

HEDGE FUNDS: A BRAVE NEW WORLD OF REGULATION AND ENFORCEMENT

MAY 8, 2009

AlixPartners

Agenda

- Introduction
- Presentation
 - Philip Khinda, Steptoe & Johnson LLP
 - Susan Markel, AlixPartners
 - Ellen Zimiles, Daylight Forensic & Advisory
- Questions and Answers — (*anonymous*)
- Slides — now available on front page of Securities Docket
 - www.securitiesdocket.com
- Wrap-up

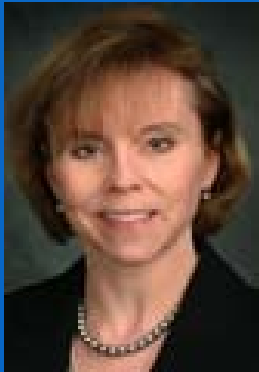
Webcast Series

- Series of webcasts — every other week
- www.securitiesdocket.com/webcasts
- Next: May 27— **Calling Off an M&A Deal: Legal and Damage Ramifications**
 - Jennifer Heil, Latham & Watkins
 - Jeff Litvak, FTI Forensic and Litigation Consulting
 - Kenneth Mathieu, FTI Forensic and Litigation Consulting

Panel



Philip S. Khinda



Susan Markel



Ellen Zimiles



Bruce Carton

Hedge Funds:
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Hedge Funds

- **Past as Prologue:**
 - Risk Mitigation?
 - **Capitalism and Seeking Alpha**
 - Some notable failures
 - Many more remarkable successes
 - Growth of Market Influence, Profile and Cachet
 - “A Demon of Our Own Design”?

Hedge Funds

- Growing Regulatory Concern and Enforcement Appetite
 - At federal level, a subtheme to trading and other cases in recent years
 - *E.g., U.S. v. Guttenberg (SDNY)*
 - Also recall IPO allocation investigations
 - State prosecutors now also in the mix
 - NYAG (Cuomo); California AG (Brown)

Hedge Funds

- **Economic Crisis and the Gathering Storm**
 - Fund redemptions and closures
 - The undue effects of Madoff, Dreier and other pretenders
- Industry in caricature and as scapegoat
 - *New Yorker* cartoon (May 4, 2009 issue)
 - **President's comments on Chrysler bankruptcy**

Hedge Funds

- **Where from Here? The Brave New World**
 - Legislative proposals (U.S. Senate/House; G20/EU)
- **Issues in play:**
 - Scope should include *all market participants*, rather than simply the asset management community
 - Short sales and the uptick rule
 - Registration (and its limitations)
 - Market disclosures/transparency
 - *The need for a more informed approach*

Hedge Funds

- **Where from Here? The Brave New World**
 - **Expected regulatory efforts and enforcement pursuit**
 - Recent SEC commentary and actions
 - Dedication of SEC enforcement staff to hedge fund matters
 - Enhanced coordination with federal prosecutors
 - **Specific concerns** (looking back and going forward)
 - Fraud/misrepresentation given lack of transparency
 - Misconduct or poor diligence/oversight by “feeder” and other funds
 - Excessive leverage creating counterparty/systemic risk
 - Pressures of unprecedented liquidation and redemption requests may lead fund managers to favor their interests or specific investors (“preferential redemptions”)
 - Unauthorized trading, and misappropriation of client assets

Hedge Funds

- **Where from Here? The Brave New World**
 - Activism by institutional and other investors?
 - Effects on:
 - The hedge fund community as a whole
 - Management companies (diligence and other issues)
 - Fund/portfolio managers
 - Fund investors
 - ***Risk, reward and the price of inaction***

Hedge Funds

- **Other Hedge Fund Considerations**
 - Risk-based controls: independent, periodic review
 - Increased diligence on investments, investors, employees and third-party services providers
 - For example:
 - Investments
 - Clear, documented due diligence protocols
 - Independent deal review before closing
 - Employees
 - Code of conduct and disclosure of conflicts of interest
 - Initial and periodic background checks on employees and consultants

Hedge Funds

- **Hedge Fund Investor issues:**
 - Transparency: strategies, leverage, limitations
 - “Reasonability” of returns and investor reports
 - Independence of custodian, service providers
 - Audit firm of appropriate sophistication/scale
- **Likely response/requests:**
 - Operational risk assessments (strategies, portfolio risk management, on-site reviews)
 - Focused diligence on fund principals, affiliated entities and service providers (meetings with senior management)
 - Institutions will look for documentation/processes to ensure their protection and that of their individual investors

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Questions?

Thank You

Thank you for attending this webcast.