



## 2019 Year in Review for Investment Advisers:

SEC Exams, Enforcement Actions, Guidance, & More

Issued: January 2020

*“If you don’t do it this year, you will be one year older when you do.” – Warren Miller*

I’ve been an aspiring ski bum my entire adult life and the release of Warren Miller’s ski films each fall is the start to my ski season. These films take you alongside their athletes to mountain ranges all around the world from Alaska to Japan and tell stories about lifestyles that were completely outside of anything I had ever heard of growing up in northern Michigan. I finally moved my family to a ski town in 2017 and Warren Miller’s ski films deserve much of the credit for that. The past decade has opened up so many opportunities as to the way we work and play and raise families, and I am thankful for the opportunity it’s affording mine – to live in a way that I had previously only dreamed of.

As I look into the next decade, I can only imagine what other opportunities lay ahead and in what ways our lives will continue to change. On behalf of the entire HighCamp team, we thank you for your continued support and wish you and your family a happy and healthy new decade full of possibilities.

Below is a recap of key 2019 policies, exam initiatives, and enforcement items, as well as our [Q4 Chronological List of Key Events](#) and [Notable Upcoming Filings & Deadlines](#).

Cheers to 2020 and, as Warren said, doing it – before we’re all another year older.

- Brad Burgtorf

## 2019 Recap

### What were the key policies to pay attention to?

- The SEC issued proposals that modernize the [Advertising Rule and Solicitation Rule](#) and expand the [accredited investor definition](#).
- The SEC voted to adopt a [package of rulemakings and interpretations](#) intended to increase transparency between retail investors and broker-dealers and advisers, which requires additional investor relationship summaries to retail investors.
- The [California Consumer Privacy Act](#) took effect in January and will apply to most large investment advisers.

**What were the SEC examiners up to?** In the last five years, the number of advisers that OCIE oversees increased from about 11,500 to about 13,475, and the assets under management increased from approximately \$62 trillion to \$84 trillion. The SEC staff examined 15 percent of registered investment advisers, resulting in over 150 enforcement referrals and approximately 65 percent of examinations resulting in deficiency letters. [Exam priorities](#) remain focused on retail sales practice abuse (particularly to seniors), information security, and digital assets. Additionally, exam staff will continue to focus on never-been-examined advisers and advisers to private funds. For private funds, the staff will prioritize and assess compliance risks, including controls to prevent the misuse of material, non-public information and conflicts of interest, such as undisclosed or inadequately disclosed fees and expenses, and the use of affiliates to provide services to clients. The staff also issued eight risk alerts, including alerts on the [cash solicitation rule](#), [electronic messaging](#), [privacy regulations](#), [use of cloud-based storage](#), and [principal/cross transactions](#).

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**And our friends in enforcement?**

- For FY 2019, 36% of standalone [enforcement actions](#) involved investment adviser/companies.
- The [Kokesh v. SEC decision](#), which limits any claim for disgorgement to five years, continues to impact adversely enforcement’s ability to disgorge and return funds to harmed investors.
- Enforcement continues to respond to the Supreme Court’s June 2018 decision in [Lucia v. SEC](#), which found that the appointment of the SEC’s administrative law judges violated the U.S. Constitution’s Appointments Clause, which have diverted substantial litigation resources in FY 2019 to address the affected administrative proceedings.
- Enforcement was allocated [22 new slots](#) which ended a more-than-two-year agency hiring freeze.

**Is that all?** We have included our year-end 2019 [By the Numbers](#) summary below. For a full recap of 2019 events, please visit our published [Q1 Newsletter](#), [Q2 Newsletter](#), and [Q3 Newsletter](#).

