

Investment Management – Regulatory and Compliance

SUMMER 2011

**Lowenstein
Sandler**
ATTORNEYS AT LAW

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I. LOWENSTEIN SANDLER OVERVIEW

Lowenstein Sandler is a nationally recognized full-service law firm with more than 250 attorneys and offices in New York, New Jersey and Palo Alto. Our commitment to our clients is demonstrated through our client-centered, service-oriented culture. Our attorneys are regularly cited for excellence by clients and peers in national publications, including *Best Lawyers in America*, *Chambers USA: America's Leading Lawyers for Business* and *U.S. News & World Report*.

Our lawyers possess the credentials, skills and experience rivaling the largest global firms, yet we continue to maintain a boutique, entrepreneurial approach to the practice of law and our relationships with clients. Regardless of the transaction or matter, understanding our clients' needs and helping them to achieve successful outcomes are at the core of what we do.

Our attorneys counsel clients on complex transactions and matters, in practice areas that include:

- Antitrust and Trade Regulation
- Appellate Litigation
- Bankruptcy, Financial Restructuring & Creditors' Rights
- Business Tax Counseling & Structuring
- Capital Markets Litigation
- Class Action & Derivative Litigation
- Commercial & Business Litigation
- Construction Law & Litigation
- Consumer Fraud Litigation
- Corporate Finance & Securities, Corporate Governance
- Derivatives
- Employee Benefits & Executive Compensation
- Environmental Law & Litigation
- Fiduciary Counseling & Litigation
- Immigration
- Insurance Coverage
- Intellectual Property Counseling & Litigation
- Investment Management
- Lending & Financial Services
- Mergers & Acquisitions
- Mortgage Banking & Finance
- PIPEs, SPACs & Registered Direct Offerings
- Private Equity & Mezzanine Financing
- Products & Specialty Torts
- Real Estate
- Securities Litigation
- Venture Capital and Angel Investing
- Tech Transfer
- Trusts & Estates
- White Collar Criminal Defense

“The client service is fantastic: they have an excellent pool of resources amongst the lawyers. They are extremely responsive and have an extraordinary ability to put the right skill sets together.”



II. INVESTMENT MANAGEMENT GROUP PROFILE

Lowenstein Sandler is home to one of the nation's leading Investment Management practices. For more than 30 years, our firm has represented preeminent domestic and offshore hedge funds, private equity funds, venture capital funds and other pooled investment vehicles, as well as managed accounts. Our global clients comprise more than 200 domestic and international investment funds and their advisers, with assets under management ranging from \$100 million to more than \$25 billion. These fund clients span a broad and diverse range of organizational structures and investment strategies. In addition to fund managers and investment advisers, our clients include administrators, broker-dealers and institutional investors. We provide a full range of legal services, which are outlined on the following page, to our investment management clients. We also represent these clients on a wide array of commercial transactions, including large going-private transactions, midsize acquisitions, and pioneering PIPE and registered direct transactions. In addition, our litigators have achieved landmark results for fund clients in high-profile securities law matters.

Our investment management attorneys are recognized for their innovative solutions and dedication to client service; many have been featured in "best of" legal publications, including *Best Lawyers in America*, *Chambers USA: America's Leading Lawyers for Business* and *The Legal 500*. The practice also received a Tier 1 national ranking for their work in Private Funds/Hedge Funds Law from *U.S. News & World Report's* 2010 Best Law Firms list. We take an interdisciplinary approach to advising our clients and collaborate with colleagues in the firm's M&A, corporate finance and securities, litigation, venture capital, bankruptcy, intellectual property, employee benefits, real estate, specialty finance and tax practices to ensure that our clients' varied legal and business needs are fully addressed.

Regulatory & Compliance

As a result of the increasing regulatory oversight and enforcement in the investment fund industry, our regulatory and compliance lawyers are called upon to provide critical advice and guidance to our clients on a wide variety of matters. By establishing strong relationships with clients, and gaining a thorough understanding of their business, investment strategies, and front and back office operations, we are able to develop comprehensive and robust compliance programs, and produce novel solutions to the complex regulatory and compliance issues that our clients increasingly confront. Our practice has also played a key role in shaping proposed legislation and regulation at the national and state levels.

We are intimately familiar with the investment industry and, for more than three decades, have worked with a broad constituency of market participants as well as various regulatory bodies. Our attorneys include experienced practitioners, and former in-house counsel and compliance personnel who provide practical advice and guidance on regulatory and compliance matters, from routine trading issues, regulatory examinations and due diligence inquiries, to enforcement proceedings and hotly contested litigation.

II. INVESTMENT MANAGEMENT GROUP PROFILE

We counsel investment management clients on a wide variety of matters, including:

- Fund Formation and Advisory Services
- Fund Structuring
- Mergers and Acquisitions
- Financing Transactions
- Partnership and Limited Liability Company Law
- Comprehensive Regulatory and Administrative Compliance
- Investor Suitability Standards
- Marketing and Reporting Guidelines
- Conflicts of Interest
- Public and Private Equity and Debt Instruments
- *PIPE* and *RD* Transactions
- Commodity Trading
- Swaps and Derivatives Transactions
- Insider Trading Issues
- Activist Investing
- Taxation and ERISA
- Employee Benefits
- Intellectual Property Law

“The ‘hardworking, responsive and creative’ six-partner team at Lowenstein Sandler PC is considered by clients to be ‘one of the best teams of hedge fund attorneys’.”



