

07.08.2006 Other Voices: Hedge fund CCO`s alive and kicking, momentum toward compliance has not reversed

There is no rush to de-registration, the "momentum toward compliance" has not reversed and there has been no mass exodus of CCO's from hedge funds, says David Claypoole from Parks Legal Placement:

An article was reprinted from Moneylaundering.com in Opalesque on August 4th entitled "*AML, SEC compliance a rollercoaster ride for hedge funds*". The article perpetuates some common misconceptions about the effect of the Goldstein decision on the demand for CCO's at hedge funds and promotes the erroneous notion being voiced by many in the industry that a trend has developed of CCO's leaving hedge funds to return to more institutional settings as a result of the Goldstein decision and what some may believe are harsh working conditions.

In the article, Mr. Monroe writes, "Compliance officers are leaving the hedge fund sector - feeling unwanted after being courted with big money, and then dumped when the regulatory regime reversed and their usefulness came into question" and that the "momentum toward compliance reversed - creating a void for experienced compliance professionals during a time of uncertainty in the industry." Mr. Monroe also quotes my peer Andrea Stern as saying, "Now funds are de-registering and it's not a very hot place to be." Later in the article Monroe states that "funds are de-registering". The fact of the matter is that, at this point, there has been no rush to de-registration, the "momentum toward compliance" has not reversed and there has been no mass exodus of CCO's from hedge funds.

Immediately after the Goldstein ruling there was a great deal of speculation that many of the 1200 or so hedge fund managers who registered as a result the adoption of 203(b)(3)-2 in December 2004 would de-register and gut their compliance departments. Also, there was a substantial school of thought that the SEC, lead by its new business friendly Chairman, would sit idle following Goldstein and allow funds to return to pre-203(b)(3)-2 status. Most significant hedge funds, taking the advice of their counsel, took a breath and waited to see what direction regulators and legislators would take.

The direction became clearer on July 25th when SEC Chairman Cox testified before the U.S. Senate Committee on Banking, Housing, and Urban Affairs on the Regulation of Hedge Funds. Chairman Cox dispelled the notion that there had been a super-rush to de-registration stating that there had actually been "a net increase in hedge fund registrations since the Goldstein decision." He also made clear his views on hedge fund regulation and compliance noting that, "We must move quickly to address the hole that the Goldstein decision left" and went even further stating, "Hedge funds are not, should not be, and will not be unregulated." Cox's comments indicate that changes in response to the Goldstein decision are on the horizon and there is a fair possibility that those changes, whether through administrative action or legislation, may place hedge funds under more regulatory scrutiny than they were subject to under 203(b)(3)-2.

As there has been no rush to de-registration, hedge funds have not rampantly cut loose compliance departments in the wake of the Goldstein decision. Funds that remain registered are required to keep their CCO and procedures in place and those who chose to de-register (and many who have never registered) have compelling reasons to have robust compliance procedures and personnel. A solid compliance program has become part of best practices for hedge funds, not only can it prevent a catastrophic event but compliance has become an essential marketing tool for the many funds chasing the increasing flow of institutional, pension and fund-of fund money that is flooding the space. As far as CCO's uncomfortable with hedge fund culture leaving hedge funds for

what some may believe are less frenetic circumstances, this is nothing new. Hedge funds have unique cultures that are very different from large institutions. Some who make the move will have trouble adjusting and choose to return to more comfortable surroundings, not a result of the Goldstein decision but of a personal decision.

I recruit CCO's for hedge funds. I am as busy now as I was before the Goldstein decision. I have placed three CCO's at hedge funds since the decision and am working on four additional searches. I have yet to receive one call from a hedge fund CCO looking to return an institutional setting. On the contrary, I receive calls almost daily from institutional compliance professionals looking to move into the hedge fund space. To paraphrase Mark Twain, the reports of the CCO's death have been greatly exaggerated.

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