

## WEEKLY BRIEFING

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## IA Compliance: Master Emerging Challenges

Sept. 16, 2019 | Philadelphia, PA

## UPCOMING WEBINARS

## Conquering Current Compliance Challenges

Sept. 11, 2019 | 2:00 - 2:30 PM EST

## RECORDED WEBINARS

## Conquering Current Compliance Challenges

Recorded: August 14, 2019

## HANDBOOKS

## Private Equity Enforcement Lessons Learned: Compliance Guidance for the PE Business Model

Includes: Best Practices, Key Regulatory Issues and Compliance Tips

## The SEC Examinations Priorities Handbook (2019 Edition)

Includes: Best Practices, Document Request Letters and OCIE Risk Alerts

## The Adviser's Guide to SEC Advertising and Marketing Rules

Includes: 23 Best Practices, 5 Peer-tested tools and 15 No Action Letters

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## Cyber again leads as greatest compliance concern, survey shows

Published on: 7/18/2019 Content area: Investment Adviser

Comments?

And the beat goes on. For six years running, cybersecurity has remained the biggest compliance concern at SEC-registered investment adviser firms, according to an industry survey of firms of all sizes jointly conducted by the **Investment Adviser Association** and **ACA Compliance Group**. The *2019 Investment Management Compliance Testing Survey* revealed that 83% of respondents reflected cyber as their current hottest compliance topic.

Not surprisingly, firms are stepping up their efforts to combat cyber risks. Seven in 10 IAs indicated that they have bulked up their compliance testing in the past year. Increases in penetration testing lead the way with 80% of the survey respondents reporting conducting such testing—up from 73% from last year's survey. Phishing exercises proved the next most popular with three-quarters of firms testing, versus two-thirds last year.

While the maxim is "it's not if but when you will experience a cyber breach," only 39% of respondents reflected that they had experienced a cybersecurity incident. Interestingly, only 2% considered the incident to be "material." A majority of firms reported having cyber insurance.

### Top 10 testing areas

While cyber lead the Top 10 areas of increased testing, the remaining issues identified were:

1. Advertising/Marketing (43%)
2. Best Execution (38%)
3. Fee Calculation/Billing (34%)
4. Electronic Communications Surveillance (32%)
5. Disaster Recovery Planning (31%)
6. Personal Trading/Code of Ethics (27%)
7. Custody (25%)
8. Social Media (24%)
9. Books and Records (23%)

Testing of marketing activities include reviewing the firm's website (76%) and conducting focused reviews of newly created documents (65%). Some of the top controls relating to advertising that were reported included written P&Ps, the prohibition of testimonials, CCO pre-approval, logging and tracking materials as they are prepared and pre-clearance interactions with media.

With the SEC contemplating changes to the advertising rule, recommended amendments included removing per se prohibitions on past specific recommendations and testimonials; eliminating rulemaking by "no-action" letters; allowing for more flexibility with institutional clients and factoring in social media usage.

### Social media usage

The survey revealed an increased interest in using social media, but over 60% of the respondents prohibited its use for anything other than basic "business card" type information. Seven in 10 respondents reported having a written stand-alone social media policy.

Nearly two thirds of responding firms have a corporate page on **LinkedIn**, with just over half permitting employees to utilize LinkedIn for business. One quarter of firms have a corporate page on **Twitter** and 19% have a corporate page on **Facebook**.

Other survey highlights cited included:

- ✓ **Code of ethics.** The most common features relating to a COE include: having someone other than the CCO review trading activity of the CCO (77%), employees/access persons certifying that the firm received all trading information on a quarterly basis (68%) and using electronic data feeds (57%). Nearly 40% of respondents allow personal trading of securities held in client accounts; 33% require a minimum holding

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period (e.g., 30 days); and for 21% personal trading is restricted to investments in which clients do not trade.

- ✓ **Gifts and entertainment.** Eighty-five percent of respondents include G&E provisions in their COE and 71% have pay-to-play provisions in their code. The most common reporting thresholds are \$250 and \$100. Three quarters of respondents require periodic certifications of compliance by employees.
- ✓ **Fees.** The top three areas for testing fee arrangements include whether clients are billed in accordance with their agreements (87%), that the description of fee arrangements in their Form ADV is accurate (70%), and that the amount of AUM on which the advisory fee is billed is accurate.
- ✓ **Expenses.** The top three tests with respect to expenses are making sure they are explicitly disclosed (52%) and are in line with their agreements (52%) or offering documents (43%).

**Compliance program budgets**

The survey also affords an opportunity to see how your compliance program budget stacks up. The following numbers reflect respondents' compliance program budget as a percentage of revenue:

- Under 5% (45%)
- 5% to under 10% (20%)
- Over 10% (7%)
- Did not know (28%)

The make-up of compliance spending plans was further captured. For items that comprised 20% or more of a firm's compliance budget, the breakdowns were:

- Compliance personnel (84%)
- Technology (34%)
- Third-party compliance consultants (29%)
- Outside legal counsel (28%)

The information contained herein was current as of the publication date.

Indexed by: Advertising/Marketing | Investment Adviser Association | Compliance Best Practices | Compliance Budget | Code of Ethics | Gifts and Entertainment | Cybersecurity | Fees and Expenses |

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Did you find what you were looking for?

Yes  No