

Live Webcast: Meeting the Books & Records Requirements of the Investment Advisers Act

November 1, 2011

Presented by DLA LLC and Net@Work

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Agenda

- ▶ Introduction
- ▶ Books and Records Requirement
 - Custody
 - Proxy Voting Records
 - GIPS
- ▶ Digital Recordkeeping
- ▶ A Best Practice Scenario of Advertising and Marketing Material
- ▶ Compliance and Auditing Demo

The DLA Approach

Our Compliance Methodology

Compliance Operations

Infrastructure Development, Review and Updating

- Registration Advisory
- Policies & Procedures Development
- Surveillance
- Training



Compliance Inspections

Risk Assessment, Identification and Testing

- Annual Reviews
- Compliance Infrastructure Testing
- Audit and Quality Assurance
- Mock Regulatory Exams



Compliance Advisory

Ongoing Monitoring and Advisory Support

- Best Practice Recommendations
- Ad Hoc Support
- Regulatory News & Updates
- Regulatory Inquiry Assistance
- Enterprise Risk

Net@Work

Founded in 1996

– Comprehensive IT Provider

Headquartered in NYC

– NJ, MA, CT, NC, TX, WA, WI

140+ Employees

– Consultants, Engineers,
Developers

4,000 Clients/350 + in FinSvcs

Named to CRN's 2011 VAR500 list

– Ranking the Top Technology
Integrators



Speakers



Jennifer Lin
DLA LLC
Managing Director,
Compliance

Jennifer has over 11 years of broad securities compliance experience in the financial services industry and provides widespread expertise in securities regulation including the execution, analysis, testing and evaluation of the supervisory and internal controls of a compliance program.



Kyle Conquy
Net@Work
Practice Manager
ECM

Kyle has extensive experience in Enterprise Content Management (ECM), Process Management, Portals and Collaboration (such as Intranets and Extranets), Websites and Application Integration. Kyle is a Microsoft Certified Professional for Microsoft SharePoint Server.

Investment Advisers Act of 1940

- ▶ The Investment Advisers Act (the Act)
 - Passed in 1940.
 - Monitor those who, for a fee, advise people, pension funds, and institutions on investment matters.
 - The Act sought not to regulate investment advisers so much as to keep track of who was in the industry and their methods of operation.
- ▶ Impetus for passage of the act began with the Public Utility Holding Company Act of 1935
 - Authorized the Securities and Exchange Commission (SEC) to study investment trusts.

SEC Exams

- ▶ Periodic, sometimes unannounced, audits by regulators.
- ▶ Licensing, books and records, and anti-fraud requirements.
- ▶ A survey of state regulators has revealed the top five problems noted in audits:
 - ADV disclosures
 - Custody
 - Poorly maintained books and records
 - Advertising
 - Poorly maintained financial records

General Records

- **Formation Records**

- Articles of Incorporation
- Charters
- Bylaws
- Partnership Agreements
- Limited Liability Company Certificates of Formation Formation
- Limited Liability Company Agreements
- Board Minutes

- **Accounting Records**

- General and Auxiliary Ledgers
- Journals
- Trial Balances
- Checkbooks
- Bank Statements

- **Client Records**

- Client Contracts
- Investment Advisory Agreements
- Powers of Attorney

- **Electronic Records**

- Emails

- **Securities Transaction Records**

- Trade Tickets
- Confirmation Statements
- Trade Reports

- **Communication Records**

- Marketing Materials
- Client Inquiries
- Client Correspondence
- Client Memorandums
- Client Complaints
- Customized Research Reports
- Materials Received from Third Parties
- Records Supporting the Use of Performance in Advertisements

- **Compliance Related Records**

- Copies of Compliance Manuals
- Proxy Voting Information
- Reports by Employees of Personal Securities Holdings and Transactions
- Copies of Codes of Ethics

Custody

▶ Specific Requirements:

- Journals showing securities transactions
- Copies of trade confirmations
- Separate client ledger
- Record for each security held by client showing amount and location

Proxy Voting Records

- ▶ Specific Requirements:
 - Proxy voting policies
 - Proxy statements received regarding client securities
 - Records of votes cast by the investment adviser on behalf of the client
 - Documents used in the decision making process of how to vote proxies
 - Any client correspondence of requests in how the adviser voted on proxies

Frequency

- ▶ In general, books and records are required to be maintained on a current basis
- ▶ Primary business records should be created concurrently with the transactions or as soon as practicable after they occur
- ▶ Secondary business records may be created as frequently as the business requires

Timing and Retention

- ▶ Corporate governance documents must be retained for the life of the firm and in an easily accessible place for three (3) years after termination of the firm
- ▶ All other documents must be retained for five (5) years, first two (2) in the principal location of the firm and in an easily accessible place for the balance of the 5 years

Documenting Performance and GIPS

- ▶ Must be maintained for five years after the fiscal year the claim was used
- ▶ Global Investment Performance Standards (“GIPS”)
 - Voluntary set of ethical principals and industry best practice for calculating returns and presenting performance
- ▶ Marketing Definitions:
 - Compliant presentation
 - Advertising guidelines
- ▶ Specific disclosure and statistical reporting requirements
- ▶ Compliance Statement

Digital Recordkeeping

- ▶ SEC used to require all records to be preserved in the medium in which they were originally created
- ▶ Conversion of paper documents to digital form allowed
- ▶ Firms must have policies and procedures governing the preservation of electronic records
 - Controls must be in place to safeguard records from loss, alteration, or destruction
 - Access should be restricted to all but properly authorized staff and SEC representatives

Best Practice Scenario

Advertising and Marketing Materials

- ▶ Fall under the anti-fraud provision of the Investment Advisers Act of 1940
 - SEC Rule 206(4)-1
 - Various SEC No-Action Letters
- ▶ Advertising vs. Marketing
- ▶ Includes websites and social media
- ▶ Materials may not be false or misleading by commission or omission

Prohibitions

- ▶ Testimonials
- ▶ Past specific recommendations
- ▶ Graphs, charts, formulas or other devices
- ▶ Free services

Best Practices for Record Retention

- ▶ Create a matrix of required records
- ▶ Conduct an inventory check to ensure proper maintenance of required records
- ▶ Streamline the process of gathering records when requested
- ▶ Electronic systems make records much easier to index and locate

Policies and Procedures

- ▶ Implement a compliance program with sufficient review and structure governing the creation and dissemination of advertising and marketing material
- ▶ Establish a supervisory review system that includes pre-approval sign off from Compliance
- ▶ Include all appropriate disclosures
- ▶ On-going monitoring and review of materials to ensure content relevance

Net@Work Compliance Software Demo

Q & A

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