

PUBLICATION

Year End Investment Manager Checklist for SEC "Hot Buttons"

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Recent market events have made investment managers and their compliance officers more aware of the need to implement sound supervisory procedures. The United States Securities and Exchange Commission (SEC) has noted on several occasions areas worthy of additional attention in annual compliance reviews. Compliance officers and executive management of investment advisers (as well as hedge fund managers that may not be registered as investment advisers) should review their internal procedures to make sure that the following areas are addressed:

- **Valuation Procedures.** Stories in the press abound regarding issues with the valuation of illiquid or infrequently traded securities. Compliance officers and their staff should review their internal procedures before year's end to ensure that their firm's written valuation procedures comport with those actually utilized in the firm's daily operations. A brief conversation with your firm's operations personnel and pricing services may prove useful in adding insight into valuation matters.
- **Recently Acquired Firms or Funds.** If your firm has merged with or purchased another firm, take particular care to confirm the incorporation of your policies and procedures firm-wide. Also note that for registered investment advisers subject to SEC and state registration, client contracts to manage funds from a predecessor firm generally require consent of the clients and new client contracts.
- **Rumor control.** The SEC has made it clear that hedge funds and investment advisers should have policies and procedures to prevent the use of false information to manipulate securities prices. Policies or procedures addressing the use of "inside information" should also include a prominent section to address the spreading of rumors by access persons. If your policy needs to be revised, be sure your firm's access persons acknowledge the new policy in a manner that can be provided to an examiner.
- **Updated Form ADVs or Fund Documents.** A review of your firm's disclosure documents, whether in the form of a Private Placement Memorandum or Form ADV, should include a close look at matters such as "best execution," performance calculation (including "side pockets" and "designated assets"), inclusion of descriptions of new products/services and payments to third-party marketers or solicitors. Also, be sure any descriptions of procedures regarding investment decisions and credit reviews accurately reflect the processes utilized by your firm.
- **Personal Trading Policies.** Particular care should be taken in reviews of your firm's personal trading policy (and accompanying Code of Ethics) to make sure your disclosure documents accurately reflect your procedures, including the firm's "restricted list" procedures. The annual disclosures of your firm's access persons should accurately reflect the identity of their investment accounts and the holdings of such accounts.
- **Custodians.** Your disclosure documents should accurately reflect the identity of the custodians used by your firm, as well as whether assets are segregated or non-segregated. Note that registered investment advisers subject to federal and state regulation are generally required to have customer assets with a "qualified custodian" that segregates customer assets.