Lessons for Investment Advisers from a Reinvigorated SEC Enforcement Staff

by Jeffrey O. Himstreet

The Securities and Exchange Commission ("SEC") has been busy of late, both taking enforcement actions against investment advisers for a host of violations and trumpeting its reengineered examination and enforcement programs. In addition to the slew of well-publicized insider-trading enforcement actions, other actions against investment advisers range from traditional violations of the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act") to seemingly minor violations, such as the recent announcement that the SEC sanctioned several investment advisory firms for failing to maintain adequate compliance procedures as required by Advisers Act Rule 206(4)-7 (the "Compliance Rule").

The Enforcement Division announced it was launching a "range of initiatives to increase its ability to identify hidden or emerging threats in the markets, and to stop that misconduct early."[1] Several of the enforcement actions cases were announced together, and thus appear to be a be a deliberate effort to send a "message" to advisers that inadequate compliance procedures, as well as a failure to enforce compliance procedures, may result in enforcement proceedings, even absent investor harm.[2]

The purpose of this alert is to discuss recent developments within the SEC's Division of Enforcement and its renewed focus on investment advisers, analyze recent enforcement actions stemming from this renewed focus, including several based on the Compliance Rule, and provide a series of takeaways for investment advisory firms to consider in assessing their own compliance programs and the manner in which they are implemented.

A. The Division of Enforcement Focuses on Investment Advisers

The SEC's Division of Enforcement has completed a significant reorganization that created five new specialized areas with nationwide scope. One of the specialized units is focused on asset management and mutual fund issues, which Robert Plaze, SEC Division of Investment Management Deputy Director, was recently quoted as saying that this new specialized unit is "dedicated to suing [advisers]."[3] Robert Khuzami, SEC Enforcement Director, stated that the segregated units will allow the Staff to build specialized, institutional knowledge and experience that will allow enforcement attorneys "to recognize and respond to suspicious activity more quickly."[4] Khuzami analogized the Staff's efforts to the "broken windows" strategy employed in New York in the 1980's to police and prosecute small crimes to prevent more significant ones. The SEC has announced initiatives targeting: (i) performance outliers; (ii) the truthfulness of information contained in regulatory filings; (iii) the investment company contract renewal process; (iv) valuation; and (v) compliance policies and procedures.

1. Aberrational Performance Inquiry

The asset management unit, says the Staff, uses data and risk-based analytics to identify the early-warning signs of fraud. This initiative, dubbed the Aberrational Performance Inquiry, focuses on performance that appears inconsistent with a fund's investment strategy or other benchmarks to form a basis for further inquiry, such as requesting additional information. The Aberrational Performance Inquiry analyzes monthly returns from thousands of hedge funds in search of unusual performance. The system is intended to detect returns that are steady when the markets are volatile or when a fund steadily tops market indices by 3% or more.[5]

The SEC furthermore is widening the use of its performance monitoring to include mutual funds and private equity funds. The effect is that performance data for 20,000 funds will soon be fed into the SEC's computer system. It was reported on March 16, 2012 that the SEC Staff stated that if it receives requested congressional funding that its first focus of additional surveillance would be on money market funds as it works to aggregate performance information that it has received from money funds since December 2010 with information on Form ADV and elsewhere to develop a more accurate picture of the systemic risk posed by a fund.[6]

In announcing the Aberrational Performance Inquiry, the SEC also announced four separate enforcement actions.[7] The complaints are discussed below and allege a host of violations, ranging from overvaluing holdings, misrepresenting fund attributes such as liquidity, strategy, or manger credentials.

The SEC sued two individuals for allegedly engaging in a fraudulent scheme to overvalue illiquid asset holdings of the now insolvent hedge fund, Millennium Global Emerging Credit Fund (the "Fund"), and thereby inflated the Fund's reported returns and net asset value.[8] The SEC's complaint alleges that the fund's portfolio manager surreptitiously provided two brokers with fictional prices for them to pass on to the Fund's outside valuation agent and its auditor. Specifically, the valuations for two of the Fund's illiquid securities holdings were completely fabricated and these fabricated prices were passed onto the valuation agent and auditor. This scheme caused the Fund to drastically overvalue these two securities holdings by as much as $163 million in August 2008 which, in turn, allowed the Fund to report inflated and false-positive monthly returns. By overstating the Fund's returns and overall net asset value, the SEC alleges that

