

2023 Year-In-Review

Rule Proposals, Risk Alerts, & More for Investment Advisers

I'm not sure what other founders do for themselves on their 5-year anniversary, or if they do anything at all. But it was a lot of hard work to hit that milestone and I wanted to commemorate it with something significant. I also turned 42 that year and had some worries whether I still had the drive and toughness to do really hard things. I felt like I needed to challenge myself mentally and physically.

I decided to attempt the Tour Divide – a 2,700 mile self-supported mountain bike race from Banff, Canada to the Mexico border that follows remote trails and forest roads along the Continental Divide. It's something I've dreamed of doing for over a decade. Picture a race longer than the Tour de France both in distance and in elevation gain that must be completed carrying everything you need (water, food, shelter, etc.) and pretty much the only rule is that you can't accept help from others. You're on your own.

After getting the blessing from my wife, I spent the next 11 months training whenever I could. I had never bikepacked before, so I really had no idea what I was in for – if it would take me 3 weeks or 5 weeks or if I'd finish at all. Most don't.

The race turned out to be as difficult as I had imagined. Physically it was brutal. I kept hoping my body would adapt but each time a pain would subside it was offset by something more concerning and severe. Mentally, the weather was the hardest. If it wasn't the wind, it was rain. If it wasn't the wind or the rain, it was the heat. If it wasn't the heat, it was the cold at the top of mountain passes which we had to climb three or four times a day. Sleep deprivation. Blisters in places you'd rather not hear about. Crappy trail conditions. Scary situations where I ran out of water in the New Mexico desert.

But despite all the misery, I found the daily routine simple and motivating. Wake up as early as possible. Ride as long as possible. Eat and drink as much as possible. Maintain and repair the bike. Sleep. Repeat. Whether it was a sunrise, sunset, wildlife sighting, or beautiful mountain landscape, there were moments in the routine that were spectacular and amazing. It was those moments that made all the suffering worth it. In June, I finished the Tour Divide in 20 days and 8 hours.

As I started reflecting back on the ride, I realized there is actually a lot of parallel in starting a business and attempting a mega adventure. Committing to do something hard and realizing you have no idea what you're getting into. High highs. Low lows. Moments you just have to keep moving forward. And moments when you have an opportunity to look back over it all, really amazed by how far you've come. I am so incredibly proud of what we have built at HighCamp. The team we have assembled. The clients we serve. We've come a long way since our launch in 2017. But in addition to our "keep moving forward" approach to HighCamp, the one thing that remains a constant year over year is our renewed commitment and focus to HighCamp's core values. These values impact every decision we make, every team member we hire, every client we onboard. They're values that we'll continue to hold in our strategy. And values, I think, that set us apart.

Value No. 1: Employee First - We recognize that being able to provide the best client experience hinges on hiring and retaining the best consultants.

We continue to invest aggressively to expand our resources, automation technologies, and infrastructure as we work to build an enduring brand where the best consultants want to work. We also continued to prioritize promotions from within.

This year, we **expanded** our Milwaukee team and opened a new office. Azra Korjenic was promoted to HighCamp's Chief of Staff and will run the office, as well as lead a number of strategic infrastructure initiatives that build consultant resources. Brian Roberts was promoted to Partner in June. In addition to client support, Brian has been leading HighCamp investments into new technologies for our consultants to leverage.

We also continue to build out our consultant benefits. This year, in one of my favorite employee-first initiatives, we added a self-improvement stipend for our team members. Employees will be able to use this stipend in conjunction with their unlimited PTO to go on an adventure, travel, learn something, or give back to others. I realized while riding the Tour Divide how important it is to carve out space for your own self development and to do hard things that challenge you.

Value No. 2: Customer Focus - We take great pride in supporting top managers, and the customer is our top priority.

HighCamp currently services over 50 clients that manage over \$150 billion in alternative investments across the country and abroad. As I've said in the past, we celebrate our clients' milestones as if they were our own. We are very fortunate to have longstanding relationships with our clients and the best seats in the proverbial stadium to support their wins. We love being around people who are building great businesses and cultures, and we are extremely proud to be able to support their growth.

As our clients grow and their needs evolve, so must HighCamp. This year we've added a number of new services, including automated sanction list searching, political contribution screening, and vendor due diligence support services, and we will continue to expand our service capabilities to answer the demands of our growing clients.

Value No. 3: Long-Term Horizon – We strive to always make decisions based on our long-term goals.

