

SEC Files Claim Regarding Historical Performance Data

The U.S. Securities and Exchange Commission (“SEC”) has brought administrative and cease-and-desist proceedings against Jason D’Amato, who served in several roles including Senior Investment Officer and Director of the Investment Advisory Group of Stanford Capital Management, LLC (“SCM”) from 2003 through 2009. During his tenure at SCM, D’Amato calculated present and historical performance data using back-tested models. While this data was only hypothetical, this data was inaccurately promoted in pitch books, or personalized proposals, to prospective clients as historical data. The SEC claims that D’Amato could not provide evidence to support the historical performance information, and misled clients by titling the performance charts as “historical” instead of “hypothetical”.

The claim can be found on the SEC website: <http://www.sec.gov/litigation/admin/2012/34-67773.pdf>

CFTC Issues Frequently Asked Questions Document Regarding Timing of Swap Dealer Registration Rules

On September 10, 2012, the staff at the U.S. Commodity Futures Trading Commission (the “CFTC”) released a “Frequently Asked Questions” responsorial document directed to support market participants in their understanding of the upcoming swap dealer registration under CFTC Rule 4.5. The swap dealer registration regulation, which goes into effect on October 12, 2012, will require firms exceeding the established de minimis level to register no later than two months after the end of the month in which their dealings exceed the de minimis threshold.

In light of the industry response, the CFTC provided responses including, but not limited to, the following commonly-asked questions:

- Which regulations are relevant to determining when a person comes within the definition of the term ‘swap dealer’?
- Which swaps are relevant to determining if a person is within the definition of swap dealer?
- Which regulations are relevant to determining when a person is required to apply to be registered as a swap dealer?
- When is a person required to be registered as a swap dealer?

The complete staff response to the most frequently submitted industry questions related to the CFTC swap dealer registration regulation can be accessed at the following link: <http://www.cftc.gov/PressRoom/PressReleases/pr6348-12>.

Fee Rate Advisory #7 for Fiscal Year 2013

The SEC issued a press release announcing the fiscal year 2013 SEC registration fees applicable to public companies or other issuers. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC is required to declare fees prior to the first day of each new fiscal year as pertains to Section 6(b) of the Securities Act of 1933 (“Section 6(b)”) and Sections 13(e) and 14(g) of the Securities Exchange Act of 1934, each as amended (“Section 13(e)” and “Section 14(g)”, respectively). Beginning on October 1, 2012, the fee will increase by \$21.80, from \$114.60 per million dollars to \$136.40 per million dollars.

Regulatory guidelines provide that the SEC must adjust these fees so that funds generated by the fees equal the annual statutory target amounts. The SEC determined that the annual adjustment target amount for the FY 2013 is \$455 million. In accordance with procedure, the SEC must also clear such rate increases with the Congressional Budget Office and the Office of Management and Budget prior to approval and implementation.

The full release provided by the SEC as pertains to this rate increase can be found at: <http://www.sec.gov/news/press/2012/2012-174.htm>

HIGHLIGHTS

Advisor charged with using hypothetical data to mislead clients

CFTC responds to industry inquiries on swap dealer registration

SEC announces 2013 fiscal year fees required from public companies and other issuers for registration of securities

SEC Issues sixth alert to firms engaged in municipal securities business

ICI and ICI Global comment letter on Wheatley Review of LIBOR

SEC Issues Risk Alert on "Pay-To-Play" Prohibitions

On August 31, 2012 the SEC issued its sixth risk alert with respect to firms engaged in municipal securities business, and their "pay-to-play" practices. Such firms include brokers, dealers and/or municipal securities dealers that engage in municipal securities business, and their practices related to contributions to political campaigns of public officials of issuers with whom they are doing, or seek to do business ("pay-to-play"). Observations made by The National Examination Program have revealed a number of potential weaknesses regarding the supervision of Municipal Securities Rulemaking Board ("MSRB") Pay-to-Play prohibitions under MSRB Rule G-37. Factors that firms should consider when evaluating their related compliance and supervision policies and procedures include strategies for improving surveillance and certification procedures as follows:

- Compliance with the rule's ban on doing business with a municipal issuer within two years of a political contribution to officials of the issuer by any of the firm's municipal finance professionals;
- Potential recordkeeping violations;
- Erroneous or misfiled required forms with regulators regarding political contributions; and
- Inadequate supervision.

In an effort to help strengthen compliance with the MSRB's Rule G-37, the SEC's alert identifies practices that firms are using to comply with applicable federal, state, and local rules on contributions. These industry practices include the development of training programs for municipal finance professionals ("MFPs"), adoption of policies and procedures that restrict political contributions, surveillance and reporting of all political contributions by employees and their spouses, and preclearance or restrictions on political contributions when permitted by state or local law. Firms are reminded of their obligation to keep written supervisory procedures up to date, and to provide regular training to MFPs.

Sources: <http://sec.gov/news/press/2012/2012-173.htm>,
<http://sec.gov/about/offices/ocie/riskalert-munipaytoplay.pdf>

ICI and ICI Global Publish Comment Letter on Wheatley Review of LIBOR

On September 7, 2012, the Investment Company Institute ("ICI") and ICI Global submitted a joint comment letter in response to the initial discussion paper by The Wheatley Review of the London Inter-Bank Offered Rate ("LIBOR").

ICI and ICI Global agree with the assertion that the credibility of LIBOR has been tarnished by alleged recent misconduct, and strongly support The Wheatley Review's suggestions to strengthen the credibility of LIBOR or to develop alternative benchmarks.

In response to the discussion paper, ICI and ICI Global note that strengthening the credibility of LIBOR and restoring investor confidence in the system may be preferable to replacing LIBOR with a new benchmark. ICI and ICI Global also assert that an alternative benchmark would have its own limitations and would import a new set of risks as well as considerable practical hurdles and costs. ICI and ICI Global recommend making the LIBOR rate-setting process more fact-based and transparent, using transaction-based data in LIBOR calculations wherever possible, and improving governance of the rate-setting process.

A timetable has been set by The Wheatley Review team to present recommendations to the UK Chancellor of the Exchequer by the end of September 2012.

Sources: <http://www.ici.org/pdf/26495.pdf>,
http://hm-treasury.gov.uk/d/condoc_wheatley_review.pdf,
http://www.ici.org/portal/site/ICI/menuitem.e5ad730a13d808bfaf8db010b52001ca/?vgnextoid=ee1a71b3be0b9310VgnVCM1000005a0210acRCD&vgnnextchannel=b9d11539b2f3f110VgnVCM1000005b0210acRCD&vgnnextfmt=default#_ftn1

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