

WHERE FROM **HERE?**

NAVIGATING THE NEW MARKET

*A resource for insights, information,
benchmarking and conversation*



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INSIDER TRADING PROCEDURES

HOW TO PREPARE FOR THE SEC'S UPCOMING
DISCLOSURE REQUIREMENTS

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Welcome and Agenda

- What is the current practice among issuers?
- How has the SEC proposed changing insider trading policy and procedure requirements?
- How does the SEC typically think about procedures and compliance requirements in other contexts?
- What should non-financial services firms include in insider trading procedures?
- What lessons can be learned from financial services firms?



Current Practice Among Issuers

- Almost all issuers have written insider trading policies which:
 - Prohibit trading while in possession of MNPI and tipping
 - Establish regular and special blackout periods
 - Bar certain types of trades, such as short sales and hedging
 - Require pre-clearance of trades by certain individuals
- Many issuers outside of financial services do not have written insider trading procedure documents, though they do have procedures
- Some issuers give limited disclosures in proxy statements; very few publish their policies

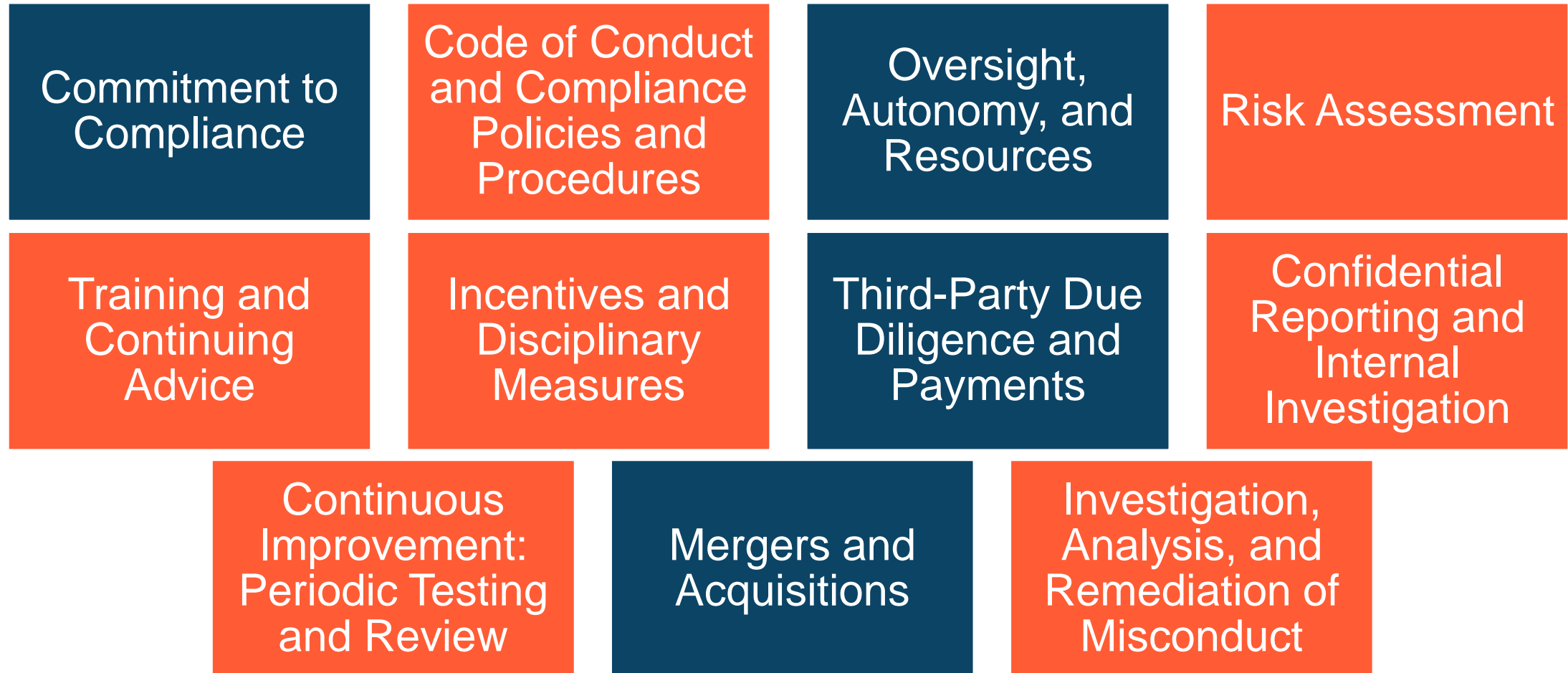


Overview of the SEC's Proposed Changes

- Cooling off periods
- Disclosures about use of 10b5-1 plans
- Prohibitions on overlapping plans
- Restrictions on single trade plans
- Disclosure requirements re options grants
- ***10-K disclosure about insider trading policies and procedures***

Procedures and Compliance Requirements in Other Contexts

DOJ & SEC Hallmarks of an Effective Compliance Program





Procedures and Compliance Requirements in Other Contexts

- Policies & Procedures
 - Reinforced through internal controls
- Training
 - Who, what, when, how, and how often: training plan and documents should be well defined and documented
- Certification/Attestation
- Auditing and Monitoring
 - Risk-based approach to monitor effectiveness
- Investigation Protocols
- Continuous Improvement



Procedures and Compliance Requirements in Other Contexts

- Leading Practices in Compliance
 - Measurability
 - Access to and use of data
 - “Root cause analysis” and remediation
 - Accountability and disciplinary actions – consistency and fairness are key
 - Tone at the top/tone at the middle
 - Appropriate resources (expertise, staffing, and budget)



Proposed Insider Trading Procedures for Non-Financial Services Firms

The SEC's examples of what an issuer might disclose about its insider trading procedures:

“For example investors may find useful, to the extent it is included in the issuer’s relevant policies and procedures, information on the issuer’s process for analyzing whether directors, officers, employees, or the issuer itself when conducting an open-market share repurchase have material nonpublic information; the issuer’s process for documenting such analyses and approving requests to purchase or sell its securities; or how the issuer enforces compliance with any such policies and procedures it may have. Furthermore, the disclosure under proposed Item 408 could address not only policies and procedures that apply to the purchase and sale of the registrant’s securities, but also other dispositions of the issuer’s securities where material nonpublic information could be misused such as, for example, through gifts of such securities.”



Proposed Insider Trading Procedures for Non-Financial Services Firms

- Insider trading procedures we expect companies to include:
 - Defined process for pre-clearance, with documentation
 - Defined process for setting special blackout periods, with documentation
 - Defined process for offering/revising training, with certifications
 - Inclusion of investigations of insider trading issues within general investigations manual
 - Defined standards and process for determining consequences of violations
 - Formal incorporation of the program into internal audit and other general controls systems/frameworks
 - Regular review of the program and its effectiveness, including review of data needs and use
 - *Consider*: greater monitoring of captive brokers and/or third parties covered by the policy



Lessons from Financial Services Firms

- Typically have:
 - trade and e-communication surveillance systems
 - electronic and physical information barriers
 - processes to receive duplicate account statements for employee brokerage accounts
 - thorough reviews of both employee and customer trading



QUESTIONS?



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