NSCP *Currents*

FOR COMPLIANCE. BY COMPLIANCE. DECEMBER 2025

BEST OF NSCP *CURRENTS* 2025

In this Issue:

NSCP
NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS

Check out what NSCP has planned for 2026

NSCP *Currents* LIVE

NSCP *Currents Live* Webinars
NSCP *Currents Live* webinars offer real-world interpretations of securities regulations and their impact on compliance, practical advice on compliance initiatives, tools and other resources to assist compliance professionals, best practices for implementation, and engaging discussions on all areas of compliance. Recordings of all NSCP *Currents Live* webinars will be published alongside written articles on NSCP *Currents On Demand*.

NSCP | REGULATORY INTERCHANGES

NSCP Regulatory Interchange Webinars
NSCP will once again be hosting Regulatory Interchange Webinars featuring NASAA, FINRA and the SEC. Hear directly from the regulators on the compliance topics that matter most to your business in a convenient, online webinar format. Attendees will have the ability to submit regulatory questions anonymously during the session. NSCP Regulatory Interchange webinars are the best way to keep abreast of current regulatory changes, gain better understanding for application, and get your questions answered.

NSCP | COMPLIANCE SEMINARS

NSCP Compliance Seminar for Private Funds
Join us in person for a full day of intermediate level sessions on compliance topics specific to Private Funds, providing insightful discussions, interactive engagement, and networking opportunities.

NSCP | INTERACTIVE COMPLIANCE LABS

NSCP Interactive Compliance Labs for Broker-Dealers and Investment Advisers
Join us for a full day of intermediate level Interactive Compliance Lab sessions for Broker-Dealers & Investment Advisers, providing practical application for seasoned compliance professionals on a variety of compliance topics. These in-person events will be hosted in multiple, convenient locations across the country.

NSCP NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS *THE NATIONAL CONFERENCE*

2026 NSCP National Conference
October 25-28, 2026 – Hyatt Regency Grand Cypress in Orlando, FL
Featuring two and a half days of educational sessions, keynotes, networking events, exhibit hall, and much more!

LEARN MORE ABOUT NSCP

Check out what NSCP has planned for 2026

Broker-Dealer Forum
Facilitates periodic discussions and exchange of ideas among NSCP members regarding regulatory issues relevant to broker-dealers. Virtual discussions are held on the first Wednesday of each month. Recordings are available to all NSCP members for review after each call.

Compliance Forum
All NSCP members are members of the Compliance Forum, providing access to the NSCP Resource Library and the ability to connect with the entire NSCP member community.

Emerging Leaders Forum
The Emerging Leaders Forum is intended for compliance professionals and service providers who are newer (10 years or less) or returning to the financial services compliance profession; however, all NSCP members are welcome. The Emerging Leaders Forum holds quarterly virtual meetings with guest speakers to address topics identified by NSCP members as important to their professional development.

Investment Adviser Forum
Facilitates periodic discussions and exchange of ideas among NSCP members regarding regulatory issues relevant to investment advisers. Virtual discussions are held on the first Thursday of each month. Recordings are available to all NSCP members for review after each call.

Private Fund Forum
Facilitates a forum for the periodic discussion and exchange of ideas among NSCP members regarding regulatory issues relevant to private funds, hedge funds, and private equity firms. Virtual discussions are held quarterly on the third Wednesday of the month. Recordings are available to all NSCP members for review after each call.

AML Rule Working Group for Investment Advisers
Meetings will review any relevant developments relating to the AML Rule and serve as a live forum for the discussion of members' questions about implementation of the rule as they work toward the compliance effective date. Virtual discussions are held quarterly on the second Thursday of the month. Recordings are available to all NSCP members for review.

LEARN MORE ABOUT NSCP

NSCP would like to thank our Sponsors:

Diamond Sponsor

ACC
Adviser Compliance Consulting

Platinum Sponsors

DFP PARTNERS
CPAs & Regulatory Consultants

RegEd

RRS
Renaissance Regulatory Services

saifr

Gold Sponsors

ACA

Confluence

Greenboard

Hadrius

Silver Sponsors

ARCHIVE intel

MCO
MyComplianceOffice

proofpoint.

Salus GRC

STAR COMPLIANCE

STP

They’ve done it again!

The NSCP Publications Committee has published yet another year of high-level articles and practical resources!

Thank you to all of our dedicated committee members!

2025 Co-Chairs

Andrew Mount
Kim Cash

2025 Editorial Board

Andrew Mountn
Edward (Ted) McCutcheon
Kim Cash
Melissa Starr
Miriam Lefkowitz
Roseann Higgins

2025 Committee Members

Andrew Mount
Ashley Mendelsohn
Bailey Drake
Bob Lavigne
Bree Ward
Brett Erickson
Brian Giue
Brian Rubin
Carrie Richards
Chelsea Perez
Craig Watanabe
Dharmi Mehta
Edward Goldfarb
Edward (Ted) McCutcheon
Jacquetta Robinson
Jennifer Herron
Jeremy Dela Cruz
Jeremy McCamic
Joshua Jones
Julie DeVisser
Kanchan Mehta
Kim Cash
Kristin Prieur
Lori Weston
Louis Froelich
Madison Dewey
Matthew Rothchild
Melissa Starr
Miriam Lefkowitz
Nebyu Retta
Nichole Wright
Omkar Bhapkar
Reece Dinauer
Roseann Higgins
Shawn Bostic

2025 Author of the Year

NSCP *Currents* seeks to embody the broader NSCP mission: "to educate, connect, and empower a community of diverse financial services compliance professionals." It also strives to further NSCP's core values by producing a best in class resource that includes opportunities for professional development, promotes the exchange of knowledge, and advocates for the compliance profession. For over 35 years, NSCP *Currents* has been delivering invaluable content, becoming the go-to resource for over 2,000 industry professionals and the premier compliance publication of the financial services industry. During that time, NSCP *Currents* has featured articles written by legal and compliance experts, thought leaders, colleagues, and professionals of all types tackling financial service compliance challenges for its readers.

In this December 2025 "Best of" edition, we again honor all of the amazing authors from years past, while providing particular distinction by formally recognizing the NSCP *Currents* Author of the Year! In determining the recipient of this honor, the NSCP Publications Committee selects an author whose contributions went above and beyond and whose content elevates the industry, our members, and the National Society of Compliance Professionals.

We are so very pleased to announce that the NSCP *Currents* 2025 Author of the Year Award goes to author Miriam Lefkowitz, Principal of Miriam Lefkowitz, LLC and Coda Advisory Group LLC. Miriam serves as a subject matter expert on compliance programs and as an expert witness in regulatory and civil matters.

Miriam's comprehensive articles not only provide invaluable guidance and insights but also include practical tools and tips to help readers. You will find one such article in this "Best of" issue, with a link below to an additional article as well. Congratulations, Miriam! We are so grateful for your contributions, and we celebrate and appreciate you!!

Once again, by handing out this year's award, the race for the top NSCP *Currents* author of 2026 has begun again. Will it be you? We certainly hope so! Check out the Writing Opportunities page on the NSCP website or contact Publications@nscp.org for more information.

Articles written by Miriam in 2025:

- Maintaining a Robust Due Diligence Program for Complex Products Under the Care Obligation of Regulation Best Interest by Miriam Lefkowitz
- Regulatory Filing Requirements for "Institutional Investment Managers" Arising Under the Exchange Act by Miriam Lefkowitz

Maintaining a Robust Due DiligenceProgram for Complex Products Under the Care Obligation of Regulation Best Interest

By Miriam Lefkowitz

About the Author:
Miriam Lefkowitz is a Consulting and Testifying Compliance Expert/Securities Regulatory Attorney.
She can be reached at Compliance@MiriamLefkowitz.com.

When the NASD was first created in 1939, it included an inherent suitability obligation in its initial rules. Over time, the breadth of the rule expanded and evolved into 3 distinct components – reasonable basis suitability, customer-specific suitability, and quantitative suitability. The NASD and its successor FINRA issued extensive regulatory guidance as to how these obligations, particularly the first of these three, apply to the ever-increasing shelf of securities being offered by member firms. In 2020, the Securities & Exchange Commission's Regulation Best Interest (Reg BI) supplanted the suitability rule for retail investors by enhancing the duty of broker dealers (BDs) and their registered representatives (RRs). The prior guidance remains relevant to informing BDs and RRs of the types of information they should incorporate into their due diligence programs which resides in Reg BI's Care Obligation, however. Further, FINRA has continued to update its guidance on existing products and strategies, and issue new guidance as newer securities products are introduced or evolve.

This article and tool[1] assume the reader is familiar with (1) the overall duty to understand a product or strategy's expected risk/return profile before recommending it to any retail investor; the scope of duties created by Reg BI (Disclosure Obligation, Care Obligation, Conflict of Interest Obligation, Compliance Obligation), and (3) the necessity of a sufficient due diligence process in order to meet other components of Reg BI. (For example, firms cannot meet their Disclosure Obligation "to disclose the material fees and costs that apply to the retail customer's . . . holdings" unless they know the management fees or ongoing costs of holding a position, nor can they disclose and mitigate conflicts unless they know what incentives exist.)

It is a good compliance exercise for BDs to revisit their due diligence practices periodically as firms broaden their investment offerings, the products themselves evolve, and when there are staffing changes. A system that worked well when staff were located in the same office may need to be revised if the key players are fully or frequently remote. This article reviews certain key elements of, and different approaches to, the maintenance of a robust due diligence program.

Information Gathering

How does the exercise of reasonable diligence, care and skill in understanding the potential risks, rewards and costs associated with an investment product or strategy translate into actual data review? The challenges here can be at one of two extremes – have you reviewed enough information upon which to assess the product? Or, are you buried in information which can obfuscate matters of concern? A reasonable due diligence program should include a review of the most important items but need not chase down every possible avenue. Knowing how much is enough is a critical element of an efficient and effective program.

Generally, more complex products warrant deeper dives and correspondingly more evidence to support the review. The key is to qualitatively address the issues specific to the investment or strategy. The SEC has identified certain items it expects will generally be important as part of due diligence, in addition to the potential costs (which are always significant and must be considered). These additional factors are the security's or investment strategy's investment objectives, characteristics (including any special or unusual features), liquidity, volatility, and likely performance in a variety of market and economic conditions; the expected return of the security or investment strategy; as well as any financial incentives to recommend the product/strategy.[2]

1. This article and tool are based on a series of articles published by the author in Currents in July and September 2020.
2. Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019) ("Adopting Release"), p. 262. Attached to this article is an analytical tool which incorporates these questions as well as the earlier FINRA guidance which, as noted, is generally helpful if and as relevant. The tool suggests where the responsive information may be found and offers examples of issues or findings which may warrant follow up or serve as red flags. Firms can use this tool to assess if their current practices are sufficient or need updating.

FINRA has recognized the need for flexibility when documenting the scope of a due diligence review, and the SEC assures that risk-based approaches are sufficient. Some firms may be more inclined to "paper their files" by including stacks of documents, others may choose to utilize a form which identifies with sufficient specificity the key documents and internet searches they reviewed which touch on the primary potential risks, returns and costs, as well as some of additional, relevant factors. Either can be acceptable, but each has drawbacks. Stacks of documents (or electronic files) which have no markings or indications of having been reviewed, especially if they contain information which warrants further inquiry, may undermine a firm's claim that its review was meaningful. Conversely, defense counsel often prefer large piles of documents to persuade factfinders that the scope of the review was sufficient.[3]

Who Should be Involved?

Regardless of whether traditional committee or a "layered" review is used (see discussion below), is a good practice to seek input from product experts as well as representatives from other departments such as supervision, sales, compliance, accounting, IT, operations and legal.[4] For example, compliance officers are generally not expected to be or become authorities in how certain products will react to market changes. Rather, the role of compliance typically is to assess whether the firm has a process to consider the key items relating to such products and strategies, not to become the experts themselves. In essence, the role of compliance is to approve the process, not the product or strategy. Many firms designate compliance and legal personnel as non-voting, to protect them from being deemed to be supervisors.[5]

The role for each department involved in the process should be made clear in the committee charter or other firm procedures. Clarifying the expectations is critical not only to protect compliance officers, it can prevent a herd mentality and finger pointing when a product does not perform as originally hoped.

How Should the Initial and Ongoing Reviews be Conducted?

1. The Classic Approach (Committee Review)

Firms with competent, experienced in-house expertise can utilize their skills to assess new offerings/strategies and often do so by creating committees, which may be called "due diligence committees," "new product committees," "investment committees" or bear a similar name and often include members from various departments, as noted above. At smaller firms, multiple roles may be filled by the same person. Such committees can have regularly scheduled or ad hoc meetings, robust discussions about products with formal agendas, minutes and votes, and a single file for each product which includes a review of reasonably available alternatives. There can be pre-determined dates for ongoing review and/or criteria, such as management changes or style drift, that warrant revisiting the product.

2. Modern Twist to Classic (Sequential Committee Review)

The traditional committee arrangement is a strong practice but one that may not be feasible at some firms, where schedules or geography make synchronous review difficult to coordinate. In such event, having a sequential review may be more practical. This can be effective, particularly

3. The SEC expressly provides that Reg BI does not create any new private rights of action. Adopting Release, page 44. Even so, claimants' counsel regularly assert claims based on Reg BI. As in many areas of compliance, extensive documentation may be protective even if not obligatory under regulations, particularly in FINRA arbitrations where some panelists have limited prior knowledge of SEC regulations, FINRA rules or even the securities industry.

