

# CLIENT ALERT

## Practice Pointers in the Wake of ISS Decision

May 28, 2013

As has been widely reported, on May 23, 2013, the Securities and Exchange Commission (the "SEC") reported that it had charged Institutional Shareholder Services (ISS), the Maryland-based proxy advisor, with failing to prevent the misuse of material nonpublic information as required under Section 204A of the Investment Advisers Act of 1940 (the "Act"). The charges stem from the actions of a now-former ISS employee who provided a proxy solicitor with voting information for more than 100 ISS institutional shareholder advisory clients in return for meals and concert, sporting event and airplane tickets. ISS will pay \$300,000 to settle the charges and has been censured by the SEC. ISS is also hiring an independent compliance consultant to evaluate ISS's internal controls and procedures related to the treatment of confidential information, communications with proxy solicitors and the reporting of gifts given to ISS's employees.

Section 204A of the Act required ISS to "establish, maintain, enforce written policies and procedures reasonably designed, taking into consideration the nature of [ISS's] business, to prevent the misuse . . . of material, nonpublic information." While what constitutes "reasonably designed" procedures depends on the nature of a firm's business, there are some basic steps you can follow to insure against regulatory charges:

- Entities subject to SEC, FINRA and state securities regulation must adopt codes of ethics. In addition to covering statutorily mandated issues such as personal trades and reporting obligations, these codes should address topics, like receipts of gifts by employees, that may impact ethical and honest behavior of employees at the firm.
- It isn't good enough just to have a policy on the shelf and to have employees acknowledge receipt of the policy; firms have to be vigilant to make sure their employees are well trained and supervised in matters of compliance. The SEC has advised that periodic training sessions and annual recertification that employees have recently read and understand the ethics policies of the firm are among the best practices firms may institute.
- Tone at the top continues to be important - this is a black eye for ISS, to be sure, but a \$300,000 payment suggests one rogue employee. Making sure that senior management is active and involved in matters of ethics and compliance will help ensure that the effect to the firm of a violation, if one should occur, will be minimized.

Crowell & Moring is available to review your ethics policies and procedures to further reduce your firm's exposure to regulatory action.

For the original SEC release on this matter, please [click here](#).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.