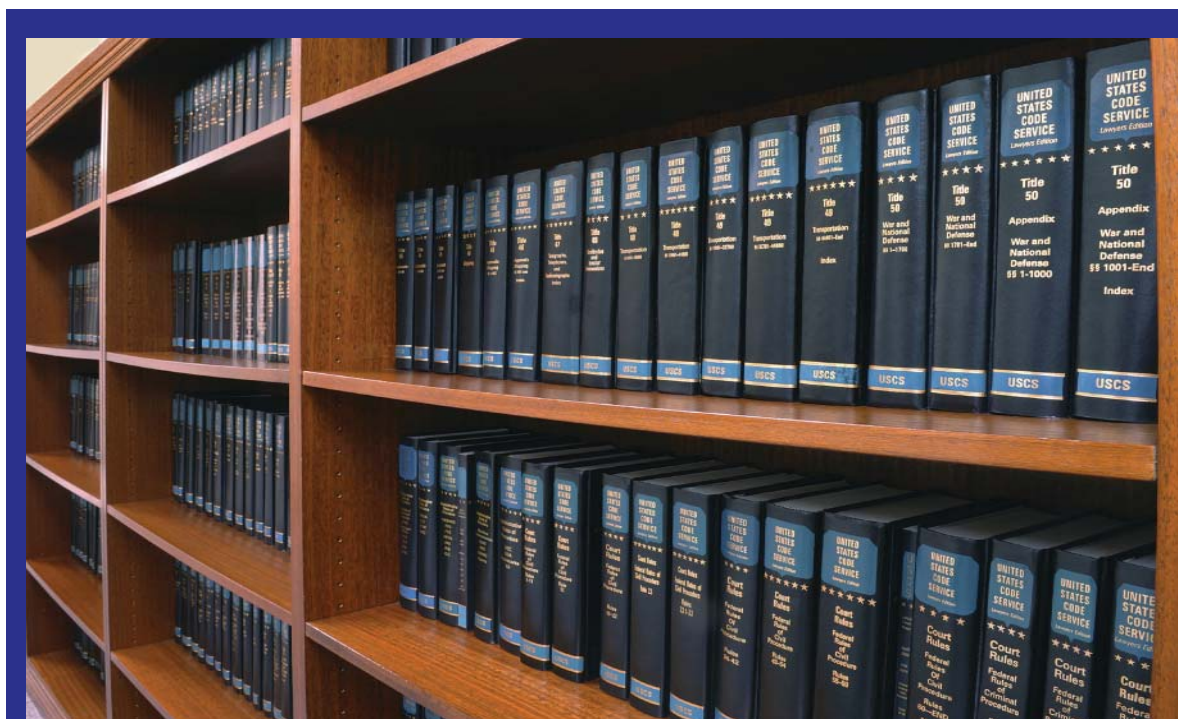


# Investment Management Legal Review (Q1 and Q2 2010)



ABA Sub-Committee on Investment Companies and Investment Advisers  
(A sub-committee of the Committee on Federal Regulation of Securities)

July 2010

**Investment Management Legal Review  
(Q1 and Q2 2010)**

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*(A sub-committee of the Committee on Federal Regulation of Securities)*

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**I. Introduction**

The ABA’s Sub-Committee on Investment Companies and Investment Advisers is pleased to publish this *Investment Management Legal Review* for Q1 and Q2 2010. The *Review* is designed to provide our Sub-Committee members with a survey of significant legal developments in the investment management field.

As the clock struck midnight on the close of June 2010, major financial regulatory reform appears to be days away. The Dodd-Frank Wall Street Reform legislation reflects reconciled House and Senate bills, and among other things would (a) require investment advisers to hedge funds to register with the SEC; and (b) expand the SEC’s enforcement powers to include broader collateral bars and financial rewards for whistleblowers.

At the beginning of the year, the SEC revamped its enforcement program, including setting up a new “Asset Management Unit.” The SEC, moreover, beefed up its examination program to more aggressively focus on possible fraudulent wrongdoing. The U.S. Supreme Court also handed down its opinion in *Jones v. Harris*, adopting *Gartenberg* as the proper standard for evaluating mutual fund fees.

“Target date” funds have garnered a regulatory focus from the Department of Labor and the SEC. Along with these significant developments, other regulations, enforcement actions and private litigation in the investment management area have continued at pace.

The Sub-Committee publishes the *Review* on a semi-annual basis. If you would like to assist us with future editions or provide us with suggestions regarding the topics covered, please contact Robert A. Robertson at robert.robertson@dechert.com, Jay G. Baris at JBaris@kramerlevin.com, or Lori L. Schneider at Lori.Schneider@klgates.com.

