



THE REGULATORY FUNDAMENTALS GROUP LLC

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Dear Clients and Friends,

Recently, there has been a great deal of publicity about high-visibility trials concerning the use of expert networks. Ironically, a poll we recently conducted revealed that most firms don't even use expert networks and the few that do have taken steps to protect themselves from inappropriate disclosures. [Click here](#) to see our survey results. But whatever your expert network practices may be, don't focus solely on this one narrow issue; instead spend some time to determine whether your policies and procedures are *designed to avoid prosecution or jail-time* even if this sort of misconduct should occur.

All firms need to be concerned about the enforcement environment they face today. The press and enforcement personnel still crave those headline grabbing cases, there are new incentives that encourage "whistleblowers" to report misconduct and the SEC has greatly expanded its enforcement staff. In fact, it has created specialized units that are *focusing directly on asset management firms*, as well as other topics such as market abuse, structured products and new products, foreign corrupt practices, and municipal securities and public pensions. These groups will very likely seek to bring the enforcement proceedings needed to justify their existence. The same goes for state and federal enforcement personnel generally. These investigations and cases will be focused on all investment advisers, not just those registered with the SEC.

Against the backdrop of intense—and likely increasing—scrutiny, investment management firms need to realize that it is within their control and in their best interests to adopt policies, procedures and practices that enforcement personnel will weigh in their favor when deciding whether to prosecute personnel or the firm, and, if the worst should occur, determining the seriousness of fines and penalties imposed. To our surprise, very few investment advisers have considered this issue when designing their overall governance, business risk management practices and compliance programs. In contrast, many of the world's largest corporations have programs designed to protect their businesses and preserve enterprise value.

The key here is whether a firm has an "effective compliance and ethics program" that satisfies the standards prosecutors and judges set out in their guidelines and manuals. *Unfortunately, a compliance program that satisfies the specific requirements of SEC Rule 206(4)-7 (on written compliance procedures and practices) does not necessarily meet these standards.*

RFG is conducting a survey on whether compliance programs have been designed to properly address enforcement issues. Take our quick, anonymous survey by [clicking here](#).

If you are interested in having RFG perform a comprehensive review of your firm's compliance program to determine whether your firm's policies and practices satisfy enforcement requirements, please contact me or Kenneth Seiler at KSeiler@RegFG.com. [Please click here](#) to learn more about our products and services for alternative asset managers.

Yours truly,
Deborah Prutzman, CEO
The Regulatory Fundamentals Group LLC