Investment Advisers Act Compliance Developments in 2014*

By Jesse P. Kanach

Introduction

If there is one U.S. Securities and Exchange Commission compliance development for investment advisers to be aware of in 2014, it is the coordination of the SEC's examination and enforcement staffs. Traditionally, exam teams have been armed with a combination of deficiency letters and sunshine-as-disinfectant in promoting compliance discipline among regulated firms, with referrals to the Enforcement Division as a looming threat. Of late, however, examiners are working directly alongside the SEC's prosecutorial arm when visiting firms registered under the U.S. Investment Advisers Act of 1940. In light of SEC Chair Mary Jo White's promise of "an incredibly active year in enforcement" in 2014,[1] how might an investment adviser best prepare for and handle its next SEC exam?

Examinations generally. This article begins with a discussion of how the SEC conducts its inspections of registered investment advisers and how an adviser might best navigate the exam process.

Specific topics of interest. Next, this article covers several substantive "hot button" areas for the SEC – particularly valuation, stress testing, risk management, disclosures, and matters integral to an adviser's compliance program itself.

Other issues. Finally, the article concludes by highlighting several other topics with which asset managers could find themselves wrestling over the course of the next year, including developments affecting fund offerings in the United States and overseas.

"We're From the Government…"

Countless investment advisers can remember with clarity the moment the SEC exam staff announced its latest visit to their offices. The announcement often comes in the form of a letter that requests numerous documents for prompt delivery and sets a schedule for an on-site inspection. It can also come in other forms such as an

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unannounced in-person examination. Every investment adviser should seek to be comfortable with the steady state question: Are you ready?

Being ready for an examination means, at its simplest, having a regulatory compliance program that covers the appropriate topics, having periodically assessed actual compliance with the firm's policies, and being ready to compile and turn over the documents that SEC examiners routinely request. But that is not the extent of it. A routine request will typically be followed by some number of additional requests, often based on the initial responses the investment adviser provides. The adviser should keep track of the documents it has provided and the written responses it has prepared, consider encrypting electronic files that it provides to the SEC, and take steps to protect its submissions from freedom of information (FOIA) requests.

Organized recordkeeping, and ready access to records, can make a registered investment adviser's life easier at inspection time. Service provider agreements that provide for prompt delivery of information to the adviser also can add to how smoothly an examination moves forward. As the SEC sometimes requests categories of emails, such as messages sent and received by specified personnel over set periods of time, the ability to sift through emails can be key. If documents are specially prepared in response to SEC requests, they should be noted as such, and any revisions or corrections made (such as a policy that is revised upon receiving the SEC exam staff's scrutiny) should be clearly noted as well.

Examinations come in various flavors, including routine exams that seek a broad swath of information from a firm, sweep exams that target particular data from numerous firms, and "for cause" exams that may arise from a tip, an adviser's association with a person under investigation, or high-risk activity. The SEC tends not to make clear that an exam is for cause. The amount of time that examiners will spend at an adviser's officers varies, from days to months, or even to "desktop" exams that involve only document delivery and conference calls. Although the SEC seeks to base the frequency of examinations on risk-based factors, every SEC-registered adviser should manage its operations with a view to being prepared for a full examination. Regardless of the kind of examination, prompt delivery of requested information – or timely requests for extensions – are the order of the day. The firm's chief compliance officer (CCO), counsel or executives also may find it appropriate to challenge requests that are, for example, overbroad or where the requested information is legally privileged, and negotiate to provide information that is responsive but does not raise those issues.

Beyond having proper documentation, records, testing and systems in place, an adviser should take steps such that its

Note about the new examination and enforcement cooperation

SEC examinations have always been a stressful affair. The SEC has announced several developments that could be seen to raise the stakes. Among these:

Risk Alerts. The SEC's Office of Compliance Inspections and Examinations (OCIE) has issued several "National Exam Program Risk Alerts" beginning in 2013. These alerts disclose that they were prepared by OCIE in coordination with attorneys from the Asset Management Unit (AMU) of the SEC's Enforcement Division. (The AMU was formed in early 2010 to focus enforcement efforts in the asset management industry.) The involvement of attorneys from the Enforcement Division may well increase the weight advisers give this informal guidance.

