Regulatory Compliance Watch

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Records violations bring in nearly $2B in fines

Perhaps now the industry will get the message: If you permit staff to use their personal devices for work, you must keep records of these communications.

The latest cases to send that clear message come from a spate of 11 related **SEC** enforcement actions (against 16 firms) stinging industry giants as diverse as **Goldman Sachs** and **Nomura Securities International**. Eight of the firms agreed to each pay a fine of $125 million, totaling an astonishing $1.1 billion haul for the Commission. The SEC's annual budget hovers around $2 billion (***RCW***, June 3, 2021).

If the industry trembled when **J.P. Morgan Securities** agreed to pay $125 million last year for neglecting to preserve business communications (***RCW***, Dec. 17, 2021), this latest regulatory salvo should break the Richter scale (see related story, page 2). Especially when you tack on another $710 million in fines assessed against the firms by the **CFTC** for ***violating*** its recordkeeping rules.

Rinse and repeat

The enforcement actions mostly mirror each other, with tales of even senior leadership charged with supervising books and records preservation themselves violating their firm's P&Ps by using their personal devices for business.

Earlier this year, ***RCW*** warned that SEC examiners were probing whether e-communications for business were being preserved (***RCW***, Feb. 11, 2022). The enforcement cases confirm that interest dated at least to 2018, when Commission staff commenced "a risk-based initiative to investigate the use of off-channel and unpreserved communications at broker-dealers."

The violations, involving Exchange Act section 17(a)(1) and—for the one adviser named—Advisers Act section 204, didn't so much involve not having recordkeeping P&Ps but failing "to implement a system of follow-up and review to determine that their supervisors were reasonably following the firms' policies," according to **Deutsche Bank Securities**' $125 million ***settlement***.

The use of interactive analysis tools under ad rule, page 2.

Content

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Case reflects need for 'proactive compliance'

Massive penalties from regulators will surely capture the attention of compliance professionals. That was certainly the case with last December's **J.P. Morgan Securities** enforcement actions tied to the use of personal devices and recordkeeping failures (***RCW***, Sept. 23, 2021).

For the **SEC**, the J.P. Morgan case was illustrative of why firms should engage in "proactive compliance" by thinking about the intersection between business and technologies. In ***remarks*** earlier this month at **PLI**'s annual *SEC Speaks* conference, the Deputy Director of Enforcement **Sanjay Wadhwa** said the case was also an "excellent example" of its approach to enforcement actions: deterring misconduct, affirmatively shaping market behavior, and ensuring public accountability.

Wadhwa acknowledged that books and records violations cases "don't typically generate" headlines but this one was an exception (see related story on page one). The bar took note, the industry took note, and the market took note, he said. "This is essential for deterrence," Wadhwa added.

J.P. Morgan Securities admitted its recordkeeping failures were firm wide. That admission—which is rare in settlements—"delivers much-needed public accountability," said Wadhwa.

Potential roadmap

The Commission's call out of J.P. Morgan Securities "robust improvements" to its compliance P&Ps in the settlement should interest compliance pros. By Enforcement laying out these improvements, "other market participants are provided with one potential roadmap of what proactive compliance looks like," said Wadhwa.

"While permitting employees to use approved communications methods, including on personal phones, for business communications, Respondents failed to implement sufficient monitoring to assure that their recordkeeping and communications policies were being followed," the SEC wrote.

"These 16 firms not only have admitted the facts and acknowledged that their conduct violated these very important requirements, but have also started to implement measures to prevent future violations," said SEC Enforcement Director **Gurbir Grewal**. He urged investment advisers and broker-dealers to tighten their compliance ships and to self-report any violations.

While the SEC credited the firms with cooperating and agreeing to implement a slew of compliance improvements, the Commission also noted that the lack of preserved records may have hampered their investigations.

What may have reduced fines

The fines ranged from $10 million to $125 million. **Cantor Fitzgerald** faced the lowest fine in its ***settlement***, perhaps because, as the SEC noted, prior to the enforcement action the firm "enhanced its policies and procedures, and increased training concerning the use of approved communications methods, including on personal devices, and began implementing significant changes to the technology available to employees."

