

HOT INDUSTRY TOPICS (“HIT”) LIST
MARCH 2009

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<p>DOL 401(k) and IRA Investment Advice Regulation: FINAL RULE & PROPOSED RULE</p> <p>HOME</p>	401(k)	Adviser & Fund	<p>On January 21, 2009 the U.S. Department of Labor (“DOL”) published the federal register of the finalized rule under the Pension Protection Act (“PPA”) making investment advice more accessible for participants in 401(k) plans and retirement accounts. Thereafter, on February 4, 2009, the DOL issued a proposed rule to extend the effective date. Comments on the proposal were due by March 6, 2009. In a press release issued on March 23, 2009 the DOL reported it has extended the effective date to May 22, 2009. The DOL indicated this extension will allow time to evaluate the 26 comment letters for questions of law and policy.</p> <p>The rule will allow greater flexibility for participants of 401(k) plans and IRAs to obtain investment advice. Advice can be given through the use of a certified unbiased computer model and through an adviser compensated on a “level-fee” basis. Other requirements include disclosing of the fees the adviser will receive for the advice given.</p> <p><i>Updated March 2009</i></p>	<p>3/23/09 DOL Press Release Further Extending the effective and applicability dates by 60 days to May 22, 2009 http://www.dol.gov/opa/media/press/ebsa/EBSA20090307.htm</p> <p>PROPOSED RULE, Federal Register, Department of Labor (“DOL”) Employee Benefits Security Administration (“EBSA”), Investment Advice-Participants and Beneficiaries, RIN 1210 - AB13, Published February 4, 2009 http://www.dol.gov/federalregister/PdfDisplay.aspx?Docid=22040</p> <p>FINAL RULE, Federal Register, DOL, EBSA, Investment Advice-Participants and Beneficiaries, RIN 1210 - AB13, Published January 21, 2009 http://www.dol.gov/federalregister/PdfDisplay.aspx?Docid=21997</p>
<p>DOL Proposes Rules to Improve Fee Disclosure to 401(k) Plan Participants – PROPOSED RULE</p>	401(k) Fee Disclosure	Adviser & Fund	<p>On July 22, 2008 the U.S. Department of Labor (“DOL”) announced a proposed rule that would provide workers with summary information, including fees and expenses, for the investment options available under their plans. The DOL proposes investment-related information be presented in a comparative chart or similar format to make it easier for participants to compare their plan’s investment options. The DOL has developed a model chart, but is allowing plan fiduciaries to design their own. The proposed regulation,</p>	<p>PROPOSED RULE, Federal Register, Department of Labor (“DOL”), Employee Benefits Security Administration (“EBSA”), Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans, RIN 1210 - AB07, Published July 23, 2008 http://www.dol.gov/federalregister/PdfDisplay.aspx?Docid=20973</p> <p>DOL Model Comparative Chart, Appendix</p>

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HOME			when finalized, would be for plan years beginning on or after January 1, 2009. <i>Updated December 2008 (No Update March 2009)</i>	§2550.404a-5 http://www.dol.gov/ebsa/modelcomparativechart.doc
DOL Helpful Guidance on Changes to Form 5500 HOME	Form 5500	Adviser & Fund	On November 25, 2008 the Department of Labor (“DOL”) released advance copies of the 2008 Form 5500 annual return/report and related instructions. The Form is for information purposes only and is not to be used for filing. Filing of Form 5500 applies to pension and welfare benefit plans required to report their financial conditions, investments and operations. The DOL issued 40 frequently asked questions to assist plan administrators and service providers in complying with new requirements of the 2009 Form 5500, Schedule C. A link to the guidance from the DOL’s website has been provided. <i>Updated December 2008 (No Update March 2009)</i>	FAQs About the 2009 Form 5500 Schedule C http://www.dol.gov/ebsa/faqs/faq_scheduleC.html 2008 Instructions for Form 5500 Annual Return/Report for Employee Benefit Plan http://www.dol.gov/ebsa/pdf/2008-5500inst.pdf 2008 Form 5500, For Information Purposes, Not to be Used for Filing http://www.dol.gov/ebsa/5500main.html#2008 Department of Labor (“DOL”) Releases Advance Copies of 2008 Form 5500 Annual Report http://www.dol.gov/ebsa/newsroom/08-1753-NAT.html
FinCEN AML Programs for Investment Advisers & Un-registered Investment Companies: Withdrawal of the Proposed Rule-making	AML – Withdrawal of Proposed Rule	Adviser & Fund	On October 30, 2008 The Financial Crimes Enforcement Network (“FinCEN”) announced the withdrawal of the proposed rule requiring investment advisers and unregistered investment companies (such as hedge funds, commodity pools and similar investment pools) to establish and implement anti-money laundering (“AML”) programs, as published in the Federal Register dated May 5, 2003. The withdrawal was effective as of November 4, 2008. <i>Updated December 2008 (No Update March 2009)</i>	Withdrawal of the Notice of Proposed Rulemaking, Federal Register, FinCEN, Anti-Money Laundering (“AML”) Programs for <i>Investment Advisers</i> , RIN 1506 – AA71, Published November 4, 2008 http://edocket.access.gpo.gov/2008/pdf/E8-26205.pdf Withdrawal of the Notice of Proposed Rulemaking, Federal Register, FinCEN, AML Programs for <i>Unregistered Investment Companies</i> , RIN 1506 –

