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IAA Compliance Conference
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The Investment Adviser Association (IAA) Compliance Conference brings Compliance Officers and Legal Counsels from leading investment firms together with regulators to discuss major issues affecting the industry.

A Conversation with the Honorable Hester M. Peirce, Commissioner, Securities and Exchange Commission
Karen L. Barr, President and Chief Counsel, IAA

This year's featured speaker, SEC Commissioner Hester Peirce, set the tone for the conference by providing her views on items included on the Commission's Regulatory Flexibility Agenda ("Reg Flex Agenda"). Commissioner Peirce noted that investors should not expect a complete rollback of regulations, but will more likely see a recalibration of post-financial crisis measures. Commissioner Peirce also indicated that Chairman Jay Clayton wants the Commission's To-Do List to be more reflective of items the Commission expects to take action on within the next 6-12 months, a departure from former Chairman Mary Jo White's laundry list approach.

IAA members felt that the Commission was close to drafting a proposed Standards of Conduct Rule of its own. Commissioner Peirce indicated in her comments that it may be time for such a rule to come from the Commission as she felt the DOL version was "destructive". The particulars of such a rule were left in doubt, although there was mention of titling guidelines for financial professionals contained in a new disclosure document to be provided to investors. Commissioner Peirce cautioned that advisers, who have long sought to compel brokers to play under the same rules, should be careful what they wish for – especially when it comes to more regulation.

Cybersecurity, cryptocurrency, and advertising are three of the top Reg Flex Agenda items that Chairman Clayton would like to see addressed according to Commissioner Peirce. Indicating that Chairman Clayton has a keen interest in cybersecurity, investors and advisers can expect to see continued work in this area. The Commission feels that if advisers can't promise to keep data safe, they should not be gathering it. Ms. Barr indicated the IAA's desire for a retrospective review of the Advertising Rule. Commissioner Peirce conceded that the rule, authored in 1961 and subsequently patched by a series of guidance releases and no-action letters, is ripe for updating with the potential for a request for industry comment forthcoming. Another item up for retrospective review was certain reporting, such as 13(f) filings. Despite a clear shift to data analysis in other areas, the Commission is questioning the submission of data if they are not using it. Third-Party Exams, which were floated as an option to supplement the Commission's resources, were noticeably removed from this year's Reg Flex Agenda. However, Commissioner Peirce cautioned that just because the controversial item was not on this year's list does not mean the idea has been abandoned. If resources become further constrained, don't be surprised to see the issue raised once again. For now, Commissioner Peirce concluded, this is not the time to address it.

In terms of Enforcement, Commissioner Peirce explained that her view of the Commission was first and foremost as a regulator. She also stated that she would like the Commission to remove the element of fear and invite more dialog and questions. Speaking to a crowd of primarily compliance officers, Commissioner Peirce sought to assure the attendees that targeting Chief Compliance Officers is not a priority.

<u>A Conversation with the Directors: SEC Examinations and Enforcement</u>

Peter Driscoll, Director, Office of Compliance Inspections and Examinations, Securities and Exchange Commission
Stephanie Avakian, Co-Director, Division of Enforcement, Securities and Exchange Commission
Robert B. Kaplan, Partner, Debevoise & Plimpton LLP
Gail Bernstein, General Counsel IAA, Moderator

Peter Driscoll commenced the session by highlighting the Office of Compliance and Inspections and Examinations ("OCIE") priorities this year: cryptocurrency, fee disclosures, digital advice, the Custody Rule, and undisclosed conflicts of interest. Mr. Driscoll stated the Commission's concern for investor protections as the cryptocurrency market is ripe for fraud. Stephanie Avakian indicated there have been a number of fraud cases for Initial Currency Offerings (ICOs). The Commission recognizes that advisers and registered representatives are being approached by investors to discuss cryptocurrencies and they are seeking to inform policy. However, the Commission is still grappling with the issue of whether or not cryptocurrency should be considered a security.

In regard to fee disclosures, the Commission is seeking to uncover cases of firms overcharging their clients or any related misappropriation. On related note, the panel discussed the upcoming June 12^{th} deadline for Share Class Self-Reporting Initiative, where firms who may not have charged their clients the lowest possible share class, may self-report the violation without SEC penalties being applied. Robert Kaplan warned that firms must consider self-reporting carefully, handicapping the consequences versus the potential of detection. However, Mr. Kaplan also stated that the initiative implies larger penalties are at risk if firms do not self-report.