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***Jeff Himstreet** is Of Counsel with Bingham McCutchen in its New York Office. His views may not represent the view or opinion of Bingham and is not intended to be legal advice. Mr. Himstreet is a member of NSCP and of the NSCP Investment Adviser Committee.*

the fund manager was able to attract at least $410 million in new investments, deter about $230 million in eligible redemptions and generate millions of dollars in inflated management and performance fees.[9]

The SEC also brought an enforcement action against New York-based hedge fund adviser ThinkStrategy Capital Management and its sole managing director with fraud in connection with two separate hedge funds they managed.[10] At its peak in 2008, ThinkStrategy managed approximately $520 million in assets. The SEC's complaint alleges that ThinkStrategy engaged in a pattern of deceptive conduct designed to bolster their track record, size, and credentials. In particular, they materially overstated the performance of one of the funds and gave investors the false impression that the fund's returns were consistently positive and minimally volatile. ThinkStrategy also repeatedly inflated the firm's assets, exaggerated the firm's longevity and performance history, and misrepresented the size and credentials of the firm's management team. ThinkStrategy has consented to the entry of judgments permanently enjoining them from violating the antifraud provisions of the securities laws, and have agreed to pay financial penalties and disgorgement. The managing director also has consented to an order barring him from the securities industry.

In a third enforcement action, the SEC charged Solaris Management LLC, a registered adviser, for fraudulently misusing the assets of the Solaris Opportunity Fund LP, to which it was the investment adviser.[11] The actions were taken by Rooney, its president. According to the SEC, Solaris made a radical change in the fund's investment strategy, contrary to the fund's offering documents and marketing materials, by becoming wholly invested in Positron Corp., a financially troubled microcap company. The SEC alleges that Rooney, who has been Chairman of Positron since 2004 and owns stock options in it, misused the Solaris Fund's money by investing more than $3.6 million in Positron through both private transactions and market purchases. Rooney and Solaris hid the Positron investments and Rooney's relationship with the company from the fund's investors for over four years. The SEC stated that "[t]hese investments benefited Positron and Rooney while providing the fund with a concentrated, undiversified, and illiquid position in a cash-poor company with a lengthy track record of losses."[12]

Lastly, the SEC also brought enforcement action against unregistered investment adviser LeadDog Capital Markets LLC and its general partners and owners for misrepresenting or failing to disclose material information to investors in the LeadDog Capital LP fund.[13] The Division of Enforcement alleges that LeadDog and its general partners solicited investments in a hedge fund they controlled through material misrepresentations and omissions concerning among other things the negative regulatory history of a securities professional for one of its general partners, compensation received by the general partners in connection with the fund's investments, and the substantial ownership interest by one of the partners in, and control of, some of the same companies to which he directed fund investments. In addition, LeadDog and its partners allegedly misrepresented to, and concealed from, existing and prospective investors the substantial conflicts of interests and related party transactions that characterized the fund's illiquid investments. For example, to induce one elderly investor to invest $500,000 in the fund, LeadDog and its general partners falsely represented that at least half of the fund's assets were liquid and could be marked to market each day and that the investor could exit the fund at any time.

2. Truth-in-Filings

In addition to monitoring for performance anomalies, the Enforcement Staff has begun to review the Forms ADV that advisers file with the SEC to determine whether an adviser is misstating the educational achievements of its personnel, the firm's business affiliations, or its assets under management.[14] Khuzami, in explaining the "broken windows" strategy stated that "For Rudy [Guiliani, former mayor of New York City], it was a focus on turnstile jumpers and squeegee men. For us, it's advisers who lie about graduating Phi Beta Kappa, conceal their association in a past failed business venture, or inflate their assets under management who might well be the same persons who outright steal your money when the markets turn against them."[15] This initiative also has begun to bear fruit.

The SEC recently announced an enforcement action against Calhoun Asset Management, an adviser, and its principal for misrepresenting the amount of assets under management to gain business, as well as allegedly made false and misleading statements on the Form ADV.[16] For example, the SEC alleges that assets under management were reported as growing from $27 million to $200 million, though the actual assets under management were never more than $3 million. The SEC also alleged that marketing material for a fund was misrepresented, including returns for the fund for time periods before the fund commenced operations.

