

# RESOURCES TO HELP ADVISERS STAY “AHEAD OF THE CURVE”

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There are many resources available to investment advisers to help them stay “ahead of the curve” by keeping abreast of industry developments and being aware of what may be coming down the road. This paper lists a number of key resources that can be tapped for those purposes.

Often, resources aimed specifically at one type of financial firm can be useful to firms operating in the other arenas as well. Therefore, readers are urged to consider resources that pertain to any topic area of interest to them, even if they appear to be designed for a different type of financial organization.

Of course this list is not exhaustive and information from third party sources should always be independently verified. While every attempt has been made to provide up-to-date links, URLs change often and therefore links that become stale should be tracked through tailored online searches.

### **General Industry Developments, Newsletters and Legal Updates:**

Dechert LLP Financial Services updates:

[http://www.dechert.com/practiceareas/practiceareas.jsp?pg=legal\\_update&pa\\_id=19](http://www.dechert.com/practiceareas/practiceareas.jsp?pg=legal_update&pa_id=19)

(free access or sign up for email delivery; do not need to be a client)

Goodwin Procter Financial Services Alerts:

<http://www.goodwinprocter.com/Publications/FinancialServicesAlerts.aspx>

(free access or subscribe to email delivery; do not need to be a client)

K&L Gates Newsletters (in broker-dealer, investment management, securities litigation, securities law):

<http://reaction.klng.com/reaction/RSGenPage.asp?RSID=869E00E7C7EB138086552225D5020BB8B5532A07B88B6D55C9A>

(free access or register for email delivery; do not need to be a client)

Morgan Lewis Publications (covering numerous aspects of securities industry):

<http://www.morganlewis.com/index.cfm/nodeID/4f1d3905-3550-4cce-bdd7-7119fa092979/fuseaction/publication.searchForm>

(free access or subscribe to email delivery; do not need to be a client)

Paul Hastings (covering numerous practices areas, including Investment Management):

[http://www.paulhastings.com/newsletter\\_signup.aspx](http://www.paulhastings.com/newsletter_signup.aspx)

(free access or sign up for email delivery; do not need to be a client)

### **Compliance Programs:**

CCOutreach (BD) National Seminar Selected Resources list (March 10, 2009):

<http://www.sec.gov/info/cco/ccobdresources2009.htm>

CCOutreach (IA) Program – Resources and Handouts:

<http://www.sec.gov/info/iaiccco/iaiccco-resources.htm>

Compliance Programs of Investment Companies and Investment Advisers (the compliance rule Adopting Release), SEC Release Nos. IC-26299, IA-2204 (December 17, 2003): <http://www.sec.gov/rules/final/ia-2204.htm>

Adviser and Fund Compliance Programs (paper June 2007):  
[http://www.40actlawyer.com/Articles/Link3\\_Schnase-Adviser-Fund\\_Compliance\\_Programs-Paper\(6-07\).pdf](http://www.40actlawyer.com/Articles/Link3_Schnase-Adviser-Fund_Compliance_Programs-Paper(6-07).pdf)

Investment Adviser Compliance Program "Annual" Reviews (paper August 13, 2007):  
[http://www.40actlawyer.com/Articles/Link1\\_%20Schnase\\_Compliance\\_Reviews\\_Paper\(8-13-07\).pdf](http://www.40actlawyer.com/Articles/Link1_%20Schnase_Compliance_Reviews_Paper(8-13-07).pdf)

Assessing the Adequacy and Effectiveness of a Fund's Compliance Policies and Procedures, Investment Company Institute whitepaper (December 2005): [http://www.ici.org/pdf/rpt\\_05\\_comp.pdf](http://www.ici.org/pdf/rpt_05_comp.pdf)

Remarks of Lori Richards, Director of the SEC's Office of Compliance Inspections and Examinations, Before the National Society of Compliance Professionals National Membership Meeting (October 25, 2005): <http://www.sec.gov/news/speech/spch102605lr.htm>

Risk Assessment Guide, Questionnaire and Identification Chart, prepared by the Investment Adviser Association:  
<http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PubDoc-RiskAssesment>

ComplianceAlerts from the SEC Staff (BDs, IAs, Funds):  
June 2007 <http://www.sec.gov/about/offices/ocie/complialert.htm>  
July 2008 <http://www.sec.gov/about/offices/ocie/complialert0708.htm>

SEC CCO Outreach (IA) program and materials: <http://www.sec.gov/info/iaicccoutreach.htm>