III. THE COMPLIANCE VALUE PROPOSITION AND THE CURRENT REGULATORY ENVIRONMENT

Intense and Demanding Regulatory and Enforcement Environment

- In response to well publicized industry scandal and fraud (both admitted and alleged) and financial markets crises, the SEC has re-staffed, restructured and reassessed the way in which it pursues examinations and enforcement actions.
- The SEC Office of Compliance, Inspections and Examinations (OCIE) has undertaken a broad self-assessment of its strategy, structure, people, processes and technology and is implementing reforms aimed toward a standardized and scalable National Exam Program designed to improve consistency, effectiveness and efficiency.
- The SEC Division of Enforcement has completed an extensive reorganization with the creation of specialized groups dedicated to high-priority areas and has been very active in bringing high-profile cases.
- In 2010, the SEC brought nearly 700 enforcement cases and obtained \$2.8 billion in penalties and disgorgement.
- The Dodd-Frank Act has significantly altered the universe of investment advisers who are required to register with and become subject to regulation by the SEC. Now, with few exceptions, advisers of private funds with assets under management in excess of \$150 million will be required to register with the SEC commencing in March 2012.
- The pressure for investment managers and broker-dealers to adopt and maintain a robust compliance program tailored to the demands and requirements of their business is greater than ever.
- A failure to demonstrate compliance may lead regulators to doubt the seriousness of the compliance efforts, infer that policies are not being followed and view the compliance manual as form over substance.
- Compliance failures translate into an erosion of reputation and enterprise value (irrespective of investor losses).

III. THE COMPLIANCE VALUE PROPOSITION AND THE CURRENT REGULATORY ENVIRONMENT

The Compliance Value Proposition

“Berkshire can afford to lose money, even lots of money; it can’t afford to lose reputation, even a shred of reputation.... There is plenty of money to be made in the center court. There is no need to play around the edges.”

- Warren Buffett, Chairman of Berkshire Hathaway, quoted in an April 10, 2005 *New York Times* article entitled “The Oracle of Omaha’s Latest Riddle.”

“I trust that many of you share the appreciation that, to be effective, compliance and ethics programs cannot exist in silos. Instead, I believe they need to be ingrained in the DNA of the organization and the decision-making framework of the organization. They need to be imbedded in the business process and at the table when strategic decisions are being made and new products are being developed. They need to be an integral part of performance measurement and management processes. And, they need to be part of the way business is done. After all, compliance programs and the work that you do every day add tremendous business value. They protect the business, they enhance the brand, they ensure that reputation is protected and that reputation risk is managed.”

- Remarks at the CCO Outreach National Seminar by Carlo V. di Florio, Director, Office of Compliance Inspections & Examinations, SEC, February, 2011

An effective compliance program promotes multiple business goals:

- Effective Corporate Governance
- Enterprise Risk Management
- Business Ethics
- Culture of Compliance
- Elevation of Franchise Value and Market Perception

III. THE COMPLIANCE VALUE PROPOSITION AND THE CURRENT REGULATORY ENVIRONMENT

Characteristics of a Strategic Compliance Function

In today's demanding regulatory environment, compliance must serve a strategic business function that protects the interests of investors and avoids violations that erode the franchise value of the adviser. Characteristics of a strategic compliance function are as follows:

- Tailored Compliance Policies and Procedures. Compliance policies and procedures must be appropriately tailored (and continually refined) to reflect and address the client's business model, investment strategies and relevant conflicts of interest, and the way the legal, compliance and operating infrastructure is administered.
- Partnership with Business Units. By engaging business process owners throughout the enterprise, Compliance builds the tools, templates, reports and business processes that contribute to a fully functional and scalable compliance infrastructure and implements systems by which compliance can be documented and demonstrated.
- Templates and Reports. Carefully prepared templates and reports that capture essential compliance data significantly increase the CCO's ability to identify and avoid compliance failures and demonstrate compliance to regulators.
- Oversight, Reporting and Testing. A robust compliance program contains oversight, reporting and testing functionality that permits advisers to demonstrate compliance through the prompt production of records and test results or evaluations.
- Training and Culture. Compliance training that is well-designed, effectively presented and systematically reinforced contributes to a virtual cycle that increases awareness of the compliance function and reinforces the culture of compliance.
- Compliance Evangelism and Reinforcement. Compliance must maintain a continuous dialogue with investment staff and business personnel to propagate the perception (and the reality) that the compliance function is actively engaged, aware and knowledgeable of all important business matters in process at or under consideration by the adviser.

