

SEC targets dual registrants

Here's a sign that the looming fiduciary standard will change the way BDs are regulated: SEC examiners are *already* stepping up their scrutiny of dually registered firms, industry pros observe.

Mid-size, independent dual registrant firms where the dominant business is the BD are really coming under the microscope, says **Amy Lynch**, president of **FrontLine Compliance LLC**, a regulatory compliance consulting firm based in Leesburg, Va. and New York.

"It really hits these firms hard because many of them are not prepared for the SEC to look at their advisory business because their model is much more of a broker-dealer model - and the advisory side is usually a struggle for these firms," she says.

The timing is no coincidence, says **Francois Cooke**, a managing director in the **ACA Compliance Group**, Morristown, N.J.

Cooke attributes the stepped-up enforcement to the fiduciary duty standard that will likely come out of the financial reform legislation.

"Ultimately, the SEC is going to leverage their broker-dealer and investment adviser reviews to help them promulgate applicable rules in this regard," Cooke says.

Historically, Cooke says, the broker-dealer and investment adviser examiners from the SEC would share information and coordinate reviews.

But over the years, they stopped such cooperation. It's picking up again, and the SEC is getting up to speed, looking at both the BD and IA sides of the firm, he says.

"Now the registrant is training the SEC on the environment of a dual registrant....That's what I'm hearing from my clients," Cooke says.

SEC examiners are looking at the level of controls entities have over geographically-dispersed adviser reps, Lynch explains.

"They're very interested in the organizational structure and who the players are. They're very interested in knowing what roles people play at the home office of the advisory affiliate, and what the process is for...supervising the activities of these IARs out in the field," she says.

Examiners are also checking out how BDs are meeting their responsibilities regarding the advisory transactions taking place under the private securities transactions rules, she says.

"I think part of what the SEC is doing now is, when they're taking a look at the advisory operations, they're taking a look at what controls surround those independent RIAs," Lynch continues.

When a parent buys up small firms that become branches, the focus often is on building the business side and providing resources to the branches to increase sales, without focusing enough on operations or compliance, Lynch says.

And Cooke says FINRA has long held the position that the BD is obligated for supervising the IA activities of their firm.

At these dually registered firms, the SEC will be focusing on custody, conflicts and disclosures. On the conflict front, there will be a keen interest in fee arrangements, and whether some groups of investors are favored over others, Cooke says. ■

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