In addition, advisers have been the subject of enforcement actions for failing to disclose an adviser's investments in companies that were the subject of investment advice to clients, as well as representing that an adviser had co-invested in a fund when in fact it had not. Concerning the latter, the SEC sanctioned a hedge fund adviser for deceiving investors about whether its executives had personally invested in a hedge fund focused on Latin America, requiring it to pay more than $3.1 million in disgorgement and penalties.[17] Concerning the former, the SEC alleged that Walter J. Clarke, the adviser's owner and principal, advised clients at Oxford Investment Partners LLC to invest in two businesses without disclosing the

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conflicts of interest that he co-owned one of them and had financial ties to the owners of the other. Both investments later failed. And when Clarke's own financial problems prompted him to sell a stake in Oxford to a client, he fraudulently inflated the value of his firm by at least $1.5 million to make the client overpay by at least $112,000.[18]

3. Enforcement Initiative Regarding the Investment Advisory Contract Renewal Process

The Division of Enforcement's Asset Management Unit also began an initiative into the investment advisory contract renewal process and fee arrangements in the fund industry. Under Section 15 of the Investment Company Act of 1940, a mutual fund's (or other investment company's) board of directors must on an annual basis approve the investment advisory contract with the investment adviser to the funds. A mutual fund investment adviser is required to provide the fund's board with information that is reasonably necessary to evaluate the terms of any contract. Khuzami stated that the SEC "want[s] to take the advisory fee setting process out of the shadows by scrutinizing the role of investment advisers and fund board members in vetting fee arrangements with registered funds."[19]

The SEC recently announced the settlement of an enforcement action against Morgan Stanley Investment Management Inc. ("MSIM") for a fee arrangement that repeatedly charged a fund and its investors for advisory services that were not actually received from a third party. According to the SEC's order, MSIM arranged The Malaysia Fund's sub-advisory agreement with a subsidiary of AM Bank Group ("AMMB"), one of the largest banking groups in Malaysia. Despite the research and advisory agreement stating that AMMB would provide MSIM with "investment advice, research and assistance, as [MSIM] shall from time to time reasonably request," the SEC found that AMMB merely provided two monthly reports based on publicly available information that MSIM neither requested nor used in its management of the fund.[20] The fund's filings stated that for an advisory fee, AMMB provided MSIM with "investment advice, research and assistance." Since AMMB was not providing any advisory services, the SEC concluded that MSIM prepared and filed false information in its annual and semi-annual reports. Furthermore, the SEC found that MSIM's oversight and involvement with AMMB during the relevant time period were inadequate.

According to the SEC's order, the fund's sub-adviser contract with AMMB was terminated in early 2008 after the SEC's examination staff inquired into the fund's relationship with the sub-adviser. MSIM agreed to repay the fund $1.845 million for the sub-adviser's fees and pay a $1.5 million penalty. MSIM also agreed to implement policies and procedures specifically governing the Section 15(c) process and its oversight of service providers.

4. Valuation and Pricing Issues

Perhaps as a reminder that valuation issues remain a topical issue for examination and enforcement Staff, the SEC announced an enforcement action against UBS Global Management (Americas) Inc. ("UBSGAM") in January 2012 for failing to properly price securities in three of its mutual funds, resulting in an overstatement of the funds' net asset values ("NAVs") to investors and the payment of higher fees by investors.[21] This enforcement action began as a referral from the examination staff,[22] and found that the UBSGAM purchased approximately 54 fixed-income securities in June 2008 at an aggregate purchase price of approximately $22 million. Following the purchases, all but six of the securities were then valued at prices substantially in excess of the transaction prices, including many that were at least double. The valuations used by UBSGAM were provided by pricing sources (broker-dealers or a third-party pricing service) that did not appear to take into account the prices at which the mutual funds had purchased the securities.

UBSGAM did not price the securities at fair value until its valuation committee met -- more than two weeks after UBSGAM began receiving exception reports identifying the discrepancies between the purchase prices and the valuation of the securities based on the pricing sources. UBSGAM caused the mutual funds to not follow their own written valuation procedures, which required valuation at the transaction price until the firm either fair valued the securities or received a response to a pricing discrepancy identified in its exception report. The result, according to the SEC, was that the improper valuations caused the funds' NAVs to be overstated by between one and ten cents per share for several days to the detriment of investors purchasing fund shares during that period.

