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HOLTZ RUBENSTEIN REMINICK

About This Series...

A periodic update of current finance-related issues covering audit and accounting, tax, and regulatory matters affecting organizations that operate within the financial services sector.

FINANCE ALERT

SEC Wants Stronger Safeguards for Investment Advisers

On May 14, 2009, the Securities and Exchange Commission proposed a new set of rules designed to improve safeguards for investment advisers who have custody of clients' funds and securities.

The SEC is seeing a very disturbing trend within their enforcement actions; that of principals and firms misusing client assets and creating false and/or misleading statements to hide their illegal activity. The SEC wants a yearly "surprise examination" of investment advisers, which will be conducted by an independent public accountant, to verify client assets. Should an adviser or an affiliate directly hold client assets, then it will be necessary to conduct a custody control review by a PCAOB-registered and inspected accountant.

The lessons from the Bernard Madoff scandal are many, but essential is the fact that any successful financial services firm must have strong supervisory and internal controls.

The pendulum shift at the SEC has been dramatic, post Madoff. According to the SEC's press release, the "proposed rule amendments, if adopted, would promote independent custody and enable independent public accountants to act as third-party monitors." The SEC is demanding greater transparency.

More so, these proposed rule amendments are focusing on the accounting and control structures of advisers. If these proposed rules are passed, advisers will have to obtain a written report that is prepared by a PCAOB-registered and inspected accounting firm, and the report must include, among other things:

- a description of the supervisory controls in place and
- results of the testing of the operating effectiveness of those controls.

One can assume that, should these proposed rules pass (which is highly likely since the SEC unanimously voted to open the May 14 proposal to public comment for 60 days) that best practices will be created as a result of this proposed rule change and will dictate strong internal controls for advisers, regardless of whether they hold custody of client assets.

Now more than ever, advisers must be diligent in engaging professionals who can assist them with developing an internal infrastructure that ensures the highest level of supervisory control.

Holtz Rubenstein Reminick LLP can help. The Financial Services Group at Holtz Rubenstein Reminick ("HRR") is actively assisting their clients, working in conjunction with management's counsel, to provide tax planning strategies including estate tax planning and succession planning. Our partners have extensive experience within the alternative investment industry. We also understand the importance of partner involvement, and, as such, we ensure that our partners manage all aspects of client engagements. Our clients know that we are always available and knowledgeable about their business. Since a high degree of partner involvement allows for increased efficiencies, we are able to remove unnecessary bureaucracy. Our clients speak directly with the decision-maker to work through the issues.

For more information, contact one of the following Financial Services Partners: John Basile, (212) 697-6900, JBasile@hrrllp.com, or Paul Finegan, (212) 697-6900, PFinegan@hrrllp.com.

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