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HOME				AA77, Published November 4, 2008 http://edocket.access.gpo.gov/2008/pdf/E8-26202.pdf
FinCEN Proposed Interpretive Guidance – Sharing Suspicious Activity Reports with Affiliates HOME	AML – Proposed Interpretive Guidance	Fund	On March 9, 2009 FinCEN issued proposed interpretive guidance to make it easier for mutual funds and other financial institutions to share Suspicious Activity Reports (“SAR”) with their affiliates. Currently, if a fund files a SAR, it alerts FinCEN only. Under the proposed guidance, the fund would also be able to alert certain affiliates including banks, brokers and other financial institutions. The provision of the existing rule not to notify affiliates was primarily due to concerns of keeping the identity of the suspected client private and the entity filing the SAR claim confidential. Comments on the proposal can be filed with FinCEN on or before June 8, 2009. NEW March 2009	Proposed Interpretive Guidance, Federal Register, FinCEN, Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates, Docket No. – TREAS-FinCEN-2008-0022, Published March 9, 2009 http://www.fincen.gov/statutes_regs/frn/pdf/frnSF_SAR_Sharing.pdf
FTC Identity Theft Red Flags & Address Discrepancies Under Fair & Accurate Credit Transactions (“FACT”) Act of 2003: FINAL RULE	Identity Theft - Red Flag Rules	Fund	On October 22, 2008 the FTC announced it would delay the enforcement of the Red Flag Rules until May 1, 2009; the previous deadline for compliance was November 1, 2008. The FTC made the decision to delay compliance, due to confusion and uncertainties surrounding which financial institutions were required to comply with the rule. The FTC believes it was appropriate to delay compliance in order to provide financial institutions enough time to carefully and thoughtfully develop and implement their policies and procedures. The Identity Theft Prevention Red Flag Rules (“Red Flag Rules”) were announced in November 2007. The Red Flag Rules require certain financial institutions to create and	Press Release, FTC Will Grant Six-Month Delay of Enforcement of 'Red Flags' Rule Requiring Creditors and Financial Institutions to Have Identity Theft Prevention Programs, Published October 22, 2008 http://ftc.gov/opa/2008/10/redflags.shtm FINAL RULE, Federal Register, Identify Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003; Published November 9, 2007 http://www.ftc.gov/os/fedreg/2007/november/071109redflags.pdf

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			<p>implement comprehensive identity theft prevention programs.</p> <p>Prior to June 2008, the mutual fund industry generally did not believe the rule applied. In June 2008 the FTC issued additional guidance and SEC staff confirmed – to the extent an investment company’s shareholders have transaction accounts, such as check writing, and credit or debit card privileges – they are to be included in the definition of a financial institution for the purposes of compliance with the Red Flag Rules. Under the Red Flag Rules, these funds are required to develop identity theft programs which should include written policies and procedures designed to reasonably identify and detect the warning signs or “red flags” of identity theft in relation to new and existing client accounts.</p> <p>The FTC is allowing for some flexibility in firms’ design of their programs based on their size, complexity and operations. The second to last page of the Federal Register identifies 26 possible red flags that assist firms in the development of their written policies and procedures. These 26 red flags fall into the following five categories:</p> <ul style="list-style-type: none"> • Alerts, notifications or warnings from consumer reporting agencies; • Suspicious documents; • Suspicious personally identifying information, such as a suspicious address; • Unusual use or suspicious activity in an account covered under the Red Flag Rules; and • Notices from customers, victims of identity theft, law enforcement authorities, or other businesses about possible identity theft in connection with covered 	

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HOME			accounts. <i>Updated December 2008 (No Update March 2009)</i>	
Standards for the Protection for the Personal Information of Residents of the Commonwealth of Massachusetts FINAL RULE HOME	Identity Theft – State of Massachusetts	Adviser & Fund	<p>There are 40 states that have data security protection rules, but the Massachusetts Data Security Rules are considered the most stringent. Since the announcement of the rules last year the ICI, IAA and many businesses have been acting to encourage changes in the rules, or at the very least delay compliance with them.</p> <p>On January 16, 2009 the IAA spoke at a public hearing on the Massachusetts Standards for the Protection of Personal Information of the Residents of the Commonwealth of Massachusetts. The IAA asked that an exemption be provided for registered investment advisers as they are already required to comply with extensive federal privacy regulations and as part of their fiduciary duty must maintain client confidentiality. At the very least it suggested a delay in compliance with the rules of 18-24 months.</p> <p>Following that hearing, the deadline for compliance was extended from the previous extension date of May 1, 2009 to January 1, 2010. The requirement to gain written certification from each third-party service provider with access to personal information of residents of Massachusetts has been waived. Firms are now asked to take <i>reasonable</i> steps to verify that third-party service providers are applying protective security measures at least as strong as those outlined within the Massachusetts Data Security Rules.</p>	Amended 201 CMR 17.00 Standards for the Protection of Personal Information of the Residents of the Commonwealth of Massachusetts http://www.mass.gov/Eoca/docs/idtheft/201CMR17amended.pdf

