

The economic recession and scandals of 2008 will likely bring additional regulatory reform to the financial industry during 2009. This issue of Vista360's Perspectives highlights some of the new initiatives that are being implemented by the SEC in their examination and enforcement processes.

Custody and Brokerage Statements

- In testimony given on January 27, 2009 before the U.S. Senate Committee on Banking, Housing and Urban Affairs, Lori Richards, Director of the SEC's Office of Compliance Inspections and Examination ("OCIE"), said that the SEC is working to identify and make improvements to regulation and oversight in an effort to decrease the opportunities for fraud. One of the SEC staff's current areas of focus is custody. The SEC examination staff is targeting firms which have custody of client assets.
- The Bernard Madoff Ponzi scheme has already left its imprint on select SEC examination request letters. We recently worked with an adviser undergoing a routine SEC examination. Within their document request list, the SEC staff requested that the adviser produce documentation provided by the firm's various custodians as evidence that custodial statements are being mailed directly to clients. This is a stronger approach than the historic standard of advisers simply proving they received duplicate copies of the custodial statements. In light of this increased focus, we recommend advisers send affirmative correspondence to custodians instructing them to mail statements directly to the client with a duplicate copy to be sent to the adviser.

Recent SEC Initiatives

- In her February 6, 2009 address to the Practicing Law Institute's "SEC Speaks in 2009" Program, the new SEC Chairman, Mary Schapiro noted that as the investor's advocate the SEC needs to work swiftly to bring transparency and accountability to the marketplace; bring enforcement actions against those that have cheated investors; and work toward the development of a regulatory system that meets today's global market initiatives.

- In an effort to speed up the SEC examination document request process, we understand Lori Richards is working with the SEC Division of Enforcement to develop a formal policy that could expose more firms to enforcement actions if they fail to deliver SEC examination request documents in a timely fashion. OCIE staff has noted such delays in receiving the requested documentation subsequently delays their examination reporting process (generally 180 days) and unnecessarily ties up examiners' time.
- In one of Ms. Schapiro's first official actions as SEC Chairman, she revoked the penalty pre-approval pilot program that has been criticized as tying the hands of the SEC staff. The program required staff to seek prior Commission approval before negotiating penalties or enforcement actions with corporations. She is also taking actions to speed up the enforcement process by calling for simplifications to the procedures by which SEC staff issue subpoenas. Ms. Schapiro is also working to improve the SEC's communication process regarding complaints received from tipsters.

Vista360 Hot Industry Topics ("HIT") List

- As new regulations are proposed and best practices evolve, Vista360 will provide information to you through our Perspective mailings and our quarterly HIT list. Our next HIT list will be mailed during March. The HIT list provides a brief description of topics and initiatives along with internet links to the resource, which may include articles or speeches. The HIT list is designed to help keep you informed of ongoing SEC proposed and final rules, along with SEC initiatives and industry best practices.

As always, please contact us with questions, or if we can be of further assistance.

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