

Outline for the
CCO Workshops – Small Firms Session
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**PRACTICAL SOLUTIONS TO
COMMON COMPLIANCE CHALLENGES**

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Investment advisers face numerous challenges when designing and implementing their compliance programs. These challenges are heightened by the dynamic regulatory and business environment. Some of these challenges are addressed below, along with practical ideas for finding a solution.

RISK MANAGEMENT

Q1: How can compliance professionals stay up-to-date in an ever-changing regulatory and business environment?

A1: There are numerous resources available today to help advisers stay ahead of the curve and abreast of industry developments. Many are free and publicly available on the Internet. Appendix A to this outline lists key resources in various topic areas.

Aside from joining organizations like the Investment Adviser Association and attending conferences and seminars, other helpful tips for staying up-to-date include:

- Signing up for the free compliance alerts and newsletters available from law firms, consulting firms and other industry sources, some of which are listed in Appendix A to this outline.
- Starting --- or participating in -- a local compliance discussion group. There are discussion groups already functioning in many cities around the country (sometimes referred to as compliance “roundtables” or “forums”).
- Preparing for your next SEC examination today using the materials posted on the SEC’s website, such as OCIE’s November 2008 “core initial request” list for investment adviser examinations.
- Attending all the SEC Compliance Outreach¹ seminars possible. This is the best way to learn what is hot with the SEC Staff. If you miss a live seminar, webcasts are archived on the SEC’s website for viewing at any time.
- Perusing the SEC’s website from time to time, particularly the “What’s New” section, the “Press Releases” section and the section for the “National Exam Program.”

Q2: How can a CCO – particularly in a small firm – juggle multiple roles and have enough knowledge and expertise to manage risks in multiple areas?

A2: At the vast majority of advisory firms, the CCO is asked to wear multiple “hats” and perform significant non-compliance functions.² This challenges them to allocate their time efficiently and develop the expertise necessary to serve in multiple roles. Simply being responsible for identifying and managing risks can present a daunting challenge, especially when viewed from the “enterprise” level of the firm, which takes into account not only regulatory compliance risks but risks posed from other areas of the firm as well.

Practically speaking, it would be impossible for any one person to have the background and expertise necessary to manage risks throughout an entire advisory firm, even at the smallest of

¹ The SEC Compliance Outreach program was formerly known as the CCO Outreach program.

² See the 2007 Investment Management Compliance Testing Survey, Summary Report, listed at http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN_RB (p. 7).

firms. In most cases, this would require having expertise in too many areas, such as portfolio management/hedging, finance, tax, legal, human resources, IT, emergency planning, E&O/D&O insurance, property and casualty insurance, and so on.

However, particularly in small firms, “enterprise”-level risk management often falls by default to one individual or a small handful of individuals, including the CCO. While CCOs may not have the expertise to manage all those risks single-handedly, they can nonetheless be instrumental in...

- raising senior management’s consciousness about the need for integrated, firm-wide (“enterprise”) risk management;
- identifying what and where the risks are and assessing which pose the greatest threat to the firm and its clients;
- finding and determining when it is appropriate to engage the services of outside professionals who can provide expertise the firm might need (compliance consultants, lawyers, insurance brokers, business consultants, platform providers, accounting and tax professionals, IT specialists, outsources HR providers and so on); and
- identifying and researching technological and other tools that may be available to help the firm in risk management (for example, ERM software).

In practice, most advisers are already doing something along these lines. Recent developments make it clear, however, that managing risks throughout an enterprise is now considered a regulatory concern.

Q3: What tools are available to help firms identify, quantify and mitigate risks?

A3: There are many technological solutions available to help advisers with ERM (enterprise risk management) and compliance, including software that can help firms identify, quantify and mitigate risks and manage compliance workflow.³ Some solutions purport to meet internationally recognized risk management standards. Some are or can be specifically tailored to the financial services industry.

While software solutions can be helpful in many cases, they can also be expensive and cumbersome for many firms, especially smaller firms where resources may be less available and complexity not as great.

