

Techniques and Strategies for Defending and Settling

Broker/Dealer Enforcement Actions

October 24 & 25, 2005
Helmsley Park Lane Hotel
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Senior regulators from the SEC, NASD and NYSE enforcement divisions, experienced securities law practitioners and in-house counsel will provide cutting-edge information that will enable you to protect your client including:

- Risk assessment and cooperation: what does “failure to cooperate” really mean?
- In which areas will regulators focus their broker-dealer enforcement efforts in the coming year?
- What internal policies and practices do regulators recommend to brokers when selling variable annuities and B-shares?
- How to best organize the search, retrieval and recovery of electronic records before and during an investigation
- Penalties and sanctions: negotiating a suitable punishment for your client

Post-Conference Workshop
Wednesday, October 26, 2005

*Cooperation and Self-Reporting:
The Advanced Guide to Advising Your Client*

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The enforcement net has widened and penalties are on the rise ... Are you prepared to ensure that your client receives a fair hearing in this new environment?

Given the recent enforcement actions relating to market timing, prospectus delivery and revenue sharing practices, and the blitz of self-assessments and sweeps, you have your work cut out for you. Are you armed with the latest knowledge to protect your clients during the new wave of broker-dealer enforcement actions?

The *American Conference Institute's* Techniques and Strategies for Defending and Settling Broker-Dealer Enforcement Actions will provide you with the information you need to manage enforcement investigations, proceedings and disciplinary actions at every stage. This year's faculty includes seasoned regulators and experienced broker-dealer enforcement attorneys who will provide invaluable perspectives regarding the following issues, including:

- Responding to NASD & NYSE self-assessments and sweeps: what does the "failure to cooperate" mean?
- Practical strategies for handling an SEC action at each stage, including informal investigations, Wells Notices and administrative proceedings
- E-mail and document retention and recovery: how to quickly respond to a delivery request
- When to settle and when not to settle SRO investigations
- Managing parallel criminal, civil and SRO proceedings and tips on handling the overriding constitutional concerns

Also, don't miss out on the **Regulators Roundtable Discussion**, "Enforcement Outlook: SEC and SRO Current Investigations and Future Initiatives," where you will hear updates on current investigations and critical information on the focus of future enforcement efforts from senior SEC, NASD and NYSE regulators.

We look forward to seeing you at this conference in New York. Register for this event by calling **888.ACI.2480**, by faxing your registration form to **877.927.1563**. Or, visit us online at **AmericanConference.com**.

WHO SHOULD ATTEND

- **Attorneys in the Following Practice Areas:**
 - Broker-Dealer Enforcement
 - Securities Enforcement
 - Securities Regulation
 - Securities Litigation
- **In-House Counsel at Securities Firms in the Following Departments:**
 - Regulatory Affairs
 - Retail Litigation
- **Federal, State & SRO Enforcement Staff Members**
- **Federal, State & SRO Market Regulation Staff Members**

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Monday, October 24, 2005

8:00 **Registration Opens and Continental Breakfast** 🍳

9:00 **Co-Chairs' Opening Remarks**

Aegis J. Frumento
Partner

Duane Morris LLP
(New York, NY)

David U. Gourevitch
Member

The Law Office of David U. Gourevitch, P.C.
(New York, NY)

9:15 **Enforcement Outlook: SEC and SRO Current Investigations and Future Initiatives**

David Jaffe
Regional Chief Counsel, New York Region
Department of Enforcement
NASD – District 10
(New York, NY)

Alexander M. Vasilescu
Senior Trial Counsel
Northeast Regional Office
U.S. Securities and Exchange Commission
(New York, NY)

Joy Weber
Managing Director, Enforcement Division
New York Stock Exchange
(New York, NY)

Moderator

David U. Gourevitch
Member
The Law Office of David U. Gourevitch, P.C.
(New York, NY)

Senior regulatory and enforcement staff members will discuss latest developments, current investigations and new initiatives in broker-dealer enforcement. With ample time for questioning, these leading regulators will focus on the following areas, as well as other hot topics that may arise prior to the conference.

