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Video

SEC Chasing Third Parties That Turn Blind Eye to Crime

By Crucial Clips May 15, 2019

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JILL GREGORIE, REPORTER, IGNITES: Hi. This is Jill Gregorie with *Ignites* and I'm with Todd Cipperman, author of the new book *The Compliance Advantage*. Another thing that you wrote about is this shift of service providers and gatekeepers, the focus on them. What does that look like? And what does that entail?

TODD CIPPERMAN, FOUNDING PRINCIPAL, CIPPERMAN COMPLIANCE SERVICES: Very often, when something goes south in the capital markets, the issuer, the client, if you will, disappears in a bankruptcy or jail, for instance. But these service providers, the big fund administrators, and the law firms, and the auditors, and the custodians, they're still there, very often. And they have a vested interest in the success and the purity of the capital markets.

And I think the SEC says, look, you have a responsibility, too, in policing these markets. You can't just take your fees and ignore wrongdoing that may go on without you saying something. So there's been a lot of cases over the last five years, we can use any time period, three years, holding administrators directly liable.

And this is a little bit different than an aiding and abetting liability. They're going to direct liability to service providers to assist them in the wrongdoing, so holding fund administrators liable, holding auditors responsible for areas, holding lawyers accountable. And what I think that's doing is it's raising the bar.

And I think what it's saying to service providers is, look, you have to do more due diligence on your clients. And you have to write in a risk premium when you're working with more risky people. And oh, by the way, you've got to rethink your insurance coverage as well. But I think there's no doubt that the SEC is looking to deputize these service providers through enforcement liability.

JILL GREGORIE: And speaking of liability, you mentioned that senior executives are more and more being held liable for wrongdoing. Can you talk about that a little bit?

TODD CIPPERMAN: If you look at the data, I think over the last couple of years of enforcement activity, roughly 80% of cases that the SEC brought in enforcements' contexts named a senior executive. So they're definitely pursuing the same goal. The DOJ backed off it a little bit this year. They basically said that you don't have to turn over all your executives to get credit, but you still get credit for turning over your executives.

And it sort of rippled across the financial services. So there's been cases over the last year or two against CEOs, portfolio managers, operations executives — god forbid, chief compliance officers — across the industry holding them accountable for the wrongdoing. So it's not just an organization, but there are actually people who are feeling the pinch.

And what does that mean? You could be, theoretically, a mid-level operations executive and be barred from the industry because you didn't raise your hand when you saw wrongdoing. I think the SEC's concept is, every single person is a fiduciary there to protect the interests of clients and shareholders.

JILL GREGORIE: Thank you, Todd, for being here.

TODD CIPPERMAN: Thanks for having me.

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