Our key strategic advantage over many of our competitors is in how we structure ourselves and our team incentives. As Charlie Munger has said, “Show me the incentive, I’ll show you the outcome.” As an employee-owned company – with half of our team having equity in HighCamp –we’ve optimized our incentives so that everyone is focused on building a lasting brand over the long term. This allows us to make decisions and provide service very differently than others. And we believe this structure is incredibly valuable to our employees and clients alike.

Value No. 4: Collaboration – We recognize the value in considering all perspectives to provide the best advice when helping our clients tackle an issue.

As a hybrid company that spans the country, we work very hard to replicate the office experience through extensive collaboration. We continue to prioritize team, client, and industry collaboration to cultivate the best ideas and practices.

Value No. 5: Giving Back - HighCamp is proud to pledge 1% of our gross revenue to charitable causes selected by our employees.

Giving back remains a priority for us. HighCamp continues to make these donations to charitable causes within our communities.

Cheers to 2024 and beyond!

-Brad

Pressing Regulatory Items for 2024

The predictions we made for 2023, included in last year’s letter, largely played out as forecasted. Looking ahead, we predict that the following areas will be of greatest regulatory interest for 2024.

- The top regulatory priority amongst HighCamp clients will be readiness for, and implementation of, the private fund rule amendments. Trade associations filed a Petition for Review with the 5th Circuit claiming, among other things, that the SEC exceeded its statutory authority. The two sides are set to **provide** oral arguments on February 5th. Although the new rule could be amended down the road as a result of the lawsuit, HighCamp recommends advisers prepare as if the final rule will go into effect as currently written. HighCamp’s practical reference guide on the new private fund rules can be found **here**.
- Potential new rulemaking is a close second. There are a variety of key rule proposals for investment advisers that could be finalized in 2024 include cybersecurity, privacy, ESG, custody, artificial intelligence, and outsourcing arrangements, among others.

- Electronic communications will remain a challenge. Vulnerabilities are widespread and regulators are attentive to this fact. Employee training and certifications and leadership from the top are critical mitigants in this area.
- The evolution and increased use cases of artificial intelligence will be a perennial risk area that legal and compliance departments will need to manage.
- The macroeconomic and political environment, including high interest rates, mismatches in buyer/seller expectations, export restrictions, and election uncertainty raises inherent compliance challenges, particularly as it relates to liquidity and valuation.
- Civil penalties and settlements with SEC enforcement for technical custody, whistleblower, and electronic communications infractions that historically wouldn't have been escalated to enforcement remain a concern under the current regime.
- Onsite and in-person SEC examinations are back in 2024. In our view, onsite examinations entail more depth and scrutiny than most pandemic-era correspondence examinations.
- Identification and management of conflicts of interest and handling of inside information will remain a top priority for industry participants and regulators alike.
- Compliance with the new marketing rule will remain an examination focus area.

Fourth Quarter Headlines

SEC Divisions of Examinations (“EXAMS”) Announces 2024 Priorities

On October 16, EXAMS **released** its examination priorities (the “Priorities”) for FY24. The Priorities include many repeat areas for investment advisers to private funds, including continued focus on conflicts of interest, fees and expenses (including management fees post-commitment period), valuation of illiquid assets, compliance with the recently updated and amended marketing rule, use of affiliated service providers, and compliance with the custody rule (including Form ADV reporting of custody practices). Market volatility and the higher interest rate environment will prompt increased scrutiny by EXAMS of illiquid portfolio assets tied to adjustable interest rates, as well as a focus on poorly performing assets and the timing of valuation markdowns. In addition, EXAMS will review for adherence to fund notification and advisory board consent requirements pursuant to fund governing documents. Furthermore, EXAMS expanded its fee and expense focus to include adequacy of disclosures and offsetting practices with respect to both investment and fund-level costs. EXAMS will be focused on private equity and venture capital funds’ due diligence on prospective portfolio companies and ensuring consistency with policies, procedures, and disclosures. Lastly, EXAMS will review for recently expanded Form PF reporting requirements.

SEC Adopts Amendments Impacting Form SHO

On October 13, the SEC **adopted** a new disclosure requirement for “institutional investment managers” to report information about their short-sale activity. Managers that hold short positions in excess of specified thresholds will need to file Form SHO within 14 calendar days of month end. Form SHO will include information about the manager’s gross end-of-month short position as well as information regarding the short-sale activity for each settlement throughout the month.

The Commission will then aggregate this information and file public reports. The compliance date for the changes to Form SHO is January 2, 2025.

