



## New Supervisory Standard by SEC Increases Risk for Corporate Counsel

On September 8, 2010, a decision by a U.S. Securities and Exchange Commission administrative law judge in *In the Matter of Theodore W. Urban*, 2010 WL 3500928 (SEC Release No. 43-31655, Sept 8, 2010) cleared Urban, former General Counsel and Executive Vice President of Ferris, Baker Watts, Inc., of all charges of failing to reasonably supervise broker Stephen Glantz. While the good news for Urban is that his supervision was found to be reasonable, the bad news for in-house legal and compliance personnel is that Urban was found to be a supervisor at all. The administrative law judge (ALJ) deemed that Urban was Glantz's supervisor, even though Urban "did not have the power normally associated with supervision."

Theodore Urban, the first lawyer hired at Ferris, Baker Watts Inc. (FBW) and former SEC enforcement lawyer, served as general counsel and executive vice president and headed the compliance, HR and internal audit departments. The SEC alleged that Glantz, one of FBW's financial advisers, had violated several federal securities laws. While Urban had no direct authority over the retail sales department that Glantz reported to and he did not possess the traditional tenets of supervision -- namely the ability to hire, fire, discipline, promote and set compensation -- the administrative law judge nevertheless deemed Urban Glantz's supervisor.

The ALJ noted that Urban had the "degree of responsibility, ability or authority to affect" Glantz's conduct, and also reasoned that FBW personnel viewed Urban's opinions on legal and compliance issues as "authoritative" and that "his recommendations were generally followed by people in FBW's business units." Despite Urban raising the issue of Glantz's improper conduct on numerous occasions to the managers of the retail sales division responsible for supervising financial advisors, due to his general counsel position he shared (with Glantz's immediate line managers) the responsibility to respond appropriately to Glantz's actions.

The ALJ did not pinpoint the precise degree of authority necessary to become a supervisor, leaving open the possibility that the Urban decision could serve as the basis of supervisory liability for in-house counsel, even where they have limited contact with employees outside of the legal and compliance departments. Currently there are cross appeals pending before the SEC. Whether the commission upholds the ALJ's analysis of supervisory liability or reaches another conclusion, legal and compliance staff at broker-dealers will likely await its ruling with great interest.



In the meantime, it is recommended that legal and compliance personnel take note of this decision and take appropriate steps to protect themselves from liability, such as clarifying the supervisory authority of such personnel in the company's policy and procedure materials. Campolo, Middleton & McCormick, LLP can assist with the development of necessary procedures and strategies.



*Clients who have any further questions or concerns about the information contained in this Advisory should not hesitate to contact us.*

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