5. Compliance Policies and Procedures

The SEC also recently announced the settlement of three enforcement actions based on a failure to adopt and implement policies and procedures as required by the Compliance Rule. Each of the three actions are the result, at least in part, of advisers being previously alerted to compliance deficiencies by OCIE Staff and allegedly failing to address those deficiencies. In announcing the settlements, SEC Enforcement Director Robert Khuzami stated in effect that, where there is smoke, there may or may not be fire, as "[n]ot all compliance failures result in fraud, but many frauds take root in compliance deficiencies."[23] The SEC stated that in two of the cases — OMNI and Asset Advisors — OCIE examiners previously warned the firms about their compliance deficiencies.[24]

The SEC previously has brought enforcement actions against advisory firms for "technical" violations that did not result in investor harm. For example, in a proceeding against Aletheia Research and Management, Inc. ("Aletheia"), the SEC alleged that Aletheia disseminated proposals to investors and intermediaries that failed to disclose information previously requested by the Examination Staff, failed to implement procedures to comply with the Compliance Rule, failed to have an annual surprise examination as required by Advisers Act Rule

206(4)-2, and failed to make and keep copies of employee records relating to its code of ethics.[25] An action based on similar violations also was brought against CapitalWorks Investment Partners, LLC.[26]

a. The Compliance Rule Generally

The Compliance Rule requires registered investment advisers to adopt and implement written policies and procedures that are reasonably designed to prevent, detect, and correct securities law violations. The Compliance Rule also requires annual review of the policies and procedures for their adequacy and the effectiveness of their implementation, and designation of a chief compliance officer to be responsible for administering the policies and procedures. A discussion of the three enforcement actions follows.

The SEC has stated that it expects that an adviser's policies and procedures, at a minimum, should address the following issues to the extent that they are relevant to that adviser, portfolio management processes, trading practices, proprietary trading of the adviser and personal trading of its supervised persons, the accuracy of disclosures made to investors, clients, and regulators, safeguarding of client assets, creation and maintenance of accurate and complete books and records, marketing advisory services (including the use of solicitors), valuation, privacy, and business continuity plans.[27] Advisers Act Rule 204A requires advisers to maintain insider trading policies and procedures and Rule 204A-1 requires advisers to adopt a code of ethics to address conflicts of interest that arise by personal trading by advisory personnel.

b. Enforcement Cases Based on the Compliance Rule

OMNI and Beynon. The SEC alleged in its order against OMNI Investment Advisors Inc. ("OMNI") and its Chief Compliance Offices, Gary Beynon, that the firm failed to adopt and implement written compliance policies and procedures after SEC examiners informed OMNI of its deficiencies.[28] According to its March 31, 2011 Form ADV, OMNI provided customized discretionary portfolio management services to approximately 190 clients with about $65 Million in assets under management. In 2007, the SEC examined OMNI and issued a deficiency letter noting several issues, including OMNI's failure to conduct an adequate annual review of its compliance program. The minority owner of OMNI remained CCO until September 2008, when he sold his interest to Beynon and left the firm, leaving it with two advisory representatives. Thereafter, Beynon was the CEO of OMNI and the firm's majority owner.

Between September 2008 and August 2011, OMNI had no compliance program and its advisory representatives were in effect unsupervised. Beynon assumed the chief compliance officer responsibilities in November 2010 while living abroad. In November 2010, the SEC began an examination of OMNI and attempted to contact the CCO designated on the firm's Form ADV; however, examiners learned that following the sale of his minority ownership to Beynon in September 2008, the CCO had left the firm. The absence of the designated CCO was not merely a technical concern because Beynon was located in Brazil from 2008 through 2011, during which time OMNI's compliance manual (dated November 3, 2010) named him as the firm's CCO and assigned all supervisory responsibilities to him.[29] The SEC *Order* asserts that he failed to perform any supervisory or compliance activities between November 2010 and August 2011, other than requiring that the two advisory representatives acknowledge receipt of the latest version of the firm's compliance manual.[30] Nevertheless, the SEC concluded that no one at OMNI ensured that the provisions of the compliance manual relating to supervision were implemented, typically a function of the CCO or a delegate.