Investment Management Compliance Testing Survey, Summary Reports (2007, 2008 and 2009), prepared by ACA Compliance Group, Investment Adviser Association, IM Insight and Old Mutual (US) Holdings Inc.:  
[http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN\\_RB](http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN_RB)

Investment Adviser Compliance Training (NSCP Currents article May/June 2007):  
[http://www.40actlawyer.com/Articles/Link4\\_NSCP\\_Currents\\_Training\\_Article\(M-J07\).pdf](http://www.40actlawyer.com/Articles/Link4_NSCP_Currents_Training_Article(M-J07).pdf)

Running the Traps: Federal Versus State Registration of Investment Advisers and Investment Adviser Representatives (paper January 2005):  
[http://www.40actlawyer.com/Articles/Link10\\_Fed-StateRegAdvisersPaperFINAL\(material\\_get\)\(8-15-05\).pdf](http://www.40actlawyer.com/Articles/Link10_Fed-StateRegAdvisersPaperFINAL(material_get)(8-15-05).pdf)

Compliance Mistakes for Investment Advisers and Funds to Avoid (paper January 2005):  
[http://www.40actlawyer.com/Articles/Link11\\_%20ComplianceMistakesPaperFINAL\(material\\_get\)\(8-15-05\).pdf](http://www.40actlawyer.com/Articles/Link11_%20ComplianceMistakesPaperFINAL(material_get)(8-15-05).pdf)

## **SEC Examinations:**

SEC Examinations and the Risk Assessment Process (2007 CCO Outreach Regional Seminars):  
<http://www.sec.gov/info/cco/examprocess2007.pdf>

OCIE Examinations Brochure -- Examination Information for Broker-Dealers, Transfer Agents, Clearing Agencies, Investment Advisers, and Investment Companies (11-07):  
[http://www.sec.gov/about/offices/ocie/ocie\\_exambrochure.pdf](http://www.sec.gov/about/offices/ocie/ocie_exambrochure.pdf)

Speech by SEC Staff: Strengthening Examination Oversight: Changes to Regulatory Examinations, by Lori A. Richards, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, at the SIFMA Compliance and Legal Division St. Louis Regional Seminar, The New World of Compliance and Legal (June 17, 2009):  
<http://www.sec.gov/news/speech/2009/spch061709lar.htm>

2009 CCO Outreach Regional Seminars (advisers) -- The Evolving Compliance Environment: Examination Focus Areas (April 2009): <http://www.sec.gov/info/iaiccco/iaiccco-focusareas.pdf>

2008 CCO Outreach Regional Seminars -- Top Deficiencies Identified in Examinations:  
<http://www.sec.gov/info/cco/topdeficiencies2008.pdf>

OCIE -- Investment Adviser Examinations: Core Initial Request for Information (the "standardized" SEC document request list): <http://www.sec.gov/info/cco/requestlistcore1108.htm>

CCO Outreach 2007 Regional Seminars -- SEC Information Tested and Tests Performed in Key Focus Areas: <http://www.sec.gov/info/cco/information2007.pdf>

Securities and Exchange Commission Confidential Treatment Procedure Under Rule 83 (17 CFR 200.83) at <http://www.sec.gov/foia/conftrat.htm>, concerning seeking confidential treatment under FOIA.

"Independence of the Legal Profession: Attorney-Client Privilege, Work Product, and Employee Legal Protections," American Bar Association Governmental Affairs Office at <http://www.abanet.org/poladv/priorities/privilegewaiver/>.

SEC Enforcement Manual (October 6, 2008):  
<http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>

## **Soft Dollars:**

OCIE Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (September 22, 1998): <http://www.sec.gov/news/studies/softdollar.htm>

Soft Dollars: Legal Issues and Best Practices for Investment Advisers (paper March 9, 2007):  
[http://www.40actlawyer.com/Articles/Link5\\_Schnase-Soft\\_Dollars\\_Paper\(3-07\).pdf](http://www.40actlawyer.com/Articles/Link5_Schnase-Soft_Dollars_Paper(3-07).pdf)

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, SEC Release No. 34-54165 (July 18, 2006):  
<http://www.sec.gov/rules/interp/2006/34-54165.pdf>

Commission Guidance Regarding the Duties and Responsibilities of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices, SEC Release Nos. 34-58264; IC-28345; IA-2763 (July 30, 2008): <http://www.sec.gov/rules/proposed/2008/34-58264.pdf>  
CFA Institute Soft Dollar Standards: <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2004.n1.4005>

