

SEC and DOL Agree to Cooperate in Examinations

July 30, 2008

What This Means

The U.S. Department of Labor's (DOL) Employee Benefits Security Administration and the U.S. Securities and Exchange Commission (SEC) have entered into a Memorandum of Understanding (MOU) on July 28, setting forth a framework for consultation and exchange of information. The MOU was heralded as a formal recognition of the agencies' effective and informal working relationships and their expectation of continued cooperation.

Discussion and Analysis

The agencies have pledged to conduct regular meetings to discuss regulatory requirements that impact each agency's responsibilities, examination findings and trends, enforcement cases, and any other matters that the SEC and DOL staffs believe would be of interest to the other regulator for fulfilling its respective regulatory responsibilities. In addition, the agencies have agreed to cross-train appropriate staff in order to enhance each agency's understanding of the other's mission and investigative jurisdiction.

Moreover, the agencies have agreed to a bilateral exchange of examination-related information concerning investment advisers or other firms of mutual interest. The MOU clarifies that, as appropriate, either agency may transfer any such shared files to criminal law enforcement authorities, and the SEC may transfer the files to any self-regulatory organizations subject to the SEC's oversight.

Most importantly, the SEC has granted the DOL "standing access" to nonpublic examination information that SEC staff determines is relevant to the DOL's mission (subject to safeguards to protect the confidentiality of the shared files). Interestingly, the DOL did not agree to grant the equivalent "standing access" to the DOL's nonpublic examination information. It is unclear whether this lack of reciprocity reflects the new reality that the SEC staff will be taking a leading role in the examination of SEC-regulated firms for compliance with the Employee Retirement Security Act of 1974, as amended (ERISA). The MOU may be a signal that the SEC staff will soon become an integral part of the ERISA compliance examination process. Accordingly, investments advisers and other SEC-regulated service providers to ERISA-covered plans should consider this information-sharing arrangement when dealing with the SEC staff.

How Morgan Lewis Can Help

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