However, even smaller firms would be wise to stay informed about available alternatives because technological solutions can be surprisingly affordable if the human cost associated with manual systems and the potential cost of missed issues are properly factored in. Moreover, providers are making platforms increasingly flexible and, in some cases, available on a more economical module-by-module basis.

³ For example, software platforms are available from Cura (<http://www.curasoftware.com/pages/default.asp>), Sungard (<http://www.sungard.com/financialsystems/solutions/riskcompliance.aspx>) and Financial Tracking (<http://www.financial-tracking.com/>). I do not recommend, endorse or have any financial arrangement with any of those firms. They are mentioned strictly so readers have a place to start their research on available alternatives.

COMPLIANCE CONTROLS AND TESTING

Q4: How can compliance testing be best calendared throughout the year?

A4: The law does not dictate when and how firms should test their compliance procedures, aside from the basic compliance rule requirement that procedures be “reviewed” at least annually. Because firms vary so widely, there is no “one-size-fits-all” testing calendar suitable for all firms. However, these basic steps will be useful in determining an appropriate testing calendar:

FIRST, using a list of the firm’s compliance procedures, decide which procedures and areas should be tested.

NEXT, decide the following:

- What kind of test will be used to test each procedure (for example, transactional, periodic and/or forensic) and specifically what test will be used (for example, checking X against Y). Refer to the “Investment Adviser Compliance Reviews and Testing” paper handed out along with this outline (or available on the web) for an extensive list of tests that might be used to test in various areas. Depending on the area, testing might consist of reviewing documentation, calculating or recalculating numbers, interviewing personnel, comparing information from various sources, checking processes that were followed, conducting simulations and so on.
- How frequently the test should be conducted (for example, quarterly or yearly) and, where appropriate, using what sample size.
- Who should conduct the various tests (such as in-house personnel, outside consultants, auditors and so on), keeping in mind the benefit of “functional separation” (having tests done by individuals other than those with day-to-day responsibilities in each area).

THEN, create a plan -- perhaps on a spreadsheet or using project management software -- incorporating these various elements to keep track of what will be tested, how, when and by whom.

Advisers should be cautious not to create an overzealous testing plan, particularly smaller advisers where resources may already be stretched to the limit. An adviser’s compliance program needs to be “reasonably designed” (not “perfectly designed”) to prevent, detect and correct violations and testing should be planned with that in mind. Importantly, creating a testing plan and then not following it can be worse than not having a testing plan at all.

Q5: How can compliance professionals decide what to test when they can’t possibly test everything?

A5: Sampling is a widely accepted testing technique when there are too many items to test individually. SEC rules do not dictate what to pick for testing or how many.⁴ They simply require the firm’s compliance program to be “reasonably designed” to prevent, detect and correct violations. (Testing

⁴ See FINRA Regulatory Notice 07-59 (December 2007), which provides guidance to broker-dealers on testing electronic communications. While not directly applicable to advisers, that guidance includes valuable perspective on some of the issues discussed in this outline, including sampling.

is aimed in particular at “detecting” violations.) Unfortunately, there is no “bright line” defining how much testing is enough to ensure that a compliance program is “reasonably designed.” This can be seen as a matter of judgment that can be improved with experience.

Firms are not required to follow rigid statistical sampling techniques when testing, although having some familiarity with sampling concepts is helpful. Some firms decide what to pick for testing by:

- random sampling (picking with an eye toward each item having an equal probability of selection), or
- systematic sampling (based on a fixed interval, such as every third case).

Other methods for picking what to test (generally considered less reliable) include:

- haphazard sampling (picking without a structured method, but avoiding conscious bias or predictability), and
- judgmental sampling (picking based on a known bias, such as all items over a certain value, all items showing a specific type of exception and so on).

Firms may find stratifying large groups of testable items to be useful. For example, if a firm is testing the completeness of client account opening documentation and the firm has both retail and institutional clients, it would be more effective to test documentation from both groups.