III. THE COMPLIANCE VALUE PROPOSITION AND THE CURRENT REGULATORY ENVIRONMENT

Current Areas of Regulatory Focus—Investment Advisers

- Abusive Marketing Practices and Performance Advertising
- Private Fund Regulation
- Pay to Play
- Personal and Institutional Conflicts of Interest
- Valuation of Assets
- Personal Trading, Insider Trading and Fraud
- Business Continuity and Disaster Recovery
- Disclosure and Corporate Governance Rules
- Asset Verification
- Use of Social Media
- Conflicts of Interest
- Municipal Advisors
- Portfolio Management
- Risk Governance
- Shift to State Oversight for Advisers
- Small Niche Mutual Funds and ETFs
- Whistleblowers
- Securities-Based Swaps and Market Participants

Source: *Speech by SEC Staff: Remarks at the IA Watch Annual IA Compliance Best Practices Seminar (March 2011)*

III. THE COMPLIANCE VALUE PROPOSITION AND THE CURRENT REGULATORY ENVIRONMENT

Current Areas of Regulatory Focus—Broker-Dealers

- Intercompany Transactions/Affiliated Entities
- Short Sales and Regulation SHO
- Sales to Senior Citizens and Other Vulnerable Customers
- Fraud Detection
- Fraudulent Activity Associated with Customer Accounts
- Information Barriers
- Suitability
- Know Your Customer
- Financial Responsibility
- Networking Arrangements
- Reporting Requirements
- Private Placements and Private Self-Offerings
- Trading in Non-Public Securities
- High-Frequency Trading, Algorithms, Sponsored Access, Direct Market Access and Trading Pauses
- High-Yield Investments
- Municipal Securities
- Non-Conventional Investments
- Exchange-Traded Funds and Notes
- Electronic Communications and Social Media
- Consolidated Account Reports
- Hiring and Compensation Practices
- Outside Business Activities and Private Securities Transactions
- Master/Sub-Account Relationships
- Funding and Liquidity Risk Management
- Governance and Control over Margin Lending

Source: *FINRA Annual Regulatory and Examination Priorities Letter (February 8, 2011)*

IV. THE LOWENSTEIN SANDLER APPROACH TO COMPLIANCE

The System is the Solution

Lowenstein Sandler works with clients to develop:

- an appropriately tailored compliance program that blends legal and compliance mechanics with daily operating workflow so that compliance and business functions are seamlessly integrated;
- a robust, yet pragmatic compliance program that contains oversight, reporting and testing functionality that permits clients to demonstrate compliance through the prompt production of records and test results or evaluations; and
- novel solutions to the complex regulatory and compliance issues that clients confront on a day-to-day basis.

Partnering with the CCO

- The CCO performs a strategic role with primary responsibility for protecting the interests of investors and preserving the investment manager's brand and franchise.
- Failure to approach compliance in a deliberate and comprehensive way will leave the CCO ill-equipped to perform the myriad tasks that are required for an effective compliance program and articulated in the compliance manual.
- Lowenstein Sandler works with CCOs to:
 - develop compliance platforms and programs where compliance is communicated, reinforced and socialized on a systematic and continuous basis;
 - engage business process owners to build tools, templates, reports and business processes that contribute to a fully functional and scalable compliance infrastructure;
 - develop compliance training and the ongoing refinement of the platform by which compliance policies and procedures are socialized and evangelized; and
 - foster an environment where awareness of and appreciation for compliance are reflected in the way that employees carry out their day-to-day responsibilities.

IV. THE LOWENSTEIN SANDLER APPROACH TO COMPLIANCE

The Compliance Toolbox

- Federal, State and SRO Registration and Licensing Consultation
- Compliance Manual, Written Supervisory Procedures Preparation and Customization
- Form ADV, Parts 1 and 2, Form NMA and Form BD/U-4 Preparation and Review
- Regulatory Compliance Review, “Mock Examination” and Testing
- Examination Support and Consultation, and Enforcement Defense/Litigation
- Compliance Training
- Compliance Calendar and Risk Matrix Preparation
- Compliance Notification System Preparation
- Marketing, Disclosure and Investor Communications Review
- Risk Management Reviews
- Compliance Form/Template Preparation
 - Personal Securities Holding and Transaction Reports
 - Cross Trades and Principal Transactions
 - Trade Errors
 - IPO/Private Placement Reports
- Committee Charter Preparation/Consultation
 - Investment Committee/Credit Procedures
 - Valuation Committee
 - Risk and Conflicts Committee
 - Best Execution/Brokerage Committee
- SEC Filing Support

V. COMPLIANCE TOOLS AND TEMPLATES

Using compliance tools and templates to build a *compliance infrastructure*

We work with clients to develop policies and procedures, forms and templates that communicate, identify, capture and report the compliance data most pertinent to their business. Building this infrastructure fosters a culture of compliance, prevents compliance violations and enhances the CCO's ability to demonstrate compliance to regulators. The creation of well-designed templates enhances the effectiveness and facilitates the scalability of the compliance program.

- A properly functioning compliance infrastructure should contain a thoughtful and systematic testing functionality, and to the extent possible, a *real-time* documentation and internal reporting capability.
- The systematic production of documentation and reports covering important compliance matters improves the effectiveness of the CCO by allowing the CCO to collect and analyze important compliance data in an efficient manner.
- To achieve a testing, documentation and reporting functionality, the CCO must focus on creating policies and procedures, templates and reports designed to capture, present and display the most pertinent compliance information. If the system is properly designed, the tests and checks that are periodically performed should uncover improper conduct, or alternatively, demonstrate appropriate behavior.
- If testing is not regularly and systematically performed, and if reports demonstrating compliance are not regularly and systematically generated, it becomes nearly impossible to play catch-up and creates a real danger that compliance violations will go undetected and that regulators will draw negative inferences in the context of an examination.

The following pages contain sample templates of select components of a comprehensive compliance program. We have excerpted representative compliance policies and procedures, compliance training slides and compliance reports for purposes of this presentation.

