

ANNUAL RETROSPECTIVE REVIEW FOR EXEMPTIVE RELIEF UNDER PTE 2020-02

Among the requirements explained in the recent DOL PTE 2020-02, firms must conduct an annual retrospective review. To satisfy the retrospective review requirement of the exemption, firms must conduct an annual retrospective review reasonably designed to assist in detecting and preventing violations of the Impartial Conduct Standards and the firm's policies and procedures. Per the Final Rule, "The methodology and results of the retrospective review must be reduced to a written report that is provided to one of the financial institution's Senior Executive Officers, who must then make certain certifications related to their review of the report."

The Final Rule specifies a "Senior Executive Officer" is the CEO, CCO, CFO, President, or one of the three most senior officers of the firm. The Senior Executive Officer must certify, within six months of the end of the annual review period that:

- The officer reviewed the report
- The firm has in place policies and procedures prudently designed to achieve compliance with the conditions of PTE 2020-02
- The firm has in place a prudent process to modify such policies and procedures as business, regulatory and legislative changes and events dictate, and to test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with the conditions of PTE 2020-02.

This is the first year of the requirement and each firm will have its own unique process of this review. This month we offer you a SAMPLE to work from and develop your own Annual Retrospective Review.

REMINDER: ANNUAL COMPLIANCE REVIEW

As 2022 nears to an end, take some time to revisit the strengths of your firm and identify areas for potential improvement in 2023. Identifying issues, weaknesses or current polices that need new and improved procedures in the Manual will only improve the outcome of any exam. CRP would like to stress the importance of *conducting the Annual Review and, most importantly, documenting* the Annual Review before year end. We provided you with a "holiday gift" - a comprehensive SAMPLE Annual Review template (refer to December *This Month in Compliance!*). **Please be sure to appropriately tailor to properly evaluate the compliance program and procedures at your firm.** As seen in last year's Risk Alerts and observed in recent exam findings, SEC regulators noted firms who were unable to demonstrate performing an Annual Review or identified firms whose Annual Reviews failed to identify significant existing compliance or regulatory problems or fully tailor the Review to their firm and its practices.

NEXT UP: Q1 ANNUAL AMENDMENT FILINGS

STAY TUNED FOR THE ADV ANNUAL AMENDMENT CHECKLIST NEXT MONTH

NEW YEARS RESOLUTIONS FOR CCO?

Below are ideas and focus areas to consider for the new year:

- Reviewing the Compliance Manual to ensure it accurately reflects firm's policies
- Cybersecurity – is your firm prepared if network is breached?
- Increased IAR Education throughout the year to make compliance more creative and fun
- Enhancing the security for mobile devices or laptops, what happens when these are mis-placed or stolen?
- Creating more detail procedures for fee billing reviews, oversight of third-party vendors and their responsibilities to your firm per your Agreement
- Audit of all Vendor Agreements and conducting the due diligence on these vendors
- Performing a mock exam – Are you ready for the SEC?
- Refreshing the Firm's business continuity plan with any recent updates of the Firm's operations and/locations
- Review PTE 2020-02 Rollover policies and procedures in light of a full year of documentation
- Increasing your knowledge base for Advisers Act or SEC related material with designation, training
- Improving controls for use of electronic signatures, electronic storage of documents
- Testing of Policies and procedures and documenting internally
- Reviewing past Annual Review/Reports from 2021, 2020, 2019 (if applicable) and identify and non-action items to address in new year as well as supporting documentation for the Review
- Are you complying with the New Marketing Rule? Have policies and procedures been updated?