



Conspicuous Compliance

published by

Horrigan Resources, Ltd. (HRL)

...compliance solutions for the financial services industry

Fall, 2009

Volume 9, Number 3

In This Issue

Shutting Down the Grapevine - 1

Fire up your Network- 2

Spotlight on Compliance - 3

SEC Client Account Confirmations - 4

Continuity Plans ... Think Outside the Box - 5

Continuity Planning Resources - 6

Shutting Down the Grapevine

As announced in July, the SEC has joined forces with FINRA and the New York Stock Exchange to initiate coordinated examinations of broker/dealers and investment advisers in an effort to mitigate price manipulation through the initiation and spreading of rumors. Examinations will not only look for evidence of rumor-mongering, but also evaluate the internal controls in place to prevent both the intentional and unintended placement and spreading of such rumors.



How does your policy stack up? Whether starting from scratch, or updating controls already in place, here are some tips to squash rumors:

- ◆ *Make sure your policy defines the term "rumor" in very specific terms which comport to your business model, i.e., illegitimate sources and uses of information in contrast to legitimate sources and uses and how it is managed pursuant to product/service offerings;*
- ◆ *Train-up personnel regarding the rumor policy and communicate the nuances of the policy using specific examples (preferably culled from actual experiences);*
- ◆ *Design specific email surveillance tests to monitor employee/Street chatter with a particular focus on securities that are subject to rumors;*
- ◆ *Apply a risk-based internal control process whereby securities held or in process of accumulation are cross referenced with rumor-driven activity in the marketplace;*
- ◆ *Incorporate the rumor policy into your Code of Ethics thereby ensuring that employees certify compliance each year;*
- ◆ *Install harsh disciplinary policies to deter the placement and spreading of rumors.*



up your Network

Compliance: Whose Job is it Anyway??

“I don't mean to place all the responsibility for compliance on the shoulders of the CCO. In fact, I believe compliance is the responsibility of the firm, not just the CCO. My approach has been that CCOs are there to assist management of the firm in developing and implementing a compliance program properly tailored to the firm and its activities. The CCO also evaluates and monitors the system. Firm management, and the supervisory personnel are, however, primarily responsible for compliance and certainly for properly supervising those below.”

*Speech by
Andrew J. Donohue
Director, SEC Division of
Investment Management
Philadelphia, PA
September 21, 2009*

Grill aficionados often yearn for one last opportunity to fire up the grill on a late summer evening while the humidity is low and the foliage dons its autumnal apparel. This fall, compliance professionals should consider *firing up their compliance network*, especially those internal sources traditionally relied upon to provide timely tells on the state of internal compliance controls. 2008-2009 has been one of the most turbulent in recent human history; it is not inconceivable that many business processes and office protocols at advisory and brokerage firms were altered or perhaps discontinued as attention and resources were diverted to deal with the financial crisis and all of its manifestations.

To the extent that the compliance scope of the firm has retrenched in recent months, now is the time to re-establish a healthy compliance reach across the enterprise. Renew scheduled and informal ‘meet and greets’ with line of business and other key support staff to ensure that risk management procedures and internal controls are appropriately focused and mapped to known risk sets. This organic process may provide fresh insight into any changes in the business model of the enterprise which may have occurred during the crisis, thus shedding new light on emergent compliance risk as well.

For example, informal discussions with portfolio managers and marketing executives may have been curtailed to deal with the twin curses of extreme volatility and customer redemptions. With volatility down and new account inquiries emergent, now is the time to renew old acquaintances.

The compliance reach of the regulated financial enterprise has always been intended to include the office of the CEO and Board of Directors, indeed this was specifically referenced in the implementing SEC Compliance Program rule. However, when times are particularly challenging, the demands on senior management are significantly increased such that the CCO may have lost touch with the top. It is imperative that the CCO re-engage this connection to ensure that the compliance program receives the organizational commitment and resources required to be effective and relevant.

It is All About the Information

"In short, decisions in business are based on information - and that means the most successful companies are often the ones that have the best access to that information.

...