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			<p>There is still concern within the industry that other states may follow suit and develop similar privacy rules. We expect the ICI and IAA to continue in their efforts to advocate against individual state privacy rules.</p> <p><u>Additional Requirements of the Rule</u></p> <ul style="list-style-type: none"> • Companies that own, license, store or maintain Personally Identifiable Information (“PII”) of Massachusetts residents are required to develop, implement, maintain and monitor comprehensive written security programs to safeguard the PII files and records. • Data must be encrypted while it is stored on laptops and mobile devices such as memory sticks, DVDs, personal digital assistant (“PDAs”) devices and personal organizers, and while it is being transmitted over public networks. • Restrict access to records and files containing personal information. • Use of unique passwords. • Monitor systems and ensure anti-virus systems are up-to-date. • Educate and train employees on proper use of secure systems and the importance of protecting personal information. <p>NEW March 2009</p>	
HOME				
SEC Books & Records Rule: Amendments	Books & Records	Adviser & Fund	During a speech October 29, 2008, Andrew “Buddy” Donohue, Director of the SEC’s Division of Investment Management, stated the current Books and Records Rule 204-2 is long	SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Key Note Address at the National Regulatory Services Twenty-

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HOME			<p>On March 14, 2008 the SEC re-proposed amendments to Form ADV Part II that were originally proposed in April 2000. The amendments will require Advisers registered with the SEC to electronically file a standardized pdf formatted brochure through the SEC’s regulatory filing website IARD. The proposed changes include:</p> <ul style="list-style-type: none"> • A new format to include 19 separate disclosure items with responses in a narrative format versus the current check box format. The SEC expects advisers to write the narrative in plain English. • Advisers will continue to deliver the brochure before or at the time a client signs the adviser’s contract. • Advisers will be required to annually deliver a copy of the brochure 120 days following the adviser’s fiscal year end. Currently advisers are required to <i>offer to deliver</i> a copy of the brochure. • Along with the annual delivery of the brochure, advisers must include a separate page summarizing any material changes made since the last update. The summary page will not have to be filed with the SEC. • The brochure will also include a supplement, Part 2B, with information on each of the adviser’s supervised personnel who provide investment advice to clients. Part 2B will not be filed with the SEC. <p><i>Updated December 2008 (No Update March 2009)</i></p>	<p>SEC Comments Received, Proposed Amendments to Form ADV Part II http://www.sec.gov/rules/proposed/s71000.shtml</p>
SEC Guidance Regarding the Duties and Responsibilities	Guidance for Fund Boards of Directors	Fund	<p>In a March 23, 2009 speech, Andrew “Buddy” Donohue, SEC Director, Division of Investment Management, said the Division hopes to move forward on the proposed guidance issued on July 30, 2008 for investment company directors,</p>	<p>SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management</p>

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<p>of Investment Company Boards of Directors with Respect to Investment Adviser Portfolio Trading Practices & Soft Dollars: Proposed Guidance</p> <p>HOME</p>			<p>with the goal of providing directors with guidelines to use in their oversight of investment adviser soft dollar and best execution matters.</p> <p>The guidance proposed for fund boards follows the SEC’s July 2006 guidance to investment advisers and does not include any new explicit requirements. The SEC issued this guidance realizing fund directors were often at a loss concerning how to meet their fiduciary duty under the Investment Company Act to ensure the safety of the funds’ assets and to protect fund shareholders in light of ever changing trading venues, such as the use of dark pools, client commission recapture arrangements, and algorithmic trading. The proposal focuses on an adviser’s determination of best execution and use of soft dollars. Additionally, the guidance suggests information directors may request from advisers to monitor conflicts of interest advisers face in their trading activities while reminding directors they have the authority to direct how an adviser uses fund brokerage. The comment period ended October 1, 2008. Most of the feedback on the proposal was positive, with some specific concerns the Division will address as it prepares the recommendation for the Commission. Mr. Donohue indicated the Division hopes to submit its recommendation in the near future.</p> <p><i>Updated March 2009</i></p>	<p>Conference, in Palm Desert, California, March 23, 2009 http://www.sec.gov/news/speech/2009/spch032309ajd.htm</p> <p>Proposed Guidance, Federal Register, SEC Commission Guidance Regarding Duties and Responsibilities of Investment Company Boards of Directors With Respect to Investment Adviser Portfolio Trading Policies, RIN 3235 - AJ45, Published August 6, 2008 http://www.sec.gov/rules/proposed/2008/34-58264fr.pdf</p> <p>SEC Comments Received, Commission Guidance Regarding Duties and Responsibilities of Investment Company Boards of Directors With Respect to Investment Adviser Portfolio Trading Policies, Proposed Guidance http://www.sec.gov/comments/s7-22-08/s72208.shtml</p>
SEC Report to Congress – Study of Mark-to-Market	Mark-to-Market	Adviser & Fund	On December 30, 2008 the SEC staff submitted to Congress the mandatory report of their findings based on the study of mark-to-market accounting standards as they apply to financial institutions. The SEC, along with the Board of	SEC Congressionally Mandated Study on Mark-to-Market Accounting, Published December 30, 2008 http://sec.gov/news/studies/2008/marktomarket12300

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Accounting Standards			<p>Governors of the Federal Reserve and the Secretary of the Treasury conducted a study on mark-to-market accounting standards pursuant to Financial Accounting Standards Board Statement Number 157. The SEC’s Office of the Chief Accountant and the Division of Corporation Finance recommended improvements and opposed suspending the standards.</p> <p>The 251 page report included the following recommended improvements:</p> <ul style="list-style-type: none"> • Developing alternate tools and additional guidance for the determination of fair value when companies and auditors are dealing with illiquid or inactive markets. • Enhancing existing disclosure requirements regarding the effect of fair value in financial statements. • Educational efforts. • FASB examination of the impact of liquidity in the measurement of fair value, and whether additional application or disclosure guidance is needed. • FASB assessment of whether the incorporation of credit risk in the measurement of liabilities provides useful information to investors, and if sufficient transparency is provided in the current practice. <p>NEW March 2009</p>	<p>8.pdf</p>
<p>HOME</p>				
SEC Municipal Securities Disclosure Amendment: FINAL RULE	Municipal Securities Disclosure	Fund	<p>The Commission has expressed concerns with transparency in the municipal security markets. Based on Rule 12c2-12, underwriters participating in primary offerings of municipal securities of \$1 million or more are to obtain, review, and distribute to potential customers copies of the issuer’s official</p>	<p>FINAL RULE, Federal Register, SEC Amendments to Municipal Securities Disclosure, RIN 3235 - AK20, Published December 15, 2008 http://www.sec.gov/rules/final/2008/34-59062fr.pdf</p>

