



## CULTURE OF COMPLIANCE

Before jumping ship, make sure your new firm views compliance as a top priority. By **Ellen J. Bessner**

THIS IS THE **FIRST** OF A **TWO-PART SERIES** ON SUSSING OUT A FIRM'S COMPLIANCE PRIORITIES.

**Picking** a new firm is a difficult decision. Regardless of the size and type, you need to affiliate yourself with a firm that has what is commonly referred to as a culture of compliance.

So, how do you determine that? For starters, consider the questions your interviewers ask you. Do they ask whether your clients are knowledgeable concerning financial matters and what steps you take to assist those who are unsophisticated investors? Are they concerned about the average age of your clients and the types of investments they are in? Do they ask whether any of your clients are in alternative types of investments based on your advice, like limited partnership units?

Do they ask whether your clients are in leverage loans (MFDA and insurance) or margin accounts (IDA)? What about how much of your book is a result of borrowing to invest?

The majority of litigation I have seen involves margin accounts and leverage loans. It's not uncommon for a single complaint to involve several clients who know one another through referrals. As a group, they hire a

single lawyer to represent them and share the cost.

If the firm isn't checking out the risk in your book, they likely haven't checked out their other advisors' books either. If a firm seems focused exclusively on your book's gross value, ignoring its quality, that would also worry me. After all, a high-risk advisor can bring down the reputation of an entire firm. What do you think Mark Valentine did to Thompson Kernaghan?

Of course, if you're not being asked questions regarding compliance, you can use this opportunity to interview the company representative. The interviewer of a compliant firm will be impressed with your questions concerning compliance, while a firm that is non-compliant may be put off.

Also consider your impression of the branch manager. What are the branch manager's values? Does the manager have his own book of business? How much time does she spend on management versus her own book?

Does the branch manager have regular meetings with the advisors? If so, ask for the agendas for the last six branch meetings. Are practice-management topics, compliance and training on the agenda? Are specialized speakers or coaches brought in to help the group with obstacles? Conducting post mortems to go over summaries of concerns expressed at meetings will

give you insight into the productivity of the meetings.

These days, no one can afford to ignore compliance and you will want to gauge whether the organization values its regulatory obligations. Ask about the compliance manager responsible for that branch and how much contact and correspondence there is between the compliance manager and the advisors. Is there an effort by the branch managers and advisors to work with compliance to resolve looming issues before they result in a compliance problem or lawsuit?

Is the compliance team solid and respected by senior management of the firm? Is compliance perceived as the police, who only come in with guns loaded when something goes wrong, or is it regarded as an integral, supportive part of the team?

Suffice it to say, if the compliance department is not seen as a partner in the organization, the firm might face serious problems in the future. In my next column, I will point out red flags concerning compliance and the firm's other advisors. **AE**

*Ellen J. Bessner is a lawyer at Gowling, Lafleur, Henderson. She practises in the area of advisors' liability and offers compliance training. The above is intended for a general audience and should not be considered legal advice. "Compliance Check" appears every other issue.*