



C&L ANNUAL SEMINAR

2014

March 30–April 2
GRANDE LAKES ORLANDO

Investment Advisers: Current Issues (WA:5)

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Moderator

Panelists

Marcy Engel, Eton Park Capital Management, L.P.
Daniel Kahl, Securities and Exchange Commission
Paul Middlemiss, LPL Financial
Charles Senatore, Fidelity Investments
Steven W. Stone, Morgan, Lewis & Bockius LLP

Investment Advisers: Current Issues

- SEC Policy Developments
- SEC Exam Priorities for 2014
- SEC Enforcement
- Uncertain Reach of FINRA Rules
- Advertising Issues
- Hedge Fund Issues

SEC Policy Developments

- DFA Uniform Standard of Care
- Temporary Principal Trade Rule
- General Solicitation 2
- Data Gathering
- Form PF
- IM Guidance/No-Action Relief
 - “Constructive Delivery” of Form ADVs
 - Custody guidance

SEC Exam Priorities for 2014

- Dual Registrants
 - Advisory Account vs. Brokerage Account Suitability
- Supervision of Advisory Accounts
 - Reverse Churning
 - Documentation of Client Reviews
 - Inactivity
 - High Cash Balances
- Conflicts

SEC Exam Priorities for 2014

- Retirement Vehicles and Rollovers
 - Sales Practices
 - Marketing/Advertising
- Custody
 - Common Issues of Non-Compliance

SEC Exam Priorities for 2014

- Higher risk products or strategies targeted to retail (particularly retired or elderly) investors
 - Common interest for the IA space and the BD space
 - Approaches for the elderly or retired population
 - Approaches for product review processes

SEC Exam Priorities for 2014

- Distribution in guise
 - Problem and its context
 - Expectations for oversight and supervisory processes
 - Approaches to ameliorate regulatory concerns
- SEC Interest in
 - Enterprise Risk Management
 - Technology

SEC Enforcement (2013)

- FY 2013: A decline in the number of cases; a record in fines/disgorgements.
 - 686 cases
 - BD/IA/fund companies: 261 cases
 - Broker-dealers: 121 (18%)
 - Investment advisers/funds: 140 (21%)
 - \$3.4 billion in penalties and disgorgement
 - Civil penalties: \$2.257 billion
 - Disgorgement: \$1.167 billion
- A “strong pipeline for 2014”
 - 574 Formal Orders of Investigation issued
 - 908 investigations opened last year
 - 1,444 ongoing investigations

SEC Enforcement (2012-13)

- Best Execution
- Principal Trading
- Trade Allocation
- Gifts and Gratuities
- Soft Dollars
- Custody
- Misappropriation
- Misrepresentation
- Insider Trading / Expert Networks
- MNPI Procedures
- Compliance Reviews and Policies & Procedures
- Records
- Valuation

Uncertain Reach of FINRA Rules

- No Jurisdiction to Enforce Advisers Act
 - But “J&E”
- Court Cases
- Specific Areas
 - Communications with the Public (1998 FSC Letter)
 - Cash Referral Arrangements
 - Trade Reporting
 - Private Securities Transactions

Advertising Issues

- Hypothetical Performance
- Past Specific Recommendations
- Testimonials
- Use of Social Media

Hedge Fund Issues

- CFTC Registration
- Form PF
- JOBS Act



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