As it pertains to digital advice, Mr. Driscoll stated that the Commission makes a distinction between large, established investment firms using a digital program as a new business line as opposed to tech firms who are being introduced to a regulated space. The latter firms are considered higher risk by the Commission.

Mr. Driscoll highlighted that OCIE has demonstrated a concerted effort to exam more advisers annually, reaching 15% of registered investment advisers (30% by AUM measures) last year. The goal is to increase that another 20% in 2018, through a combination of targeted and correspondence exams. Both Mr. Driscoll and Ms. Avakian cited efforts within the Commission that have resulted in more cooperation and better communication, particularly between the Examinations and Enforcement divisions. However, Mr. Kaplan, a former Co-Chief of the SEC's Enforcement Division and current legal counsel to several investment firms, warned that while synergy among the divisions may be beneficial for the Commission, advisers should act as if they are speaking to the Enforcement Division during an exam. Mr. Kaplan claims he prepares clients to "defend the exam."

Ms. Avakian indicated an effort within the Commission to bring cases to closure quicker as a result of last year's ruling on *Kokesh v. Securities and Exchange Commission* which imposed a statute of limitations on disgorgement at five years.

Mutual Fund Advisers and Sub-Advisers: Latest Developments

Matthew Garcia, Partner, Compliance, Champlain Investment Partners LLC
Kevin Ehrlich, Manager, U.S. Regulatory Affairs & CCO, Western Asset Management Company
Sarah G. ten Siethoff, Deputy Associate Director, Rulemaking, Division of Investment Management, Securities and Exchange Commission
Timothy F. Silva, Partner, WilmerHale, Moderator

Sarah ten Siethoff discussed recent developments regarding the Liquidity Risk Management Program ("Liquidity Rule"). Ms. ten Siethoff claimed the aim of the rule was part of the Commission's efforts to identify trends within the industry, and not to play "gotcha" because a firm categorized a security as a "2 vs. 3." Ms. ten Siethoff indicated that delays in rulemaking, like the most recent postponement of the liquidity bucketing requirement, are not uncommon in complex situations. She also emphasized that, although the bucketing requirement is delayed, there is no intention by the Commission to remove it. Furthermore, Ms. ten Siethoff stated that the 15% illiquid reporting requirement, the rule's most important aspect, remains in place and on time. Matthew Garcia advised that the bucketing requirement delay allows funds to review policies and vendors across sub-advisers and begin testing. Mr. Garcia further counseled attendees to begin talking to their respective executive and portfolio management teams regarding processes and costs to comply once the bucketing component goes live. Also, while the bucketing component has been delayed by regulators, advisers and sub-advisers may see it appear in Request for Proposals and Due Diligence Questionnaires from fund companies immediately in anticipation of the rule going into effect.

Kevin Ehrlich noted that he believes many firms will seek out vendors to perform the bucketing requirement. However, that separates the liquidity classification from the portfolio managers who typically assess and manage the risk of the portfolio. This creates logistics issues as it forces portfolio managers to check with vendors when making purchases for the portfolio. Mr. Ehrlich also warned that for sub-advisers who manage funds across different complexes you may need to check with multiple vendors.

A Conversation with the Division of Investment Management

Dalia Blass, Director, Division of Investment Management, Securities and Exchange Commission
Paul G. Cellupica, Deputy Director, Division of Investment Management, Securities and Exchange Commission

Paul Cellupica highlighted the Commission's recent efforts to find more ways to collect and analyze data to formulate policy. He also said the Commission is examining whether the Inadvertent Custody Guidance released in February 2017 needs updating.

Dalia Blass reiterated that the Commission was working on proposed Standards of Conduct in response to the DOL's Fiduciary Rule. She indicated that a comment process would be included and requested proposals for constructive solutions from the attendees.

Ms. Blass again referred to the Reg Flex Agenda, which is scheduled to be updated this spring. The short-term items include the Standards of Conduct as well as items that pertain to exchange-traded funds. These items are expected to be addressed within the current fiscal year which ends September 2018. Mr. Cellupica noted the Advertising Rule on the long-term agenda would seek to address social media and e-delivery.