4. While this article focuses on the suitability and duty of care aspects of due diligence, there are other items to consider. For example, if client data will be provided to third party managers, additional diligence may be warranted into privacy and data security practices. Similarly, there may be significant operational aspects of diligence to be addressed if a product will be held at a custodian with which the firm has no prior relationship. Firms may wish to incorporate these aspects of review into their due diligence programs as well.

5. *See, e.g., SEC Division of Trading and Markets: Frequently Asked Questions about Liability of Compliance and Legal Personnel at Broker-Dealers under Sections 15(b)(4) and 15(b)(6) of the Exchange Act (September 30, 2013), Question 5 and footnote 10.*

at smaller, less formal firms or when the key personnel work remotely or in different time zones. This process relies on an “internal sponsor” or “product champion.” Just as with a typical committee process, the sponsor is tasked with channeling the product through each relevant department – the difference is that it does not all take place at once. For example, if the sales managers do not think there is an appetite for a product/strategy, or if the product experts are not comfortable with the potential risks/rewards/costs, there is no need for the remaining departments to dedicate any time. Similarly, if a firm is considering adding a new manager or strategy on a previously approved platform, there may not be any new accounting or IT concerns for consideration, although there may still be need for compliance and supervision input. The internal sponsor can utilize a worksheet which requires each department to sign off that it has reviewed the product, or that such review was not warranted, and each department can maintain its own records of the review, if that is more efficient. When coordination among departments is needed, such as if compliance and supervision need to work together to develop proper policies and set up training, the sponsor can connect the key parties. This may sound complicated but in practice, it is often easier than getting everyone together at the same time. The key is that each stakeholder in the process has a chance to review the information they need and that the review has been documented.

3. RR as Product Champion

Modern open-architecture platforms may offer hundreds or thousands of investment options. Many of the offerings are available on platforms which have already conducted their own levels of due diligence, such as outside managers or strategies or products offered through unaffiliated custodians. It is not feasible or realistic to expect a centralized team to become sufficiently versed in each possible offering. In such circumstances, the RRs themselves, rather than a core due diligence committee, may be the most knowledgeable about a particular product.[6] Neither the SEC nor FINRA mandate that due diligence be conducted centrally, although having the RR spearhead the process on his/her own creates supervisory challenges as BDs are obligated to reasonably assess whether a sufficient review has been conducted.[7] If a firm permits RRs to offer products or services that have not been vetted in other channels within the firm, the supervisory and compliance obligations are heightened to determine that the process has met the standards of RBI’s Care Obligation. More frequent testing and extensive recordkeeping may be warranted. One area for testing may be reviewing the investments considered as part of the “reasonably available alternative” assessment. In particular, supervisors may want to consider the criteria used in choosing the other investments to determine they were not merely selected to make the recommended investment appear superior when it might not, had other alternatives been chosen.

Incorporating Third Party Resources

For firms that lack the in-house skills to conduct meaningful reviews of specific products, wish to supplement their core competencies or simply like to buttress their own views with additional ones, third party due diligence providers can add significant value. These vendors may have expertise in industries or access to issuers that individual firms lack. Firms get into trouble, however, when they rely too heavily on these reports rather than integrate them into their own due diligence programs.[8]

---

6. When an RR is the sponsor of a product, the sequential approach can have the advantage of requiring a high level of engagement by the RR early in review process. If the RR is insufficiently motivated to keep the investment moving through the channels, or does not identify appropriate alternatives, the firm does not need to assume the risks of offering the investment to its customers. This heavy involvement by the RR can also counter any later assertion by the RR that somehow the firm approval of a product exonerated him/her from developing a strong understanding of the investment.
7. Unlike the Conflict of Interest and Compliance Obligations of Reg BI, which expressly require the firm to take relevant action, the Care Obligation can be satisfied by the “the broker, dealer, or natural person who is an associated person of a broker or dealer” who engages in the appropriate review (emphasis added).
8. *See, e.g., Investors Capital Corp*., FINRA Case # 2009018609501 (2011) (“During the Relevant Period, ICC’s system for approving such products was deficient in the following respects [among other reasons]: . . ICC’s, due diligence relied heavily on due diligence reports that the firm knew were paid for by the issuers) and/or sponsors) of offering(s).” ICC’s, due diligence relied heavily on due diligence reports that the firm knew were paid for by the issuers) and/or sponsors) of offering(s).”

Further, some of the third-party due diligence providers have significant conflicts of interests because they get paid by the issuers of the securities and are incentivized to find the products they review worthwhile. This is not disqualifying – just as customers of brokers may derive value from investments even when the BD has conflicts, so, too, can firms benefit from third party research even if touched by conflict. But firms should consider the conflicts when assessing the conclusions of the third-party vendor.

Some items to consider when using third party due diligence reports are:

1. Does the due diligence report address each of the items that the firm deems to be significant with respect to investments of this type? A good way to assess if the reports are sufficiently comprehensive is to make a checklist of the items you would want to know about the specific investment before reading the report. There will be a core list – but if the product is in a new industry, a foreign jurisdiction or incorporates novel strategies, firms may want to supplement their lists. As the due diligence team/sponsor reads the third-party report, they can note on the checklist where each topic is addressed and assess if the level of detail is to the firm's reasonable satisfaction. This practice helps firms from conflating heft for quality or assuming that the length of the report implies a sufficiency that may not be warranted.

2. If there are gaps or weaknesses in the report, follow up. Some firms take undue comfort that if a reputable due diligence provider did not address an issue, it must not be significant. Remember that each firm is responsible for its own compliance with Reg BI and that if there are deficiencies, the firm will be accountable, not the third-party provider.

3. Who at the firm is reviewing the report? Some firms delegate this task to a single person. Unless the individual is sufficiently knowledgeable about the risks and market for the particular investment product at issue, additional people may need to be involved. The integration of third-party reports typically does not change the need to input from various departments.

4. Is this a niche product? Third party due diligence reports often examine the particular investments for which the issuers have retained them and may not offer sufficient insight into other products that may offer similar benefits. Some understanding of alternative securities is often necessary to assess if the potential rewards of the investment are commensurate with the risks and costs.

Other Resources

The Reg BI requirement to consider reasonably available alternatives means that firms that have not already incorporated automated tools to compare investments/strategies designed to meet their customers' objectives may wish to start doing so. For mutual funds, there are some widely available sources that allow users to create custom comparisons and detail differences in style, returns over various time periods, expense ratios, sales loads, etc. Other tools assign risk categories or compare tax implications. For more complex products, certain vendors offer comparison tools which permit users to select criteria and compare investments from a broad pool of alternative investments including non-traded REITs, BDCs, closed-end interval funds, private placements and alternative mutual funds.

As with all third-party resources, firms should not delegate the decisions but use the output of the process to support the recommendations made.

Conclusion

Although due diligence is a critical component to compliance with Reg BI, there is no single approach that will work for all firms, all products, all strategies or even all RRs' customer bases. The suggestions in the article are designed to suggest approaches that may help firms as they refine their suitability programs to meet the challenges of Reg BI. ■

Practice Tips to Satisfy the Care Obligation of Due Diligence for BDs under Regulation Best Interest for Complex Products and Strategies

1. This tool is designed to provide an analytic framework to satisfy the reasonable basis (as opposed to customer-specific) element of the Care Obligation before firms recommend a security or investment strategy to retail customers.[1] It suggests questions to ask, where to seek answers and when to follow up, but it is designed to be representative, not comprehensive. The significance of any particular item will vary based on the relevant factors. There is no set minimum number of questions which must be addressed, nor will a mechanical but nonanalytical collection of information be sufficient. Each firm must customize its process based on its own circumstances and those of the particular investment at issue.

2. Although the firm may not be able to get answers to each question, the key is to consider if the firm has sufficient information upon which to reasonably understand the security/investment strategy. Firms do not need to learn everything about an investment – so long as the investigation is conducted with reasonable diligence, skill and care,[2] and firms consider the potential costs[3] of purchasing (e.g., commissions, sales loads) and selling/exchanging (e.g., deferred sales charges or liquidation charges) as part of the best interest Care Obligation. The SEC did not include opportunity costs as part of this analysis.

3. It may be difficult for firms to achieve reasonable diligence, skill and care in their due diligence programs if they assess each investment or strategy without benchmarking it to "reasonably available alternatives," which the SEC has embedded into the customer-specific best interest analysis of the Care Obligation.[4] For this reason, it may be advisable to the firm's review of such options to straddle both of these components of the Care Obligation.

4. How much effort will be required to demonstrate the exercise of reasonable diligence, skill and care is a facts and circumstances determination[5] and will depend in large part on the complexity of and risks associated with the recommended security or investment strategy, and the broker-dealer's familiarity with the recommended security or investment strategy.[6] Firms that are new to particular types of investments or strategies will likely need to conduct deeper dives than firms with more experience and expertise. As a general matter, both FINRA and the SEC deem alternative investments to be complex securities and that most options strategies are complex.

5. For non-registered investments, many answers to these questions may be contained in the offering documents (Private Placement Memorandum, Subscription Agreement, Prospectus and/or marketing materials) but firms should not rely exclusively on such material. They should

---

1. Exchange Act Rule 15l-1(a)(2)(ii)(A).
2. See Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019) ("AdoptingRelease"), Section II.C.2.a.
3. Adopting Release, Section II.C.2.b.
4. Adopting Release, Section II.C.2.c. See SEC discussion on the scope of this duty, which concludes that a "broker-dealer does not have to conduct an evaluation of every possible alternative, either offered outside of the firm (such as where the firm offers only proprietary or other limited range of products) or available on the firm's platform" although it needs to have a reasonable basis for limiting the scope of such review.
5. Adopting Release, Section II.C.2.a.
6. Adopting Release, Section II.C.2.b..

supplement issuer-drafted statements with audited financial data and/or publicly available information, if and as available and appropriate to the circumstances (i.e., independent audits, Internet search, government records, regulatory resources such as BrokerCheck, Investment Adviser Public Disclosure website, EDGAR, credit checks, contracts with key counterparties, etc.). For issues that have no public filings and do not have PPMs, additional effort may be required, particularly in higher risk scenarios such as when the member or its associated persons are affiliated with the issuer, have unusual conflicts or when red flags are present.

6. Certain documents prepared by independent auditors – such as audited financial statements prepared in accordance with GAAP and statutory financial statements for insurance companies - are generally deemed to be reliable. The availability and content of these documents can impact what additional measures may be warranted.

7. Collecting documents is not helpful; someone must read them and follow up on material issues the firm doesn't understand. BDs should not assume that the strategy makes sense merely because it is described in the corporate documents or other firms are offering the product.

8. If there are public filings or PPMs/Prospectuses/Offering Memoranda and/or other subscription documents, generally at least one person within the firm who has competence in this area should read them in their entirety, regardless of what other due diligence is conducted or what third-party resources are used.

9. Firms should include flexibility in the review process. Regardless of how the firm approaches the investment review process, by the end of the initial due diligence process and as warranted throughout the period of time the BD permits RRs to recommend the investment to retail customers, the firm and RRs should "understand the potential risks, rewards, and costs associated with the recommendation" (i.e., meet the Care Obligation of Regulation Best Interest).

10. If an issuer/manager is evasive, non-responsive or reluctant to answer questions, consider whether it is possible to reasonably understand the investment and/or whether the risk exceeds the upside.

11. Except as noted above, this tool does not include any recommendations regarding the customer-specific best interest analysis of the Care Obligation or any of the other obligations (Compliance, Conflicts of Interest, Disclosure) of Reg BI.[7]

12. The SEC considered but did not adopt a documentation requirement in the Care Obligation. Notwithstanding, both the staff of both the SEC and FINRA have expressed extreme skepticism that firms can meet the reasonable basis aspect of the Care Obligation without documenting their consideration of the various factors (i.e., potential risks, rewards, costs) and reasonably available alternatives. Such guidance is useful to firms in meeting their duties but has no legal force or effect, does not alter or amend applicable law, and creates no new or additional obligations for any firms.

*- Nothing herein implies a regulatory requirement to use this approach, and firms can meet their duties without obtaining answers to all of these questions. Notwithstanding that claimants' counsel often allege that the mere offering of a product which did not perform is sufficient evidence of inadequate due diligence, it is not so. BDs are obligated to have a reasonable process. Reasonable due diligence will not uncover all potential reasons why an investment or strategy will not perform as expected, especially if a manager/sponsor/issuer affirmatively misrepresents its business and/or conflicts, an auditor fails to meet its own standard of care

7. For guidance on the customer-specific best interest analysis, see Adopting Release, Section II.C.2.c.

when auditing a firm or subsequent market/political/global events that were not reasonably foreseeable.

