

Compliance

Edward Elgar, 2011

Book review by Sally Ramage, Editor, *The Criminal Lawyer*, Bloomsbury Professional.

Governments around the world are now cracking down on financial corruption and bribery, so much so, that all around the world, lawsuits by prosecutors are increasing in number.¹

The article titled 'The Next Great Fed Crackdown' is useful reading for and compliance lawyers and accounting professionals. In the article is a useful check list to help assess a company's own risk and I therefore limit the company's exposure to risk.

Compliance, published by Edward Elgar is, however, much more intensive, detailed and makes for interesting reading. It gives a true insight into this serious issue. It is not as if management is unaware of issues and indeed there are compliance social networks set up, eg ComplianceX Group on LinkedIn. As regards compliance in particular, no research has been undertaken to assess the usefulness or other of such networks. ComplianceX.com is a blog site/network dedicated to compliance officers. It introduced its readers to the U.S. Stock Act 2012 with this mischievous statement:

'Rather than conferencing two versions of the legislation aimed to identify and curb what might be looked upon as "insider trading" on Capitol Hill, the Senate overwhelmingly approved the Stock Act.'

The United States can boast of regulations such as Code of Federal Regulations, as follows:-

'Title 17: Commodity and Securities Exchanges; Part 275-Rules and Regulations Investment Advisors Act 1970.: Books and Records to be maintained by investment advisers. Section 204-2(a)(11):

"Every investment adviser registered or required to be registered shall make and keep true, accurate and current the following books and records relating to its investment advisory business..."

¹ Thomas R Weirich and Steven A, The Next Great Fed Crackdown, *Strategic Finance*; Dec 2011, Vol. 93 Issue 6, p41. This article discusses the resurgence of the Foreign Corrupt Practices Act of 1977 (FCPA) in the U.S. The authors state that the FCPA resurges as the Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) have stepped up their investigations for FCPA violations of U.S. companies, and that with this resurgence in anti-corruption enforcement, corporate managers are looking for ways to strengthen their internal control systems to prevent costly violations. See pertinent article, Sally Ramage, 'Preserving privilege and employing media PR whilst your client is being investigated or prosecuted', *The Criminal Lawyer*, Issue 206, Jan-Feb 2012, pp 2-5. ISSN 0956-7429,

Section 204-2(e)

3) Books and records required to be made under the provisions of paragraphs (a)(11) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated the notice...

Section 275.204-2(g)

A legible, true, and complete copy of the record in the medium and format in which it is stored; Means to access, view, and print the records; Requirements: Maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; Limit access to the records to properly authorized personnel and the Commission...

Section 240.17a-4(f)(3)(v)

"The member, broker, or dealer, must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to Rules 17a-3 and 17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby."

FINRA Conduct Rule 2210, under which electronic advertisements are regulated:

1. Advertisements - for communications to a broad audience;
2. Sales Literature - for communications to a targeted audience;
3. Correspondence - for communications to a single customer; and,
4. Communications in a live forum."a separate file of all advertisements and sales literature...shall be maintained for a period of three years from the date of each use."

Communications to a Broad Audience

This category is reserved for advertisements targeted toward a broad and anonymous audience. As stated above, the NASD defines these communications as "Advertisements" under Rule 2210(a)(1). Relevant examples might include: websites that are not password-protected, sites within a service providers' site, banner advertisements, stand-alone software programs, bulletin boards, and auditoriums run by the fund group.

This category includes electronic communications targeted to a known or restricted audience and it falls under the FINRA's definition of "Sales Literature" under Rule 2210(a)(2). This category might include: group emails, password-protected websites accessible by the group, and research reports distributed to the customers, and published group messages.

Although these FINRA rules are not as intimidating or complicated as the SEC rules, their importance in creating a valid mutual fund advertisement cannot be understated. In fact, both the SEC and the NASD have the power to force a mutual fund to discontinue an advertisement found violating their rules.'

On Thursday 24 March 2012, the United States announced the STOCK Act 2012.

The United States STOCK Act 2012

The STOCK Act states that members have a duty to the United States and its citizens, and to the institution of Congress itself, to keep confidential any material information they come into possession of in the course of performing their duties.. As a result, the entire history of SEC regulation of insider trading can now be applied in full to members of Congress. Secondly, the act forbids public officials, , from using their

government office to obtain preferential access to hot IPOs. Third, to help voters ensure that Congress is doing what it's now legally obliged to do (and not do the things it's now legally forbidden from doing), the act requires members of Congress (and senior members of the executive branch) to disclose their trading activity within 30 days after placing a trade. That's different than the current disclosure requirement, which had trades and disclosures being separated by as much as 17 calendar months. Further improving the system currently in place, these disclosures will need to be made electronically, in standardized form, and will be open to the public for review.

