



K&L GATES

2017 WASHINGTON D.C. INVESTMENT MANAGEMENT
CONFERENCE

Compliance and Examinations

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DISCUSSION OVERVIEW

- I. Duty to Establish a Compliance Program
- II. Chief Compliance Officer
- III. Written Policies and Procedures
- IV. Annual Review Process
- V. SEC Examinations





Duty to Establish a Compliance Program



RULE 38A-1 REQUIREMENTS

- Adopt and implement written policies and procedures
- Designate a Chief Compliance Officer (“CCO”)
- Review the compliance program
- Report to the Board
- Maintain records



BOARD APPROVAL

- Compliance program of the Fund
- Compliance program of the Fund's service providers
- Reliance on summaries and third-party reports
- Amendments and annual re-approval not required





Chief Compliance Officer



CCO REQUIREMENTS

- Board must designate a CCO
- Competent and knowledgeable
- Empowered with full responsibility and authority
- Position of seniority and authority
- Duty to administer the compliance program

CCO DUTIES

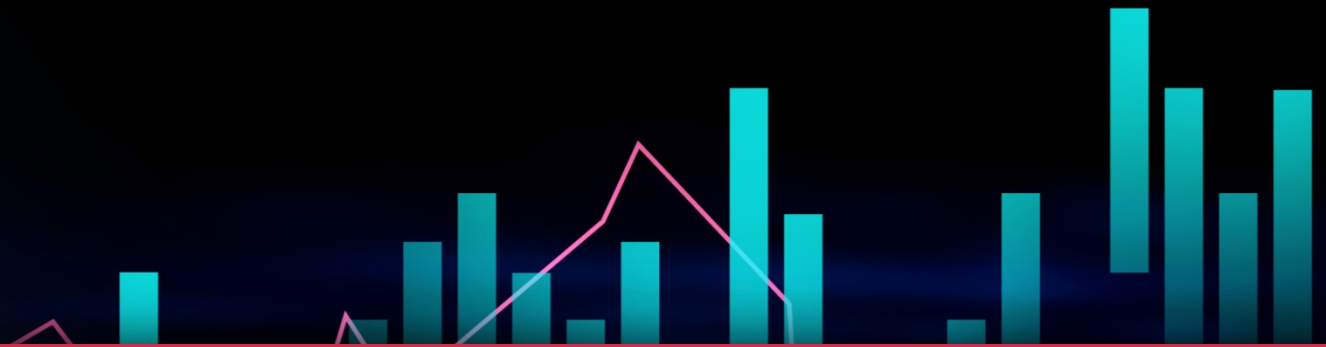
- Ensuring compliance program is comprehensive and current
- Conducting annual compliance review
- Reporting to the Board
- Implementing any material recommendations
- Advising senior management on compliance matters
- Being the “go to person” on compliance issues



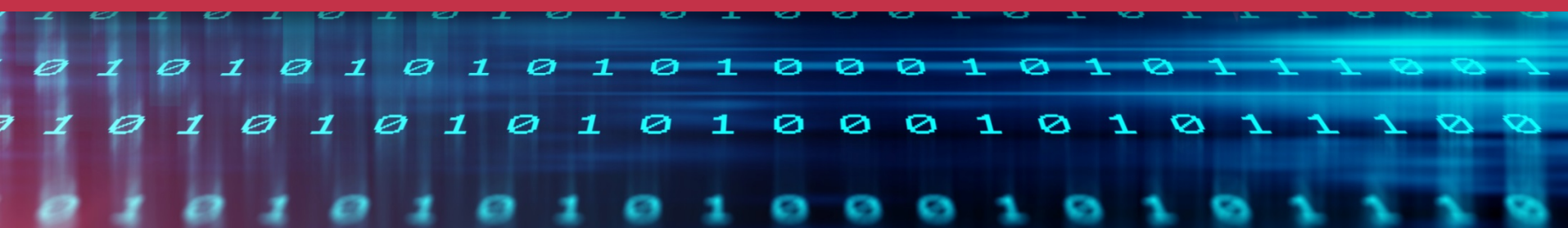
INDEPENDENCE OF THE CCO

- Board hires and fires
- Board sets compensation
- Direct reporting line to the Board
- Annual executive session meetings with the Board





Written Policies and Procedures



COMPLIANCE PROGRAM REQUIREMENTS

- Coverage of policies and procedures
 - Culture of compliance
 - Delegation of responsibility
 - Training
 - Monitoring and auditing
 - Response, prevention and evaluation
- One size does not fit all
- Risk assessments
- Must be dynamic





Annual Review Process



ANNUAL REVIEW

- Compliance rule requirements
- Testing schedule
- Remediation schedule
- Leverage work being done by others
- Maintain documentation



