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CORPORATE & FINANCIAL
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SEC Extends and Modifies Relief for Broker-Dealers Regarding Reliance on Advisers for AML Obligations

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In a no-action letter issued on January 11 (2011 Letter), the Securities and Exchange Commission's Division of Trading and Markets extended and modified no-action relief it had previously granted allowing broker-dealers to rely on SEC-registered investment advisers to perform some or all of the broker-dealers' anti-money laundering (AML) customer identification program (CIP) obligations. Under the 2011 Letter, the broker-dealer's reliance on the investment adviser must be reasonable under the circumstances, and the investment adviser must enter into a contract with the broker-dealer in which the investment adviser agrees that: (a) the adviser has implemented its own AML Program consistent with the requirements of Section 5318(h) of the Bank Secrecy Act and will update such AML Program as necessary to implement changes in applicable laws and guidance; (b) the adviser (or its agent) will perform the requirements of the broker-dealer's CIP in a manner consistent with Section 326 of the USA PATRIOT Act; (c) the adviser will promptly disclose to the broker-dealer potentially suspicious or unusual activity detected as part of the CIP being performed on the broker-dealer's behalf to enable the broker-dealer to file a Suspicious Activity Report, as appropriate in such broker-dealer's judgment; (d) the adviser will annually certify to the broker-dealer that the representations in the reliance agreement will remain accurate and that it is in compliance with such representations; and (e) the adviser will promptly provide its books and records regarding its performance of CIP to the SEC, a self-regulatory organization (SRO) with jurisdiction over the broker-dealer, or to authorized law enforcement agencies, directly or through the broker-dealer, at the request of the broker-dealer or such bodies. The SEC agreed to extend the no-action position under the existing no-action letters until May 11, after which the terms of the 2011 Letter will govern.

Click here to read the SEC's 2011 Letter.

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