

Investment Management Alert

Akin Gump
STRAUSS HAUER & FELD LLP

SEC Charges 21 Advisers for Form CRS Failures – Impact on Private Fund Managers

August 4, 2021

On July 26, 2021, 21 investment advisers entered into settlements with the Securities and Exchange Commission to resolve charges that they failed to timely file and deliver their relationship summaries on Form CRS.¹ Penalties ranged from \$10,000 to \$97,523 per firm.

Form CRS, adopted by the SEC on June 5, 2019, is a “relationship summary” that registered investment advisers were initially required to deliver to retail investor clients (and prominently post on their websites) by June 30, 2020. According to the SEC’s orders, each of these 21 firms missed that deadline—notwithstanding an April 7, 2020, Risk Alert.²

In light of these charges and settlements, legal and compliance personnel of private fund managers and sponsors should confirm that they are in compliance with any Form CRS obligations, and consider specific steps such as the following:

First, confirm whether the firm has any Form CRS obligations. Under Rule 204-5(d)(2), a retail investor client is “a natural person ... who seeks to receive or receives [advisory] services primarily for personal, family or household purposes.” This definition typically does not include a natural person who invests in a private fund. However, a careful review of any managed account relationships or “funds of one” that benefit specific individuals may be warranted.

Second, this is a good time to review the contents of any Form CRS relationship summaries. While the recent settlements were for failures to file, not for any deficiencies in substance, this is a good time to prepare for substantive reviews on examination.

Third, review the Form CRS (which should be prominently placed on the firm’s website) for consistency of disclosure across the Brochure, fund offering documents, any due diligence questionnaires and any other marketing materials.

In addition, all investment advisers should note the relative severity of the SEC’s enforcement responses – a formal, public charge and settlement and a five-figure fine. While it is difficult to extrapolate from a single data point, legal and compliance

Contact Information:

Peter I. Altman

Partner
paltman@akingump.com
Los Angeles
+1 310.728.3085

Michael A. Asaro

Partner
masaro@akingump.com
New York
+1 212.872.8100

Brian T. Daly

Partner
bdaly@akingump.com
New York
+1 212.872.8170

Jason M. Daniel

Partner
jdaniel@akingump.com
Dallas
+1 214.969.4209

Alexandra L. Delman

Senior Regulatory Counsel
adelman@akingump.com
New York
+1 212.872.8112

Barbara Niederkofler

Partner
bniederkofler@akingump.com
New York
+1 212.872.8149
London
+44 20.7012.9662

Douglas A. Rappaport

Partner
darappaport@akingump.com
New York
+1 212.872.7412

personnel may want to prepare for increased enforcement activity even for what registrants may consider to be “technical” violations.

¹ SEC Charges 27 Financial Firms for Form CRS Filing and Delivery Failures (July 26, 2021)

² Office of Compliance Inspections and Examinations, Risk Alert: Examinations that Focus on Compliance with Form CRS (April 7, 2020)

akingump.com

Contact Information:

Stephen M. Vine

Partner

svine@akingump.com

New York

+1 212.872.1030