

# THIS MONTH IN COMPLIANCE

## CRD, IARD Availability in December

### SEC RISK ALERT: Investment Adviser's Fee Calculations

#### MONTHLY COMPLIANCE TASKS

Please be sure to check your SmartRIA CCO portal to keep up with your monthly Compliance tasks or utilize the CCO Scorecard included in our This Month in Compliance email. Please contact the following for:

- Login and Portal Requests: Sara Sparks: [ssparks@thecomplianceresource.com](mailto:ssparks@thecomplianceresource.com)
- Task Related Questions: Nancy Harry: [nharry@thecomplianceresource.com](mailto:nharry@thecomplianceresource.com)  
Stacie Craddock: [scraddock@thecomplianceresource.com](mailto:scraddock@thecomplianceresource.com)  
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DATE	STATUS	COMMENT
Sunday, December 26th	Limited (10 a.m. – 6 p.m., ET)	Last day to submit form filings prior to year-end. CRD, IARD, and PFRD are available from 10 a.m. to 6 p.m., ET.
Monday, December 27	Unavailable	CRD, IARD and PFRD are unavailable due to Final Statement and renewals processing.
Tuesday, Dec. 28 – Friday, Dec. 31	Query-only	CRD, IARD & PFRD are available for system query and the creation of pending filings

#### SEC RISK ALERT ISSUED IN NOVEMBER

##### **Division of Examinations Observations: Investment Advisers' Fee Calculations**

On November 10, 2021, the SEC issued a Risk Alert summarizing the observations from a series of examinations that focused on SEC-registered investment advisers advisory fee billing practices. This Initiative assessed the various ways in which investment advisers charge fees for their services, as well as evaluated the adequacy of fee disclosures and the accuracy of fee calculations. [Click here to review the Risk Alert in its entirety.](#) Notable deficiencies in advisory practices included (1) Advisory Fee Calculations, (2) False, Misleading or Omitted Disclosures, (3) Missing and inadequate Policies and Procedures, (4) Inaccurate Financial Statements.

##### **ADVISORY FEE CALCULATIONS**

**Summary** - Inaccurate calculations were noted due to a variety of errors, including inaccurate percentages used to calculate advisory fees, double-billed fees, breakpoint, or tiered billing rates not correctly calculated, householding of client accounts not correctly calculated, incorrect client account valuations used, and fees not refunded for prepaid fees on terminated accounts or did not correctly assess fees for new accounts on a pro-rata basis.

##### **FALSE, MISLEADING OR OMITTED DISCLOSURES**

**Summary** - Issues identified were related to incomplete or misleading Form ADV Part 2 brochures and/or other disclosures, including disclosure that did not reflect current fees charged or whether fees were negotiable, did not accurately describe how fees would be calculated or billed and inconsistencies across advisory documents, such as stating the maximum fee in an advisory agreement that exceeded the fees disclosed in the adviser's brochure.

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#### MISSING OR INADEQUATE POLICIES AND PROCEDURES

**Summary** - Examined firms had no policies for testing or monitoring fee calculations. The staff observed examined advisers' policies and procedures missing a variety of critical advisory fee components that were relevant to the firms' businesses, including: (1) valuation of illiquid or difficult-to-value assets included in the assets for the calculation of advisory fees; (2) fee offsets, such as those offered for 12b-1 fees; (3) fee reimbursements for terminated accounts, where the client prepaid fees; (4) prorating fees for additions or subtractions of assets in accounts; and (5) family account aggregation (householding) or the application of breakpoints for fee calculations.

#### INACCURATE FINANCIAL STATEMENTS

**Summary** – A focus on firms with inaccuracies on financial statements were observed at several examined advisers. These issues included examined advisers in potential financial distress (e.g., substantial balances on loans or lines of credit) and examined advisers not properly recording pre-paid advisory fees as liabilities; or maintaining their financial statements. Some Advisers used a cash and modified cash basis of accounting, but prepared financial statements on an accrual basis of accounting. These examined advisers incorrectly classified client advisory fees as "accounts receivable."

#### CCO TAKE-AWAYS

- **ADOPT AND IMPLEMENT WRITTEN POLICIES AND PROCEDURES ADDRESSING ADVISORY FEE BILLING PROCESSES AND VALIDATING FEE CALCULATIONS.**

*Review your policies and procedures addressing the supervision, calculation, review, and billing of advisory fees.*

- **CENTRALIZE THE FEE BILLING PROCESS AND VALIDATE THAT THE FEES CHARGED TO CLIENTS ARE CONSISTENT WITH COMPLIANCE PROCEDURES, ADVISORY CONTRACTS, AND DISCLOSURES.**

*Create a centralized billing structure – rather than billing dispersed throughout the firm with separate, supervised persons preparing and invoicing client billing statements.*

- **ENSURE RESOURCES AND TOOLS ESTABLISHED FOR REVIEWING FEE CALCULATIONS ARE UTILIZED.**

*Use monthly CCO Scorecard checklist/SmartRIA and other resources for reconciling client fee calculations with client advisory agreements to keep consistent on fee billing reviews.*

- **PROPERLY RECORD ALL ADVISORY EXPENSES AND FEES ASSESSED TO AND RECEIVED FROM CLIENTS, including those paid directly to advisory personnel.**

*Maintain firm financials and review monthly to ensure advisor fees are being entered in appropriately to reflect accurate financials*

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#### YEAR END CHECKLIST

- Tailoring of the **206(4)- 7 ANNUAL REVIEW** – Review and Document Compliance Program Review  
(Refer to November 2021 TMR and November 2020 SEC Risk Alert)
- Fund **IARD REGISTRATION FEES** for 2022  
(Refer to Firm's Renewal Statement sent by CRP week of Nov 8th)
- Conducted **RISK ASSESSMENT**- Are all Firm conflicts reported on ADV, addressed in Agreement?  
(Refer to TMIC in June, July, August 2021)
- Updated **FIRM'S POLICIES AND PROCEDURES MANUAL**  
(Refer to October 2021 TMR)
- Reviewed **Business Continuity Plan (BCP)** with any updates, document testing of the Plan  
(Refer to May 2021 TMIC)
- Reviewed **Cybersecurity Plan** and testing of the Cybersecurity Plan Review in 2021 (include the strength of remote access protocols, the security levels of personal computers and home wireless connections, results of Penetration and Phishing tests)  
(Refer to May 2021 CCO Scorecard)
- Reviewed **Due Diligence conducted on Third Party vendors**, maintain list, and updated as necessary  
(Refer to September 2021 TMIC)
- Conducted training via **Annual Compliance Meeting** (Code of Ethics, Annual Employee Acknowledgements and Certifications)  
(Refer to October 2021 TMIC)
- Confirm **Advertising File** contains materials used in 2021, Review business presentations, commentaries, websites, social media sites, and other marketing materials for all necessary disclosures, ensure all materials have been approved through Compliance and employees are using the most current versions  
(Refer to December 2021 CCO Scorecard)
- Obtain all Form **U-4 updates and review and Form ADV Part 2Bs**, as applicable- confirmed that information is accurate.  
(Refer to September 2021 CCO Scorecard)
- Review listing of **Alternative/Complex Exchange Traded Products**- Review client list of those who hold such products.  
(Refer to August 2021 TMIC)