

Panelists

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Introduction

- Litigation and regulatory risks exist—no matter how well you do your job or how well your fund is run.
- These risks have evolved in recent years, and understanding the contours of these risks can help you to address and manage them.
- Indemnification and insurance can play an important role in protecting you, and insurance can play an important role in protecting both you and your funds.

Agenda

- SEC and other regulatory enforcement activity
- Private civil litigation
- Managing litigation and regulatory enforcement risk
- The role of indemnification and insurance

Regulatory Enforcement Activity

Regulatory Enforcement

- SEC Enforcement Division continues to be active.
 - SEC filed a near-record number of enforcement actions in its FY 2012.
- Asset management area remains a focus for the SEC.
 - Impact of Division's asset management unit (created in 2010)
 - Potential effect of Dodd-Frank's "whistleblower" provisions
- Enforcement activity by other regulators

Selected Recent SEC Enforcement Cases

- *In re Northern Lights Compliance Services LLC* (SEC settlement) (May 2, 2013)
- *In re J. Kenneth Alderman* (filed Dec. 10, 2012) (also known as “*Morgan Keegan*”)
- *In re Lisa Premo* (SEC administrative proceeding decision) (Dec. 26, 2012)

Private Civil Litigation

Private Civil Litigation

- Disclosure-based litigation
 - Prospectus liability under the 1933 Act
 - Antifraud liability under the 1934 Act
- Fee-based litigation
 - “Excessive fee” lawsuits under the 1940 Act
 - Other fee-based litigation
- State law–based litigation
 - “Derivative” lawsuits
 - State law–based class actions

Managing Litigation and Regulatory Enforcement Risk

Managing Litigation and Regulatory Enforcement Risk

- Duties of Directors
 - Duty of care
 - Duty of loyalty
 - 1940 Act specific duties
- The “3 Ps”
 - Preparation
 - Process
 - Paperwork

Indemnification and Insurance

Indemnification and Insurance

- Indemnification for directors
- D&O/E&O Insurance
 - Scope of protection for directors
 - Scope of protection for funds
- Supplementary Protections for Independent Directors
 - Independent Director Liability (IDL) Insurance
 - Other Protections

Conclusion

- Litigation and regulatory risks exist.
- Understanding the contours of these risks can help you to address and manage them.
- Indemnification and insurance play important roles.

Panelist Biographies

- **Mark Holland** is a partner in the New York office of Goodwin Procter LLP, where he is a member of its Securities Litigation & SEC Enforcement Practice. He has over thirty years' experience defending issuers, financial intermediaries, investment advisers and mutual fund directors in securities class actions and derivative suits in federal and state courts. In 2009, he was named Independent Counsel of the Year by *Fund Directions* for his work defending the independent trustees of the Reserve Primary Fund in litigation brought after that fund "broke the buck" in 2008. Holland received his JD from the Cornell Law School in 1981, where he served as the Managing Editor of the *Cornell Law Review*, and his BA from Colgate University in 1978.
- **Paulita A. Pike** represents mutual funds or their boards as well as investment advisers and fund service providers throughout the country. Pike advises her clients on a broad range of issues including fund service provider contracts, excessive fee litigation, regulatory investigations, D&O/E&O considerations and negotiation, governance structures and practices, communications with the press and fund mergers and "manager-of-managers" frameworks. Pike is an Adjunct Professor at Northwestern University School of Law where she teaches a course on mutual fund regulation. She and Paul Dykstra were named "Independent Counsel of the Year" in 2008 and 2013 by *Fund Directions*.
- **Daniel T. Steiner** is Executive Vice President and General Counsel of ICI Mutual. Prior to joining ICI Mutual in September 1997, he was a partner in the Washington, DC, office of the national law firm of Kirkpatrick & Lockhart, LLP (now K&L Gates), where his practice focused on investment management and professional liability insurance matters. Steiner received his JD from the University of California at Berkeley (Boalt Hall) School of Law and his BA from Yale University.
- **Annette Capretta** is Deputy Managing Director of the Independent Directors Council. She joined IDC in 2006 from the U.S. Securities Exchange Commission, where she had served in various capacities in the Office of Risk Assessment, the Division of Investment Management, and the Division of Enforcement. Previously, Capretta was Vice President and Senior Counsel at Charles Schwab, and she began her career in private practice as a litigator. Capretta received her JD from the University of Virginia School of Law and earned a BS in Mathematics from the University of North Carolina.

Additional Resources

- IDC Publications
 - Fair Valuation Series: Role of the Board (2006), available at: http://www.idc.org/pdf/06_fair_valuation_board.pdf
 - Fair Valuation Series: An Introduction to Fair Valuation (2005), available at: http://www.idc.org/pdf/05_fair_valuation_intro.pdf
- ICI Mutual Publications
 - ICI Mutual *Claims Trends*, available at: <http://www.icimutual.com/claims-trends>
 - ICI Mutual Risk Management Studies, available at: <http://www.icimutual.com/risk-management-studies>
 - Independent Director Liability (IDL) Insurance: A Guide for Fund Independent Directors And Their Insurance Advisers (2013)
 - Mutual Fund Prospectus Liability: Understanding and Managing the Risk (2010)
 - Mutual Fund D&O/E&O Insurance: A Guide for Insureds (2009)