



Your Quarterly Regulatory Briefing*

(compliments of Daphne Chisolm and Cyndie Baughman)

The SEC gets in on the action of establishing “conduct standards” following the Fifth Circuit’s decision striking down the DOL Fiduciary Rule, several high-level SEC position changes, the ICI is granted no-action assurance to protect seniors, and the SEC makes a “fake news” initial coin offering in the name of education . . . This is Your Quarterly Briefing.

Industry Regulatory & Enforcement Activity

1. SEC Orders Investment Advisers to Pay \$12 Million to Harmed Clients
2. SEC Awards Whistleblower More than \$2.1 Million
3. SEC Proposes Conduct Standards for Advisers and Broker/Dealers
4. Douglas Scheidt to Leave the SEC
5. Dalia Blass Speaks at PLI’s Investment Management Institute 2018
6. Enforcement Division Issues FAQs on Share Class Selection Disclosure Initiative
7. SEC Launches “SALI” – An Investment Protection Tool
8. FINRA Announces a Consolidated Enforcement Team
9. New FAIR Act Rules
10. SEC Halts Fraudulent Coin Offering / Makes a “HoweyCoins” Website
11. SEC Charges Private Fund Advisers for Multiple Filing Failures
12. Division of Investment Management Issues Update on Custody Rule Q&A
13. ICI Receives No-Action Assurance on Section 22(e)
14. Sarah ten Siethoff named Associate Director of the Division of Investment Management
15. Commission to Modernize Delivery of Fund Reports – Seeks Comment
16. SEC Leaves Washington D.C. to Meet Off-Cite in Atlanta (TWICE)
17. New Chief Counsel of the Division of Investment Management
18. SEC Proposes Exchange-Traded Funds Rule
19. SEC Proposes Amendments to the Whistleblower Rule
20. SEC Adopts Changes to Liquidity Risk Management Disclosure

Education & Training

This section lists upcoming conferences as well as on-line learning opportunities and free webinars suitable for various parties – trustees, compliance professionals, or those seeking CPE or CLE credits.

Industry Observations

This section provides a brief update on trends.

* *For the Quarter Ended June 30th.*

About the Authors: Daphne Chisolm and Cyndie Baughman are attorneys that each have over 20 years of experience in the financial services and investment management industry. Ms. Chisolm has particular expertise in the area of exchange-traded funds. Ms. Baughman and Ms. Chisolm have been colleagues for nearly their entire careers and worked together at Dechert, LLP in Washington D.C.

INDUSTRY REGULATORY & ENFORCEMENT ACTIVITY

1. SEC Orders Investment Advisers to Pay \$12 Million to Harmed Clients

On April 6, 2018, the Securities and Exchange Commission (the “SEC”) announced that it had charged PNC Investments LLC, Securities America Advisors, Inc., and Geneos Wealth Management Inc. with breaching their fiduciary duty to clients and generating millions of dollars in improper fees. According to the SEC’s order, the firms failed to disclose to their clients’ conflicts of interest and violated their duty to seek best execution by providing clients with lower-cost shares of the same mutual funds when they were available. The SEC also charged Geneos Wealth Management Inc. for failing to identify its revised mutual fund selection disclosures as a “material change” in its 2017 disclosure brochure. Collectively, the three firms will pay nearly \$15 million with more than \$12 million going to harmed clients.

2. SEC Awards Whistleblower More than \$2.1 Million

On April 12, 2018, the SEC announced a whistleblower award of more than \$2.1 million to a former company insider whose information led to multiple successful enforcement actions. The information provided assistance to the SEC staff during the investigation. Jane Norberg, Chief of the SEC’s Office of the Whistleblower stated that, “[a]s these awards demonstrate, we continue to receive high-quality information from whistleblowers, which we use to detect and prosecute securities violations and safeguard investors.”