SEC Adopts Amendments Affecting Schedule 13D and 13G

On October 10, the SEC **adopted** amendments to Schedules 13D and 13G. The new amendments require 13D filers to make an initial filing within five business days instead of the previously required ten business days. Additionally, amendments must be filed within two business days. Among the changes for Schedule 13G, exempt investors and Qualified Institutional Investors must file within 45 days from calendar quarter end (down from 45 days after year-end) in which they crossed the 5% threshold, and passive investors must file within 5 business days from date of crossing the threshold. Ongoing amendments are required within 45 days of calendar quarter end in which there are material changes in reporting from the previously filed 13G. There are different requirements if an investor crosses the 10% threshold. The effective date for the amended Schedule 13D is February 5, 2024 and for Schedule 13G the compliance date is September 30, 2024.

HighCamp maintains a **Key Rulemaking Tracker** with effective dates and pending rule proposals, which is included at the end of this letter.

2023 Trends

Industry Trends

By the Numbers	2019	2020	2021	2022	2023
SEC Staffing (# of full-time employees) ⁱ	4,350	4,411	4,459	4,547	4,606
SEC Registered Investment Advisers ⁱⁱ	13,506	13,903	14,835	15,444	15,573
Exempt Reporting Advisers ⁱⁱ	4,223	4,568	5,024	5,573	6,010
Investment Adviser Examinations ⁱ	15%	15%	16%	15%	15%
Broker-Dealers ⁱⁱⁱ	3,735	3,616	3,541	3,533	3,477
Private Equity Funds/Advisers ^{iv}	13,027/1,264 (Q1 2019)	14,470/1,359 (Q1 2020)	15,879/1,459 (Q1 2021)	18,961/1,636 (Q1 2022)	20,917/1,755 (Q1 2023)
Hedge Funds/Advisers ^{iv}	9,399/1,744 (Q1 2019)	9,370/1,728 (Q1 2020)	9,484/1,760 (Q1 2021)	9,645/1,858 (Q1 2022)	9,846/1,856 (Q1 2023)
Real Estate Funds/Advisers ^{iv}	2,850/349 (Q1 2019)	3,111/373 (Q1 2020)	3,292/388 (Q1 2021)	3,788/428 (Q1 2022)	4,253/454 (Q1 2023)

Examination Recap

The Division of Examinations (“EXAMS”) serves on the SEC’s frontlines and, through its examinations, EXAMS helps provide the Commission with information that is used in rulemaking, identifying and monitoring risks, and pursuing misconduct. In FY23, EXAMS had a particular focus on risks to retail investors. Additionally, fiduciary standard under the Advisers Act, advisers, including private fund advisers, compliance with the new Marketing Rule, and information security and operational resiliency were also priorities. EXAMS published nine Risk Alerts in FY23.

Enforcement Highlights

- The Division of Enforcement (“Enforcement”) brought 784 enforcement actions (a 3% increase from FY22) in which it obtained nearly \$5 billion in combined penalties and disgorgement orders. This was the second most in history, behind FY22.
- FY23 was a record-breaking year for the Whistleblower Program. Whistleblower awards totaled nearly \$600 million, including the largest ever one-time award of \$279 million. Additionally, the Commission received nearly 18,000 whistleblower tips, which is nearly 50% higher than the then record 12,300 in FY22.
- In a continuing trend, 17% of standalone enforcement actions involved investment adviser/company issues, which is down from 26% in FY22 and 28% in FY21. Insider trading cases accounted for 6% of standalone enforcement actions.
- For more information, read the SEC’s press release: [SEC Announces Enforcement Results for Fiscal Year 2023](#)

Did You Know?

In an interview with the Wall Street Journal, the Director of Enforcement, Gurbir Grewal, said that there was a “conscious effort over the last two years to make sure the penalties we were seeking were having that deterrent effect” that was more than the cost of doing business. Grewal added that moving forward, the Commission is recalibrating penalties to identity and reward cooperation and remediation. The entire interview can be read here: [SEC Top Enforcer Says Tougher Penalties Are Working.](#)

Q4 Key Enforcement Actions and News

We left off on September 30 in our 2023 [Third Quarter Newsletter](#). Please note all sources are hyperlinked rather than footnoted.

SEC Charges Adviser with Poor MNPI Controls

On December 26, an adviser was **charged** with sharing material nonpublic information about its funds in violation of its own policies and procedures, which stated that such information could only be shared if “necessary for legitimate business purposes.” Despite having current investors, prospective investors, and industry contacts under NDA or confidentiality agreement, the SEC

found that the adviser's sharing of confidential fund information via mass email blasts to these parties, as well as the adviser's decision to invite non-firm personnel to investment committee meetings, violated the firm's internal policies.