- In which areas will regulators focus their broker-dealer enforcement efforts in the coming year?
- Gifts and gratuities
 - the latest sweep: where do the SROs stand?
 - what types of entertainment do regulators consider "lavish?"
- What are the concerns of regulators regarding the sale of variable annuity products?
- Mutual funds: what potential violations will regulators look for?
- NYSE proxy regulation compliance as a new area of concern to regulators
- How will the expansion of NYSE electronic trading affect broker-dealer practices?

10:45 **Coffee Break** 🍳

11:00 **The Brave New World of Risk Assessment and Cooperation: How to Respond to Self-Assessments and Sweeps**

Roger Sherman
Senior Vice President, Enforcement
NASD
(Washington, DC)

Allison Bishop
Managing Director
NYSE Risk Assessment
New York Stock Exchange
(New York, NY)

George Kramer
Vice President & Acting General Counsel
Securities Industry Association
(Office of the General Counsel)
(Washington, DC)

Nancy L. Swift
Director and Senior Counsel
Deutsche Bank Legal Department
(New York, NY)

Barry Rashkover
Partner
Sidley Austin Brown & Wood
(New York, NY)

Moderator

Aegis J. Frumento
Partner
Duane Morris LLP
(New York, NY)

- How to predict if your firm will be selected for review?
- Responding to self-assessments: dos and don'ts
 - what amount of due diligence should be used?
 - what if you discover a problem after responding to a self-assessment?
- How will regulators view companies that self-report wrongdoing?
- What factors do regulators take into consideration when determining whether cooperation was given?
- What are the benefits of cooperation? Is the reward worth the risk?
- Will cooperation result in more lenient penalties and sanctions?

12:00 **Networking Luncheon for Delegates and Speakers** 🧑🏫

**SEC Investigations & Proceedings:
Obtaining the Best Outcome**

1:30 **The Informal Investigation Stage to the Receipt of a Wells Notice: Minimizing Risk of Future Action**

Bruce Karpati
Assistant Regional Director
Northeast Regional Office
U.S. Securities and Exchange Commission
(New York, NY)

Ronald Long
Senior Vice President, Regulatory Policy
Wachovia Securities, LLC
(Richmond, VA)

Jeffrey Plotkin
Partner
Pitney Hardin
(New York, NY)

- Nature of informal vs. formal proceedings
- How to respond to extensive document requests
- How to negotiate and clarify the timing and scope of subpoenas with SEC staff
- Disclosure of existing investigations
 - duties and responsibilities
 - how to approach
- Whether and when to believe the client's story
- Advantages and disadvantages of early cooperation vs. wait-and-see
- Best practices on preparing witnesses for testimony
- How to communicate with SEC staff prior to the transmission of a Wells Notice
- Tips on preparing and making a successful Wells submission
 - the pros and cons of Wells submissions
 - what strategy should you use?
 - what style should you use when writing the brief?
 - ingredients for a successful submission
- Answering the age old question: to settle or not to settle?
- Queen for a Day Agreements: advantages vs. disadvantages
- How to utilize joint defense agreements during investigations
- Managing client expectations when taking the Fifth
- Going up the supervisory chain at SEC: when should you request review from a higher authority?

