

HEDGEWORLD'S FREE MONTHLY MAGAZINE

**ACCREDITED**

# INVESTOR

## August Issue – Legal & Regulatory

### More Laws, More Funds, More Lawyers

---

**By Cara Walsh**

Wednesday, September 07, 2005 2:42:22 PM ET

*New regulations and an increase in start-up funds are both a boost to hedge fund-focused firms.*

Hedge fund managers may be voyageurs of the financial world, but even they prefer a guide and compass before venturing into the regulatory waters surrounding the establishment of a new fund or the maintenance of an older one. Such guidance usually comes from one major source—talented attorneys who specialize in hedge funds. They are among the first people called when managers establish a new fund. Managers continue to count upon their attorneys for their legal advice long after the hedge fund is established.

And, the number of hedge fund-focused attorneys is growing. For firms working with smaller funds, this growth is a reflection of a surge in start-ups. Among firms that service larger funds, the new interest has mainly been fed by the tangle of compliance measures that must be implemented before registering with the Securities and Exchange Commission by February 2006.

#### **A Flood of Start-up Funds**

Robert Green, a non-lawyer member of Green & Company CPAs, LLC, says the increase in the number of fund managers he has as clients has little to do with the February 2006 deadline.

"Most of our clients are small start-up funds, and they are still below SEC requirements," he says. "Registration has always been a bigger issue in the media than in reality."

Because the clients most interested in SEC registration are larger funds, the rush to get everything in order has been far less apparent among smaller funds that are just starting out. Mr. Green says that he hasn't seen a huge swell in the number of clients who want help with registering because the majority of smaller funds are already registered within their states.

"There are maybe only 1,000 or so funds that need to register with the SEC," he adds. What he has seen is an increase in the number of funds themselves, coupled with an increase in a demand for the amount legal service provided by the law firms working for the funds.

"Hedge fund attorneys and accountants are in tremendous demand, and they need to do twice the work," Mr. Green says. "Hedge funds are proliferating."

The high demand for attorneys who focus on small funds has its basis in geography, he says. Because smaller hedge funds are regulated on the state level, the attorneys who service them need to be knowledgeable about state-level regulations. But an attorney may be an expert in one state, but lacking knowledge in another. "So it's hard to assemble supply to meet demand," Mr. Green says.

"It's gotten more complex because of the democratization of hedge funds," he adds. "Someone has to put together a coordinated national program. We have, but it hasn't been easy."

#### **Larger-Fund Practices**

Ron Geffner, who oversees the Financial Services Group at the law firm Sadis & Goldberg LLC, sees a different type of demand.

"With the new regulations, we're seeing an increase in managers contacting us for assistance with registration as investment advisers, compliance policies and in the training, coordination and hiring of chief officers," he says.

"There are a lot of people who need to get caught up," he adds.

The new policies mean that attorneys now are even more important to larger hedge funds. "We've always been really active," Mr. Geffner says. "I do think the industry will continue to grow."

Among other things, a hedge fund attorney will write a fund's manuals and offering documents, review agreements such

as administration agreements, deal with real estate leases and estate planning, perform tax analysis, help write a code of ethics and sift through related compliance materials.

Managers want attorneys to protect themselves from litigation. Disclosure rules mean fund managers need to fully disclose their business plans in their funds' offering documents. Then, compliance measures have to follow the stated business plan or the investor could claim wrongdoing.

Actions by the SEC or state regulatory agencies can also be taken against non-complying funds. Even non-registered funds can be subjected to such anti-fraud actions. This has led many larger firms to expand and offer attorneys who specifically specialize in regulatory actions.

"We have several attorneys that have been trained in connection with regulatory investigations," Mr. Geffner says, who used to prosecute for the SEC, and says many of the attorneys in his firm are trained by state agencies. Having an attorney as an advisor allows hedge fund managers to claim attorney-client privilege if they should need to iron any illegal behavior out of their practices.

### **Gold!**

Mr. Geffner and Mr. Green both spoke of a gold rush into hedge fund law practices. "There's always a gold rush or a silver rush," Mr. Green says. "The word goes out and the pioneers go out."

"People follow the money," he adds. "First it was Wall Street, then online trading. Now it's hedge funds."

Mr. Geffner says he is concerned that the quick growth of the industry could mean that some of the attorneys rushing to fill the growing need for hedge fund legal counsel may be underqualified.

Some firms are shifting attorneys over from other fields to deal with hedge funds, he says.

The speed at which firms are trying to provide services to the ever-burgeoning industry means these shifted attorneys can sometimes lack the necessary training to adequately deal with any specialized issues that may arise when dealing with hedge fund clients.

### **Beyond the United States**

As the hedge fund industry gains worldwide visibility, it is likely that regulation of it will also continue to globally expand. In Germany, Chancellor Gerhard Schroeder recently called for further regulation of hedge funds within the European Union—a significant move, considering that an estimated 40%-50% of the industry's dollar assets resides in Europe-based funds, according to EuroHedge.

Although Sadis & Goldberg doesn't deal in foreign law, it does manage hedge fund clients around the world in the same areas that it help its U.S. clients, Mr. Geffner says. An increase in foreign regulations, then, would likely spur the same kind of growth that the current SEC regulations have fostered among larger funds within the United States.

[CWalsh@hedgeworld.com](mailto:CWalsh@hedgeworld.com)

---

Story Copyright © 1999-2005 HedgeWorld Limited All rights reserved.