SEC Charges Adviser with Violating the Custody Rule

On December 1, the SEC **charged** an adviser that had affiliated real estate funds in which its advisory clients invested with violations of the Custody Rule. The adviser's principal was able to sign off and issue advisory fee payments directly from the funds' bank accounts to the adviser, in addition to authorizing and initiating wire transfers of the funds' money to outside entities. The adviser also allegedly had physical custody of the paper membership interests issued to its clients to evidence their investments in the funds. The adviser allegedly failed to comply with the Custody Rule by not having an independent public accountant conduct an annual audit of the funds or perform an annual surprise examination of its clients' membership interests in such funds.

SEC Releases 2023 Agency Financial Report

On November 15, the SEC **released** its 2023 Agency Financial Report. The report is full of information regarding the SEC's financial health, work-life goals, EXAMS statistics, and future rulemaking notes. Some highlights from the report include:

- The Commission has been focused on shedding office space. It has eliminated 140,000 sq. feet in the last 9 years, and it continues to analyze its existing footprint.
- In March '23 the SEC and its union finalized a new CBA. Among other things, the agreement expanded telework to eight days per pay period for most employees.
- EXAMS reached its FY23 goal by examining 15% of investment advisers. EXAMS conducted more than 3,100 exams in FY23.
- EXAMS focused on important risk areas, including information security and operational resiliency, compliance with new rules (specifically the marketing rule, custody, and activities of advisers to private funds.
- As of September 2023, the SEC finalized 11 rules and proposed 12 more, most with planned final action dates between October 2023 and April 2024

SEC Releases 2023 Whistleblower Report

On November 14, the Office of the Whistleblower **released** its annual report for FY23. The Commission awarded a record amount of nearly \$600 million to 68 whistleblowers. More than \$1.9 billion has now been awarded to 397 whistleblowers since the program's launch in 2011. The report includes positive factors that may increase an award such as significance of the information, assistance provided by the whistleblower, law enforcement interest, and participation in internal compliance or reporting systems. Culpability or an unreasonable reporting delay are among the factors that can negatively affect an award amount.

SEC Charges Individual with Insider Trading

On October 30, an individual was **charged** with insider trading after he allegedly gained MNPI from an old colleague regarding his previous employer's agreement to acquire another company. After hearing the news, the individual purchased shares of the company that was to be acquired.

The stock's price rose 66% following the acquisition announcement, netting the individual nearly \$75,000.

SEC Charges Adviser with Rule 105 Violations

On October 19, the SEC **announced** charges against an adviser relating to multiple alleged violations of Rule 105 and its misapplication of the bona fide purchase exception. The adviser had allegedly bought secondary offering shares in multiple companies after selling them short within the five-day restricted period prior to the offering. The adviser then attempted to use the bona fide purchase exception but did not repurchase the shares "no later than the business day prior to the day of pricing."

SEC Charges Adviser for Investment Decisions While Using Wrap Fees

On October 10, the SEC **charged** an adviser with investing wrap-fee clients' assets into higher-cost mutual fund share classes that had no-transaction fees. The adviser was allegedly able to pocket the wrap fees while avoiding transaction fees at the expense of its clients, which bore higher costs due to the mutual fund investments.

Q1 Upcoming Key Reporting & Disclosure Deadlines

- 01/26/24** Deadline for Receipt of Final IARD Statement Payments
- 01/30/24** Q4 2023 Quarterly Transaction Reports Due
- 02/14/24** Annual Employee Holdings Reports Due
- 02/14/24** Form 13F Due for Q4 2024
- 02/29/24** Form PF Due for Large Hedge Fund Advisers for Q4 2023
- 03/30/24** Annual Form ADV Due

