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Tips on pushing that compliance rock up the hill

By **Todd E. Schwartz**
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Hey, you, chief compliance officer for an SEC-registered investment advisory firm: Take a break from drafting your SEC-mandated written compliance report and listen up.

Sure, compliance-related burdens are a serious matter. Yes, reading through the latest soft-dollar release from the Securities and Exchange Commission, or the 2006 Pension Reform Act, can be a real grind. I know that attempts to apply the regulatory minutiae to the day-to-day operations of your firm may make you feel more like a modern-day Sisyphus than a CCO.

But there is hope. Somewhere behind the "compliance curtain" is a wizard who may be able to provide you with some courage, wisdom or even something heartening. The wizard's words may even save you a compliance nightmare down the road. I know. At the request of my fellow members of the Wealth Advisor Institute, I recently sneaked behind the curtain and conversed with the wizard. Without a single citation to a compliance-related statute or regulation, here are five nuggets of wisdom she shared:

Compliance is 99% disclosure and documentation. When in doubt, disclose it. When you do it, document it. The vast majority of compliance-related issues are due to a failure by the investment adviser to disclose. Failure to disclose properly on Form ADV almost always is an issue during an SEC examination. Do yourself a favor and err on the side of disclosing those soft-dollar arrangements you have been reluctant to admit exist. Yes, you have a conflict of interest, but what RIA using a qualified custodian doesn't?

Did you receive a client complaint letter? Lucky you! Now you have something to document. In doing so, you get to demonstrate to the SEC your commitment to compliance. Place a copy of the letter and a memo explaining the resolution along with any supporting documentation in the client file and your "client complaint" file.

Don't forget the rudder. Your compliance manual is your ship's rudder. If you are not comfortable or are not following the policies contained in the manual, you are way off course. Consult a compliance expert and get rid of language that is unduly burdensome or find a way to ensure that certain required provisions are workable. Don't fall into the trap of having a compliance manual that is so burdensome, it isn't used. Nothing puts an SEC examiner in a worse mood than a compliance manual that is mere window dressing.

Keep your eyes and ears open. It's tough to say you're fulfilling your role as CCO if you don't properly communicate the importance of compliance to your employees. At a minimum, have a quarterly compliance meeting/training session with your employees. Don't forget to document the meetings. Bring your compliance manual.

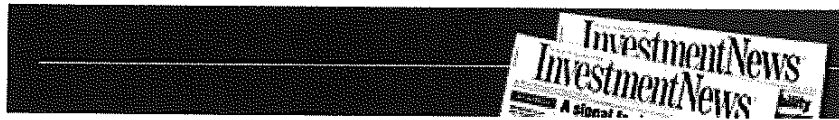
Performance numbers can bring you down. Not surprisingly, most clients are interested in knowing what type of results they can expect by trusting you with their investments. Unfortunately, publicizing your performance numbers is one of the biggest compliance problem areas. Your numbers and calculation methods will be subjected to intense scrutiny. Don't take a chance with your business; hire an expert in global investment performance standards to run your numbers.

E-mail is a business record. Until the SEC adopts specific regulations addressing electronic communications, e-mail is subject to the same requirements as other business records. Save all business-related records for a minimum of five years. You are doing it with paper documents; surely you can do so with electronic communications. Be able to access your business records easily during this five-year period. In regard to e-mail, access means searching by keyword. Microsoft Outlook and almost all non-web-based e-mail programs have this capability.

Are you still worried? The wizard says, "Don't be."

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