SEWARD & KISSEL LLP

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- The International Organization of Securities Commissions (IOSCO) has issued an advisory template of eleven proposed categories of information to be gathered from hedge fund advisers. In its February 25th release, IOSCO indicated that it published the template to help inform any planned legislative changes in its members' jurisdictions (which include the SEC and the FSA). The template suggests that advisers should report operational details including the number of funds operated and key service providers to local regulators. It also requests that hedge fund advisers outline material holdings in a number of asset classes, such as long and short positions in equities, bonds or derivatives as well as information on geographic exposure, investor types, subscriptions, redemptions, liquidity and the use of side pockets and gates. The information would be collected twice a year, starting in September 2010.

- The SEC recently proposed a new "large trader" reporting rule which would require traders of publicly traded securities with an activity level, subject to certain exceptions, of 2 million shares or $20 million in fair market value per day, or 20 million shares or $200 million in fair market value per month to register with the SEC under new Form 13H and provide their large trader identification information to their brokers. The brokers would have to monitor and record large trader activity and, upon request, report the activity to the SEC.

- Under a plan set to start in mid-June for a six-month pilot period, the SEC has proposed a new rule to deal with volatility in individual stocks in response to the May 6 stock "flash crash". The rule would require trading to halt in a given stock if its price moved 10% or more in a five-minute period.
- The SEC's proposed "pay to play rule", which prohibits, among other things, an investment adviser from compensating third-party marketers for soliciting business from public pension and government plans, has received a lot of criticism and the SEC may now be changing its view of the proposal. Andrew Donohue, Director of the SEC's Division of Investment Management, recently indicated in a letter to FINRA that an exception to the outright ban on registered broker-dealers engaging in such solicitations on behalf of an investment adviser may be appropriate, if the SEC was convinced that FINRA had adopted rules prohibiting pay-to-play activities by such FINRA members.
- Due to recent changes in New York law, all powers of attorney executed by individuals in New York on or after September 1, 2009 must adhere to certain formalities, as further discussed in our Memorandum to Clients dated October 9, 2009. However, a bill to amend the New York Power of Attorney law has been introduced in the State Assembly that would exclude powers of attorney given primarily for a business or commercial purpose (e.g., in all likelihood this would include private funds) from these required formalities.

Seward & Kissel LLP provides legal advice to its investment management clients on structure, business planning, regulatory, compliance, corporate finance, asset securitization, capital markets, business transactions, derivatives, bankruptcy/distressed debt, tax, ERISA, litigation, trademark, employment, trusts & estates, and real estate matters.

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