

Trending Legal and Regulatory Issues for Investment Advisers

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a MarketCounsel *du jour* Presentation



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April 18, 2013

fi360 Conference

- ❑ **Dodd-Frank inches forward**
- ❑ **JOBS Act**
- ❑ **Social media**
- ❑ **Red Flags**
- ❑ **SEC emphasis**
- ❑ **Random trending issues impacting investment advisers**

- **Signed into law on July 21, 2010**

- **Improving examinations for investment advisers**
 - **2011 SEC report**
 - **Bachus bill (SRO)**
 - **Waters bill (User Fees)**
 - **SEC position**
 - **FINRA stealth**

- **Harmonization:**
 - ▣ **History**
 - ▣ **Fiduciary duty**
 - ▣ **But wait, there's more...**
 - **Advertising and other communications**
 - **Use of finders and solicitors**
 - **Supervision**
 - **Licensing and registration**
 - **Continuing education**
 - **Books and records**

- ❑ **Signed into law on April 5, 2012**
- ❑ **Allows for general solicitation of private placements**
- ❑ **Allows for crowdfunding**
- ❑ **SEC had 90 days to revise regulations**
- ❑ **SEC proposed revised regulations on August 29**

- ❑ **LinkedIn endorsements and recommendations**
- ❑ **SEC guidance**
- ❑ **State guidance**
- ❑ **Employee privacy regulations**

- ❑ **Proposed in February 2012 by the SEC and CFTC**
- ❑ **Certain firms must have written identity theft prevention programs**
- ❑ **Mirrors FTC rules**
- ❑ **Should not require compliance by any firm not covered by FTC**

- **Assets under management**

- **National examination risk alert regarding custody**
 - ▣ **Role of employee or related persons**
 - ▣ **Bill pay services**
 - ▣ **Online access to client accounts**
 - ▣ **Adviser as general partner**
 - ▣ **Physical custody of assets**
 - ▣ **Check writing authority**
 - ▣ **Receipt of checks**

- **2013 Examination priorities**
 - **Safety of assets**
 - **Conflicts related to compensation arrangements**
 - **Conflicts related to allocation of investment opportunities**
 - **Performance advertising**
 - **Dually registered investment advisers / broker-dealers**
 - **Pay-to-play**

- **Business continuity plans**

□ SEC turnover

- Elisse Walter, Chairwoman
- Mary Schapiro, Chairwoman
- Robert Khuzami, Enforcement Director
- Robert Cook, Director, Trading & Markets
- Meredith Cross, Director, Corp. Finance
- Mark Cahn, General Counsel
- Ricardo Delfin, Counsel
- Eric Spitler, Legislative Director
- Robert Plaze, Deputy Director, IM
- Thomas Sporkin, Head of Mkt Intelligence
- Robert Kaplan, Co-Head, Enforcement

□ 12b-1 fees in the cross-hairs

□ Massachusetts background checks

□ FINRA enhanced compensation disclosure rule



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