Compliance Program Initiative. Senior officials in the Enforcement Division have noted that the Division's involvement in adviser exams has been a "significant area of collaboration," with AMU personnel training examiners and accompanying them on exams,[1] and with both units "[w]orking closely" together and "coordinating efforts to identify and bring cases" against firms that have ineffective compliance programs.[2] The SEC has called this its Compliance Program Initiative. The press releases announcing proceedings brought under this initiative not only give credit to the SEC's enforcement attorneys that contributed to the action, but also list the names of the SEC examiners involved in the inspections.

Risk and Examinations Office. As mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act, since late 2012 the SEC's Division of Investment Management houses an examination team, sometimes called Reg (rhymes with "edge"), with a particular focus on asset management firms and the funds they manage.

ENDNOTES

1 Bruce Karpati, then-Chief, Asset Management Unit, Enforcement Division, SEC, Private Equity Enforcement *Concerns (Jan 23, 2013) (speech).*

2 Stephen L. Cohen, Associate Director, Enforcement Division, SEC, Remarks at SCCE's *Annual Compliance & Ethics Institute (Oct. 7, 2013).*

personnel are educated on the compliance program and, in the context of an SEC inspection, ready to answer questions about the program. Interaction with the SEC exam staff involves a balance between candid and precise responses. The SEC will commonly request a conference room or other accommodations, and care should be taken to maintain the business's privacy. A point person, often the adviser's CCO, should be designated and would generally accompany personnel during interviews with the SEC staff, particularly so that any compliance issues identified can be promptly addressed. This management of the examination process is particularly important given the enforcement-oriented tone of late.

If there is one U.S. Securities and Exchange Commission compliance development for investment advisers to be aware of in 2014, it is the coordination of the SEC's examination and enforcement staffs.

Upon the SEC exam staff's departure, and preferably even before, there must be a focus on remediating any adverse findings. An examination can unnecessarily become an enforcement action if deficiencies that the SEC staff has identified are not addressed. For example, in one case, the SEC found that the adviser failed to remedy issues that the exam staff had raised, including the failure to conduct an annual compliance review and its continuing use of marketing statements that the exam staff had found were misleading.[2] In another case, an adviser was warned of

Note about typical SEC examination requests

A registered investment adviser should expect to provide certain basic information to the SEC's examiners on short notice. These items often include some or all of the following:

- Organizational charts
- List of officers and directors, including those who recently departed the firm (i.e., over the prior 2-3 years)
- Remedial actions taken against supervised persons
- Copies of standard client investment advisory and sub-advisory contracts
- Regulatory filings
- List of service providers and the services they perform
- Written compliance program and results of compliance testing
- Inventory of compliance risks that forms the basis for policies and procedures and notations regarding changes made to the inventory
- The required annual compliance reviews and any interim reviews
- Internal audit results
- Client complaints
- Pricing services and systems used in the valuation process
- Information about fair-valued and illiquid securities held by clients
- Advisory fee calculations
- Information about maintaining the privacy of client information
- Business continuity plan
- Various items of information about each current advisory client
- Trade blotter
- Securities held in all client portfolios, including information identifying each client holding an interest, the amount owned by each client, the aggregate number of shares or principal or notional amount held and total market value of the position
- Investment committee meetings and minutes, if held and maintained
- Publicly traded companies for which employees of the Adviser or its affiliates serve as officers or directors
- Brokerage arrangements and documentation of best execution evaluations
- Soft dollar practices including products and services obtained using clients' brokerage commissions
- Trade errors and related information
- Information about trade allocations among client accounts
- Reports of securities transactions reported by access persons
- Record of non-compliance with the Code of Ethics
- Copies of marketing materials and requests for proposals (RFPs)
- Performance returns
- Persons paid and compensation received for referring clients, and documentation supporting such arrangements
- Information about compliance with the Advisers Act custody rule
- Information about anti-money laundering measures
- Threatened, pending and settled litigation or arbitration
  Financial statements of the adviser

This list is derived from one published on the SEC web site, but the information requested frequently evolves and may target different or additional topics depending on the circumstances.

custody rule violations in an examination deficiency letter, and its failure to remedy that deficiency several years later helped precipitate the elevation to an enforcement matter.[3] These are just a couple of cases out of many and, as noted above, the SEC has a formal Compliance Program Initiative to bring enforcement actions rather than send second and third warnings. As the SEC has announced, this initiative "targets firms that have been previously warned by SEC examiners about compliance deficiencies but failed to effectively act upon those warnings."[4]

Hot Button Topics in SEC Exams

Beyond the top-down compliance culture, and the adviser's readiness in supplying requested documents and statements, the SEC has placed particular emphasis on a number of substantive topics. These include the following – some old, some new:

Valuation

The SEC places a premium on robust, independent and accurately-disclosed pricing processes. Valuation is at the heart of advisory fee calculations, performance-based allocations, and client account balances, and thus represents a potential conflict of interest for advisers. From the high-profile Regions Morgan Keegan Funds mutual fund adviser and directors cases, to enforcement actions brought under the Advisers Act and other securities laws,[5] the SEC has both spoken loudly and carried a big stick.

