

Will SEC Heed its Own Compliance Outsourcing Advice?

April 25, 2016

The SEC's Office of Compliance Inspections and Examinations (OCIE) recently issued a compliance alert warning financial advisers about the dangers of outsourcing compliance functions to third-party providers. The alert, which identifies compliance outsourcing as a growing trend, raised concerns that third-party providers are often not familiar enough with the adviser's business and may insufficiently tailor their approach to each adviser they service. **OCIE also recommended that advisers with outsourced compliance functions review the third-party providers' business practices to ensure they comport with applicable compliance requirements.** Ironically, just two weeks before the OCIE alert, the Director of the SEC's Division of Investment Management testified before Congress that the SEC staff is developing a somewhat analogous proposal: i.e., for third-party providers to conduct compliance reviews of investment advisers to supplement the SEC's own inspection program. This confirmed previous indications from SEC Chairman Mary Jo White and other officials that such an approach was being considered as a partial response to a chronic insufficiency of SEC resources to inspect investment advisers as frequently as many consider advisable. The developing proposal, however, was immediately criticized in an op-ed by the division's immediate past director, who argued that certain previous attempts by the SEC to rely on third parties have not served the SEC or the public well. Rather, he pointed to more effective use of the SEC's own resources as the primary issue to be addressed. It will be interesting to see what measures the SEC puts in place to mitigate the dangers of relying on third parties to help it review investment advisers and how such measures compare to those followed—or recommended by SEC staff—when financial advisers retain other types of third-party compliance service providers.

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