

INSIDE THE SEC ENFORCEMENT DIVISION: IMPORTANT CHANGES AHEAD

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April 28, 2009

Agenda

- Introduction
- Presentation
 - George Curtis, SEC Division of Enforcement
 - David Seide, Curtis, Mallet-Prevost, Colt & Mosle LLP
 - Pamela Parizek, KPMG Forensic
- Questions and Answers — (*anonymous*)
- Slides — now available on front page of Securities Docket
 - > www.securitiesdocket.com
- Wrap-up



Webcast Series

- Series of webcasts — every week
- www.securitiesdocket.com/webcasts
- **May 8:** “Hedge Funds: A Brave New World of Regulation and Enforcement”
 - Philip Khinda, Susan Markel, Ellen Zimiles



Panel



George Curtis



David Seide



Pamela Parizek



Bruce Carton

George Curtis



Deputy Director
SEC Division of Enforcement



Securities Docket Webcast:

Inside the SEC Enforcement Division

- George Curtis *Deputy Director, SEC Enforcement Division*
- Pamela P. Parizek *Partner, KPMG*
- David Z. Seide *Partner, Curtis Mallet-Prevost, Colt & Mosle LLP*

SEC Issues -- 2008

- “SEC Image Suffers in a String of Setbacks”
-- N.Y. Times
- Drop off in securities cases
 - 66 criminal securities fraud cases filed in 2008
 - *101 cases in 2005*
- Drop off in number of personnel

Mary Schapiro

- EXPERIENCE:

- SEC Commissioner
- Acting SEC Chair
- CFTC Chair
- Chair and CEO of Financial Industry Regulatory Authority



Early Enforcement Actions

- Senior Staff Appointments:

Robert Khuzami -- Director of Enforcement Division

David Becker -- General Counsel

Early Enforcement Actions

- Recent Cases

SEC v. Morris (S.D.N.Y. Filed Mar. 19, 2009) – Placement Agents (with NYAG)

SEC v. Maximum Return Investments, Inc. (C.D. Cal. Filed April 13, 2009) – Ponzi Schemes

Enforcement Developments

- Management Review Underway
- Wells Process
 - Decision-making
 - Wells discovery

Enforcement Developments

- SEC Enforcement Manual
- Consistency across offices
- Communication with outside counsel

Enforcement Developments

- Subpoena Power
 - “Duty Officer” now issues
 - Senior Staff (Commissioner Aguilar) may issue

Enforcement Developments

- Penalties
 - Elimination of “Pilot” Penalty Program
 - Restoration of corporate penalties (Commissioner Aguilar)?

Enforcement's Future

- Headcount expansion
 - Quantity – More Staff Attorneys
 - *Fraud Enforcement and Recovery Act of 2009*
 - \$20 million for 60 additional SEC Staff
 - Quality – JDs vs. MBAs vs. CPAs
 - Distribution – Regions vs. Home Office

Enforcement's Future

- Cooperation Credit?
 - A new *Seaboard Report*?
 - “If we are too stingy with credit, defendants may not see the ‘credit for cooperation’ trade as worth it.” – Commissioner Paredes

Regulatory Reform

- SEC – CFTC merger?
- Criminal authority?
- New federal regulation of financial products?
- Council of Regulators?



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- Pamela J. Parizek
- KPMG ForensicSM

Topics for Discussion

- **Enforcement Statistics**
- **Challenges for Corporate Management**
- **International Challenges**
- **Implications for Corporate Boards**
- **Compliance and Monitoring**

Enforcement Trends

SEC brought 671 enforcement actions in FY08, up from 656 in FY07

- Market manipulation and insider trading cases up more than 45 percent and 25 percent respectively