## II. SEC and Other Rule-Making

SEC and Other Rule-Making			
<i>Topic / Rule<sup>1</sup></i>	<i>Proposal Date/ Comment Period</i>	<i>Adoption Date/ Compliance Date<sup>2</sup></i>	<i>Summary</i>
Investment Company Advertising: Target Date Fund Names and Marketing Rules 156 and 482 under the '33 Act and 34b-1 under the '40 Act	June 16, 2010 (comments due by Aug. 23, 2010)	Pending	○ Would require enhanced disclosures in target date fund marketing material.
Disclosure of Member Financial Condition FINRA Rule 2261 (Combines and replaces former FINRA Rules 2270 and 2910)	April 15, 2010	June 14, 2010	○ Requires a member to make available to inspection by any bona fide regular customer, upon request, the information relative to such member's financial condition as disclosed in its most recent balance sheet.
Networking Arrangements between FINRA Member Firms and Financial Institutions FINRA Rule 3160 (adopts with changes former FINRA Rule 2350 into Consolidated FINRA Rulebook)	April 15, 2010	June 14, 2010	○ Requires that a member that is a party to a networking arrangement with a financial institution provide certain written disclosures at or prior to the opening of a customer account.
Borrowing From or Lending to Customers FINRA Rule 3240 (adopts	April 15, 2010	June 14, 2010	○ Generally prohibits registered persons from borrowing money from or lending money to their customers.

<sup>1</sup> Defined terms include: “33 Act” – Securities Act of 1933; “34 Act” – Securities Exchange Act of 1934; “IC” – Investment Company Act of 1940; and “IA” – Investment Advisers Act of 1940. When summarizing legal developments in this *Review*, we have cited only key legal provisions. Source documents should be consulted for all relevant statutes and rules.

<sup>2</sup> Only certain compliance dates have been noted in this *Review*. Source documents should be consulted for all relevant compliance dates.

<b>SEC and Other Rule-Making</b>			
<i>Topic / Rule<sup>1</sup></i>	<i>Proposal Date/ Comment Period</i>	<i>Adoption Date/ Compliance Date<sup>2</sup></i>	<i>Summary</i>
with changes former FINRA Rule 2370 into Consolidated FINRA Rulebook)			
Large Trader Reporting System Rule 13h-1 and Form 13H under the '34 Act	April 14, 2010 (comments due by Jun. 22, 2010)	Pending	<ul style="list-style-type: none"> <li>○ Would require “large traders,” including investment advisers and registered broker-dealers, to identify themselves and make certain disclosures on Form 13H.</li> </ul>
Creation of Separate Account Class for OTC Derivatives Cleared through a Futures Commission Merchant CFTC Reg. 190.01(oo) and Reg. 190.07	Mar. 31, 2010	May 6, 2010	<ul style="list-style-type: none"> <li>○ Creates a separate “account class” applicable only to the bankruptcy of a futures commission merchant (FCM) for positions cleared in OTC derivatives.</li> <li>○ Codifies the appropriate allocation, in the bankruptcy of the FCM, of positions in commodity contracts in one account class that are commingled with positions in commodity contracts of the futures account class.</li> </ul>
Money Market Reform IC Rule 2a-7	Feb. 23, 2010	May 5, 2010, except among other dates: - Oct. 7, 2010 (public website disclosure) - Dec. 7, 2010 (Form N-MFP filings) - Dec. 31, 2010 (designated NRSRO disclosure)	<ul style="list-style-type: none"> <li>○ Would tighten risk-limiting provisions and add new liquidity requirements.</li> <li>○ Would require monthly reporting to SEC.</li> <li>○ Q&amp;A available about Rule 2a-7.</li> <li>○ Q&amp;A available about Rule 30b1-7 and Form N-MFP.</li> </ul>
Internet Availability of Proxy Materials '34 Act Rule 14a-16; '33 Act Rule 498	Feb. 22, 2010	Mar. 29, 2010	<ul style="list-style-type: none"> <li>○ Provides additional flexibility regarding the format of the Notice of Internet Availability of Proxy Materials.</li> <li>○ Permits mutual funds to accompany Notice with Summary Prospectus.</li> </ul>

<b>SEC and Other Rule-Making</b>			
<i>Topic / Rule<sup>1</sup></i>	<i>Proposal Date/ Comment Period</i>	<i>Adoption Date/ Compliance Date<sup>2</sup></i>	<i>Summary</i>
Securities Loans and Borrowings; Permissible Use of Customers' Securities; Callable Securities FINRA Rules 4314, 4330 and 4340, respectively	Jan. 5, 2010 (comments due Mar. 8, 2010)	Pending	<ul style="list-style-type: none"> <li>○ Sets forth the requirements applicable to a member firm that is a party to an agreement for the loan or borrowing of securities (Proposed Rule 4314).</li> <li>○ Sets forth the requirements applicable to a member firm's borrowing or lending of a customer's margin securities that are eligible to be pledged or loaned (Proposed FINRA Rule 4330).</li> <li>○ Sets forth the obligations applicable to any callable securities a member firm has in its possession or control (Proposed FINRA Rule 4340).</li> </ul>

### III. SEC No-Action Letters (selected)

<b>SEC No-Action Letters (selected)</b>			
<i>Requesting Party</i>	<i>Date Issued</i>	<i>Legal Provisions</i>	<i>Summary</i>
Accor Services	June 7, 2010	IC §§ 3(a)(1)(C) and 7(d)	Permits a foreign company that would be a 1940 Act private investment company to sell securities in the U.S., notwithstanding Section 7(d), where the company's investment activities support its non-investment primary business.
The Swiss Helvetia Fund, Inc.	May 5, 2010	Exchange Act Rule 14a-8	Declined to permit a closed-end fund to exclude from its proxy statement a shareholder proposal that would require the fund to become an interval fund.

