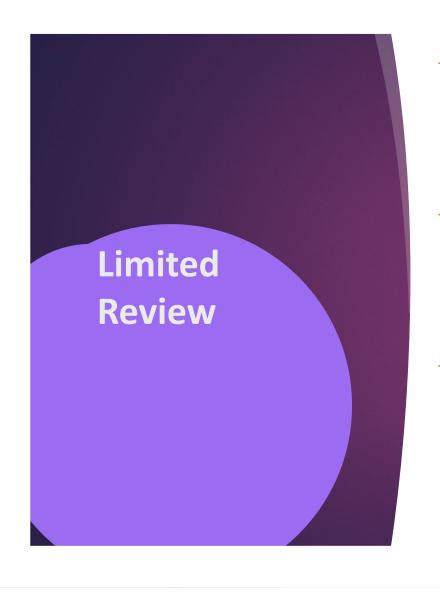
https://www.sec.gov/rules/2023/03/regulation-s-p-privacy-consumer-financial-information-and-safeguarding-customer#34-97141

Proposed Rule: Outsourcing by Investment Advisers

https://www.sec.gov/rules/2022/10/outsourcing-investment-advisers#IA-6176

Proposed Rule: Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies

https://www.sec.gov/rules/2022/02/cybersecurity-risk-management-investment-advisers-registered-investment-companies-and#33-11028



This Is Not A Comprehensive Listing of All Proposed and Finalized Rules

Rules Referenced In This Presentation Are Merely Examples of SEC Rules Selected by RCC

There May Be Other Proposed and Finalized Rules Which Are Not Referenced Here But Nonetheless Applicable To Attendee

SEC Rulemaking Process

Rule Proposal

- Publication of Detailed Rule Proposal with Text of New or Amended Rule
- Available at https://www.sec.gov/rules/rulemaking-activity

Public Comment

• Public Is Typically Provided 30 to 60 days for Review and Comment

Economic Analysis

- SEC Assesses Potential Impact of Proposed Rule
- Evaluating Costs and Benefits and Alternative Regulatory Approaches

Regulatory Flexibility Act

- Agenda Identifies Rules that It May Consider in Next 12 Months
- Available at Office of Management of Budget: RegInfo.gov

Rule Adoption

• Commissioners Vote Whether to Adopt the Final Rule

Effective/Compliance Date

- Final Rule Typically Becomes Effective 60 Days After Publication in FR
- Compliance Date May Be Set Well Beyond Effective Date

Amendment to Form PF Filing Requirements Summary

- Large Hedge Fund Adviser (\$1.5 Billion or More of Hedge Fund AUM) Required to File an
 Event Report No Later than 72 Hours From Occurrence of a Trigger (e.g., Extraordinary
 Investment Losses, Significant Margin and Default Events, Terminations or Material
 Restrictions of Prime Broker Relationships, Operations Events, and Events associated with
 Withdrawals and Redemptions)
- Large Private Equity Adviser (\$2 Billion or More of Private Equity Fund AUM) to Report Annually Any GP or LP Clawback During Past Year and Information on Strategies and Borrowings
- **Private Equity Adviser** (\$150 Million or More of Private Equity Fund AUM) Required to File an Event Report Within **60 Days of Fiscal Quarter End of Trigger** (e.g., Removal of GP, Fund Termination Events, and an Adviser-Led Secondary Transaction)

Amendment to Form PF Filing Requirements

Finalized by SEC:

• 5/3/2023

Compliance Date:

- 12/11/2023 for Amendments to Current Reporting Events (Large Hedge Fund Adviser)
- 6/11/2024 for Other Reporting Requirements (Large Private Equity Adviser and Private Equity Adviser)

Edgar Reporting of Exec Comp Votes Rule 14Ad-1 & Form N-PX

Summary: Require Institutional Investment Managers (e.g., Investment Adviser Exercising Discretion) to Report Annually on Form N-PX Regarding How They Voted Proxies on Executive Compensation or "Say-on-Pay" Votes

Finalized by SEC: 11/2/2022

Effective Date: 7/1/2024

Compliance Date: Votes Starting 7/1/2023 with First Filing Due in 2024

Private Fund Advisers & Compliance Reviews Summary

For **SEC Registered Private Fund Advisers**

- Quarterly Statement Detailing Info Regarding Fund Performance, Fees, and Expenses
- Obtain Annual Audit for Each Fund
- Obtain a Fairness or Valuation Opinion for Advisor-Led Secondary Transaction

For All Private Fund Advisers

- Prohibit Certain Activities Contrary to Protection of Investors Unless Certain Disclosures Provided and (in Some Cases) Receive Investor Consent
- Prohibit Certain Types of Preferential Treatment that Have Negative Effect on Other Investors Unless Disclosed to Investors

For All SEC Registered Advisers

• Rule 206(4)-7 Amendment Requiring Documenting Annual Review in Writing

Private Fund Advisers & Compliance Reviews

Compliance Dates:

