What the Recent SEC Action Means for Your Business

In light of a recent litigation release concerning the Securities and Exchange Commission's (SEC) actions against a well-known broker-dealer for failing to report suspicious activities, many independent advisors may be left wondering what the federal regulator's action means for their businesses.

Here's What Happened

Last month, the SEC charged and subsequently fined a major custodian for failing to file Suspicious Activity Reports (SARs) relating to the termination of several independent investment advisors from its custodial platform. The advisors' terminations resulted after they were found to have violated internal policies and to have created risk for the custodian and its customers. Interestingly though, the SEC indicated that the custodian should have done more, including filing SARs regarding the advisors' behavior and that the failure to do so constituted the custodian's violation of securities laws and the Bank Secrecy Act (BSA).

The advisors' offenses consisted of a range of transactions not involving the outright misappropriation or misuse of client funds, including possible undisclosed self-dealing or conflicts of interest, charging client accounts excessive fees, potentially fraudulent transactions in client accounts, posing as the client to effect or confirm transactions in the client account, and executing client trades and/or collecting advisory fees without being properly registered as an advisor.

At the heart of the matter, according to the SEC complaint, is that the custodian lacked clear policies and procedures necessary to identify and report suspicious activities under the SAR rule with respect to activities of these independent third-party advisors.

Why Advisors Need to Take Notice

While the SEC's action is a warning sign for broker-dealers and custodians to better watch their platforms, investment advisors are wise to pay attention too. This complaint is a strong signal that the custodian is strictly responsible for the failures of their RIA accounts; putting custodians "on notice" for the failures of their advisors.

RIAs, particularly smaller ones, may now find large custodians less willing to provide custodial and execution services if the RIA can't demonstrate robust compliance programs to protect against the failures identified by the SEC action.

If the latest SEC action is an indication of things to come, here are a few things advisors will need to add to their to-do list:

Identify & Report Transactions Involving Possible Undisclosed Self-Dealing or Conflicts Of Interest

While most RIAs probably have policies to avoid self-dealing and conflicts of interest, it may be that custodians are actually going to want to know and maybe even see evidence of how RIAs are policing this.

Orion Tech Tip: Our Supervise tool in Compass is immensely valuable to test a firm's policies and procedures and identify conflicts or other activities that may signal a violation of the firm's policy. For example, auditing trading and billing activities not only help a compliance officer know when activities have gone outside of the firm's procedures but evidence of this ongoing monitoring, which is also available in Supervise, may prove essential to doing business with a large custodian.

Give Extra Attention to Billing on Client Accounts

RIAs can look for ways to streamline and even automatically schedule and review their billing activities to ensure that clients are being billed appropriately and that excessive fees aren't being charged up front.

Orion Tech Tip: Additionally, our Advisory Fee Benchmark tool in Trends is a good tool to identify possible outliers at a glance or if there's a suspicious trend for certain reps.

Flag Potentially Fraudulent Transactions

Even if the ultimate responsibility lies with the custodian as a broker-dealer, custodians are going to want to confirm that the RIA they're working with has anti-money laundering (AML) policies and procedures in place.

Orion Tech Tip: For this, our Verify tool in Compass that utilizes LexisNexis data is extremely helpful to identify clients that may be likely to engage in fraudulent behavior.

Leverage Technology to Avoid These Pitfalls

Look for ways to streamline your efforts around all these activities by deploying the help of an advisor tech platform that supports your billing, reporting and compliance activities.

Orion Tech Tip: At Orion, we're continually developing solutions to help our customers stay ahead of the regulatory curve. While a complex topic like compliance rarely ever has a simple answer, Orion technology solutions can help you address the issues seen from advisors in the SEC action.

Want Even More Compliance Support?

As complex and ever-changing as the regulatory environment can be, you don't have to figure it out alone. Contact Orion Advisor to schedule a demo of our platform and see how we can enhance your compliance program.

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