

SEC Proposes Rule Requiring Advisers to Adopt Business Continuity and Transition Plans

On June 28, 2016, the Securities and Exchange Commission (SEC) proposed a new rule that would require a registered investment adviser to adopt and implement written business continuity and transition plans designed to address risks related to significant disruptions in the adviser's operations, including technological failures (proprietary or third party), cyberattack, departure of key personnel and loss of adviser or client data or access to facilities.¹ The proposed rule aims to mitigate client and investor harm in the event of a disruption or when an adviser is winding down its operations. This is the fourth of five investment management policy proposals that Chair Mary Jo White announced in December 2014 to enhance risk monitoring and regulatory safeguards for the asset management industry.²

The proposed rule would require an adviser to adopt and implement, and review at least annually, written plans, tailored to the complexity and risks attendant to its particular business model, addressing:

- maintenance of systems and protection and recovery of data;
- pre-arranged alternative physical locations for offices and employees;
- communication to employees, clients, service providers and regulators in the event of a disruption;
- review of critical third-party service providers; and
- transition planning in the event the adviser winds down its operations or is unable to continue providing advisory services.

In the Proposing Release, the Staff recognized that many advisers have already taken steps to address and mitigate the risks of business disruptions but noted that its proposal derives from concern about the adequacy of some advisers' plans, the critical role advisers play in the capital markets and the Staff's belief that "it would be fraudulent and deceptive for an adviser to hold itself out as providing advisory services unless it has taken steps to protect client's interests from being placed at risk as a result of the adviser's inability . . . to provide those services."

The public comment period on the proposed rule closes August 29, 2016.

- 1 See [Press Release](#) and [Proposing Release](#), June 28, 2016. The proposal would also amend existing Rule 204-2 under the Advisers Act of 1940 to require record retention related to business continuity and transition plans. The SEC's Division of Investment Management simultaneously issued [Staff Guidance](#) on business continuity planning for registered investment companies.
- 2 See [Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry](#), Mary Jo White, December 11, 2014. Other recent proposals include rules designed to modernize information reporting, enhance fund liquidity management and strengthen the regulation of funds' use of derivatives.

If you have any questions about the matters addressed in this *Kirkland AIM*, please contact the following Kirkland attorneys or your regular Kirkland contact.

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