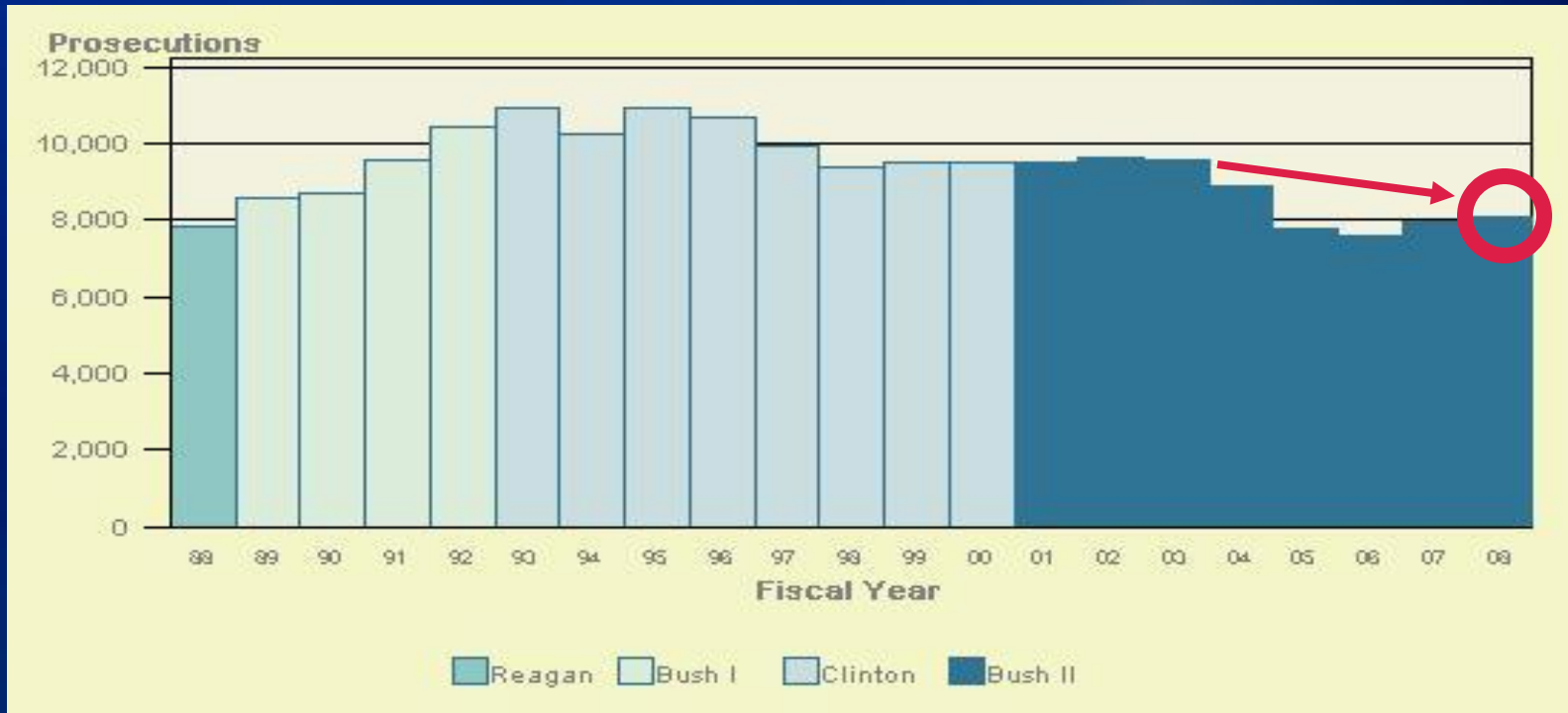
The Federal Bureau of Investigation has over 2,000 open investigations into mortgage fraud and 566 corporate fraud

- 43 of corporate fraud investigations involve matters “directly related to the current financial crisis and 36 new cases have been opened in recent weeks

•Source: FBI Deputy Director John S. Pistole Statement Before the House Committee on Financial Services (3/2009)

Enforcement Trends (cont'd)

DOJ reported 8,108 new individual white collar crime prosecutions in FY08



•Source: Analysis of DOJ Records Accessible to the Public, White Collar Crime Prosecutions

Challenges for Management

- **Surviving a Recession**
 - **Pressure on Earnings**
 - **Downsizing**
 - **Employee Morale**
- **Incentives to Manage Earnings**
- **The Importance of Tone at the Top**
- **Risks Posed by New Customers, Emerging Markets and Strategic Alliances**

International Challenges

- **FCPA Enforcement**

- DOJ, SEC and Foreign Regulatory Authorities

- **FCPA Compliance**

- Obama administration has emphasized anti-corruption, transparency – could lead more cases, greater fines and publicity
- FINRA emphasis on FCPA Compliance

Implications for Corporate Boards

- **Responsibilities:**

- Board does not detect fraud, but must conduct effective oversight
- Audit Committee must ensure that audits are effective, per SAS 99

- **Recent events have undermined confidence in Corporate Boards**

- Lehman (not exactly “fresh eyes”)
- Satyam (Board appointed by financial sponsors)
- Stanford (family and friends)

- **Rule-making proposals would increase transparency and provide investors more say in corporate governance**

Implications for Corporate Boards: Reforms Under Consideration by the SEC

- **Reforms under consideration by the SEC**
 - Enhanced disclosure around director nominee experience, qualifications and skills
 - Enhanced disclosure of compensation structure – encourage reform along 3 principles:
 - Governance of compensation
 - Alignment of compensation with prudent risk taking
 - Supervisory oversight and engagement by stakeholders

Implications for Corporate Boards: Reforms Under Consideration by the SEC

- **Reforms under consideration by the SEC (cont'd)**
 - Boards should disclose reasoning for choosing their particular leadership structure
 - Reviewing proposed changes to DE corporate law
 - Proxy Access: giving company owners opportunity to nominate directors
 - Increased disclosure from credit agencies, investment brokers, hedge funds, credit swaps, money market securities, etc
- SEC anticipates disclosure reforms. Not mandating any particular type of oversight, since risk management is not “one size fits all”

Corporate Governance Considerations: Pro-Active Compliance and Monitoring

- **Enterprise Risk Management**
- **Compliance/Risk Committee**
- **Audit Committee consultation with Compensation Committee**
- **Pro-Active FCPA Risk Assessment**
- **Expanded Role for Internal Audit**
- **Continuous Monitoring**
- **Investigation, Remediation, Accountability and Disclosure Protocols**

Questions?



Thank You

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