How many items should be tested will of course vary by firm. The number tested should be reasonable under the circumstances, taking into consideration the size of the firm, the nature of its business, the types of clients it serves and other key characteristics of its business model, as well as the regulatory sensitivity of the area being tested. Other common sense factors should also be considered, such as:

- Has a problem or issue come to light in the course of testing in a particular area? If so, more cases ought to be tested to determine how widespread the problem is.
- Has there been an issue detected in this area in the past? If so, common sense would suggest testing more cases than if not.
- Is the area a “hot topic” for the SEC or the industry? If so, more attention should be paid to testing that area.
- Has there been a change in personnel or change of procedure in certain areas, suggesting a greater risk for errors to have occurred? If so, more rigorous testing in that area may be warranted.
- Is the area subjected to more than one type of testing? If so, selecting a smaller number of items for one particular type of test may be reasonable. For example, if a firm surveils email electronically on an on-going basis using a lexicon-based system, it may be reasonable for the firm to select a smaller number of messages for its quarterly after-the-fact manual review than if the quarterly review was the only testing method used.

Ideally, the method used to select items and the number of items tested would provide reasonable confidence that the sample group results are representative of the group as a whole. There are many free technology tools available on the Internet – such as sample size calculators – that can

help firms determine what sample size might be right for their testing and help them to understand the relationships between sample size, population size, margin of error and confidence level.

Q6: What might be done if testing uncovers a “red flag,” such as a violation or potential violation?

A6: Testing is expected – at least occasionally – to uncover issues, questions, violations or potential violations.⁵ Among firms surveyed, 6% reported that testing revealed “significant” compliance issues; another 69% reported “minor” compliance issues revealed.⁶

Any testing that indicates a potential problem should be addressed and resolved with due speed. Minor problems would likely result in a less full-scale response as compared to larger or more serious problems, which would be best brought to the attention of senior management immediately. However, even minor problems should be viewed in context to see whether a pattern is developing that suggests a more serious problem may exist.

Whenever testing reveals a “red flag,” an action plan should be formulated taking into consideration all relevant issues, including among them:

- Should outside counsel be engaged to investigate specific issues or violations and provide legal advice, in an engagement intended to be protected by the attorney-client privilege?
- What can be done to enhance procedures and eliminate the discovered weakness? If a compliance program “loophole” is discovered or conduct is found flying under the compliance “radar screen,” firms should assess, implement and document their response eliminating those problems.
- Has any client been harmed due to the weakness or violation and, if so, in what way, how much, for how long and what can be done to make them whole?
- Which personnel were involved in the situation and what were their role, responsibility and level of culpability? Should they be terminated, put on leave or reassigned pending resolution of the issue?
- What should clients or investors be told about the issue and when?
- Should the firm “self-report” to the SEC or other regulators or otherwise contact authorities about the issue?
- Must or should the firm or its clients disclose the matter publicly, in SEC filings or otherwise and, if so, when?
- Should the firm’s or client’s fidelity bond carrier or E&O insurance carrier be notified of the problem, in order to preserve a possible claim under those policies? (Failure to notify a carrier of potential claims in a timely fashion may void otherwise available coverage.)
- Should the firm engage the services of a public relations firm to assist with outside contacts and relations?

⁵ The SEC Staff has even acknowledged that in compliance “everyone hits bumps in the road” and that the compliance rules call for “reasonable” policies and procedures, not “perfect” policies and procedures. See 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, Washington, DC (October 25, 2005).

⁶ See the 2008 Investment Management Compliance Testing Survey, Summary Report, listed at http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN_RB (p. 14).

- Must or should a contingency be booked on the financial statements of the firm and/or any affected clients?

Firms vary in their approach to follow-up, including self-reporting. Of the small percentage of firms (6%) reporting in a 2008 survey that testing had detected “significant” compliance issues, the majority (68%) said that they did not report the issues to the SEC and did not intend to raise them at their next SEC exam because they had resolved the issues internally.⁷ Another 20% said they did not self-report to the SEC, but plan to raise the issues during their next SEC exam. Only 12% said that they had reported the matters to the SEC.⁸

We will have to see whether more firms start self-reporting now that the SEC “whistleblower” program is in effect.⁹ Self-reporting may cut off “bounty” claims employees or others may have if they are the first to report wrongdoing to the SEC.¹⁰ However, it is unclear at this stage whether the whistleblower program will increase the rate of self-reporting in order to gain the potential benefits of self-reporting¹¹ or so firms can win the “race to the regulator” and cut off potential bounty claims.

