

Morgan Lewis

webinar

Virtual Asset Management Roundtable Series:
SEC Enforcement 2012 Year In Review

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Ivan P. Harris
Jennifer L. Klass
Thomas A. Linthorst
Richard M. Morris
Joshua R. Blackman

Our Team



Ivan P. Harris
iharris@morganlewis.com
212.309.6390



Jennifer A. Klass
jklass@morganlewis.com
212.309.7105



Richard F. Morris
richard.morris@morganlewis.com
212.309.6650



Thomas A. Linthorst
tlinthorst@morganlewis.com
609.919.6642



Joshua R. Blackman
jblackman@morganlewis.com
212.309.7131

Agenda

- SEC Enforcement Developments
- SEC Enforcement Statistics
- Selected SEC Enforcement Cases
- 2013 Examination Priorities
- Conclusion

2012 SEC Enforcement Developments

- Enhanced cooperation between Enforcement, OCIE, Division of Investment Management
- Impact of Asset Management Unit
- Statute of limitations
- “No admit or deny” settlement policy
- Emphasis on individual liability
- Change in Commission and senior staff

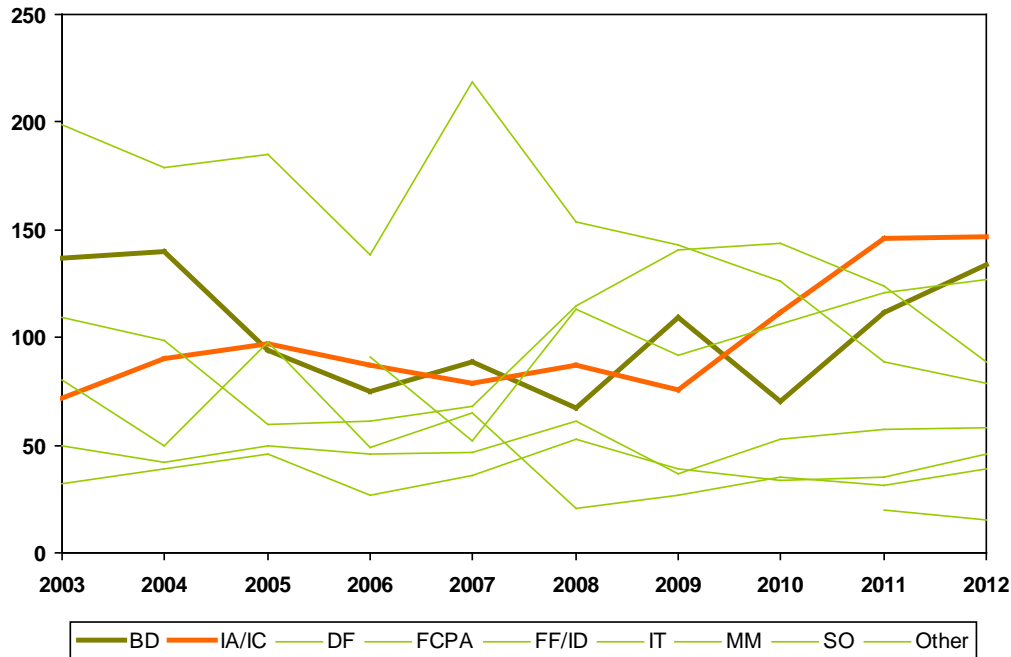
2012 SEC Enforcement Developments

- Dodd-Frank whistleblower “bounties”
- Office of the Whistleblower
 - 3,001 tips, complaints and referrals received in FY 2012
 - One award (August 21, 2012) – 30%
 - Types of allegations
 - Corporate disclosure and financials (18.20%)
 - Offering fraud (15.50%)
 - Manipulation (15.20%)
 - Insider trading (6.30%)
- Regulatory and employment law dimensions

2012 SEC Enforcement Statistics

- FY 2012 was a busy time for SEC enforcement:
 - 734 cases
 - 150 National Priority cases
 - 147 investment adviser and investment company cases
 - 134 broker-dealer cases
 - 58 insider trading cases
 - 29 financial crisis-related actions
 - \$3 billion in penalties and disgorgement