Here are the other firms caught up in these record-breaking enforcement settlements:

- ***Barclay's Capital*** ($125M)
- ***BOA/Merrill Lynch*** ($125M)
- ***Citigroup*** ($125M)
- ***Credit Suisse*** ($125M)
- ***Goldman Sachs*** ($125M)
- ***Jefferies*** ($50M)
- ***Morgan Stanley*** ($125M)
- ***Nomura Securities International*** ($50M)
- ***UBS*** ($125M)

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Ad rule: Use of interactive analysis tools

Odds hold that you've used software to forecast your financial future. Many firms offer these tools. The question to be asked is how will the **SEC**'s ***new IA ad rule*** affect how advisers use them?

The new ad rule dedicates nearly 170 words to the use of an "interactive analysis tool." The rule defines such tools as "where a client or investor, or prospective client, or investor, uses the tool to produce simulations and statistical analyses that present the likelihood of various investment outcomes."

These tools won't be considered to be hypothetical ads if advisers satisfy these four steps:

1. Provide "a description of the tool's criteria and methodology used, including the investment analysis tool's limitations and key assumptions" to clients and prospects using the tool.
2. Explain that results can vary.
3. Describe "the universe of investments considered in the analysis," explain "how the tool determines which investments to select," disclose "if the tool favors certain investments" and explain "the reason for the selectivity" and that "other investments not considered may have characteristics similar or superior to those being analyzed."
4. Note that such tools generate hypothetical results.

Shining a general green light

The ***adopting release*** that accompanied the new Advisers Act rule noted that the SEC excluded such tools from the definition of a hypothetical ad if these four steps are followed. The Commission wrote that "the rule will allow an adviser to present these tools in advertisements without complying with the conditions applicable to hypothetical performance."

"We do not view these tools as presenting the same investor risks that model portfolios do," the Commission continued. But it went on to urge advisers to "consider which disclosures are necessary in order to comply with the general prohibitions of the final marketing rule. For example, to comply with the first general prohibition, the adviser should neither imply nor state that the interactive tool, alone, can determine which securities to buy or sell."

But without additional guidance from the SEC about the rule (***RCW***, July 7, 2022), some advisers remain uncertain about how to move forward. For example, one stubborn question asks if an adviser can input the data on behalf of a client or a prospect?

"I don't think the clients have to input the data," maintains **Joseph Mannon**, shareholder with **VedderPrice** in Chicago. He acknowledges that "it's a little unclear in the rule."

Paul Fenaroli sees it differently. "The investors themselves use the tools," says the associate attorney at **Pastore** in Stamford, Conn.

Driven by the prospect/client

Nathan Howard, senior VP, COO/CCO, **Private Capital**

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Management ($1.4B in AUM) in Denver, reads the rule to place the prospect or client at the center of the process. "It's very clear that the prospect or client has to be the one directing the inputting of information into the tool," he states. "They either have to do it themselves or they have to give the information to an adviser to input."

"The client has to be able to interface with the tool either directly or indirectly" through their adviser, reasons **J. Steven Parker**, a partner with **Parker MacIntyre** in Atlanta.

Howard worries that if an adviser gets too involved in reworking an interactive tool—by, e.g., adjusting the program for inflation estimates or different investment strategies—"I think you're going to have a problem."

Lack of SEC guidance

Turning to outside counsel to seek answers not provided by the SEC has proved to be a hurdle. "What we're dealing with here is a lack of clarity," Howard continues. "Outside counsel is not willing to take an aggressive position" without SEC guidance. The topic begs for SEC FAQs, he adds.

His firm will take a conservative approach and regard the way it uses such tools to be hypothetical ads, requiring satisfying the larger requirements of the new rule (e.g., adopt relevant P&Ps and help the client to understand the criteria and assumptions used and the inherent risks).

Should you plan to follow Howard's route and treat these tools as hypothetical ads, get prospects and clients to sign an acknowledgement that they're a qualified client or purchaser, counsels Mannon. This action would satisfy the SEC's requirement—expressed in the rule's preamble—that an investor provided with a hypothetical ad "have the financial expertise to understand the risks and limitations of these types of presentations."

Matt Lovett, CCO at **Brookstone Capital Management** ($8.4B in AUM) in Wheaton, Ill., says his firm will continue to use the interactive tools—and not to consider them to be hypothetical ads. They're ideal for one-on-one meetings with an adviser, he states. Lovett interprets the rule as permitting an adviser to input client data into the tools. The firm prefers to grab these data from a custodian's latest statements, he adds.

