



2021 Year-In-Review for Investment Advisers:

Guidance, Enforcement, Hot Topics, & More

January 2022

I feel very fortunate to be writing HighCamp's fifth Year-In-Review letter. To be completely candid, I questioned whether a ski bum coming off a yearlong sabbatical living out of a backpack could ever build the caliber of company that would attract the top clientele and team members that we have today. After all, the HighCamp business plan was started in a small Patagonia town in Chile, Villa Cerra Castillo, off gravel road Route 7 that my wife and I hitch hiked into. We ran out of money and food, but I left committed to plan what would become HighCamp.

In my view, the professional services consulting model is broken. I left my prior consulting firm in 2016, about the time its clients started to experience the strain of consolidation, and its employees began to realize the strangulation of KPIs. I intended to return to that company, but the time away brought the clarity that the glory days would not be coming back under a succession of new owners. The industry consolidation has only since intensified. And the problems I sought to answer five years ago are just as prevalent today.

There is absolutely nothing unique about our business plan. What makes HighCamp unique is that we went back to the basics.

We'd attract top talent.

We'd work really, really hard to solve painful problems for our clients.

We'd do it together.

It turns out that simply focusing on improving the client and employee experience is what makes us unique. And the longer that we do it, the further we can distance ourselves from the traditional model.

The traditional business model calls for ramping up sales efforts and increasing service offerings. We feel the best salespeople are the consultants and the best sales pitch is delivering exceptional service to existing clients. The traditional business model calls being active at public speaking, sponsorship of industry conferences, and having a big social media presence. We only engage in topics and forums that are interesting to us and to our clients. The traditional business model calls for sell first, staff later business approach. We have defined a specific type of investment manager and if it doesn't fit those specs or we don't have capacity, we don't do it. The traditional business model feeds off of issuing misleading scare and fear tactics. We tell it as it is, always.

I'm forever grateful for our clients that have bought into this unique approach and our team for building a company that stands for these principles. We're very passionate about bringing back the client experience and, in rock climbing terminology, doing it in good form.

Thank you to my team, clients, and industry friends that have believed in HighCamp and continue to support our pursuit of the path no longer traveled.

Cheers to 2022,
Brad Burgtorf, Partner

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Pressing Regulatory Items for 2022

We find that the regulator priorities and challenges for private fund managers don't always sync with "published" priorities. These are pressing issues that we see are facing our industry as we enter the new year.

- Electronic communications are incredibly challenging to navigate. Regulations have not kept pace with the usage of various communication and collaboration applications.
- The new marketing rule sought to add clarity and modernize prior guidance, but as we close in on its effective date, it has raised more questions than it answers for private fund managers.
- To be a security or not to be a security is still primarily interpreted based on a 1940s case law about orange groves. The ramifications of this cause all kinds of compliance and legal burdens for private equity managers, real estate managers, and digital assets managers, among others. Specifically:
 - There is limited guidance for real estate managers to decipher when bricks and mortar are or are not a security, which in effect has forced firms to register as investment advisers out of abundance of caution.
 - Examiners continue to scrutinize private equity managers that accept transaction-based fees but don't register as a broker dealer, despite investor consent to such fees in fund governing documents.
 - Digital securities continue to be regulated by speeches and litigation, rather than by a constructive regulatory framework.
- As the industry evolves, so do its conflicts. The speed of consolidation, new service offerings, different and interrelated fund structures, and financing options have never been higher.
- ESG guidance from regulators is not keeping pace with investor demand and diligence.
- Cybersecurity remains a top risk, yet the risk doesn't necessarily diminish in close correlation to the amount of time and money spent to mitigate it.
- Fee and expense ambiguities between fund offering documents, investor disclosures, and other offering materials continue to leave significant room for interpretation, and regulatory scrutiny.
- Shadow trading is a regulatory focus, with significant challenges to effectively police it, keeping CCO's up at night.
- A lack of anti-money laundering and sanction list rulemaking and guidance for investment advisers leaves the industry with too much uncertainty as to what is in fact best practice.

Regulations will never be black and white, but these are the key issues the HighCamp team is focusing on helping our clients navigate as we enter 2022.

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Fourth Quarter Headlines

- **November:** Division of Examinations issued a [Risk Alert](#) on Investment Advisers' Fee Calculations. For a rundown, see [HighCamp's recent article](#) summarizing the key takeaways for investment advisers.
- **November:** SEC Releases [FY 2021 Agency Financial Report](#).
- **December:** SEC Announces [FY 2021 Enforcement Results](#). The SEC issued a press release highlighting noteworthy and impactful enforcement actions in emerging arenas alongside the statistical results from FY 2021.