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			<p>statement. Specifically the rule requires underwriters to:</p> <ul style="list-style-type: none"> • Obtain and review an official statement “deemed final” by issuer of the securities. • In non-competitively bid offerings, send, upon request, a copy of the most recent preliminary official statement to potential customers. • Send, upon request, a copy of the final official statements to potential customers for a specified period of time. • Contact an issuer to receive, within a specified time, sufficient copies of the final official statement to comply with the Rule’s delivery requirement. <p>The final rule amends certain requirements regarding information that underwriters must reasonably determine that the issuer has agreed:</p> <ul style="list-style-type: none"> • To provide the information covered by the written agreement to the Municipal Rulemaking Board (“MSRB”), instead of to multiple municipal securities information repositories and state information depositories; and • To provide such information in an electronic format, accompanied by identifying information as directed by MSRB for its Electronic Municipal Market Access (“EMMA”) system for municipal securities disclosure. <p>The intention of this action is to enable investors to easily locate information on their bonds at no charge. The final rule is effective July 1, 2009.</p> <p><i>Updated March 2009</i></p>	

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SEC Interactive Data for Mutual Fund Risk/Return Summary: FINAL RULE HOME	Mutual Fund Risk/Return Summary	Fund	<p>The SEC adopted rule amendments that will allow mutual funds to provide risk/return summary information to investors in a format that will be more user friendly. Under the rules, mutual funds will provide the risk/return summary section of their prospectuses to the Commission and on their websites in interactive data format using the eXtensible Business Reporting Language (“XBRL”).</p> <p>The effective date is July 15, 2009 and the compliance deadline is January 1, 2011.</p> <p>NEW March 2009</p>	<p>FINAL RULE, Federal Register, SEC Interactive Data for Mutual Fund Risk/Return Data, RIN 3235 - AK13, Published February 19, 2009</p> <p>http://www.sec.gov/rules/final/2009/33-9006fr.pdf</p>
SEC Regulation SP - Privacy of Consumer Financial Information and Safe-guarding Personal Information: PROPOSED RULE	Regulation SP - Privacy	Adviser & Fund	<p>There is currently no update regarding when the SEC will finalize the proposed rule. It is anticipated that the SEC will finalize the rule during 2009. The SEC wants firms to “step-up” their procedures for protecting and disposing of their clients’ non-public, personal information. The SEC wants firms to designate an employee or employees to be responsible for oversight of the “information security program”, with responsibilities to include:</p> <ul style="list-style-type: none"> • Development of policies and procedures that identify potential risk areas and the procedures that will be followed should a security breach occur. • On-going monitoring of the procedures used to safeguard information. • Education of staff on the policies and procedures. • Review and maintenance of written contracts with third-party providers. • New Form SP-30 to be filed as soon as a breach is discovered. 	<p>PROPOSED RULE, Federal Register, Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information, RIN 3235 - AK08, Published March 13, 2008</p> <p>http://sec.gov/rules/proposed/2008/34-57427fr.pdf</p> <p>SEC Comments Received, Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information: Proposed Rule</p> <p>http://www.sec.gov/comments/s7-06-08/s70608.shtml</p>

