

SEC Staff Issues *ComplianceAlert* Online Newsletters for CCOs

The staff of the Securities and Exchange Commission ("SEC") recently published its first *ComplianceAlert* online newsletter¹ designed to assist chief compliance officers ("CCOs") of SEC-registered investment advisers, investment companies, broker-dealers, and transfer agents with their compliance functions.

The *ComplianceAlerts*, which will be available only on the SEC's web site, are intended to help CCOs learn more about common deficiencies and weaknesses that SEC staff examiners have found during recent examinations of SEC-registered entities and "proactively fine-tune" their compliance programs.

The first *ComplianceAlert* discusses:

- The failure of some closed-end funds with managed distribution policies to send "Rule 19a-1" notices disclosing the source of the distribution with distributions that include a return of capital component, which could cause the fund's distribution yield to be misleading;
- Performance advertising deficiencies by SEC-registered investment advisers;
- The need for open-end funds to adopt effective policies and procedures to monitor the use of "as-of" trades to monitor whether such transactions are being used as an abusive trading practice, causing dilution of other investors' holdings, and

to implement control practices requiring documentation of the reasons for each "as-of" transaction;

- The types of provisions that registered advisers impacted by Hurricane Katrina had adopted as part of their business continuity plans that proved to be effective with respect to the advisers' ability to provide uninterrupted advisory services to clients in a compliant manner after a disaster;
- Broker-dealer supervisory procedures and processes related to sales of Section 529 College Savings Plans;
- Deficiencies in broker-dealers' disclosures to retail customers in connection with sales of collateralized mortgage obligations and asset backed securities;
- Deficiencies in broker-dealer sales practices with respect to real estate investment trusts;
- Deficiencies in procedures to ensure compliance with Regulation SHO;
- Control procedures with respect to charges assessed to separately managed accounts;
- Potential deficiencies related to the use of a part-time financial and operations principal (a so-called "Rent-A-FinOp");
- Broker-dealer expense sharing agreements.

¹ The first *ComplianceAlert* is available at www.sec.gov/about/offices/ocie/complialert.htm. Any future *ComplianceAlerts* will only be available on the SEC's web site.

We believe that the *ComplianceAlerts* will be useful to CCOs of investment companies and investment advisers, compliance professionals at broker-dealers and transfer agents, and others in learning about SEC staff approaches to compliance issues.



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