2021 SEC Examination and Enforcement Recap

Industry Trends

By the Numbers	2017	2018	2019	2020	2021
SEC Staffing (# of full-time employees) ⁱ	4,794	4,483	4,350	4,411	4,459
SEC Registered Investment Advisers ⁱⁱ	12,694	13,267	13,506	13,903	14,835
Exempt Reporting Advisers ⁱⁱⁱ	3,588	3,911	4,223	4,568	5,024
Investment Adviser Examinations ⁱ	15%	17%	15%	15%	16%
Broker-Dealers ^{iv}	3,918	3,817	3,735	3,616	3,541
Private Equity Funds/Advisers ^v	10,350/1,084 (Q1 2017)	11,532/1,147 (Q1 2018)	13,027/1,1,264 (Q1 2019)	14,470/1,359 (Q1 2020)	15,712/1,449 (Q1 2021)
Hedge Funds/Advisers ^v	9,036/1,676 (Q1 2017)	9,175/1,729 (Q1 2018)	9,399/1,744 (Q1 2019)	9,370/1,728 (Q1 2020)	9,457/1,756 (Q1 2021)
Real Estate Funds/Advisers ^v	2,422/307 (Q1 2017)	2,651/328 (Q1 2018)	2,850/349 (Q1 2019)	3,111/373 (Q1 2020)	3,291/387 (Q1 2021)



Examination Recap

The Division of Examinations (“EXAMS”) utilizes multiple methods for targeting advisers to examine, including the entity’s risk profile; a tip, complaint, or referral; or review of a particular risk area. In recent years, these selection methods have been enhanced by machine learning models. During FY 2021, the EXAMS conducted over 2,300 examinations, covering 16% of all registered investment advisers, and published 8 risk alerts. As the COVID-19 pandemic dragged on into its second year and continued to affect the way businesses operate, information security and operational resiliency remained key areas of focus for the Division of Examinations. Additionally, the staff increased focus on investments and services marketed to retail investors as well as financial technology and innovation.

Enforcement Highlights

- The Division of Enforcement brought 697 actions (3% decrease from FY20), obtaining financial remedies of more than \$3.8 billion, and awarded a record \$564 million (222% increase from FY20) to 108 whistleblowers.
- 28% of standalone enforcement actions involved investment adviser/company issues, which is up from 21% in FY20.
- 6% of standalone enforcement actions involved insider trading.
- Keeping up with the times, the SEC filed many first-of-their-kind actions in areas such as decentralized finance and Form CRS violations.

Q4 List of Key Events

We left off on September 30, 2021 in our [Q3 Letter](#). Please note all sources are hyperlinked rather than footnoted.

October 26, 2021: [SEC Charges Colorado Investment Adviser with Fraud](#)

The SEC complaint alleged that the Colorado-based adviser misled investors in AMV Investments LLC by representing herself as a consistently successful options trader and promising exorbitant returns.

November 5, 2021: [SEC Charges Michigan Investment Adviser with Defrauding Elderly Client](#)

The adviser allegedly defrauded one of his elderly clients over \$300,000 by using the client’s money for his own benefit and overcharging management fees. This case highlights the SEC’s continued focus on advisers’ calculation of fees.

November 5, 2021: [Jury Finds Hedge Fund Liable for Securities Fraud](#)

Lemelson Capital Management LLC was found to have reaped more than \$1.3 million in illegal profits by making false public statements to drive down the price of one of the hedge fund’s short positions.

December 12, 2021: [SEC Investigates Private Equity Firm Backed by Coors, Ultrawealthy Families for Misusing Funds](#)

According to the Wall Street Journal, the manager of a private equity fund backed by Coors and other ultrawealthy families, the One Thousand and One Voices Fund, is under SEC investigation for using investor funds to pay for his personal expenses.

December 17, 2021: [JPMorgan Agrees to Pay \\$125 Million Penalty for Widespread Recordkeeping Failures](#)

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JPMorgan admitted that since at least January 2018, employees often communicated about securities business matters on personal devices using text messaging, WhatsApp, and personal email. As a result of the findings in this investigation, the SEC has commenced additional investigations of record preservation practices at financial firms. For more, see [HighCamp's recent article](#).

December 17, 2021: [SEC Charges Private Equity Fund Adviser with Fee and Expense Disclosure Failures](#)

The SEC order alleged that Global Infrastructure Management, LLC failed to offset certain portfolio company fees against management fees charged to clients as required by the offering documents. The adviser agreed to pay a \$4.5 million penalty and repay \$5.4 million to affected private fund clients.

Q1 Upcoming Events and Deadlines

January 30, 2022	Q4 2021 Quarterly Transaction Reports Due
February 14, 2022	Form 13F Due Annual Form 13H Due Schedule 13G (and any amendments) Due
March 1, 2022	Quarterly Form PF for Large Hedge Fund Advisers (for Q4 2021) NFA PF for Large Hedge Fund Advisers
March 31, 2022	Form ADV Annual Amendment Due State notice filings (if any required by states) Due
April 30, 2022	Annual Form PF Due Deliver Audited Financial Statements to Private Fund Investors Deliver updated Form ADV Part 2A (or summary of material changes) to investors Q1 2022 Quarterly Transaction Reports Due

About HighCamp Compliance

HighCamp is a 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 private equity, real estate, venture capital, hedge funds, and institutional separate account managers. HighCamp is 100 percent employee owned and located in New York City (Metro), Denver, Austin, Milwaukee, and Bozeman.

ⁱ <https://www.sec.gov/files/sec-2021-agency-financial-report.pdf>

ⁱⁱ <https://www.sec.gov/help/foiadocsinvafoiahtm.html>

ⁱⁱⁱ <https://www.sec.gov/help/foiadocsinvafoiahtm.html>

^{iv} <https://www.sec.gov/help/foiadocsbdfoiahtm.html>

^v Private Fund Statistics, December 1, 2021, <https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q1.pdf>