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HOME			<ul style="list-style-type: none"> Compliance with state privacy laws or find applicable exemptions. <p>The comment period ended May 12, 2008. The rule is still pending as a proposal. See the link to the comments the SEC received on this proposed rule.</p> <p><i>Updated December 2008 (No Update March 2009)</i></p>	
SEC Regulation SHO: Amendments FINAL RULE	Short Selling - Reg SHO	Adviser & Fund	<p>On October 14, 2008 the SEC adopted final rule amendments to Regulation SHO, making permanent its September 2008 emergency order which eliminated the options market maker exception to the close-out requirement of Regulation SHO.</p> <p>Regulation SHO was initiated on January 3, 2005. Regulation SHO is designed to prevent “naked” short selling. “Naked” short selling occurs when the seller does not own, locate, borrow or otherwise arrange to deliver a security by settlement date. Naked short sales can permit more shares of a company to be sold than actually exist. The regulation is designed to address those situations where the levels of “fails to deliver” for a particular security are enough to possibly impact the market for that security. Under the amendment all “fails to deliver” settlements, regardless of whether they are in the options market or the equity market, will be treated the same. The amendment eliminates the previous exemption for options market makers.</p> <p><i>Updated December 2008 (No Update March 2009)</i></p>	Amendments FINAL RULE, SEC, Federal Register, Amendments to Regulation SHO, RIN 3235 – AJ57, Published October 17, 2008 http://www.sec.gov/rules/final/2008/34-58775fr.pdf
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SEC “Naked” Short Selling Anti-Fraud Rule: FINAL RULE HOME	Short Selling – Anti Fraud Rule	Adviser & Fund	As companion regulation to SEC Regulation SHO, the “Naked” Short Selling Anti-Fraud Rule was finalized by the SEC on October 14, 2008. The rule targets short sellers, including broker-dealers selling short for their own accounts, making them liable for deceiving broker-dealers, participants of registered clearing agencies, or purchasers about their intention or ability to deliver equity securities by the settlement date. Just like Regulation SHO, the rule is designed to reduce “fails to deliver” and the negative impact such fails have on the market for those securities. <i>Updated December 2008 (No Update March 2009)</i>	FINAL RULE, SEC, Federal Register, “Naked” Short Selling Anti-Fraud, RIN 3235 – AK06, Published October 17, 2008 http://www.sec.gov/rules/final/2008/34-58774fr.pdf
SEC Disclosure of Short Sales & Short Positions by Institutional Investment Managers and Form SH: Interim FINAL Temporary Rule	Short Selling – Disclosure of Short Sales & Short Positions (Form SH)	Adviser & Fund	On September 18, 2008, September 21, 2008 and October 21, 2008 the SEC issued Emergency Orders to address their concerns regarding “the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling.” The SEC recently adopted an interim final temporary rule (Rule 10a-3T under the 1934 Act) which extends the reporting requirements established by the Emergency Orders until August 1, 2009. The rule requires institutional investment advisers who were required to file a Form 13F for the most recent calendar quarter to file a Form SH to report short sales in Section 13(f) securities (excluding options). According to the Federal Register, the SEC is applying the rule only to Form 13F filers because they exercise discretion over large accounts that have a significant potential to affect the markets.	Interim FINAL Temporary Rule, SEC Federal Register, Disclosure of Short Sales and Short Positions by Institutional Investment Managers, RIN 3235 – AK23, Published October 17, 2008 http://www.sec.gov/rules/final/2008/34-58785fr.pdf

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			<p>The IAA and the ICI submitted comments to the SEC regarding Rule 10a-3T and Form SH (and Rule 204T which is not discussed here) in December 2008. A summary of those comments follows:</p> <ul style="list-style-type: none"> • While the IAA understands the SEC’s need for information regarding short positions during challenging and unprecedented market conditions, the IAA urged the SEC to consider whether the information requested in Form SH will be necessary over the long term. The ICI also urged the SEC to consider the burdens placed on market participants to ensure they are meeting the requirements. • The IAA recommended the SEC conduct a study to determine the impact of short selling and whether the requirements of the rule have been effective in deterring manipulative activity. • Should the rule be permanently adopted, both the ICI and the IAA recommend continuing to keep the information non-public and reduce the frequency of the filing requirements to quarterly. • The IAA recommended the SEC either (while the ICI recommended both): <ul style="list-style-type: none"> ○ Raise the .25% threshold discussed above (to 2.0% or 2.5% as an example), or ○ Allow filers to exclude short positions from the filing if one of the two conditions (.25% and less than \$1,000,000) is met, rather than both. • The ICI requested the SEC only require disclosure of short positions rather than both short sales and short positions. • The ICI letter also encouraged the SEC to work with 	

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HOME			foreign regulators so the regulations are consistent. <i>Updated March 2009</i>	
SEC New Summary Prospectus & New Prospectus Delivery Option for Mutual Fund Securities: FINAL RULE	Summary Prospectus & Summary Section to Statutory Prospectus	Fund	<p>Beginning January 1, 2010 the SEC will require mutual fund companies to include a <u>Summary Section</u> in all Statutory Prospectuses. The summary section will require specific information that must be presented in a particular order and should be written in “plain English”. The separate summary section for each fund in a prospectus will be <i>mandatory</i> beginning January 1, 2010.</p> <p>Additionally, as of March 31, 2008, mutual fund companies may <i>optionally</i> begin distributing a <u>Summary Prospectus</u> to satisfy disclosure requirements, provided that more detailed information is available upon request either online, via email or in paper copy. The new summary prospectus is an effort by the SEC to provide investors with an easy to follow format on information helpful in comparing mutual funds, such as the description of the fund’s objectives and strategies, fees, risks, and performance. Providing a Summary Prospectus document for the overall prospectus is a new disclosure and delivery choice, and it is <i>optional</i> per the rule. There is no size constraint on the Summary Prospectus, but the SEC has suggested it be 3-4 pages in length.</p> <p>The key information that must be included on the Summary Prospectus and the summary section of the Statutory Prospectus, and the order in which the information must be presented are:</p> <ul style="list-style-type: none"> • Investment Objective and Goals • Fee Table 	FINAL RULE, Federal Register, SEC, Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, RIN 3235 - AJ44, Published January 26, 2009 http://sec.gov/rules/final/2009/33-8998fr.pdf

