JACKO LAW GROUP, PC

Four Hot Topics to Consider for Your 2024 Annual Review

What should you consider when performing your annual review? With so many new regulations and amendments, it can be challenging to keep abreast of what areas the SEC is scrutinizing and expecting advisers to examine closely.

Jacko Law Group's recommendation is to consider first and foremost their highest risks, as well as the following areas that have been in the headlines for the last several months. By performing forensic tests as part of the Annual Review, results often highlight potential gaps in operational processes, which, when addressed, help strengthen the compliance program.

For this year, we recommend paying close attention to the following four hot topics for your 2024 Annual Review:

1. **13F Filings**

Registered Investment Advisers (RIAs) must complete 13F filings within 45 days of the end of the quarter if they exercise investment discretion with respect to accounts holding Section 13(f) securities having an aggregate value of at least $100 million. This requirement is in place to make sure that significant investments are monitored. In September 2023, the SEC fined Artemis Wealth Advisers $150,000 for violating their 13F filing obligation. The SEC found that Artemis Wealth Advisers managed more than the threshold and had failed to file their 13F forms since 2017, resulting in the firm paying a civil penalty of $150,000. The enforcement action taken against them is a clear sign that the SEC is paying attention.

As part of your annual review, be sure to:

- Consider the aggregate value of your Section 13(f) securities; and
- Evaluate whether holdings are assigned the proper classification according to SEC guidelines.

2. **New Proxy Rule (NPS)**

On November 2, 2022, the SEC adopted amendments to Form N-PX under the Investment Company Act of 1940 ("Investment Company Act") to expand the information that is reported by registered investment companies regarding their proxy voting activities. At the same time, the SEC implemented new Rule 14Ad-1 of the Exchange Act, which requires investment advisers that make Form 13F filings to file Form N-PX.

Specifically, investment advisers that file Form 13F and have a policy to vote proxies for clients are now required to annually file Form N-PX outlining the proxy votes they made regarding executive compensation during the preceding 12 months. Notably, investment advisers that file Form 13F and have a policy of not voting proxies for clients are also required to annually file Form N-PX, stating as much.

The first annual Form N-PX filing must be made on or before August 31, 2024.

In this year's annual risk assessment, it is vital to:

- See if your Proxy Policies and Procedures take into consideration the new Form N-PX requirements;
- Address preparedness for the Form N-PX filing; and
- Test how the firm can demonstrate that they have implemented the New Proxy Rule accordingly, including providing proof that staff are aware of and trained in their new obligations and that regular internal reviews are performed to identify areas of concern.

3. **Third-Party Due Diligence**

It is important for RIAs to pay close attention when selecting third-party vendors to protect the business' operations and reputation and make sure they are meeting compliance requirements. In addition, third-party relationships can introduce risk to an otherwise strong business infrastructure, especially in matters of data protection and cyber threats. During your annual review, check to see if your firm has:

- Identified what personally identifiable information (PII) the vendor may have, and the cybersecurity and privacy controls they have in place to protect PII;
- Conducted thorough background checks to ensure personnel do not have disciplinary reports or otherwise are deemed to be "bad actors;"
- Reviewed SOC 2 reports or similar to verify the vendor's internal control system; and
- Performed ongoing monitoring to assess the critical third parties' performance and ensure that they continue to meet regulatory compliance requirements and your firm's current business needs.

4. **Cybersecurity**

With the ongoing threat and increased sophistication of cyberattacks, the SEC is scrutinizing their registrants' protections and internal controls of their advisory business with a focus on client data. RIAs must incorporate robust cyber policies and protocols that address how to prevent and respond to cyberattacks and be prepared to demonstrate that they have implemented those procedures.

As crucial business operations become dependent on AI and technology networks, and remote and hybrid work environments remain popular, the risk and potential impact of cyberattacks should be a high matter of concern. It is crucial for RIAs to evaluate how they are performing thorough cyber risk assessments – either internally or through external resources – and if the tests performed are meaningful to address ever-evolving cyber risks.

Jacko Law Group is here to help firms address these and other areas of focus when performing 2024 annual reviews. If you need assistance or wish to discuss these and other forensic testing ideas, please contact us at 619.298.2880 or email info@jackolg.com.