Failing to follow-up on compliance issues in a timely fashion can have serious consequences. In addition to the potential for violations to get progressively worse before being fixed, failing to follow up on “red flags” is one of the surest ways to get the attention of the SEC, and not in a good way. It is clear from public statements and enforcement actions¹² that the SEC Staff takes a very dim view of firms that know something is wrong and do nothing to address it, particularly if the problem is repeated or recurring (i.e., recidivism).

⁷ See the 2008 Investment Management Compliance Testing Survey, Summary Report, listed at http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN_RB (p. 15).

⁸ *Id.*

⁹ The SEC ‘whistleblower’ program went into effect in July 2010. See the website of the Office of the Whistleblower established to administer the whistleblower program: <http://www.sec.gov/whistleblower>.

¹⁰ For a discussion of the whistleblower rules generally, see Holly Smith, Allegra Lawrence-Hardy, Cynthia Krus and Lawrence Polk, “Blowing the Whistle: New SEC Rules Set the Stage for Increased Reporting of Potential Securities Law Violations,” *Practical Compliance and Risk Management for the Securities Industry* (Sep-Oct 2011).

¹¹ For more on the benefits of self-reporting, see generally Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on the Relationship of Cooperation to Agency Enforcement Decisions, Exchange Act Release No. 44969 (October 23, 2001) at <http://www.sec.gov/litigation/investreport/34-44969.htm>.

¹² See, for example, CapitalWorks Investment Partners, LLC and Mark J. Correnti, Inv. Advisers Act Release 2520, 2006 SEC LEXIS 1306 (June 6, 2006) (among other things, repeated failures to correct deficiencies supported claim that firm’s compliance program did not meet the required Rule 206(4)-7 standard). See also Western Asset Management Co. and Legg Mason Fund Adviser, Inc., Advisers Act Rel. No. 1980 (September 28, 2001): “Supervisors must also respond vigorously to indications of possible wrongdoing.... Supervisors must inquire into red flags and indications of irregularities and conduct adequate follow-up and review to detect and prevent future violations of the federal securities laws”; and In Re Rhumbline Advisers and John D. Nelson, Advisers Act Rel. No. 1765 (September 29, 1998): “Red flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws.” Also, see Letter From the Office of Compliance Inspections and Examinations: To Registered Investment Advisers, on Areas Reviewed and Violations Found During Inspections (May 1, 2000): “The examination staff closely reviews the actions that advisers have taken to remedy the deficiencies cited during past examinations. Examiners have found instances where advisers have failed to correct violations cited during prior examinations, even after representing to the staff in writing that such violations would be corrected promptly. These violations may be subject to enforcement action, if appropriate.”

Follow-up is one of the most important aspects of a compliance program. According to the SEC Staff, unresolved problems should be a compliance professional's "worst nightmare."¹³ This emphasizes that the compliance program is in place not just to catch problems after they occur, but to CORRECT them as well and PREVENT them from occurring again. This goal can only be achieved with appropriate follow-up.

ANNUAL REVIEWS

Q7: How can an annual review report be kept private?

A7: In a 2007 industry survey, nearly half (45.6%) of the responding firms indicated that they documented their annual review with a lengthy written report.¹⁴ All but a tiny fraction indicated that they documented the review in writing in some way, such a short memorandum (37.4%), informal notes summarizing tests (30.4%), workpapers evidencing tests (48.7%) and/or other methods (13.9%). This has caused some advisers to ask how their annual review report (or other written documentation) can be kept private, given that it may well contain sensitive information about the adviser's compliance program and actual compliance.

As a practical matter, an adviser's annual review report probably cannot be kept entirely "private," at least not if "private" means shielding it from the SEC Staff upon inspection. The typical document request list sent by the SEC Staff in an inspection asks for a copy of documentation evidencing the adviser's annual review.¹⁵ Given that SEC rules require advisers to conduct an annual review, it is logical that the Staff would expect to see documentation that the rule requirement has been met.