Checklist based on:

(i) Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019) ("Adopting Release") presumptively-required elements of a reasonable basis due diligence review (i.e., what are the potential risks, rewards and costs of the investment or strategy) under the Care Obligation of RBI;

(ii) Risk Alert Examinations that Focus on Compliance with Regulation Best Interest, (April 7, 2020) ("Risk Alert")

(iii) April 20, 2023 Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Care Obligations, (April 20, 2023, updated April 22, 2024) ("Care Obligation Staff Bulletin");

(iv) Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers Account Recommendations for Retail Investors, March 30, 2022, updated June 7, 2024) ("Account Recommendations Staff Bulletin")

(iv) Select FINRA guidance on reasonable-basis suitability prior and subsequent to adoption of Reg BI. (This table does not include every item for consideration from the FINRA guidance.) ■

Disclaimer: *The information provided in this article and any accompanying materials is for general informational purposes only and is not intended as professional compliance or legal advice. The views expressed do not necessarily reflect the opinions or positions of the authors and are not intended to express the views of their employers or NSCP. NSCP assumes no responsibility or liability for the content of this article or any accompanying materials, or for any errors or omissions. No representation or warranty, express or implied, is made as to the accuracy, completeness, or timeliness of the information provided. Readers should consult with qualified professionals regarding all regulatory, compliance, or legal issues.*

Questions based on :
(i) Adopting Release presumptively-required elements of a reasonable basis due diligence review (*i.e.* , what are the potential risks, rewards and costs of the investment or strategy?) under the Care Obligation of RBI;
(ii) OCIE Risk Alert on aspects of Reg BI that may require input from due diligence process;
(iii) Select FINRA guidance on reasonable-basis suitability prior to adoption of Reg BI. (This table does not include every item for consideration from the FINRA guidance); and
(iv) select FINRA and SEC guidance subsequent to the adoption of Reg BI.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
Adopting Release, Section II.C.2.b; See also NTM 03-71 (Non-Conventional Investments)	What are the costs of purchasing, owning and selling/exchanging the security/strategy?	May want to ask underwriter/placement agent. Consider comparing to other investments in the same industry.	If there is no secondary market; if these costs materially reduce the return or if the investment/strategy costs much more than products designed to meet a similar objective without a sufficiently diminished risk.
Adopting Release, Section II.C.2.b; See also RN 12-03 (Complex Products)	What is the security/investment strategy's investment objectives?	May want to review independent information on the industry and/or regulatory environment, especially for new products (such as QOZ investments).	Is the product reasonably designed to meet the objective and is there sufficient clarity about the regulatory requirements.
Adopting Release, Section II.C.2.b; See also NTM 03-71 (Non-Conventional Investments)	What are the characteristics (including any special or unusual features) of the security/investment strategy?	Consider reviewing independently-authored white papers to understand any novel approaches. If they relate to tax or regulatory matters, consider consulting counsel or accountants.	If the complexity or black box seems unnecessary to achieve the objective; or if the firm lacks the skills to understand the instrument/strategy. If investors have extreme or unusual limitations on ability to control management's behavior, if too much ambiguity; if place in the capital structure is not supported by the expected return.
Adopting Release, Section II.C.2.b; See also NTM 03-71 (Non-Conventional Investments)	What is the liquidity of the product? Is there a likelihood of a secondary market and what is the prospective transparency of pricing in any secondary market transactions?	If not sufficiently disclosed in offering documents, may want to explicitly ask the issuer, sponsor, underwriter/placement agent.	If assertions about liquidity do not seem to make sense or if the risk of illiquidity is not reflected in the return or investment objective.
Adopting Release, Section II.C.2.b; See also 05-59 (Structured Products)	What is the expected volatility of the security/strategy?	If not in the offering material, consider asking how will the product be marked to market (level 1, 2 or 3); look at historical performance under various market conditions.	If the expected or historical return does not compensate adequately for the volatility, or if the correlation between change in asset value of the underlying asset and the value of the security is not clear.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
Adopting Release, Section II.C.2.b; See also RN 12-03 (Complex Products)	What assumptions underlie the security/strategy, and how sound are they? How is the security/strategy expected to perform in a wide variety of market or economic scenarios? What market or performance factors determine the investor's return? Under what scenarios would the presumed benefits not occur?	May want to look into the market/industry/historical performance of similar products/strategies.	If assumptions seem insufficiently tested or unduly optimistic.
Adopting Release, Section II.C.2.b.	What is the expected return of the security or investment strategy?	May need to request information regarding the underlying assumptions.	Is the return sufficient to compensate for the risk; are caps are and floors, if any, reasonable.
Adopting Release, Section II.C.2.c.	How does the investment/strategy compare to "reasonably available alternatives?"	For non-publicly traded investments, may want to ask issuer to identify comparable investments, attend industry conferences, may look on alternate asset platforms, or incorporate third party aggregators of alternative asset information (AI Insight). For mutual funds, consider Morningstar, Lipper, Kiplinger or other third parties.	If the costs or complexity have unexplained deviations from comparable investments or unsupported assumptions or projections.
Adopting Release, Section II.C.2.b.	What incentives are created by the manner, timing and amount of the firm and RRs' compensation for offering the product/strategy?	Should be in selling agreement with issuer, sponsor or wholesaler.	If the compensation creates conflicts of interest between the customer and the firm, RRs or firm affiliates.
Risk Alert, § II.	What are the fees and costs related to services and investments that retail customers will pay or incur directly and indirectly (*e.g* ., custodian fees, account maintenance fees, fees related to mutual funds and variable annuities, and other transactional fees and product-level fees)?	Depending on the type of security and where it will be traded or custodied, may need to look at fees charged by such third parties.	If the fees are high without corresponding increase in value.
Risk Alert, § II.	What payments to RRs or the firm will be made by the product sponsor/affiliate, what other incentives exist, and what conflicts of interest are created by these payments or otherwise?	May need to review relationships and potential payment streams from sponsor/issuer, custodian, third party manager, or even affiliates of each. And affiliates of the firm.	Can the conflicts be mitigated or eliminated? How will disclosure be handled?

Issuer/Sponsor - General

RN 23-08 (Private Placements)	Transactions or payments between an issuer and the issuer's affiliates involving offering proceeds, including the terms of the transaction between the related parties and whether an arrangement presents a material conflict of interest for the issuer and, if so, the sufficiency of disclosure.	May want to see copies of agreements among affiliates.	If the terms are not commercially reasonable, or the issuer cannot provide sufficient explanations or details.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
RN 10-22 (Reg. D Offerings)	The amount of the issuer's authorized stock/units and restrictions on the entity's activities, if any.	Issuer's governing documents such as charters, bylaws, operating or partnership agreements, etc.	If there are any restrictions on activities, compare to business strategy to see if any deviations or style drift.
RN 23-08 (Private Placements) RN 10-22 (Reg. D Offerings)	Track record - including how long has the sponsor/issuer been operating; how long under the current management team?	For non-listed investments, may want to explicitly ask.	Are there unsupported claims of success? If newly formed entity, is there sufficient experience among the management team? Could they be cherry picking results or providing misleading results?
RN 10-22 (Reg. D Offerings)	Key operational trends - is there high employee turnover? Is the company (or industry) growing at a sustainable pace? Can they manage the growth? Retain sufficient talent, as needed?	May want to explicitly ask.	Are there unexplained high turnover numbers; insufficient operating history; unsupported claims of success? If there are indications that there may be difficulty hiring or retaining quality employees.
RN 10-22 (Reg. D Offerings)	Historical financial statements of the issuer and its affiliates.	Ideally financial statements audited by a reputable independent CPA. If not, statements that are current and opportunity to ask questions about line items, if warranted.	Look for excessive or unclear inter-affiliate activity; unexpected material changes in income or expenses; differences between numbers in the audit and the issuer's marketing material; notes that suggest there may be weak internal controls; novel evaluation metrics not reconciled to GAAP.
RN 23-08 (Private Placements)	Existence of permits or regulatory approvals	Obtain copies of the permits	If contingent approval or have expiration.
RN 10-22 (Reg. D Offerings)	Key third party relationships - existence of or excessive reliance on specific relationships.	Issuer's contracts, leases, mortgages, financing arrangements, etc., with key customers/vendors. Consider reviewing the contracts or confirming existence of permits. If warranted, can contact customers and suppliers regarding their dealings with the issuer. Or doing credit checks, public records searches.	Are affiliated contracts reasonable? Does the strategy depend too heavily on any particular third party? If so, what protections exist?
RN 10-22 (Reg. D Offerings)	How have past securities offerings performed?	Audits/financial statements of other issues;	Even though past performance is not indicative of future performance, it may offer insight into the skill and experience of the company; poor performance should be explored and strong performance can be assessed to see if due to factors not present in the current offering; if the auditor is not experienced in the type of company at issue.
RN 10-22 (Reg. D Offerings)	Liabilities	Request information with specificity from the issuer/sponsor regarding contingent liabilities and/or conduct public records search for anticipated, pending or concluded litigation, arbitration, civil, disciplinary, regulatory or criminal matters; bankruptcies, etc.	Any unexplained information with particular focus on contingent, disputed and/or unliquidated liabilities.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
RN 12-03 (Complex Products)	How complex is the entity? Does the issuer's complexity impair understanding and transparency of the operations?	Organization chart; capitalization chart.	Does the affiliate structure of the entity create unnecessary complexity that can make it unduly challenging to track the actual business operations, or create repatriation/liquidity risk or tax issues?

Management/Key Players			
RN 10-22 (Reg. D Offerings)	Key employment relationships - are the incentives of the principals aligned with the investors?	Issuer/Sponsor contractual arrangements with management and stock option plans. Or ask with specificity about how compensation is determined, by whom, in what form, are there claw backs, etc.	Significant conflicts of interest or weak controls; unusual profit sharing or management right incentives.
RN 23-08 (Private Placements) RN 10-22 (Reg. D Offerings)	Who are the principals of the sponsor/issuer? Consider: Bad Actor status, business/education history, OFAC status, anticipated, pending or concluded litigation, arbitration, civil, disciplinary, regulatory or criminal matters, bankruptcies, etc. Consider if a credit check is appropriate.	Request the information with specificity from the issuer/sponsor and/or conduct public records search.	Any negative information or any discrepancies between public information (including BrokerCheck) and information provided by the issuer/sponsor.

The Investment - Assumptions, Business Prospects and Structure			
RN 12-03 (Complex Products)	How complex is the investment? Is the complexity necessary to its performance? If the structure of the investment generates fees to affiliates or third parties, are the costs justified and conflicts appropriately mitigated? Does the product's complexity impair understanding and transparency of the product?	May want to explicitly request documents demonstrating relationship and payments among parties or look to audited financial statements.	If the complexity seems unnecessary to achieve the objective or if the inter- or intra-company payments are excessive or create misaligned interests; or if the firm lacks the skills to understand the instrument.
RN 10-22 (Reg. D Offerings)	Ownership of proprietary technology/algorithm/intellectual property/key assets (such as industrial equipment) or collateral.	Contracts, UCC filings, patent search, etc.	If ownership is unclear or encumbered; litigation.
RN 10-22 (Reg. D Offerings)	What are management's assumptions regarding the industry in which it conducts its business and the issuer's place within the industry. Do they understand the regulatory/political environment?	Business plan and projections; third party assessments of industry; regulatory environment, pending legislation or political developments.	If the assumptions seem unrealistic or if the firm lacks the skills to assess the soundness of the assumptions; if other issuers within the industry seem better positioned.
RN 12-03 (Complex Products)	Does the product present any novel legal, tax, market, investment or credit risks?	May want to seek expert opinions from counsel or accountants.	If the risks are too undeterminable.
NTM 05-25 (Review of New Products)	Changes to offering terms since inception, such as if minimum purchase amount has dropped, use of proceeds has changed, yield, etc.	May want to explicitly ask.	If the changes indicate the initial assumptions are not borne out or the investment has hit some snags.
NTM 03-71 (Non-Conventional Investments)	What are the tax consequences of the product?	May want to explicitly ask; speak to own tax advisors.	If there is regulatory ambiguity.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
NTM 03-71 (Non-Conventional Investments)	What is the expected return? Will any of the return be paid from the offering proceeds?	Should be offering document.	If the return seems unrealistic as compared to investments of comparable risk; if net proceeds to the company is unusually low or high.
Fees and other costs			
NTM 05-26 (Review of New Products)	What are the embedded costs of the product? How transparent are they? How do they compare to other products offered by the firm?	May want to look at other investments to compare.	If the costs are higher than other investments offering similar investment objectives or strategies, are they justified?
NTM 05-26 (Review of New Products)	What incentives are created by the internal cost structure of the investment? Are there conflicts embedded within this structure? How transparent are they?	May want to inquire about affiliate relationships.	Are conflicts of interest reasonably mitigated?
NTM 05-26 (Review of New Products)	How much of the offering proceeds will get invested in the strategy? How will that impact the expected return? How does this compare to other products offered by the firm or by competitors?	May want to look at other investments to compare.	If the estimated return is higher than expected given the amount actually invested in the strategy or if the costs are higher than similar investments.
Broker-Specific Considerations			
RN 12-03 (Complex Products)	For whom is this product intended? Does that align with the customers of the BD?	Should be in the offering documents.	If the type of customer for whom this is appropriate is not reflective of the firm's existing customer base.
RN 12-03 (Complex Products)	How can RRs be trained on the specific features and risks associated with the product? Once trained, can they articulate the value proposition of the product and the potential downsides?	Need to know firm's own resources.	Does the firm have the resources to conduct the training or assess whether the RRs have received it?
Additional considerations for specific investments			
RN 10-51 (Commodity Futures-Linked Securities)	For commodity futures-linked securities: what strategies are employed to address roll yield, if any; does the investment utilize a single futures contract or multiple contracts along the futures curve (e.g., holding contracts for each of the next 12 months), or more complicated investment strategies, such as tracking indices that attempt to optimize roll yield by minimizing the impact of contango or maximizing the impact of backwardation? Also - the tax implications.	Should be in the prospectus.	If new to product, may want to review white papers.
RN 12-03 (Complex Products)	For asset backed securities: what is the creditworthiness of the underlying borrowers/guarantors or the existence of prepayment risks?	May want to explicitly ask and/or do public records search and/or contact the borrowers.	If there is too much risk at the asset level or insufficient information regarding same.
RN 12-03 (Complex Products)	For structured notes with embedded derivative-like features, how well do you understand the reference asset and how that will impact the investors' return?	May want to look at performance histories of those assets.	If the assumptions regarding the reference asset are too optimistic or too complex.
RN 16-08 (Contingency Offerings)	Contingency offerings: Compare the description of the contingencies in the escrow agreement to the offering documents.	Escrow agreement	If there are inconsistencies between the escrow agreement and the offering documents.
RN 09-31 (Leveraged and Inverse ETFs)	For "geared ETFs:" the terms and features of the funds, including how they are designed to perform, how they achieve that objective, and the impact that market volatility, the ETF's use of leverage, and the customer's intended holding period will have on their performance.	Should be in the prospectus.	If the assumptions about performance in the offering documents have not borne out in practice.
RN 21-15 (Margin)	For Margin: the clearing firm's and regulatory maintenance margin requirements.	Firm and clearing requirements.	
RN 20-14 (Oil-Linked Exchange-Traded Products)	For Oil-Linked Exchange-Traded Products: what are the underlying indices or benchmarks, how does the performance relate to the "spot" (or cash) price of oil, what is the product structure (ETN or commodity pool ETP) and how that can impact the performance and the investor experience (e.g., suspension of new issuance or accelerated termination) understanding generally how the investment tracks futures contracts or futures indices, how contango and backwardation may affect their performance, and how such products may perform relative to the spot asset (e.g., oil), especially over extended periods of time; does the investment employ short-term futures or more diversified exposure; is it designed to be used tactically?	Should be in the prospectus.	Have the embedded assumptions borne out?
RN 21-15 (Options)	For Options: the terminology, features and risks of different types of options (e.g., equity, index, CDO, foreign currency, etc.); how they are exercised and settled, tax considerations, differing risks to options writers and options holders.	Characteristics and Risks of Standardized Options	If the particular strategies are too complex.
NTM 09-73 (Principal-Protected Notes)	For principal protected notes: what is the credit worthiness of the guarantor; what are the terms of the principal guarantee?	Should be in the offering documents or may want to seek additional information regarding guarantor.	If the risks are too undeterminable.
RN 10-22 (Reg. D Offerings)	For energy investments: the quality of the assets and facilities dedicated to supporting the investment.	If relevant, review independent geological, land use, engineering or other reports; if feasible and meaningful, consider inspecting a sample of the issuer's assets and facilities to assess whether the value of the assets reflected on the financial statements is reasonable.	If the assets/facilities are not as represented or appear to be in disarray, or if the assets are foreign and not subject to independent inspection.