"I think advisers will continue to use these tools," maintains Fenaroli. "These requirements are not overly burdensome," he adds of the four required compliance steps.

Action to take

To satisfy the rule's four requirements for use of the tools, Lovett has combed through the disclosures that accompany them to ensure they're prominent and "understandable to the layperson," and included such standards as past performance doesn't guarantee future results, he says. The firm will ensure clients and prospects understand how the tools work.

Some have told us the interactive tool vendors have been accommodating, even knowing about the new SEC ad rule and willing to hand out disclosures aimed at satisfying the four requirements. But others have stated they've run into intransigence at some vendors when requesting such disclosures.

RCW contacted several vendors that offer interactive analysis tools. Only one responded. "I do think it's going to have an impact," says **Justin Boatman** , the chief product officer at ***Riskalyze*** in Auburn, Calif., of the new ad rule.

"It's about getting the client involved," he continues, saying an adviser could give a client a keyboard to enter her data or the adviser can input the client's data. Riskalyze has prepared disclosures that it believes satisfy the four compliance prongs of the new ad rule.

Morningstar, which offers its Scenario Builder, didn't return ***RCW*** inquiries. However, a source shared with us a PowerPoint prepared by the firm about its software. The presentation recommends a current client or a prospect must actually use the tool (i.e. input information into the tool or provide information to the adviser to input into the tool) to comply with the new ad rule.

Compliance steps

Be sure you have written compliance P&Ps around the use of these tools, conduct staff training and ultimately select a tool that permits a client/prospect to input different numbers, recommends Parker.

"The degree of interactivity is an issue," he says. "We have seen very few tools that clients have sent to us" that would qualify as an interactive analysis tool under the rule. Those that rely on Monte Carlo simulations would clearly qualify, he adds.

Using such tools with existing clients can convert the activity into an advertisement because it could persuade someone to give an adviser even more money to manage, alerts Fenaroli. Use of backtesting or model portfolios in these tools should come with the relevant disclosures, he adds.

A CCO shared with ***RCW*** a ***sample disclosure*** for use of these tools.

Exercise additional caution if your firm uses a proprietary tool as opposed to one created by a vendor, counsels Mannon. Be sure to understand the assumptions used. Strive for transparency with the client/prospect.

Examiners hunting deficiencies

Some worry, given the lack of SEC guidance, that examiners and enforcement staff will define the regulatory regime. "They're going to be looking to make examples in every single area" of the new rule, predicts Mannon. "I could definitely see an enforcement case …. I would expect sweeps over time. [But] not right out the gate."

What do you think about this story? Please, ***share your thoughts*** *with Publisher* **Carl Ayers**. ❍

Did SEC go too far in proxy case?

Just one vote made the difference between an adviser agreeing to pay a $150,000 fine for violating the ***proxy voting rule*** and no enforcement action at all.

SEC commissioners voted 3-2 this month to settle an enforcement action against **Toews Asset Management** ($1.2B in AUM) in Northfield, N.J., with the two Republican members vigorously dissenting for fear the case sends the wrong message to the industry.

"We are concerned that the [enforcement] Order may be misconstrued regarding an adviser's fiduciary duties with respect to voting proxies on behalf of its clients, as well as the specific requirements imposed by the proxy voting rule," ***wrote*** commissioners **Hester Peirce** and **Mark Uyeda**.

Rare public dissent

Such open disagreements among commissioners over an enforcement action rarely make their way to the public.

The Sept. 20th enforcement ***settlement*** faulted the adviser for having a third-party vote proxies at more than 200 shareholder meetings between 2017 and this past January. The SEC asserted that the proxies were voted on behalf of registered funds without the adviser "taking any steps to determine whether the votes were cast in those clients' best interests, and without implementing policies and procedures reasonably designed to ensure that Toews voted proxies in its clients' best interests."

The settlement order states the adviser directed the third-party provider without fail to "always vote all of the RICs' securities in favor of the proposals put forth by the issuers' management and against any shareholder proposals."

While the Commission maintains the firm violated the proxy voting rule and Advisers Act ***section 206***(2) and 206(4) (prohibited transactions; the former being "a fraud or deceit upon any client" and the latter "to engage in any act, practice, or course of business which is fraudulent, deceptive, or manipulative"), the real culprit may have been the firm's Form ADV brochure.

The adviser's CCO **Yu Jin Kim** declined to discuss the case with ***RCW***.