- Quarterly Statement Rule 3/14/2025
- Private Fund Audit Rule 3/14/2025
- Adviser Led Secondaries Rule
 - ✓ Large Adviser (\$1.5 billion or more in private funds assets) 9/14/2024
 - ✓ Small Adviser (Less than \$1.5 billion in private fund assets) 3/14/2025
- Restricted Activities Rule
 - ✓ Large Adviser (\$1.5 billion or more in private funds assets) 9/14/2024
 - ✓ Small Adviser (Less than \$1.5 billion in private fund assets) 3/14/2025
- Preferential Treatment Rule
 - ✓ Large Adviser (\$1.5 billion or more in private funds assets) 9/14/2024
 - ✓ Small Adviser (Less than \$1.5 billion in private fund assets) 3/14/2025
- Rule 206(4)-7 (Documented Compliance Review) **11/13/2023**

Schedule 13D and 13G Amendments Background

Sections 13(d) and 13(g) of Securities
Exchange Act of 1934 along with Regulation
13D-G Require Investor Who Beneficially Owns
More than 5% of a Covered Class of Equity
Securities to Publicly File Either a Schedule 13D
(Intent to Control) or a Schedule 13G
(Qualified Institutional Investor & Passive
Investor Without Intent to Control)

Schedule 13D and 13G Amendments Summary

- Changed Filing Requirement of Initial Schedule 13D from 10 Days to 5
 Business Days and Amended Schedule 13D to 2 Business Days
- Changed Filing Requirement of *Initial* Schedule 13G for Qualified Institutional Investors & Exempt Investors from 45 Days After End of Calendar Year to 45 Days After End of Calendar Month
- Changed Filing Requirements of Initial Schedule 13G for Passive Investors from 10 Days to 5 Business Days After End of Calendar Quarter
- Changed Filing Requirements of Amended Schedule 13G for All Filers from 45 Days After Calendar Year to 45 Days After End of Calendar Quarter In Which Any Change Occurred
- Schedules 13D & 13G Filings Use a Structured, Machine-Readable Data Language
- Release Provides Guidance on When 2 or More Persons May Be Considered a Group for Beneficial Ownership Threshold

Schedule 13D and 13G Amendments Finalized by SEC: 10/10/2023

Effective Date: 90 Dates Following Publication in Federal Register

Compliance Date:

- Compliance with Revised Schedule 13G
 Filing deadlines Begins 9/30/2024
- Compliance with Structured Data Requirement for Schedules 13D and 13G Begins 12/18/2024

Short Reporting (Rule 13f-2 & Form SHO) Summary

Institutional Money Manager (e.g., investment adviser exercising discretion) that meet or exceed certain prescribed reporting thresholds will report on Form SHO certain short position and activity data for equity securities

- Reporting Threshold A for a Security of a Reporting Issuer
 - o Monthly Average Gross Short Position in an Equity Security of \$10 Million or More, or
 - Monthly Average Gross Short Position as a % of Shares Outstanding in the Equity Security of 2.5 % or More
- Reporting Threshold B for a Security of a Non-Reporting Issuer
 - Gross Short Position in the Equity Security of \$500,000 or More at Close of Regular Trading Hours on Any Settlement Date During Calendar Month
- If Threshold A or B is Met, Manager must file a Form SHO report via EDGAR system within 14 calendar days after the end of each calendar month

Short Reporting Finalized by SEC: 10/13/2023

Effective Date: 60 Dates Following Publication in Federal Register

Compliance Date: 1 Year from Effective Date

Cybersecurity Risk Management

(Proposed: 2/26/2022)

Summary of Rule 206(4)-9

- Adopt & Implement Written P&P Reasonably Designed to Address Cybersecurity Risks
- Promptly (48 Hours) Report Significant Cybersecurity Incidents to SEC via ADV-C
- Disclose Cybersecurity Risks and Past Cybersecurity Incidents in Form ADV Part 2A
- Make and Retain Cybersecurity Related Books & Records

Update to Regulation S-P

(Proposed: 3/15/2023)

Incident Response Plan

 Requires Adviser to Maintain an IRP Which Is Reasonably Designed to Detect, Respond to, and Recover from Unauthorized Access to or Use of Customer Info

Customer Notice

 Requires Adviser to Provide (No Later than 30 Days After Adviser Becomes Aware of a Likely Unauthorized Access or Use of Customer Info) Notice to Customer

Privacy Notice Delivery

 Conform Reg S-P's Annual Privacy Notice Delivery to Exception Added by 2015 Fixing America's Surface Transportation Act, Which Provides that Advisers Are Not Required to Deliver an Annual Privacy Notice Under Certain Conditions

Safeguarding Advisory Client Assets

Initially Proposed 2/15/2023 & Re-opened 8/23/2023

Comment Period Closes 10/29/2023

Expands Custody Beyond "Funds and Securities" to Any Investments Which Adviser Has Custody

Defines Custody to Also Include an Adviser with Investment Discretion

Required to Maintain a Client's Assets with Qualified Custodian If Adviser Has Custody

Provides More Requirements for Foreign Financial Institution to be Considered a Qualified Custodian

