

The Fourth Annual National Institute on Securities Fraud

**October
15-16, 2009**

The Ritz-Carlton
Washington, DC



Presented by
**The American Bar Association
Criminal Justice Section,
Section of Business Law,
and the ABA Center for
Continuing Legal Education**

The Fourth Annual National Institute on Securities Fraud

October 15-16, 2009 | The Ritz-Carlton | Washington, DC

For more information about this National Institute, the ABA, the ABA Criminal Justice Section, Section of Business Law, and/or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit our Web site at www.abacle.org.

Program Description

The end of 2008 and beginning of 2009 saw the financial markets collapse and administration change hands. Ponzi schemes are back, the FCPA is still hot, good old fashioned financial fraud seems unending, and the drumbeat for more prosecutions, stricter enforcement and stiffer penalties has never been louder. In response, the new teams at DOJ and SEC are already demonstrating renewed vigor and gearing up for aggressive enforcement in an effort to restore investor confidence.

By attending this program, you will gain valuable insights from the very best in the profession: judges, prosecutors, regulators, academics, compliance officers, and defense counsel. Top officials and luminaries from the SEC, DOJ, law schools, corporations, and top-tier law firms will share their insights concerning a multitude of important subjects. Find out what to expect next and how to prepare for these new developments in the ever present, headline-making area of securities fraud.

This educational and professional forum sponsored by the Securities Fraud National Institute Planning Committee, in cooperation with the Criminal Justice Section White Collar Crime Committee and the Section of Business Law, will provide you the opportunity to discuss the legal and ethical issues that arise in securities fraud matters in both plenary and break out sessions.

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Lanny A. Breuer**

and

**U.S. Securities and Exchange
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Robert Khuzami**

Program Agenda

Day One ■ Thursday ■ October 15, 2009

7:30 a.m. Registration

8:45 a.m. Opening Remarks

9:00 a.m. Plenary Session

Developments, Trends and Expectations in Securities Fraud Investigations and Prosecutions: Listen and learn as this panel of SEC and DOJ insiders and practitioners outlines what to expect on the regulatory, criminal and legislative fronts in the coming year.

Moderator: Thomas A. Hanusik
Bruce Baird
Lanny A. Breuer
Leslie R. Caldwell
Robert Khuzami

10:00 a.m. Break - Sponsored by Navigant Consulting, Inc.

10:15 a.m. Breakout Session I

A. RESERVE ACCOUNTING CASES – THEY’RE BACK

Call it a cookie jar, call it a kitty, call it what you will. The temptation to manage the numbers by creating and later dipping into a reserve seems ever present and always provides good fodder for SEC enforcement actions and DOJ prosecutions. Is history just repeating itself or have new methods emerged to avoid detection? Explore the latest trends in reserve manipulation with a panel of SEC, DOJ and defense practitioners who have prosecuted and defended all manner of such cases.

Moderator: Pamela J. Parizek
Gregory G. Faragasso
Glen S. McGorty
Robert W. Pommer, III
Russell G. Ryan

B. EXTRATERRITORIAL JURISDICTION/VENUE OVER COMPANIES AND INDIVIDUALS

Just how far does the jurisdiction of the United States reach? And how far should it? Is it different for companies than for individuals? For publicly traded v. privately held companies? For U.S. citizens v. foreign nationals? And how do you explain to an overseas client that he is being charged with violating a U.S. law that he never even heard of? Learn different perspectives from a panel of government and private practitioners, from the U.S. and abroad.

Moderator: Jonathan R. Barr
Joshua R. Hochberg
Kelly McKinnon
Cheryl Scarboro
William J. Stuckwisch

11:15 a.m. Break

11:30 a.m. Breakout Session II

ETHICS

A. THE GOVERNMENT’S “NEW” POLICIES ON PRIVILEGE: PLUS ÇA CHANGE, PLUS C’EST LA MÊME CHOSE

Just when you could say “Holder-Thompson-McNulty” three times fast, former Deputy Attorney General Mark Filip issued another version of the second most controversial memo at DOJ in the past ten years. The SEC is still grappling with its own iterations of the Seaboard Report, Statement on Financial Penalties and Enforcement Manual. Do any of these “new” policies impose additional ethical obligations on the government lawyers? Is there true accountability for those who stray? What about the defense bar? Are there ethical limits on charges of prosecutorial misconduct that these ever changing guidelines seem to inspire? Are there ethical implications for advising clients when the landscape changes almost annually? Learn from those who know what the latest iterations of these policies mean for you and your clients, as well as additional changes that may be in the pipeline.

