Looking past 'The Wolf of Wall Street'

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"The Wolf of Wall Street" is a cautionary tale based on the true story of stockbroker Jordan Belfort who rose to fame and fortune in the 1990s only to get caught for his role in a "pump and dump" scheme. Since then, the Securities and Exchange Commission has nabbed numerous other notorious financial "wolves," including Ponzi schemers and portfolio managers engaged in insider trading.

Clearly, the SEC remains committed to pursuing and eliminating "wolves of Wall Street" from the marketplace, but it is not necessary to be a scheming fraudster to face significant punishment from the SEC. Recent comments made by Securities and Exchange Commission Chairman Mary Jo White make it clear that the SEC's enforcement mission also includes searching out "red flags" in the financial industry and punishing minor violators before they become the subject of a Hollywood movie. White said, "Investors in our markets want to know that there is a strong cop on the beat… (they) do not want someone who ignores minor violations, and waits for the big one that brings media attention."

Financial services firms also should keep in mind that the SEC intends to impose harsher penalties going forward while also focusing more on individual conduct than it has in the past (versus primarily targeting firms). Said White, "Individuals tempted to commit wrongdoing must understand that they risk it all if they do not play by the rules. When people fear for their own reputations, careers or pocketbooks, they tend to stay in line."

Enforcement actions brought by the SEC in late 2013 support its initiative to halt minor violators and punish individual conduct. A few examples:

• The SEC sanctioned two New Orleans investment advisers and an Ohio investment adviser in separate actions for repeatedly ignoring problems with their compliance programs. The actions

arose from the SEC's initiative targeting firms previously warned about compliance deficiencies that then failed to correct them. Sanctions imposed included firm and individual fines ranging from $175,000 to $225,000 as well as censures and a requirement the firms hire compliance consultants and other personnel to complete compliance training.

• The SEC charged three unaffiliated investment advisers for violating the custody rule under the Investment Advisers Act. Violations included failure to maintain client assets with a qualified custodian and failure to engage an independent public accountant to conduct surprise exams. Penalties imposed included disgorgement, prejudgment interest, firm and individual fines of $60,000 to $250,000 and industry suspensions.

• The SEC charged managing partners of a North Carolina investment adviser for allowing a third party to influence its portfolio selection process despite telling investors the firm was solely responsible for making those choices. The partners agreed to dissolve their business, pay more than$472,000 and consented to industry suspensions.

• The SEC sanctioned a Texas-based investment adviser who charged performance fees to private fund investors that were not "qualified clients" (a standard that must be met for an adviser to receive performance fee compensation). Although the adviser asked the investors to complete a questionnaire to verify their qualified client status, the SEC found that most of the investors did not complete the questionnaire. The SEC censured the adviser and charged the adviser with a $35,000 penalty (a reduced fine that reflects the adviser's cooperation and prompt refunding of all performance compensation).

In light of the SEC's renewed focus on being a "beat cop," operating a financial services firm requires more vigilance than ever about compliance. This includes:

• Adopting, maintaining, enforcing and periodically testing and updating compliance policies and procedures that are specifically tailored to the operations of the firm.

• Documenting compliance reviews and keeping track of how the firm resolves compliance deficiencies.

• Regularly reviewing disclosures made to clients and others to identify and eliminate inaccuracies or misstatements.

• Routinely educating personnel on ethical and compliance matters; immediately addressing lapses.

• Keeping clear, concise and accurate records of all documentation and communications pertaining to the firm's advisory business.

Maintaining a rigorous compliance program can go a long way to demonstrating to regulators like the SEC that you are not the next wolf of Wall Street. You certainly don't want the SEC to blow your whole house down.

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