

# Investment Adviser Considerations for Retail (TA)

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# Investment Adviser Considerations for Retail (TA)

- Overview of the Changing SEC Staff Landscape
- Trends and “Tea Leaves” in SEC RIA Exams & Enforcement
- SEC Rulemaking Initiatives
- Special Areas of Focus
  - Compensation Issues
  - Custody Issues
  - Wrap Fee Programs and Focus on Manager Trading
  - Unclear Rules of the Road with Non-Discretionary Investment
  - Share Class Selection and Suitability
  - Disclosure
  - Robos and Rule 3a-4
- Key Takeaways



# Changing SEC Staff Landscape

Position	Former	New
Chair	Mary Jo White	Jay Clayton (nominee)
Director, Investment Management	David Grim	David Grim
Director, OCIE	Marc Wyatt	Peter Driscoll (acting)
Director, Enforcement	Andrew Ceresney	Stephanie Avakian (acting)
Director, Corporation Finance	Keith Higgins	Shelley Parratt (acting)
Director, Trading & Markets	Stephen Luparello	Heather Seidel (acting)



# Trends and “Tea Leaves” in SEC RIA Exams

- 2016 Developments

- Areas of Focus and Sweeps
- Repurposing Broker Exam Staff
- SEC Ditches Third-Party Exam Proposal
- Multi-Multi Branch Adviser Initiative
  - Risk Alert: Multi-Branch Adviser Initiative (Dec. 12, 2016)

- 2017 Developments

- Risk Alert: The Five Most Frequent Compliance Topics Identified in OCIE Examinations of Investment Advisers (Feb. 7, 2017)
  - Compliance Rule
  - Regulatory Filings
  - Custody Rule
  - Code of Ethics Rule
  - Books and Records Rule
- SEC 2017 Priorities Letter (Jan. 12, 2017)