Moderator: Richard C. Smith
Bradley J. Bondi
James L. Cooper
Michael N. Levy
Steven Tyrrell

B. INTERNAL CONTROLS AND REMEDIAL MEASURES: WHAT IS THE GOVERNMENT'S ROLE?

Publicly traded companies are required to maintain a “system of internal accounting controls” and they are expected to implement appropriate “remedial measures” when things go awry. But what is the government’s role in determining the adequacy of a company’s internal controls? Its role in deciding whether certain remedial measures – usually involving separation from key personnel – are necessary? Or whether those results are in the best interest of shareholders? How far can the government go in imposing its views?

Moderator: Michael E. Clark
Colleen A. Conry Robert Gray
David U. Gourevitch Gerald Hodgkins

12:30 p.m. Luncheon Keynote Address

(Speaker to be announced)

1:45 p.m. Breakout Session III

A. ANATOMY OF A PONZI SCHEME: FROM INITIATION TO DETECTION

Bernie Madoff pleaded guilty and received a 150-year sentence. Sir Alan Stanford is insisting he will fight to the end, despite deplorable conditions in jail. Both were alleged to have run the largest Ponzi schemes in history for a long time. Learn from this group of experts how Ponzi schemes begin, how they fall apart and, most importantly, how the people who run them get prosecuted.

Moderator: Steven R. Peikin
J. Kevin Edmundson F. Joseph Warin
Paul Pelletier

B. IS EVERYTHING CRIMINAL? WHAT EVER HAPPENED TO REGULATORY VIOLATIONS?

In an age where the SEC and FINRA police the securities markets with ever increasing vigilance, the number of criminal securities fraud prosecutions is still on the rise. Are there any pure regulatory violations left? Does the DOJ ever decline to prosecute when it has jurisdiction in the wake of an SEC or FINRA settlement that it considers appropriate? If so, when? Learn how to keep things civil from this panel of experts who have prosecuted and defended all varieties of charges.

Moderator: Saul M. Pilchen
Joshua E. Levine Daniel A. Nathan
Luis Mejia David Zinn

2:45 p.m. Break

3:00 p.m. Breakout Session IV

A. THE ROLE OF AUDITORS: IS INDEPENDENCE MUTUALLY EXCLUSIVE FROM A CLIENT RELATIONSHIP?

The fact that Sarbanes-Oxley changed the dynamic between auditors and their clients is a given, just how much is less clear. Learn from this panel of experts on both sides of the table just how much that relationship has changed as they explore the role of the auditor, the meaning of “pressure” and the expectations for an “independent” audit.

Moderator: R. Daniel O’Connor
John Carney David L. Kornblau
Richard Haynes Claudius Modesti

B. HEDGE FUND REGULATION – IS IT INEVITABLE? DOES IT ALREADY EXIST?

Are hedge funds responsible for the collapse of the financial markets? Did anyone really believe that they were? Should they have to pay the price for the misdeeds of Bernie Madoff and others? Will that approach solve anything or will it just make it more expensive to invest? Learn from this panel of expert practitioners with different perspectives — in-house at a hedge fund, SEC enforcement and investment management and the defense bar — what has changed, what is likely to change and what might change when it comes to hedge fund regulation and enforcement.

Moderator: Daniel L. Zelenko
Tom Biolsi
Robert B. Kaplan

Manish K. Mital
Walter G. Ricciardi

4:00 p.m. Break

4:15 p.m. Breakout Session V

A. INSIDER TRADING KNOWS NO BOUNDS: WHAT THEORY WILL THEY COME UP WITH NEXT?

As it stands now, a hacker in the Ukraine cannot trade on inside information obtained from the U.S. if he was deceptive in getting access to it, but the 5%+ investor in Texas (who might also own a pro basketball team) can as long as he never promised not to? Do these cases make sense? Is there now a split in the circuits? Is a fiduciary duty required everywhere except the Second Circuit? Learn from experts in the field what the latest theories of prosecution are for insider trading cases, which defenses are effective, and which are not.

