

Market News

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A monthly review of IR developments for our clients and friends. . .

Few points in Dodd-Frank Act affect our readers

We don't have enough virtual "ink" to review the entire Dodd-Frank Wall Street Reform and Consumer-Protection Act here, but will highlight a few points that impact the IR world:

- SEC funding will dramatically rise as Congress authorized annual budget increases starting at \$1.3 billion in 2011 and rising to \$2.25 billion in 2015. The SEC will add 800 employees in 2011 to the 3,800 it employs now.
- The SEC can go after those "aiding" and "abetting" securities offenders after the law eliminates the burden of proving intent to aid another person's violation. Now the government only must show that the individual's reckless conduct furthered the violation.
- Hedge funds managing over \$100 million will be required to register with the SEC and meet the disclosure and compliance requirements imposed on other investment firms in the same category.
- Congress mandated a study on expanding the fiduciary duty of brokers. The intent is to stop brokers from recommending investments just because they are more lucrative to the broker.

Congress pondered eliminating the arbitration clause in brokerage and investment advisory agreements to make it mandatory that all disputes be decided by an arbitrator appointed by the Financial Industry Regulatory Authority. Investors could be able to sue brokers in court.

FAS 157 could be in place by year-end as Topic 820

The most controversial accounting standard in recent memory is coming to a quiet end. FAS 157 has been rewritten and retagged as Topic 820. Banks challenged the FASB and IASB on any rule that would increase the volatility of asset values, or worse, depress the book value of financial assets. Going into effect in 2009, FAS 157 was accused of exactly that, causing liquidity problems. Yet the rule did not change what companies measure at fair value or when they needed to apply fair-value accounting; it set a methodology for measuring market values of assets and liabilities. As Topic 820 goes into effect around the end of the year, it will do little more than clarify existing rules of how to measure the value of illiquid assets and liabilities using internal models and unobservable inputs. The new rule will require that inputs used in the calculations be disclosed in the financial statements, such as modeling of growth rates or discount rates in discounted cash-flow calculations. Ironically, as the economy improves there will be fewer illiquid assets and liabilities left over from the financial crisis.

Google carries through with its promise, and it worked

Google issued its second quarter results without using a news release service, and it said it went without a hitch. By placing its release on its website and filing an 8-K two minutes later, the news was covered within a minutes by all major business news outlets, and trading volume ramped up immediately. The stock dropped almost 7 percent, as the company missed analyst estimates. Building up to the new format, the company filed an advisory release in the first quarter notifying investors that second-quarter results would be posted on their website. The idea is catching on. Forty-one companies advised investors that their second-quarter results would be issued the same way.

SEC to review new proxy advisory rules

SEC commissioners unanimously voted July 16 to conduct the first review and overhaul of the proxy voting infrastructure in nearly 30 years. They will explore potential conflicts of interest for proxy advisory firms, and whether to require disclosure of voting recommendations in filings. Important topics: letting issuers communicate with “street name” shareholders; reviewing “reimbursement” fees to broker-dealers; disclosing proxy votes by securities lenders; access to voting data held by tabulators, intermediaries and proxy service providers; more retail investor voting participation; and retention of voting rights for shares sold after the record date, or if their rights exceed economic interest.

You’d be surprised at who’s investing in hedge funds these days

The perception that the bulk of hedge fund investors are high-net-worth individuals no longer rings true. In 2009 institutions accounted for an absolute majority of hedge fund assets under management, according to research by Alternative Investment Management Association (AIMA). Their research shows this trend has been building over the last 10 years, slowing only a little during the financial crisis, as institutional investors represented the majority of new investment capital. A study recently completed by Credit Suisse and Deutsche Bank predicts the industry will attract \$200 to \$300 billion in institutional money in 2010.

Citi settlement exposes IRO’s involvement

Fortune magazine, whose financial industry watchdog Carol Loomis had kept an especially close eye on Citi’s disclosures during the financial crisis, now says the financial giant’s \$75 million SEC settlement reveals Citi’s problems were even worse than it suspected. *Fortune* had harped on Citi in 2007 for not disclosing everything about its toxic assets. It says Citi’s former financial chief Gary Crittenden led an effort to hide more than \$40 billion worth of bad CDO debt for more than a month. Loomis had reported a flurry of meetings at Citi in late October, and the gap between those meetings and its admission of CDO problems on Nov. 4, 2007. The SEC said (with neither confirmation nor denial from Citi) that Crittenden and Citi former IRO Arthur Tildesley violated four provisions of the federal securities laws. Crittenden and Tildesley paid penalties without admitting anything.

...And to the point of Dodd-Frank’s deal for whistleblowers

It might be an understatement to say that Dodd-Frank expanded whistleblowers’ rights. Under the new act, the SEC will determine rewards for whistleblowers for all cases that involve penalties worth more than \$1 million. Successful informants are entitled to collect 10 to 30 percent of the payout from the Commission. It’s better than before; the SEC could only reward whistleblowers of insider-trading cases, and they were stingy, paying out a total of \$159,537 to only five claimants during the rule’s 20-year existence. The new law also lets whistleblowers bring discrimination or retaliatory firing claims in federal court, and have up to six years to do so. Under Sarbanes-Oxley, whistleblower cases were heard by Department of Labor judges, with a 90-day statute of limitations.

Goldman: Our @#%\$! Words are Our Bond

While we don’t expect that technicians will be prying the “s” and “f” keys off the keyboards in the Goldman Sachs executive suites (they can always use their Blackberrys for swearing instead), it’s certainly refreshing to see Wall Street’s once-revered leader fess up. We particularly like *Time* magazine’s take: “It makes you wonder ‘just how often Goldman Sachs employees are referring to deals as s****,’ if they have to ban it. Besides, ‘a bad deal by any other name would still smell, well, you know.’”



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