Spotlight on Cybersecurity: Medium Size Firms

Askari J. Foy, CPA, CPE, Managing Director, Regulatory Cybersecurity, ACA Aponix
Heather Sevillano, Chief Operating Officer, Greenwich Investment Management
Frank Kinsella, IT Director, Cooke & Bieler, L.P.
Brian L. Rubin, Partner, Eversheds Sutherland (US) LLP, Moderator

Brian Rubin, a former head of the SEC, FINRA, and State Securities Enforcement Team, noted that cybersecurity is not something firm executives and compliance officers can just pass off to their IT departments. While risk assessment and procedure manuals are important steps forward, scenario testing and response planning are perhaps even more critical. The panelists warned, "Everyone will get breached" – not just from bad actors, but perhaps through former employees or service providers who may already have keys to the kingdom.

The panel went through a hypothetical breach scenario and discussed the steps firms should consider when addressing the matter. To help with response planning, Askari Foy indicated that some firms are starting to create "playbooks" for different types of scenarios similar to how various business continuity and disaster response procedures are tested. The response plan should include steps and templates for contacting personnel, clients, insurance, outside counsel, regulators, and law enforcement, if necessary. Frank Kinsella advised that firms make sure they have all the facts regarding the breach before submitting a report or they may miss what the real danger is.

If a breach is inevitable, executives (including compliance officers) need to be aware of the timing and extent of their regulatory and law enforcement reporting requirements which vary by state. Mr. Foy cited that all but two states have data breach reporting requirements; some also include a No Harm Standard, which means that even if no client was materially harmed by a data breach, the firm still has a reporting requirement to the state.

According to Mr. Kinsella, firms often invite the data breach by not updating security patches on a timely basis or not encrypting email or files that contain client personally identifiable information (PII). Furthermore, Mr. Kinsella emphasized the importance of holding everyone (including top executives) to a disciplined security patch management schedule.

Key Issues in Third Party Due Diligence and Vendor Oversight

Maria Chambers, Vice President, Chief Compliance Officer, Klingenstein Fields Wealth Advisors
Emily Irving, AVP, Enterprise Third Party Risk Management, Wellington Management Company LLP
Mavis Kelly, Assistant Director, Office of Compliance Inspections and Examinations, Securities and Exchange Commission
Tram Nguyen, Partner, Paul Hastings LLP, Moderator

Mavis Kelly begun by warning advisers that when using third-party service providers or vendors, the adviser is still ultimately responsible for their deficiencies. Ms. Kelly advised firms to consider carefully what firm policies a service provider / vendor should be subject to: Code of Ethics, Business Continuity, etc. Documentation will help evidence that the adviser is performing adequate oversight of the vendor according to Ms. Kelly. An initial questionnaire may not be enough; firms should also consider monitoring the scalability of the vendor as well as any material changes in the vendor's business.

Emily Irving further advised that advisers should not be blind to the vendor's vendor. Firms should consider performing a pre-hire risk assessment for each vendor. The risk assessment should be accompanied by a response plan should anything happen at the vendor.

Maria Chambers stated that getting ownership from the Business Unit is a key step in proper oversight. In her opinion, it is helpful if the relationship manager is looking at the vendor from a risk-based view. Ms. Chambers also recommended performing OFAC checks on vendors given their access to key systems and information.

<u>Advertising, Marketing Materials and Managing Social Media</u>
Lisa Snow, Associate General Counsel, Senior Vice President – Legal, Focus Financial Partners LLC
Alpa Patel, Partner, Kirkland & Ellis LLP
Melissa Harke, Senior Special Counsel, Division of Investment Management, Securities and Exchange Commission
Sanjay Lamba, IAA Assistant General Counsel, Moderator

Alpa Patel recounted some of the common pitfalls of advisers who violate the Advertising Rule – most involving performance track records. Many involve back-tested performance, which Melissa Harke revealed that the Commission views with skepticism. In her review of deficiencies from 2015-2016, the case log is dominated by cases of misleading performance. According to Ms. Harke, the risk alerts were derived from cases that were "not close calls." In a notable case, F-Squared used back-tested performance, but did not disclose it properly. In the case, there were 13 advisers, who were also cited, that passed on the false performance to clients. The SEC ruled that the advisers did not do a proper review of the performance – taking it at face value was not (and will not be) considered sufficient. Ms. Harke advised that firms need to do a reasonability check on manager performance they are passing onto their clients; don't ignore red flags such as outsized performance returns.

Portability is also an issue which the IAA hopes a retrospective review of the Advertising rule will address. For new firms looking to port performance from their previous firm, Ms. Patel claimed that the SEC does not care if a portfolio manager has contractual rights to a track record, but cares that you have the evidence on hand to support the track record.