<b>SEC No-Action Letters (selected)</b>			
<i>Requesting Party</i>	<i>Date Issued</i>	<i>Legal Provisions</i>	<i>Summary</i>
Claymore Advisors, LLC	April 27, 2010	IC § 15(a)	Permits an investment adviser to ETFs to continue to serve as adviser after expiration of the Rule 15a-4 temporary period where, despite dedicated efforts to obtain shareholder approval, the adviser was unable to establish a quorum at shareholder meetings.
Tortoise Energy Infrastructure	April 23, 2010	Securities Act §§ 5 and 6(a) and Rule 486	Permits a non-interval closed-end fund that had issued securities on a delayed basis to file post-effective amendments under Securities Act Rule 486(b).
Investment Company Institute	April 2, 2010	IC § 17(d) and Rule 17d-1	Clarifies that, despite recent Rule 2a-7 amendments that narrowed the meaning of “collateralized fully,” the term will have the same meaning as it did prior to the amendments for any party relying on the Chase Manhattan Bank no-action letter (2001), relating to collateral for a securities lending program.
Fifth Street Finance Corp.	Feb. 25, 2010	IC § 57(a)(4) and Rule 17d-1	Permits applicant private fund to engage in a debt restructuring transaction in which an affiliated BDC would participate.

#### **IV. SEC Exemptive Orders (selected)**

<b>SEC Exemptive Orders (selected)</b>			
<i>Applicant</i>	<i>Date Issued</i>	<i>Legal Provisions</i>	<i>Summary</i>
Hercules Technologies Growth Capital, Inc.	IC Rel. No. 29287 (May 26, 2010) (notice); IC Rel. No. (June 22, 2010) (order)	§ 23(c)(3)	Permits applicant BDC to issue restricted shares of common stock and to issue stock options to the BDC’s executive officers, employee directors, and key employees under the terms of an employee and director compensation plan.

<b>SEC Exemptive Orders (selected)</b>			
<i>Applicant</i>	<i>Date Issued</i>	<i>Legal Provisions</i>	<i>Summary</i>
AdvisorShares Investments LLC, <i>et al.</i>	IC Rel. No. 29264 (May 6, 2010) (notice); IC Rel. No. 29291 (May 28, 2010) (order)	§ 2(a)(32), 5(a)(1), 22(d), 22(e); Rule 22c-1	Permits applicant funds to operate as actively-managed ETFs, provided they will not invest in option contracts, futures contracts or swap agreements.
Pax World Funds Trust II, <i>et al.</i>	IC Rel. No. 29257 (Apr. 26, 2010) (notice); IC Rel. No. 29269 (May 17, 2010) (order)	§ 2(a)(32), 5(a)(1), 12(d)(1)(A)-(B), 17(a)(1)-(2), 22(d), 22(e); Rule 22c-1	Permits applicant index ETFs to offer new series that are based on an equity securities index where the index provider may be deemed a second tier affiliate of the applicant.
First Trust/Aberdeen Global Opportunity Income Fund, Inc., <i>et al.</i>	IC Rel. No. 29163 (Feb. 26, 2010)(notice); IC Rel. No. 29189 (Mar. 24, 2010) (order)	§ 19(b); Rule 19b-1	Permits applicant closed-end fund companies to make periodic distributions of long-term capital gains as frequently as 12 times each year.
The Chile Fund, <i>et al.</i>	IC Rel. No. 29169 (Mar. 8, 2010) (notice); IC Rel. No. 29194 (Mar. 30, 2010) (order)	§ 17(a)	Permits applicant closed-end fund to effectuate in-kind repurchases of shares held by certain affiliated shareholders of the applicant.
iShares Trust, Inc., <i>et al.</i>	IC Rel. No. 29129 (Feb. 16, 2010) (notice); IC Rel. No. 29172 (Mar. 10, 2010) (order)	§ 12(d)(1)(A)-(B)	Permits applicant mutual funds to (i) acquire shares of unaffiliated ETFs where the ETF adviser is a sub-adviser to the applicant funds; and (ii) acquire shares of an affiliated ETF that carries out its investment strategies by investing in a wholly-owned subsidiary.

