

## THE PRIVATE FUNDS BULLET REPORT

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### Business Planning, Structural, Legal, Regulatory & Compliance Developments

- On November 12, 2013, the SEC [announced](#) its first deferred prosecution agreement with an individual, a former employee of a hedge fund administrator. The individual, Scott Herckis, assisted the SEC in its [enforcement action](#) against Herckis' former employer, Heppelwhite Fund, LP and its founder, Berton M. Hochfeld, in a case involving the misappropriation of client assets and making material misstatements to clients. In exchange for his cooperation which allowed the SEC to file an emergency action within weeks of his bringing allegations of impropriety to its attention, the SEC entered into the historic agreement which prevents Herckis from providing any services to a private investment fund for a period of 5 years and disgorges \$50,000 in fees earned.
- On November 27, 2013, the SEC approved [amended FINRA Rule 5131](#). The rule, amended to provide relief to fund-of-funds seeking to rely on it, permits a member to rely upon a written representation obtained within the prior 12 months from a person authorized to represent an account that does not look through to the beneficial owners of any unaffiliated private fund invested in the account (except those who are control persons of the investment adviser to such private fund), provided that such unaffiliated private fund: (i) is managed by an investment adviser; (ii) has assets greater than \$50 million; (iii) owns less than 25% of the account and is not a fund in which a single investor has a beneficial interest of 25% or more; and (iv) was not formed for the specific purpose of investing in the account.
- On January 9, 2014, the National Exam Program (the "NEP") of the SEC's Office of Compliance Inspections and Examinations published its examination priorities for 2014. While the NEP continues to stress market-wide initiatives for enhanced fraud protection, improved corporate governance, reformed retirement vehicle treatment and strong information technology systems, among other things, it provided specific guidance to investment companies and investment advisers for items that its staff will emphasize during examinations in the upcoming year. Specifically, the staff indicated that it will focus its examination efforts on core risks – i.e., the safety of client assets, conflicts of interest, and issues arising from the marketing of performance – in addition to new and emerging initiatives including both the staff's desire to examine advisers who have yet to be examined as well as those who utilize quantitative trading models. Firms should review the 2014 examination priorities letter (available [here](#)) to become familiar with these areas of particular importance.
- On January 30, 2014, the SEC's Office of Compliance Inspections and Examinations, Division of Investment Management and the Asset Management Unit of the Division of Enforcement held a compliance outreach seminar for Chief Compliance Officers ("CCOs") and other senior personnel of investment companies and investment advisers. Panelists emphasized the SEC's efforts to crack down on recidivist conduct and noted that the SEC will ensure that firms taking advantage of recent JOBS Act legislation have adequate policies and procedures in place to both verify the accredited investor status of each investor and to prevent the distribution of misleading marketing materials. Further, panelists stressed the importance of addressing cyber security threats (and the necessity of performing due diligence on service providers to ensure they address such threats) and highlighted both key responsibilities of CCOs and concerns related to outsourcing this role. CCOs seeking further information regarding this program should review the webcast of the seminar (available [here](#)).

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