The SEC alleged that OMNI failed to establish, maintain, and enforce a written code of ethics, and failed to maintain and preserve certain books and records. In response to a subpoena from the SEC, OMNI produced client advisory agreements with Beynon's signature evidencing his supervisory approval when, according to the SEC, Beynon had never reviewed the agreements. The SEC further found that Beynon backdated his signature on those agreements one day before the documents were produced to the Commission.[31]

Beynon agreed to pay a $50,000 penalty and to be permanently barred from acting within the securities industry in any compliance or supervisory capacity and from associating with any investment company. Additionally, OMNI agreed to provide a copy of the proceeding to all of its former clients between September 2008 and August 2011.

Feltl. According to the SEC's order against Feltl & Company Inc. ("Feltl"), the dually-registered broker-dealer and investment advisory firm failed to adopt and implement written compliance policies and procedures for its advisory business, which in 2011 grew to approximately $107 million in assets under management.[32] The SEC found that the firm's compliance manual "was an off-the-shelf manual purchased, customized, and periodically updated" and that the firm in effect treated its brokerage and investment advisory accounts the same for compliance purposes.[33] The firm furthermore did not make any changes to the chapter in its compliance manual relating to its advisory business from 2003 to 2011.

The SEC alleged that Feltl further neglected to adopt a code of ethics and collect the required securities disclosure reports from its staff. Advisers Act Rule 204A-1 requires registered advisers to adopt a code of ethics that requires the periodic reporting and review of the personal securities transactions of certain advisory personnel.

The SEC Staff issued a deficiency letter to Feltl in 2010 noting that Feltl's compliance manual did not meet the requirements of the Compliance rule, such as requiring disclosure and consent for principal trades with advisory clients. The SEC action alleged that Feltl

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engaged in over 1500 principal transactions with its advisory clients' accounts without informing them or obtaining their consent as required by law.[34] Feltl also charged undisclosed commissions on certain transactions in clients' wrap fee accounts. The SEC suggested that the principal transactions and undisclosed commissions were the result of Feltl's compliance failures, noting that "[t]he principal transactions resulted from Feltl's failure to maintain sufficient compliance policies and procedures regarding its advisory business" and that, [h]ad Feltl maintained sufficient compliance procedures relating to its advisory billing process, it would have likely caught the overcharges."[35]

Under the settlement, Feltl & Company agreed to pay a penalty of $50,000 and return more than $142,000 to certain advisory clients. Additionally, the firm will hire an independent consultant to review its compliance operations annually for two years, provide a copy of the SEC's order to past, present and future clients, and prominently post a summary of the order on its website.

Asset Advisors. Like the order in Feltl, the SEC's order against Asset Advisors LLC ("Asset Advisors") states that SEC examiners found in 2007 that the firm had failed to adopt and implement a compliance program.[36] Asset Advisors in May 2011 had approximately $27 million under management. After SEC examiners brought it to the firm's attention, Asset Advisors adopted policies and procedures but never fully implemented them. Similarly, Asset Advisors only adopted a code of ethics at the behest of the SEC exam staff and then failed to adequately abide by the code.

Under the settlement, Asset Advisors agreed to pay a $20,000 penalty, cease operations, de-register with the Commission and, with clients' consent, transfer the advisory accounts to a firm with an established compliance program.

B. Lessons for Investment Advisers

Substantiate Performance Numbers. The Aberrational Performance Initiative, as discussed above, is intended to ferret out performance outliers. The fact that an adviser is outperforming a benchmark or its peers certainly is not tantamount to fraud -- rather, it often times is because the adviser is simply posting better performance. With superior performance, however, comes increased investigative risk and as such advisers are encouraged to verify performance numbers and maintain all records necessary to substantiate the performance (which is already required under the Advisers Act recordkeeping rules).

Review Form ADV Disclosures. While the enforcement cases discussed above would appear to involve more than typographical errors or inadvertent miscalculations, it is imperative for advisers of all sizes to assure the accuracy of their Form ADV disclosures. An adviser's legal and compliance staff are encouraged to seek broad ownership of the Form ADV disclosures within the relevant business areas.

Enforce Pricing Procedures. As noted above, the SEC continues to focus on how firms value securities holdings. The conflicts of interest are considerable with pricing issues, given that a higher asset value yields a higher fee to the adviser. As such, advisers should ensure that their pricing policies are fair, disclosed, and followed.

