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

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

UBS Wealth Management Americas (Moderator)

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## 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)

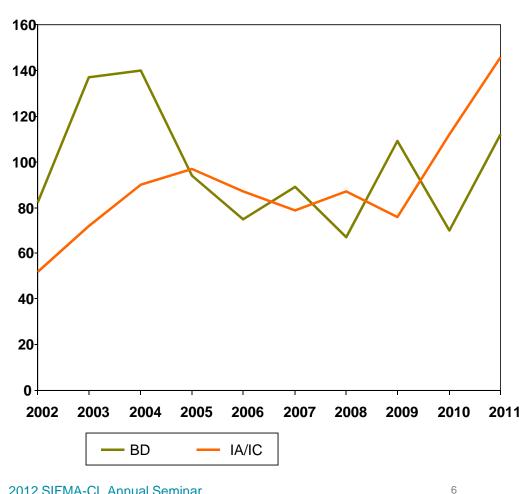
### SEC Examination Issues

- 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 brokerdealers (70 in FY 2010)
- Cases against investment advisers, investment companies and brokerdealers represent 35% of SEC's total enforcement docket

- 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

- 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."

- 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

- 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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