

**NAREIM Legal, Compliance &  
Risk Virtual Connection:**

## **Staffing and Professional Development Challenges**

November 16, 2022





# Panelists

Session leader: Kara Brown, CCO and General Counsel, Cabot Properties

Speakers:

Jeffrey Morandi, CCO, Berkshire Residential

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Miki Kamijyo, General Counsel and CCO, Asana Partners

# New Regulations Enacted and Proposed by the SEC

**Revised Marketing Rule** – final compliance date of November 4, 2022

## **Proposed Private Funds Rules**

- Mandated quarterly statements addressing fees, expenses, and performance
- Fairness opinion required for any adviser-led secondaries and additional disclosure of side letter terms

## **Proposed Form PF Amendments**

- Mandates next-day reporting of certain events, including adviser-led secondaries and clawbacks

## **Proposed Cybersecurity Rule**

- Advisers would have to implement new P&Ps and report “significant” cyber incidents to within 48 hours

## **Proposed ESG Disclosures for Advisers**

- Advisers would have to disclose ESG strategies and consideration of ESG factors in their investment process

## **Proposed Outsourcing Rule** – *just released on October 26, 2022*

- Codifies expectation that advisers are conducting initial and on-going diligence on key vendors

# Recent Regulatory Focus Areas for the Industry

- Recent and expected “sweep” exams
  - Electronic signature verification processes
  - Custody rule – focus on Form ADV disclosures, delivery of financials
  - Electronic communications – i.e., use of texting, Whatsapp, WeChat, etc.
  - Compliance with the new marketing rule (coming soon!)
- Particular areas of scrutiny for RE advisers
  - Affiliated service providers
  - Investment allocation, including co-investment vehicles
  - Fees and expenses
  - Other types of conflicts of interest (personal investments, outside business activities, etc.)
  - Compliance with terms of side letters

# Compliance Resources – not just a “nice to have”

SEC Risk Alert – November 19, 2020

OCIE (now known as the Division of Examinations) Observations: Investment Adviser Compliance Programs

The SEC observed the following deficiencies or weaknesses identified by staff:

## **Inadequate Compliance Resources**

- “CCOs who had numerous other professional responsibilities”
- “insufficient staff”
- “Advisers that had significantly grown in size or complexity, but had not hired additional compliance staff or added adequate information technology . . .”

# Number of Compliance Employees by RAUM

The **2022 Investment Management Compliance Testing Survey**, conducted in partnership with ACA, IAA, and Yuter Compliance, found the following number of compliance personnel (including the CCO) based on the RAUM of the firm, across all types of advisers:

- Under \$500m: 69% had 1 29% had 2-5
- \$500m – under \$1b: 55% had 1 43% had 2-5
- \$1b – under \$10b: 37% had 1 60% had 2-5
- \$10b – under \$20b: 74% had 2-5
- \$20b – under \$50b: 63% had 2-5 29% had 6-10
- \$50b – under \$1trillion: 27% had 6-10 30% had 11-20 32% had over 20

# Number of Compliance Employees by Firm Size

The **2022 Investment Management Compliance Testing Survey**, conducted in partnership with ACA, IAA, and Yuter Compliance, found the following number of compliance personnel (including the CCO) based on the total number of company employees, across all types of advisers:

1-5 company employees:	71% had 1	29% had 2-5		
6-10 company employees:	67% had 1	30% had 2-5		
11-50 company employees:	38% had 1	61% had 2-5		
51-250 company employees:		67% had 2-5	20% had 6-10	
251-500 company employees:		32% had 2-5	36% had 6-10	27% had 11-20
501 to 1000 company employees:			50% had 6-10	40% had 11-20
More than 1000 company employees:			20% had 11-20	80% had over 20

# Increasing Compliance Resources

## Issue: **Increasing compliance staff numbers**

- recruiting challenges
- what level?
  - juniors may need more of your time
  - mid-levels hard to find
  - seniors are too much \$, can require promote, etc.

## Issue: **More compliance software/technology or other outsourced services**

- which ones are worth the spend and implementation pain?
- staff to manage and review
- buy-in from other groups

## Issue: **Asking for external mock exam or similar review?**

- timing
- buy-in from other groups