By the Numbers	2016	2017	2018	2019
SEC Staffing (# of full-time employees)	4,554 <sup>i</sup>	4,794 <sup>ii</sup>	4,483 <sup>iii</sup>	4,350 <sup>iv</sup>
SEC Registered Investment Advisers	12,242 <sup>v</sup>	12,694 <sup>vi</sup>	13,267 <sup>vii</sup>	13,506 <sup>viii</sup>
Exempt Reporting Advisers	3,302 <sup>ix</sup>	3,588 <sup>x</sup>	3,911 <sup>xi</sup>	4,223 <sup>xii</sup>
Broker-Dealers	4,064 <sup>xiii</sup>	3,918 <sup>xiv</sup>	3,817 <sup>xv</sup>	3,735 <sup>xvi</sup>
Private Equity Funds/Advisers	9,700/1,017(Q1 2016) <sup>xvii</sup>	10,350/1,084 (Q1 2017) <sup>xviii</sup>	11,532/1,147 (Q1 2018) <sup>xix</sup>	12,941/1,256 (Q1 2019) <sup>xx</sup>
Hedge Funds/Advisers	8,897/1,689 (Q1 2016) <sup>xxi</sup>	9,036/1,676 (Q1 2017) <sup>xxii</sup>	9,175/1,729 (Q1 2018) <sup>xxiii</sup>	9,388/1,741 (Q1 2019) <sup>xxiv</sup>
Real Estate Funds/Advisers	2,093/290 (Q1 2016) <sup>xxv</sup>	2,422/307 (Q1 2017) <sup>xxvi</sup>	2,651/328 (Q1 2018) <sup>xxvii</sup>	2,850/349 (Q1 2019) <sup>xxviii</sup>
Investment Adviser Examinations	11% (FY 2016) <sup>xxix</sup>	15% (FY 2017) <sup>xxx</sup>	17% (FY 2018) <sup>xxxi</sup>	15% (FY 2019) <sup>xxxii</sup>

*Did we miss something or have questions? Contact us at [Hello@HighCampCompliance.com](mailto:Hello@HighCampCompliance.com). You are receiving this Compliance Update because you have been supportive of us and/or have expressed interest in reading our content. If at any time you wish to unsubscribe, just drop us an email.*

## Q4 Chronological List of Key Events

*We left off on September 30, 2019 in our Third 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.*

### **October 16:** [FINRA Reg BI and Form CRS Checklist](#)

With Regulation Best Interest and the Form CRS Relationship Summary due to be completed by all applicable entities by June 30, 2020, FINRA has released a checklist to help members assess their obligations under the new rules. The checklist helps to explain the main differences between FINRA rules and Reg BI and Form CRS.

### **October 18:** [Frequently Asked Questions Regarding Disclosure of Certain Financial Conflicts Related to Investment Adviser Compensation](#)

Disclosing conflicts of interest, especially when involving adviser compensation, is an adviser's fiduciary duty to its clients. This FAQ provides examples of an adviser's fiduciary obligation to disclose compensation arrangements.

### **October 23:** [Managing Director and Chief Compliance Officer of Private Equity Firm Indicted for Obstruction of Justice](#)

A former SEC examiner was charged with obstruction of justice and unauthorized access of a government computer. Allegedly, just prior to joining a private equity firm as CCO, he supplied senior staff with insider information about an SEC investigation into the firm by accessing SEC servers to obtain the confidential information.

### **November 4:** [SEC Charges Issuer and CEO with Violating Whistleblower Protection Laws to Silence Investor Complaints](#)

Whistleblower protection laws don't only protect employees, but investors as well. The SEC alleged that an online auction portal and its CEO unlawfully sought to prohibit their investors from reporting misconduct to the SEC and other governmental agencies.

### **November 4:** [SEC Proposes to Modernize the Advertising and Cash Solicitation Rules for Investment Advisers](#)

The Advertising Rule amendment proposal takes into account technological developments (i.e. multiple communication channels), past no-action letters, and SEC guidance to provides for more principle-based provisions. The Cash Solicitation Rule amendment proposal expands the rule to apply to the solicitation of current and prospective investors in private funds.

### **November 5:** [SEC Proposes Rule Amendments to Improve Accuracy and Transparency of Proxy Voting Advice](#)

The SEC proposals to Exchange Act Rule 14(a)-1 would codify recent Commission guidance that, among other things, amends the definition of "solicitation" to include proxy voting advice and provide that any firm that markets and sells proxy voting advice will be deemed to be engaged in a solicitation subject to the proxy rules. Institutional Shareholder Services (ISS) filed a lawsuit in October challenging the Commission's August guidance. Stay tuned.