3. SEC Proposes Conduct Standards for Advisers and Broker/Dealers

On April 18, 2018, the SEC proposed a package of rulemaking and interpretations to enhance the quality and transparency of investors’ relationships with their advisers and broker/dealers. The package includes three proposals: (1) Regulation Best Interest; (2) Investment Adviser Standards; and (3) Form CRS and Titling. The full text of the releases can be found at: [Regulation Best Interest](#), [Investment Adviser Standard](#), and [Form CRS and Titling](#).

Regulation Best Interest is a standard of conduct for broker/dealers and would require a broker/dealer to act in the best interest of a retail customer when making recommendations on securities. The standard of conduct sets forth certain specific obligations. Investment Adviser Standard relates to investment advisers. The SEC reaffirmed certain aspects of the standard of care an adviser owes to its clients. Form CRS requires disclosures in retail communications and restrictions on the use of certain names and titling. Among other things, it would require short-form disclosure that highlights key differences in the principal types of services offered and the legal standards of each as well as the fees a customer would pay and conflicts that may exist. Broker/dealers and associated persons would not be able to use “adviser” or “advisor” as part of their name due to confusion associated with a registered investment adviser.

Comments on the three proposals are due on or before August 7, 2018.

How to comment: You can comment [HERE](#) by adding the appropriate file number in your subject line, S7-07-18 for Regulation Best Interest, S7-08-18 for Investment Adviser Standard, and S7-08-18 for Form CRS and Titling.

4. Douglas Scheidt to Leave the SEC

The SEC announced on April 20, 2018 that Douglas Scheidt, Associate Director and Chief Counsel of the Division of Investment Management will retire this September after 32 years of public service.

5. Dalia Blass Speaks at PLI's Investment Management Institute 2018

On April 30, 2017, Ms. Blass, Director of the SEC's Division of Investment Management, spoke at the Practising Law Institute's Investment Management Institute 2018 conference. The full program is available as a Webcast for a fee and for CLE credits on the PLI's website [HERE](#). Ms. Blass' portion of the program is available in written form on the SEC's website under the "[Speeches](#)" category. Ms. Blass discussed the SEC's conduct standards as well as the recent liquidity risk management rules.

6. Enforcement Division Issues FAQs on Share Class Selection Disclosure Initiative

On May 1, 2018, the SEC's Division of Enforcement issued FAQs on its share class selection disclosure initiative whereby advisers can self-report violations of the federal securities laws relating to certain mutual fund share class selection issues and promptly return money to injured clients without negative repercussions. [See the FAQs](#).

7. SEC Launches "SALI" – An Investment Protection Tool

On May 2, 2018, the SEC announced a new tool for individual investors referred to as "SEC Action Lookup for Individuals" or "SALI". SALI's goal is to help individual investors identify whether the person trying to sell them on an investment has a judgment or enforcement action against them. An investor can enter the first and last name of an individual and SALI will provide search results of SEC actions filed as far back as October 1, 2013 and the database will be updated periodically. The SALI page also encourages investors to utilize other tools available at Investor.gov. SEC Chairman Jay Clayton stated that "[o]ur Main Street Investors themselves are a key line of defense in detecting and preventing fraud. One of the SEC's most important tasks is to arm our investors with the tools necessary to identify potential fraudsters. An important risk factor is whether the person you are dealing with has a disciplinary history with the SEC or other regulators. SALI provides Main Street investors with an additional tool they can use to protect themselves from being victims of fraud and other misconduct."

8. FINRA Announces a Consolidated Enforcement Team

On May 21, 2018, the Financial Industry Regulatory Authority ("FINRA") announced a consolidated enforcement team. FINRA combined its legacy enforcement group with its legacy market regulation and legal group. You can find a Podcast on the topic [HERE](#).

9. New FAIR Act Rules

On May 23, 2018, the SEC proposed rules in furtherance of the Fair Access to Investment Research Act of 2017. The rules would promote research on mutual funds, exchange-traded funds, registered closed-end funds, business development companies and similar funds by harmonizing the treatment of research with research on other public entities. If adopted, a safe harbor would be established

to protect broker/dealers publishing and distributing research reports on these types of funds under certain conditions similar to those applicable to other public entities.

The comment period ended on July 8, 2018.

