SEC RISK ALERT

RANSOMWARE ALERT

"The Office of Compliance Inspections and Examinations (OCIE) has observed an apparent increase in sophistication of ransomware attacks on SEC registrants, which include broker-dealers, investment advisers, and investment companies. The perpetrators behind these attacks typically demand compensation (ransom) to maintain the integrity and/or confidentiality of customer data or the return of control over registrant systems. In addition, OCIE has observed ransomware attacks impacting service providers to registrants. In light of these threats, OCIE encourages registrants, as well as other financial services market participants, to monitor the cybersecurity alerts published by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA), including the updated alert published on June 30, 2020, relating to recent ransomware attacks. ***OCIE further encourages registrants to share this information with their third-party service providers, particularly those that maintain client assets and records for registrants."*** **Click here for the full SEC RISK ALERT published on July 10, 2020**

In response to the most recent Risk Alert, it is recommended firms review the following within their Cybersecurity Programs:

- **Incident response and resiliency policies, procedures, and plans** - Assessing, testing, and periodically updating incident response and resiliency policies and procedures, such as contingency and disaster recovery plans.
- **Operational resiliency -** Determining which systems and processes are capable of being restored during a disruption so that business services can continue to be delivered.
- **Awareness and training programs -** Providing specific cybersecurity and resiliency training and considering undertaking phishing exercises to help employees identify phishing emails. Training provides employees with information concerning cyber risks and responsibilities and heightens awareness of cyber threats such as ransomware.
- **Vulnerability scanning and patch management -** Implementing proactive vulnerability and patch management programs that consider current risks to the technology environment, and that are conducted frequently and consistently across the technology environment.
- **Access management** - Managing user access through systems and procedures that:
    - *limit access* as appropriate, including during onboarding, transfers, and terminations
    - *implement separation of duties for user access approvals*
    - *re-certify users' access rights* on a periodically (paying particular attention to accounts with elevated privileges including users, administrators, and service accounts)
    - require the use of *strong, and periodically changed, passwords*
    - *utilize multi-factor authentication* leveraging an application or key fob to generate an additional verification code; and
    - *revoke system access immediately for individuals no longer employed by the organization,* including former contractors. Configuring access controls so users operate with only those privileges necessary to accomplish their tasks (i.e., least privilege access).
- **Perimeter security** - Implementing perimeter security capabilities that are able to control, monitor, and inspect all incoming and outgoing network traffic to prevent unauthorized or harmful traffic. These capabilities include firewalls, intrusion detection systems, email security capabilities, and web proxy systems with content filtering.

NOTABLE IN THE NEWS

DOL RULE – Take Two! - The Department of Labor announced Monday it is proposing a new regulation to govern investment advice in retirement accounts to replace a rule that was vacated more than two years ago by a federal appeals court. The proposed regulation would provide exemptions under federal retirement law — the Employee Retirement Income Security Act — that would allow fiduciaries to receive compensation for advice that would otherwise be prohibited, such as third party payments, as long as they act in a retirement savers' best interests. Financial advisers would qualify for the exemption when working with 401(k) plans and individual retirement accounts if they follow impartial conduct standards, including: earning reasonable compensation, not making misleading statements and telling customers they are acting as fiduciaries. The proposal says that it applies to registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents and representatives. But brokers who adhere to Regulation Best Interest, the new broker advice standard that was implemented on July 15, 2020, will likely be deemed as being in compliance with the new DOL rule. The senior DOL official said the exemption would enable "regulatory efficiencies." The DOL proposal will be published soon in the Federal Register and open for public comment. After reviewing comments, the DOL could modify the proposal and then promulgate a final rule. That process could take months.

Attention 13F Filers – This is for you! - The Securities and Exchange Commission today announced that it has proposed to amend Form 13F to update the reporting threshold for institutional investment managers and make other targeted changes. The threshold has not been adjusted since the Commission adopted Form 13F ***over 40 years ago***.

New Reporting Threshold

In 1978, when Form 13F was adopted, the threshold for filing the form was set at $100 million, the amount in the underlying statute and representing a certain proportionate market value of U.S. equities. Since then, the overall value of U.S. public corporate equities has grown over 30 times (from $1.1 trillion to $35.6 trillion), and the relative significance of managing $100 million has declined considerably. The Commission and staff have received recommendations to revisit the Form 13F reporting threshold from a variety of sources over the years, including from the Commission's Office of the Inspector General. ***Today's proposal would raise the reporting threshold to $3.5 billion***, reflecting proportionally the same market value of U.S. equities that $100 million represented in 1975, the time of the statutory directive.

Relief for Smaller Managers

The legislative history of the 1975 statute indicates that the reporting threshold of $100 million was intended to capture the largest institutional managers. ***The proposed adjusted threshold would provide relief to smaller managers who are now subject to Form 13F reporting, while retaining data on over 90% of the dollar value of the securities currently reported.***

Again – a reminder this is proposal stage but when final we will communicate this to firms! Good news for all the 13F filers….one less SmartRIA task to complete until you reach $3.5 Billion!

BEST EXECUTION REVIEW

In July, your CCO monthly tasks include review of Best Execution. In its interpretive release, Release No. 34-23170, Securities; Brokerage and Research Services, issued April 28, 1986, the Commission stated that *as a fiduciary, a money manager has an obligation to obtain "best execution" of client transactions under the circumstances of the particular transaction.* In addition, the Commission stated that *advisers are required to periodically and systematically evaluate the quality and cost of services they receive from broker-dealers with whom they have placed client orders, including custodians*. The SEC likes to see the analysis documented and maintained as a measure of best practices and strong internal controls.

Below offer some tips for CCOs in reviewing their recommended Custodian(s) this month:

⇒ **REVIEW Quarterly** or as appropriate the Best Execution Report from your Custodian (Report Name differs with each Custodian but they do exist! --- TD's Report Name: "Post Trade Report", Schwab's Report name: "Best Execution Quality Report". Pull sample of trades to review. Compare the price variance from the market price and the execution price.

⇒ **DOCUMENT Annually** Qualitative and Quantitative Review of Custodian
Refer to Sample Checklist to assist with Review. Topics of Review include:
- Execution capabilities including the ability to handle trades and answer calls in a volatile market
- Financial responsibility, obtain the audit or FOCUS Report
- Value of research or brokerage provided
- Technology provided
- Willingness, ability, facilities and infrastructure to work with investment advisor firms
- Administrative resources
- Responsiveness
- Pricing for services provided
- Compare 606 reports from various Custodians and retain for file. CRP has provided three different Custodian 606 reports for your ease of conducting this review. Refer to the attachments on this month's TMR email.

⇒ ***For Firms who go to the Street for Fixed Income Trades:*** Be sure to document the executing price with public quote sources.