



2019 Third Quarter Compliance Letter

Guidance, Enforcement, Hot Topics, & More for Investment Advisers

Issued: October 16, 2019

We're a little late issuing our quarterly letter. We would fault our editorial team, but we don't have one ... just like we don't have a sales team, recruiters, or lawyers on staff. Our consultants do everything from answering the phones and opening the mail, to providing client service. Two years ago, we would have viewed this as a limitation. Today, we realize how critical it has been to our development and success. If something isn't being done right, we fix it. We can't pass it along to another department or blame it on the bureaucracy. We have both the responsibility and power to stand by what we create. And we think that's what makes our company so special.

Now, let's get down to business.

This quarter's headlines.

- In July, OCIE issued a [Risk Alert](#) to raise awareness of compliance issues that OCIE's staff observed during recent examinations, including certain risks related to supervised persons with disciplinary histories. The alert encouraged advisers to consider the risks related to hiring employees who have disciplinary histories, and also to design and implement compliance programs to address those risks.
- In August, the SEC issued a [press release](#) clarifying its position surrounding advisers' proxy voting responsibilities. The guidance reaffirmed the SEC's views on the importance of the adviser voting responsibly on behalf of their clients, and that advisers who vote proxy or rely on advice from proxy advisory firms must do so in a manner consistent with their fiduciary obligations.
- In September, OCIE issued a [Risk Alert](#) regarding compliance issues related to principal trading and agency cross transactions under Section 206(3) of the Advisers Act. OCIE identified common deficiencies such as failure to disclose to clients that the trades may be subject to Section 206(3) and the Rules thereunder, failure to obtain consent prior to the trades, or failure to obtain consent at all.
- In September, seven states [sued](#) the SEC and Chairman Clayton to overturn Regulation Best Interest. Plaintiffs claim the regulation "undermines critical consumer protections for retail investors" and increases confusion, among other things.

Did you know? The private markets are now more than double the size of the public markets. In 2018, issuers raised roughly \$2.9 trillion of capital through exempt offerings, compared to only \$1.4 trillion through public offerings. This trend explains the SEC's efforts to make public markets accessible to more issuers. Most recently, the SEC adopted a [new rule](#) that extends the "test-the-waters" accommodation. Previously, the accommodation had been available to emerging growth companies under the JOBS Act. Under the new rule, all issuers will be allowed to measure market interest in a possible IPO or other registered securities offering through discussions with institutional investors prior to (or following) registration.

Is that all? See below for our Q3 Chronological List of Key Events and Upcoming Dates and Deadlines.

Have questions? Get in touch at Hello@HighCampCompliance.com.



Q3 Chronological List of Key Events

Issued: October 16, 2019

We left off on July 8, 2019 in our Second Quarter Compliance Letter for Investment Advisers. You can access it [here](#). For those printing this letter, please note that all sources are hyperlinked rather than footnoted.

July 18: CFTC Orders Former Hedge Fund Portfolio Manager to Pay More than \$700,000 in Monetary Sanctions for Fraudulently Mismarking Swaps

The CFTC and the [SEC](#) settled with a hedge fund portfolio manager for mismarking swap valuations to inflate the profits in order to obtain an increased performance bonus.

July 24: Alaska-Based Adviser Charged with Failing to Disclose Conflicts of Interest

A wealth manager settled charges with the SEC for breaching its fiduciary duty to its client by failing to disclose a conflict of interest when making recommendations to investment in a private fund. The fund and the fund's manager paid the wealth manager over \$250,000 in up-front payments and annual trailing fees in exchange for recommending investments in the fund.

August 12: SEC Charges Blockchain Company for \$6.3 Million Unregistered ICO

According to the SEC's order, a New England-based blockchain company publicly announced its plan to conduct a token sale (an "Initial Coin Offering" or "ICO") to raise money for the development of a "healthcare-related blockchain ecosystem." However, the company failed to file a registration statement with the Commission or qualify for an exemption from registration before offering and selling the ICO.

August 14: SEC Charges Orange County, California Investment Adviser [ERA] with Fraud

The SEC charged a principal and his investment advisory firm, a venture capital fund manager, registered as exempt reporting adviser at the time, with fraud and breach of fiduciary duties for its affiliate charging over \$14 million in undisclosed and excessive incubator fees to start-up companies. Appears this case was triggered from an investor [lawsuit](#) rather than examination.

September 13: SEC Charges Investment Adviser with Custody Rule and Related Violations

A hedge fund manager and its owner agreed to settle with the SEC for failing to distribute annual audited financial statements prepared in accordance with GAAP to the investors, thus violating the Custody Rule under the Advisers Act. The manager also failed to adopt and implement adequate written policies and procedures and to conduct annual reviews of its compliance program.

September 16: 19th Annual IA Compliance Conference

The conference took place in Philadelphia, and HighCamp was in attendance. Hot topics included cybersecurity, Reg BI, Form CRS, and recent OCIE exam observations. Industry leaders, including SEC staff, in attendance alluded that possible updates to advertising guidelines may soon include social media, electronic communications, and company websites.

September 17: Volcker Rule Amendments are Adopted

Revisions to the Volcker Rule were adopted by regulatory agencies, including the SEC and the CFTC. The intent of these revisions is to ease the complex trading requirements first established by the Rule in 2013, and to offer some relief to the limits the Rule imposed on banks. The revisions become effective January 1, 2020, and banks will have one year to comply.

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September 23: [SEC Charges PwC LLP With Violating Auditor Independence Rules and Engaging in Improper Professional Conduct](#)

The SEC's orders find that PwC and PwC partner Brandon Sprankle violated the auditor independence provisions of the federal securities laws and caused one audit client to violate its obligation to have its financial statements audited by independent public accountants.

September 24: [SEC Charges Investment Advisers with Failing to Disclose Conflict of Interest](#)

An adviser settled with the SEC for purchasing stock for clients in a publicly traded issuer that the principals also had a consulting agreement with, and who also personally owned significant shares in the same issuer, without making adequate disclosure of this arrangement.

September 24: [Oversight of the Securities and Exchange Commission: Wall Street's Cop on the Beat](#)

The U.S. House of Representatives Committee of Financial Services held a hearing with SEC Chairman Clayton and four Commissioners. Some of the topics on the agenda were ESG, enforcement, cryptocurrency, and fiduciary duty. You can read the Committee Memorandum [here](#).

September 30: [SEC Charges Hedge Fund Adviser and Top Executives with Fraud \[re: valuation\]](#)

Defendants allegedly made numerous misrepresentations, including to auditors and investors, by inflating NAV through non-GAAP valuations of structured notes.

Upcoming Events & Deadlines

- October 15** Form PF for Large Liquidity Fund Advisers Due
- October 30** Transaction Reports due for Q3
- November 14** Form 13F Due (45 days after each quarter ends)
- December 18** Funds Due for 2020 IARD Renewal Program

About HighCamp Compliance

HighCamp Compliance is a premier, boutique compliance consulting and outsourcing firm helmed by former SEC examiners, CCOs, and proven consulting professionals. HighCamp specializes in regulatory compliance and operational support for SEC-registered alternative and institutional investment managers. The team includes specialists in private equity, real estate, and hedge funds.

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