10. SEC Halts Fraudulent Coin Offering / Makes a “HoweyCoins” Website

The SEC announced on May 29, 2018 that it obtained a court order to halt an ongoing fraud by Titanium Blockchain Infrastructure Services, Inc. involving an initial coin offering (“ICO”) raising \$21 million from non-U.S. investors. The investigation was brought by the SEC’s Market Abuse Unit in coordination with its Cyber Unit. In the announcement, the SEC cautions investors when considering investments in ICOs and directs them to an [Investor Bulletin](#) and a [“mock ICO website”](#) offering “HoweyCoins” developed by the SEC’s Office of Investor Education and Advocacy.

11. SEC Charges Private Fund Advisers for Multiple Filing Failures

On June 1, 2018, the SEC announced settlements with 13 advisers who repeatedly failed to provide required information that the SEC uses to monitor risk. For example, the advisers did not file annual reports on Form PF regarding advised private funds and violated multiple reporting requirements under the Investment Advisers Act of 1940. The advisers agreed to each pay a \$75,000 civil penalty. The investigation was conducted by members of the SEC Enforcement Division’s Asset Management Unit with help from the Private Funds Unit within the Office of Compliance, Inspections and Examinations as well as the Division of Investment Management’s Analytics Office.

12. Division of Investment Management Issues Update on Custody Rule Q&A

In June, the SEC’s Division of Investment Management issued [IM-INFO-2018-01](#) titled “Updates to Custody Rule Frequently Asked Questions.” The Update is one-page and reflects the addition of two new FAQs (Question II.11 relating to inadvertent custody and Question II.12 relating to custodial contract authority).

13. ICI Receives No-Action Assurance on Section 22(e)

On June 1, 2018, the SEC issued [no-action assurance](#) to the Investment Company Institute (the “ICI”) regarding Section 22(e). Section 22(e) prohibits a fund from suspending the right of redemption or postponing payment for redeemed shares for more than 7 days after the redemption request. The ICI asked that the SEC not take enforcement action for a fund (or its transfer agent) that delays payment for longer than 7 days from an account of a “Specified Adult” which is defined in FINRA Rule 2165 generally as someone older than 65 or someone older than 18 that the transfer agent reasonably thinks has a mental or physical impairment that renders him or her unable to protect their own interest. The SEC’s position is based on the facts set forth in the ICI letter and the SEC cautions that different facts may lead to a different result. The ICI’s original request letter (referred to as the “Incoming Letter” can be found at the bottom of the above “no-action assurance” hyperlink.

14. Sarah ten Siethoff named Associate Director of the Division of Investment Management

The SEC named Sarah ten Siethoff on June 8th as the associate director of the Division of Investment Management’s rulemaking office. Ms. Ten Siethoff has been in the Division of Investment

Management since 2008 and prior to her service with the SEC was an associate at Cleary Gottlieb Steen and Hamilton LLP.

15. Commission to Modernize Delivery of Fund Reports – Seeks Comment

On June 5, 2018, the SEC announced that the Commission voted to “improve the experience of investors who invest in mutual funds, ETFs and other investment funds.” These improvements are detailed in three separate releases. A fund company may elect, if shareholders agree, to place a shareholder report on a website and send via mail a paper notice of its availability. This would create new Rule 30e-3 under the Investment Company Act of 1940 and funds could rely on it beginning no earlier than January 1, 2021. The SEC is seeking public comment on other ways it could modernize fund information availability. The SEC specifically invites comment from investors, academics, design experts, market observers, advisers, and boards. Comments can be given [HERE](#). Comments are due by October 31, 2018. A Fact Sheet containing “highlights” on the disclosure and delivery package can be found [HERE](#).

16. SEC Leaves Washington D.C. to Meet Off-Cite in Atlanta (TWICE)

On June 13, 2018, the SEC held an event in Atlanta titled “Investing in America, the SEC Comes to You.” The event was held in a “Town Hall” format and all five Commissioners attended. The SEC will post the [Webcast](#) following the event.

