

THE PRIVATE FUNDS BULLET REPORT

FEBRUARY 2009

A publication of the Investment Management Group



Business Planning, Structural, Legal, Regulatory & Compliance Developments

- FINRA has proposed Rule 2030, which would prohibit broker-dealer members from originating or circulating rumors with respect to any security where a member “knows or has reasonable grounds for believing” that the rumor is “false or misleading or would improperly influence the market price of such security.” Under the proposed rule, member firms would also be required to report any circumstances in which they reasonably believe that rumors might have been originated or circulated.
- In light of recent increases in redemption activity by investors, investment managers are reminded to calculate their fund’s “benefit plan investor” participation level upon each redemption to determine if they will be managing ERISA “plan assets” since additional compliance and documentary requirements would then apply.
- The SEC has published an open letter to registered advisers reminding them that, although they may be implementing cost-cutting measures, they have a legal obligation to maintain an adequate compliance program and ensure that the interests of their clients are protected.
- The ban by the U.K. Financial Services Authority (“FSA”) on the short selling of certain stocks in the U.K. financial sector expired on January 16, 2009. The FSA has also extended its short sale disclosure requirements to June 30, 2009. A disclosure must be made if a net short position exceeds 0.25% of the issued shared capital of a covered company. The FSA has relaxed the disclosure requirements by now only requiring further short sale disclosure at 0.1% thresholds. Previously, the FSA had required any changes to be disclosed.
- Registered investment advisers are reminded to update their Form ADV and file an amendment to their Form ADV Part I with the SEC within 90 days after the end of their fiscal year.
- Investment managers are reminded that 13F filings and 13G amendments are due by February 17, 2009.
- Investment advisers (both registered and unregistered) must send an annual notice of their privacy policy to all investors.
- The new SEC chairman, Mary Schapiro, strongly supports legislation requiring hedge fund manager registration.

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