Verify the Legitimacy of Payments to Third-Parties. The genesis of the MSIM case discussed above is the fact that payments were made to a third party for research that was not needed and was not used in the formulation of investment ideas. Advisers are encouraged to have their portfolio managers review all arrangements for research to ensure that the research that client assets are paying for is actually of value to the adviser.

Mitigate Recidivism Risk. It should go without saying that if the SEC Staff correctly cites an adviser for a deficiency, particularly one relating to its overall compliance program and adherence to the Compliance Rule, the adviser should implement the requested corrective actions. It also is important that the adviser document what was corrected, the measures taken to correct the deficiency, and the supervisory controls implemented to prevent the deficiency from being repeated. In connection with their annual reviews, if not otherwise, advisers are encouraged to review the last deficiency letter received and any response sent by the adviser, and verify that the adviser has taken any necessary corrective measures indicated by the Staff.

CCO Functions. It furthermore is important that the CCO is not only empowered to perform his or her role but is able to do so. Beynon, the CCO for OMNI, was in Brazil from 2008 to 2011. While it certainly is possible to discharge one's duties as CCO without being on-site continually, the CCO and the adviser must demonstrate that the CCO is doing so, regardless of where he or she is located. As such, the SEC was not concluding in the OMNI order that an off-site CCO is a *de facto* violation of the Compliance Rule. Rather, the SEC Order stated that the Beynon did nothing more than have the two advisory representatives for OMNI affirm their receipt of the manual.

Compliance Manuals. Compliance manuals, and written supervisory procedures, must be tailored to the adviser's business and its system of supervisory controls. In the OMNI matter, the SEC characterized the manual as an off-the-shelf product that was not specifically tailored to the relevant adviser's business as such. Feltl's compliance manual as it relates to its investment advisory business had not been updated in several years, according to the SEC, despite the fact that Feltl's business changed considerably over the same period to managing client assets on a non-discretionary basis through a wrap fee program. Asset Advisors compliance manual was similarly inadequate, as the manual did not fully address the advisers' business and "did not provide any detail as to how compliance processes would be executed."[37]

Code of Ethics. All three SEC orders based on violations of the Compliance Rule discussed above noted a lack of compliance with Advisers Act Rule 204A-1 in that the adviser either did not have a code of ethics (or adopted one after the SEC Staff reminded them of their regulatory obligations through a deficiency letter) and then did not abide by the adopted code of ethics. The code of ethics rule was initially adopted by the SEC after a spate of enforcement actions against investment companies and investment advisers, such as mutual fund and variable annuity market timing, undisclosed revenue sharing arrangements, and disclosure of material non-public information about fund portfolio holdings to favored advisory clients.[38] Given the recent regulatory focus on insider trading issues, advisers are encouraged to review their codes of ethics and, as importantly, the processes for assuring compliance with the personal trading reporting requirements imposed by the codes of ethics.

