

INTERNAL INVESTIGATIONS & COMPLIANCE *Update*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

New SEC Chairman Seeks to Energize Enforcement Program

Richard G. Ketchum Named FINRA CEO

March 9, 2009

Mary L. Shapiro, the newly appointed Chairman of the Securities and Exchange Commission, recently outlined her priorities in her first speech since returning to the SEC. Describing the agency's enforcement efforts as a "foundation" of its mission, Chairman Shapiro sent a clear message regarding the agency's priorities. Chairman Shapiro also announced several immediate reforms intended to energize the enforcement program.

First, Chairman Shapiro announced the end of a two-year pilot program that required the SEC staff to seek authorization from the Commission prior to negotiating a civil monetary penalty settlement with a public company as punishment for engaging in securities fraud. Critics of the pilot program had argued that it introduced significant delays into the process of obtaining a corporate penalty, discouraged the SEC staff from seeking penalties in certain cases, and sometimes served to reduce the size of penalties the SEC could impose.

Second, Chairman Shapiro announced revisions to the procedures used to grant subpoena power to the SEC enforcement staff. In recent times, subpoena power was frequently granted by action of the entire Commission at a meeting. Under the revised procedure which is intended to result in more rapid approval of formal orders of investigation, the SEC enforcement staff can obtain subpoena power by written action of the Commission or a single Commissioner acting on behalf of the entire Commission.

Shortly after Chairman Shapiro's announcement of these reforms, the SEC announced that Robert Khuzami had been named the Director of the Division of Enforcement. Mr. Khuzami most recently served as General Counsel of the Americas at Deutsche Bank, but previously served as a federal prosecutor in New York for 11 years. Mr. Khuzami's resume as a prosecutor includes numerous securities fraud cases.

Looking forward, companies under investigation may face additional pressures to pay, and pay larger, monetary penalties. In recent years the SEC has been criticized as the aggregate amount of monetary penalties obtained by the Commission declined, except with respect to

penalties for commercial bribes prohibited by the Foreign Corrupt Practices Act. Given this backdrop, companies should consider the guidance previously given by the SEC concerning the importance of compliance programs and internal controls, prompt internal investigations, cooperation with SEC investigations, and appropriate remedial action.

Finally, Chairman Shapiro announced last week that the agency is moving to improve its handling of whistleblower complaints and enforcement tips. The steps announced include the retention of the Center for Enterprise Modernization, a federally funded research and development center, to conduct a comprehensive review of the SEC's internal procedures used to evaluate tips, complaints and referrals. The goal is to establish a more centralized process that will more effectively identify valuable leads and improve the SEC's use of information received to protect investors.

In another regulatory matter, the Financial Industry Regulatory Authority or "FINRA" recently announced the hiring of Richard G. Ketchum to serve as its new CEO, a position previously held by Chairman Shapiro. FINRA is the largest non-governmental regulator for all securities firms doing business in the United States. FINRA oversees nearly 5,000 brokerage firms, about 173,000 branch offices, and approximately 659,000 registered securities representatives. Mr. Ketchum previously served as the CEO of NYSE Regulation, Inc., the self-regulatory arm of the New York Stock Exchange. James H. Cheek, III and Bass, Berry & Sims PLC worked closely with Mr. Ketchum in their role as Regulatory Auditor to the Exchange and wish Mr. Ketchum well in his new position.

If you have any questions regarding this Internal Investigations and Compliance Update please feel free to contact any of your regular Bass, Berry & Sims PLC contacts or any of the attorneys listed below.

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