But more information doesn't necessarily mean better information. Too much, and you don't know what is important. Too much, and you might not even get through it all.

Instead, it's the right information that matters. And, it's the right information that leads to good decisions."

*Speech by SEC
Chairman Mary Schapiro:
Address to Conference
on "The Future of Global
Finance"
Washington D.C.
Sept. 18, 2009*



Spotlight on Compliance

The events of the past several months have shattered investor trust, arguably the most important element of the capitalist free market economy. The recent proliferation of boutique brokerage firms and independent investment advisers in the aftermath of the crash of 2008-2009 is testament to this, especially considering that many of them were borne of the detritus of severely impaired "wire house" business models, which embodied the very essence of the Wall Street image.

Whether victims of a failure of the balance sheet, the business model or the regulatory regime, investors are still shell shocked at the massive level of fraud and mismanagement that occurred. Nonetheless, just as in cycles past, investors will eventually opt for reinvestment as they have done throughout history, though what remains unclear is what the optimal re-engagement scenario will be, e.g., a "V" shaped recovery, rising household income or perhaps a "competitive" dollar devaluation. The investing class will re-emerge and firms should proactively position resources to attract and retain business.

Compliance can play a central role in winning investor trust, especially if your enterprise has a positive compliance story to tell. Firms with relevant and effective compliance programs have an asset that can be effectively utilized as a competitive differentiator to regain investor trust and market share. While the SEC has yet to formalize the long awaited change in the ADV Part II disclosure to a narrative format, its time will likely come soon enough thereby offering a new venue to re-tell the compliance story.

Will compliance be the key to winning new business? Maybe not *the* key, but it can certainly help turn the key in your direction while providing the CCO with another opportunity to engage senior management and extol the virtues of good compliance.



SEC Client Account Confirmations ... *nothing "routine"* *about them*

Receiving that phone call or letter from the SEC advising that they are coming to visit your firm serves to elevate attention to matters of compliance (and blood pressure) pretty quickly. A new wrinkle in the examination process entails client contact while the Commission is in residence at your offices, or soon after their departure. In May, the SEC posted on their website detailed information about this practice, known as "requests for independent confirmation of assets." These requests are made pursuant to a form called "*Routine Account Information Confirmation*."

Routine ... quite debatable. The practice allows the SEC to independently verify client custodial relationships and portfolio cash/securities balances. For advisers who by nature are sensitive about client communications, especially during these historic market times, the thought of the SEC initiating "routine" requests to their clients can be unnerving.

At least one adviser has a different take. In fact, he believes the SEC client confirmation practice offers a great way for advisers to boost client confidence. In August, Ken Fisher, CEO of Fisher Investments wrote in an article entitled, *SEC Calling*,

"You want every single opportunity to demonstrate that your shop is squeaky clean. So long as your firm does nothing wrong, you should easily pass muster. Afterward, your clients will have additional confidence in you and your firm—a major positive. Think of this process like a potential Good Housekeeping seal of approval. Think like a marketer: You can use this. Be completely open to the SEC and your clients about allowing the interaction—make it as easy as possible for everyone involved. ... If you haven't violated any securities laws or otherwise abused client trust, you have nothing to fear. And clients truly will appreciate your intrepidity—it gives them another reason to be confident in you during otherwise trying times."

Another way to spotlight compliance! Regardless of which side you come down on this argument, advisers should be informed about the process. For more information, go to the SEC's website and read a copy of the letter that might be on its way to *your* clients.

www.sec.gov/about/offices/ocie/routine_account_information_confirmation.pdf
www.financial-planning.com/fp_issues/2009_8/sec-calling-2663453-1.html

DID YOU KNOW?

According to Robert Khuzami,¹
Director of the SEC
Division of
Enforcement ...

The SEC initiated
approximately 70
enforcement actions
against Ponzi schemes
in 2007 and 2008.
Compare that to 2009,
where from January
through August 5th,
the SEC has filed more
than 40 cases
involving Ponzi
schemes or Ponzi-like
payments. Chalk up
this impressive jump
to Madoff and the
financial crisis.