Disclosure cited

The settlement order quotes the adviser's former Form ADV brochure as stating "we act as a fiduciary. We will vote proxies in the best interests of our clients."

The adviser revised its disclosures this year, including noting a material change in its latest Form ADV brochure. It now states "Toews will vote in a manner that provides for greatest shareholder value using data driven guidelines derived from publicly disclosed voting records of fund families selected by assets under management." Allowing a third-party to vote the proxies provides "a level of independence, but also eliminates any potential conflicts that might arise," the brochure continues.

The firm also changed the brochure's disclosure under Item 17 (voting client securities). That section notes that a client can explicitly authorize "Toews to vote proxies and Toews accepts this responsibility by communicating such agreement in writing to the client, Toews will vote proxies as agreed." It also instructs clients on how to get a copy of the adviser's proxy voting P&Ps as well as "information on how proxies for their shares were voted."

A bridge too far?

The two Republican commissioners believe their colleagues went too far and "may affect how investment advisers shape their proxy voting policies and procedures."

Peirce and Uyeda state the settlement "might be read to imply that the adviser's prior proxy voting practices were *per se* improper and violate the Advisers Act and the proxy voting rule. This implication, however, would be at odds with the Commission's own guidance that '[a] client and its investment adviser may agree that the investment adviser should exercise voting authority pursuant to specific parameters designed to serve the client's best interest,' such as by voting in accordance with the voting recommendations of management of the issuer."

The pair points to the proxy voting rule's adopting release, which "recognizes that the adviser may take cost into account when determining how to satisfy its fiduciary duties. The release recognizes that, at times, 'refraining from voting a proxy [may be] in the client's best interest, such as when the adviser determines that the cost of voting the proxy exceeds the expected benefit to the client.'"

The two commissioners also expressed concern that smaller advisers won't have the time or money to comb through scores of shareholder proposals and vote proxies.

IAA expresses concern

"We think the dissenting commissioners have it right that the proxy rule doesn't seem to require what the order implies, not necessarily with respect to this case, but more generally," **Gail Bernstein**, the general counsel at the **Investment Adviser Association** in Washington, D.C., tells ***RCW***.

"The implication that the proxy voting rule does not allow advisers to agree with their clients that they will vote all proxies in a certain way and that that can be in the clients' best interest is troubling and could confuse advisers on what's expected," Bernstein continues. "We're seeing a rather troubling trend in enforcement cases that suggests the staff may be substituting their judgement for the advisers' about what's in a client's best interest."

The settlement comes as a new ***proxy voting advice rule*** takes effect; a rule both Peirce and Uyeda opposed. That rule also reversed Commission guidance on proxy voting that was released in 2020 (***RCW***, July 13, 2022).

Check your P&Ps

While the case surely breeds confusion as to the proper regulatory course for an adviser to take, it also reinforces the need to examine your proxy voting P&Ps and disclosures to ensure you're doing what you say you are.

*What do you think about this story? Please, **share your thoughts** with Publisher* **Carl Ayers**. ■

SEC shatters PF enforcement record

The **SEC**'s "broken windows" approach has already resulted in shattered private fund enforcement records.

Since January, regulators have brought cases against at least 27 private fund advisers or their executives, an ***RCW*** analysis of Commission records shows. That sets a record for cases in the *Dodd-Frank* era. The previous record, 18, was set in 2018 and then again in 2020. In 2012, as the Commission mopped up the mess of the Great Recession and began the still-incomplete job of implementing *Dodd-Frank*, there were 17 cases, Commission records show.

The biggest single category of offense stems from the Commission's custody rule, with 10 cases so far. There have been at least seven cases stemming from fees, expenses or valuations, and four for "pay-to-play" violations, records show.

"It's clear that they're scrutinizing a lot of different areas in the private fund industry," says **Greg Larkin**, a partner in **Goodwin, Procter**'s Washington, DC office. "You have to readjust to the environment that you're in. You have to be much more careful on basically everything. Conflicts. Fees and expenses. Custody rule. The marketing rule is the big flashing light to me."

Guinea pigs

The SEC has proposed some of the most radical changes to private fund regulation since *Dodd-Frank*. The regular bulletins from the Enforcement Division since Chairman **Gary Gensler** appointed former New Jersey Attorney General **Gurbir Grewal** its director shows regulators don't need new rules to demonstrate to the $11 trillion private funds industry there's a new sheriff in town.