On June 14, 2018, the SEC’s Investor Advisory Committee also held its first off-site meeting in Atlanta. This meeting is open to the public and will be available via [Webcast](#) following the event. A [Press Release](#) announced the event and linked to a full agenda.

17. New Chief Counsel of the Division of Investment Management

On June 21, 2018, the SEC announced that Paul G. Cellupica was named the chief counsel of the Division of Investment Management. Mr. Cellupica is currently the Division of Investment Management’s deputy director and will continue to serve in that role. Mr. Cellupica served in several roles within the Division of Investment Management as well as the Division of Enforcement prior to taking a position with the Teachers Insurance and Annuity Association of America (TIAA) and then returning to the Division of Investment Management in November of 2017.

18. SEC Proposes Exchange -Traded Funds Rule

On June 28, 2018, the SEC proposed a highly anticipated rule that that would permit exchange-traded funds (“ETFs”) that satisfy certain conditions to operate without obtaining an exemptive order. Notably, the proposal contemplates the utilization of “custom baskets,” a measure which would level the playing field for ETF sponsors operating under newer exemptive relief. The full text of the release can be found at: [Exchange-Traded Funds](#).

19. SEC Proposes Amendments to the Whistleblower Rule

On June 28, 2018, the SEC voted to propose amendments to the rules governing the whistleblower program. There is a 60-day comment period following the rule’s publication in the Federal

Register. The propose changes are aimed at, among other things, providing the SEC with additional tools to make awards to whistleblowers and increase efficiencies in the review of whistleblower claims. The rule proposal contains a [FACT Sheet](#) from the SEC Open Meeting held June 28, 2018 explaining the background of the current rule and the intent behind the proposed rule changes.

20. SEC Adopts Changes to Liquidity Risk Management Disclosure

On June 28, 2018, the SEC announced amendments to the liquidity-related disclosures for certain funds. Under the amendments, funds would discuss in their annual or semi-annual reports the operation and effectiveness of their liquidity risk management program. This replaces a requirement that funds provide on Form N-PORT a quantitative snapshot of historic aggregate liquidity classification data. This change appears to be a result of the discussions the staff has had with various parties identifying potential issues associated with the liquidity rule which was proposed in October of 2016. The amendment will become effective 60 days following its publication in the Federal Register. A FACT Sheet on the amendment can be found [HERE](#).

The above is merely our summary of industry activities that we feel may be of the most interest to those in the investment management field – funds, their trustees/directors and service providers. The full text of SEC press releases, proposed and adopted rules, enforcement actions and other news can be found on the [SEC’s Website](#).

EDUCATION & TRAINING

Date	Location	Sponsor	Event
Various	On-Line	Financial Industry Regulatory Authority (“FINRA”)	FINRA offers a variety of e-learning courses, free webinars, and other events that can be found HERE .
September 13, 2018	New York, New York	FINRA	Fixed Income Conference.
September 30 – October 3, 2018	San Diego, California	Investment Company Institute (“ICI”)	2018 Tax and Accounting Conference
October 1, 2018	Washington, D.C.	Securities Industry and Financial Markets Association	SIFMA Annual Meeting
October 9, 2018	New York, New York	FINRA	2018 FINRA Disclosure Reporting, Monitoring and Registration Conference
October 15, 2018	Chicago, Illinois	Independent Directors Council (“IDC”)	2018 Fund Directors Conference
October 25, 2018	Washington, D.C.	ICI	2018 Securities Law Development Conference
November 7, 2018	Santa Monica, California	FINRA	2018 Small Firm Conference
November 14, 2018	New York, New York	ICI	2018 Closed-End Fund Conference
March 17-20, 2019	San Diego, California	ICI	2019 Mutual Funds and Investment Management Conference
May 15-17, 2019	Washington, D.C.	FINRA	2019 Annual Conference

INDUSTRY OBSERVATIONS

Exchange-traded funds have been active during the quarter. Some interesting new funds include AI Powered International Equity ETF listed on the NYSE Arca and Global X Autonomous & Electric Vehicles ETF listed on Nasdaq.