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HOME			<ul style="list-style-type: none"> • Investments, Risks, and Performance • Management • Purchase and Sale of Fund Shares • Tax Information • Financial Intermediary Compensation <p>Investment companies that elect to use the Summary Prospectus must then also have their Summary Prospectus, Statutory Prospectus and corresponding Statement of Additional Information (“SAI”), and annual and semi-annual reports available free of charge on an internet website other than the SEC’s website. Going forward, companies will need to host and maintain the information on their website. The website must post a toll-free number and an email address for investors to request printed copies or emailed copies of these reports.</p> <p><i>Updated March 2009</i></p>	
SEC Ponders Investment Adviser & Mutual Fund Surveillance System HOME	Surveillance System	Adviser & Fund	<p>Lori Richards, Director of the SEC’s Office of Compliance Inspections and Examinations (“OCIE”) in a December 16, 2008 speech spoke about the concept of the SEC developing expanded surveillance systems for investment advisers and mutual funds. Ms. Richards noted the examination process could be enhanced by increased surveillance allowing the staff to detect emerging and reoccurring risks.</p> <p>NEW March 2009</p>	<p>SEC Speech by Lori Richards, Director of Office Of Compliance Inspections and Examinations (“OCIE”), 2008 Securities Law Developments Conference Investment Company Institute, in Washington, D.C., December 16, 2008 http://www.sec.gov/news/speech/2008/spch121608l.r.htm</p>
SEC New Interpretive	Website Guidance	Funds - Public	<p>On August 7, 2008 the SEC issued new interpretive guidance to assist companies in complying with federal securities laws</p>	<p>Interpretive Release, Federal Register, SEC,</p>

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HOME			<p>the use of interactive data for displaying mutual fund risk/return summary information.</p> <p>NEW March 2009</p>	
SEC 12b-1 Reform	12b-1 Reform	Fund	<p>In a March 23, 2009 speech, Andrew “Buddy” Donohue, SEC Director, Division of Investment Management, stated the SEC will be deferring wholesale reconsideration of 12b-1 until after 2009. Mr. Donohue continues to be committed to its reform. In his address, he said, “it remains that the factors investment company boards must consider when approving or renewing a 12b-1 plan are outdated and may detract from effective board oversight.” He further noted that in advance of meaningful reform to 12b-1 there is the possibility of guidance for fund directors to assist them in this area.</p> <p>NEW March 2009</p>	<p>SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management Conference, in Palm Desert, California, March 23, 2009</p> <p>http://www.sec.gov/news/speech/2009/spch032309ajd.htm</p>
SEC Valuation Guidance - Bibliography	Valuation	Fund	<p>In a March 23, 2009 speech, Andrew “Buddy” Donohue said the SEC is focusing on other areas where it can assist fund directors in the valuation of portfolio securities. Mr. Donohue noted while funds are now investing in more complex and difficult-to-value securities, more valuation-based information is now available. Mr. Donohue believes the Division needs to provide guidance to assist funds and their directors to ensure that fund investors are treated fairly. To this end, the Division has posted on the SEC website a bibliography that lists select relevant provisions of the Investment Company Act and related rules and Commission guidance concerning valuation. Mr. Donohue said the Division is hopeful fund directors and fund personnel will find the bibliography a useful tool when</p>	<p>SEC Valuation of Portfolio Securities and other Assets Held by Registered Investment Companies – Select Bibliography of the Division of Investment Management</p> <p>http://www.sec.gov/divisions/investment/icvaluation.htm</p> <p>SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management Conference, in Palm Desert, California, March 23,</p>

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HOME			<p>approaching valuation in this uncertain market.</p> <p>NEW March 2009</p>	<p>2009</p> <p>http://www.sec.gov/news/speech/2009/spch032309ajd.htm</p>
SEC Director Outreach	Director Outreach	Fund	<p>In a March 23, 2009 speech, Andrew “Buddy” Donohue, noted, in addition to 12b-1 and valuation guidance for fund directors, the Division is continuing to focus on directors’ general needs. Mr. Donohue started the “Director Outreach Initiative” early in 2007. The purpose of the “Director Outreach Initiative” was to examine the duties imposed on independent directors of mutual funds and determine what the Commission could do to assist fund directors in the performance of those duties.</p> <p>Based on director feedback and the Division’s analysis, Mr. Donohue’s staff is preparing recommendations for the Commission’s consideration that will suggest possible rule modifications and other guidance that may enable directors to focus their time more efficiently overseeing conflicts of interest rather than engaging in day-to-day management of the fund.</p> <p>NEW March 2009</p>	<p>SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management Conference, in Palm Desert, California, March 23, 2009</p> <p>http://www.sec.gov/news/speech/2009/spch032309ajd.htm</p>
SEC Annual and Semi-Annual Report Reform	Annual and Semi-Annual Report Reform	Fund	<p>In his March 23, 2009 speech, Andrew “Buddy” Donohue noted the Division intends to reform fund shareholder annual and semi-annual reports. The driving force behind this reform, similar to the summary prospectus reforms, is to make mutual fund disclosure easier and more accessible to investors. The Division plans to reach out to the industry and the shareholder advocates to determine what information should be included in</p>	<p>SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management Conference, in Palm Desert, California, March 23, 2009</p> <p>http://www.sec.gov/news/speech/2009/spch032309ajd.htm</p>

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HOME			summary shareholder reports. NEW March 2009	d.htm
SEC Review of Rule 2a-7 HOME	Rule 2a-7	Fund	In his March 23, 2009 speech, Andrew “Buddy” Donohue noted the Division intends to review Rule 2a-7 and the money market model. Mr. Donohue complimented the ICI Money Market Working Group on the work they have done in this area and the recommendations contained in the Group’s Report issued March 17, 2009. Mr. Donohue said the Division will use the Group’s Report as a starting point in reviewing Rule 2a-7, and the Division plans to act quickly develop recommendations for Rule 2a-7 changes. NEW March 2009	Report of the Money Market Working Group, Submitted to the Board of Governors of the Investment Company Institute on March 17, 2009 http://www.ici.org/pdf/ppr_09_mmwg.pdf SEC Speech by Andrew “Buddy” Donohue, Director, Division of Investment Management, Keynotes Address at the Investment Company Institute (“ICI”) 2009 Mutual Funds and Investment Management Conference, in Palm Desert, California, March 23, 2009 http://www.sec.gov/news/speech/2009/spch032309ajd.htm

