

## **SEC ENFORCEMENT DIRECTOR ROBERT KHUZAMI OUTLINES CHANGES TO ENFORCEMENT DIVISION FORESHADOWING INCREASED ENFORCEMENT ACTIVITY IN COMING MONTHS**

August 11, 2009

To Our Clients and Friends:

In the midst of a busy week for the Division of Enforcement of the United States Securities and Exchange Commission (“SEC”), including the filing of settled actions against Bank of America Corporation and former American International Group Chairman and CEO Maurice “Hank” Greenberg, on August 5, 2009, Division Director Robert Khuzami gave a speech to a packed room at the New York City Bar assessing his first 100 days as Director.<sup>1</sup> In the speech, the highlights of which are discussed below, Mr. Khuzami announced five changes in the Division’s procedures and organization aimed at strengthening the SEC’s enforcement program: (1) the introduction of specialized units; (2) the streamlining of management and internal processes; (3) the creation of an office of market intelligence; (4) increased emphasis on cooperation; and (5) the strategic use of new resources. Mr. Khuzami made it clear that his and the SEC’s objective with these changes is to usher in an era of more immediate, more efficient and more potent enforcement activity.

### **INTRODUCTION OF SPECIALIZED UNITS**

The first major initiative Mr. Khuzami announced was the creation of national specialized units dedicated to particular highly specialized and complex areas of the securities laws. The specialized units will be headed by a Unit Chief and staffed across the nation by those with existing expertise or a desire to learn. The staff of the specialized units will receive specialized and advanced training. The first five specialized units will be:

- **Asset Management.** This Unit will focus on investment advisors, investment companies, hedge funds and private equity funds, and will address issues such as disclosure, valuation, portfolio performance, due diligence and diversification, transactions with affiliates, misappropriation and conflicts of interest.

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<sup>1</sup> The full text of Mr. Khuzami’s speech is available at <http://www.sec.gov/news/speech/2009/spch080509rk.htm> (last visited Aug. 11, 2009).

- **Market Abuse.** This Unit will focus on large-scale market abuses and complex manipulation schemes by institutional traders, market professionals and others. Mr. Khuzami expects that this Unit will develop technological and screening tools to identify suspicious trading activity and will use the tools to analyze other trading across equity, debt and derivative markets, and in response to corporate announcements and other events.
- **Structured and New Products.** This Unit will focus on complex derivatives and financial products, including CDSs, CDOs and other securitized products. Mr. Khuzami observed that these markets historically have been opaque due to the complexity of the products, the limited availability of trading information and the prevalence of private offerings, and, as a result, require specialized knowledge to police.
- **Foreign Corrupt Practices Act.** This Unit will focus on new and proactive approaches to identify violations of the Foreign Corrupt Practices Act (“FCPA”), with a view toward fostering closer relationships with foreign counterparts.
- **Municipal Securities and Public Pensions.** This Unit will focus on offering and disclosure issues, tax and arbitrage-driven activity, unfunded or underfunded liabilities, and “pay-to-play” schemes involving municipal securities and public pensions.

Additionally, other existing working groups, such as the Subprime Working Group that was created in 2007, will remain intact and continue to work alongside these specialized groups.

## **STREAMLINING MANAGEMENT AND INTERNAL PROCESSES**

The second major initiative Mr. Khuzami announced involved his efforts to streamline the Division’s management and internal processes. He noted five steps the Division is taking to meet this challenge:

- **Redeployment of Branch Chiefs.** The Division will reduce the number of management positions by redeploying the branch chiefs to conducting investigations, the “heart-and-soul” function of the SEC.
- **Delegation of Authority to Issue Formal Orders of Investigation.** Mr. Khuzami announced that the SEC had approved, subject to certain exceptions, an order that

delegates to him the authority to issue formal orders of investigation with subpoena power,<sup>2</sup> authority which he intends to delegate to senior officers throughout the Division.

- ***Delegation of Authority to Approve Routine Case Decisions.*** Mr. Khuzami also announced that the authority to approve routine case decisions would be delegated from the Deputy Director to senior officers located throughout the country.
- ***Tolling Agreements.*** Going forward, Mr. Khuzami announced that the Division Director's approval would be required for all tolling agreements. Noting that such agreements "impose a significant cost of delay and may undermine our message of prompt accountability for wrongdoing," Mr. Khuzami remarked that tolling agreements had "become far too common" and that they would now be "an exception, not the rule."
- ***Quicker Turnaround of Action Memos.*** Mr. Khuzami also said that Action Memos recommending specific enforcement actions would be shorter, would be subject to less internal review and would require quicker turn-around times.

#### **OFFICE OF MARKET INTELLIGENCE**

The third major initiative Mr. Khuzami announced was the creation of an Office of Market Intelligence which will be responsible for the collection, analysis, risk-weighting, triage, referral and monitoring of the hundreds of thousands of tips, complaints and referrals that the SEC receives each year. Mr. Khuzami said that the Office of Market Intelligence would work with the SEC's other Divisions and the specialized units to analyze the tips and identify wrongdoing.

#### **FOSTERING COOPERATION BY INDIVIDUALS**

The fourth major initiative Mr. Khuzami announced involves changes to enable the SEC to incentivize cooperation by individuals. The four steps being considered to provide these incentives are similar to those that have been used by federal prosecutors in corporate fraud prosecutions during the past decade and include: (1) a "Seaboard" for individuals setting forth standards to evaluate cooperation by individuals in enforcement actions; (2) an expedited process for submitting immunity requests to the United States Department of Justice; (3) provision to witnesses in appropriate cases with oral assurances that they will not be charged; and (4) the use of Deferred Prosecution Agreements in which the SEC will agree to forego enforcement in exchange for full cooperation, waiver of statutes of limitations and

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<sup>2</sup> See *Delegation of Authority to Director of Division of Enforcement (effective as of Aug. 11, 2009) (to be codified at 17 C.F.R. § 200.30-4(a)(13))*, available at <http://www.sec.gov/rules/final/2009/34-60448.pdf> (last visited Aug. 11, 2009).

compliance with certain undertakings. Mr. Khuzami emphasized that these tools are meant to encourage and reward “extraordinary cooperation” and cautioned that arguments such as “our competitors do it” or “we’ve always done it this way” would not be credited.

### **STRATEGIC USE OF NEW RESOURCES**

Finally, Mr. Khuzami said that the SEC was committed to rebuilding the Division’s ranks, which have been reduced by approximately 11 percent since 2005. According to Mr. Khuzami, the Division is committed to tripling the current number of full-time paralegals and support personnel in order to free up investigators from routine administrative tasks, and has already added to the ranks of the Trial Unit. Mr. Khuzami also said that the Division will hire, for the first time in its history, a Chief Operating Officer who can manage information technology, oversee project management and build efficient workflow processes, including in the area of collection and distribution of funds.

### **OTHER PRIORITIES**

In closing, Mr. Khuzami recognized the magnitude of the developments he highlighted, but stressed that these changes did not mean that the SEC has turned its back on the traditional “bread-and-butter” priorities of the Division, such as Ponzi schemes or Ponzi-like payments, cross-market misconduct, breaches of fiduciary duties by hedge fund consultants, proxy disclosure and accounting and financial statement fraud. To the contrary, Mr. Khuzami stressed that the Division will be “working hard to continue [its] vigorous enforcement efforts.”

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