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Key Rulemaking Tracker

Rule	Effective Dates	Brief Description
Finalized Rules with Upcoming Compliance and Effective Dates		
Form PF	Dec. 11, 2023	Hedge funds need to report current reporting events within 72 hours of occurrence, and private equity fund advisers need to report private equity reporting events within 60 days of quarter-end
	June 11, 2024	Amended section 4 of Form PF includes questions on GP and LP clawbacks, PE fund investment strategies, fund-level borrowings, events of default, bridge financings to controlled portfolio companies, and geographic breakdown of investments
Schedule 13D	February 5, 2024 Compliance date: Dec. 18, 2024, for structured, machine-readable data requirements	Shortens the initial filing timeline from ten business days to five business days. Amendments are required to be filed within two business days
Form N-PX	July 1, 2024 Compliance date: Aug. 31, 2024 (covers period of July 1, 2023 to June 30, 2024)	Institutional investment managers subject to Section 13(f) reporting requirements need to file an annual Form N-PX showing how they voted proxies relating to certain executive compensation matters
Private Fund Rules	November 13, 2023	All Investment Advisers need to maintain written documentation of their annual compliance program reviews
	September 14, 2024	Private fund advisers with \$1.5 billion or more in private fund assets are restricted from engaging in certain activities, must obtain an independent fairness or valuation opinion prior to completing adviser-led secondaries, and are barred from providing or must disclose certain preferential treatment to investors
	March 14, 2025	Private fund advisers, regardless of AUM, must audit their private funds and deliver quarterly statements to investors containing specified information Private fund investors with less than \$1.5 billion in private fund assets are restricted from engaging in certain activities, must obtain an independent fairness or valuation opinion prior to completing adviser-led secondaries, and are barred from providing or must disclose certain preferential treatment to investors

Schedule 13G	September 30, 2024	Shortens the initial filing timeline for Qualified Institutional Investors and exempt investors from 45 days after the year end to 45 days from the end of the calendar quarter in which the investor beneficially owns more than 5% of the covered class. For other 13G filers, the timeline for initial filing is shortened from ten days to five business days. Finally, for all 13G filers the timeline to file an amendment for material changes is shortened from 45 days after calendar year end to 45 days from quarter end in which the material change occurred
Form SHO	January 2, 2025	Institutional Investment Managers are required to file Form SHO within 14 calendar days of month end if they exceed certain thresholds in short-sale positions

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Rule	Proposed Dates	Brief Description
Proposed Rules		
Conflicts of Interest for Use of AI	July 26, 2023	Firms that use a “Covered Technology” (use of analytical, technological, or computational functions, algorithms, models, correlation matrices, or similar methods or processes that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes) would be required to evaluate whether any conflicts of interest may exist from such technology, and if so, eliminate them. Firms would also need to establish written policies and procedures addressing the use and conflicts of such Covered Technology. Finally, there are new record keeping requirements advisers would need to follow
Regulation S-P	March 15, 2023	The proposed amendments would require covered institutions to provide notice to individuals within 30 days if their sensitive information was reasonably likely to have been accessed without authorization
Safeguarding Advisory Client Assets	February 15, 2023	The proposed amendments would expand the Custody Rule to cover any client assets that an adviser has custody of, including but not limited to digital assets, real estate, and commodities. Assets would now also include non-traditional line items, such as written options and negative cash. Under the proposal, qualified custodians would be required to have “possession or control” of advisory client assets, with limited exceptions for physical assets and certain privately offered securities
Outsourcing by Investment Advisers	October 26, 2022	Among other proposed requirements, advisers would need to be able to document their analyses of the scope of work service providers are performing, each service provider’s subcontracting arrangements, and potential risks to the adviser relating to work performed by the provider
Enhanced ESG Disclosure	May 25, 2022	Under the proposed rule, advisers would have to specify whether they or their private funds pursue ESG “Integration Funds,” “ESG-Focused Funds,” or “Impact Funds,” and disclose certain ESG-related information on Form ADV Part 1A and Part 2A, including methods of analysis, financial industry affiliations, and proxy voting policies, among other things

Cyber Security	February 9, 2022	Registered advisers would need to adopt policies reasonably designed to address cybersecurity risks, conduct annual reviews of the policies, and report significant cybersecurity incidents and risks to the SEC in new Form ADV-C and Form ADV Part 2A
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About HighCamp Compliance

HighCamp is a boutique compliance consulting and outsourcing firm helmed by former SEC examiners, CCOs and proven consulting professionals. The firm specializes in regulatory compliance and operational support for SEC-registered private equity, real estate, venture capital, hedge fund, and institutional alternative managers. HighCamp is 100-percent employee owned, with a gender-balanced leadership team. The company has locations in New York City (Metro), Los Angeles, Denver, Dallas, Milwaukee and Bozeman.

i <https://www.sec.gov/files/sec-2023-agency-financial-report.pdf>

ii <https://www.sec.gov/help/foiadocsinvafoiahtm.html>

iii <https://www.sec.gov/help/foiadocsbdfoiahtm.html>

iv Private Fund Statistics, October 16, 2023, <https://www.sec.gov/files/investment/private-funds-statistics-2023-q1-accessible.pdf>