### **November 26:** [Frequently Asked Questions on Form CRS](#)

The SEC staff issued frequently asked questions that address Form CRS format and delivery requirements.

### **November 26:** [SEC Revokes Registration of Adviser Engaged in \\$60 Million Fraud](#)

The SEC revoked the registration of an investment adviser, which was recently charged with securities fraud for hiding losses by overstating the value of defaulted loans and selling at least \$60 million in fake loan assets to clients. SEC's



Daniel Michael, Chief of the SEC’s Complex Financial Instruments Unit, commented in the SEC press release, “even sophisticated professional investors can fall victim to Ponzi schemes.”

**December 9:** [Remarks before the 2019 AICPA Conference on Current SEC and PCAOB Developments](#)

The remarks given at the conference placed emphasis on the role that an independent auditor plays in the financial reporting “ecosystem” and the critical role of the PCAOB. The same emphasis was also noted by the SEC in their [Enforcement Division 2019 Annual Report](#), which stated, “Fiscal Year 2019 also saw enforcement actions to address auditor independence violations, failed audits, and other serious auditor misconduct.”

**December 16:** [SEC Charges Former Goldman Sachs Executive with FCPA Violations](#)

The SEC alleges that a Goldman Sachs senior executive engaged in a corruption scheme involving bribes to top foreign government officials in Malaysia and the Emirate of Abu Dhabi which earned \$600 million for Goldman Sachs. He also personally received more than \$43 million facilitating the bribe scheme.

**December 17:** [Silicon Valley IT Administrator and Friends Charged in Multimillion Dollar Insider Trading Ring](#)

A former IT administrator allegedly used his IT credentials and work contacts to obtain highly confidential information about his employer’s quarterly earnings and financial performance. He traded his employer’s securities based on the confidential information or tipped his friends to trade. The SEC further alleges that, “the defendants sought to evade detection, with Nellore insisting that the ring use the code word “baby” in texts and emails to refer to his employer’s stock, and advising they “exit baby,” or “enter few baby.”

**December 18:** [SEC Proposes to Update Accredited Investor Definition to Increase Access to Investments](#)

The amended definition would add new categories of natural persons that may qualify as accredited investors based on their professional knowledge and experience. Notably, the proposal would also add new categories based on professional certifications, such as a Series 7. The amendment would also expand the list of entities that may qualify as accredited investors.

**December 19:** [SEC Charges Recidivist Investment Adviser with Defrauding Retirees](#)

A couple of months after issuing its FAQ on compensation arrangements and conflict disclosures, the SEC charged an investment adviser and its owner with defrauding hundreds of retail clients. The SEC alleges that the firm received millions of dollars in undisclosed compensation for recommending certain investment opportunities, while not disclosing the conflicts of interests.

## Notable Upcoming Filings & Deadlines

<b>January 30</b>	Quarterly Transaction Reports Due	<b>March 30</b>	Form ADV Annual Updates Due
<b>February 14</b>	Annual Holdings Reports Due  Form 13F Due  Annual Form 13H Due	<b>April 29</b>	Annual Form PF Due  Distribute Audited Financial Statements to Private Fund Investors
<b>February 29</b>	Form PF for Large Hedge Fund Advisers		

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NFA PF for Large Hedge Fund Advisers		
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## 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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- i SEC Agency Financial Report, Fiscal Year 2016
  - ii SEC Agency Financial Report, Fiscal Year 2017
  - iii SEC Agency Financial Report, Fiscal Year 2018
  - iv SEC Agency Financial Report, Fiscal Year 2019
  - v Registered Investment Advisers, December 2016, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>
  - vi Registered Investment Advisers, December 2017, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>
  - vii Registered Investment Advisers, December 2018, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>
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  - ix Exempt Reporting Advisers, December 2016, Data Download. <https://www.sec.gov/help/foiadocsinvafoiahtm.html>
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