V. COMPLIANCE TOOLS AND TEMPLATES

Compliance Manual Preparation

Rule 206(4)-7 of the Advisers Act requires that investment advisers adopt comprehensive policies and procedures *reasonably designed to detect violations of the federal securities laws*. Many advisers have *adopted* generic one size fits all compliance manuals that contain policies and procedures bearing little resemblance to the actual conduct of their business. The SEC has stated that adopting but failing to comply with compliance policies and procedures may be viewed more harshly than not adopting the requisite compliance policies and procedures in the first place. Below is the table of contents of a compliance manual containing appropriately tailored policies and procedures adopted in accordance with the requirements of Rule 206(4)-7.

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V. COMPLIANCE TOOLS AND TEMPLATES

Tailoring Compliance Manual Policies and Procedures

We work with clients of all sizes and investment strategies to develop policies and procedures that are appropriately tailored (and continually refined) to reflect and address the client’s business and investment strategies, and to reflect the way the legal, compliance and operating infrastructure is administered. An excerpt from a Code of Ethics is shown below.

I. CODE OF ETHICS

A. Introduction

In accordance with the requirements of the Advisers Act, the Firm has adopted this Code of Ethics (“Code of Ethics” or the “Code”) to provide Firm Personnel with information regarding the nature of their fiduciary duties and the associated regulatory requirements, and to set forth the Firm’s policies with respect thereto. As a condition of employment, Employees are required to acknowledge their understanding of the subjects covered in the Code and their intention to comply with the requirements set forth herein. Annually thereafter, as a condition of continued employment, Employees must confirm their understanding and intention to comply with the requirements of the Code, as then in effect. In addition, all Employees must agree to comply strictly with all applicable federal and state regulations governing his or her activities involving a prohibition on trading on “inside information” set forth in this Manual.

B. Fiduciary Duties

Section 206 of the Advisers Act imposes a fiduciary duty on registered investment advisers. In applicable case law, the SEC and the Supreme Court of the United States made clear that an adviser has an undivided duty of loyalty to act *solely in the best interests of the client*, including the obligation to make full and fair disclosure of all material facts, especially where the adviser’s interests may conflict with those of the client.

Section 206 of the Advisers Act states that it is unlawful for any investment adviser to:

- employ any device, scheme, or artifice to defraud a client or prospective client;
- engage in any transaction, practice, or course of business which defrauds or deceives a client or prospective client;
- knowingly sell any security to or purchase any security from a client when acting as principal for his or her own account, or knowingly effect a purchase or sale of a security for a client’s account when also acting as broker for the person on the other side of the transaction, without disclosing to the client in writing before the completion of the transaction the capacity in which the adviser is acting and obtaining the client’s consent to the transaction; and
- engage in fraudulent, deceptive or manipulative practices.

XYZ is and has always been committed to the notion that all Employees must comply with its fiduciary duties to Clients and Investors. Furthermore, all of our conduct with Clients and Investors and all of its business operations are based on fundamental principles of openness, integrity, honesty and trust. All Employees should be aware of the high value we place on the adherence to ethical conduct at all times, and all Firm Personnel are urged to comply not only with the letter of their respective fiduciary duties, but also to these stated ideals of the Firm.

V. COMPLIANCE TOOLS AND TEMPLATES

Employee Compliance Training—Preparation of Training Templates

Compliance training that is well-designed, effectively presented and systematically reinforced can play an important role in institutionalizing the “culture of compliance.” We work with clients to prepare training templates that foster the *enterprise DNA* in which business operations, and compliance policies and procedures are seamlessly integrated. An excerpt from a training presentation addressing insider trading is shown below.

Insider Trading

Insider Trading is generally considered to be trading either personally or on behalf of others (for example, a Client/Fund) on the basis of material nonpublic information (MNPI) or communicating MNPI to others in violation of applicable law including:

- **Classic Theory:** Trading by an insider (temporary insider or tippee) while in possession of MNPI. Largely based on a fiduciary relationship between an insider and shareholders;
- **Fiduciary Duty Theory:** Trading by a non-insider who entered into a confidential relationship through which they gain access to MNPI; non-insider may take on a fiduciary duty to company's stakeholders if they are aware or should have been aware that he/she has received MNPI by an insider who violated a fiduciary duty to the company's stakeholders; or
- **Misappropriation Theory:** Trading by a non-insider while in possession of MNPI, where the information was disclosed to the non-insider in confidence.

XYZ maintains policies and procedures designed to prevent the misuse of MNPI.

Note: The SEC can bring civil or criminal actions.
Additionally, aggrieved parties can bring civil actions for fraud.

V. COMPLIANCE TOOLS AND TEMPLATES

Employee Compliance Training

Investment staff training is an opportunity to present information that helps *connect the dots* between the *theory* of compliance as reflected in the written policies and procedures and the *reality* associated with (actual or alleged) improper conduct. As seen below, recent news articles and actual complaints filed in high-profile cases can be presented in employee training sessions in a way that resonates well with employees.

Observations on Pending Regulatory Actions

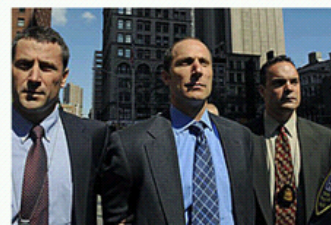
- Conduct is not viewed in isolation.
- Cases can be built out of a pattern of statements, omissions and actions.
- Regulators are willing to prosecute cases involving misstatements to sophisticated investors in private funds, including misstatements about the portfolio managers' view of the prospects for a fund.
- E-mail will be used (selectively or otherwise) to substantiate claims of misstatements or bad acts.
- The Firm should at all times be balanced and forthcoming in our communications with investors, potential investors and regulators, be mindful of the full context in which we are speaking (or e-mailing) and acting, and take care to adhere to our internal policies and procedures.
- Well-designed policies and procedures and independent controls can help protect a firm and its employees.