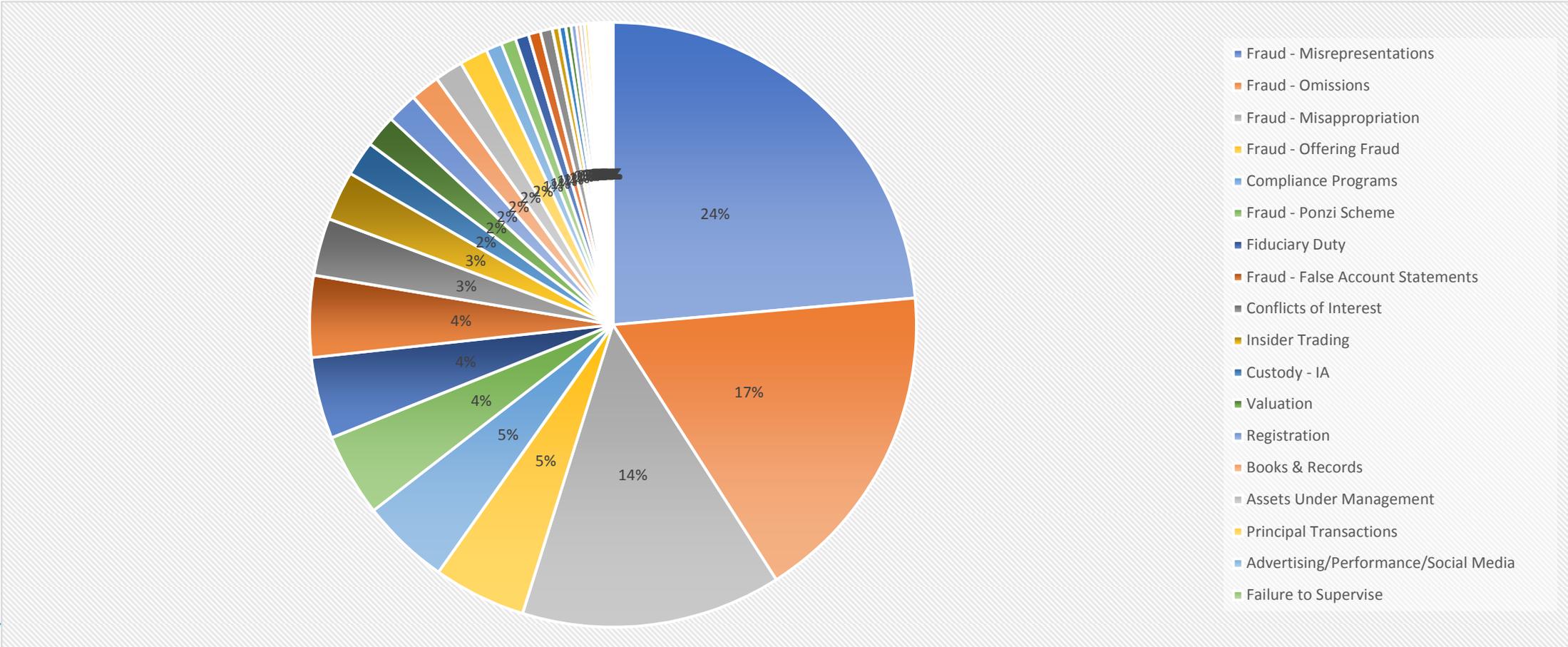


# SEC Priorities for 2017

- Protecting Retail Investors
  - Electronic Investment Advice
  - Wrap Fee Programs
    - Suitability, Disclosure, Conflicts
    - Brokerage Practices: Trading Away/Best Ex
  - ETFs
  - Never Before Examined Advisers
  - Recidivist Representatives and Firms that Employ Them
  - Firms/Multi-Branch Firms
  - Mutual Fund Share Class Selection
- Senior Investors and Investors Saving for Retirement
  - Variable annuity sales; Target date funds
  - Cross-transactions, especially in regard to fixed income securities
- Market-Wide Risks
  - Money Market Funds
  - Payment for Orderflow
  - Clearing Agencies
  - FINRA
  - Regulation SCI
  - Cybersecurity
  - Exchanges
  - AML
- Other
  - Municipal Advisers
  - Transfer Agents
  - Private Fund Advisers



# Breakdown of Past Adviser Settlements



# 2016 SEC Enforcement Statistics

Percentage of Investment Adviser, Investment Company, and Broker-Dealer Actions



Type of Case	Number of Actions	Percentage
Broker-Dealer	173	19.9%
Investment Advisers and Investment Companies	159	18.3%
Delinquent Filings	121	14.4%
Issuer Reporting and Disclosure	103	11.9%
Securities Offering Cases	97	11.2%
Public Finance Abuse	97	11.2%
Insider Trading	45	5.2%
Market Manipulation	33	3.8%
FCPA	21	2.4%
Miscellaneous	11	1.3%
Nationally Recognized Statistical Ratings Organization (NRSRO)	2	0.2%



# Notable SEC Cases from 2016-17

- Advisory Fees
  - Blackstreet Capital Management, LLC and Murry N. Gunty
  - Acceleration of Monitoring Fees upon Termination - Apollo Management V, L.P., Apollo Management VI, L.P., Apollo Management VII, L.P. and Apollo Commodities Management, L.P.:
  - Fee Allocation Practices - WL Ross & Co. LLC
  - Misbilling – Morgan Stanley Smith Barney & Citigroup Global Markets Inc.
- Custody – Morgan Stanley Smith Barney
- Affiliated Transactions – Madison Capital Investments LLC, and Madison Royalty Management LLC
- Best Execution
  - FX Trading – State Street Bank and Trust Company
  - Mutual Fund Share Class – Everhart Financial Group, Inc., Richard Scott Everhart, and Matthew James Romeo
- Gatekeeper Failure – Apex Fund Services (US), Inc.
- Municipal Advisory Activities – Central States Capital Markets, LLC, Mark R. Detter, David K. Malone, and John D. Stepp
- Performance advertising – F-Squared Cases
- Trade Allocation – James Caird Asset Management LLP and Timothy G. Leslie
- Trading Away
  - Portfolio Managers – Riverfront Investment Group, LLC
  - Sponsors – Raymond James & Associates, Inc. & Robert W. Baird & Co., Inc.:
- Valuation – Odd Lots – Pacific Investment Management Company LLC



# SEC Rulemaking Initiatives

- Form ADV Updates
- Transition Planning and BCP
- 2016 Sunset of Temporary Principal Trade Rule
- Uniform Standard of Care



# Special Areas of Focus

- Compensation Issues
  - Focus on Undisclosed Compensation
  - Disclosure of Recruiting Compensation
  - Fee/billing issues – Mis-billing & Frozen (suspended) accounts
- Custody Issues – Guidance & Open Issues
  - Related person custody – Investment Adviser Association (April 25, 2016)
  - Inadvertent custody – IM Guidance Update (Feb. 2017)
  - Standing letters of authorization – Investment Adviser Association (Feb. 21, 2017)
- Wrap Fee Programs and Focus on Manager Trading
  - Trading and step outs
  - Disclosure



# Special Areas of Focus

- Unclear Rules of the Road with Non-Discretionary Advice
  - Scope of Services and Responsibilities
  - Reasonability of Fees
  - Reverse Churning Issues
  - Allocation of Investment Opportunities
  - Limited Scope Investments and Effect on Suitability Obligations
- Share Class Selection and Suitability
  - SEC & FINRA Focus
  - Clean Shares and Section 22(d) – Capital Group (January 11, 2017)
- Disclosure
  - Conflict Disclosure and the SEC's focus on "May" Based Disclosure
  - Trends
- Robos and Rule 3a-4
  - SEC Investor Alert (February 2017)
  - SEC IM Guidance Update (February 2017)



# 2017 Staff IM Guidance: Robo Advisers

- Substance and presentation of disclosures
  - Explanation of the business model
  - Scope of advisory services
  - Presentation of disclosures
- Provision of suitable advice
  - Reliance on client questionnaire
  - Client-directed changes in investment strategy
- Effective compliance programs



# Key Takeaways



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