## V. Case Law and SEC Enforcement Actions (selected)

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<b>Private Litigation</b>		
<i>Janus Capital Group v. First Derivative Traders</i> , No. 09-525 (U.S. cert. granted June 28, 2010).	'34 Act § 10(b) and Rule 10b-5	U.S. Supreme Court has agreed to hear a case involving whether a fund's adviser and the adviser's parent corporation have primary securities fraud liability for statements in a fund's prospectus.
<i>Ameriprise Financial v. Gallus</i> , 559 S. Ct. ____ (Apr. 5, 2010)	IC § 36(b)	U.S. Supreme Court remands fee case for consideration in light of <i>Jones v. Harris Associates</i>
<i>Jones, v. Harris Associates L.P.</i> , 559 S. Ct. ____ (Mar. 30, 2010)	IC § 36(b)	U.S. Supreme Court adopts <i>Gartenberg</i> as proper standard for evaluating mutual fund fees.

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<i>Smith v. Franklin/Templeton Distributors, Inc.</i> , Case C 09-4775 PJH (N.D. Cal. June 8, 2010)	IC § 47(b)	Court dismissed claim regarding certain 12b-1 payments because no private right of action under 1940 Act illegal contract provision.
<i>Chow v. ProShares Trust et al.</i> , Case No. 10-CIV-3211 (S.D.N.Y. Apr. 15, 2010)	'33 Act §§ 11 and 15	Complaint alleges leveraged inverse ETF was defective as a simple “directional play”
<i>Ryskamp v. Looney, et al.</i> , Case No. 1:10-cv-00842 (D. Col. Apr. 14, 2010)	State law breach of fiduciary duty and unjust enrichment	Complaint alleges closed-end fund insiders manipulated rights offering to maximize fees and control.
<i>In re: Morgan Keegan Closed-End Fund Litigation (Jones et al. v. Morgan Keegan &amp; Company, Inc. et al.)</i> , Case No. 2:10-cv-0224 (W.D. Tenn. Apr. 8, 2010)	'33 Act §§ 11, 15 and 20 / '34 Act § 10(b) and Rule 10b-5	Complaint alleges that comparisons to index misleading because index lacked asset-backed securities
<i>The Gabelli Global Multimedia Trust Inc. v. Western Investment LLC, et al.</i> , Civil No. 1:10-cv-00557 (D. Mary. Apr. 1, 2010)	IC §§ 12(d)(1)(A)(i) and 48(a)	Court rules that closed-end fund had no private rights of action so as to preclude proxy contest.
<i>Lawson v. FMR LLC</i> , Civil Action No. 08-10466 (D. Mass. Mar. 30, 2010); <i>Zang v. Fidelity management &amp; Research Co.</i> , Civil Action No. 08-10758 (D. Mass. Mar. 30, 2010)	Sarbanes-Oxley Act § 806	Court rules whistleblower provision applies to privately-held adviser to publicly-held mutual funds.
<i>Wiener v. Eaton Vance Distributors, Inc. et al.</i> , Case No. 1:10-cv-10515 (D. Mass. Mar. 26, 2010)	IC § 47(b) and state law contract, fiduciary duty and waste laws	Complaint alleges that distributor illegally paid Rule 12b-1 payments for assets in non-advisory brokerage accounts.
<i>In re Charles Schwab Corporation Securities Litigation</i> , Case No. C 08-01510 (N.D. Cal. Mar. 25, 2010)	IC §§ 8(b), 13(a)	Court rules that changing industry classification / concentration policy required shareholder vote.
<i>Rafton v. Rydex Series Funds</i> , Case No. CV10-1171 (Mar. 19, 2010)	'33 Act §§ 11, 12(a)(2) and 15	Complaint alleges inverse long bond fund did not track index.
<i>Smith v. Oppenheimer Funds Distributor, Inc. et al.</i> , Case No. 1:10-cv-00655 (D. Col. Mar. 15, 2010)	IC § 47(b) and state law contract, fiduciary duty and waste laws	Complaint alleges that distributor illegally paid 12b-1 payments for assets in non-advisory brokerage accounts.