Feds Make First Arrest in Massive Insider Trading Probe

Someone had to be first. For Don Ching Trang Chu, this realization was probably of little comfort as he made the perp walk on Wednesday from his home in Somerset, N.J. to face charges in the massive government crackdown on insider trading. Chu is accused of conspiring to leak information while he was an employee at an expert-network firm.



Don Chu



Associated Press

Federal agents exit 26 Federal Plaza with handcuffed former Bear Stearns hedge fund manager Matthew Tannin, Thursday, June 19, 2008, in New York. Indictments will be handed down on Tannin and ex-manager Ralph Cloffi, both accused of securities fraud in the wake of the collapse of the subprime mortgage market which foreshadowed Bear Stearns' own demise.

V. COMPLIANCE TOOLS AND TEMPLATES

Operating Guidelines / “Desktop Operating Procedures”

We encourage CCOs to identify discrete compliance issues and work collaboratively with business process owners to develop policies and procedures that best address the problem or mitigate the risk without suffocating the business process. Below is an excerpt from a “desktop operating procedure” that documents the process by which investments are approved by a portfolio manager or investment committee.

A. Investment Approval, Trading and Execution

1. New Investment Opportunity Identification/Sourcing

The Group’s (the “Group”) investment ideas are originated from a wide array of sources. These include proprietary industry research; a proprietary leveraged credit screen; other XYZ Funds; Wall Street broker/dealers; private equity, distressed funds and origination; and XYZ portfolio companies and industry contacts.

The Group identifies industries it believes will have specific drivers causing distress (i.e., high oil prices impacting plastic resin users) to the sector and analyzes the companies in that sector that have leveraged balance sheets and may become distressed candidates. Our proprietary leveraged credit screen was developed using data from numerous sources that alerts us when factors we deem to be good leading indicators of distressed scenarios are triggered. XYZ’s other activities and experience of the professionals within the Group result in resident expertise and knowledge of the leveraged loan and high yield arenas. Additionally, the Group has extensive relationships within the private equity and distressed communities that produce proprietary deal flow.

Investment opportunities are typically identified or otherwise received by Senior Managing Directors or Managing Directors but may be identified/sourced by any member of the Group.

2. Investment Screening and Approval

a. Deal Team Formation and Initial Screen

Following the identification of a new opportunity, a Deal Team is formed consisting of a Senior Managing Director or Managing Director, a Vice President or Senior Associate, and an Associate or Analyst (“Deal Team”). The Deal Team performs an initial screen to determine whether the opportunity warrants further due diligence. Typically, investments which pass the initial screen will have characteristics including:

- A stable, sustainable cash flow generated by a proven and understandable industrial or service business
- Leadership in their markets in sustainable industries with high barriers to entry
- Businesses that are not likely to be materially damaged by the bankruptcy process itself and which might, in fact, benefit by the unique protections afforded them in bankruptcy.
- Limited debt senior to the selected security
- A market price of its debt securities that allows for the acquisition of the entity at an attractive valuation

V. COMPLIANCE TOOLS AND TEMPLATES

Holdings / Transaction Reports

We work with clients to create forms, reports and certifications designed to capture, present and display the most pertinent compliance information to facilitate thoughtful review and analysis by the CCO. An example of a personal securities holding report and certification is shown below.

XYZ INVESTMENT ADVISER

EMPLOYEE INITIAL SECURITIES HOLDINGS REPORT AND CERTIFICATION

(This form must be completed and returned within 10 days of hire)

Statement to XYZ INVESTMENT ADVISER by _____ (Please print your full name) Hire Date: _____

As of the date appearing above, the following are each and every security and account in which I have a direct or indirect Beneficial Ownership or other Beneficial Interest (not including exempted securities such as bank certificates of deposit, open-end mutual fund shares, Treasury obligations (T-bills notes and bonds), Open-end Unit Investment Trusts that hold securities in proportion to a broad base index). For purposes of this report, the term Beneficial Ownership or Beneficial Interest shall mean, ownership of securities or securities accounts by or for the benefit of a person, or such person's "family member", including any account in which the employee or family member of that person holds a direct or indirect beneficial interest, retains discretionary investment authority or other investment authority (e.g., a power of attorney). The term "family member" means any person's spouse, child or other relative, whether related by blood, marriage or otherwise, who either resides with, or is financially dependent upon, or whose investments are controlled by that person and any unrelated individual whose investments are controlled and whose financial support is materially contributed to by the person, such as a "significant other."

I have no holdings to report.

Name of Security/Type of Security	Amount (No. of Shares or Principal Amount)	Nature of Interest Broker, Dealer (or Direct Ownership, Spouse, Control, Etc.)	Bank acting as Broker

I certify that the securities listed above, are the only securities in which I have a direct or indirect beneficial ownership interest.

