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2017 REGULATORY DEVELOPMENTS

IMPACTING BROKER-DEALERS, INVESTMENT ADVISERS, AND REGISTERED FUNDS

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November 14, 2017
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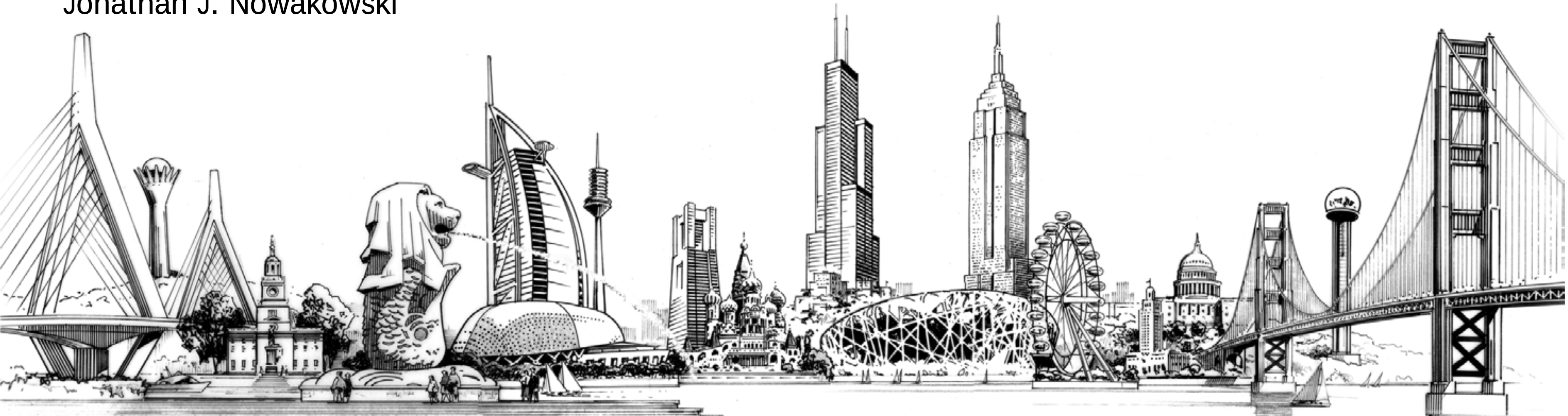


2017 Regulatory Developments – Overview

- SEC Chairman Clayton's Guiding Principles and Priorities
- Current Status of DOL Fiduciary Rule
- SEC's Uniform Fiduciary Standard
- OCIE's Risk Alert on Cybersecurity
- OCIE's Risk Alert on Advertising Deficiencies
- Move to T+2 Standard Settlement Cycle
- Q&A

SEC Chairman Clayton’s Guiding Principles

- SEC’s Mission
  - Protection of investors;
  - Fair, orderly, and efficient markets; and
  - Capital formation
- Long-term interests of the Main Street investor
- Disclosure and materiality heart of regulatory approach
- Lasting impact of regulatory actions
- Evolution of the SEC
- Public input on rulemaking beyond adoption
- Cost of compliance
- Coordination with other regulators

Chairman Clayton's Priorities for the SEC

- Enforcement and examinations
- Capital formation
- Market structure
- Investment advice and disclosures to investors
  - Fiduciary Rule
  - Improving disclosure to investors
- Resources for investor education

Current Status of DOL Fiduciary Rule

- June 9, 2017 – Expanded definition of "fiduciary investment advice" went into effect
- July 25, 2017 – SEC Commissioner Piwowar published letter in response to the DOL's request for information; criticized the DOL Fiduciary Rule
- August 9, 2017 – DOL filed a notice of administrative action, notifying court of proposed amendment that would delay applicability of requirements for exemptions from January 1, 2018, until July 1, 2019
  - BIC Exemption
  - Principal Transactions Exemption
  - PTE 84-24 (regarding insurance contracts and annuities)
- August 29, 2017 – OMB accepted the DOL's proposed delay
- Next step – publish text of the delay in the *Federal Register*

SEC's Uniform Fiduciary Standard

- Chairman Clayton published a request for comment on adviser and broker-dealer conduct standards on June 1, 2017. Common concerns include:
  - Broker-dealers and investment advisers should have different rules because they have different business models.
  - A uniform fiduciary standard should apply to all types of accounts and should be implemented through disclosures.
  - A uniform fiduciary standard should be a "true best interest standard."
  - Regulatory obligations that differ by retail account type present a "compliance burden."
- Both the SEC and DOL have expressed a desire to coordinate, and recent comments from Chairman Clayton and Secretary Acosta suggest this may already be happening.