2:45 Refreshment Break ☞

3:00 SEC Proceedings from Complaint to Appeal: Best Practices for Defending Your Client

James M. McHale
Assistant Chief Litigation Counsel
Enforcement Division
U.S. Securities and Exchange Commission
(Washington, DC)

Philip A. Rothman
Vice President
Law Division, Regulatory Group
Morgan Stanley
(New York, NY)

Aegis Frumento
Partner
Duane Morris LLP
(New York, NY)

- How to keep up with what other parties are doing throughout the investigation process

- Administrative proceedings and trials
 - special burden of proof issues
 - how is evidence handled differently than in a court?
 - do normal privileges apply?
 - how to deal with a "rocket docket?"
 - strategies and tactics for dealing with the complaint
- Why and when to commence settlement discussions with SEC staff
- How to negotiate settlement language with regulators
- What are the limits of the SEC's ability to settle?
- What can you expect during the settlement process?
- Appellate process: what to do if you lose

4:15 Managing E-Mail, Documents and Other Data: Best Practices for Retention, Destruction and Recovery

David Jarvis
Senior Vice President & Senior Litigation Counsel
Wachovia Securities, LLC
(Richmond, VA)

Linda Riefberg
Managing Director, Enforcement Division
New York Stock Exchange
(New York, NY)

Ernie Badway
Partner
Saiber Schlesinger Satz & Goldstein LLC
(Newark, NJ)

- How to approach document preservation and retention challenges
- How to determine what documents need to be preserved as relevant to a request
- How to effectively and quickly responding to a delivery request
- How does technology impact the implementation and enforcement of Rule 17a-4?
- How to best organize the search, retrieval and recovery of electronic records
- What is the evidentiary force of e-mails?

5:15 Conference Adjourns for the Day

Tuesday, October 25, 2005

7:45 Continental Breakfast ☞

8:15 Co-Chairs' Opening Remarks

Aegis J. Frumento
Partner
Duane Morris LLP
(New York, NY)

David U. Gourevitch
Member
The Law Office of David U. Gourevitch, P.C.
(New York, NY)

8:30 NASD and NYSE Investigations from Start to “Wells” Type Notices: Working with Regulators in Your Client’s Best Interest

Jay M. Lippmann
Deputy Regional Chief Counsel
Department of Enforcement
NASD - District 10 (New York, NY)

Bill Singer
Partner
Gusrae, Kaplan & Bruno, PLLC
(New York, NY)

Michael Solomon
First Vice President &
Senior Associate General Counsel
UBS Financial Services, Inc.
(New York, NY)

Moderator

Ben Indek
Partner, Morgan Lewis Bockius
(New York, NY)

- How to quickly mobilize and respond to immense document requests
- Responding to requests for information
 - how much information is considered enough?
 - how to effectively “push back” on information requests
- Best practices on the preparation of witnesses for an OTR interview
 - do you volunteer?
 - how much should you say?
- What does “failure to cooperate” really mean?
- Invoking Fifth Amendment rights in SRO proceedings and other constitutional concerns
- What to consider when deciding whether or not to settle

- discovery
- motions
- scheduling issues
- Defense strategies
 - how is evidence handled differently than in a court?
 - what can you do to preserve the record?
- Considerations in settling versus litigating
- Appeals

10:30 Coffee Break ☕

10:45 State Initiatives and Enforcement Actions Regarding Broker-Dealer Practices

Joseph P. Borg
Director
Alabama Securities Commission
(Montgomery, AL)

James Ropp
Securities Commissioner
Department of Justice
Delaware Division of Securities
(Wilmington, DE)

Patricia Struck
President-Elect, North American Securities Administrators Association
Administrator
Wisconsin Department of Financial Institutions
Division of Securities
(Madison, WI)

Moderator

Andrew Kandel
First Vice President, Regulatory Affairs
Office of General Counsel
Merrill Lynch & Co., Inc.
(New York, NY)

Leading state regulators will provide insight on current developments in state law enforcement of broker-dealer regulations. This roundtable discussion of premier state enforcement experts will provide inside information on the latest state regulatory developments and enforcement initiatives that will have a direct impact on your broker-dealer practices and litigation.