SEC EXAMINATION AND ENFORCEMENT				
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SEC 2008 Inspection & Exam Overview	SEC 2008 Inspection & Exam Overview	Adviser & Fund	On February 6, 2009 the new SEC Chairman, Mary Schapiro, outlined what she believes the SEC needs to do in 2009 to restore investor confidence. The three points Ms. Schapiro identified were; (1) bring transparency and accountability to all facets of the marketplace; (2) bring about swift and vigorous enforcement actions against those parties that have cheated investors; and (3) modernize the regulatory system within the United States to recognize global markets.	2007 SEC Office of Compliance Inspections and Examinations, dated February 2008 http://www.sec.gov/about/offices/ocie/ocieoverview.pdf

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SEC EXAMINATION AND ENFORCEMENT				
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HOME			<p>Following the “SEC Speaks in 2008” Conference, the SEC posted to their website the 2007 Inspections and Examination Overview on March 20, 2008. Vista360 will watch for the 2008 Inspections and Examinations Overview report and provide the link when it becomes available. In the meantime, for your convenience, we have attached the link to the 2007 Overview report.</p> <p>NEW March 2009</p>	
SEC 2008 Performance & Accountability Report HOME	SEC 2008 Performance & Accountability Report	Adviser & Fund	<p>The SEC released its annual Performance and Accountability Report for the fiscal year ended 2008 on November 18, 2008. The Office of Compliance Inspections and Examinations (“OCIE”) reported that during 2008 it examined more advisers and funds than projected. OCIE examined 14% of all SEC-registered investment advisory firms, which was above their 10% target. OCIE also reported that it examined 23% of fund companies, which was above their target of 15%. A link to the entire report off the SEC’s website is provided.</p> <p>NEW March 2009</p>	SEC 2008 Performance and Accountability Report http://www.sec.gov/about/secpar/secpar2008.pdf
SEC’s Core Information Examiners Request of Investment Advisers	SEC Core Exam Request	Adviser & Fund	<p>The SEC has posted its Core Initial Request for Information (SEC Request Letter) to its website. The document highlights core information the SEC would request of an investment adviser that provides traditional money management services to non-fund clients.</p> <p>If an adviser’s business includes fund clients or other business relationships, this core request list would be accompanied by a request for additional information that would allow SEC staff</p>	SEC Office of Compliance Inspections and Examinations (“OCIE”) Investment Adviser Examinations: Core Initial Request for Information, Posted to SEC website November 2008 http://www.sec.gov/info/cco/requestlistcore1108.htm

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SEC EXAMINATION AND ENFORCEMENT				
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HOME			<p>to evaluate compliance programs in place for other business activities of the firm.</p> <p><i>Updated December 2008 (No Update March 2009)</i></p>	
SEC Letter to Investment Adviser Association Regarding Custody	SEC Custody	Adviser & Fund	<p>On March 9, 2009 Gene Gohlke, SEC, Associate Director, Office of Compliance Inspections and Examinations (“OCIE”), sent a letter to Karen Barr, General Counsel, Investment Adviser Association (“IAA”) regarding custody. Currently during examinations the SEC, in an attempt to verify client assets, may request documentation provided by independent third-parties such as: bank and broker-dealer custodians; account administrators; investors in hedge funds managed by the adviser; advised clients; derivative counterparties; hedge fund administrators and/or managers that are invested in by advised clients; National Securities Clearing Corp.; Depository Trust and Clearing Corp.; and auditors for the advisory firm and/or investor accounts. When contacting advisory clients, the SEC will ask for confirmation that account balances for a particular date agreed with their records, and contributions and withdrawals from their accounts over a period of time were authorized by the client. Mr. Gohlke noted in his letter these requests do not indicate the Commission staff feels a firm or its staff have committed any violations of the law and the requests should not reflect negatively on the adviser or their staff. However, many within the industry are concerned with the SEC contacting their clients directly and the perception that action might infer.</p> <p>NEW March 2009</p>	<p>March 9, 2009 Gene Gohlke, SEC, Associate Director, Office of Compliance Inspections and Examinations (“OCIE”), Letter to Karen Barr, General Counsel, Investment Adviser Association (“IAA”) http://investmentadviser.org/eweb/docs/Public/IAA3.9.2008.PDF</p>
HOME				

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<p>the Importance of Compliance Programs</p> <p>HOME</p>			<p>Office of Compliance Inspections and Examinations (“OCIE”). Within the letter Ms. Richards says, “Your firm’s compliance function is critical to assure that your operations comply with the law and rules for industry participation and to ensure that the interests of your customers, clients and shareholders are protected. Moreover, compliance is a vital control function that helps to protect the firm from conduct that could negatively impact the firm’s business and its reputation. While many firms are considering reductions and cost-cutting measures, we remind you of your firm’s legal obligation to maintain an adequate compliance program reasonably designed to achieve compliance with the law.”</p> <p>NEW March 2009</p>	<p>http://www.sec.gov/about/offices/ocie/ceoletter.htm</p>

