

Horrigan Resources, Ltd.

Regulatory Bulletin

November, 2009

As many of our clients conclude their annual review and CEO certification process - we draw your attention to the following new regulations governing both investment advisers and broker-dealers. We have also included prospective regulations likely to pass in 2010 for your budgeting and risk mapping considerations.

NEW REGULATIONS

Regulation S-AM: limitations on affiliate marketing

Compliance Date - January 1, 2010

The SEC recently adopted Regulation S-AM which limits the extent to which certain financial institutions can provide consumer information to affiliates for marketing purposes. Here are some highlights of the rule:

- ◆ Applies to brokers, dealers, investment companies, registered investment advisers, and registered transfer agents;
- ◆ Limits sharing of “eligibility data” about consumers between affiliates for the purpose of initiating marketing solicitations (eligibility data is information used to identify the consumer as a marketing target, e.g., net worth);
- ◆ Requires consumer to be granted an opt-out option before using this information type (opt-out can be included with existing notice requirements, e.g., privacy notice).

Red Flags Rule (FTC 16 CFR 681): mandated rules to deter identify theft

(amendment to the Fair and Accurate Credit Transactions Act of 2003)

Compliance Date - June 1, 2010

The Red Flags Rule requires financial institutions and creditors maintaining “transaction accounts” for clients to identify, detect, and mitigate attempts to use stolen identity information. Here are some highlights of the rule:

- ◆ Creditors are defined as any business that allows a customer to defer payment;
- ◆ Transaction account is defined as an account for household/personal use that permits third party payments by check, wire, etc.;
- ◆ Each organization is responsible for generating its own list of Red Flags, and subsequently designing a program to identify and mitigate associated identity theft risks;
- ◆ Policy may be incorporated into anti-money laundering and Customer Identification Program policies and procedures;
- ◆ Program must be approved and regularly approved by the Board of Directors;
- ◆ Personnel must receive adequate training;
- ◆ Outsourced business operations require the firm to ensure that the outsourcer has a plan;
- ◆ See also Massachusetts Office of Consumer Affairs and Business Regulation which requires comprehensive “personal information protection program.”

This document 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.

Horrigan Resources, Ltd.

Regulatory Bulletin

November, 2009

NEW REGULATIONS (cont'd)

Changes to U4 and U5: enhancing disclosed information about registered personnel

See FINRA Regulatory Notice 09-23

Final Compliance Date – November 14, 2009

The SEC has approved amendments proposed by FINRA for certain changes to U4 and U5 disclosure statements in order to make it easier to identify those subject to a “statutory disqualification.” Changes require that additional questions are answered by firms with regard to registered personnel on Form U4. Here are some highlights of the rule change:

- ◆ Forms U4 and U5 would be revised to require the reporting of allegations of sales practice complaints against registered personnel in a civil lawsuit or arbitration even if the person is not directly named in the civil lawsuit or arbitration;
- ◆ The monetary threshold for reporting settlements of customer complaints, arbitrations or litigation has been raised from \$10,000 to \$15,000;
- ◆ Form U5 is now subject to correction if the date of or reason for termination was otherwise inaccurate (prior to this rule change, there was no means to make such corrections, even if the information was inaccurate).

PROPOSED REGULATIONS

Pay to Play: limiting political contributions

Comment period ended October 6, 2009

The SEC has proposed a new rule that would prohibit an investment adviser from providing advisory services for compensation to a government client for two years after the adviser or certain of its employees make a contribution to certain elected officials or candidates. Here are some highlights of the proposed rule:

- ◆ Advisers seeking to manage government accounts will be required to develop controls which prohibit soliciting or managing government accounts wherein the firm (or any of its employees) contributed over \$250 in one year;
- ◆ Any contribution over the cutoff would require a two year freeze on adviser solicitation or active management
- ◆ The rule would impact solicitors acting on behalf of an adviser, as well as the pooling of political contributions;
- ◆ Advisers would be required to maintain certain records of the political contributions made by the adviser or certain of its executives or employees.

This document 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.

Horrigan Resources, Ltd.

Regulatory Bulletin

November, 2009

PROPOSED REGULATIONS (cont'd)

Amendment to SEC Rule 206(4)-2: Custody

Comment period ended July 28, 2009

In the wake of the Madoff scheme, the SEC is looking to remove certain inherent risks associated with custody. Here are some highlights of the proposed amendment:

- ◆ Custody definition would be expanded to include those advisers with direct or indirect custody through related persons;
- ◆ Firms maintaining custody of client assets would be subject to surprise audits by an independent public accountant to verify funds and securities;
- ◆ Unless client accounts are maintained by an independent qualified custodian (*i.e.*, a custodian other than the adviser or a related person), the adviser or related person must obtain a written report from an independent public accountant that includes an opinion regarding the qualified custodian's controls relating to custody of client assets;
- ◆ Elimination of the option for the adviser to satisfy delivery of account statements by directly mailing them and relying on a surprise exam. Thus, the custodian holding advisory client assets would be required to directly deliver custodial statements to advisory clients rather than through the investment adviser. In addition, the adviser would be required to instruct those clients to compare account statements they receive from the custodian with those received from the adviser, a move intended to make it more difficult for an adviser to prepare false account statements, and more likely that clients would find discrepancies;
- ◆ New reporting requirements would alert the SEC staff and investors to potential problems at an adviser. Advisers would be required to disclose in public filings with the Commission, among other things, the identity of the independent public accountant that performs its "surprise exam," and to amend its filings to report if it changes accountants. The accountant would have to report the termination of its engagement with the adviser and, if applicable, any problems with the examination that led to the termination of its engagement. If the accountants found any material discrepancies during the surprise examination, they would have to report them to the SEC. The independent public accountant would also be required to file Form ADV-E within 120 days of the date selected for the surprise exam.

This document 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.

Horrigan Resources, Ltd.

Contact Us Today

**Horrigan Resources, Ltd.
3000 Village Run Road
Building 103, #209
Wexford, PA 15090
(724) 934-0129 voice / (724) 934-0132 fax
Betsy Rathz, President
brathz@horriganresources.com**

This document 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.