Regulatory source	Examples of what to look for	Suggestions on where to look (if not fully addressed in public filings or standard selling agreement / prospectus / PPM / marketing material)	Additional Considerations/Examples of when to consider seeking additional information or input
RN 10-09 (Reverse Convertibles)	For reverse convertibles: what are the payout structure, call features, conditions under which the investor would and would not receive a full return of principal, the volatility of the reference asset and the product's credit, market and other risks?	May want to look at reference assets.	If the risks are too undeterminable.
2025 FINRA Annual Regulatory Oversight Report: Annuities Securities Products (RILAs)	For Registered Index-Linked Annuities (RILAs): limitations of investors' ability to take certain actison during the crediting periods (such as surrenders, withdrawals, death benefits, starting annuity payments, changing of investment) without bearing adjustments; limitations on investors' abilities to participate in upside index performance (through "cap rates" or "participation rates"); surrender periods; financial strength of issuer	Should be in prospectus, fact sheets and product brochures.	If the terms are materially worse than other RILAs.
NTM 05-59 (Structured Products)	For structured products: is the instrument priced such that the potential yield is appropriate relative the volatility of the reference asset based upon comparable or similar investments, in terms of structure, volatility and risk in the market, as determined at the time the product is issued?	May want to compare to similarly-structured products based on reference securities that possess substantially similar volatility characteristics or look at credit reports.	If there are significant unexplained differences.
RN 17-32 (Volatility-Linked Exchange-Traded Products)	For Volatility-Linked Exchange-Traded Products: what strategies are employed to address roll yield, if any; how long the products are designed to be held; what is the likely correlation to the VIX over short and longer time periods?	Should be in the prospectus.	Has the expected correlation borne out?

** = Some or all of these items may be available through third-party due diligence vendors.

DOWNLOAD TOOL

NSCP member login required for download. Not a member? Join here

Blowin' in the Wind: An Analysis of FINRA's Most Recent CCO Enforcement Case

By Brian Rubin and Max Miseyko

NSCP
NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS
CURRENTS

About the Authors:
Brian Rubin is a Partner at Eversheds Sutherland (US) LLP. and co-authored the NSCP Firm and CCO LiabilityFramework, which is referenced in this article.
He can be reached at brianrubin@eversheds-sutherland.com.
Max Miseyko is an Associate at Eversheds Sutherland (US) LLP.
He can be reached at gmaxmiseyko@eversheds-sutherland.com.

The answer, my friend, is blowin' in the wind.
The answer is blowin' in the wind.
–Bob Dylan

Regulators at both the U.S. Securities and Exchange Commission (SEC) and FINRA have stated that they rarely charge chief compliance officers (CCOs) for their firms' compliance failures, so when CCOs are charged, shockwaves reverberate throughout the securities industry. Why was one firm's CCO sanctioned, but not the CCO of that other firm, which was charged with the same underlying violations? And what can CCOs do to help ensure that they aren't charged for their firms' failures? Friends, this article analyzes FINRA's most recent enforcement action against a CCO to see whether that case provides answers to these and other basic questions.

Legal Analysis

Firms are regularly charged with failing to establish and maintain a supervisory system, including written supervisory procedures (WSPs) or policies and procedures reasonably designed to achieve compliance with the securities laws. However, CCOs are rarely charged for their firms' failures. FINRA, for example, has stated that of nearly 440 FINRA disciplinary actions involving Rule 3110 violations for supervisory failures from 2018 to 2021, CCOs were charged 28 times—18 times where the CCO was also the CEO or president of the firm and 10 times where "the firm had conferred upon the CCO specific supervisory responsibilities that the CCO failed reasonably to perform." It is interesting that FINRA focused on the phrase "supervisory responsibilities," even though FINRA's rules refer to the CCO as the "primary *advisor* to the member on its overall compliance scheme and the particularized rules, policies and procedures that the member adopts" and not as a "supervisor." FINRA Rule 3130 (emphasis added).

CCOs are not charged frequently for their compliance activities because, consistent with the FINRA rule, many CCOs play an advisory role, they are often not part of firm management, they do not supervise outside of the compliance department, and they do not control resources. Outside of the compliance department, they often have limited or no responsibility, ability, or authority to affect a firm's conduct and ensure that the firm is complying with the rules. More specifically, with regard to a firm's supervisory procedures, including written supervisory procedures (which is the subject of the case we are discussing), CCOs rarely, if ever, develop policies and procedures while sitting alone in their cubicles. Rather, they draft or assist in drafting procedures with senior management and various departments, including sales, supervision, operations, compliance, surveillance and legal. Supervisory procedures are then reviewed by senior management, business unit heads, and often in-house or outside counsel or an outside compliance consulting firm.

On occasion, regulators have recognized the limited but critical role of CCOs. As former SEC Office of Compliance Inspections and Examinations Director Peter Driscoll explained: "Without the support of management, no CCO, no matter how diligent and capable, can be effective." The SEC's Division of Trading and Markets has also acknowledged that the "ultimately the responsibility for a broker-dealer's compliance resides with its chief executive officer and senior management." With this understanding in mind, last year, now-former SEC Enforcement Director Gurbir Grewal stated that the Commission typically brings enforcement actions against compliance personnel only where they affirmatively participated in misconduct unrelated to the compliance function, misled regulators, or wholly failed to carry out compliance responsibilities. This analysis is helpful, but only to a point because (1) we don't know what "wholly failed" means and (2) regulators often conflate supervisory and compliance responsibilities, as shown below. Regardless, the above standards are consistent with the view that compliance serves an important advisory role, with firm management ultimately responsible for firm supervision and compliance.

FINRA has written about the limited, but essential, role that CCOs generally play. In Regulatory Notice 22-10, FINRA stated that CCOs:

> play a vital role. For example, CCOs and their compliance teams help design and implement compliance programs, help educate and train firm personnel, and work in tandem with senior business management and legal departments to foster compliance with regulatory requirements. In this way, CCOs help promote strong compliance practices that protect investors and market integrity, as well as the member firm itself.

FINRA went on to state that, "FINRA will not bring an action against a CCO under Rule 3110 for failure to supervise except when the firm conferred upon the CCO supervisory responsibilities and the CCO then failed to discharge those responsibilities in a reasonable manner." Thus, in certain cases, the following questions arise: What does it mean for a firm to "confer" supervisory responsibility upon a CCO? And when is a CCO acting in a supervisory, as opposed to a compliance, capacity?

FINRA's Recent Case Against a CCO

On October 31, 2024, FINRA brought a settled enforcement action against the firm and its CCO through a Letter of Acceptance, Waiver, and Consent (the Firm/CCO AWC). The firm was fined $195,000, and the CCO was suspended for 45 days in a principal capacity and fined $5,000. Among other violations, FINRA found that (1) the firm violated Rule 606(a) of Regulation NMS when it published four quarterly reports that provided inaccurate information about its handling of customers' orders in National Market System (NMS) securities, and (2) the firm and the CCO "failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the requirements of Rule 606(a) of Regulation NMS." The AWC stated that "The firm delegated [the CCO] with supervisory responsibility as it relates to" the WSPs and another function discussed below.

Since 2020, FINRA has brought six other enforcement actions for failures related to Rule 606(a). Three such actions were virtually identical to the underlying facts in the Firm/CCO AWC because those WSPs did not include steps that supervisors should take to review the accuracy of the firm's Rule 606 reports, and three cases were far more egregious because those three firms had no systems at all for supervising Rule 606(a) reporting. However, CCOs were not charged in any of those six cases and those AWCs do not explain what role, if any, CCOs play with regard to the firm's WSP.

So, you might think that the Firm/CCO AWC set forth in detail the reasons that FINRA charged the CCO in this case, unlike in those other cases. That is not the case. However, the Firm/CCO AWC must have explained that the CCO acted contrary to legal advice or advice from an outside compliance consultant, correct? Uh-uh. Well then, the Firm/CCO AWC must have explained that the CCO acted in isolation in his cubicle, refusing to consult with others at his firm, right? Nope. But surely, the Firm/CCO AWC must provide some guidance for other CCOs so that they don't find themselves in the same situation, true? Afraid not. (And stop calling me "Shirley.")

What does the Firm/CCO AWC tell us about the CCO's conduct, which was so bad that he was sanctioned? The Firm/CCO AWC contains the following three statements about the CCO's conduct regarding the firm's compliance failures:

> [The firm and the CCO] failed to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with the requirements of Rule 606(a) of Regulation NMS.

> [The firm and the CCO] failed to establish and maintain a supervisory system, including WSPs, reasonably designed to achieve compliance with Exchange Act Rule 606(a).

> The firm delegated [the CCO] with supervisory responsibility as it relates to both the firm's WSPs and Rule 606 reports.

Thus, the AWC didn't provide much information.

A Missed Opportunity

AWCs should provide justification for the charges and the sanctions. Additionally, they should offer guidance to the securities industry and to other CCOs by clearly explaining the basis for the charges, especially when charging a CCO. However, as noted above, the Firm/CCO AWC lacks such guidance. We don't know why the CCO acted or failed to act properly, nor do we understand what he could have done differently, given his responsibility, ability, and authority. While we recognize that FINRA negotiates with respondents over the language of AWCs, these settlement documents should nonetheless be transparent and not omit relevant facts.

To address regulatory uncertainty faced by CCOs, the National Society of Compliance Professionals (NSCP) issued its revised NSCP Firm and CCO Liability Framework (NSCP Framework) in February 2023. *See Press Release, National Society of Compliance Professionals*, *NSCP Releases Revised NSCP Firm and CCO Liability Framework (Feb. 14, 2023)*. Had FINRA focused on the issues raised in the Framework, it may have been clearer why the CCO was charged in this case.

While we know that firm "delegated [the CCO] with supervisory responsibility as it relates to" the firm's WSPs, we don't know what that means. Using the NSCP Framework as a guide, we do not know whether firm management:

- Delegated the CCO with "actual responsibility, ability, or authority to affect the violative conduct" or whether the delegation was nominal.
    - Unfortunately, the Firm/CCO AWC provides zero information about what the "delegation" consisted of.
- Provided sufficient support (including, for example, adequate resources) for the CCO to affect the violative conduct.
    - The Firm/CCO AWC suggests a lack of support because the CCO, rather than someone in management, was delegated the non-compliance supervisory responsibility for Rule 606 reports. In addition, only five randomly selected trades were reviewed, which FINRA found "was not reasonably designed to supervise the accuracy and completeness of the firm's disclosures, given that the firm effected approximately 10,000 transactions in NMS stocks each month." It is possible that the CCO performed the review because the firm had no other properly licensed personnel who could do so or that the CCO could not assign that role to another person. In addition, it is possible that the CCO did not have time to review more transactions and that the Firm did not provide resources for a more thorough review.

The AWC also could have addressed other issues set forth in the NSCP Framework. For example, it could have been relevant to know if the CCO:

- Escalated the supervisory system, WSPs, or Rule 606 issues to firm management through a risk assessment, annual review, CEO certification meeting/report, or otherwise?
    - According to the AWC, the supervisory system deficiencies lasted from January 2021 through December 2022, so it is surprising if firm management was unaware of what was happening (or not happening) for almost two years.
- Consulted with legal counsel (in-house or external) and/or securities compliance consultants and act consistently with the advice provided?
    - It is common for firms and CCOs to consult with counsel or compliance consultants, but we do not know if this occurred.
- Reasonably relied on information from others in the firm or firm systems?
    - FINRA highlighted that only five trades were reviewed, so it would be helpful to know where that number came from and, if it was provided by the CCO, whether he consulted with anyone else at the firm.