OCIE's Risk Alert on Cybersecurity - Overview

- Common Issues Identified:
  - Failure to reasonably tailor policies and procedures
  - Failure to adhere to or enforce policies and procedures; policies and procedures were confusing/did not reflect actual practice
  - Reg S-P issues among firms that did not appear to adequately conduct system maintenance
  - Failure to fully remediate issues found
- Best Practices:
  - Maintenance of data, information, vendor inventory, and risk classifications
  - Detailed cybersecurity-related instructions, including prescriptive schedules and processes for testing
  - Access Controls for data and systems
  - Mandatory employee training
  - Cybersecurity policies and procedures vetted and approved by senior management

OCIE's Risk Alert on Cybersecurity – Key Takeaways

- SEC registered broker-dealers, investment advisers, and funds should review cybersecurity policies and procedures to fill gaps and make improvements.
- Firms and funds should further evaluate policies and procedures to ensure that they reflect actual practices and are reasonably tailored to the particular firm's business.
  - Tailored and risk-based approach
- Cybersecurity remains a high priority with the potential for enforcement actions.

OCIE’s Risk Alert on Advertising Deficiencies

- Most Frequent Advertising Rule Compliance Issues:
  - Misleading performance results
  - Misleading one-on-one presentations
  - Misleading claim of compliance with voluntary performance standards
  - Cherry-picked profitable stock selections
  - Misleading selection of recommendations
  - Compliance policies and procedures
- Observations from Touting Initiative:
  - Misleading use of third party rankings or awards
  - Misleading use of professional designations
  - Testimonials

OCIE's Risk Alert on Advertising Deficiencies – Key Takeaways

- OCIE staff likely to continue to focus examination resources on marketing – has been a source of deficiencies and enforcement referrals.
- In light of Risk Alert, advisers should review existing policies and procedures against findings and revise accordingly.
  - Take remedial measures as necessary.
  - Policies should be reviewed at regular intervals and updated to conform with evolving regulatory environment and changes in adviser's marketing practices.
- Firms should review adequacy and effectiveness of compliance programs – details matter.

Move to T+2 Standard Settlement Cycle

- On September 5, 2017, the amendment to Rule 15c6-1 under the Securities Exchange Act of 1934 went into effect and shortened the standard settlement cycle for most broker-dealer securities transactions from T+3 to T+2.
- Reasons for the Amendment:
  - Reduce credit, market, and liquidity risk from unsettled transactions
  - Align the U.S. with other T+2 settlement markets (e.g., the EU), reducing the need for:
    1. Market participants to hedge risks; and
    2. Financing/borrowing

Move to T+2 Standard Settlement Cycle (continued)

- Other Time Frame Changes as a Result of the Amendment:
  - Prospectus delivery obligations
  - Delivery of written trade confirmations
  - Various aspects of Regulation SHO
  - Broker-dealer to obtain cash or margin from a customer following transaction under Regulation T
- What the Amendment Does Not Change:
  - Alter settlement date by express agreement
  - Firm commitment underwritten transactions

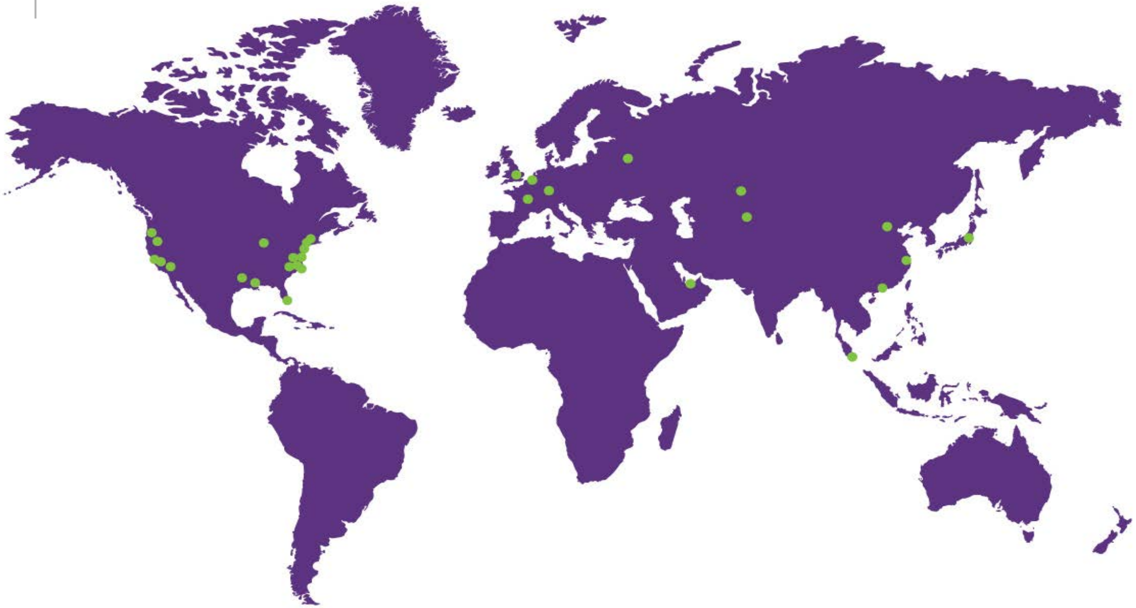
QUESTIONS?

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty
Astana
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



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