

CLIENT ALERT

SEC Settlement Illustrates Poor Compliance Program Can Lead to Significant Sanctions

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We have observed in recent years a heightened focus by top-notch investment firms on compliance, with talented, empowered chief compliance officers given a broad mandate by their firms to design a robust compliance program. A recent SEC enforcement action again supports the prudence of such focus. In our view, the best investment firms embrace customized compliance programs pursuant to which they and their advisers are always developing policies and procedures that match business developments. Failing to do so means that an investment firm runs the serious risk of a lengthy, expensive enforcement matter that may culminate not only in monetary fines and significant legal bills but a harmed institutional reputation.

In the most recent illustrative case, the SEC's focus was on the broker-dealer side but the teachings apply as forcefully to investment advisers. After a four year investigation, boutique equity research firm and broker-dealer Monness Crespi Hardt & Co. (MCH) agreed to pay \$150,000 to settle claims by the SEC that it lacked or failed to adequately enforce controls, policies and procedures to prevent insider trading. The SEC's settlement order notably did not identify any alleged acts of insider trading but instead focused on alleged weak compliance and the risk of insider trading.

In the settlement order, the SEC alleged that MCH failed to enforce two of its written compliance procedures, which required MCH to maintain a restricted list and required employees to submit a report of their securities transactions. Additionally, the SEC alleged that MCH did not adopt written policies and procedures to address the potential risk created by certain marketing programs that the firm had established and provided as services to its existing and prospective customers.

We also wanted to draw attention to a regular program hosted by MCH for its clients. For many years, the firm held dinners and other events at which MCH personnel, including research analysts, and current and prospective investor clients shared ideas with clients and others.

According to the SEC, MCH's analysts or other employees might have shared material, nonpublic information "about upcoming research reports or about an issuer learned in the course of an analyst compiling a research report," but the firm failed to have written policies and procedures to address those risks.

Although it appears no allegations were made concerning insider trading, it seems clear that the SEC staff did not like the idea of these kinds of events without a detailed compliance trail. Investment advisers should take note as SEC examinations are focused on insider trading monitoring, expert networks, policies to address the delivery by issuers of material non-public information, and related issues.

The full text of the SEC's settlement order can be found [here](#).

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