9:30 Protecting Your Client During NASD and NYSE Formal Charges and Disciplinary Hearings

Steven Brostoff
Managing Director, Enforcement Division
New York Stock Exchange
(New York, NY)

Richard M. Gelb
Partner, Gelb & Gelb, LLP
(Boston, MA)

Robert Giacovas
Partner
Lazare Potter Giacovas & Kranjac LLP
(New York, NY)

Brian L. Rubin
Partner
Sutherland Asbill & Brennan LLP
(Washington, DC)

- Life cycle of a hearing
- Formal charges and complaints: how to answer the charges
- NASD and NYSE pre-hearing procedures

11:45 Parallel Proceedings: Taking a Strategic Approach to Simultaneous Criminal, Civil, SRO Investigations and Arbitration Proceedings

Mark S. Kreitman
Assistant Director
Division of Enforcement
U.S. Securities Exchange Commission
(Washington, DC)

David U. Gourevitch
Member
The Law Office of David U. Gourevitch, P.C.
(New York, NY)

Marvin G. Pickholz
Partner
Pickholz Law Firm LLP
(New York, NY)

Stephen P. Younger
Partner
Patterson, Belknap, Webb & Tyler LLP
(New York, NY)

- How to effectively deal with multiple enforcement authorities
- How to obtain a stay or dismissal of civil proceedings and SROs proceedings
- Implications of invoking the Fifth Amendment in SRO proceedings
- An in-depth analysis of potential double jeopardy issues
- How to manage your client's expectations and interests
- Under what circumstances do regulators decide to coordinate enforcement efforts? What are the determining factors?

12:45 Networking Luncheon for Delegates and Speakers 

2:00 Preserving Attorney-Client Privilege, Preventing Conflicts of Interest and Protecting Against Other Ethical Dilemmas

Bruce M. Bettigole
Partner
Crowell & Moring LLP
(Washington, DC)

David Brodsky
Partner
Latham & Watkins
(New York, NY)

Gary Klein
Partner
Klein & Sallah, LLC
(Boca Raton, FL)

- To what extent can in-house counsel represent an employee? Who is considered the client?
- What factors should brokerage firms consider when determining whether the firm's lawyers should not represent an employee?
- What duty do you have to tell an employee that they could/should retain outside counsel?
- When is the right time to tell an employee to retain outside counsel?
- The dynamics of the in-house counsel/outside counsel relationship
 - what happens when outside counsel starts representing an employee?
 - what happens when outside counsel starts working against you?
 - how to properly document outside counsel requests
- How to craft careful disclosures to avoid conflicts
- Best practices concerning the drafting of joint defense agreements
- Sarbanes-Oxley and its ethical implications

3:00 Refreshment Break 

3:15 Preparing for the Latest Wave of Actions Relating to Fee-Based Accounts, Variable Annuities, B-Shares and Business Relationships

Seth Krauss
Vice President, Regulatory Group
Morgan Stanley
(New York, NY)

Roger B. Sherman
Senior Vice President, Enforcement
NASD
(Washington, DC)

Gary DiBianco
Counsel
Skadden, Arps, Slate, Meagher & Flom LLP
(Washington, DC)

The use of fee-based accounts has increased dramatically. Likewise, sales of variable products have grown enormously over the past several years. With the rise in enforcement actions regarding the use of fee-based accounts and the sale and marketing of new annuity products, broker-dealers must have a firm understanding of the latest regulations and guidelines. The Panel will offer an in-house and regulator perspective on the following product and business relationship-related issues:

- What internal policies and practices do regulators recommend to brokers when selling new products?
- Fee-based accounts
 - when is it appropriate to put a client into a fee-based account?
 - how should firms be supervising these accounts?
- Variable annuities
 - where do regulators stand on sales practices and business relationships?
 - what should brokers be telling clients?
 - suitability: who shouldn't you market to?
 - disclosure issues relating to brokerage commissions and revenue sharing
- B-Shares
 - disclosure of commission costs: up front vs. back end
- Revenue sharing and in-house proprietary mutual funds: do you have the best internal practices in place?
- Cross-marketing conflicts and preferred provider arrangements: how to avoid illegal practices
- What NASD guidelines relating to the marketing of new products mean for broker-dealers