Employee Signature: _____ Date: _____ Reviewed by: _____

CCO/Review Comments: _____

V. COMPLIANCE TOOLS AND TEMPLATES

Recordkeeping and Document Production

We work with clients to develop detailed recordkeeping matrices so that record maintenance and production responsibilities are responsibly assigned and documented. A clear delineation of recordkeeping responsibilities will facilitate the production of documents in the context of an SEC examination. An excerpt from a sample recordkeeping matrix appears below.

List of Books and Records Required Under Rule 204-2 of the Advisers Act				
	DOCUMENT	REQUIRED LENGTH OF RETENTION ¹	STATUTORY AUTHORITY	RESPONSIBLE DEPARTMENT
<i>Organizational Documents</i>				
1	Formation and Operating Documents. Articles of incorporation, certificates of formation, partnership agreement or charters, as the case may be.	Termination + 3 years	Rule 204-2(e)(2)	Legal / Compliance (L & C)
2	Minute books.	Termination + 3 years	Rule 204-2(e)(2)	L & C
3	Stock certificate books.	Termination + 3 years	Rule 204-2(e)(2)	L & C
<i>Accounting Records</i>				
1	Journals, including records of original entry that form the basis of all ledger entries.	5 years	Rule 204-2(a)(1)	Finance & Accounting (F & A)
2	General and auxiliary ledgers, reflecting asset, liability, reserve, capital, income, and expense accounts.	5 years	Rule 204-2(a)(2)	F & A
3	Bank account information, including checkbooks, bank statements, canceled checks, and cash reconciliations.	5 years	Rule 204-2(a)(4)	F & A
4	Bills and statements, paid or unpaid, relating to the business of the adviser.	5 years	Rule 204-2(a)(5)	F & A
5	Trial balances.	5 years	Rule 204-2(a)(6)	F & A
6	Financial statements.	5 years	Rule 204-2(a)(6)	F & A
7	Internal audit working papers.	5 years	Rule 204-2(a)(6)	F & A
<i>Account Management Records</i>				
1	Trade Tickets. A memorandum of: (i) <i>each order</i> given by XYZ for the purchase or sale of any Security; (ii) <i>any instruction</i> received by XYZ concerning the purchase, sale, receipt or delivery of a particular Security; and (iii) <i>any modification or cancellation</i> of any such order or instruction. Each memorandum must: <ul style="list-style-type: none"> Show the terms and conditions of the order, instruction, modification, or cancellation; Identify the person connected with the adviser who recommended the transaction to the client and the person who placed the order; Show the client account for which the transaction was entered, the date of entry². 	5 years	Rule 204-2(a)(3)	Operations (Ops)
		5 years	Rule 204-2(a)(3)	Operations (Ops)

¹ See record retention notes at end of this chart for a fuller explanation of length of retention requirements.

V. COMPLIANCE TOOLS AND TEMPLATES

Compliance Calendar and Risk Matrix

The process by which the “theory” of the compliance manual is transformed into the “practice” of a functioning compliance program is a deliberate and laborious one. As a best practice, all of the policies and procedures in the manual should be inventoried, and the frequency with which they are to be tested and documented must be determined. We work with clients to develop a compliance calendar that maps the frequency of testing (daily, weekly, monthly, quarterly, semi-annually or annually) in a systematic way that reflects the perceived level of risk associated with each particular business operation. This work yields the adviser’s all-important “risk matrix.”

Activity	Responsible Person	Estimated Required Completion Date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Compliance Program														
Compliance Meetings	---	Ongoing												
Compliance Committee Meetings	---	Periodically, when conflicts are identified	-	-	-	-	-	-	-	-	-	-	-	-
Disaster Recovery Committee meeting	IT	Annually												
Review the adequacy and effectiveness of Compliance Program	Outside Counsel	Annually	X											
Employee Issues														
Compliance Program Training	Compliance Counsel	Annually					X							
Review the firm’s gift logs to identify potential conflicts of interest in relation to XYZ’s trading practices, including broker-dealer selection. Report finding to Best Execution committee.	Compliance Counsel	Annually	X											
Approve speaking engagements sought by Employees	GC/CCO	Ongoing												
Monitor Board/Advisory positions sought by Employees	GC/CCO	Ongoing												
Review Employee emails	Compliance Counsel	Periodic sampling					X						X	

VI. PARTNER BIOGRAPHIES



Robert G. Minion

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Practice

Robert G. Minion is one of America's leading lawyers. He has 25 years of experience in all aspects of corporate and business law, with an emphasis in securities law, investment partnerships, mergers and acquisitions and related corporate transactions. Mr. Minion is recognized by numerous "best of" legal publications, including *Chambers USA: America's Leading Lawyers for Business*, Woodward/White, Inc.'s *The Best Lawyers in America*, *The Legal 500*, *Lawdragon 500 Leading Lawyers in America* and *Super Lawyers*.

Robert G. Minion leads Lowenstein Sandler's *Investment Management Group*, which was selected as one of the preeminent practices in the United States for its representation of hedge funds and private equity funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News* and *Best Lawyers*. Mr. Minion leads all types of investment, investment fund, capital formation and corporate finance transactions (including mergers and acquisitions, venture capital, and public and private securities offerings) for clients throughout the United States and internationally.

Mr. Minion is a noted author and lecturer on corporate law, securities transactions and investment management. Many of his transactions have been published in, and he has been quoted in or provided commentary for, among others, *The Wall Street Journal*, *The New York Times*, *The American Lawyer*, *The Deal* and a variety of other publications. In addition, he is the editor of the *Lowenstein Sandler Investment Management Alert*, a newsletter covering legal issues for the investment management community.