'Broken windows,' notoriously, is the theory that if you crack down on low-level crime—graffiti, subway jumping—you'll deter bigger crimes because you're wiping out a culture of corruption. Private fund advisers find themselves unwitting guinea pigs in a fresh experiment on the idea.

"We are starting to see the SEC in both enforcement actions and exams increasingly focusing not only on substantive issues but technical ones as well, and this shows that cyclical nature of regulation," says **Vivek Pingili**, a managing director with compliance consultant **ACA Group**. "The SEC is more focused on technical compliance at certain points (like now) than at other times."

'Scratched windows'

You don't have to take Pingili or Larkin's word for it. Ask the nine advisers caught up in a custody rule sweep (***RCW***, Sept. 14, 2022). Or the four dinged for pay-to-play violations (***RCW***, Sept. 26). In none of the cases did regulators accuse anyone of harming investors, nor was there any suggestion of criminal intent.

"A lot of this is scratched windows," Goodwin's Larkin says. "It's clearly a message. These are easy enforcement cases to bring. It's hard to make the argument that these aren't violations. Yes, it's technically a violation of a very strict rule, but is it the most important issue in the private fund industry?"

For their part, Commission staff make no apologies for its law-and-order approach. In fact, that so many people are upset about it is proof that it's working, Enforcement Deputy Director **Sanjay Wadhwa** says. Consider the shock and awe that followed from the Commission's $125 million case against **J.P. Morgan Securities** over books-and-records violations (***RCW***, Dec. 17, 2021).

Sweeps messaging

For private funds, the best news about 2022 may be that it's almost over. The worst part may be that more is yet to come. The Commission has brought custody rule cases before. It's brought pay-to-play cases before. It's brought fee and expense cases before. That it's now bringing these cases in sweeps, though, is new, ACA's Pingili says.

"This shows Gensler wants to send strong messages to the private fund sector on a regular basis," he says.

So now what? If you're a compliance officer at a private fund adviser, Pingili, Larkin and others have some suggestions.

1. Scrub your firms' P&Ps, especially on areas that SEC risk alerts or enforcement actions have warned you about: conflicts of interest; fees, expenses and valuations; material, non-public information; the custody rule; campaign donations; and disclosure methodology.

2. Double, triple and quadruple check your ADVs, and other disclosures. "These disclosures alert the SEC to potentially problematic issues at private fund shops around custody rule compliance and the investor protections the custody rule is designed for," Pingili says. "As such, providing the SEC with stale/inaccurate data is something they are increasingly focused on and willing to publicly sanction firms over."

3. Show your work. The Commission begins enforcing the marketing rule in November. Larkin says he's worried. "Think about being very disciplined in stating something as a fact. Can you get the documents?" he says. "This seems like a simple thing to say, but when you walk the line through your pitchbooks, your PPMs, things like that, it's actually a hard process. There's a tension between the way the businesspeople want to talk, and the more lawyerly way of saying, 'This is a fact, this is an opinion.'" ■

PF adviser settles fee case for $325K

Maybe it's impossible to put a value on a good compliance officer, but **Wave Equity Partners** might have a better idea than most.

The Boston-based private equity ESG adviser has agreed to pay $325,000 in fines and to accept censure to ***settle*** allegations that it improperly borrowed money from one of its funds to pay placement agents, and then didn't properly disclose the loan to its investors. The **SEC** wants you to know that things might have gone a lot worse for Wave ($381M in AUM) if it hadn't hired **Bob Wolfe** last year.

"In determining to accept the offer," the Commission says in a Sept. 23 settlement order, it "considered remedial acts undertaken by respondent. Respondent's remedial efforts included fully repaying the loan with interest, hiring a new chief compliance officer, engaging an outside compliance consultant, and convening a management committee that is charged with providing more stringent and timely oversight of the compliance program by senior management."

Neither Wolfe nor anyone else at Wave ($381M in AUM) responded to requests for comment.

Record setting year

This is already a record-setting year for private fund enforcement cases (see related story, page 6). Wave is now the fifth private fund adviser this year to be accused of issues with fees, expenses or valuations, and the sixth since last December. Outside of the custody rule, no other area of regulation has tripped up more firms than fees, expenses or valuations since **Gary Gensler** took over as Commission chairman last year.