Lisa Snow characterized Social Media as "a square peg in a round hole" under the Advertising Rule, but cautioned that, for now, the same regulations apply. Ms. Harke conceded that updated regulations need to be drawn as the Commission does not want legitimate advisers to avoid the medium for fear that it will only be left to the fraudsters.

A couple other issues that Ms. Patel counseled attendees to review: Accolades – make sure your employees' industry designations are up-to-date and any dues have been paid. Firm Awards – make certain that they are current and relevant. Past-specific recommendations – "cherry-picking" is being looked at closely by the Commission; disclaimers may help you with institutional investors, but will not save you when presenting to retail customers.

Best Practices for Form ADV Disclosure

J. Christopher Jackson, Senior Vice President & General Counsel, Calamos Investments LLC
Jennifer Porter, Branch Chief, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission
Elizabeth K. Sipes, Partner, Bryan Cave LLP
Monique S. Botkin, Associate General Counsel, IAA Moderator

The purpose of the panel was to clarify instructions for completing the Form ADV Part 1A, focusing on the new sections as well as helpful tips.

Item 5D: Separately managed accounts ("SMAs") should reflect all clients who are not in a pooled investment vehicle. Also, if a category has zero (0) clients, then put a zero (0). The Less than 5 clients check box is intended for clients 1-4.

Item 5K: The panel advised to document your methodology and supporting data for inclusions and exclusions. The custodial data is being retrieved because the Commission felt that they were not getting enough data for custodial firms.

Item 9: Due to the guidance released last year pertaining to inadvertent custody, there is could be significant changes to this number. The panel suggests documenting the clients affected by this change in your supporting materials.

Regulatory Assets Under Management: To include non-discretionary assets under management, the panel emphasized that the adviser must arrange or effect the transaction. If you wish to market the broader Assets Under Advisement, consider using explanations or footnotes in Part 2A to reconcile difference with what is reported on Part 1. The Commission will be looking at what you report in marketing materials and RFPs for consistency.

Part 2A: Jennifer Porter advised that the content of the Part 2A should contain "sufficiently specific facts" such that the investor can understand the firm's business and products, all applicable fees, and any conflicts of interest. When referencing conflicts of interest, Ms. Porter recommends identifying the conflict and describing how the conflict is addressed. She made it clear that advisers should not force clients to "connect the dots." When discussing fees, Ms. Porter cautioned that listing a broad range of fees raises a red flag among examiners. To help with clarity, Ms. Porter suggests a table or other graphical representation when outlining fees. In an effort to remove ambiguity in the document, Christopher Jackson advised firms to do a word search for "may" and be judicious in its use. If advisers are seeking to provide latitude for "certain cases", then describe the circumstances where that will be the case.

Understanding the Recent Custody Rule Guidance – SLOAs, First Person Transfers and Inadvertent Custody

Christopher Gilkerson, Senior Vice President, General Counsel, Charles Schwab & Co., Inc.
Sara Cortes, Assistant Director, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Lawrence J. Griffin, General Counsel / Chief Compliance Officer, Legal & General Investment Management America, Inc.
Laura Grossman, Associate General Counsel, IAA, Moderator

Panelists conveyed frustration with the guidance that was released last year on Inadvertent Custody (https://www.sec.gov/investment/im-guidance-2017-01.pdf). The guidance creates complications for advisers as it considers advisers to have custody 1) under certain Standing Letters of Authorization (SLOAs); 2) if the custodian contract is written to grant broad powers to the adviser; or 3) if transactions are not handled on a DVP basis. Sara Cortes, the Commission's representative on the panel, agreed that there was room for improvement to the guidance. However, as protecting investor assets against misappropriation is fundamental to the SEC's charter, Cortes warned advisers should be prepared to accurately report assets for which they are now considered to have custody. Panelists lamented that, under the current guidance, advisers may be deemed to have custody under a custodial agreement even if they are not a party to that agreement or if their own investment advisory agreement contradicts the custodial agreement. They also found that the Commission's advice to address the matter in a letter to the Custodian was impractical as many custodians were not being cooperative. Christopher Gilkerson stated that most of the custodial issues stemmed from bank models, whereas firms like Schwab and Fidelity were built with advisers in mind. Those firms have sections on their website to help satisfy the seven representations required for client SLOAs. Currently, the Commission is working with organizations such as the IAA and SIFMA to seek to remedy the matter.