Case Law and SEC Enforcement Actions (selected)		
Case	Legal Provisions	Summary
<i>In re Regions Morgan Keegan ERISA Litig.</i> , Case No. 08-2192 (W.D. Tenn. Mar. 9, 2010)	ERISA § 409	Court allows ERISA fiduciary breach claims for bank including affiliated mutual funds and stock in its retirement plan.
<i>Yu v. State Street Corporation, et al.</i> , Case No. 08-CV-08235 (S.D.N.Y. Feb. 25, 2010)	'33 Act §§ 11, 12(a)(2) and 15	Court dismisses class action for misrepresentations about fund's mortgage-related securities investments.
<i>Ghogari v. ProShares Trust: UltraShort Russell 2000 Growth Fund</i> , Case No. 10-CV-01174 (S.D.N.Y. Feb. 16, 2010)	'33 Act §§ 11 and 15	Complaint alleges ETF did not track index.
<i>Ghogari v. ProShares Trust: UltraShort Russell MidCap ProShares Fund</i> , Case No. 10-CV-0025 (S.D.N.Y. Feb. 4, 2010)	'33 Act §§ 11 and 15	Complaint alleges ETF did not track index.
<i>In re Morgan Stanley Information Fund Securities Litigation</i> , Case Nos. 09-0837-cv and 09-0858-cv (2d Cir. Jan. 25, 2010)	'33 Act §§ 11, 12(A)(2) and 15	Court dismissed class action alleging funds' failure to disclose affiliated research analysts' conflicts of interest; court relied on SEC amicus brief.
<i>In re Mutual Funds Investment Litigation (Stenberg et al. v Janus Capital Management LLC et al.)</i> , Case No.: 04-MD-15863, 04-CV-518 (D.Mary. Jan. 20, 2010)	IC § 36(b)	Based on scienter requirement, court granted summary judgment to fund adviser because of offset from the adviser's 2004 SEC settlement.
<i>Schwack v. ProShares Trust: Ultra Basic Materials Fund</i> , Case No. 10-CV-00272 (S.D.N.Y. Jan. 13, 2010)	'33 Act §§ 11 and 15	Complaint alleges that ETF did not perform as described for longer than one trading day.
<i>Schwack v. Direxion Shares ETF Trust : Direxion Energy Bear 3X Shares Fund</i> , Case No. 10-CV-00271 (S.D.N.Y. Jan. 13, 2010)	'33 Act §§ 11 and 15	Complaint alleges that tracking errors caused ETF to be defective as a directional play.
<i>TCW v. Grundlach</i> , Case No. BC 429385 (Los Angeles Sup. Ct. Jan. 7, 2010)	State laws re fiduciary duty, unfair competition, trade secrets, confidentiality, contractual relations, etc.	Bond fund asset management firm files civil suit alleging former star portfolio manager stole confidential data and lied to clients while forming competing advisory firm.
<i>Kircher et al. v. Putnam Funds Trust, et al.</i> , Gen. No. 5-08-0260 (Madison County No. 03-L-1255; Jan. 6, 2010).	'34 Act § 28(f) [SLUSA] and state negligence laws	SLUSA precludes state class actions for negligence / recklessness in allowing market timers to time zone arbitrage.

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<i>Bachow v. Swank Energy Income Advisers, LP</i> , Civil Action No.3-09-CV-0262-K (N.D.Tex. Jan. 6, 2010)	IC § 36(b) / '34 Act § 10(b) and Rule 10b-5	Court allows misrepresentation suit against mutual fund adviser to proceed but dismisses § 36(b) claim.
<b>SEC Enforcement Actions</b>		
<i>SEC v. Aamer Abdullah</i> , Civil Action No. 10-CV-4957 (S.D.N.Y. Jun. 25, 2010)	IA §§ 206(1)-(2), 206(4) and Rule 206(4)-8 / '33 Act § 17(a)(1) / '34 Act § 10(b) and Rule 10b-3 and 10b-5	SEC alleged portfolio manager caused CDOs to purchase securities at above-market prices.
<i>SEC v. Pequot Capital Management, Inc. and Arthur J. Samberg</i> , Case #:10-cv-00831 (D.C.Con. May 27, 2010)	'34 Act § 10(b) and Rule 10b-5	SEC alleged insider trading against hedge fund advisor and its chairman / CEO.
<i>In the Matter of James E. Otto</i> , Admin. Proc. File No. 3-13674 (May 26, 2010)	IA §§ 206(1)-(2) / '34 Act §§ 10(b) and 15(a) and Rule 10b-5	SEC alleged individual acted as unlicensed broker dealer and impersonated advisory client without authorization.
<i>SEC v. Finbar Securities Corp.</i> , Civil Action No. CV 09-2325 ODW (VBKx) (C.D. Cal. May 11, 2010)	IA §§ 206(1)-(2) / '34 Act § 10(b) and Rule 10b-5	SEC alleged firm operated as unregistered broker-dealer.
<i>In the Matter of David W. Baldt</i> , Admin. Proc. File No. 3-13887 (May 11, 2010)	IA §§ 206(1)-(2) / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged mutual fund portfolio manager traded and tipped others about fund inside information.
<i>SEC v. Neil V. Moody and Christopher D. Moody</i> , Civil Action No. 8:10-cv-0053-T-33TBM (M.D. Flor. Apr	IA § 206(4) and Rule 206(4)-8 / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged hedge fund promoters overstated performance and assets.
<i>SEC v. Jeffrey R. Neufeld and Paridon Capital Management LLC f/k/a Tritone Capital Management, LLC</i> , Case No. 10-cv-02399 (N.D. Ill. Apr. 22, 2010)	IA §§ 206(1)-(4) Rule 206(4)-8 / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged hedge fund adviser engaged in impermissible trades and fraudulent performance.
<i>SEC v. Quadrangle Group LLC and Quadrangle GP Investors II, L.P.</i> , Case No. 10-cv-3192 (S.D.N.Y Apr. 15, 2010)	'33 Act § 17 (a)	SEC alleged that NY Comptroller and aide orchestrated kick-back scheme for pension fund.

