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Frontline News

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RIAs Transferred To States May Get Dual Exams

The Securities and Exchange Commission may continue to examine registered investment advisors that are being officially transferred to state jurisdiction—at least for a while, according to the SEC's compliance office.

The Dodd-Frank Wall Street Reform and Consumer Protection Act that became law this summer transfers investment advisors with less than \$100 million in assets under management to state jurisdiction as of July 21, 2011. Now, the SEC monitors RIAs with \$25 million or more in AUM.

John Walsh, chief counsel of the SEC Office of Compliance Inspections and Examinations, says the SEC and state regulators will work closely together during the transition period, which may mean dual exams by federal and state agencies in some cases. The agencies review the ADV forms filed by advisors.

The change supposedly will lessen the workload for the SEC, which was examining many firms only once every nine years, or had never examined many that fell under its jurisdiction.

"We may examine firms even if they're likely to leave our jurisdiction," Walsh says. In addition, the SEC may show up at a firm to do an examination and then may continue it along with the state regulators to conduct some joint exams, he says.

SEC spokesman John Heine says the goal is to provide a smooth transition from the old system to the one mandated by the Dodd-Frank law.

"During the transition period, our regulators will be consulting regularly with the state regulators and vice versa," Heine says. "This is to comply with the Dodd-Frank bill, but, even in the past, the two levels of regulations always worked together."

However, Walsh notes that joint reviews are very few and highly targeted and take place only where local exam managers and states believe they are appropriate. The joint work will continue through the transition, but Walsh did not put a time limit on how long it might last.

SEC collaboration will not be limited to only those firms at or near \$100 million in AUM. "We are urging all SEC registered advisors of all sizes to be vigilant in their compliance right up through the transition."

Walsh would not speculate on what a state regulator might be looking for or whether the two levels of examiners may be looking for different things.

Most of the estimated 4,200 financial advisors who will fall under state oversight are waiting until after January 1 to file ADVs at the state level, even though they could have started making the switch last July. The reason that most are waiting is most likely that they would have had to pay registration fees to both the state and SEC for the portion of 2010 when they fell under both jurisdictions, says Chris Winn of AdvisorAssist, a compliance consulting firm in Boston.

Compounding the expected late-stage rush is that the new filings have to be done by July 21, squeezing them into an eight-month time span, and that the number of new firms in the under-\$100-million-AUM category continues to grow faster than other groups, says one expert.

Some people in the industry question whether state securities regulators in cash-strapped states will have the resources to do the job. However, the North American Securities Administrators Association, a membership group of state securities regulators, says some states are expanding the number of examiners on staff, and others are creating procedures to share resources to handle the expected rising workload.