<u>Developments and Compliance Obligations in Automated Investment Advice</u>

Shahriar Hafizi, Chief Compliance Officer, FutureAdvisor, Inc.
*Dilia Caballero, E*Trade*
Kristin Snyder, Co-National Associate Director, IA/IC Program, Office of Compliance Inspections and Examinations, Securities and Exchange Commission
Susan Gault-Brown, Partner, Morrison & Foerster LLP, Moderator

There are more than 200 robo-type advisers in the marketplace that can be categorized at a high level as: 1) Digital algorithm; 2) Semi-Hybrid – which are primarily digital; 3) Hybrid – initially digital with adviser review; and 4) Adviser-branded portal. Panelists indicated that automated providers were seeking reassurance from the Commission that there was not a double standard between robo-advisers and brick and mortar advisers. One of the criticisms lobbed at robo-advisers is that they don't gather sufficient information to perform adequate suitability. Dilia Caballero indicated that providers try to find a balance between gathering what is necessary and risk of abandonment from clients who find the interface too tedious. Kristin Snyder, the Commission's representative on the panel, also cited balance as a determining factor in what is enough. Robo-advisers are attracting retail investors, so the Commission is concerned about equating the platform, and the services provided, with the investor's level of sophistication. Ms. Snyder also advised providers to clearly document clients who may choose a different path from the default model.

Emphasis was also placed on documentation and continuous testing of the algorithm and software code. Shahriar Hafizi indicated there was a learning curve throughout an organization by both user interface designers (who need to understand disclosure requirements) and by compliance officers (who need to be familiar with software lifecycles).

Ms. Snyder outlined several items that the Commission specifically reviews when examining robo-advisers. According to Ms. Snyder, documentation of code changes and testing helps demonstrate how committed the firm is to compliance. The Commission will also question whether there are sufficient resources dedicated to compliance. Additionally, robo-advisers need to clearly disclose to clients any code changes that may have a material impact on the advice or portfolios. If the firm is reporting back-tested performance, they should make certain that assumptions and limitations are clearly and plainly described to clients. Obviously, cybersecurity is a major exam topic for automated providers as well.

The Latest from Washington: Hot Topics for Investment Advisers from Regulators to Capitol Hill

Mara Shreck, Head of Regulatory Affairs - Asset & Wealth Management, JP Morgan Chase
Rick A. Fleming, Investor Advocate, Securities and Exchange Commission
Karen L. Barr, President & Chief Executive Officer, IAA
Neil Simon, VP for Government Relations, IAA, Moderator

Despite Commissioner Peirce's comments a day earlier that the Commission was close to drafting Standards of Conduct, some seemed to question whether the March 15th decision by the Fifth Circuit of the U.S. Court of Appeals vacating the DOL's Fiduciary Rule would stall any SEC version. Although it gives some pause for how to proceed legally, SEC Investor Advocate Rick Fleming does not see the ruling as an impediment from moving forward. He further indicated that the Commission acknowledges that this is their space and that if the Commission does not act, many states likely will - resulting in further confusion. In his view, any SEC rule should standardize definitions of "Fiduciary" and "Best Interest" as opposed to creating multiple definitions that differ based on whether you are an adviser, broker, or insurance agent. According to Mr. Fleming, the term "Best Interest" should align with client expectations and not be explained away in a disclaimer document. In addition, the decision may cause the SEC to brighten the line between industry job titles since the ruling, in Fleming's view, appeared to demonstrate a lack of awareness that brokers and insurance agents provide investment advice in conjunction with their normal job functions.

The panel also questioned the survival of the proposed Dodd-Frank changes which recently passed in the Senate. Mara Shreck indicated that the House of Representatives already turned up their nose at the bill. According to Neil Simon, the House wants broader rollbacks, but the Senate does not have an appetite for that at this time. Mr. Simon believes it may be the Senate version of the bill or nothing.

Strategies for Managing an SEC Exam

Steven Yadegari, Chief Operating Officer and General Counsel, Cramer Rosenthal McGlynn LLC
Mary E. Keefe, Director of Regulatory Affairs, Nuveen Asset Management
Wendy D. Fox, Senior Vice President, Chief Compliance Officer, Ariel Investments
David P. Bergers, Partner, Jones Day, Moderator

The panel, comprised entirely of SEC alumni, provided an outline of the exam process and what compliance officers can expect during the exam. David Bergers felt there was no longer such thing as a routine exam, but rather risk-based exams based on one factor or another. Mary Keefe said that regional offices have been given the freedom to conduct exams at their desire and tend to make sure they adequately cover the largest registrants in their region. Mr. Bergers indicated that the Commission has employed the use of text analytics to review Form ADVs and find what stands out. Mr. Bergers also said that there is a practice among regulatory agencies to refer registrants for review. Wendy Fox noted that recent enforcement cases are fresh on the mind of the examiners, so they will be looking for similar behaviors and deficiencies that led to those cases. Ms. Fox also emphasized careful review of your firm's last exam letter as any remediation that has not taken place will be viewed harshly.