Thus, FINRA missed an opportunity to explain its reasoning and why it turned a firm violation into a charge against the firm and against the CCO. Such transparency is important so that firm management and CCOs can understand the implications of taking (or not taking) certain steps.

The Possible “X” Factor

It is possible that FINRA charged the CCO, not just because of his role regarding the firm’s WSPs, but because of another factor. According to the AWC, “The firm delegated [the CCO] with supervisory responsibility as it relates to” Rule 606 reports. This could be an “X” factor that FINRA used when determining whether to charge the CCO (or a factor that CCOs may want to avoid).

The AWC sets forth the WSPs alleged shortcomings regarding this function as well as the CCO’s failures. According to the AWC, the WSPs required the CCO to “review the reports for accuracy before they were published by the vendor, but did not provide guidance on how the review should be conducted, what the review should include (e.g., reported execution venues, payment for order flow, or material aspects disclosures), how to identify inaccuracies in the reports, or what to do if the report was not accurate.” The AWC also explains why the CCO’s review was unreasonable. First, the CCO reviewed a very small percentage of trades. According to the AWC, he randomly selected five trades for “comparing the terms of the trades to the execution venue, payment for order flow and material aspects disclosures in the quarterly report,” which FINRA found “was not reasonably designed to supervise the accuracy and completeness of the firm’s disclosures, given that the firm effected approximately 10,000 transactions in NMS stocks each month.” Second, FINRA found that the quality of his review was deficient. According to the AWC, for a period of time, the CCO “approved the firm’s quarterly reports for publication even though he knew the reports were prepared using historical trade data.”

Last year, FINRA may have used this “X” Factor analysis in charging another CCO. The firm and the CCO were charged for not establishing, maintaining, and enforcing a supervisory system, including WSPs, reasonably designed to achieve compliance with various rules. In that case, in addition to being “the principal responsible for developing supervisory procedures,” the CCO was also the “designated principal responsible for determining what actions the firm took upon identifying red flags of excessive trading[.]” Thus, this case is similar to the Firm/CCO AWC because, in both cases, the CCO was charged for conduct unrelated to the firm’s inadequate supervisory system. If that was a basis for charging the CCO in both cases, FINRA missed the opportunity to explain its rationale and charging decisions in both of these settlements.

The Firm/CCO AWC will likely lead to countless discussions at securities conferences as well as during in-house legal and compliance meetings. Why was this CCO charged, but not the CCOs in the other Rule 606(a) enforcement cases (and in the countless other cases where FINRA sanctioned firms for having unreasonable policies and procedures)? We can all guess, but without clarification from FINRA and without more transparent AWCs, we’ll never know.

The answer, our legal/compliance and regulatory friends, should not be “blowin’ in the wind.” ■

How to Implement an IA AML Program

By Melissa Starr and Craig Watanabe

About the Authors:
Melissa Starr is the COO and CCO of Corundum Group.
She can be reached at melissa.starr@corundumgroup.com.
Craig Watanabe is the Director of IA Compliance at Diversify Advisor Network.
He can be reached at cwatanabe@diversify.com.

The Regulatory Imperative

The FinCEN Anti-Money Laundering ("AML") rule for investment advisers ("IAs") and exempt reporting advisers has a compliance date of January 01, 2026. In the final rule, FinCEN stated it would separately propose Customer Identification Program ("CIP") and Customer Due Diligence ("CDD") rules. The CIP rule was proposed jointly with the SEC on May 21, 2024, and is still pending, subject to a regulatory freeze. FinCEN has not yet proposed the CDD rule.

In the final rule preamble, The U.S. Treasury cited the following statistics in support of the rule:

> *"Treasury's analysis showed that 15.4 percent of RIAs and ERAs were associated with or referenced in at least one SAR filed between 2013 and 2021. The number of SAR filings associated with or referencing an RIA or ERA increased by approximately 400 percent between 2013 and 2021—a far greater increase than was observed in relation to sectors with a SAR filing obligation."*

The AML rule could be repealed, consistent with the Presidential Executive Order for Deregulation. Given this uncertainty, consistent with your firm's risk tolerance and size, it is advisable to prepare but delay implementation until more regulatory clarity exists, or January 1, 2026, in the absence of additional clarity.

> *"Prepare for the worst and hope for the best." ~ proverb*

To heed the proverb, firms should be prepared for not only the AML rule but also the CIP and CDD rules. As the compliance date approaches, firms will either know whether the rules are final or can decide whether to implement a complete AML program, even if not required. If the AML rule is implemented, it will likely be only a matter of time before the CIP and CDD rules are required. There are advantages to implementing a complete AML program simultaneously instead of piecemeal.

Nine Required Elements of an AML Program

1. Designate an AML Compliance Person
2. Implement written AML policies and procedures
3. Perform AML training
4. Implement a customer identification program
5. Implement a customer due diligence program
6. Monitor for suspicious activity
7. Complete regulatory reporting and filings as required
8. Conduct independent testing of the AML program
9. Obtain senior Management approval

Designation of an AML Compliance Person

The designation of the AML Compliance Person is a critical component of the overall compliance program. Although said person does not have to be an "officer" of the IA, said person must have proper authority, independence, and access to resources to implement and monitor the policies, procedures, and controls of the program which will be reasonably risk-basked in accordance with the IA's risk profile of money laundering, terrorist financing, or other illicit finance activities. Although certain tasks may be delegated to third parties or outside consultants, the AML officer must be an employee of the IA or its affiliate.

AML Policies and Procedures

The written policies and procedures will be the most challenging task in assessing what will be required to comply with the AML rule. AML is a big task, and the best place to start is with the policies and procedures. *Included with this article are template AML Program Policies and Procedures*. This template is a modification of the FINRA Small Firm AML Template, which has been customized for IAs. The FINRA template is designed to be a standalone document. The template included here is intended to be inserted into your compliance manual, and it has also been modified to conform to the way most manuals are written, which is not the case with the FINRA template. The template includes CIP and CDD, which can be deleted if these rules are not finalized, and you choose not to implement these provisions.

Even if you have substantial experience with AML, you would be well advised to spend a few hours reading and customizing the 29-page template. Depending on what works best for you, you can keep separate notes or use the comment feature in MS Word to make a to-do list. This will be a well-thought-out process, and you should understand what it entails and how much time and effort it will take to implement the AML program.

AML Training

Although AML is new for IAs, it has a long history and a well-established infrastructure. Nearly every compliance training vendor has AML training modules that you can peruse. Firms are required to provide training tailored to the roles and responsibilities of personnel, so additional custom training will likely be necessary. Regardless of whether you choose to provide training in-house or engage a service provider to assist, it is advisable to train on your AML policies and procedures, so the template will be helpful.

Independent Testing of the AML Program

Independent testing will be the second most challenging element of the AML program after written policies and procedures.

For Broker-Dealers ("BDs"), FINRA Rule 3310(c) states:

> *"Provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member personnel or by a qualified outside party, unless the member does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading or conducts business only with other broker-dealers), in which case such "independent testing" is required every two years (on a calendar-year basis);"*

For Investment Advisers ("IAs"), the compliance date for the AML rule is January 01, 2026. The FinCEN rule has the same requirement for independence; however, the frequency is risk-dependent.

> *"The frequency of the independent testing would depend upon the money laundering, terrorist financing, and other illicit finance risks of the adviser and the adviser's overall risk management strategy."*

The other significant difference between BDs and IAs is that IAs that are not dually registered as a bank or BD, are not subject to the Customer Identification Program ("CIP") and Customer Due Diligence ("CDD") requirements. The CDD Rule has specific requirements, and it can be confusing that the term "due diligence" is used in other contexts in the AML rule.

In-House vs. Third-Party Testing

Many firms will not have a choice. If the firm has no independent personnel with reasonable expertise to conduct the test, then having the test performed by a third party is the only option. If the firm has a choice, the advantages of having a third-party conduct the test are that the auditor may have more experience, the work product may be of higher quality, and using a third party will not burden in-house personnel. For IAs doing their first AML independent test, it might be advantageous to have it done by a competent third party and then decide whether to bring the testing in-house for future tests.

In addition to cost savings, the advantage of doing the independent testing in-house is that the auditor will be more familiar with the firm's business and transactions. An in-house auditor will generally have a more informed look at the workings of the AML compliance program.

How to Conduct the Independent Testing

The balance of this article is intended for firms considering the performance of in-house testing. AML independent testing is very similar to other compliance testing and can be incorporated into the firm's compliance testing program. There are a few minor nuances in AML independent testing because the rules emanate from FinCEN and not FINRA or the SEC. However, the testing process is nearly identical, so anyone with experience doing compliance testing should be able to pick up AML testing.

Testing lends itself well to checklists, and AML independent testing is no exception. One advantage of having the testing done by a third party is that the independent testing report and supporting documentation should provide a framework for future testing. As is the case with most testing, for typical firms, there is not much change from year to year, so the first year is the most important.

AML Independent Testing Template

One key to a successful independent test is having a good testing template. *This article includes an Excel template designed to be used with the template AML policies and procedures included with this article*. Many NSCP members are familiar with the many compliance testing templates in the NSCP Resource Library, and this template will have a familiar look and feel. It should assimilate seamlessly into your existing compliance testing program.

Note: The template is formatted for BDs and a complete AML compliance program. IAs are not subject to the CIP and CDD requirements. The SEC does not have an AML Rule. BDs don't need one because of FINRA Rule 3310. However, for IAs, the SEC might be forced to enact an AML Rule. Considering that idea, we anticipate it would likely be very similar to FINRA Rule 3310. You can always modify the template to eliminate those requirements.

Examining the testing template may enable firms to decide whether to perform the test in-house or utilize a third party.

The Risk of Money Laundering

For many firms, the risk of money laundering is minor, and few IAs will rank AML among their top ten compliance risks. Furthermore, the overwhelming majority of firms operate under the blanket of an AML program from an affiliate or custodian, which makes your AML program somewhat redundant (absent having a regulatory obligation to implement it). It may feel tempting to view this as a mere check-the-box operation; however, each firm must do its risk assessment and act accordingly.

Senior Management Approval

Each IA will be required to have its AML program approved in writing by its board of directors. For IAs who do not have a board of directors, an individual or group with similar functions (such as trustees, officers, or other senior management members) can serve that function.

Conclusion

This article and the two templates should ease the burden of complying with the AML rule and enable each firm to assess what it will take to comply by January 1, 2028.* ■

*The authors believe there is a distinct possibility that this rule could be withdrawn prior to the compliance date and recommend staying tuned to updates.

Disclaimer: *The information provided in this article and any accompanying materials is for general informational purposes only and is not intended as professional compliance or legal advice. The views expressed do not necessarily reflect the opinions or positions of the authors and are not intended to express the views of their employers or NSCP. NSCP assumes no responsibility or liability for the content of this article or any accompanying materials, or for any errors or omissions. No representation or warranty, express or implied, is made as to the accuracy, completeness, or timeliness of the information provided. Readers should consult with qualified professionals regarding all regulatory, compliance, or legal issues.*

DOWNLOAD POLICIES & PROCEDURES AND TESTING TEMPLATE

NSCP member login required for download. Not a member? Join here

Crypto in 2025: Navigating the Path of Digital Asset Regulation

By Kristin Prieur

About the Authors:
Kristin Prieur is Director of Compliance Services with Key Bridge Compliance.
She can be reached at kprieur@kbc.team.

The digital asset market has long operated in a regulatory gray area. Since their emergence, regulators have grappled with defining what constitutes a digital asset, determining whether such assets qualify as "securities," and creating a coherent regulatory framework to govern them. These unresolved questions have fueled ongoing debates among policymakers and prompted evolving guidance from multiple regulatory bodies. While slight progress has been made since the emergence of cryptocurrencies, the overall regulatory landscape has remained clouded and uncertain.

This began to change with the arrival of the Trump administration in January 2025, which signaled a sharp departure from prior skepticism toward open support for digital assets. Within his first days in office, President Trump established the Working Group on Digital Asset Markets[1] to coordinate interagency policy development and recommend a forward-looking regulatory strategy. He also appointed Mark Uyeda as Acting Chairman of the Securities and Exchange Commission[2]. The following day, Uyeda announced the creation of the Crypto Task Force[3], underscoring the administration's intent to advance usability, provide definitional clarity, and streamline regulation in the digital asset sector.

This shift has sparked a year of rapid regulatory activity, with executive actions, agency initiatives, and new legislation all working toward a clearer, more unified framework for the digital asset market. Efforts by the administration and relevant regulatory agencies are producing a progressively more articulated, though still developing, roadmap for the treatment of cryptocurrencies, stablecoins, non-fungible tokens (NFTs), and other blockchain-based assets under United States law. This article examines the initiatives advanced by the Crypto Task Force and other key milestones that are reshaping the digital asset landscape since the inauguration of the Trump administration in 2025.

The Crypto Task Force

The SEC formally established the Crypto Task Force on January 21, 2025, stating its mission was to "help the Commission draw clear regulatory lines, provide realistic paths to registration, craft sensible disclosure frameworks, and deploy enforcement resources judiciously."[4] The creation of the Crypto Task Force signaled not only a change in tone from the SEC, but also a broader policy realignment at the federal level aimed at replacing uncertainty with more definition and regulatory engagement.