Stress testing

Stress testing has not historically been an SEC-mandated compliance practice. Going forward, that may well change. The Dodd-Frank Act requires the SEC to adopt stress testing regulations for certain institutions, and that rulemaking may soon become the law of the land for larger funds or advisers.

SEC examinations have always been a stressful affair. The SEC has announced several developments that could be seen to raise the stakes.

In the meantime, the SEC's Investment Management Division has issued an *IM Guidance Update* suggesting that fund advisers – fixed income managers in particular – consider various stress tests including with respect to the funds' ability under various market scenarios and time periods to meet potential redemptions.[6]

While the above IM Guidance Update does not expressly represent a mandatory checklist of stress tests that the SEC views as appropriate, an adviser could find itself responding to exam staff inquiries that are derived from that guidance.

Risk management

The SEC examinations office lists scrutinizing firms' "Enterprise Risk Management" as being among its most significant initiatives nationwide. In response to signals from the SEC, such as adding a requirement that proxy statements disclose the extent of a mutual fund board's role in risk oversight, many firms have considered whether a formalized risk management process should be in place, rather than the ad hoc risk management measures that are part of every investment adviser's business. That IM Guidance Update suggests that risk management strategies and actions be developed to address potential changes in market conditions, particularly in the fixed income space.

Note about stress testing

The SEC staff guidance suggests that, in assessing liquidity under various market scenarios, those market scenarios might include:

- Normal environments
- Stressed environments generally
- Declining markets
- Dislocated markets
- Increased volatility
- Reduced liquidity
- Interest rate hikes
- Widening spreads
- Price shocks
- Other market stress

Other factors

Time periods the staff suggested evaluating might include needs for liquidity, and sources of liquidity, over:

1 day
5 day
30 day
Longer periods

Note about risk management

Items that the SEC's Division of Investment Management found worth noting in its IM Guidance Update for risk management processes include decisions around:

- Portfolio composition
- Concentrations
- Diversification
- Liquidity
- Other factors

Disclosure

The SEC staff can be expected to review an adviser's disclosures against actual practices or for factual accuracy. Since an adviser is continuously offering its services, virtually everything its personnel write or say about its business can be a target for SEC review, and since an adviser is a fiduciary, it tends to be subject to a higher standard than other enterprises. Disclosure deficiencies come in various forms, including the following.

Misstatements

Recent examples of regulatory scrutiny include cases in which advisers misstated performance, highlighted a track record during a single favorable period while ignoring less favorable periods, or overstated assets under management (AUM).[7] Advisers' alleged misstatements have taken place in Form ADV (the Advisers Act registration form), on the adviser's website, in pitch books, in newsletters, and on social media such as Twitter.[8]

Disclosed Policies Inconsistent with Actual Practices

The SEC exam staff may focus on differences among (i) internal policies the firm has adopted, (ii) how those same policies are disclosed to clients or fund investors, and (iii) the firm's actual conduct. The SEC Enforcement Division may decide to bring an action even if no regulatory violation would have occurred absent the firm's adoption of the policy. As examples:

- Upon discovering an apparent breach of investment guidelines, an adviser took steps that did not include notifying the client, which the SEC found at odds with the adviser's Form ADV disclosure.[9]
- The SEC found the absence of certain investment performance disclosures at odds with an investment adviser's internal policy that called for providing those disclosures.[10]
- The SEC cited inconsistencies between a firm's actual valuation practices and those disclosed in its private fund offering memorandum.[11]

Failure to Make Unattractive Disclosures

Despite the marketing disadvantage that comes from unfortunate facts, it is important to respond accurately to client or prospective client requests for information. As examples, the SEC recently cited advisers for failures to disclose:

- The timing and extent of redemptions in response to a question seeking confirmation of recent redemption activity.[12]
- Prior SEC examination deficiencies.[13]