### **Best Execution:**

Best Execution: Questions and Answers (IAA Newsletter “Compliance Corner” article February 2007):  
[http://www.40actlawyer.com/Articles/Link6\\_IAANewsletter\\_wBestEx\\_Article\\_\(2-07\)news\\_0207-%20final.pdf](http://www.40actlawyer.com/Articles/Link6_IAANewsletter_wBestEx_Article_(2-07)news_0207-%20final.pdf)

Best Execution, Considerations For Investment Advisers and Funds (paper June 6, 2005):  
[http://www.40actlawyer.com/Articles/Link9\\_BestExecution-PaperFinal\(Schnase\)\(6-6-05\).pdf](http://www.40actlawyer.com/Articles/Link9_BestExecution-PaperFinal(Schnase)(6-6-05).pdf)

SEC “Answers” on Best Execution: <http://www.sec.gov/answers/bestex.htm>

FINRA Notice to Members 01-22 Best Execution (April 2001):  
<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003889.pdf>

CFA Institute Trade Management Guidelines: <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2004.n3.4007>

### **Supervision:**

Adviser-Subadviser Relationships: Selected Issues (paper September 2006):  
[http://www.40actlawyer.com/Articles/Link7\\_Schnase-Adviser-Sub\\_Rels\\_Selected\\_Issues\(9-06\).pdf](http://www.40actlawyer.com/Articles/Link7_Schnase-Adviser-Sub_Rels_Selected_Issues(9-06).pdf)

A Fresh Look at an Adviser’s Duty to Supervise Sub-Advisers (paper November 1, 2005):  
[http://www.40actlawyer.com/Articles/Link8\\_Schnase-AdvisersDutytoSuperviseSubs\\_Paper\\_\(11-05\).pdf](http://www.40actlawyer.com/Articles/Link8_Schnase-AdvisersDutytoSuperviseSubs_Paper_(11-05).pdf)

FINRA Regulatory Notice 08-24 (May 2008) on proposed rules governing Supervision and Supervisory Controls: <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p038506.pdf>

### **CCO Personal Liability:**

Investment Adviser Compliance Program “Annual” Reviews (paper August 13, 2007):  
[http://www.40actlawyer.com/Articles/Link1\\_%20Schnase\\_Compliance\\_Reviews\\_Paper\(8-13-07\).pdf](http://www.40actlawyer.com/Articles/Link1_%20Schnase_Compliance_Reviews_Paper(8-13-07).pdf)  
(See Question 11 for a discussion of a CCO’s exposure to personal liability.)

In the Matter of CapitalWorks Investment Partners, LLC and Mark J. Correnti, Investment Advisers Act of 1940 Release No. 2520 (June 6, 2006) (settled administrative proceeding) (SEC found that adviser willfully violated the compliance rule by failing to adopt any procedures that could have prevented false statements from appearing in the adviser’s RFP responses, which statements served as the basis for

separately alleged fraud violations; SEC also pursued personally the firm's head of compliance -- who was also the adviser's head of marketing -- asserting that he had willfully aided and abetted the firm's violations) at <http://www.sec.gov/litigation/admin/2006/ia-2520.pdf>

SEC v. The Nutmeg Group LLC, Randall Goulding and David Goulding, et al., USDC ED IL (Case No. 09CV1775) (filed March 23, 2009) (SEC charged an adviser along with several officers personally, including the CCO, for various violations stemming from a scheme they allegedly conducted, in which they misappropriated client assets, made misrepresentations to clients, failed to comply with custodial obligations and violated books and records requirements) at <http://www.sec.gov/litigation/complaints/2009/comp20972.pdf>

In the Matter of Consulting Services Group, LLC, and Joe D. Meals, Release Nos. IA-2669 and 34-56612 (October 4, 2007) (settled administrative proceeding) (CCO found personally liable for aiding and abetting adviser's failure under Rule 206(4)-7 to establish and implement a compliance program reasonably designed to prevent violations, even in the absence of actual violations resulting from that failure) at <http://www.sec.gov/litigation/admin/2007/34-56612.pdf>

### **Custody:**

2009 CCO Outreach (IA) Regional Seminars -- Safeguarding Clients' Assets Under Management Through Asset Verification and Reconciliation (April 2009): <http://www.sec.gov/info/iaiccco/iaiccco-custody.pdf>

SEC FAQs on Adviser Custody Rule: [http://www.sec.gov/divisions/investment/custody\\_faq.htm](http://www.sec.gov/divisions/investment/custody_faq.htm)