Steven Yadegari highlighted that exams are focusing on the costs of investing and all forms of compensation. Firms should make certain that all relationships and conflicts are clearly disclosed, such as if the RIA also sponsors its own mutual funds. In an effort to make sure all conflicts have been identified, mitigated, and disclosed, Ms. Fox has seen firms employ a Conflict Matrix which lists each of those items along with identifying the business owner who is assigned to manage the conflict of interest.

Mr. Yadegari also provided a list of common deficiencies: 1) The compliance manual does not reflect the current business; 2) the compliance manual is not tailored to the firm; 3) a new line of business is not covered in the ADV and manual prior to launch; 4) the firm is not living up to the polices outlined in the manual; and 5) inconsistency between the Form ADV and marketing materials.

Ms. Keefe advised compliance officers to speak with the examiner prior to the visit to discuss the focus of the exam, who is attending, the timeline (including how many days on site), and of course to indicate that the firm will be cooperative. Then review the exam letter with your business team, designating who will be speaking and providing the required documents. During the exam, if a specific data request is extensive, do not be afraid to ask to provide a sampling or a smaller window of data initially and then the examiners can assess if more is required. For larger requests, you may also ask for extensions. Ms. Keefe also advises that if a data request seems overly broad, discuss with the examiner how the data point pertains to the focus of the exam and if you can narrow the request to what is applicable. For compliance officers, stay in touch with the examiners during the length of the exam and inquire if there are any issues for which you should be made aware. During the preliminary exit interview, should any issues arise, request for time to respond. You should be given a fair opportunity to respond or clarify any issues. The panel emphasized that firms must seek to respond to any issues prior to them going into the deficiency letter – once the issue is in the letter, there is no getting it out.

All panelists indicated that, despite RFP or DDQ requests, they did not give out the deficiency letter. In lieu of providing the letter, they either prepared a summary of the findings and remediation or they offered due diligence officers the opportunity to view the letter onsite.

Ethics for Advisers

Garrett Broadrup, Vice President and Senior Counsel, Affiliated Managers Group, Inc.
Daniel S. Kahl, Chief Counsel, Office of Compliance Inspections and Examinations, Securities and Exchange Commission
Robert E. Plaze, Partner, Proskauer Rose LLP
Sarah A. Buescher, Associate General Counsel, IAA Moderator

The panel highlighted topics within the Code of Ethics and how they see firms applying them. Garrett Broadrup covered common practices for firms as it pertains to personal trading. Mr. Broadrup stated that firms often extend the requirements to all employees. He has seen frequent application of restricted lists and blackout periods. Mr. Broadrup emphasized that all firm employees should understand that if the firm advises on a type of security, the Code of Ethics should be applied to that type of security in particular. In terms of cryptocurrency, although it may not be considered a security, Mr. Broadrup indicated that firms may impose a reporting requirement at the very least, if not a pre-clearance requirement. Also, firms should be aware that the SEC may be looking closer at third-party contractors depending on their level of access. Firms may need to consider whether those contractors will need to be subject to their firm's Code of Ethics or have their own in place. Daniel Kahl suggested a good litmus test would be to consider, "If the job function was an in-house employee, would the employee be subject to the Code of Ethics?"

The panel also covered the topic of political contributions. Robert Plaze, an author of the Code of Ethics guidelines in 2004, indicated that although spousal contributions may not be explicitly disable a firm from dealing with government clients, the SEC could assert there is undue influence. Mr. Broadrup warned that certain states do include spousal contributions as prohibited actions. Firms should spot check their employees versus what they report against various databases of contributions as Sarah Buescher warned that Commission staff will most certainly check.

On another Code of Ethics topic, Mr. Plaze stated that Whistleblower attorneys now may force clients to report directly to the SEC after a recent Supreme Court decision. Mr. Kahl reiterated that firms need to carefully review their current employment contracts and termination agreements to make sure they are not in violation of the Whistleblower rule.

Finally, Mr. Kahl cited that an easy target for examiners, and a common deficiency among firms, was a lack of repercussions for employees who were late in their Code of Ethics reporting.