Private Funds
Alert

Weil

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On September 14, 2026, the SEC's Division of Examinations (the "**Division**") issued a Risk Alert (the "**Risk Alert**") describing its observations during recent examinations in regard to investment advisers' compliance with Rule 206(4)-7 (the "**Compliance Rule**") under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**").[1] The Risk Alert addresses issues regarding advisers' annual reviews of their compliance policies and procedures, including issues related to: (1) the timeliness of annual reviews; (2) the completeness of advisers' policies and procedures for conducting such assessments; (3) the alignment of the assessments performed with the advisers' policies, procedures, and practices; (4) the documentation made and kept regarding those reviews; and (5) the resolution of corrective actions for matters identified during assessments.

Observations Regarding Timely Annual Reviews

The staff observed advisers that did not perform reviews of their compliance policies and procedures, at least annually, to determine their adequacy and the effectiveness of their implementation, as required under the Compliance Rule. Examples included advisers that had gaps in their annual reviews (e.g., conducting reviews for 2021 and 2023 but omitting 2022), as well as advisers that performed annual reviews for periods of greater than 12 months, including first reviews at 18 months post-registration with the Commission and extended intervals due to business, operational, and personnel changes such as Chief Compliance Officer departures.

The staff also observed advisers that, instead of performing any annual review, unsuccessfully argued that providing personnel with compliance training or obtaining annual attestations of personnel's adherence to the advisers' compliance policies and procedures satisfied the annual review requirement. In addition, some advisers had not taken corrective action after receiving previous deficiency letters from Division staff for not performing annual reviews or not performing them in a timely manner, constituting recidivist conduct.

[1] A link to the Risk Alert can be found here.

Observations Regarding Completeness of Policies and Procedures for Conducting Annual Reviews

The staff also observed advisers that had compliance policies requiring annual reviews but had not adopted procedures—or had adopted only incomplete procedures—for their personnel to use when assessing whether the advisers' policies and procedures were adequate and effectively implemented. For example, certain advisers' policies required them to document their annual reviews and to include testing and validation of compliance policies and procedures as part of their review process; however, the advisers did not document procedures providing direction and processes personnel should follow for the tests and validations, the factors personnel should consider when evaluating results, or the types or level of documentation that should be made and kept in support of such reviews and assessments.

The staff also observed advisers whose compliance policies identified required practices, services, and/or operations to be assessed during the annual review in various sections of the advisers' compliance manuals but then did not include these topics in their policies and procedures for the annual review itself, resulting in omissions in the reviews (e.g., an adviser's identity theft policies and procedures mandating annual review testing, but such topic being omitted from the annual review testing).

Observations Regarding Consistency of Annual Reviews with Written Procedures

The staff observed advisers that conducted timely annual reviews but did not conduct them in a manner consistent with their written procedures. For example, advisers did not follow their own policies and procedures that required them to cover a defined review period or scope, utilize specified workpapers or other documentation, and perform specific tasks and tests.

In addition, the staff observed annual reviews that assessed the effectiveness of incorrect documents, such as outdated versions of policies and procedures that had been updated and superseded prior to the review period.

Observations Regarding Alignment of Policies, Procedures, and Practices

The staff observed advisers that did not recognize, during their annual reviews, that their policies and procedures did not fully address or were not aligned with their practices. The staff noted instances in which advisers: (1) had not adopted policies and procedures to address risk areas that were pivotal to the advisers' businesses; and (2) did not consider changes in their business activities that were relevant for their assessments of the adequacy of their policies and procedures (e.g., failing to inform the CCO of certain business or operational changes that may impact the scope of the annual review). Specific examples of misalignment included:

- Fee and expense billing practices that deviated from policies and procedures and/or client disclosures, such as using different fee calculation methodologies, not prorating fees for large intra-billing period deposits, not applying breakpoints that reduced advisory fees, and not issuing refunds for terminating accounts;
- Proxy voting policies that stated the advisers had a responsibility to vote proxies for portfolio securities in a manner consistent with the best economic interests of their clients, where in practice the advisers disclosed to clients that they did not vote proxies and did not vote proxies in practice;
- Custody policies and procedures that omitted steps to ensure that accounts over which the adviser had custody were identified to the independent public accountants performing the advisers' surprise examinations;

- Marketing policies and procedures that were not updated to reflect the adoption of the marketing rule under the Advisers Act;
- Regulatory filing procedures that were not updated to reflect that, when advisers have retail clients, they needed to file a Client Relationship Summary (Form CRS) with the SEC;
- Policies that delegated the execution of services and/or operations to others but did not identify how the adviser should oversee these delegated responsibilities to prevent violations of the Advisers Act and the rules thereunder; and
- Incidents of non-compliance, which were identified and reported during the review period, but were not addressed or recorded in the annual reviews as instances of non-compliance.

Observations Regarding Documentation of Annual Reviews

The Division staff observed advisers that created documentation when conducting their annual reviews, such as when performing testing and recommending corrective actions, but did not maintain the documentation in their books and records as required under the Advisers Act "books and records" rule. For example, some advisers included discussions in their written annual review reports regarding compliance violations identified during the reviews but did not maintain the documentation generated during the annual review addressing such compliance issues, such as records regarding the testing performed, issues identified, and/or corrective actions recommended.

Other advisers adopted policies and procedures requiring their annual reviews to be memorialized in written reports covering specific topics (e.g., recommendations for improvement, material changes to be made to the policies and procedures, and material compliance issues that required remedial action during the previous year); however, no written annual review report was prepared.

The staff also observed advisers that adopted policies and procedures requiring the annual review to be documented in a specific manner (e.g., using a series of checklists, workpapers, or templates) but did not satisfy all of these requirements or only partially completed them.

Observations Regarding Corrective Actions

The staff observed advisers that did not take corrective action after their annual reviews recommended changes to the advisers' compliance policies or procedures, disclosures, and/or business practices. For example, the staff observed advisers whose annual reviews identified improving proxy voting practice disclosures, documenting client risk tolerances, and/or conducting more thorough analysis of best execution and third-party due diligence on broker-dealers; however, the advisers did not make the recommended changes, including instances where the advisers indicated that corrective actions were already implemented but the issues identified during the prior annual reviews persisted.

Key Takeaways

In response to this Risk Alert, advisers should review their policies and procedures related to the annual review requirements under the Compliance Rule and implement updates as necessary. In particular, advisers should assess whether their annual reviews are conducted on a timely basis, are supported by complete and well-documented procedures, are performed consistently with those written procedures, adequately address business practices and changes in business activities, are accompanied by thorough recordkeeping, and result in corrective actions that are actually carried out. Please reach out to the Weil Private Funds Team with any questions.

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