Proposed Adviser Custody Rule amendments: <http://www.sec.gov/rules/proposed/2009/ia-2876.pdf>

### **Communicating with Clients Electronically:**

Use Of Electronic Media For Delivery Purposes, SEC Rel. No. 33-7233 (10-6-95) at <http://sec.gov/rules/proposed/33-7233.txt>

Use Of Electronic Media By Broker-Dealers, Transfer Agents, And Investment Advisers For Delivery Of Information; Additional Examples Under The Securities Act Of 1933, Securities Exchange Act Of 1934, And Investment Company Act Of 1940, SEC Rel. No. 33-7288 (5-9-96) at <http://www.sec.gov/rules/concept/33-7288.txt>

Use of Electronic Media, SEC Rel. Nos. 33-7856, 34-42728, IC-24426 (4-28-00) at <http://www.sec.gov/rules/interp/34-42728.htm>

### **Business Continuity Planning:**

SEC Spotlight on: Business Continuity Planning, at <http://www.sec.gov/spotlight/continuity.htm>, with links to numerous other SEC materials concerning business continuity planning at the Commission, with the exchanges and with various financial institutions in the aftermath of 911 and Hurricane Katrina.

Business Continuity Planning for Investment Advisers (paper August 25, 2008):  
[http://www.40actlawyer.com/Articles/Link15\\_Schnase\\_Business\\_Continuity\\_for\\_Advisers\\_8-25-08.pdf](http://www.40actlawyer.com/Articles/Link15_Schnase_Business_Continuity_for_Advisers_8-25-08.pdf)

IAA Guide to Establishing and Implementing a Compliance Program for Investment Advisers, section on Contingency Planning and Procedures, available in the password protected members-only section of the IAA website at <http://www.investmentadviser.org/>. This discusses key items such as:

- Forming a business continuity committee.
- Distributing and training personnel on the BCP.
- Communications with employees during a crisis.
- Workplace recovery.
- Back-up communications and records storage.
- Utilities, including phone, Internet, etc.
- Communications with clients and other key contacts (landlord, etc.).
- Pricing/valuation of portfolios, particularly if disaster is widespread and affects markets.
- Loss of key personnel.
- Third-party service provider relationships (brokers, custodians, sub-advisers, pricing services, transfer agents, administrators, etc.) and assessing their readiness.

Managed Funds Association, Sound Practices for Hedge Fund Managers, at <http://www.managedfunds.org/downloads/Sound%20Practices%202007.pdf> (see Section 7 on Business Continuity, Disaster Recovery and Crisis Management).

FINRA, Business Continuity Planning resources webpage at <http://www.finra.org/RulesRegulation/IssueCenter/BusinessContinuityPlanning/index.htm>, including a BCP Template for a small introducing firm at <http://www.finra.org/RulesRegulation/IssueCenter/BusinessContinuityPlanning/p006464> and a Case Study, aimed at helping a small firm ask questions and frame its business continuity planning at [http://www.finra.org/web/groups/rules\\_regs/documents/rules\\_regs/p006467.pdf](http://www.finra.org/web/groups/rules_regs/documents/rules_regs/p006467.pdf).

SIFMA Business Continuity Planning Committee, Best Practices Subcommittee compiled "Testing Methodologies for Validating Business Continuity Plans" at [http://www.sifma.org/services/business\\_continuity/pdf/SIFMA-Testing-Methodologies.pdf](http://www.sifma.org/services/business_continuity/pdf/SIFMA-Testing-Methodologies.pdf).

Federal Financial Institutions Examinations Council, Business Continuity Planning, IT Examinations Handbook, March 2008 at [http://www.ffiec.gov/ffiecinfobase/booklets/bcp/bus\\_continuity\\_plan.pdf](http://www.ffiec.gov/ffiecinfobase/booklets/bcp/bus_continuity_plan.pdf).

Disaster Recovery Institute, an organization founded to develop a knowledge base concerning contingency planning and the management of risk, at <http://www.drii.org/DRII/>

FEMA Emergency Management Guide for Business and Industry, which includes a step-by-step guide on how to conduct BCP and hazard-specific information at <http://www.fema.gov/business/guide/toc.shtm>.

OSHA How to Plan for Workplace Emergencies and Evacuations (2001), which includes specific steps for emergency planning at <http://www.osha.gov/Publications/osha3088.pdf>.

Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, SEC Release No. 34-47638; File No. S7-32-02, at <http://www.sec.gov/news/studies/34-47638.htm>.