*CDC -
Recommended
Employer
Responses for the
2009-2010
Flu Season*

The U.S. Department of Health and Human Services' Centers for Disease Control and Prevention has developed updated guidance for employers as they develop or review and update plans to respond to 2009 H1N1 influenza during the upcoming fall and winter flu season. The CDC website addresses a variety of issues impacting employers, such as ...

- ü Absenteeism
- ü Vulnerabilities related to closures of child care centers and schools
- ü Caring for sick family members
- ü Protecting vulnerable employees
- ü Alternative work arrangements
- ü Travel considerations

*Check out
www.cdc.gov/h1n1flu/business/guidance/*

Continuity Plans ... *think outside the box*

Continuity planning may not be glamorous, but it must be a top priority for advisers and broker/dealers. Ask any firm who has actually put their continuity plans to the test to handle a true threat or emergency and they will tell you there is much room for improvement.



Common deficiency areas include communication gaps and failure to think out of the box. The New York blackout of August, 2003 provided a wake-up call to institutions with heavy reliance upon cell phone satellites and electric power. 80% of the state of New York lost all electric power, and satellite towers were down. The good news for the Northeast was that the blackout lasted less than 2 days. However, consider New Orleans and Hurricane Katrina. Telecommunications were completely wiped out ... for days, weeks, and in some cases, months.

Another stark wake-up call in New Orleans hit businesses when they finally did reach their employees ... they were simply too preoccupied with their personal circumstances to go to work.

How can we learn from history? First and foremost, make sure that your telecommunications plans are multi-dimensional. Devise an escalatory recovery plan that considers widespread telecommunications failures. Secondly, consider the personal welfare of your employees and the potential need to temporarily house and feed not only your employees but their families.

H1N1 is considered to be a major health threat this fall and winter. Even if your employees don't fit the profile of those most vulnerable to the virus, according to medical experts, your firm could be impacted if your employees are primary caregivers for those who *are* most vulnerable.

Take time now, before disaster and the flu season strike, to think things through ... and **outside the box**.



Continuity Planning Resources

There are many resources available to organizations, large and small, to inform the continuity planning process.

Here is a short list of sites worth a few minutes of your time. Even if you don't have the budget ... or inclination ... to seek an outside partner, these sites will enlighten your internal analysis as you devise your own organic solutions.

- ✓ ***sendwordnow.com*** - specializes in emergency notification, on-demand alerting and response services
- ✓ ***IA Watch*** – search website for 'business continuity'
- ✓ ***SIFMA*** – business continuity planning documentation link - http://www.sifma.org/services/business_continuity/html/documents.html
- ✓ ***FINRA*** – search website for 'business continuity'
- ✓ ***Federal Financial Institutions Examination Council*** – information booklet addressing business continuity- http://www.ffiec.gov/ffiecinfobase/booklets/bcp/bcp_00.html
- ✓ ***Bank info security*** – section of website dedicated to continuity planning, and includes timely articles about H1N1 preparedness- <http://www.bankinfosecurity.com/category.php?catID=76>
- ✓ ***Sun Microsystems*** - article about the right questions to ask when building continuity plans; also references other useful websites- http://blogs.sun.com/FrankWickham/entry/questions_to_ask_disaster_recovery

*The odds of failure:
1 out of 4*

An estimated 25% of businesses do not reopen following a major disaster, according to the Institute for Business and Home Safety (Disaster Preparedness).

*"If you fail to plan,
you plan to fail."*

Horrigan Resources, Ltd.
3000 Village Run Road
Building 103, #209
Wexford, PA 15090
(724) 934-0129 phone
(724) 934-0132 fax
brathz@horriganresources.com
www.horriganresources.com

© 2009 Horrigan Resources, Ltd. All rights reserved. Reproduction or redistribution of *Conspicuous Compliance* is strictly forbidden without prior written permission of Horrigan Resources, Ltd. This publication has been prepared for your general information and no responsibility is taken for any errors or omissions. While all care has been taken in its preparation, no warranty is given as to the accuracy of the information. This publication is not intended to provide legal advice.