The Annual Review Handbook for Investment Adviser CCOs

How-to Guidance and Tools to Thrive with this Responsibility

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Introduction

The CCO’s Complete Guide to the Annual Review: Tools and Techniques to Thrive with this Responsibility

Congratulations on obtaining this copy of IA Watch’s annual review guide (© 2013; all rights reserved). You will find an ideal combination to help you achieve a great annual review in these pages and the companion CD:

1. A recap of the rules along with the actual language from federal regulations addressing the annual review;
2. Best practices suggested by some of your savviest peers and
3. Tools-you-can-use to aid your annual review.

We begin with a quick recap of what the U.S. Securities and Exchange Commission (SEC) has said about the annual review. You’ll see this split between the Investment Advisers Act and the Investment Company Act. Depending upon your firm, you may live under one or both of these federal statutes.

Investment Advisers Act of 1940

It’s section 204 of the Act that’s relevant here. It refers to “Reports by Investment Advisers” and gives the SEC the right to “ prescribe” any reports or records to be completed by registered investment advisers that are “necessary or appropriate in the public interest or for the protection of investors.” This section also alerts you that such records can be examined by the Commission or its representatives “at any time.”

Rule 206(4)-7

Congress passed the statute all those decades ago and it permits the SEC to promulgate rules based on the statute. The Commission did just that with Advisers Act rule 206(4)-7, which covers the annual review.

You can read the entire section elsewhere in this book but here are the highlights. It orders the CCO or a designee to complete a review “no less frequently than annually” that looks into “the adequacy of the [firm’s] policies and procedures.”

The Compliance Rule

You also can absorb guidance from the SEC’s “discussion” of its rules. Take the so-called Compliance Rule that came out in 2003. It speaks at length about the annual review. For instance, “The review should consider any compliance matters that arose during the previous year, any changes in the business activities of the adviser or its affiliates, and any
changes in the Advisers Act or applicable regulations that might suggest a need to revise the policies or procedures.”

The SEC goes on to write that “Although the rule requires only annual reviews, advisers should consider the need for interim reviews in response to significant compliance events, changes in business arrangements, and regulatory developments.”

As with other books and records rules, advisers should keep documents related to the annual review for five years, with those from the two most recent years being in “an easily accessible place.” These records can be kept electronically.

The Investment Company Act of 1940

In section 38, Congress handed the SEC the authority to “authorize the filing of any information or documents required to be filed with the Commission under this title.” This led the SEC to create rule 38a-1, which deals with several issues including the annual review.

Rule 38a-1

This rule offers language similar to the Advisers Act rule 206(4)-7. For instance, the annual review should be “no less frequently than annually” and scrutinize “the adequacy of the policies and procedures of the fund and of each investment adviser, principal underwriter, administrator, and transfer agent and the effectiveness of their implementation.”

It goes on to instruct that the CCO “must, no less frequently than annually, provide a written report to the board that, at a minimum, addresses … any material changes to the policies and procedures recommended as a result of the annual review.”

This rule also holds that “Any records documenting the fund’s annual review” must be kept “at least five years after the end of the fiscal year in which the annual review was conducted, the first two years in an easily accessible place.” These records can be kept electronically.

The Compliance Rule

It’s worth your time to read how the SEC discusses the annual review responsibility by CCOs of mutual funds in its 2003 compliance rule. It’s available elsewhere in this book but we’ll summarize its key points:

The CCO “must annually furnish the board with a written report on the operation of the fund’s policies and procedures and those of its service providers.... the report should inform the board of those compliance matters about which the fund’s board reasonably needs to know in order to oversee fund compliance.”

“The chief compliance officer of a fund must submit the first annual report to the board within 60 calendar days of the completion of the annual review.”