That said, one way an annual review report might be kept "private" is if it is prepared by an attorney and protected from disclosure under the attorney-client privilege or legal work product doctrine. However, several factors suggest that the attorney-client privilege and work product protections might not be available even if the review were conducted by an attorney. These are discussed in more detail in the "Investment Adviser Compliance Reviews and Testing" paper included as a hand-out along with this outline (or available on the web). Moreover, if an entire compliance review report were unavailable for SEC Staff inspection, the Staff might view the adviser as less than forthcoming and cooperative and therefore perceive it as a higher risk, potentially putting the adviser on a shorter cycle for SEC examination and subject it to greater scrutiny.

An annual review report not shielded by a privilege would be subject to disclosure through other means as well, for example, under a subpoena or discovery request issued by the SEC, another regulator or a private plaintiff in litigation. As a result, some advisers make only general references in their written annual review reports to any specific issues discovered in the course of a review that have particular sensitivity. Those issues can then be referred to counsel for investigation or for advice on how to proceed. That way, the adviser can make a written record of the overall review

¹³ See 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, Washington, DC (October 18, 2001).

¹⁴ See the 2007 Investment Management Compliance Testing Survey, Summary Report, listed at http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PN_RB (p. 10). By this point in 2012, this figure may well be higher as a matter of industry best practice.

¹⁵ See OCIE's Core Initial Request for Information (November 2008) at <http://www.sec.gov/info/cco/requestlistcore1108.htm>.

available for SEC Staff inspection, but at the same time have a better chance of protecting those specific, narrow matters referred to counsel under the attorney-client privilege or other applicable protection.

Some advisers are willing to disclose their compliance review to the SEC Staff upon inspection, but are nonetheless concerned about the review being made public by other means, for example, through a request made to the SEC under FOIA (the Freedom of Information Act, the federal “open records” law). This prompts cautious advisers to request “confidential treatment” under SEC Rule 83 for any compliance review reports or other sensitive materials that wind up in the SEC’s records in the course of an inspection or otherwise. More information on seeking confidential treatment is available under the “SEC Examinations” heading in Appendix A to this outline.

Q8: What might be done if a prospective client asks to see the adviser’s annual review report?

A8: The answer depends on how much bargaining power the adviser has relative to the client. This is true whether the client asks to see an annual review report or some other sensitive document, such as the adviser’s last SEC deficiency letter.

If the adviser is willing to lose the client over not responding to this request, the adviser might simply refuse to provide the report, politely saying in effect that the report is an internal document prepared for management and as a matter of policy is not circulated outside the firm. The client can then decide how to respond.

If, on the other hand, the adviser is eager to keep the client and is in a relatively weak bargaining position – as many small firms might be with new accounts – the adviser may not want to risk losing the client by not acceding to this request in some way. In that case, the adviser might do one of several things:

- Discuss the report in general terms with the client, without providing a written copy.
- Provide a copy of the report for the client to read at the adviser’s offices, without allowing a written copy to be taken outside the office.
- Provide a summary of the report (such as an Executive Summary) for the client’s records, without providing the full, detailed copy.

Of course, some of these alternatives may be more practical than others, depending on the circumstances.

If none of those alternatives satisfy the client, the adviser will have to decide whether to provide a full, written copy of the report to the client. If so, the adviser might consider providing only a printed copy, on the theory that it would be more difficult for a printed copy (as compared to an electronic copy) to be circulated further in an inappropriate way. Cautious advisers would also mark the copy “Confidential” if it isn’t already and ask the client to specifically acknowledge that the report may not be further circulated without the adviser’s express written permission.

Q9: What is the cost / benefit of conducting a “mock SEC exam”?

A9: A mock SEC exam can be useful to supplement an adviser’s own annual review and internal testing. Mock exams are usually conducted by outside providers, such as compliance consultants,

lawyers or auditors who can offer an experienced, outside perspective on an adviser's compliance program and a fresh set of eyes to detect issues.

