



Perspective

Industry Focused News

Vista360 staff attended the ICI Mutual Funds Conference and the IA Compliance Best Practices Summit in late March and have summarized some key points made by SEC staff. This summary includes information on current initiatives and areas of SEC examination focus. We hope you find this information helpful in managing your compliance program.

Lori Richards, Director of OCIE:

New Document Request Form

The SEC is working on a new document request letter. The letter is expected to follow a risk-based approach by requesting information about controls and risks for each compliance program component defined by the SEC. The examiner will determine whether to conduct additional tests based on the answers provided. Gene Gohlke also noted if the program appears weak, the SEC will make additional requests via additional communications.

CCOutreach Regional Seminars

The SEC will host regional CCOutreach sessions for CCOs in various regions of the country. Seminars will be very focused on key findings from examinations, forensic tests used by examiners and portfolio management and trading matters. These regional seminars are free, and you may register at <http://www.sec.gov/info/iaicccoutreach.htm>.

Sweep Examinations

The quantity of SEC sweep examinations has significantly decreased in recent years. In addition, the SEC has changed its process for communicating the results of such exams. The SEC now provides a deficiency letter in connection with sweep examinations and will publish a summary of the results of such examinations within its Compliance Alerts. The next Compliance Alert is expected to be released within a few weeks and will focus upon general strengths and weaknesses discovered during recent sweep examinations.

Examination Focus

➤ Dedicated Examiners for Large Advisers

The SEC has a pilot program in place with examiners dedicated to 4 or 5 presumably large advisory firms. Approximately 3-4 examiners are assigned to the firms and effectively have daily contact with the firms. The program seems to be successful but represents obvious resource concerns for both the SEC and the adviser.

- Weak Controls or Supervision
The SEC will focus on firms that have had problems in prior exams or enforcement issues.
- Riskier Activities
The SEC is focusing on firms that employ higher risk practices or are involved in higher risk securities/activities.

Other Examinations

- Random Sample
The SEC will randomly sample lower risk firms to examine each year. (Vista360 attended a conference in late 2007 where SEC staff indicated if a firm had not been examined in 10 years then it would be examined in the 11th year.)
- New Firms
The SEC staff will meet with new firms on a limited scope basis by conducting half-day interviews with the CCO and management.

FOIA Protection

Ms. Richards strongly recommended requesting FOIA (Freedom of Information Act) protection in connection with any examination. It would be best to work with counsel to ensure the request complies with applicable legal requirements.

Top 10 Compliance Issues

Ms. Richards indicated CCOs should ensure these 10 items are adequately addressed in compliance programs and spend more/less time on these items depending how strong the program is in this area.

1. Valuation Controls
2. Insider Trading
3. Senior Investors
4. Compliance and Supervision
5. Investment Restrictions
6. Best Execution and Broker Selection
7. Trade Allocation
8. Performance Advertising & Fund Distribution Activities
9. Safety of Assets
10. Information Processes and Protection

Gene Gohlke, Associate Director of OCIE:

Deficiency Letter Template

OCIE is working on a deficiency letter template to ensure the format and tone of the letters are consistent among all SEC regional offices. Letters will no longer include the term “violation”; rather, they will refer to an issue as a “weakness” or “deficiency”. The order of the letter will list issues from most to least severe.

Service Provider Oversight

SEC expects firms to oversee service providers to obtain reasonable assurance the service providers are employing effective compliance programs and are performing services as promised or described. This may include a visit, review of SAS70, and/or certifications depending upon the circumstances.

David Blass, Assistant Director of Division of Investment Management:

Form ADV Part II Proposed Revisions

1. Section A
 - a. Written brochure, 19 items, plain-English;
 - b. Describe business;
 - c. Describe conflicts and how addressing;
 - d. Annual delivery required (no longer Ok to just offer);
 - e. Use your own software to create, convert to pdf format;
 - f. Flexibility in how brochure looks (use charts, graphs, firm colors, etc.); and
 - g. Attach to IARD system.
2. Section B
 - a. Resumes of employees; and
 - b. Include disciplinary information and special conflicts.
3. Timing
 - a. Currently in comment period;
 - b. Will have 6 months to transition to new form;
 - c. Soonest adoption/effectiveness – rule is adopted by 9/30/08 = 3/31/09 effective date;
 - d. Latest adoption/effectiveness – 3/31/10 annual amendment.

Buddy Donahue, Director of Division of Investment Management:

1. The SEC plans to propose 12b-1 revisions this summer.
2. Prospectus simplification is still under consideration.
3. Fair Valuation: Buddy recommends a review of actual sales vs. fair values over time for long-term trends.

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