MY RIA LAWYER

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We help financial advisers create the life they dream of and go independent!

Greetings!

It's that time of year again!

Yes, it is time to prepare for annual renewals. E-bills for annual RIA amendments are available now on IARD. Annual amendments may be filed beginning January 2, 2018 and must be filed by the end of March.

This year, Form ADV has gone through significant revisions, *including hundreds of new disclosures,* depending on the size of your advisory firm. The new Form ADV requires advisers to report more information about their social media addresses, separately managed accounts, and outsourced compliance officers. They also must divulge much more detail on how they have invested their clients' money. You can see a redline of the changes here.

Fourth quarter is also a great time to conduct your annual review of your compliance policies, procedures, and systems.

Failing to conduct annual reviews of your compliance systems can be costly. Take the case of Dupree Financial Group, an advisory firm based in Lexington, Kentucky. The SEC found that the firm failed to conduct mandatory compliance reviews for a more than four-year span while it was registered with the commission.The trouble started for the firm when staff from the SEC's Office of Compliance Inspections and Examinations dropped in for a routine exam in 2014. In the course of the review, the examiners discovered that Dupree Financial Group had never conducted the annual compliance review that is required under Rule 206(4)-7.

Under the agreement, Dupree Financial Group, accepted a *censure* for its compliance

lapses and agreed to pay a *$25,000 fine* while also explicitly committing to avoid repeat violations of the relevant provisions of the Investment Advisers Act. That regulation, which the SEC adopted in December 2003, requires every registered adviser "to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws, review those policies and procedures annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer to be responsible for administering the policies and procedures."

OCIE also discovered that Dupree Financial, which had engaged outside compliance consultants since it registered with the commission in 2010, had policies and procedures on the books that, in fact, stipulated that it would conduct the annual compliance reviews. Dupree says he hired two *"compliance-in-a-box type firms"* to help establish internal policies to ensure that his practice satisfied the SEC's regulatory requirements. He does not give those compliance consultants a glowing review.

"It was almost useless. They were not helpful," Dupree says. "They helped us write a compliance manual, but it was a generic thing. I could have gotten it off the internet."

Our Experience

We have seen Dupree Financial's story with several of our clients who come to us after an audit has begun and deficiencies are found even though our client had engaged one or more outside compliance consultants to review and advise our clients on their compliance obligations. The cost of using a "compliance-in-a-box" firm coupled with the fines these clients face for their deficiencies, often is more than if they had hired competent counsel in the first place. Depending the disciplinary actions handed down, an adviser, especially one who is dually registered as a registered representative, may then run afoul of the "bad actor" rules. If the disciplinary actions trigger the "bad actor" rules, then the adviser may no longer participate in certain securities-related activities.

Deficiencies found by regulators during their examinations of state-registered RIAs jumped nearly 60% to 7,907 in the first half of ***this*** year.

"Training and technology have combined to enable state examiners to conduct more examinations and better detect deficiencies," NASAA Investment Adviser Section chairwoman Andrea Seidt said in a statement released at the group's conference.

Policies and procedures must be reasonably designed to prevent violations of the SEC's and states' rules, and firms must enforce them vigorously. It is not enough for an RIA's policies and procedures to parrot the Commission's rules without tailoring them to the firm's activities. As Norm Champ, the SEC's former Director of the Division of Investment Management, said in his remarks to the 2014 IAA Investment Adviser Compliance Conference, "It is crucial that policies and procedures be reviewed and updated as your business changes, as regulations change, as new guidance is issued." According to Champ, "Compliance policies and procedures should evolve and grow with your business."

Don't Wait For An Audit to Catch Your Compliance Program's Deficiencies

A lot can go wrong if you don't take the time to review your compliance systems. You may not know where to start or how to conduct your review. That is where My RIA Lawyer can help. Unlike the "compliance-in-a-box" firms out there, we evaluate your current systems, report to you the deficiencies, and then ***work with you*** to update your compliance program. The best part of working with us? ***Attorney work product and attorney-client privilege shield your firm and you won't have to disclose our review to regulators.***

This is the best time of year to review your compliance program. So after you have your turkey, give thanks, and watch a little football, give us a call so we can discuss how to keep your money out of the regulator's pockets.

To your success,

Leila Shaver

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Department of Labor Fiduciary Rule Update

The rule went into effect June 9, 2017. The compliance period was to end January 1, 2018 when the best interest contract exemption and other private transaction exemptions were to go fully into effect. However, the Department of Labor has now proposed delaying full implementation until July 1, 2019.

The House Financial Services Committee approved legislation that would kill the Labor Department fiduciary rule and replace it with an investment advice regulation to be written by the Securities and Exchange Commission.

In a 34-26 vote along party lines, the panel sent the Protecting Advice for Small Savers Act to the House floor. The measure, written by Rep. Ann Wagner, R-Mo., reflects GOP concerns about the DOL rule, which requires brokers to act in the best interests of their clients in retirement accounts.

The committee also approved legislation that would revise the accredited investor standard to allow more people to buy unregistered securities and passed a bill that would provide legal protection for financial advisers who report senior financial abuse to authorities. Each of these measures received almost unanimous support.

The bills now go to the House floor, where votes have not yet been scheduled.

The regulatory landscape has changed dramatically since Trump's election. The Department of Labor proposed delaying implementing the fiduciary rule's best interest contract exemption by 18 months. The rule's other provisions are already in effect. Some state governments, meanwhile, are exploring whether to craft their own fiduciary standard.

There are six lawsuits that have been filed in four different jurisdictions challenging aspects of the rule. Now, thus far, no court has granted injunctive relief that would effectively stop the rule, so it’s difficult to predict the outcome of any of these cases. Each one is very fact-specific, but it is possible that one or more could have a profound impact on the final outcome.

If you have any questions about how the Department of Labor's Fiduciary Duty Rule affects you and your business, do not hesitate to contact us today.

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My RIA Lawyer keeps you up to date with industry news.

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A registered investment adviser and its principal, owner and chief compliance officer were found to have failed to disclose to the adviser's clients a material conflict of interest whereby the firm received compensation from the custodian of its...

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