There are various types of mock exam engagements that might be pursued. Most mock exam providers can conduct a "true" mock exam, where the provider essentially acts like the SEC during a real exam. That means a document request list is sent to the adviser in advance of the exam, documents are reviewed by the examiners inside and outside the adviser's office, key advisory personnel are interviewed about their areas of responsibility and a mock deficiency letter is issued at the end of the process. This style of exam can be particularly helpful for firms that have a mature compliance program and want to get practice with an SEC exam before a real exam occurs.

However, some advisers – especially small advisers – may not be mature enough to benefit from a "true" mock exam. For example, they may not understand what procedures they have versus what procedures they need, or even how to respond to an SEC request list appropriately. Those advisers would likely benefit more from a walk-through style of engagement, that is, more of a hand-holding, educational engagement, where the provider walks through the adviser's compliance program with the adviser, reviewing policies and procedures and making comments, observations and recommendations along the way. Just like a "true" mock exam, this style of engagement helps to identify where the adviser's compliance program may need strengthening. However, it also helps to educate the adviser about its legal obligations and about SEC expectations, industry norms, best practices and potential alternatives.

Before engaging a mock exam provider, advisers should consider what style of engagement would be of greatest benefit to them. Prospective providers should be familiar with this issue and be able to describe the various styles of engagements they offer.

Advisers should also consider the attorney-client privilege when conducting a mock exam. Although some providers (like compliance consulting firms) are often staffed by lawyers, they are not acting as the adviser's lawyer. As such, the results of a mock exam and any written documentation produced in the exam would not be protected by the attorney-client privilege and would likely be subject to production to the SEC in a real examination (and they will ask), as well as subject to discovery in litigation.

Advisers aiming to have the results of a mock exam protected by the attorney-client privilege should consider hiring an outside lawyer to conduct the mock exam as part of the adviser's legal representation of the adviser. To control the budget, the lawyer may then in turn hire service providers (for example, a compliance consulting firm) to do the field work, so the bulk of the engagement would be undertaken at a lower overall cost to the adviser. In that case, the lawyer would typically oversee the entire engagement and provide legal counsel to the adviser regarding the results.

Although attorney-client privilege is an issue, not all advisers consider it imperative enough to preserve in a mock exam. Whether an adviser would undertake the extra time and cost to hire a lawyer to conduct the exam -- or hire a consultant through a lawyer -- often depends on budget and whether there is likely to be something of particular sensitivity uncovered during the mock exam (and, if so, whether the privilege would likely to be used to shield that information). This issue is

discussed in more detail in Question 9 in the “Investment Adviser Compliance Programs and Testing” paper provided as a hand-out with this outline (or available on the web).

In addition to considering the style of engagement and attorney-client privilege, it is critical for advisers to ask prospective providers about their experience with firms similar to the adviser’s firm so the adviser will get relevant, meaningful assistance. For example, some providers purport to cover both advisory firms under SEC rules, as well as broker-dealer firms under FINRA rules, when their actual background would suggest in-depth experience with only one or the other. Some providers have experience only with unregistered private funds and not with funds registered under the Investment Company Act, or vice versa. Former SEC examiners may have invaluable experience in how an SEC exam works, but have less experience with forging practical, tailored solutions for problems identified in the course of an exam. As with other professional engagements, advisers should ask exactly who would be doing the work, what their experience is with the exact type of engagement desired by the adviser (for example, asking how many mock exams they have done for the adviser’s type of firm), what deliverable would be produced and how they can help the adviser correct deficiencies if any are found.

Whether a mock exam is worth it for an adviser will depend a lot on cost and cost can vary wildly from provider to provider. One way to approach cost is to set a budget and ask prospective providers what they can do for the adviser within that budget. Some advisers have spent \$50,000 or more for mock exams from nationally known providers, whereas smaller providers typically say it should cost a fraction of that (\$1,000-\$5,000), depending on the size and complexity of the adviser and the scope of the engagement. Like most other professional engagements, the more experience, care, rigor and professionalism desired, the more an adviser can expect to spend.

