Davis Polk

SEC Issues FAQ Regarding Supervisory Responsibility for Legal and Compliance Personnel

October 3, 2013 | Client Update | 2-minute read

On September 30, 2013, the Securities and Exchange Commission issued a staff response to Frequently Asked Questions ("**FAQ**") regarding the role and duties of the Chief Compliance Officer and other legal and compliance personnel at broker-dealers. The FAQ provides guidance to consider when determining whether legal and compliance personnel can be held liable as a "supervisor." While the FAQ does not break new ground, it provides clear and concise answers to certain questions that have been of significant interest to the securities industry since a number of administrative proceedings and enforcement actions imposed supervisory liability on compliance personnel.

The FAQ first articulates some general principals regarding supervision. It then clearly states that compliance and legal personnel are not "supervisors" of business line personnel solely because they occupy legal or compliance positions. Instead, liability for failure to supervise is a facts and circumstances determination. The question turns on whether the legal or compliance personnel have been expressly delegated supervisory functions outside the legal and compliance departments, or whether they have been implicitly delegated or have otherwise assumed such responsibility.

The FAQ then discusses the types of activities that legal and compliance personnel can engage in without triggering supervisory responsibility. In particular, legal and compliance personnel can:

- Provide advice and counsel concerning legal and compliance issues to business line personnel including senior management.
- Participate in and advise management and other business committees without becoming supervisors of the business activities involved.
- Implement robust compliance programs including compliance monitoring systems and processes to escalate identified sources of non-compliance to line supervisors.
- Keep senior management and other supervisors apprised of the state of compliance by the broker-dealer, major regulatory developments, and external events that may have an impact on the broker-dealer.
- Address red flags and other instances of noncompliance without becoming a supervisor.

While the FAQ goes a long way in clarifying the role of legal and compliance personnel, ambiguities remain, particularly when a legal or compliance officer is in a position to prevent a violation from continuing even if he or she is not the line supervisor of the activity. The FAQ articulates the responsibility of legal and compliance personnel to inform direct line supervisors about conduct that raises red flags. Legal and compliance personnel must continue to follow up in these situations to ensure a proper response by management and may be required to escalate situations to higher management if they determine that the concerns have not been addressed properly. Failure to do so could result in supervisory liability.

The FAQ can be accessed **here**

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Annette L. Nazareth
+1 202 962 7075
annette.nazareth@davispolk.com

Zachary J. Zweihorn
+1 202 962 7136
zachary.zweihorn@davispolk.com

Related materials

Read the full update