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<i>In the Matter of Haberman Management Corp., Haberman Value Fund, L.P., and Ross L. Haberman</i> , Admin. Proc. File No. 3-13859 (Apr. 13, 2010)	IA §§ 206(1)-(2) and 206(4) and Rule 206(4)-2 and 206(4)-8 / '34 Act § 10(b) and Rule 10b-5	SEC alleged adviser misrepresented identity of purchaser in stock offerings and kept inaccurate records.
<i>In the Matter of Morgan Asset Management, Inc.; Morgan Keegan &amp; Company, Inc. James C. Kelsoe, Jr.; and Joseph Thompson Weller, CPA</i> , Admin. Proc. File No. 3-13841 (Apr. 7, 2010)	IA §§ 206(1)-(2) and 206(4) and Rule 206(4)-7 / IC § 34(b) and Rules 33c-1 and 38a-1 / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged adviser fraudulently overstated value of mutual funds' subprime mortgage portfolios.
<i>SEC v. Kevin H. Blood</i> , Civil Action No. 2:10-cv-00731-SRB (D. Ariz. Apr. 1, 2010)	IA §§ 206(1)-(2) and 206(4) and Rule 206(4)-8 / '33 Act §§ 5 and 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged adviser misrepresented investment risks and did not disclose side compensation agreement.
<i>In the Matter of Paul H. Heckler and Yosemite Capital Management, LLC</i> , Admin. Proc. File No. 3-13821 (Mar. 17, 2010)	IA § 206(2)	SEC alleged adviser and managing director failed to perform due diligence while investing in Ponzi scheme.
<i>In the Matter of William L. Gunlicks</i> , Admin. Proc. File No. 3-13820 (Mar. 17, 2010)	IA §§ 206(1)-(2) and 206(4) / '33 Act §§ 5 and 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged adviser and president invested in impermissible investments without disclosure.
<i>In the Matter of GPS Partners, LLC and Brett S. Messing</i> , Admin. Proc. File No. 3-13818 (Mar. 16, 2010)	Regulation M, Rule 105	SEC alleged hedge fund adviser sold securities short before pricing of offering of covering shares.
<i>SEC v. Stephen X. Kim and Spyglass Management, L.P.</i> , Civil Action No. 4:10-cv-00816 (S.D.Tex. Mar. 11, 2010)	IA §§ 206(1)-(2) / '33 Act §§ 5 and 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged hedge fund adviser falsified statements to cover unhedged trading losses.

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<i>In the Matter of Robert John Hipple</i> , Admin. Proc. File No. 3-13543 (Mar. 11, 2010)	IC §§ 31(a), 34(b), 57(a)(1), 59 and Rule 31a-1 /'34 Act § 10(b), 13(a), 13(b)(2), 13(b)(3), 13(b)(5) and Rules 10b-5, 12(b)(20), 13a-11,13a-13, 13b2-1 and 13b2-2	SEC alleged BDC executive falsified records, filed false reports and made illegal principal trade.
<i>In the Matter of Baron A. Mathis</i> , Admin. Proc. File No. 3-13812 (Mar. 11, 2010)	IA §§ 206(1)-(2) / '33 Act §§ 5 and 17 (a) / '34 Act § 10(b) and Rule 10b-5	Adviser officer barred for undisclosed sales charge in sales of affiliate's unregistered stock to clients.
<i>SEC v. Tambone et al.</i> , Case No. 07-1384 (1 <sup>st</sup> Cir. Mar. 10, 2010)	'34 Act § 10(b) and Rule 10b-5	Court rejects SEC's contention that underwriter executives impliedly "made" a statement that prospectuses were truthful and complete.
<i>SEC v. Wealth Management LLC, et al.</i> , Civ. Action No. 1:09-cv-506 (E.D. Wis. Mar. 4, 2010)	IA §§ 206(1)-(2),(4) and 207 / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged adviser president accepted undisclosed payments for hedge fund investments.
<i>In the Matter of S4 Capital, LLC and Sharath Sury</i> , Admin. Proc. File No. 3-13683 (Mar. 2, 2010)	IA §§ 206(1)-(2) / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged that hedge fund adviser engaged in undisclosed, unhedged, high risk trading.
<i>In the Matter of Grant Ivan Grieve a/k/a Gad Grieve</i> , Admin. Proc. File No. 3-13799 (Mar. 2, 2010)	IA §§ 206(4) and Rule 206(4)-8 / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC alleged that hedge fund promoter used fabricated and false information to lure investors.
<i>SEC v. Daniel Bonventre</i> , Civ. 10 CV 1576 (S.D.N.Y Feb. 25, 2010)	IA §§ 204, 206(1)-(2), and 206(4) and Rules 204-2 and 206(4)-2 / '33 Act § 17 (a) / '34 Act §§ 10(b), 15(c) and 17(a) and Rules 10b-3, 10b-5, 17a-3 and 17a-5	SEC charges Madoff operative with falsifying accounting records and illegally enriching himself.
<i>In the Matter of David Siegel</i> , Admin. Proc. File No. 3-13787 (Feb. 22, 2010)	IA § 203(e)(6)	SEC alleged dual registrant branch manager failed to supervise registered representative.
<i>SEC v. State Street Bank and Trust Company</i> , No. 1:10-CV-10172 (D.Mass. Feb. 4, 2010)	'33 Act § 17 (a)	SEC settled complaint that fund investors misled about portfolio subprime securities.

