

Compliance & Enforcement in 2012: What are the Implications for the Advisory Solutions Industry?

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Compliance & Enforcement

- Policy Issues
- Practice Issues
- Examinations & Enforcement Issues

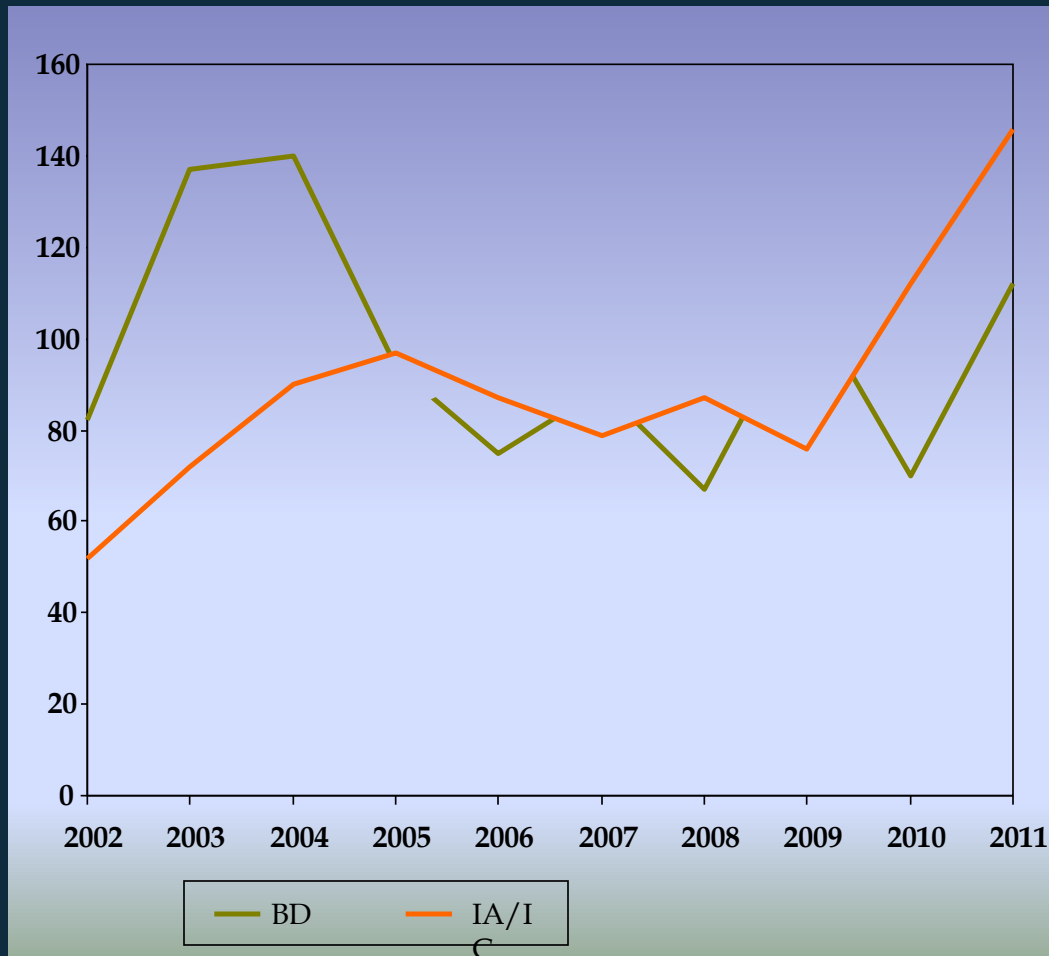
Policy Issues

- Broader SEC Policy Agenda
 - Broad Demands of the Dodd-Frank Act
 - New JOBS Act Demands
- Managed Accounts
 - Rule 3a-4 Reconsideration?
 - The Fiduciary Duty Debate
 - Spillover Effects of a Standard of Care
 - Forthcoming DOL ERISA Investment Advice / Fiduciary Rule Proposal

Practice Issues

- Suitability & Due Diligence Issues
 - Effect of FINRA's Approach to Complex Products?
- Performance and Other Advertising Issues
- Alternative Investments
 - Impact of JOBS Act lifting bars to general solicitation
- Special Issues with FA as PM Programs
- Cross, Agency & Principal Trade Issues
- Fee Issues
 - Conflicts/Differentials
 - ERISA Section 408(b)(2) Issues

Examinations & Enforcement Issues



- **146** cases against advisers and mutual funds
- **30%** increase over FY 2010
- **92%** increase from FY 2009
- 112 cases against brokers (70 in FY 2010)
- Cases against advisers, mutual funds and brokers represent 35% of SEC's enforcement docket

SEC Examination & Enforcement Developments

- Changes in Exam & Enforcement Programs
 - Establishment of Enforcement's Asset Management Unit
 - Enforcement-OCIE Coordination
 - Dodd Frank Act Whistleblower Provisions
 - Hiring Specialized Personnel in OCIE and Enforcement
 - Technology Resources & Analytical Tools
- Areas of Enforcement Focus
 - Compliance & supervision
 - Performance claims, including aberrational performance
 - Selective disclosure
 - Valuation
 - Turn-key mutual fund solutions and inexperienced advisers
 - Mutual fund fees
 - Error correction
 - Insider trading

Areas of SEC Examinations Focus

- Complex Entities
 - New shops
 - PE shops
 - Quant shops
- New or Risky Products
 - Retailization of complex investments
- Portfolio management activities that increase risk of investor loss
- Lack of due diligence on investment vehicles or managers and undisclosed conflicts
- Manipulative activity, such as front-running and insider trading
- Valuation practices and any conflicts
- Performance and advertising
- Compliance, supervision, and risk management
 - Cost cutting
 - Outside business
 - “Dual and affiliated registrants transitioning broker-dealer customers into advisory clients”
 - “Ineffective compliance and risk management [for] complex investments and/or investment strategies.”
- Custody arrangements that increase the potential for misappropriation

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