

DFW Compliance Roundtable

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Agenda

- Financial Reform: The Dodd-Frank Wall Street Reform and Consumer Protection Act
- 2010 SEC Exam Focus
- Social Networking
- Investment Adviser Rule Changes
 - Custody
 - Pay-to-Play
 - Form ADV
- Fiduciary Standards and Broker-Dealer Issues

Financial Reform: Hedge Funds and Advisers

- Elimination of Private Adviser Exemption
- Raised minimum for SEC registration to \$100 million AUM
- New Exemptions from Registration
 - foreign private advisers
 - venture capital exemption
 - family office exemption
 - private fund exemption (to \$150 million AUM)

More on Dodd-Frank Reform

- Venture capital and private fund advisers will be subject to books and records requirements
- Definitions required for venture capital and family office advisers
- Enhanced Recordkeeping and Reporting Requirements
- Modifications to Qualified Client Standard
- Expansive New Rulemaking Authority for SEC

Accredited Investors

- Modifications to Accredited Investor Definition
 - Net worth exclusive of residence of \$1 million
 - Effective immediately
 - SEC review and modification after 4 years

SEC Exam Approach

- Targeted Letters and Visits to Identify Potential Exam Target Based on Risk
- Examination Style
 - May be based on TCR System (Tips, Complaints and Referrals) but not shared with firm
 - Notice may not be given
 - Advisers are not told reason for exam
- “Number of examiners needs to grow” – Commissioner Aguilar
 - 61 new examiners in 2010, 100 in 2011
- Coordination among SEC units

Exam “Hot Topics”

- Verification of Assets – With Custodian and Client
- Risk Management Systems and Liquidity
- Side letters and preferences
- Valuation
- Regulation M

- Financial reform: how will it impact exams?

Social Networking

- More firms seeking social networking policies
- Not driven by regulatory requirement for investment advisers
 - The SEC has not issued any real guidance on the use of social media other than to remind us that the anti-fraud provisions in the IA Act apply.
- FINRA guidance highlights 2 issues:
 - i. Investor protection
 - ii. Assist firms in developing effective oversight and supervision
- Driven by best practices, practicality

Social Networking

- Obvious = Facebook, Twitter and LinkedIn
- Also blogs, hyperlinks to and from your website
- What about third party sites referring to your firm?

- Developing Policies and Procedures
 - What are the risks?
 - When drafting P&P, consider your marketing, advertising, speech/interview practices
 - Training
 - Supervision

Custody

- The basics: deduction of fees; non-affiliated qualified custodian; notices to clients; and accounts statements
- Independent surprise verification when adviser has custody other than via deduction of fees and when the related person with custody is “operationally independent” of adviser
- Internal control report when adviser or related person is qualified custodian
- Private fund audits
- Recordkeeping
- Custody FAQ
- Cost

Pay-to-Play

- New Emphasis
- Old Concerns relating to kickbacks
- Broker-Dealers currently in municipal finance
- New Rule applicable to Investment Advisers for campaign contributions when seeking pension business

Form ADV Changes

- SEC has recently adopted long-awaited amendments to Form ADV
- New Part II of Form ADV requires:
 - Narrative in “plain English”
 - Annual summary of material changes
 - Annual filing with the SEC starting in 2011
 - New filings with the SEC starting 1/1/2011
- Extensive new disclosure requirements
- Registered advisers are working now to digest the new Form ADV

Fiduciary Standards for BDs

- SEC study on duty of care
- Report by January 2011
- Rulemaking
- Special protections regarding proprietary products and conflicts

More Broker-Dealer Issues

- SIPC protections increased to \$250,000 for cash balances
- Exchange rules on proxy voting
- “Municipal advisers”
- Retention of credit risk in asset-backed securities
- Swap transactions

Wrap-Up

What have your experiences been with respect to any of these issues?

Questions ?

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