* * *

These are but a few of the challenges advisers face with their compliance programs. However, they are among the most common and most vexing in an increasingly dynamic and complex environment. The perspectives offered in this outline can help advisers forge practical solutions to those challenges tailored to their needs.

APPENDIX A

RESOURCES TO HELP ADVISERS KEEP UP-TO-DATE

This list of resources is not exhaustive. While every attempt has been made to provide active links, URLs change often and materials may need to be tracked down through tailored online searches. Information from third-party sources should always be independently verified.

Resources aimed specifically at one type of financial firm can often be useful to firms operating in the other arenas as well. Therefore, resources pertaining to any topic area of interest should be considered, even if they appear to be designed for a different type of financial firm.

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

(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.klgates.com/reaction/RSGenPage.asp?RSID=6Wxd4tn1DXo7Vn3U_QVGxu4bwndJ4ydxqGRVNIMx4Aq

(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

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

SEC Frequently Asked Questions (FAQ) Index:

<http://www.sec.gov/answers/faqs.htm>

Compliance Programs:

Information for Newly Registered Investment Advisers, SEC website:

<http://www.sec.gov/divisions/investment/advoverview.htm>

SEC Division of Investment Management resources (forms, no-action letters, FAQs, etc.):

<http://www.sec.gov/divisions/investment.shtml>

Compliance Outreach (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 Testing & Reviews (paper updated through July 13, 2010):

<http://www.40actlawyer.com/Articles/Link5-Adviser-Compliance-Reviews-Testing-Paper.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

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>

"The Role of Compliance and Ethics in Risk Management," Remarks of Carlo V. di Florio, Director, Office of Compliance Inspections and Examinations before the NSCP National Meeting (October 17, 2011):

<http://www.sec.gov/news/speech/2011/spch101711cvd.htm>

Risk Assessment Guide, Questionnaire and Identification Chart, prepared by the Investment Adviser Association:

<http://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=PubDoc-RiskAssesment>

Alerts from OCIE covering the National Exam Program (BDs, IAs, Funds):

ComplianceAlert June 2007 <http://www.sec.gov/about/offices/ocie/complialert.htm>

ComplianceAlert July 2008 <http://www.sec.gov/about/offices/ocie/complialert0708.htm>

Risk Alerts 2011 and 2012 http://www.sec.gov/about/offices/ocie/ocie_guidance.shtml

SEC Compliance Outreach Program for Investment Advisers and Investment Companies:

http://www.sec.gov/info/complianceoutreach_ia-funds.htm

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[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)

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Strengthening internal control through forensic testing, PricewaterhouseCoopers (July 2007):

http://www.pwc.com/us/en/asset-management/investment-management/publications/assets/pwc_forensic.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

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>

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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.

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SEC Enforcement Manual (August 2, 2011): <http://www.sec.gov/divisions/enforce/enforcementmanual.pdf>

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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>

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Commission Proposed 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>

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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, Legal and Practical Considerations For Investment Advisers and Funds (paper updated through July 12, 2010): <http://www.40actlawyer.com/Articles/Link9-Best-Execution-Paper.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)

Another Look at an Adviser's Duty to Supervise Sub-Advisers (and Other Advisers) (paper updated March 1, 2009):

[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>

In the Matter of Theodore W. Urban (Initial Decision Release No. 402) (September 8, 2010) (appeal pending; General Counsel and head of compliance found to be broker's "supervisor" but not to have failed to supervise because he acted reasonably in the broker's supervision):

<http://www.sec.gov/litigation/aljdec/2010/id402bpm.pdf>.

CCO Personal Liability:

Investment Adviser Compliance Testing & Reviews (paper updated through July 13, 2010):

<http://www.40actlawyer.com/Articles/Link5-Adviser-Compliance-Reviews-Testing-Paper.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>

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>

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 Wunderlich Securities, Inc., Tracy L. Wiswall, and Gary K. Wunderlich, Jr., Release Nos. IA-3211 and 34-64558 (May 27, 2011) (settled administrative proceeding) (CCO failed to implement adequate written policies and procedures regarding principal transactions, thereby “causing” the firm’s violations related to principal trades. CCO also failed to adequately tailor an “off-the-shelf” compliance manual.) at <http://www.sec.gov/litigation/admin/2011/34-64558.pdf>.