Mr. Minion has served as an *Adjunct Professor* at *Rutgers University School of Law*, teaching Securities Law and Regulation. He has served as the Chairperson of the Corporate Law Committee of the Essex County Bar Association. He chaired the *National Business Institute Seminar on Negotiating and Drafting Acquisition Agreements*, co-chaired *The Institute for Continuing Legal Education Sale of Businesses Program*, and the *Summit Series on Unlocking Shareholder Value*. He chairs the *Annual Lowenstein Sandler Investment Management Forum* and is a frequent speaker at investment industry programs, including *The United States Securities and Exchange Commission's International Institute for the Regulation and Inspection of Investment Advisers*, *The New York Hedge Fund Regulation and Compliance Forum*, and *The Dow Jones & Co. Investment Adviser Regulation*. In addition, Mr. Minion serves on the *MFA Legal Advisory Forum*, the *Legal Committee of The Wall Street Hedge Fund Forum* and many other professional associations.

Mr. Minion has completed hundreds of fund organizations, mergers, acquisitions, and corporate finance transactions, many of which have multi-billion dollar transaction values. He represents a large number of domestic and offshore investment funds, with aggregate assets under management in excess of \$50 billion, as well as publicly traded privately held business corporations. His clients are leading national and international investment managers, corporations and other businesses, all of whom look to Mr. Minion for his experienced and seasoned legal advice.

Education

Stanford Law School (J.D. 1986)
Cornell University (A.B., 1983), *with distinction in all subjects*

Bar Admissions

1987, New York
1986, New Jersey

VI. PARTNER BIOGRAPHIES



David L. Goret

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Practice

David L. Goret is a Member of Lowenstein Sandler's Corporate Department and Investment Management Group. He has more than 20 years of experience conceptualizing, implementing and administering a broad range of business relationships, commercial transactions and legal and compliance policies and procedures, including as the general counsel to publicly traded and privately held businesses. Mr. Goret was named in the 2011 edition of *The Legal 500* in the category of Investment fund formation and management - Alternative/hedge funds.

Prior to joining Lowenstein Sandler, Mr. Goret served as General Counsel and Chief Compliance Officer of a U.S. and U.K.-based investment manager specializing in distressed debt investing, corporate credit and structured mortgage products with assets under management in excess of \$10 billion.

Previously, Mr. Goret served as the General Counsel of Hawk Holdings, a holding company which financed and developed technology infrastructure and services companies (including Teoma Technologies, now part of IAC), Mercator Software, a NASDAQ-listed software company (acquired by Ascential Software, now part of IBM Corporation) and Icon CMT Corp., a NASDAQ-listed technology infrastructure and services company (acquired by Qwest Communications).

Mr. Goret has completed a large number of fund organizations, private placements, mergers, acquisitions and other corporate finance transactions, with transaction values ranging from \$10 million to in excess of \$1 billion. His extensive experience enables him to provide practical and seasoned advice to a wide range of corporate, institutional and investor clients.

Education

University of Michigan law School (J.D. 1988)
Duke University (B.A., 1985), *magna cum laude*

Bar Admissions

1989, New York
1988, New Jersey

VI. PARTNER BIOGRAPHIES



Scott H. Moss

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Practice

Scott H. Moss is a member of the firm's Corporate Department and a member of the Investment Management Practice Group, which was selected as one of the preeminent practices in the United States for its representation of hedge funds and private equity funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News and Best Lawyers*. He is also a member of the firm's M&A and Corporate Finance Practice Group. Mr. Moss' practice includes the formation of investment funds, investment adviser regulation, broker-dealer regulation and compliance. Mr. Moss also has experience in corporate matters, business planning, securities regulation, mergers and acquisitions, and banking and finance.

Education

Seton Hall University School of Law (J.D. 2001), *magna cum laude*, *Notes Editor*, *Seton Hall Law Review*
Bentley College (B.S., 1998), *magna cum laude*

Bar Admissions

2001, New Jersey
2002, New York

VI. PARTNER BIOGRAPHIES



Marie T. DeFalco
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Practice

Marie T. DeFalco is Vice Chair of the firm's Investment Management Group, which is ranked in the top-tier, nationally, for its representation of hedge funds and private funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News* and *Best Lawyers*.

Ms. DeFalco represents investment management clients throughout the United States and internationally. She specializes in structuring business transactions to maximize the achievement of clients' goals, from both a business and tax perspective, particularly transactions involving limited liability companies and partnerships. Ms. DeFalco assists clients with the formation and operation of hedge funds and private equity funds, in the organization of joint ventures, and in the negotiation of shareholder and limited liability company agreements. She chairs the Fund Formation and Private Offerings; Ongoing Fund Representation section of the Investment Management Practice Group. Ms. DeFalco holds an A.B. in Economics from Cornell University and a J.D. from Yale Law School. She is admitted to practice law in New York, New Jersey, and Connecticut.

Education

Yale Law School (J.D., 1998), *Case Notes Editor*, *Yale Law Journal*, *Editor-in-Chief*, *Yale Journal of Law & the Humanities*
Cornell University (A.B., 1995), *Phi Beta Kappa*

Bar Admissions

1999, New Jersey
1999, New York
2000, Connecticut

VI. PARTNER BIOGRAPHIES



Peter D. Greene

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Practice

Peter D. Greene is Vice Chair of the firm's Investment Management Group, which was selected as a National Tier 1 practice in the United States for its representation of hedge funds and private equity funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News* and *Best Lawyers*. He is also a member of the firm's Corporate Department.