4:15 Penalties and Sanctions: Negotiating a Suitable Punishment for Your Client

Mark S. Kreitman
Assistant Director
Division of Enforcement
U.S. Securities Exchange Commission
(Washington, DC)

Martin Kaplan
Partner
Gusrae, Kaplan & Bruno, PLLC
(New York, NY)

David Pitofsky
Partner
Goodwin Procter
(New York, NY)

Chuck Ross
Partner
Herrick, Feinstein LLP
(New York, NY)

Martin P. Russo
Partner
Kurzman Eisenberg Corbin Lever & Goodman LLP
(White Plains, NY)

Moderator

Mark S. Mandel
Partner
Morgan Lewis Bockius
(New York, NY)

- What guidelines are used when calculating which penalties or sanctions are imposed by regulators?
- What kinds of creative alternatives to penalties are available?
- Best practices for negotiating penalties/sanctions with regulators
- How do regulators assess the severity of the penalty in relation to the issuance of "creative" sanctions?
- How is the quantity of a sanction determined in dollar terms?
- The impact of the increasing criminalization of securities violations: should these violations be criminalized?

5:15 Conference Adjourns

What People Are Saying About ACI's Securities Industry Events:

"Very worthwhile. Excellent content and excellent speakers. Exceeded my expectations."

William T. Keevan

Senior Managing Director, Navigant Consulting, Inc., April 2005

"Once again, it was a very positive experience because of high quality speakers, good topics, courteous conference managers and well crafted materials."

Michael E. Clark

Partner, Hamel Bowers & Clark, LLP, April 2005

Attention Government Securities Regulators and SRO Enforcement and Market Regulation Division Staff Members!

ACI is offering a significant registration discount to government regulators and SRO staff members interested in attending this premier enforcement program. Be sure to contact ACI's Registration Department at 888-224-2480 for more information regarding this incentive. At the time of registration please mention Priority Service Code 800I06.D to take advantage of this discount.

Post-Conference Workshop Wednesday, October 26, 2005

9:00 a.m. - 12:00 p.m.

(Registration begins at 8:30 a.m.)

Cooperation and Self-Reporting: The Advanced Guide to Advising Your Client

Aegis J. Frumento
Partner

Duane Morris LLP
(New York, NY)

David U. Gourevitch
Member

The Law Office of David U. Gourevitch, P.C.
(New York, NY)

In the ever-changing world of broker-dealer enforcement, navigating the choppy waters of cooperation and self-reporting can be treacherous. With regulators relying on self-assessments and sweeps more and more as an enforcement tool, broker-dealers must be armed with the latest strategies and defense techniques regarding self-reporting in order to maximize the benefits of cooperation.

During this advanced workshop, you will have the unique opportunity to discuss the biggest challenges facing you when advising your clients on whether or not to cooperate at all levels of enforcement actions. This candid defense forum will bring together guest speakers and delegates for an advanced, interactive discussion regarding the potential pitfalls of self-reporting and how to best avoid liability. The workshop leaders will provide practical advice and guidance on the following issues:

- How does cooperation work?
- The pros and cons of cooperation: is the benefit worth the risk?
- What can you realistically expect from cooperation?
- How to handle waiver of privilege and related confidentiality issues
- How often do SROs credit cooperation?
- Under what circumstances have regulators given credit for cooperation?
- How to minimize the risks of cooperation and maximize benefits for your client during the self-assessment process
- Are regulators issuing more lenient penalties and sanctions based on self-reported violations? And if so, under what circumstances has that happened?
- What will we see in the future regarding self-reporting?

This defense forum will give you the rare opportunity to hear from broker-dealer enforcement experts on what advice they are offering their clients regarding self-reporting and how to answer the tough questions surrounding cooperation.

"Good idea to have small groups speak with adequate time to give presentations. Enjoyed the number of different areas and topics covered."

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Defending and Settling

Broker/Dealer Enforcement Actions

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