The Task Force quickly launched a series of five stakeholder roundtables designed to generate conversation and guidance for future policy formation regarding digital assets[5]. The *Spring Sprint Toward Crypto Clarity*. Following is a discussion of each of the roundtables initiatives and key takeaways:

March 25, 2025: "How We Got Here and How do we Get Out – Defining Security Status"

The first roundtable set out to address fundamental questions about when and under what conditions digital assets should be classified as securities under existing law. This classification is of key importance, as it determines whether an asset falls under the SEC's jurisdiction and triggers registration, disclosure, and compliance obligations.

Participants debated the application of existing legal tests, including the Supreme Court's Howey and Revestests, to modern token structures. The conversation highlighted the challenges of

1. https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-executive-order-to-establish-united-states-leadership-in-digital-financial-technology/.
2. https://www.whitehouse.gov/presidential-actions/2025/01/designation-of-chairmen-and-acting-chairmen/.
3. https://www.sec.gov/newsroom/press-releases/2025-30?utm_medium=email&utm_source=govdelivery.
4. https://www.sec.gov/newsroom/press-releases/2025-30.
5. https://www.sec.gov/about/crypto-task-force/crypto-task-force-roundtables.

applying decades-old securities standards to programmable, decentralized assets. Significant discussion was had surrounding whether the SEC's regulatory reach should extend to the asset itself or solely to transactions involving that asset. This distinction carries significant implications for how decentralized protocols and platforms might fit into securities laws. Although no consensus emerged, there was widespread agreement that clear, predictable guidance would encourage domestic innovation and reduce regulatory friction.

Key Takeaways:

- **No Real Consensus**: Despite extensive debate, no clear agreement emerged on a universal rule for what defines a security in the crypto context. Panelists acknowledged that existing legal frameworks like the *Howey* and *Reves* tests are hard to apply consistently to modern token structures.

- **Need for Tailored Guidance and Regulatory Predictability**: Strong calls were made for the SEC to issue clear, asset-specific guidance to reduce uncertainty for issuers, trading platforms, and investors. Participants stressed that predictability in enforcement and guidance is essential for fostering innovation without sacrificing investor protection.

- **Balancing Oversight and Innovation**: While recognizing that crypto tokens often differ radically from traditional securities, participants cautioned against regulatory rollbacks that could weaken investor protections. The SEC signaled openness to frameworks that recognize both investor protection imperatives and the unique characteristics of blockchain technology.

April 11, 2025: "Between a Block and a Hard Place: Tailoring Regulation for Crypto Trading"

The second roundtable focused on the regulatory challenges faced by secondary crypto trading markets and tokenized financial instruments. Discussions centered on how existing securities laws might be applied or adapted to the unique characteristics of digital asset markets, with a focus on preserving market integrity. The session also examined the regulatory treatment of crypto trading platforms and their potential integration into existing market structures overseen by the SEC, CFTC, and state regulators.

Industry participants stressed that digital asset trading venues differ significantly from traditional exchanges: many operate 24/7, facilitate settlement directly on blockchain networks, and offer tokenized assets that don't align neatly with existing asset classes. Regulators acknowledged the need to avoid imposing frameworks that could stifle operational innovation, while still maintaining investor protections, market integrity, and anti-fraud safeguards. Calls for interagency coordination and even cross-border harmonization were recurring themes, underscoring the global nature of crypto markets.

Key Takeaways

- **Secondary Market Jurisdiction**: Stakeholders debated when secondary sales of tokens should fall under SEC oversight and when they should be treated differently from initial offerings.

- **Inter-Agency Coordination**: Emphasis on the importance of SEC–CFTC cooperation to avoid jurisdictional gaps or overlapping compliance burdens.

- **Global & Decentralized Markets**: Recognition that crypto markets operate beyond U.S. borders, necessitating coordinated international standards.

- **Integration of Blockchain Tools**: Support for adapting existing market infrastructure to accommodate blockchain features such as smart contracts and on-chain settlement.

April 25, 2025: Know Your Custodian: Key Considerations for Crypto Custody

This roundtable examined how custody requirements should evolve for digital assets. The aim was to address security, access, and compliance risks associated with safeguarding crypto assets. The discussion explored various custody solutions and regulatory approaches, including bank-based custody, self-custody wallets, and principles-based standards, with panelists debating the appropriate balance between traditional financial oversight and crypto-specific requirements. Panelists emphasized the need for clear guidelines on qualified custodians and harmonized regulations across jurisdictions, while emphasizing the importance of maintaining existing regulatory structures while expanding investor protections in the digital asset space.

Panelists examined the suitability of omnibus accounts versus fully segregated accounts and debated on-chain versus off-chain custody models. Many advocated for a technology-neutral, principles-based approach that could evolve as custody methods advance, rather than rigid prescriptive rules that risk becoming obsolete. The conversation also touched on the SEC's proposed amendments to the Custody Rule under the Advisers Act and the importance of harmonizing rules with state-level money transmission and trust company requirements.

Key Takeaways

- **Qualified Custodian Definition**: Participants urged the SEC to modernize the definition to reflect crypto-native custody models, including multi-signature and decentralized custody solutions.

- **Investor Protection Standards**: Calls for enhanced due diligence, transparency, and cybersecurity requirements to protect client assets.

- **Operational Challenges**: Industry stakeholders highlighted the cost and complexity of meeting current custody requirements without stifling innovation.

- **Harmonization with Banking Rules**: Suggestions for aligning custody regulations with OCC and state banking frameworks to avoid conflicting standards.

May 12, 2025: "Tokenization – Moving Assets Onchain: Where TradFi and DeFi Meet"

The third roundtable focused on the tokenization of traditional financial assets and the regulatory implications of shifting these products to blockchain-based systems. Tokenization, which is the process of representing real-world assets such as stocks, bonds, or real estate on a blockchain, was explored in depth, with panelists weighing its potential benefits and risks. The discussion underscored that tokenization exists at the intersection of traditional finance ("TradFi") and decentralized finance ("DeFi"), demanding that regulators bridge the gap between legacy rules and emerging technologies to realize its full potential.

Proponents highlighted tokenization's ability to modernize capital markets through near-instant settlement, programmable compliance, fractional ownership, and broader investor access. They also discuss the benefits of tokenization in improving financial systems, including enhanced shareholder communication, operational efficiencies, and the potential to democratize access to investing through blockchain technology. Panelists also acknowledged challenges surrounding tokenization, including the need for interoperability standards, the legal enforceability of smart contracts, and consistent disclosure practices. Regulators stressed that large-scale adoption in regulated markets would require clear definitions, robust technical standards, and strong investor protections.

Key Takeaways

- **Efficiency Gains**: Tokenization could reduce settlement times, increase transparency, and broaden investor access.

- **Regulatory Treatment**: The need to clarify how existing securities and commodities laws apply when traditional assets are represented on-chain.

- **`Interoperability Concerns**: Calls for standards that enable tokenized assets to interact across platforms and jurisdictions without creating compliance blind spots.

- **Hybrid Models**: Recognition that the most immediate opportunities lie in blending TradFi regulatory safeguards with DeFi technological innovation.

June 9, 2025: “DeFi and the American Spirit”

The final spring roundtable addressed decentralized finance’s role in capital markets, examining how the core DeFi principles of permissionless access, transparency, and decentralization align with U.S. legal traditions and investor protection requirements. The discussions covered various aspects of DeFi regulation, including its intersection with traditional financial systems, the challenges of defining and regulating decentralized finance, and the importance of trust in blockchain technology.

Discussions examined DeFi’s potential to reduce reliance on intermediaries, lower transaction costs, and expand global market participation. However, panelists also acknowledged significant risks, including smart contract vulnerabilities, governance challenges, and the potential for fraud in anonymous or pseudonymous environments. The consensus was that the regulatory framework for DeFi must be flexible and rational, encouraging experimentation and innovation while maintaining mechanisms for accountability and investor protection.

- **Decentralization vs. Accountability**: Debate over how to regulate protocols without undermining their decentralized nature, particularly when no central operator exists.

- **Investor Risks**: Concerns about smart contract vulnerabilities, governance token concentration, and fraud.

- **Opportunities for U.S. Leadership**: Recognition that thoughtful regulation could position the U.S. as a hub for compliant DeFi innovation.

- **Path Forward**: Interest in “regulatory sandboxes” and pilot programs that would allow DeFi projects to operate within a defined, supervised framework.

What’s next for the Crypto Task Force?

With the spring roundtable series concluded, the Task Force plans to continue gathering input from stakeholders nationwide. Commissioner Peirce and Task Force members will travel to multiple U.S. cities and meet with various stakeholders as part of an “On the Road” initiative—furthering their goal of crafting a clear, workable, and innovation-friendly regulatory framework for digital assets[6]. The "On the Road" Initiative began August 4th, with dates scheduled across various US cities through December 5th.

In addition to the "On the Road" initiative, the Task Force is accepting written input from stakeholders. Both the written input and meeting requests can be submitted online.

A Crypto Summer: Major Milestones since the Roundtables

Following the conclusion of the spring "Sprint Toward Crypto Clarity" roundtables, initiatives surrounding digital assets continued to accelerate. Legislative victories, executive actions, and new agency initiatives have started to emerge:

The GENIUS Act – Establishing a Federal Stablecoin Framework

On July 17, Congress passed the Guaranteed Electronic Nationally Issued United States (GENIUS) Act, the first comprehensive federal framework for payment stablecoins[7]. In summary, the Act requires issuers to maintain 1:1 reserves in approved assets, submit to federal and state supervision, and adhere to robust anti–money laundering (AML) and know-your-customer (KYC) standards. By creating uniform national rules, the GENIUS Act seeks to eliminate the patchwork of state-by-state licensing and provide stablecoin issuers with a clear compliance pathway, while enhancing consumer confidence in dollar-pegged digital assets.

The CLARITY Act – Defining and Differentiating Digital Assets

Shortly after the GENIUS Act, lawmakers introduced and the Clear Legal Architecture for Recognizing and Treating Innovative Tokens Year-round (CLARITY) Act, designed to codify definitions for various types of digital assets[8]. The legislation distinguishes between "digital commodities" and "digital securities" and outlines criteria for when an asset can transition from one classification to another, particularly as networks achieve decentralization. The CLARITY Act provides much-needed statutory guidance for market participants, narrowing the scope of regulatory ambiguity that has long plagued the industry. Notably, the CLARITY Act shoehorns crypto into existing regulatory frameworks instead of creating a whole new system. Ultimately, this will make the transition much smoother for the industry and for compliance professionals.

The CLARITY Act passed in the House of Representatives on July 17th and currently awaits a vote from the Senate.

Trump's Presidential Working Group on Digital Asset Markets Releases Report

On July 30, President Trump's Working Group on Digital Asset Markets released its long-anticipated report, "Strengthening American Leadership in Digital Financial Technology", delivering a comprehensive set of recommendations. Key proposals included:

- Formal rulemaking by the SEC and CFTC to clarify registration, disclosure, and custody requirements for digital asset intermediaries.
- Establishment of regulatory "on-ramps" for token projects transitioning toward decentralization.

6. https://www.sec.gov/about/crypto-task-force/crypto-task-force-road.
7. https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-signs-genius-act-into-law/.
8. https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=410816.

- Enhanced cross-border cooperation with international regulators to standardize rules and reduce jurisdictional arbitrage.

The report's recommendations underscored the administration's emphasis on coordination, market integrity, and fostering U.S. competitiveness in blockchain innovation.

Project Crypto – The SEC's Roadmap for On-Chain Markets

On August 5, SEC Chair Paul Atkins announced Project Crypto[9], a multi-pronged initiative to modernize securities laws for on-chain markets. The project's workstreams focus on:

- Developing tailored disclosure standards for token issuers.
- Reviewing market structure rules to accommodate blockchain settlement and smart contract execution.
- Creating compliance pathways for decentralized protocols and hybrid TradFi–DeFi platforms.

Project Crypto formalizes the SEC's shift toward proactive, rules-based oversight and sets the stage for proposed regulations expected later in the year. Together with the GENIUS Act, the CLARITY Act, and the Working Group's roadmap, Project Crypto signals a decisive move toward a more mature and transparent regulatory environment for digital assets in the United States.

Democratizing Access to Alternative Assets for 401(k) Investors

On August 7, the White House issued an Executive Order[10] directing the SEC, DOL, and Treasury to update guidance to streamline the inclusion of alternative assets, including cryptocurrency, within 401(k) plans. The move aims to "democratize" access to investments previously limited to wealthy or institutional investors. While this could expand retirement savers' access to crypto, it also raises concerns about volatility, transparency, and fiduciary risks. The order doesn't allow immediate crypto investing in 401(k)s—agencies must first update rules, providers must create products, and employers must adopt them.

Key takeaways for Compliance Professionals regarding the Digital Assets Regulatory Landscape

The events of 2025 have marked a turning point in the evolution of U.S. digital asset regulation. For compliance officers, legal counsel, and risk managers, the shift from a fragmented, enforcement-heavy environment toward a more structured, rule-based framework presents both opportunities and obligations.

1. **Regulatory Clarity Is Increasing – but Still Evolving**
   The GENIUS Act, CLARITY Act, and initiatives like Project Crypto provide the clearest statutory and regulatory guidance the industry has seen to date. However, these frameworks are still in their early stages of implementation. Compliance teams must remain alert to interpretive guidance, rulemakings, and agency commentary as details are finalized.

2. **Classification Drives Compliance Obligations**
   With more precise definitions emerging for digital assets, classification will help determine regulatory jurisdiction, disclosure requirements, and permissible activities. Firms must develop internal protocols to assess and document the classification of any digital asset they handle.

9. https://www.sec.gov/newsroom/speeches-statements/atkins-digital-fi nance-revolution-073125.
10. https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/.