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<p>CFA Institute’s Risk Management Principle</p>	<p>CFA Institute’s Risk Mgmt. Principle</p>	<p>Adviser</p>	<p>The CFA Institute Centre for Financial Market Integrity is proposing to add a risk management principle to its Asset Manager Code of Professional Conduct. It would require investment advisers and other asset managers to include the following principle, “Establish a risk management process that identifies, monitors, and analyzes the risk position of the Manager and its investments, including the source, nature and degree of risk exposure.”</p> <p>The IAA submitted a comment letter to the CFA on January 15, 2009 noting the importance of risk management</p>	<p>IAA Comment Letter to CFA regarding CFA’s Risk Management Principal, Dated January 15, 2009 http://www.investmentadviser.org/eweb/docs/Publications_News/Comments_and_Statements/Current_Comments_Statements/comment011509.pdf</p>

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SEC Chairman Schapiro on Financial Regulatory Structure Reform	Financial Regulatory Reform	Adviser & Fund	<p>In SEC Chairman, Mary Schapiro’s testimony before the U.S. Senate Committee on Banking, Housing and Urban Affairs on March 26, 2009, she explained the general principles she felt were needed to guide the effort towards the modernization of the financial regulatory structure. Among these principles she included an integrated, independent capital markets regulator focusing on investor protection. Chairman Shapiro noted she believes a strong investor-focused capital markets regulator complements the role of a systemic risk regulator, resulting in more effective financial oversight.</p> <p>Chairman Schapiro mentioned several areas where the Commission will be focusing during 2009 to modernize the rules and regulations governing investment advisers and broker-dealer, including:</p> <ol style="list-style-type: none"> 1. Requiring registration of hedge fund investment advisers; 2. Studying whether legislation is needed to break down the statutory barriers requiring different regulatory regimes for broker-dealers and investment advisers, given that the services provided are often virtually identical from the investor’s perspective; 3. Whether legislation is needed to enhance regulatory oversight with regards to credit default swaps and municipal securities; 4. Proposed rules for broker-dealers and investment advisers with custody of client assets; and 5. A particular focus in coming weeks on proposals to enhance standards regarding money market mutual funds. 	<p>SEC Chairman, Mary Schapiro’s Testimony Concerning Enhancing Investor Protection and Regulation of the Securities Markets, Before the United States Senate Committee on Banking, Housing and Urban Affairs, on March 26, 2009 http://www.sec.gov/news/testimony/2009/ts032609mls.htm</p>

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HOME			<p>Ms. Shapiro noted for the Commission, “Enforcement is one of our core competencies and a central part of our heritage as an agency”. Ms. Shapiro further noted the greatest challenge for the SEC is staying ahead of those who seek to take advantage of investors. She anticipates coming to the Senate in the near future to request the authority to compensate whistleblowers, in an attempt to further encourage them to bring information to the Commission on fraudulent activity practices they have observed.</p> <p>NEW March 2009</p>	
HOME	Hedge Fund Best Practices Report	Fund	<p>On January 15, 2009 the Asset Managers’ Committee released their final best practices report for hedge fund managers and the Investors’ Committee released their final report on best practices for hedge fund investors, to the President’s Working Group on Financial Matters (“PWG”). The PWG includes heads of the SEC, CFTC, the U.S. Treasury and the Federal Reserve Board. In September 2007, the PWG formed two private-sector groups to develop voluntary industry best practices for hedge funds, the Asset Managers’ Committee for hedge fund asset managers and the Investors’ Committee for hedge fund investors. Links to both of these final reports are provided.</p> <p>NEW March 2009</p>	<p>Best Practices for the Hedge Fund Industry Report of the Asset Managers’ Committee to the President’s Working Group on Financial Matters http://www.amaicmte.org/Public/AMC%20Report%20-%20Final.pdf</p> <p>Principles and Best Practices for Hedge Fund Investors Report of the Investors’ Committee to the President’s Working Group on Financial Matters http://www.amaicmte.org/Public/Investors%20Report%20-%20Final.pdf</p>
HOME	SAFE Markets Act	Adviser & Fund	<p>On January 22, 2009, Senators Charles Schumer (D-NY) and Richard Shelby (R-AL) announced bipartisan legislation to thwart securities fraud on Wall Street. The Supplemental Anti-Fraud Enforcement (“SAFE”) Markets Act will provide \$110 million to hire 500 new FBI agents, 50 new Assistant</p>	<p>Text of S.331: SAFE Markets Act, Original Text as Introduced January 27, 2009, Refer to Section 3, (c) – Additional Employees for the Securities and Exchange Commission, Division of Enforcement http://www.govtrack.us/congress/billtext.xpd?bill=s11</p>

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HOME			<p>U.S. Attorneys and 100 new SEC enforcement officials. The SAFE Markets Act will provide significant resources to SEC Chairman Mary Schapiro in her efforts to aggressively ramp up the SEC’s Division of Enforcement.</p> <p>NEW March 2009</p>	1-331
HOME	Mutual Fund Fees	Adviser & Fund	<p>On March 9, 2009 the U.S. Supreme Court granted review of the case of Jones v. Harris Associates, whereby a group of individual shareholders sued Harris Associates, which advises on the Oakmark funds. The shareholders, who own shares of Oakmark Funds, allege that Harris’ fees are so high they violate their fiduciary duties under the Investment Company Act of 1940.</p> <p>Advisers to mutual funds will be watching the case carefully, as it could potentially have an affect on firm revenue derived from managing mutual funds.</p> <p>NEW March 2009</p>	<p>U.S. Supreme Court Jones v. Harris Associates Case http://origin.www.supremecourtus.gov/qp/08-00586qp.pdf</p>

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