



K&L GATES

2016 INVESTMENT MANAGEMENT CONFERENCE

SEC Asset Management Unit, SEC Focus Points and Developments in Enforcement

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AGENDA

- Review of SEC Examination Priorities and Sweep Examinations for 2016
- Trends in SEC Enforcement Actions
 - Conflicts of Interest
 - Back-tested and 3rd Party Performance
 - Expense Allocations
 - Broker-Dealer Registration
- SEC's Expanded View on Back-Tested Performance



SEC EXAMINATION PRIORITIES

- SEC Chair Mary Jo White pronounced the SEC's enforcement programs in its most recent fiscal year a "resounding success."
- The SEC has made continued and improved use of data analytics to focus its enforcement efforts.



SEC EXAMINATION PRIORITIES

- The SEC filed 868 enforcement actions in its latest fiscal year, 160 of which involved investment advisers or investment companies. These are both record figures.
- The vast majority of these actions were brought as Administrative Proceedings.
- Some industry participants believe the SEC enjoys procedural advantages in Administrative Proceedings.



SEC EXAMINATION PRIORITIES

- Enforcement actions against investment advisors tended to focus on traditional trouble spots:
 - improper disclosure of fees and conflicts of interest;
 - misleading prior performance reports;
 - use of “off-the-shelf” compliance manuals.



SEC EXAMINATION PRIORITIES

- The SEC brought a record number of actions under the Foreign Corrupt Practices Act, including its first ever FCPA action against a hedge fund.
- The action was against Och-Ziff Capital Management, its CEO and its CFO.
- The SEC claimed, among other things, that Och-Ziff had paid a bribe to induce the Libyan Investment Authority sovereign wealth fund to invest in its funds.
- Och-Ziff is expected to pay a criminal penalty of \$213 million.



SEC EXAMINATION PRIORITIES

- Another record was set in the last fiscal year when the SEC made \$57 million of whistleblower awards.
- The SEC brought an action against a second company for including in its agreements with employees provisions that deterred the employees from voluntarily providing information to the SEC.



SEC EXAMINATION PRIORITIES

- The SEC continues its “broken windows” approach to enforcement, bringing enforcement actions in some cases over technical violations of the securities laws that caused no significant harm to investors.
- The SEC has set the compliance bar very high.



SEC EXAMINATION PRIORITIES

- The SEC continues to bring enforcement actions against compliance professionals.
- A former SEC commissioner and many other industry participants had criticized the SEC for bringing such actions in 2015, voicing concerns that actions of this sort would deter good people from becoming compliance professionals.



ENFORCEMENT TRENDS: CONFLICTS OF INTEREST

- *Royal Alliance Associates, Inc., SagePoint Financial, Inc. and FSC Securities Corporation*
March 14, 2016



ENFORCEMENT TRENDS: EXPENSE ALLOCATIONS

- *Alpha Titans*, April 29, 2015
- *Kohlberg Kravis Roberts & Co. L.P.*, June 29, 2015
- *First Reserve Management, L.P.*, Sept. 14, 2016



ENFORCEMENT TRENDS: BROKER-DEALER REGISTRATION

- *Ranieri Partners LLC*, March 8, 2013
- *David W. Blass, A Few Observations in the Private Fund Space*, April 5, 2013
- *Blackstreet Capital Management, LLC*, June 1, 2016



ENFORCEMENT TRENDS: BACK-TESTED AND THIRD PARTY PERFORMANCE

- *Raymond J. Lucia Companies, Inc. and Raymond J. Lucia, Sr.*, September 3, 2015
- *F-Squared Investments, Inc.*, December 22, 2014
- *Virtus Investment Advisers, Inc.*, Nov. 16, 2015
- *Investment Advisers Paying Penalties for Advertising False Performance Claims*, August 25, 2016