<b>Case Law and SEC Enforcement Actions (selected)</b>		
<i>Case</i>	<i>Legal Provisions</i>	<i>Summary</i>
<i>SEC v. Coadum Advisors, Inc., et al.</i> ; Civil Action File No. 1:08-CV-0011-ODE (N.D. Ga. Feb. 4, 2010)	IA §§ 206(1)-(2) / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	Summary judgment against promoters of hedge funds for false representations to investors.
<i>SEC v. Steven E. Nothern</i> , Civil Action No. 05-CV-10983 (NMG) (D.Mass. Jan. 22, 2010)	'34 Act § 10(b) and Rule 10b-5	SEC settlement with mutual fund portfolio manager for insider trading for fund.
<i>SEC v. Brian Travis, et al.</i> , Civil Action No. 09-10073 (S.D.N.Y. Jan 19, 2010); see also Releases 34-61502, 34-61503 & 34-61504 (Feb. 4, 2010)	IA §§ 206(1)-(2) / '33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC settled complaint for broker paying bribes to hedge fund adviser employees for order flow.
<i>SEC v. Charles J. Marquardt</i> , Civil Action No. 10-10073, (D.Mass. January 20, 2010)	'33 Act § 17 (a) / '34 Act § 10(b) and Rule 10b-5	SEC complaint against adviser's executive for insider trading on the fund's portfolio securities.
<i>SEC v. Neil V. Moody, et al.</i> , Civil Action No. 8:10-CV-0053-T-33TBM (M.D. Fla., Jan. 11, 2010)	IA § 206(4) and Rule 206(4)-8 / '33 Act §§ 17 (a)(1)-(3) / '34 Act § 10(b) and Rule 10b-5	SEC complaint against investment advisers for misrepresentations in hedge fund fraud.
<i>William Keith Phillips</i> , SEC Admin. Proc. File No. 3-13559 (Jan. 4, 2010)	IA § 206(2)	SEC settlement with financial adviser regarding undisclosed conflicts of interest.

## VI. FINRA and CFTC Regulatory Guidance (selected)

<b>VI. FINRA and CFTC Regulatory Guidance (selected)</b>		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
CFTC Advisory Concerning the Offer and Sale of Foreign Security Futures Products to U.S. Customers	Jun. 8, 2010	Guidance regarding sophisticated customers located in the U.S. transacting in foreign security futures products ("FSFPs"); the guidance was prepared in response to an SEC order that exempts certain sophisticated persons from provisions of the '34 Act that prohibit the offer and sale of FSFPs to U.S. persons.
CFTC Advisory Regarding Intraday Speculative Position Limits	May 7, 2010	Reaffirms that, irrespective of the end-of-the-day applicability of the CFTC's Large Trader Reporting System, speculative position limits apply on an intraday basis as well as an end-of-the-day basis.
FINRA Reg. Notice 10-22	April 20, 2010	Guidance (a) details a broker-dealer's obligation to conduct a reasonable investigation of an issuer and its securities that it recommends in Regulation D offerings, and (b) suggests practices to help ensure that firms adequately investigate the private placements that they recommend.

<b>VI. FINRA and CFTC Regulatory Guidance (selected)</b>		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
FINRA Reg. Notice 10-19	April 8, 2010	Reminds firms that consolidated financial account reports provided to customers represent communications with the public, and dissemination of those reports must comply with FINRA rules and federal securities laws.
FINRA Reg. Notice 10-06	Jan. 25, 2010	Guidance (a) clarifies the responsibilities of firms to supervise the use of social networking sites to ensure that recommendations are suitable and their customers are not misled, and (b) addresses the recordkeeping and other responsibilities of firms.
CFTC Rel. 5774-10	Jan. 22, 2010	Annual guidance letter to assist commodity pool operators and their public accountants in complying with the CFTC's regulations on the preparation and filing of commodity pool annual financial reports.
FINRA Reg. Notice 10-05	Jan. 21, 2010	Reminder of firms' responsibilities under FINRA Rule 2330 for recommended purchases or exchanges of deferred variable annuities.
FINRA Reg. Notice 10-02	Jan. 5, 2010	Guidance to help firms review, reconcile and respond to their Final Renewal Statements and reports available in Web CRD/IARD for the 2010 Registration Renewal Program.