Rankings

In 2014 the SEC expressed its view that the manager of a five-star fund under Morningstar's ranking system will be materially misleading investors if it calls itself a five-star money manager – because Morningstar ranks funds, not managers.[14]

Past Specific Recommendations

The SEC found non-compliance when a registered investment adviser noted several successful trades without providing a list of all recommendations by the adviser within the past year or otherwise complying with SEC staff guidance.[15]

Matters Integral to the Compliance Program

In addition to recently bringing a number of cases as violations of the Advisers Act's compliance program rule (Rule 206(4)-7), the SEC has placed great emphasis on the administration of the compliance program itself rather than focusing on simply the policies and procedures the program comprises, the appointment of a CCO, and conducting an annual review.

Interpreting the Compliance Manual

An investment adviser's written compliance program must anticipate many issues should they arise but, inevitably, not every possible issue can be anticipated and clearly addressed in writing. For that reason, compliance departments frequently have to interpret the text of their compliance

manuals in light of unanticipated events. Advisers should be aware that the SEC, if it disagrees with the interpretation, may find the adviser in violation of Rule 206(4)-7 for failure to implement its policy.[16]

Inexperienced CCO

In bringing the Morgan Keegan Regions Funds actions on valuation, the SEC seemed to rely in part on an expert report that remarked on the lack of the CCO's valuation expertise. More recently, the SEC cited a firm for designating a CCO who did not have "adequate knowledge, training or resources."[17] The SEC has not been shy about bringing actions directly against CCOs (experienced or not) who have failed to take appropriate compliance measures.

Oversight of All Personnel

Compliance requires attention at all levels including, of course, outside of the compliance department. It is not enough just to have an adequate written compliance program; a failure of personnel to comply with that program may result in SEC charges. For example, after an advisory firm's trader acted inconsistently with a firm policy, the SEC found a violation by the firm of Rule 206(4)-7 for failure to implement measures to ensure compliance.[18]

Note about other areas of SEC focus in 2014

The following are some of the other areas that the SEC's exam staff identified for particular scrutiny in its *National Exam Program Examination Priorities for 2014*, dated January 9, 2014:

- Firms' "tone at the top" and control environment
- Conflicts of interest
- Preparedness to respond to technological malfunctions and system outages
- Firms dually-registered as both broker-dealers and investment advisers
- Compliance with new rules on swaps and other derivatives (also the subject of an IM Guidance Update)
- Sales practices in connection with individual retirement account (IRA) rollovers
- Advisers Act custody rule (also the subject of both an IM Guidance Update and an OCIE Risk Alert)
- Wrap fee programs, including best execution
- "Retail alts," or SEC-registered funds offering "alternative" (hedge fund-like) strategies (also the subject of an OCIE Risk Alert)
- Compliance with SEC exemptive orders (also the subject of an IM Guidance Update)
- Security lending arrangements

Other Developments of Which Advisers Should Be Aware

As always, an investment adviser's compliance obligations do not fit solely within the confines of the Advisers Act. A few of the other topics of interest to advisers in the coming year are briefly described below.

Fund Offerings

Fund managers have new rules to navigate, depending on the fund's structure and target investor base.

"Unregistered Public" Offerings

The SEC has adopted a rule that allows for general advertising so long as the investors that are accepted (rather than all viewers of the advertisement, or offerees) are eligible investors – meaning "accredited investors" as defined under Regulation D of the U.S. Securities Act of 1933. In short, the issuer must take "reasonable steps" to verify investor eligibility. Checking for compliance with this area is listed among OCIE's *Examination Priorities for 2014*.

Bad Actor Rule

Interests in investment funds, if not registered with the SEC, are commonly offered under Regulation D. Most Reg D offerings are, as of late 2013, subject to potential "bad actor" disqualification. In brief, certain bad acts, by a lengthy list of insiders, affiliates, underwriters or large shareholders of an issuer, may disqualify the issuer's offerings from reliance on Reg D. Questionnaires, compliance checks, and new disclosures for relevant bad acts occurring prior to the rule's effective date are being developed for use in 2014 and beyond.

