

## ***SEC Enforcement***

# **In Light of Changes at SEC, Companies Need Data Collection Protocols, Exec Says**

Structural and other changes ongoing and anticipated at the Securities and Exchange Commission make it imperative for companies to adopt “ironclad” data collection practices and protocols in the event of an investigation, forensics executive John Reed Stark said April 20.

The founder and former chief of the SEC Enforcement Division's Office of Internet Enforcement, and currently managing director of the Washington office of digital forensics firm Stroz Friedberg LLC, Stark spoke at a conference in Washington organized by the International Association of Privacy Professionals.

Among other changes, Stark noted that the SEC is expected to walk away with a bigger budget once pending financial regulatory reform is enacted. In addition, legislation currently pending in the Senate and passed by the House would give the SEC the authority to reward whistleblowers. The commission also recently unveiled national specialized units and new cooperation tools (42 SRLR 79, 1/18/10), and made organizational changes in order to quickly move on subpoenas and investigations.

### **Move Towards Data Analysis.**

Moreover, Stark noted that there is a “tremendous movement towards inhouse forensics” at the SEC, pointing to the recent hiring of 70 new employees to conduct data forensics in the Enforcement Division's Office of Market Intelligence. The office, which is charged with collecting and collating the tens of thousands of tips, complaints, and referrals that the commission receives, also is building a state of the art facility that will be able to track and process data such as e-mails, instant messaging, telephone recordings, and trading information, Stark said.

Stark added that historically, about 20 percent of the SEC's enforcement cases involve related DOJ actions. This percentage could increase given that the SEC and DOJ's working relationship is better than ever, and the two agencies have indicated that they will be working even more closely together in the future.

Going forward, these changes mean that the SEC will rely more heavily on informants, be quicker in its ability to sieve through information, and be more nimble in its enforcement actions, Stark continued. In addition, SEC action could be followed by criminal prosecution. Given these changes, companies and other

regulated entities must be able to identify, preserve, and analyze every bit of data that they have so as to be prepared for enforcement action. "If you're involved in an investigation, the first thing to do is consider the data," he said.

### **Data Identification.**

Stark said companies should implement strong and effective data collection practices and protocols early. Most companies do not know what information they have and where it resides, he stated. "You have got to begin the identification process."

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Besides collecting the data, companies must preserve the data by putting it in a central repository, and must ensure that they have the forensic tools to access the data, which could be in different formats, Stark said. Importantly, companies also must consider backing up information. As a further precaution, companies should consider hiring a third party to perform the data collection, which could help in evidence spoliation issues, he said. However, Stark added that companies only have to provide to regulators reasonably accessible information. To that end, they can prepare so-called "burden affidavits" for data they consider too costly and burdensome to collect, he said.

Stark further warned that in investigations, SEC staff frequently contact former employees, who generally are not represented by corporate counsel and could prove good information sources. "You need to locate former employees before law enforcement officers do," he said. "You need to get ahead of the investigation."

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