INCREASED ENFORCEMENT ACTIVITY BY SEC OF REGISTRATION REQUIREMENTS FOR FOREIGN BROKER-DEALERS AND INVESTMENT ADVISERS SERVICING U.S. CLIENTS

Smarter Way to Cross Blog Archives
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In 2014, the U.S. Securities and Exchange Commission (SEC) continued its crackdown against violations of, as the *New York Times* Dealbook calls it, "a cardinal rule of the financial industry" that financial advisers (including foreign financial advisers incorporated outside of the United States) providing brokerage and investment advisory services to U.S. clients register with the SEC as a broker-dealer and/or as an investment adviser. Recent high-profile settlements between the SEC and units of banking giants HSBC (which paid a $12.5 million penalty for violations by its Swiss unit, HSBC Private Bank (Suisse) SA in November 2014) and Credit Suisse (which paid a $196 million penalty for violations in February 2014) underscore the steep financial and reputational penalties a foreign financial adviser could face.

Subject to certain limited and technical exceptions and exemptions, domestic and foreign financial advisors servicing U.S. clients are required to register with the SEC as (1) a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and/or (2) an investment advisor under Section 203 of the Investment Advisers Act of 1940. Broadly, Section 15(a)(1) of the Exchange Act prohibits broker-dealers from engaging in the business of effecting transactions in securities for the accounts of others without registering with the SEC. Section 203 of the Advisers Act restricts persons who, for compensation, provide investment advice with respect to securities to clients from doing so without registering with the SEC. While both the Exchange Act and the Advisers Act include limited exemptions that allow foreign financial advisers to service cross-border U.S. clients without registration, these exemptions only cover certain limited activities with U.S. clients and require strict adherence to the enumerated requirements.

In its proceeding against HSBC Private Bank (Suisse) SA, the SEC found that HSBC Private Bank Suisse, through its relationship managers with desks at its offices located in Switzerland, maintained as many as 368 U.S. client accounts holding as much as $775 million in securities under management between 2003 and 2011. Despite not being registered with the SEC during this period, HSBC Private Bank

Suisse's relationship managers were found to have used many different means of communications with their U.S. clients and made more than 40 trips to the United States to meet with these clients, in each case to provide financial advisory services and effect transactions in securities in violation of U.S. federal securities laws.

These recent SEC enforcement actions highlight the need for foreign investment advisers servicing U.S. clients to ensure they are in compliance with the registration requirements under the Exchange Act and Advisers Act.