3. **Tokenization of Equity Securities is Rapidly Evolving**
   Tokenization was a key topic in the Crypto Task Force's fourth roundtable. It is essential for compliance professionals to recognize that equity tokenization is emerging quickly. In June, Dinari, a startup that offers blockchain-based US Stocks, secured a broker-dealer registration in the U.S.[11]. This registration underscores how close the financial industry is to mainstreaming tokenized equities. With regulatory approval, Dinari becomes the first platform legally authorized to offer blockchain-based stock trading in the U.S. For compliance professionals, the shift brings both opportunity and complexity—requiring oversight of token standards under securities laws, integration with blockchain settlement systems, and assurance that tokenized shares remain equivalent to traditional securities. As tokenization gains legitimacy, compliance will play a central role in shaping and safeguarding its adoption within established regulatory frameworks.

4. **Interagency Coordination Reduces Gaps but Raises Expectations**
   The SEC, CFTC, and banking regulators are coordinating closely, closing loopholes that once allowed regulatory arbitrage. Compliance programs should assume that agencies will share information and expect consistent adherence to overlapping requirements.

5. **Custody Standards Are Tightening**
   The push to modernize the definition of "qualified custodian" for digital assets will require firms to review existing custody arrangements, enhance cybersecurity protocols, and ensure third-party custodians meet evolving regulatory criteria.

6. **Innovation-Friendly Does Not Mean Unregulated**
   The administration's pro-innovation stance should not be interpreted as a relaxation of core compliance obligations. Investor protection, AML/KYC standards, and accurate disclosures remain non-negotiable and are being actively enforced.

The ongoing digital asset regulatory shift marks a rare moment of structural change in U.S. financial oversight. For compliance professionals, the challenge is turning new laws and policy guidance into clear, firmwide procedures while staying agile as the rules continue to develop. Those who build adaptable policies, implement strong monitoring processes, and stay engaged with this evolving landscape will be best positioned to keep pace with changes and thrive in the fast-moving digital asset market. ■

Disclaimer: *The information provided in this article and any accompanying materials is for general informational purposes only and is not intended as professional compliance or legal advice. The views expressed do not necessarily reflect the opinions or positions of the authors and are not intended to express the views of their employers or NSCP. NSCP assumes no responsibility or liability for the content of this article or any accompanying materials, or for any errors or omissions. No representation or warranty, express or implied, is made as to the accuracy, completeness, or timeliness of the information provided. Readers should consult with qualified professionals regarding all regulatory, compliance, or legal issues.*

11. https://www.reuters.com/sustainability/boards-policy-regulation/dinari-granted-first-broker-dealer-registration-offer-tokenized-stocks-2025-06-26/?utm_source=chatgpt.com.

Annual Review Detective

By Matthew Rothchild

About the Author:
Matthew Rothchild is a Sr. Compliance Consultant at Core Compliance.
He can be reached at matthew.rothchild@corecls.com.

The sky was clearing and the sun coming out, as always after rain. The petrichor filled my nostrils as I returned to my office. I didn't have time for basking in the rich olfactory glories of my gritty neighborhood, I had a case.

Chapter One: My Assignment

She arrived to my office shortly after me, I'd hardly had time to remove my hat and jacket and take a seat at my desk when she walked in.

"You must be who called me earlier," I deadpanned.

"Yes," she said. "I heard you do snooping in the financial services industry."

"I prefer to think of it as conducting private investigations for people who need help," I replied to her presumptuousness. "What do you have?"

"I need an annual review and report for a private fund adviser."

"Ok. What sort of stuff does the private fund invest in?"

"Intellectual property litigation and oil rigs."

Exotic stuff, to be sure. You could always count on these private fund firms to come up with investment ideas limited only by one's imagination. Though this sounded downright tame compared to the time I was pitched a case for an annual review for a firm that invested in Beanie Baby futures. I told them no because they were 30 years late. But key to beginning any annual review was:

- Know the business. A diverse array of factors will drive the review and different firms will have different needs and focuses. Some examples:
    - Type of firm
    - Types of clientele: An annual review for a firm that manages individuals' SMA accounts will look very different from that of a firm that manages private funds or corporate accounts
    - Business models: How does a firm acquire clients? How are client onboarded? What kinds of investments are recommended to clients? How does a firm charge fees?

"Sounds good. Here is my engagement agreement with my terms," I said, sliding a contract across the desk toward her. I remember the good old days before I needed to put it in writing, but too many deadbeats who didn't want to pay and I was uncomfortable with using community-based means of collecting.

She quickly signed and slid the contract back toward me. These were the ones I liked, didn't need to sell the engagement.

"Ok, I will begin right away. We will be in touch."

"Thank you."

Chapter Two: Getting Started, Getting Going

After she left, I stepped back into the street. Where to begin with an Annual Review? Every good detective has sources and I had mine. I walked a couple blocks down to a yellow brick bar called The Cloud. It was a frequent hangout for a guy called "Doc". His full name was "Doc" Ument Request and he was the kind of guy who was always in everyone's business. And yet, despite everyone's enthusiasm for keeping their goings on away from his prying eyes, somehow he still managed to find out everything.

"Hey Jim," I said to the bartender as I walked through the front door into the empty barroom. "Is Doc here?"

"Yeah, he's in the back room at his usual table," Jim said without looking up from the glass he was polishing.

Rumor had it that Doc made a living from knowing stuff. Information was never easy to come by and you could either spend a whole lot of time getting it or just spend some money. Doc was the sort who dealt in the latter. Nobody seemed to know where he came from, where he went, or if he even lived anywhere. According to some, he lived at The Cloud.

"Hey Doc, how are things?" I asked as I sat down opposite him.

"Same as usual, a million bucks short of being a millionaire."

"I need some information. I am working on an Annual Review and report. Private fund, exotic non-securities investments. Know anything?"

"Well…maybe I do…maybe I don't. What's it to you?"

The expected ask. I fished around in my pocket and pulled out the man from Galena and slid it across the table to Doc's waiting hands. Doc looked down and frowned. He looked back at me.

"I know a place with some solid procedural testing programs."

"Yeah? Where is this place?"

Doc said nothing. Growing impatient, I slid another fifty across the table to him.

"You didn't hear it from me, but word is they've had some trade blotter and best execution anomalies."

I lunged across the table, grabbed the faded lapels of his shabby suit, and pulled him across the table toward me.

"This firm doesn't have that kind of stuff!" I roared in his face. "Quit messing around and give me something relevant!" The worst thing I could do is produce an Annual Review report based on testing of topics that did not relate to a firm's business. A firm's business will drive the sorts of tests that will roll up into the Annual Review. Ask yourself, as I asked Doc, what's relevant. Examples:

- Trade Blotter and Best Execution: Tests around these topics are relevant for firms that trade actual securities for clients and will be extensive. Private funds investing in oil wells, a list of holdings acquired or disposed will suffice and will likely be short.
- Privacy Statements: If a firm works with retail clients, this is a must. If private funds or corporations are the clients, it's nice to have but not required.
- Fee Billing: Testing for a firm that charges a percent of AUM will be more extensive and intensive than a firm that only charges fixed fees.
- Regulatory Filings: Form CRS, Form PF, Section 13—all have different requirements and are not filed by all firms.
- Procedural Changes: If a firm made changes to its procedures, were those changes tested to verify they work as intended?
- Regulatory Releases: Unsure what to test? The SEC publishes examination priorities, risk alerts, and enforcement actions year round, making it easy to know what's on their mind.

"Ok, ok, just settle down! There is a trucking firm half a mile from here called Smith and Company. I get it on good authority that they've got the goods on some financial statements and fund expense allocations from the past year. You should take a look. They can get you testing results too."

"Good, thank you for that," I said, releasing him before walking out of the room.

Chapter Three: Assembling the Information

Smith and Company was known around town for being the premier shipping solution for anything. And when I say "anything", I mean *anything.* And because of this, they could possess the full range of procedural testing results and associated documentation that I was looking for.

Their facility was a sprawling complex of concrete and steel that took up four entire city blocks. But all I needed was the front office, which lay ahead. Their front office, with its dusty brick façade, looked like it had been added as an afterthought, shoehorned into what space remained on that block after the huge warehouse was built.

"Good morning," I greeted as the front office door closed behind me.

Behind the counter, an older, heavyset, balding man in an ill-fitting, untucked dress shirt looked up, stood, and stepped over to me. "I don't believe I have seen you here before. I am Cal Smith, the founder here. What can I do for you today?"

"I'm not looking to ship anything, I am looking for information. I am working on an Annual Review and report for a private fund adviser and was told you might have a range of procedural testing results and associated documentation."

"Ah, yes! An Annual Review!" he said, almost too excited to have a visitor in his otherwise boring and featureless front office. "You can find what you need over there in our file room. Take your pick of whatever you need out of those filing cabinets."

"Thank you very much," I answered, glancing through the open door of the file room at the edge of the front office and noting its equally lifeless interior, save for a square wooden table with a beat up old swivel chair next to it looking like it hadn't seen a visitor in some time. "Would you know anything about regulatory risk alerts, rule changes, or exam priorities?" There is more to an Annual Review that procedural testing. Consider:

- Recent rule changes and their effects on a firm's busines
- Regulator Risk Alerts and whether they relate to a firm's processes and procedures
- Regulator examination priorities and whether they relate to a firm's processes and procedures or expose vulnerabilities in the same
- Enforcement actions and whether they expose a similar vulnerability at a firm
- Changes in key personnel
- Conflicts inherent in multi-hatted key personnel and those conflicts' mitigation

Cal paused for a moment and then slowly answered, "No…but a couple of my drivers do some moonlighting on the side, I think with some less than savory characters. They could definitely tell you more."

Not sure which I found more surprising: that he had this kind of information or that he told me this without the least bit of irony in his voice. "Are your drivers here now?"

"No, they are gone doing local runs today and won't be back until their shifts end at 5."

"May I use the file room until then?"

"Sure. Just make sure you put everything away when you're finished with it. My last secretary quit because she hated filing things more than me."

"All right. Let me know when your guys get back."

"Will do!"

Chapter Four: The End Product

I walked into the file room and thought even my spartan office near The Cloud would be a more comfortable place to camp out for a day. But the files were here…and there were many of them. I wasn't sure whether I would get through them all before the drivers returned.

As it turned out, the files exceeded all of my expectations, a veritable gold mine! I couldn't believe everything they had on hand. They had everything:

- Procedural and forensic testing results
- Previous versions of the Compliance Manual
- Previous Annual Review report
- Documentation of interviews with operational personnel about procedural/process changes

I was able to rifle through the manuals and find all the references to "the CCO or designee shall…" or "the Firm shall…", make a list of those activities, and then crosscheck those line items against the testing files they had in here. Upon making that comparison, I noted there were testing files for things not explicitly mentioned in the manuals; these were likely areas of focus or curiosity for whomever completed the tests. They had even taken all of the recommendations from the previous Annual Review report and updated the latest version of the Compliance Manual and had memos describing interviews with operational personnel about process changes and verified they occurred consistent with the recommendations.

I dutifully made notes of anomalies to include in the Annual Review report for the client who came into my office. Suddenly, I heard a door close and two huge, goonish looking guys walked across the front office. One of them turned his head and looked into the file room and, surprised, pointed and shouted, “HEY! WHO ARE YOU?!?”

“Ask Cal, he told me I could be here,” I replied calmly, not wanting to arouse their ire.

“Oh yeah?” the other one retorted. “I don’t see Cal here now. You’ve got some explaining to do!” he gruffed as both advanced through the door toward me.

Not knowing what these gorillas had in mind, I moved my right hand toward the inside of my suit jacket to my trusty .45 in a cross-draw shoulder holster; I wasn’t about to let these guys practice their culinary skills focused on meat tenderizing on me. Just then, a voice called out from behind the two men.

“Hey! How were the deliveries?”

It was Cal. After apparently leaving the office, he returned just in time.

The three of us relaxed as one of the two goons turned toward Cal and asked, “You know about this guy in the file room?”

“Yes. He is here doing an Annual Review report and I told him you two would know something about regulatory risk alerts, rule changes, and exam priorities.”

The two goons looked back at me, slightly embarrassed about their aggressive bearing that nearly resulted in some serious fireworks. The first one deadpanned, “You didn’t hear it from me, but the SEC only published two risk alerts last year. I have them out in my truck and will bring them in. You will need to determine their relevance to the firm you’re working on. Same with rule changes—find out if they relate to your firm and if so, see that the Compliance Manual is updated to conform to them. Also follow up with the firm to verify that everyone knows how processes will need to change in light of the rule changes.”

“Yeah,” the other one growled, still calming down from our initial encounter. “And your exam priorities review should focus on whether your current Compliance Manual has procedural coverage of the topics the priorities discuss. If not, that becomes a finding.”

Of all the things I had heard about Doc and his knowledge of local information, this topped them all. I had hit the jackpot and would be able to finish the Annual Review report by day’s end… tomorrow. I thanked Cal and his men for their time and saw myself out the front door…quickly. ■

Preparing for Regulation S-P: Considerations for Drafting Policies and Procedures

By Amber Allen and Craig Watanabe

About the Authors:
Amber Allen is Counsel with Eversheds Sutherland (US) LLP.
She can be reached at amberallen@eversheds-sutherland.com.
Craig Watanabe is the Director of IA Compliance at Diversify Advisor Network.
He can be reached at cwatanabe@diversify.com.