In the Matter of Theodore W. Urban (Initial Decision Release No. 402) (September 8, 2010) (appeal pending; General Counsel and head of compliance found to be broker’s “supervisor” but not to have failed to supervise because he acted reasonably in the broker’s supervision): <http://www.sec.gov/litigation/aljdec/2010/id402bpm.pdf>.

Custody:

Custody of Funds or Securities of Clients by Investment Advisers, A Small Entity Compliance Guide: http://www.sec.gov/info/smallbus/secg/custody_rule-secg.htm

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

Final Adviser Custody Rule amendments: <http://www.sec.gov/rules/final/2009/ia-2968.pdf>

Practical Application of the Adviser Custody Rule and How to Report Custody on Form ADV (paper December 2010): [http://www.40actlawyer.com/Articles/Link2\(11-10\)%20Adviser%20Custody%20Rule%20\(LSchnase%2011-29-10\).pdf](http://www.40actlawyer.com/Articles/Link2(11-10)%20Adviser%20Custody%20Rule%20(LSchnase%2011-29-10).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 updated through August 23, 2010): <http://www.40actlawyer.com/Articles/Link6-Business-Continuity-for-Advisers-Paper.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 <https://www.managedfunds.org/hedge-fund-investors/sound-practices-for-hedge-fund-managers/> (see Section 7 on Business Continuity/Disaster Recovery Principles).

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 and a Case Study, aimed at helping a small firm ask questions and frame its business continuity planning.

SIFMA Business Continuity Planning Committee, Best Practices Subcommittee compiled "Testing Methodologies for Validating Business Continuity Plans" at <http://www.sifma.org/uploadedfiles/services/bcp/sifma-testing-methodologies.pdf>.

Federal Financial Institutions Examinations Council, Business Continuity Planning, IT Examination HandBook InfoBase at <http://ithandbook.ffiec.gov/resources/business-continuity-planning.aspx#>.

DRI International, an organization founded to develop a knowledge base concerning contingency planning and the management of risk, at <https://www.drii.org/>.

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 revised), which includes specific steps for emergency planning at <http://www.osha.gov/Publications/osha3088.pdf>.

SEC, Federal Reserve System and Department of Treasury 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>.

SEC Registration and Reporting:

Frequently Asked Questions on Form ADV and IARD:
<http://www.sec.gov/divisions/investment/iard/iardfaq.shtml>

Staff Responses to Questions About Part 2 of Form ADV:
<http://www.sec.gov/divisions/investment/form-adv-part-2-faq.htm>

Division of Investment Management: Frequently Asked Questions Regarding Mid-Sized Advisers:
<http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm>

Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, A Small Entity Compliance Guide:
<http://www.sec.gov/rules/final/2012/ia-3308-secg.htm>

Advisers Act Rule 206(4)-5 (Political Contributions by Certain Investment Advisers), A Small Entity Compliance Guide:
<http://www.sec.gov/rules/final/2010/ia-3043-secg.htm>

Amendments to Form ADV, A Small Entity Compliance Guide:
<http://www.sec.gov/rules/final/2010/ia-3060-secg.htm>

Family Office. A Small Entity Compliance Guide:
<http://www.sec.gov/rules/final/2011/ia-3220-secg.htm>

Advisers Act Rule 206(3)-3T (Temporary Rule Regarding Principal Trades with Certain Advisory Clients), A Small Entity Compliance Guide:
<http://www.sec.gov/info/smallbus/secg/206-3-3-t-secg.htm>

Rules Implementing Dodd-Frank Act Amendments to the Investment Advisers Act, A Small Entity Compliance Guide:
<http://www.sec.gov/rules/final/2011/ia-3221-secg.htm>

Division of Investment Management: Frequently Asked Questions About Form 13F:
<http://www.sec.gov/divisions/investment/13ffaq.htm>