

# 10 Things Adviser WISH They Knew BEFORE Their Examination Led to an SEC Enforcement Action



- 1) **Any enforcement action, even a settlement, must be disclosed in regulatory filings.** You may even be required by the SEC to make the information prominent and available through your website. You will have to notify all of your clients of the settlement or SEC finding. Your SEC fine isn't the only money you can lose.
- 2) **You will lose clients and access to certain custodians or service providers if you are found at fault or settle an enforcement action.** Some clients, particularly ones like pension funds or charities, will stop using your services if you are being investigated for possible violations. If an investigation leads to a settlement or a finding, some custodians and service providers will stop doing business with you completely.
- 3) **Just because it's your first time, doesn't mean the punishment won't be harsh.** The SEC has a tiered penalty system and the type of violation determines the tier and thus the potential fine.
- 4) **The CEO can be personally fined for not facilitating the compliance needs of the firm.** If you know there are issues or your CCO has asked for more resources or changes, and you fail to act, you can personally be fined and found at fault. Reliance on your compliance consultant is not a defense. Reliance on counsel is.
- 5) **It's better to have counsel manage issues that come up during the examination than try to go it alone and end up in an enforcement action.** Sometimes advisers will say something or provide information that triggers an investigation. Counsel can work with examiners to narrow the scope of the request and review documents you produce to be able to mitigate any potential issues.
- 6) **You can't blame your compliance consultant.** The SEC holds the CEO and the CCO responsible for administering the firm's compliance program. You can't turn a blind eye and say that you thought it was being handled by your consultant. You must maintain oversight and ensure your compliance requirements are met.
- 7) **It doesn't matter if it's an honest mistake.** If you could have implemented reasonable measures to catch the mistake, you are going to be held responsible.
- 8) **Ignorance is not a defense.** As the CCO, you are required to have the knowledge and experience to administer the firm's compliance program. That means you should be staying up to date with rule changes and guidance published by the SEC and also understand how to apply them to the advisory firm.
- 9) **Templates are not good enough.** You can't just take templates from your compliance consultant as is. You have to tailor it to the business and actually make sure it is complete!
- 10) **Conflicts of interests are what get you!** For every potential conflict of interest there must be a disclosure and how that conflict is going to be mitigated so that the best interests of the client are served.