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SOLUTIONS FOR TODAY'S BUSINESS

Risk Management Tip December 2008

The Importance of E-mail Controls

This season while you are making a list and checking it twice, remember to also review your current electronic communications controls!

With new and emerging communication technologies evolving at record pace, users are capable of communicating with each other around the world, whenever and wherever they so choose. Because of the ability to e-mail, text, chat and blog from personal devices such as Blackberries and iPhones, securities regulators are requiring firms to take an active role in overseeing and retaining records of communications made between their representatives and clientele.

In order to satisfy regulators' expectations during an examination, it is critical to have a system in place customized to the nature of the firm's business and operational capabilities. This year, SEC staff specifically stated they were interested in whether effective policies and procedures were in place for capturing, compiling, and maintaining e-mail and instant messages.

To help evaluate your firm's current electronic communication controls, consider the following.

Setting Up the Electronic Communications Compliance Program

In implementing or revising your compliance program for electronic communications, begin by reviewing your firm's compliance manual to ensure that policies and procedures exist that specifically address electronic communications. For example, such policies and procedures should list permissible and prohibited methods of communication and identify the consequences for use of prohibited methods. In addition, due to the rules and heightened regulations concerning e-mail, many firms require that all e-mails and instant messages be sent only from firm portals and devices. Finally, the firm's policies and procedures should identify the persons responsible for managing and supervising electronic communication. Therefore, such persons delegated with review responsibility should meet regularly to discuss and test the compliance guidelines to ensure they are being followed.

Education and Training

The regulators recommended that firms periodically provide training on supervision of electronic communications for senior management. Personnel and staff must be made aware that electronic communication rules apply to more than e-mail, and managers must be aware of and enforce these requirements. Relevant support groups such as Compliance, Operations and IT should meet no less than annually.

Technology Considerations

As a starting point, firms need to determine what modes of electronic communication are currently being used and check to see if these are in line with firm policy and procedures. For instance, firms that subscribe to Bloomberg or Reuters should verify they are able to capture and

supervise these communications. If your firm allows your employees and registered representatives to use public instant messaging systems such as AOL or MSN Messenger for business communications, ensure these records are being captured and backed up to a secure storage site. As part of the regularly scheduled meetings between compliance and desk heads, the CCO should include discussions of new technology as an agenda item.

Ongoing Evaluations

The regulators agree that simply having an e-mail supervision system in place is not in and of itself sufficient. Firms are expected to conduct ongoing evaluations of their systems to address any short-comings or loopholes. If your firm maintains a list of customizable trigger words, ensure that authorized personnel have the ability to edit the list of key words and phrases to address any loopholes or problems with the review system. Also, the list itself of trigger words and phrases must be kept confidential and only accessible by the authorized person responsible for the review. Ensuring the confidentiality of the trigger word list enhances the integrity of the review process so as to avoid supervision loopholes.

For additional guidance on implementing an electronic communications surveillance program, please contact us. Thank you.

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