

SIFMA Compliance & Legal
Society Annual Seminar
Monday, March 19th, 2012

**Investment Advisers: The Perspective of
the Adviser (MB-9)**

Brent Taylor

UBS Wealth Management Americas

(Moderator)

Allison Bevacqua

Credit Suisse

Daniel S. Kahl

U.S. Securities and Exchange

Commission

David Lui

Galliard Capital Management

Michael S. Caccese

K&L Gates LLP

Steven Stone

Morgan, Lewis & Bockius LLP

Agenda

- SEC Regulatory Update
- SEC Examination Issues
- SEC Enforcement Developments
- Managed Account Issues
- Performance Advertising
- “On the Radar”

SEC Regulatory Update

- Form ADV Amendments
- Pay to Play Rule
 - Implementation Schedule
 - Interplay with FINRA/MSRB Rules
 - Exemptive Relief
- Rule 12b-1 Reform
- Dodd-Frank Act Initiatives
 - Section 913 Rule Making
 - Section 914 Study
- Sunset of Temporary Principal Trade Rule (Rule 206(3)-3T)

SEC Examination Issues

- Examination Trend Overview
- What to Expect During an IA Exam
- OCIE / Enforcement Coordination
 - **Impact of Delegated Authority to Initiate Investigations**
- “National” Exam Manual
- National Examination Risk Alerts
 - **Social Media**
 - **Unauthorized Trading**
- Emerging Questions & Areas of Focus

SEC Enforcement Developments

- Broad Based Changes in Enforcement Program
 - Cooperation Initiatives
 - Dodd-Frank Act Whistleblower Provisions
- Asset Management Unit's 1st Year
 - Specialized Personnel in OCIE and Enforcement
 - Technology Resources and Analytical Tools

2011 Highlights: SEC Statistics



- **146** cases against investment advisers and investment companies
- **30%** increase over FY 2010
- **92%** increase from FY 2009
- 112 cases against broker-dealers (70 in FY 2010)
- Cases against investment advisers, investment companies and broker-dealers represent 35% of SEC's total enforcement docket

Current Enforcement Priorities & Cases

- Compliance programs and supervisory structure
 - “Not all compliance failures result in fraud, but many frauds take root in compliance deficiencies . . . That simple truth underlies our renewed focus on identifying and charging firms and individuals that fail their legal obligations to maintain adequate compliance programs.”
- Mutual fund fee arrangements, including board oversight and the 15(c) contract renewal process
 - **Morgan Stanley Investment Management, Inc. (Nov. 16, 2011)**
- Turn key mutual fund solutions and inexperienced advisers

Current Enforcement Priorities & Cases

- Failure to disclose errors & focus on code
 - AXA Rosenberg Group LLC (Feb. 3, 2011)
- Performance claims, including aberrational performance and portability of performance
 - Aberrational Performance Inquiry
 - “The extraordinary returns reported by these advisers and portfolio managers were, in most cases, too good to be true . . . We are applying analytics across the investment adviser space – beyond performance and beyond hedge funds.”

Current Enforcement Priorities & Cases

- Insider Trading, including Expert Networks, Info Barriers & Front Running
- Selective Disclosure
 - *In re State Street Bank and Trust (2010)*
 - Selective disclosure regarding exposure to mortgage-backed securities
 - *In re Evergreen Inv. Mgmt. Co., LLC; Evergreen Inv. Serv., Inc. (2009)*
 - Selective disclosure regarding overvaluation and re-pricing
- Private Equity Funds and related Conflicts, including
 - Use of placement agents and other gatekeepers
 - Preferential terms in side letters and co-investing
 - Relationships with portfolio companies
 - Investing at different levels in the capital structure

Current Enforcement Priorities & Cases

- Valuation of illiquid and hard-to-value assets, including compliance with pricing policies
 - Morgan Asset Management, Inc. and Morgan Keegan & Company, Inc. (June 22, 2011)
 - UBS Global Asset Management (Americas) Inc. (Jan. 17, 2012)

Managed Account Issues

- Manager Due Diligence
- Rule 3a-4 Issues
 - Possible SEC Staff Reconsideration

Performance Advertising

- GIPS Developments
- Hypothetical Performance
 - FINRA positions
 - Divergent SEC and CFTC approaches
- Private Equity
 - Past Specific Recommendations
 - Projected-Targeted Returns
 - Related Performance

“On the Radar”

- CFTC Registration by Advisers and Private Funds - December 31, 2012 Deadline
 - For CPOs of Rule 4.13(a)(4) with a Rule 4.13(a)(4) notice of exemption filed before April 24, 2012, CPO has until December 31, 2012 to (a) comply with the de minimis restrictions of Rule 4.13(a)(3) and file a new notice of this exemption, or (b) register as a CPO
 - For CPOs of Rule 4.13(a)(4) funds that do not have a notice of exemption on file before April 24, 2012, CPO must, upon the commencement of operations, (a) comply with the de minimis restrictions of Rule 4.13(a)(3) and file a notice of this exemption, or (b) register as a CPO
 - For CTAs to Rule 4.13(a)(4) funds that claimed exemption under Regulation 4.14(a)(8) because they advised Rule 4.13(a)(4) funds, CTAs must adhere to the same registration timetable as CPOs (Note: other exemptions may be available, including partial exemption under Rule 4.7 for funds with QEP investors)
 - Application of registration rules will not apply with respect to a fund's swaps until the effective date of the yet-to-be-adopted swap definitions rule

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