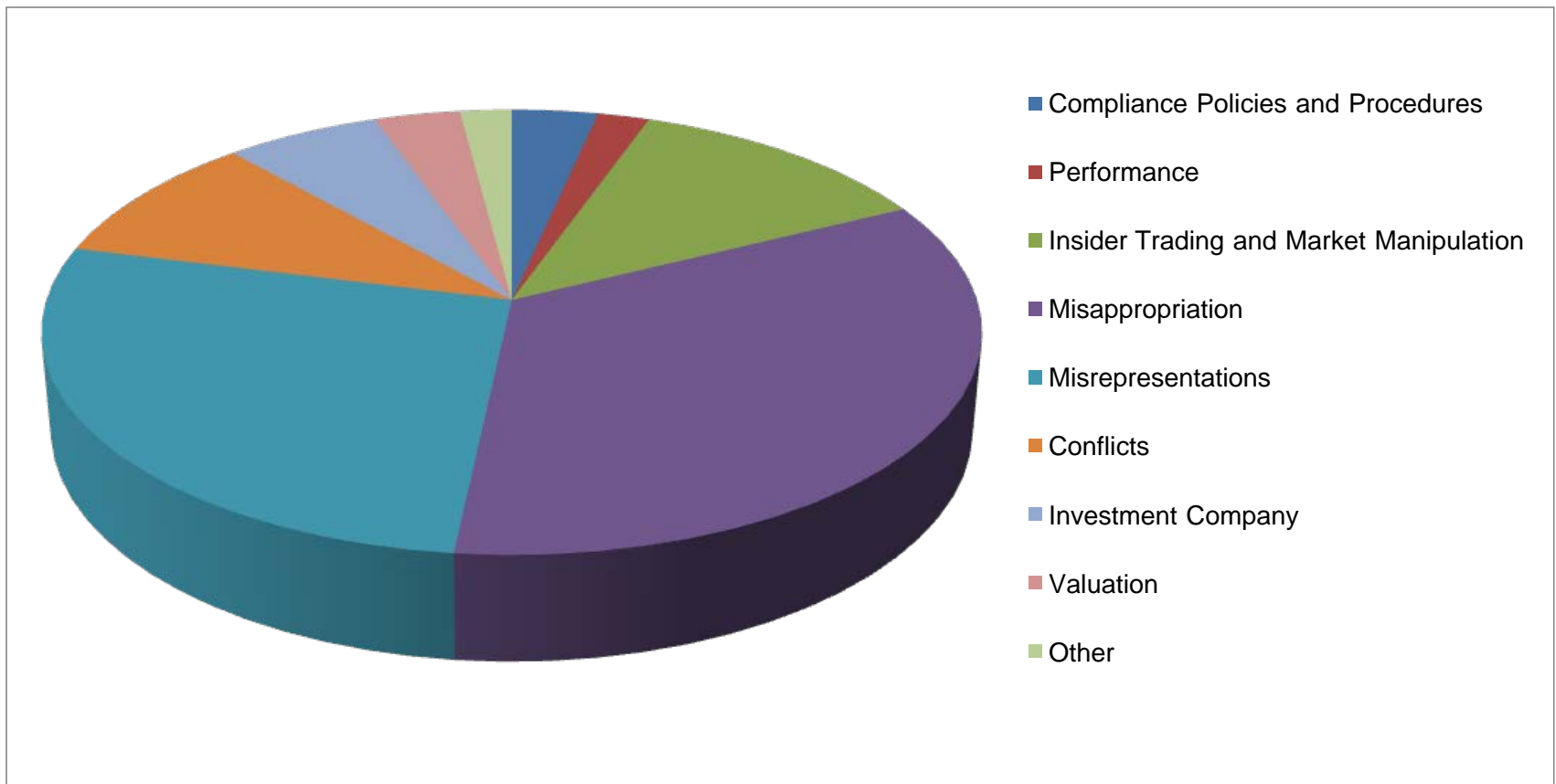
2012 SEC Enforcement Statistics



- **734** cases in FY 2012 (735 in FY 2011)
- **147** cases against investment advisers and investment companies (146 in FY 2011)
- **134** cases against broker-dealers (112 in FY 2011)
- **38%** of cases in FY 2012 involved investment advisers, investment companies and broker-dealers

Selected SEC Enforcement Cases

Distribution of Investment Adviser and Investment Company Cases



Selected SEC Enforcement Cases

- Claims to Attract or Retain Clients/Investors
 - Quantek Asset Management LLC (May 29, 2012)
 - Calhoun Asset Management, LLC (July 9, 2012)
- Performance Claims
 - GMB Capital Management LLC (Apr. 20, 2012)
 - Jason A. D’Amato (Aug. 31, 2012)
 - BTS Asset Management, Inc. (Oct. 29, 2012)

Selected SEC Enforcement Cases

- Valuation of Assets
 - SEC v. Yorkville Advisors, LLC (Oct. 17, 2012)
 - J. Kenneth Alderman, et. al (Dec. 10, 2012)
- Mutual Fund Fee Arrangements
 - SEC v. AMMB Consultant Sendirian Berhad (June 27, 2012)
 - In the Matter of Peak Wealth Opportunities, LLC (Aug. 10, 2012)

Selected SEC Enforcement Cases

- **Conflicts of Interest**
 - Martin Currie Inc. and Martin Currie Investment Management Ltd. (May 10, 2012)
 - Mark F. Spangler and the Spangler Group, Inc. (May 18, 2012)
 - Focus Point Solutions, Inc. (Sept. 6, 2012)
- **Insider Trading and Market Manipulation**
 - SEC v. CR Intrinsic Investors, LLC (Nov. 20, 2012)
 - Tiger Asia Management (Dec. 13, 2012)
 - SEC v. RKC Capital Management, LLC (Apr. 30, 2012)
 - Wesley Capital Management, LLC (July 26, 2012)

Selected SEC Enforcement Cases

- Compliance Controls and SEC Examinations
 - Consultiva Internacional, Inc. (Aug. 3, 2012)
 - EM Capital Management and Seth Richard Freeman (Nov. 20, 2012)
 - Evens Barthelemy and Barthelemy Group (Nov. 20, 2012)

Selected SEC Enforcement Cases

- Additional areas of enforcement activity:
 - Management of private equity funds
 - Custody of client assets
 - Use of affiliated broker-dealers
 - Consistency of investment objectives and disclosures
 - Misappropriation of client assets and fraudulent trading schemes

2013 SEC Examination Priorities

- **NEP Initiatives**

- Fraud Detection and Prevention
- Corporate Governance and Enterprise Risk Management
- Conflicts of Interest
- Technology

- **IA-IC Ongoing Risks**

- Safety of Assets
- Compensation Arrangements
- Marketing and Performance
- Allocation of Investment Opportunities
- Fund Governance

2013 SEC Examination Priorities

- **IA-IC New and Emerging Issues**
 - New Registrants
 - Dually Registered IA/BD
 - “Alternative” Investment Companies
 - Payments for Distribution in Guise
- **IA-IC Policy Topics**
 - Money Market Funds
 - Compliance with Exemptive Orders
 - Compliance with Pay to Play Rule

Conclusion



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