1. Robert Khuzami, Director, SEC Division of Enforcement, Testimony Concerning Investigating and Prosecuting Fraud after the Fraud Enforcement and Recovery Act, US Sen. Cte. on the Judiciary (Sept. 22, 2010).
2. *See* Melanie Waddell, SEC, Industry Experts Issue Stern Warnings to CCOs, AdvisorOne (Mar. 8, 2012) (avail. at http://www.advisorone.com/2012/03/08/sec-industry-experts-issue-stern-warnings-to-ccos)
3. *See id.* (Division of Investment Management Director Eileen Rominger quoted as saying that the SEC's Division of Enforcement "may act even without incidence of fraud").
4. *See* Robert Khuzami, Director, SEC Division of Enforcement, Remarks before the Consumer Federation of America's Financial Services Conference (Dec. 1, 2011).
5. *See* SEC Ups Its Game to Identify Rogue Firms, Wall Street Journal (Dec. 27, 2011) (avail. at online.wsj.com (subscription required)).
6. SEC Plans Money Market Fund Surveillance, Fund Industry Intelligence (Mar. 16, 2012) (avail. at fundinstryintelligence.com (subscription required)).
7. SEC Charges Multiple Hedge Fund Managers with Fraud in Inquiry Targeting Suspicious Investment Returns, Press Rel. 11-252 (Dec. 1, 2011) (December 11 Press Release).
8. SEC v. Balboa et. al, Civil Action No. 8731 (S.D.N.Y. filed December 1, 2011) (avail. at http://www.sec.gov/litigation/complaints/2011/comp-pr2011-252.pdf).
9. *Id.*
10. SEC v. Kapur et. al Civil Action No. 8094 (S.D.N.Y. filed Nov. 10, 2011) (avail. at http://www.sec.gov/litigation/complaints/2011/comp22151.pdf).
11. SEC v. Rooney et al., 11-cv-08264, E.D. Ill (Nov. 18, 2011).
12. November 11 Press Release, *supra* note 7.
13. LeadDog Capital Markets, LLC, Inv. Adv. Act Rel. No. 3314 (Nov. 15, 2011).
14. Robert Khuzami, Improvements at the SEC Enforcement Division, NACD Directorship (Jan. 1, 2012) (avail. at directorship.com).
15. Robert Khuzami, SEC Director of Enforcement, Remarks Before the Consumer Federation of America's Financial Services Conference, by Robert Khuzami (Dec. 1, 2011).
16. Calhoun Asset Management LLC et. al, Inv. Adv. Act Rel. No. 3345 (Dec. 29, 2011). The SEC also has brought similar cases against advisers for making material misstatements through social media such as Facebook and LinkedIn. See In re Anthony Fields et. al, Inv. Adv. Act Rel. No. 3348 (Jan. 4, 2012).
17. Quantek Asset Management, et al., Inv. Adv. Act Rel. No. 3408 (May 29, 2012).
18. Oxford Investment Partners, LLC and Walter J. Clarke, Inv. Adv. Act Rel. No. 3412 (May 30, 2012). The SEC also brought a similar action against a Seattle-based fund manager for investing client funds into start-up companies that he co-founded, despite the fact that the investments were inconsistent with the strategies the manager represented to his clients and contrary to their investment objectives. SEC v. Spangler et al., Civil Action No. 2:12-cv-00856 (W. Wash) (May 17, 2012).
19. SEC Charges Morgan Stanley Investment Management for Improper Fee Arrangement, Press Rel. 2011-244 (Nov. 16, 2011).
20. *Id.*
21. UBS Global Asset Management (Americas) Inc., Inv. Adv. Act Rel. No. 3356 (Jan. 17, 2012).
22. *See* SEC Charges UBS Global Asset Management for Pricing Violations in Mutual Fund Portfolios, SEC Press Rel. No. 2012-8 (Jan. 17, 2012) (avail. at www.sec.gov/news/press/2012/2012-8.htm
23. *See* SEC Penalizes Investment Advisers for Compliance Failures, SEC Press Release 2011-248 (Nov. 28, 2011) (avail. at http://sec.gov/news/press/2011/2011-248.htm).
24. *See id.*
25. *See* In re: Aletheia Research and Management, Inc., et. al, Inv. Adv. Act Rel. No. 3197 (May 9, 2011).
26. *See* In re: CapitalWorks Investment Partners, LLC, et. al, Inv. Adv. Act Rel. No. 2520 (June 6, 2006). See also Bingham McCutchen Securities Regulation Alert, CapitalWorks Proceeding Provides Important Compliance Reminders (June 2006) (avail. at http://www.bingham.com/Media.aspx?MediaID=2817).
27. Compliance Programs of Investment Companies and Investment Advisers, Inv. Adv. Act Rel. No 2204 (Dec. 17, 2003).
28. In re: OMNI Investment Advisors, Inc. and Gary R. Beynon, Inv. Adv. Act Rel. No. 3323 (Nov. 28, 2011).
29. *See id.*; *see also* Bill Singer, SEC Fishing for Compliments: Look At Our New Proactive Regulation of RIAs, Forbes.com (Nov. 29, 2011) (available at http://www.forbes.com/sites/billsinger/2011/11/29/sec-fishing-for-compliments-look-at-our-new-proactive-regulation-of-rias/).
30. See note 26, supra.
31. *See* note 26, supra.
32. Feltl & Company, Inc., Inv. Adv. Act Rel. No. 3325 (Nov. 28, 2011).
33. *Id.*
34. *Id.*
35. *Id.*
36. Asset Advisors, LLC, Inv. Adv. Act Rel. No. 3324 (Nov. 28, 2011).
37. *See* Inv. Adv. Act Rel. No. 3324.
38. Investment Adviser Codes of Ethics, Inv. Adv. Act Rel. No. 2256 (July 2, 2004), at n.3 and accompanying text.