Peter is familiar with all aspects of operating the business of a hedge fund and its investment management-related entities, including the formation and launch of investment funds, the formation of management entities, compliance, trading, investor relations, fund audits, fund administration, third-party marketing, employment and executive compensation. Peter also has particular experience with the hedge fund restructurings that have become so commonplace since late 2008. From 2000 to 2002, Peter was the General Counsel and Chief Operating Officer at an investment manager responsible for the management of a \$600 million family of funds specializing in Private Investments in Public Equities (PIPEs).

Education

Northwestern University School of Law (J.D., 1995), *cum laude*, Senior Note and Comment Editor, *Journal of International Law and Business*
University of Michigan (B.A., 1992), *with distinction*

Bar Admissions

1996, New Jersey

1996, New York

VI. PARTNER BIOGRAPHIES



Elaine M. Hughes

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Practice

Elaine M. Hughes is a Member of the firm's Investment Management Practice Group, which is ranked in the top-tier, nationally, for its representation of hedge funds and private funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News* and *Best Lawyers*.

Ms. Hughes focuses her practice on private equity, venture capital and hedge fund formation, compliance and investment, including representation of funds, managers and investors in onshore and offshore alternative and pooled investment vehicles, as well as representation of investors and issuers in equity and debt financings.

Ms. Hughes also advises clients regarding all aspects of critical liquidity events, from strategic and financial mergers and acquisitions to public offerings, as well as other major transactions including technology spin-offs, and strategic alliances. In addition, Ms. Hughes has represented issuers and purchasers in shelf registrations, PIPEs deals and alternative financings and a number of corporate transactional matters.

Ms. Hughes has been a guest speaker on venture capital law and shareholder relationships, as well as a member of the National Venture Capital Association Model Legal Document Working Group, where she co-chaired the Investor Rights Committee. She is a graduate of Harvard University, cum laude, and received her J.D. from Boston College Law School, *magna cum laude*.

Education

Boston College Law School (J.D., 1998), *magna cum laude*

Harvard University (B.A., 1995), *cum laude*

Bar Admissions

1998, Massachusetts

2003, New Jersey

VI. PARTNER BIOGRAPHIES



Allen B. Levithan

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Practice

Allen B. Levithan has more than 30 years of experience in matters involving business planning, mergers and acquisitions, securities regulation and partnership and limited liability company law. Mr. Levithan is listed among *The Best Lawyers in America* in the corporate law, leveraged buyouts and private equity law, mergers & acquisitions law, and private funds law sections of the publication. He was also featured in the 2005, 2006, 2007, 2008 and 2009 issues of *Super Lawyers* in the Securities and Corporate Finance section of the publication.

Mr. Levithan is Lowenstein Sandler's General Counsel and past Chair of the Firm's Investment Management Practice Group. He is the immediate past Chair of the Firm's Corporate Department. His practice has focused upon a diverse range of areas, including:

- Initial structuring and funding of business organizations
- Mergers and acquisitions
- Private and public securities offerings
- Structuring employment relationships and compensation programs
- Advising hedge funds, broker-dealers, investment advisors and investment bankers
- Advising closely held and public companies
- Joint ventures and complex commercial transactions

Education

Harvard Law School (J.D., 1971), *cum laude*

Lafayette College (A.B., 1968), *magna cum laude*, *Phi Beta Kappa*

Bar Admissions

1972, New Jersey

VI. PARTNER BIOGRAPHIES



Matthew A. Magidson

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Practice

Matthew A. Magidson is Chair of Lowenstein Sandler's Derivatives Practice Group and a member of the Investment Management Group, which was selected as one of the preeminent practices in the United States for its representation of hedge funds and private equity funds in the inaugural 2010 edition of Best Law Firms, published by *U.S. News* and *Best Lawyers*. Mr. Magidson has more than twelve years of experience negotiating derivatives transactions and trading agreements for hedge funds, corporate end-users, and broker-dealers. Prior to joining the firm, he served as Associate General Counsel at Smith Breeden Associates, Inc. in Chapel Hill, NC, (2005 to 2008) where he focused his practice on negotiating ISDA Master Agreements, Credit Support Annexes, Repurchase and Global Master Repurchase Agreements, Securities Lending Agreements, Prime Brokerage Agreements, and Master Trade Confirmations; processing OTC derivative confirmations; as well as reviewing and negotiating leveraged loan investments, vendor agreements, and advising on new products. Previously, he was Vice President, Fixed Income at Wachovia Bank, N.A. in Charlotte, NC, (2002 to 2005) where he worked with hedge funds, investment advisors, and large corporate end-users. Mr. Magidson began his legal practice as an associate at Kelly, Hart and Hallman in Fort Worth, TX (1998 to 2000) and then joined Haynes Boone as a Business Transaction Associate (2000 to 2002).

Education

Georgetown University Law Center (J.D., 1998), *cum laude*, editorial staff member, *The Tax Lawyer*

University of Minnesota (M.B.A., 1994), *Finance*

Washington University (B.S., 1993), *Business Administration*

Bar Admissions

1998, Texas

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2011, New Jersey

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