## **VII. Legislation**

<b>Legislation</b>		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
Dodd-Frank Wall Street Reform and Consumer Protection Act	June 25, 2010	The conference report largely tracks the Senate-passed legislation on May 20, 2010.
H.R. 4173		
<i>Dodd-Frank Conf. Report Issued</i>		
S. 3217	May 20, 2010	The legislation would, among other things:
Restoring American Financial Stability Act of 2010		<ul style="list-style-type: none"> <li>○ Establish a new interagency council, which would include the SEC, to manage systemic risk in the financial system;</li> </ul>
<i>Passed in Senate by a 59 to 39 vote</i>		<ul style="list-style-type: none"> <li>○ Develop resolution procedures for large financial institutions to address "too big to fail" concerns;</li> </ul>
Senate passed its bill as a		<ul style="list-style-type: none"> <li>○ Implement corporate governance reforms, relating</li> </ul>

Legislation		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
replacement to H.R. 4173.		<p>to executive compensation, director elections and proxy access, which would apply to all companies, not only financial institutions;</p> <ul style="list-style-type: none"> <li>○ Require investment advisers to hedge funds to register with the SEC, but provide an exemption for advisers to venture capital funds and private equity funds; and</li> <li>○ Expand the SEC's enforcement powers to include, for example, broader collateral bars and financial rewards for certain whistleblowers.</li> </ul> <p>Senate bill, co-sponsored by Senator Dodd, must be reconciled with the reform bill (H.R. 4173) that the House passed in December 2009.</p>
CA AB 1743 (Hernandez)	Feb. 8, 2010	The bill would require placement agents to register in California as lobbyists before providing investment ideas to public pension plans in the State.

### VIII. Miscellaneous

Miscellaneous		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
<p><i>Board Oversight of Target Retirement Date Funds</i></p> <p>Independent Directors Council</p>	June 15, 2010	The IDC prepared a memorandum to assist directors of target date funds (also called lifecycle funds) in performing their oversight responsibilities.
<p><i>IM Director Keynote Address at the ALI-ABA Compliance Conference</i></p> <p>SEC staff</p>	June 3, 2010	Director Andrew J. Donohue review the history of the 1940 Act and the principles embodied in the Act.
<p><i>IM Director Speech Before the PLI's Investment Management Institute</i></p> <p>SEC staff</p>	April 8, 2010	Director Andrew J. Donohue discusses his concerns regarding funds' use of derivatives and announces the Division's review of current practices involving these instruments.
<p><i>SEC Chairman Speech – "Looking Ahead and Moving Forward"</i></p> <p>SEC Chairman</p>	Feb. 5, 2010	Chairman Mary Schapiro set forth the SEC's agenda for this year, which includes new rules for 12b-1 fees, target-date funds, and point-of-sale disclosure.

<b>Miscellaneous</b>		
<i>Topic /Action</i>	<i>Date</i>	<i>Summary</i>
<i>Mutual Fund Prospectus Liability</i>  ICIMutual	Jan. 29, 2010	The ICIMutual study: <ul style="list-style-type: none"> <li>○ Provides a general introduction to securities class actions that challenge mutual fund disclosure;</li> <li>○ Reviews the industry’s actual experience in such litigation: and</li> <li>○ Outlines a number of considerations that fund groups may wish to take into account when designing practices and procedures to reduce liability risk.</li> </ul>
<i>Compliance Director’s Remarks at CCO Outreach National Seminar</i>  SEC staff	Jan. 26, 2010	Director Carlo V. di Florio discusses 10 elements of an effective compliance and ethics program.
<i>SEC Names New Specialized Unit Chiefs</i>  SEC staff	Jan. 13, 2010	Division of Enforcement named leaders of new enforcement specialized units, including Co-Chiefs Bruce Karpati and Robert B. Kaplan of the “Asset Management Unit.”
<i>SEC Enforcement Measures</i>  SEC	Jan. 13, 2010	SEC announced a series of measures to further strengthen its enforcement program by encouraging greater cooperation from individuals and companies in the agency’s investigations and enforcement actions.
<i>Board Oversight of Subadvisers</i>  Independent Directors Council	Jan. 2010	The IDC Task Force Report examines industry practices relating to board oversight of subadvisers and provides practical guidance in this area.

**IX. ABA Selected Events**

<b>Selected ABA Events</b>		
<i>Date</i>	<i>Event</i>	<i>Location</i>
Aug. 5-10, 2010	2010 Annual Meeting	San Francisco, CA
Nov. 5-6, 2010	2010 Fall Meeting	Washington, DC
April 14-16, 2011	2011 Spring Meeting	Boston, MA
August 5-8, 2011	2011 ABA Annual Meeting	Toronto, Ontario
March 22-24, 2012	2012 Spring Meeting	Las Vegas, NV

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