Crowdfunding

Investment products, particularly on a smaller scale and in the space commonly referred to as venture capital or emerging growth companies, are finding greater avenues for fundraising. As Congress and the SEC are wrestling with tension between

capital formation and investor protection, solutions have not been simple and it remains to be seen if these options will be manageable for smaller issues that lack deep resources. Examples of these developments include:

- **Venture Capital Funding Platforms**
  The SEC staff has confirmed that it would not object if an investment adviser, without registering as a broker-dealer, operates a certain kind of online platform for investing in specific deals through privately-offered investment vehicles. These platforms are subject to certain structuring requirements and limitations on activities, such as prohibitions on handling customer funds or accepting transaction-based compensation.[19]

  Another kind of platform, an online-only "funding portal," was proposed by the SEC in late 2013 to allow for unregistered offerings. As these offerings would generally be small (under $1 million), require SEC registration (of either the funding portal or a broker-dealer that runs it), and impose limitations (such as limiting the size of any one investment, prohibiting the funding portal from providing investment advice, and prohibiting the compensation of personnel based on the sale of securities through the portal), the usefulness of this platform remains to be seen.
- **Regulation A+**
  In December 2013, the SEC proposed so-called Regulation A+. This rule amendment to Regulation A under the Securities Act would raise from $5 million to $50 million the maximum capital that may be raised in certain offerings not subject to full public offering regulations, and would broadly free those offerings from registration with individual states. The SEC would, however, generally require the preparation of audited financial statements and periodic SEC reporting. The SEC also asked for comment on existing Regulation A.

Revenue sharing

Unlike the offering-related topics described immediately above, even the largest mutual funds are subject to SEC scrutiny of revenue sharing. In the aftermath of the SEC's failure to reform the mutual fund distribution fee rules, the SEC continues to review arrangements by which mutual funds or their advisers pay intermediaries. OCIE's *Examination Priorities for 2014* states that a priority is assessing whether revenue sharing and sub-transfer agency (sub-TA) payments are "payments for distribution and preferential treatment."

Whistleblowers

The SEC has long sought to partner with certain private parties having minimal conflicts of interest with advisory clients and whose job descriptions reflect a compliance-oriented role. These include independent mutual fund directors, audit firms, and chief compliance officers – sometimes referred to by SEC Commissioners and staff as watchdogs or gatekeepers – whose formal obligations with respect to compliance are well-established. This public-private partnership does not always function smoothly, as the SEC has occasionally brought enforcement actions finding failures of directors, auditors or CCOs to meet their obligations. With the implementation of the Dodd-Frank Act, the SEC formally has a new private sector partner, the whistleblower. As an incentive to report violations to the SEC, the law allows for some categories of whistleblowers to be awarded a portion of the monetary sanctions resulting from their tips. With some 3,000 complaints from whistleblowers being filed annually over the past two years, the SEC's Office of the Whistleblower and the Enforcement Division's Office of Market Intelligence continue to sift through leads. As the SEC synchronizes its data and tracking systems, as complaint processes are better understood by the public, and as earlier complaints mature into formal proceedings, expect to see a greater trend of whistleblower awards accompanying enforcement outcomes this year and going forward.

Insider Trading and Other Trading Misconduct

The SEC and other regulators, including U.S. Attorneys Offices, the Federal Bureau of Investigation (FBI), and the Financial Industry Regulatory Authority (FINRA), continue to aggressively patrol for insider trading cases. SEC Chair White, in introducing an instrument called the National Exam Analytics Tool (NEAT), has warned: "In 2014, our examiners will be using the NEAT analytics to identify signs of not only possible insider trading, but also front running, window dressing, improper allocations of investment opportunities, and other kinds of misconduct."[20] To reduce compliance and reputational risks, an investment adviser has all the more reason to review with care both portfolio

trades for clients and personal transactions reported under the adviser's Code of Ethics.

Cybersecurity and Data Privacy

Financial firms stand at the forefront of the battle against cyber criminals, data breaches, and improper sharing of personal information. The overlap of fiduciary responsibility, maintenance of financial information that can be deeply personal, and having access to financial assets makes protecting confidential client information an essential part of an asset manager's operations. At the same time, SEC measures such as Regulation S-P, Regulation S-AM and Regulation S-ID, together with certain state-by-state and other requirements, come into play alongside measures overseas such as the looming European Data Privacy Regulation. Whether in reaction to outside threats or compliance obligations that the SEC and other regulators view as key, the coming months and years will continue to pose data safeguarding challenges for investment advisers. Although some aspects are more operational than purely compliance-based, advisers should be prepared to discuss their approach to data protection at exam time.

