



COMPLIANCE & LEGAL SOCIETY

St. Louis Regional Seminar



INVESTMENT ADVISERS

Regulatory, Legal and Supervisory Matters

Overture

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INVESTMENT ADVISER OVERSIGHT DEVELOPMENTS

Jen Klass

Partner

Morgan, Lewis & Bockius

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Adviser Oversight Developments

Scope of FINRA Jurisdiction Over Investment Advice

- Section 914 of Dodd-Frank Act
 - Impose user fees on SEC-registered advisers
 - Establish an SRO for investment advisers
 - Extend FINRA's reach to include advisers dually registered as brokers
- No jurisdiction to enforce the Advisers Act
- Continuing convergence of investment advisory and brokerage services

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Adviser Oversight Developments

Application of FINRA Rules to Investment Advice

- FINRA Rule 2010 – Just and Equitable Principles
- FINRA Rule 2111 – Suitability
 - Recommendation of an “investment strategy involving a security”
- FINRA Rule 2210 – Communications with the Public
 - Interpretive Letter to FSC (July 30, 1998)
- FINRA Rule 3040 – Private Securities Transactions
 - Proposed Rule 3110(b)(3)
- FINRA Rule 8210 - Information and Testimony Requests
- Trade Reporting Rules

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SUPERVISION AND SURVEILLANCE

Jennifer Tuohy

Senior Counsel

Thrivent Financial for Lutherans

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Supervision and Surveillance

Wrap Fee and Managed Account Program Surveillance

- “Shadowing” third-party managers
- Suitability of recommended advisory service compared to other products/services, including brokerage services.
- Account holdings and activity (e.g., cash, level of trading)

Custody

- SEC identifies common deficiencies in March 4, 2013 National Exam Program Risk Alert
 - Failure by advisers to recognize they have custody under Rule 206(4)-2.

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Supervision and Surveillance

Social Media

- Compliance Program Policies and Procedures
 - Detailed procedures including usage guidelines
 - Approval of content
 - Training
 - Personal/Professional sites
- Third-Party Content
 - Policies to avoid Advisers Act violations related to testimonials under Rule 206(4)-1.

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SEC ENFORCEMENT OF COMPLIANCE PROGRAM DEFICIENCIES

Dan Peterson

Partner

Husch Blackwell

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SEC Enforcement of Compliance Program Deficiencies

Changing Nature of Enforcement

- Increasing Frequency of Compliance Program Enforcement
- Increasing Focus on Individuals and CCOs
- Increasing Use of Non-Financial Penalties

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SEC Enforcement of Compliance Program Deficiencies

Specific Deficiencies

- Failure to Adopt Compliance Programs
- Failure to Tailor “Off the Shelf” Procedures Manuals
- Failure to Update Procedures
- Failure to Train Staff
- CCO’s With Insufficient Authority or Resources
- Failure to Correct Examination Deficiencies

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SEC Enforcement of Compliance Program Deficiencies

Enforcement Cases Worth Noting

- **OMNI Investment Advisors, Inc.** – Failure to adopt procedures or implement compliance program; COE failures; books and records
- **Feltl & Company** – Failure to adopt comprehensive procedures; principal transactions in advisory accounts; charging undisclosed fees (commissions plus wrap); COE failures; inadequate compliance resources

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SEC Enforcement of Compliance Program Deficiencies

Enforcement Cases Worth Noting (ctd.)

- **Asset Advisors** – Failure to adopt procedures or fully implement compliance program; taking remedial steps only when notified of impending examination; COE failures
- **Foxhall Capital Management** – Failure to adopt procedures; books and records; failure to follow stated procedures; failure to timely remediate examination findings; failure to conduct annual review; failure to integrate trade management system and custodian's client account systems (resulting in NSF and improper reallocations)

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Outro