ANNUAL REPORT

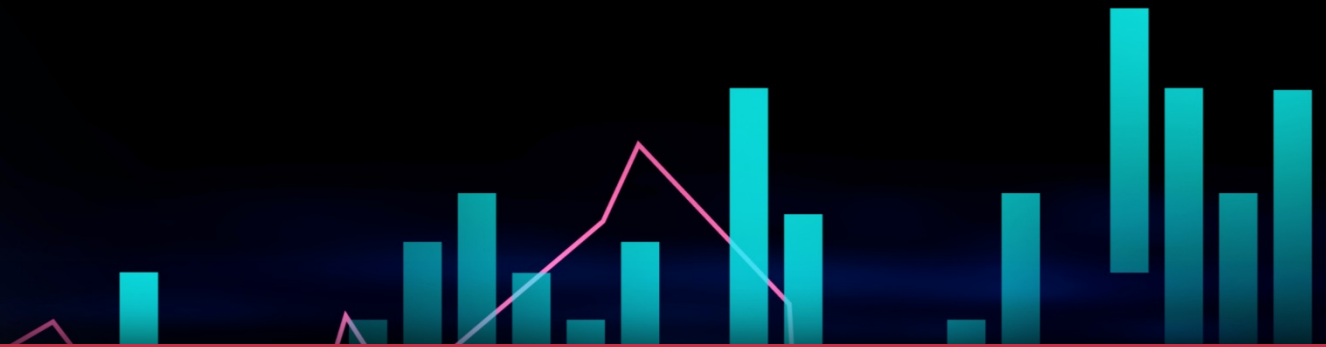
- Written report to the board must discuss:
 - Operation of the program
 - Material changes to the program
 - Material compliance matters
- Annual report considerations



MATERIAL COMPLIANCE MATTER

- Compliance rule definition
 - any compliance matter about which the board would **reasonably** need to know to oversee fund compliance
 - violations of federal securities laws
 - violations of policies and procedures
 - weakness in design or implementation of policies and procedures





38a-1 and 206(4)-7 Enforcement Actions



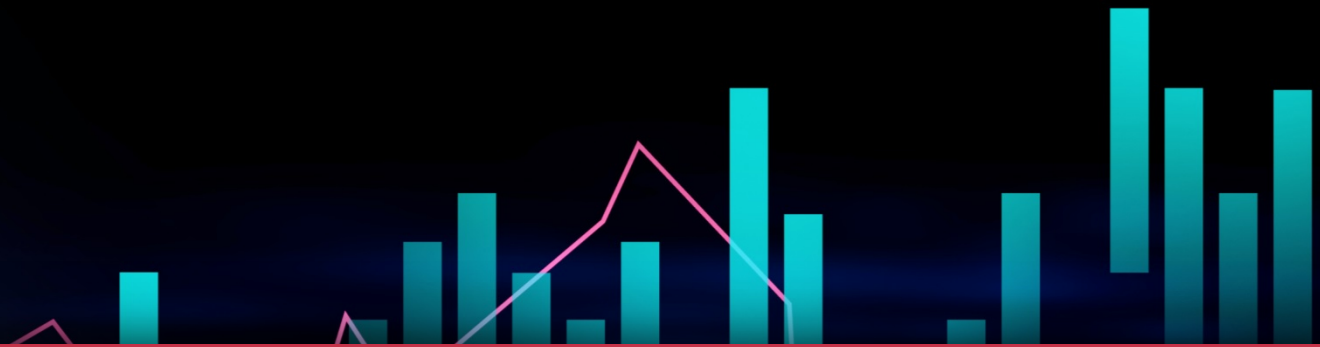


Recent CCO Liability Cases



CCO LIABILITY

- **Susan M. Diamond, Advisers Act Rel. No. 4619 (Jan. 19, 2017)**
 - Private funds adviser allegedly filed Forms ADV with false statements that financial statements were audited and would be distributed; CCO found liable for overseeing completion of forms containing false statements
 - Violation of IAA Section 207; nine month industry suspension; permanent bar from acting as a partner, officer, branch manager, or director, or in a compliance capacity for advisers; \$15,000 penalty
- **David I. Osunkwo, Advisers Act. Rel. No. 4745 (Aug. 15, 2017)**
 - Outsourced CCO failed to file timely and accurate Forms ADV and amendments; filings overstated AUM and total number of client accounts; allegedly relied on and failed to verify CIO's inaccurate statements
 - Violation of IAA Sections 204 and 207, \$30,000 penalty, and 12 month industry suspension
 - Firms sanctioned for recordkeeping and filing violations



SEC Examinations



REGULATORY ENVIRONMENT

- Pressure for OCIE to perform
- Enforcement Division – Asset Management Unit
- Division of Economic and Risk Analysis (DERA)
- Increasingly complex regulatory environment
- Additional voices beyond the SEC



EXAM RESULTS

- Enforcement actions originate from exams
- Enforcement action consequences
- Face-to-face interactions with SEC staff
- Deficiency letters



EXAM PREPARATION

- Contact person
- Notify management and personnel
- Prior exam records
- Examiner work area/resources
- Opening presentation
- Office tour
- Business cards
- Exit interview





Questions?



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