Compliance Dates for the Amendments to Regulation S-P

Covered Institutions[1] are required to adopt the amended Regulation S-P (the "Amendments") program by December 3, 2025, for larger entities (*e.g.*, registered investment advisers with $1.5 billion or more in assets under management, investment companies with over $1 billion in assets or more, and broker-dealers and transfer agents that are not small entities under the Securities Exchange Act for purposes of the Regulatory Flexibility Act) and by June 3, 2026, for smaller entities.[2]

Notably, several industry trade groups submitted a request to Chairman Atkins for an extension of compliance dates and asked the Chairman to consider further amendments to Regulation S-P ("Reg S-P") to better align with existing federal and state requirements.[3] Nevertheless, firms should continue their efforts to meet the current compliance date. Virtually all firms will need to revise their policies and procedures to achieve compliance—a process that will require careful planning and time. In light of regulatory uncertainty and the potential for a delay, some firms may determine that aligning the adoption of new policies and procedures with the compliance date is the most prudent course of action.

When interpreting an amended regulation, it is essential to understand both the historical context of the rule and the key components of the amendment itself. This dual perspective provides valuable insight into the regulation's purpose and practical implications. A thorough understanding of the rule's historical context is helpful when interpreting any amended regulation.

History of Reg S-P

The Gramm-Leach-Bliley Act ("GLBA"), also known as the Financial Services Modernization Act of 1999, was enacted in November 1999, repealing portions of the Glass-Steagall Act of 1933. Since the Great Depression and until GLBA, Glass-Stegall mandated separation of commercial and investment banking, prohibiting financial institutions from offering a combination of insurance, investment, and commercial banking serves. By relaxing these restrictions, GLBA paved the way for integrated financial services firms with access to vast amounts of customer information. Shortly thereafter, the SEC enacted Reg S-P. The "S" stands for safeguarding, and the "P" stands for privacy. Since 2000, the term "cybersecurity" has all but replaced the term "safeguarding" for many industry professionals, and if enacted today, privacy and cybersecurity would likely be separate regulations.

Since the adoption of Reg S-P, the cybersecurity landscape has changed significantly alongside the rapid digitalization of the financial industry. When the rule was initially adopted, trades were commonly executed over the phone or using dial-up – methods that are a far cry from today's environment, where transactions can be completed instantly through smartphones. Over the past two decades, cybercrime has surged, with 2024 marking a record year of internet crime-related losses. According to the FBI's Internet Crime Complaint Center (also known as IC3), losses totaled $16.6 billion – a 33% increase from 2023.[4] The Amendments were adopted to modernize the rule, aiming to address the realities of today's digital threats and better protect customers in an increasingly interconnected world.

1. *Covered institution* is defined under Amended Regulation S-P and means any broker or dealer, any investment company, and any investment adviser or transfer agent registered with the Commission or another appropriate regulatory agency ("ARA") as defined in section 3(a)(34)(B) of the Securities Exchange Act of 1934.
2. Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, 89 Fed. Reg. 47,688 (June 3, 2024) (to be codified at 17 C.F.R. pts. 240, 248, 270, and 275), https://www.federalregister.gov/documents/2024/06/03/2024-11116/regulation-s-p-privacy-of-consumer-financial-information-and-safeguarding-customer-information.
3. See SIFMA et al Request for Extension of Compliance Dates for Amendments to Regulation S-P (Joint Trades) (April 25, 2025) *available at*: https://www.sifma.org/resources/submissions/letters/request-for-extension-of-compliance-dates-for-amendments-to-regulation-s-p-joint-trades.
4. Federal Bureau of Investigation. (2025). 2024 Internet Crime Report. Internet Crime Complaint Center (IC3). https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.

Amendments to Reg S-P

Before delving into drafting policies and procedures, a thorough understanding of the amendment is necessary. An overview of the requirements is included below.

Expanded Scope of the Rules: The Amendments broadened the scope of information covered by Regulation S-P to include any nonpublic personal information collected from customers or received from other financial institutions. As a result, the Amendments expand the group of customers protected by the disposal rule and safeguards rule. Additionally, the Amendments expand the safeguards rule to apply to transfer agents.

Incident Response Program: Covered Institutions must develop, implement, and maintain comprehensive written policies and procedures for incident response programs. These programs must be designed to detect, respond to, and recover from unauthorized access to customer information.

Service Provider Oversight: Covered Institutions must also adopt policies and procedures reasonably designed to oversee and monitor Service Providers.[5] This includes ensuring that Service Providers (1) safeguard customer information against unauthorized access, and (2) will notify Covered Institutions within 72 hours of discovering any such unauthorized access.

Customer Notification Requirement: In the event of unauthorized access to customer information, the Amendments require the Covered Institutions to notify the affected customers whose sensitive customer information was, or is reasonably likely to have been, accessed or used without authorization, as soon as practicable, but no later than 30 days after becoming aware of the incident, unless the Firm conducts "reasonable investigation" and determines that sensitive customer information has not been, and is not reasonably likely to be, used in a manner that would result in substantial harm or inconvenience.

The notice to affected customers must include details about the incident, the nature of the data that was accessed, and guidance on how the affected customers can respond to protect themselves. Delayed notice is permitted if the Covered Institution meets certain requirements, including that the Commission receives a written request from the Attorney General that the notice poses a substantial risk to national security or public safety.

Recordkeeping and Annual Notice Amendments: Covered Institutions, other than funding portals, are required under the Amendments to make and maintain written records documenting compliance with the safeguards rule and the disposal rule. The Amendments also conform Regulation S-P annual privacy notice delivery provisions to codify a statutory exception.

Drafting Policies and Procedures

Although Amended Reg S-P combines privacy and cybersecurity, most compliance manuals address these subjects in separate chapters. Craig Watanabe provided template Reg S-P policies and procedures as an addendum to this article. The template combines privacy and cybersecurity but can be easily separated. The template is intended to provide an example and should be reviewed and customized by legal and compliance to meet the needs of your firm.

5. *Service Provider* is defined under Amended Regulation S-P to mean any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a covered institution.

Conclusion

In May 2025, Director Cassidy cautioned that registrants should not be surprised to see Regulation S-P as a thematic initiative in the coming years. Accordingly, firms should consider maintaining documentation of decisions made and action taken to prepare for Regulation S-P compliance, including drafting policies and procedures, conducting training, and changes made to your service provider oversight program.[6]

Time spent drafting your policies and procedures is time well spent.[7] It is essential to tailor policies and procedures to reflect your firm's specific business practices and risk profile, and to seek external expertise when additional support is needed. ■

Disclaimer: *The information provided in this article and any accompanying materials is for general informational purposes only and is not intended as professional compliance or legal advice. The views expressed do not necessarily reflect the opinions or positions of the authors and are not intended to express the views of their employers or NSCP. NSCP assumes no responsibility or liability for the content of this article or any accompanying materials, or for any errors or omissions. No representation or warranty, express or implied, is made as to the accuracy, completeness, or timeliness of the information provided. Readers should consult with qualified professionals regarding all regulatory, compliance, or legal issues.*

DOWNLOAD TEMPLATE REG S-P POLICIES AND PROCEDURES

NSCP member login required for download. Not a member? Join here

6. Keith E. Cassidy, Acting Dir., Div. of Examinations, SEC, Regulation S-P – Back to the Future, Remarks at the FINRA Conference (May 14, 2025), https://www.sec.gov/newsroom/speeches-statements/cassidy-remarks-finra-conference-051425.
7. Craig Watanabe developed the template policies and procedures, which are available in the NSCP Resource Library and attached hereto.

2025 NSCP *Currents* Articles

You've Got Mail (and a FINRA Disciplinary Action): FINRA's Cases Against Individuals for Off-Channel Communications
By Brian Rubin and Ellen Sheridan-Cona

Putting the T in your BCP
By Dr. Shawn Bostic, CFE and Craig Watanabe

Mitigating Compliance Risks in Performance and Asset-Based Fee Arrangements
By Amy Jones and Arin Stancil

What Are Your Thoughts? Why We Never Get the Answers We Need in Business Conversations
By Dr. Shawn Bostic, CFE

Scary Compliance Stories and Other Enforcement Actions
By Matthew Rothchild

Beyond the Rule: Strengthening Your Code of Ethics Framework for Investment Advisers
By Brian Giue and Lori Weston

Tis the (ADV) Season: 8 Common Headaches & Practical Solutions for Form ADV Updates
By Paul Felsch, JD

NSCP Currents National Conference Edition 2025

Annual Review Detective
By Matthew Rothchild

Crypto in 2025: Navigating the Path of Digital Asset Regulation
By Kristin Prieur

NSCP Submits Proposal for an SEC Compliance Advisory Committee

Preparing for Regulation S-P: Considerations for Drafting Policies and Procedures
By Amber Allen and Craig Watanabe

Managing Insider Trading Risks
By Thomas G. Kennedy, Esq.

Maintaining a Robust Due Diligence Program for Complex Products Under the Care Obligation of Regulation Best Interest
By Miriam Lefkowitz

The Future of Know Your Customer ("KYC") – Digital Verification
By Melissa Starr and Craig Watanabe

Blowin' in the Wind: An Analysis of FINRA's Most Recent CCO Enforcement Case
By Brian Rubin and Max Miseyko

The SEC Is Serious About the Whistleblower Protection Rule. Don't Blow It!
By Lauri London

NSCP *Currents* articles are available to NSCP Members anytime on Currents On Demand.
NSCP member login is required for access. Not a member? Join here

2025 NSCP *Currents Live* Webinars

NSCP *Currents Live* Webinar - "Properly Responding to Client Complaints"
Featuring Kim Chapman, Chief Compliance Officer, Berthel Fisher, Ellen Sheridan-Cona, Counsel, Eversheds Sutherland (US) LLP, and Brenda Vaughn, Vice President - Advice and Wealth Management Supervision, Ameriprise Financial, Inc.

NSCP *Currents Live* Webinar - "How to do Compliance Testing on BCP"
Featuring Jane Riley, Chief Compliance Officer, The Leaders Group, and Allison Fraser, Managing Director, Salus GRC

NSCP *Currents Live* Webinar - "Challenges with Emerging Technology"
Featuring Ranah Esmaili, Partner, Sidley Austin LLP, Patricia Flynn, Vice President, Compliance, Prudential Financial Inc., and Som Mohapatra, Founder and COO, Hadrius

NSCP *Currents Live* Webinar - "Discover NEW Firm Efficiencies on the FINRA Gateway (IARD, CRD)"
Featuring Noah Egorin, Senior Director, Product Management, FINRA, Lisa Paygane, Vice President and Director of Registration Services, Renaissance Regulatory Services, and Jennifer Szaro, CRCP, CCO, XML Securities, LLC

NSCP *Currents Live* Webinar - "Preparing for a Regulatory Exam"
Featuring Kristin A Snyder, Partner, Debevoise & Plimpton, Karen Steighner, CEO, Compliance Advisers, Inc, and KC Waldron, CCO, Empower

NSCP *Currents Live* Webinar - "Navigating the Evolving Cyber Landscape and Regulation S-P"
Featuring Amber M. Allen, Counsel, Eversheds Sutherland (US) LLP, Bryan Smith, SVP - Complex Investigations and Intelligence (CII), FINRA, and Pam Gelormini, VP, Sr. Director and Privacy Officer, MFS Investment Management

NSCP *Currents Live* Webinar - "Crypto: A New Hope for Compliance Professionals"
Featuring Sam Callahan, Vice President, Battery Finance, Iqan Fadaei, Associate, Michael Best & Friedrich LLP, and Owen Rapaport, Former Executive Director, StarCompliance

NSCP *Currents Live* Webinar - "You've Identified Possible Financial Exploitation of Your Client - Now What?
Featuring Tara Ambrose, VP, Senior Manager, Client Risk Prevention, RBC Wealth Management, Ronald Long, Consultant, Stevens & Lee, and Jennifer Szaro, CRCP®, Chief Compliance Officer, XML Securities, LLC & XML Financial Group

NSCP *Currents Live* Webinar - "IA/PF Regulatory Reporting Redux"
Featuring Gwen Williamson, Partner, Faegre Drinker Biddle & Reath LLP, and Scott Bennewitz, CCO/CFO

NSCP *Currents Live* Webinar - "Regulatory Change – With Change Comes Opportunity?"
Featuring Brad Busscher, Chief Administrative Officer and General Counsel, InspereX, Bridghet Donato, Chief Compliance Officer, Peaceable Street Capital, and Daniel Kahl, Partner, Investment Funds Practice Group, Kirkland & Ellis LLP

NSCP *Currents Live* webinars are recorded and available to NSCP Members anytime on Currents On Demand. NSCP member login is required for access. Not a member? Join here

Share your Expertise: NSCP Call for Authors

NSCP *Currents* is seeking thoughtful, engaging, and practical content from compliance professionals across the industry. Whether you're a seasoned practitioner, an emerging voice, or someone with a unique perspective on today's regulatory challenges, we invite you to share your insights with our community.

We welcome articles that explore:

- Real-world compliance challenges and solutions
- Regulatory developments and their impact
- Ethics, culture, risk, and governance topics
- Technology, AI, and emerging trends
- Practical guidance, best practices, and lessons learned

Our readers value clear, informative writing that supports their day-to-day work—so if you have experience or expertise that can help others navigate the evolving compliance landscape, we'd love to hear from you. We especially seek content that goes beyond the rules to provide practical take-aways for our readers, and accompanying checklists or other tools are much appreciated.

How to Contribute
To learn more about writing guidelines, topic ideas, and submission details, visit:
https://www.nscp.org/writing-opportunities

Contributing to NSCP Currents is an excellent way to support the compliance profession, elevate your voice, and connect with peers who share your commitment to integrity and continuous learning.

We look forward to reviewing your ideas and welcoming new contributors!