According to the Commission's settlement order, Wave used cash from one of its funds to pay more than $1 million in placement agent expenses between May 2018 and October 2020. Under the fund's partnership agreement and private placement memoranda, "this borrowed money was required to be paid back to Fund II promptly through an offset of the quarterly management fees."

Wave didn't offset any of the expenses for 11 consecutive quarters, the Commission claims. Regulators also claim Wave "never informed investors and potential investors in Fund II that it had failed to repay Fund II timely and was thereby in violation of Fund II's governing documents."

Once Wave discovered the errors—it's not clear whether the firm found out on its own or SEC examiners found them—it began repaying the money, with interest, the Commission says. ■

J.P. Morgan steps in disclosure debate

J.P. Morgan hasn't launched its new wealth management call center yet, but the firm has inadvertently reopened arguments about the limits of disclosure.

J.P. Morgan's "*Personal Advisors*" program is still in pilot mode. The firm launched it last year, shortly after it hired one of **Vanguard's** top robo-advisor experts, **Boaz Lahovitsky**, to run the shop. The firm hopes it can capture and hold the interest of younger investors who either want or need a lighter touch from their investment adviser.

Investors in the pilot aren't being charged fees for the service. That'll change beginning next year when J.P. Morgan flips the switch and launches the program formally. Looking over J.P. Morgan's latest Form ADV, some critics think they smell arbitrage.

'Everything that is wrong'

"The J.P. Morgan Personal Advisor program," veteran securities lawyer **Max Schatzow** says, "is everything that is wrong with the fiduciary investment advice business."

The problem, Schatzow and others say, isn't that J.P. Morgan is hiding anything from would-be investors. The problem is that the firm is giving itself all kinds of wiggle room in its disclosures—effectively, making the disclosures moot.

For instance, J.P. Morgan says the program will charge around 60 basis points. But the firm also gives itself the right for "additional, indirect revenue," including from other JP Morgan branches.

"In fact," Schatzow says, "they disclose that they have a preference for their affiliated funds. They might use up to 100% of their own funds. However, for some reason, their disclosure brochure seems to try and downplay their use of affiliated funds."

J.P. Morgan also says it will use its own sweep accounts for cash, and add another 25 basis points for "servicing fees."

"The bottom line," Schatzow writes in an Aug. 29 post, "is that it is impossible to know how much JP Morgan is making off clients because of how they have structured their program."

'Cost-effective'

In an e-mail statement, J.P. Morgan spokeswoman **Veronica Navarro Espinosa** said that most of the investment vehicles in the pilot program are third party. The funds the firm offers "are cost-effective to the investor," Navarro Espinosa says.

"We believe the program's overall costs will be competitive and transparent," she adds. "The funds we use are from a variety of managers, and they are thoroughly vetted to ensure they meet the program's fiduciary standards. Our portfolios will be managed, reviewed and adjusted regularly by the firm."

Neither Schatzow nor anyone else accuses J.P. Morgan of wrongdoing here. The critics' argument is that it's another example of arbitrage that allows firms to hide their fees behind a mountain of jargon.

'A weakness'

"Depending on what services they provide, 60bps doesn't seem excessive," says **Ed deHaan**, a professor at the **University of Washington** business school whose research focuses on disclosures (***RCW***, Sept. 2, 2021). "The bigger problem is the indirect revenues, which I have complained about in the past as a weakness of Regulation Best Interest. For example, Morgan Stanley's vanilla S&P 500 index fund (**OGEAX**) charges 66bps per year and a 5.25% front load. These fees are crazy, in my view, given that Vanguard charges ~2bps and no load for the same product."

A divided Commission adopted Reg BI in the dying days of the **Trump Administration**. Critics said at the time that it was a half measure that left big investment advisers too much room to gouge investors. When **Gary Gensler** took over as chairman, some of his allies hoped he'd undo Reg BI. Instead, Gensler seems to want to use the letter of Reg BI to rein firms in. To date, there has only been one enforcement case stemming from a Reg BI violation, so critics find themselves right where they started.

"Firms should not be allowed to disclose their way out of bad advice," says **Micah Hauptman**, a former aide to SEC Commissioner **Caroline Crenshaw**, now a director at the **Consumer Federation of America**. "The idea behind disclosure is to promote informed consent. But these aren't those types of disclosures. They're buried in ADVs, they've got all this lawyerly language. Those kinds of disclosures fall short of informed consent. No reasonable investor agrees to being harmed." ■