



Perspective

Industry Focused News

Vista360 attended the National Society of Compliance Professionals, Inc. (“NSCP”) Midwest Regional Meeting in Chicago on April 28th. In this issue of Perspective we are sharing information from the NSCP meeting that you may find of interest. Please feel free to call us if you have any questions or would like to further discuss any of the topics included in this issue.

SEC Staff Comments

We have summarized below comments made by Jane Jarcho, SEC Associate Regional Director for Examinations, Chicago Regional Office.

Gifts and Entertainment Update

Ms. Jarcho indicated new guidance for gifts and entertainment is due in the next 12-18 months. The new guidance will include a more narrow scope of business entertainment.

Books and Records Update

The new books and records proposal is “a ways off”. The focus is that the proposal be done right rather than quickly. We had recently heard at a March 2008 conference the proposal would be done by end of 2008.

Exam Staff Considerations When Making Referrals to Enforcement

- Fraud
- Pattern of trading favors firm or staff
- Harm to investors
- Was SEC informed and did firm take action?
- Activity SEC wants to emphasize (emerging area of regulatory focus)
- If a profit was made by the firm
- If act was intentional
- If act was recidivist in nature
- Supervisory procedures inadequate

Risk Management

An inadequate risk assessment has been cited by the SEC as one of the most common compliance program deficiencies. The 3 primary controls investment advisers can use to minimize compliance risks are:

- 1) Identify the committees who will be responsible for risk assessment (e.g., Executive, Trade Practices, Code of Ethics, Proxy Voting and Valuation);
- 2) Develop appropriate checks and balances, to include segregated duties and independent control groups; and
- 3) Create a culture of risk management, one that stresses the importance of compliance and how compliance is every employee's responsibility.

Pilot Program for Exams of Dually-Registered Broker-Dealers and Investment Advisers

The SEC's Office of Compliance Inspections and Examinations ("OCIE") examiners are in the process of developing a pilot program that will include a single examination of a number of dually-registered broker-dealers and investment advisers. OCIE hopes the pilot program will:

- Better position OCIE to identify compliance issues that exist across the boundaries between broker-dealer and investment adviser functions;
- Allow examiners to see the "whole picture" of a firm's various activities; and
- Increase efficiencies to firms by having one exam by the same exam team versus multiple exams by separate exam teams.

One possible issue with the pilot program raised at the NSCP meeting was if the exam team has more broker-dealer experience, then the exam could be more broker-dealer focused versus investment adviser and broker-dealer focused.

New Firm Examinations

The SEC has previously stated they will conduct limited scope half-day interviews with the CCO and management of new firms. One audience participant at the NSCP meeting, who had a newly registered mutual fund, noted that instead of an in-person exam, the SEC conducted a limited scope phone interview and asked the firm to provide copies of selected compliance documents, including policies and procedures.

Valuation Best Practices

The SEC is expected to issue guidance for valuation; however, the timeframe is unknown. We will provide additional information when it becomes available. These are some key areas to consider in your valuation processes:

- Due diligence in pricing - will you be able to defend your valuations?
- Consider the experience of staff involved in the pricing/valuation process.
- Follow your policies and procedures.
- Ensure pricing reflects what prices could be obtained in a current sale.
- Make sure prices are calibrated with trade data.
- Make sure there are safeguards to reasonably ensure quotes reflect prices at which the security could actually be sold.

Insider Trading

SEC staff is going after many insider trading cases, more than ever before and looking at the multiple layers within the chain of information sharing. OCIE is focusing on the following:

- Whether firms have identified the source and type of non-public information to which employees have access;
- Whether firms have adequate procedures in place to maintain the confidentiality of that information; and
- Whether and how firms are implementing, testing and documenting those procedures to provide reasonable assurance they are working correctly.

Hedge Funds and Inside Trading Information

The SEC is increasingly bringing enforcement actions against hedge fund and fund managers for trading on the basis of non-public information. There is an inherent ability for non-public information to flow more easily because of the close knit relationships between hedge funds and providers (lawyers, traders, consultants, etc.). Hedge funds are critically dependent on these relationships given their inability to advertise. Some fund managers impose “walls” between individual managers and traders of their various funds to prevent information leakage across funds. Some fund managers develop trading protocols to allocate opportunities among their various funds. Hedge funds should identify potential risks, establish, and enforce policies and procedures to prevent insider trading on the basis of any material non-public information that may be learned from providers.

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