Specifies How QC Which Is Bank or Savings Association Must Hold Assets

Require Adviser to Enter Into a Written Agreement with Qualified Custodian

 Must Include Reasonable Assurances from QC that Client Assets Are Properly Segregated and Held in Accounts Designed to Protect Assets in the Event of QC Bankruptcy/Insolvency



Modify the current custody rule's exception from the obligation to maintain client assets with a qualified custodian for certain privately offered securities, including expanding the exception to include certain physical assets;

Retains Requirement for Adviser to Undergo a Surprise Exam by an Independent Public Accountant to Verify Client Assets

•Expands Availability of Audit to Satisfy Surprise Exam

Requires an Adviser to Keep Detailed Records of Trades/Positions for Each Account Which Adviser Has Custody

Provide Additional Information About Custody on Form ADV



Proposed by SEC: 10/26/2022

Conduct Due Diligence Before Outsourcing, Periodically Monitor Keep Books and Records Performance of Service Related to Due Diligence and Provider and Re-Assess Monitoring Whether to Retain Service Provider Conduct Due Diligence and Monitoring for Third-Party Collect and Disclose Recordkeepers and Obtain Information About Service Reasonable Assurances that Providers on Form ADV Third-Party Will Meet Certain Standards

Conflicts of Interest with Use of Technology

Proposed by SEC: 7/26/2023

- For Covered Technology: Any Algorithm,
 Computational Tool, or Technology that Uses
 Data Analysis, Predictive Modeling, or
 Machine Learning to Guide or Influence
 Investment-Related Behaviors or Outcomes
- Must Evaluate Covered Technology to Identify Any Conflict of Interests
- Determine Whether Conflict Places Adviser's Interest Ahead of Client's Interests
- If Covered Technology Places Adviser's Interest First, Must Eliminate or Neutralize Conflict
- Adopt, Implement & Maintain P&P
- Review Annually Effectiveness of P&P

Registration Exemption for Internet Investment Adviser

Proposed by SEC: 7/26/2023

Require Adviser Relying on Exemption to Have at All Time an Operational Interactive Website Through Which Advisory Services Are Provided on an Ongoing Basis to More than One Client

Eliminate Current De Minimis Exception for Non-Internet Clients



RIA Compliance Consultants, Inc. 6910 Pacific Street, Suite 102 Omaha, NE 68106 RIA-Compliance-Consultants.com 877-345-4034

Important Disclosures

Please carefully review the following disclosures and limitations of this course.

- Although the sponsor of this course, RIA Compliance Consultants, Inc. ("Sponsor"), is an affiliate of a law firm and Sponsor may have an individual on its staff that is also licensed as an attorney providing legal services in a completely separate capacity, Sponsor is **not** a law firm and does **not** provide legal services or legal advice. A consulting relationship with Sponsor does not provide the same protections as an attorney-client relationship.
- This course is offered for educational purposes only and should not be considered an engagement with Instructor or Sponsor. This presentation should not be considered a comprehensive review or analysis of the topics discussed today. These educational materials are not a substitute for consulting with an attorney or compliance consultant in a one-on-one context whereby all the facts of your situation can be considered in their entirety.



Key Point: Taking this educational course does not create an attorney-client relationship or a compliance consulting relationship between you and your Instructor or the program Sponsor. If you have questions about your particular circumstances, we encourage you to discuss them with your compliance professional and/or your attorney.

Please Read Our Fine Print

- Instructor and Sponsor make all reasonable efforts to ensure the educational material is current and accurate at the time of presentation. Instructor and Sponsor are not be under an obligation to advise you of any regulatory developments or subsequent changes to educational material presented in this IAR CF course.
- Information provided during this course is provided "as is" without warranty of any kind, either express or implied, including, without limitation, warranties and merchantability, fitness for a particular purpose, or non-infringement. Instructor and Sponsor assume no liability or responsibility for any errors or omissions in the content of the presentation.
- There is no guarantee or promise that concepts, opinions and/or recommendations discussed will be favorably received by any particular court, arbitration panel or securities regulator or result in a certain outcome.



Key Point: Laws and regulations change over time, and it is impossible to predict how a court, arbitration panel, or securities regulator will act in the future. After taking this course, you should be alert for future regulatory developments.

Keep in Mind...

- Communication with Instructor is not protected from discovery by third-parties during litigation or regulatory proceedings. Please keep questions during this course in a hypothetical form.
- Reviewing the slides and/or attending this course does not create a consulting engagement with RIA Compliance Consultants, Inc. A consulting relationship can be established only after the following two events have been completed: (1) our thorough review with you of all the relevant facts pertaining to a potential engagement; and (2) the execution of a written engagement and fee agreement and our advance receipt of any retainer required under such an agreement. The slides and/or course should not be regarded as a complete analysis of the subjects discussed. The information on these slides and in the course should not be relied upon as a substitute for one-on-one compliance advice. Often times, a party needs professional advice that applies to his or her specific situation. Your investment adviser firm should retain a compliance professional and/or attorney to provide you with specific guidance regarding your firm's situation.



Key Point: Do not disclose confidential or proprietary information during this course. If you have questions about your particular circumstances, we encourage you to discuss them with your compliance professional and/or your attorney.