

CORPORATE AND SECURITIES LAW

Alert

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

SEC Enforcement Director Robert Khuzami Speaks: Outlines New Initiatives for the Division of Enforcement

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In his first speech since becoming SEC Director of the Division of Enforcement (the “Division”), Robert Khuzami discussed several new initiatives designed to make good on Chairman Shapiro’s promise to “reinvigorate” the Division. The initiatives stem from a “top-to-bottom” self-assessment undertaken by the Division amid heavy criticism, and are characterized by Khuzami’s day-one mandate that the Division become more strategic, swift, smart, and successful in its protection of the investing public. These initiatives include an organizational restructuring to enhance specialization, streamlining certain internal processes, creating an Office of Market Intelligence, and perhaps most important of all, steps intended to foster improved cooperation from individuals.

- ***Increased Specialization***

The Division will undergo an organizational restructuring, which will use specialization to target prevalent areas susceptible to securities violations. The creation of five specialized units will, according to Khuzami, help the Division become more proactive, as opposed to reactive, in their investigations, and less likely to be misled by those who shroud their violations in complexity. The five specialized units and their primary focus include:

- Asset Management Unit – investment advisors, investment companies, hedge funds and private equity funds;
- Market Abuse Unit – large-scale market abuses and complex manipulation schemes by institutional traders;
- Structured and New Products Unit – complex derivatives and financial products;
- Foreign Corrupt Practices Act Unit – new and heightened FCPA focus; and
- Municipal Securities and Public Pension Unit – offering and disclosure issues, tax and arbitrage driven activity, and pay-to-play schemes in connection with municipal securities.

- ***Streamlining Management/Internal Processes***

Khuzami introduced several internal adjustments intended to make the Division more operationally effective and nimble. To address stagnation caused by over management, the Division plans to redeploy its branch chiefs to focus on front-line investigations. Other streamline initiatives include allowing the Division staff to issue subpoenas without obtaining advance Commission approval, and increasing the decision-making authority of senior officers. Khuzami also expects to decrease reliance on tolling agreements, which are used to foster settlement discussions in exchange for waiving the right to later assert that such claims are untimely.

- ***Office of Market Intelligence***

The newly created Office of Market Intelligence will serve as the center for monitoring the many tips, complaints, and referrals that the Division regularly receives. Internally-developed risk criteria and priorities will be used to filter the information in an effort to better focus “on those tips with the greatest potential for uncovering wrongdoing.”

- ***Fostering Cooperation from Individuals***

One of Khuzami’s key goals involves extending to individuals the incentives currently offered to corporations in return for their cooperation with SEC investigations. Four initiatives are being developed to accomplish this goal. First, standards for evaluating individual cooperation will be clearly articulated. This was previously done with respect to standards applicable to corporations in the Seaboard report. Second, an expedited process by which the Division Director may submit immunity requests to the Department of Justice will be developed. Third, the Division is looking at ways to provide witnesses with oral assurance early on that it does not intend to file charges against them. Fourth, the Division plans to recommend a form of deferred prosecution agreement where, in some instances, the Division will agree to forego an enforcement action.

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