International Matters. With the interplay of global markets, international issues must remain on investment advisers' radar screens. In the coming months and years, marketing into Europe by many funds will generally be subject to the Alternative Investment Fund Manager Directive (AIFMD), which can carry surprisingly greater burdens (such as personnel compensation protocols or prohibitions on certain activities) than the disclosure-based regulation to which advisers are accustomed. Tax law remains complicated and overseas fund managers are confronting obligations under the Foreign Account Tax Compliance Act (FATCA). On its part, the SEC continues to scrutinize non-U.S. money managers, whether in connection with managers (both U.S. and non-U.S.) named in over 20 settled enforcement actions announced in September 2013 concerning certain short selling activities, or those that should be registered with the SEC as investment advisers due to the nature of their U.S. client base but failed to do so.[21]

Conclusion

As the asset management industry becomes ever more complicated, as new rules are promulgated to support both capital formation and the protection of investors, and as regulatory compliance has expanded to encompass certain operational safeguards, investment advisers must keep up. This goal should be fostered beyond the compliance department, legal staff and executive suite; in any investment advisory firm, compliance has always been the responsibility of the overall enterprise. At the same time, the increased collaboration of the SEC's examination and enforcement areas has been a significant development and can potentially chill the registrant-regulator relationship. Nevertheless, investment advisers are well-served to partner with regulators with the common goal of broad compliance.

ENDNOTES

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1 Mary Jo White, Chair, SEC, *The SEC in 2014* (Jan. 27, 2014) (speech) ("SEC in 2014 Speech").

2 In the Matter of Modern Portfolio Mgmt. et al., Investment Advisers Act Release No. 3702 (Oct. 23, 2013) ("Modern Portfolio Mgmt.").

3 In the Matter of Knelman Asset Mgmt. Group, LLC et al., Investment Advisers Act Release No. 3705 (Oct. 28, 2013). This is just one example of many.

4 *SEC Sanctions Three Firms Under Compliance Program Initiative*, SEC Press Release (Oct. 23, 2013), citing *SEC Penalizes Investment Advisers for Compliance Failures*, SEC Press Release (Nov. 28, 2011) ("SEC examiners previously warned the firms about their compliance failures").

5 See, e.g., GLG Partners, Inc. and GLG Partners, L.P., Securities Exchange Act Release No. 71050 (Dec. 12, 2013) (citing deficient valuation controls in the publicly-traded company context).

6 IM Guidance Update, *Risk Management in Changing Fixed Income Market Conditions* (Jan. 2014). Numerous of these updates, on various topics, have been issued beginning in early 2013.

7 See, e.g, Modern Portfolio Mgmt.

8 See, e.g., In the Matter of Navigator Money Management Inc. and Mark A. Grimaldi, Investment Advisers Act Release No. 3767 (Jan. 30, 2014) ("Navigator Money Mgmt.").

9 In the Matter of Western Asset Mgmt. Co., Advisers Act Release No. 3763 (Jan. 27, 2014).

10 Modern Portfolio Mgmt.

11 Agamas Capital Management, LP, Investment Advisers Act Release No. 3719 (Nov. 19, 2013).

12 West Coast Asset Mgmt., Inc. et al., Investment Advisers Act Release No. 3746 (Dec. 23, 2013).

13 Equitas Capital Advisors, LLC, Investment Advisers

Act Release No. 3704 (Oct. 23, 2013).

[14] See Navigator Money Mgmt.

[15] See *id*.

[16] See, e.g., In the Matter of Western Asset Mgmt. Co., Investment Advisers Act Release No. 3763 (Jan. 27, 2014) (finding a violation of Rule 206(4)-7 after an adviser narrowly interpreted the word "error" as used in the firm's policy).

[17] Modern Portfolio Mgmt.

[18] In the Matter of Western Asset Mgmt. Co., Advisers Act Release No. 3762 (Jan. 27, 2014).

[19] See AngelList LLC and AngelList Advisors LLC, SEC Staff No-Action Letter (Mar. 28, 2013); FundersClub Inc. and FundersClub Mgmt. LLC, SEC Staff No-Action Letter (Mar. 26, 2013).

[20] SEC in 2014 Speech.

[21] See, e.g., In the Matter of ABN AMRO Bank, N.V., Investment Advisers Act Release No. 3639 (July 31, 2013). Although the basis for that particular enforcement proceeding will no longer apply because the law has been amended, the case demonstrates the SEC interest in non-U.S. advisers that have a U.S. client base.