Moderator: William B. Mateja
Michael A. Collora
Michael S. Dry

Scott W. Friestad
George B. Parizek

B. PAY TO PLAY

It used to be that pay to play involved a corrupt politician and some bond work or maybe a government contract for a new building. And sometimes it still does. But now, the SEC is proposing rules to curtail “pay to play” practices by investment advisers who want to manage money for state and local governments. Both the SEC and DOJ are becoming ever more vigilant in prosecuting those who “pay to play” and those who get “paid.” Explore the latest series of prosecutions and rule proposals with this panel of experienced counsel in the “pay to play” arena.

Moderator: Elizabeth P. Gray
David Blass
David Rosenfeld

Jeffrey H. Rutherford
David K. Willingham

5:15 p.m. Adjourn

5:15 p.m. Reception - Sponsored in part by KPMG

Day Two ■ Friday ■ October 16, 2009

9:00 a.m. Plenary Session

The FCPA: It's Not Just Another Four Letter Word: Record breaking settlements with Siemens and KBR. There is a surge in the number of individuals, both domestic and foreign, being investigated and prosecuted. Come hear what prosecutors, in house counsel and defense lawyers who deal with the FCPA have to say concerning these cases and the ones in the pipeline, and on issues ranging from the challenges of obtaining evidence abroad (even from clients!) to extradition.

Moderator: Philip H. Hilder
Peter B. Clark
Stephen Korotash
Mark F. Mendelsohn

C.E. Rhodes, Jr
Robert W. Tarun

10:00 a.m. Break

10:15 a.m. Breakout Session I

A. THE IMPACT OF BLOGGERS AND E-MEDIA ON SECURITIES FRAUD INVESTIGATIONS AND PROSECUTIONS

If they existed ten years ago, no one noticed. However, blogs now have become an all important source of real-time information. Their constituents include juries, judges, prosecutors and defense lawyers. What does all of this mean for the latest form of citation to find its way into briefs filed in courts all over the country?

Moderator: David Z. Seide
Bruce Carton
Thomas O. Gorman
Professor Ellen S. Podgor

B. CONFLICTS OF LAWS IN CROSS-BORDER INVESTIGATIONS AND PROSECUTIONS: IS COMITY DEAD?

Whether the issue is producing personal data subject to strict privacy laws, interviewing foreign nationals about potential violations of U.S. laws, or trying to defend/extradite a foreign national for U.S. based charges, the conflicts are not getting any easier to understand or address. Listen in as this panel of U.S. and non-U.S. experts discuss some of the obstacles they have encountered as well as the solutions that helped resolve them.

Moderator: Marvin G. Pickholz
Ashish S. Joshi
Raymond Lohier
Jonathan R. Tuttle
Philip Urofsky

11:15 a.m. Break

11:30 a.m. Breakout Session II

ETHICS

A. SENTENCING: WE'VE GOT NOTHING BUT TIME

Bernie Madoff received 150 years after accepting responsibility for his crimes. Other major securities fraud cases with losses measuring in the \$100s of millions resulted in sentences between 1 and 10 years in the same year. What are the ethical requirements for defense lawyers and prosecutors at the sentencing stage? Do judges have an ethical obligation to maintain some consistency in how sentences are applied from one district to another? Within the same district? Learn from the best as this panel, moderated by a federal judge, explores these issues and more.

Moderator: Honorable Amy St. Eve
Christine C. Ewell
James Mutchnik
Gil M. Soffer
Brian A. Sun

B. PRACTICAL ADVICE FOR DEFENDING A SECURITIES FRAUD PROSECUTION OR ENFORCEMENT ACTION

Trials, trials, trials. Everyone wants trials. But securities fraud criminal prosecutions and enforcement present complications and hurdles that other cases do not. Explore the factors that differentiate securities fraud cases from others, including the complexity of the underlying transactions, the need for and role of outside experts, evidentiary issues and affirmative defenses that work (and those that do not!).

Moderator: Sean M. Berkowitz
John C. Hueston
Janet I. Levine
Gary S. Lincenberg
Lorin L. Reisner
Jane Raskin

12:30 p.m. Conference Concludes

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For more information about this National Institute, the ABA, the ABA Criminal Justice Section, Section of Business Law, and/or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit our Web site at www.abacle.org.

Program Information

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MCLE

Mandatory continuing legal accreditation has been requested from all states that require continuing legal education. 9.25 hours of CLE credit have been requested from those states recognizing a 60-minute credit hour including 2.0 hours of Ethics and 11.1 hours of CLE credit have been requested from those states recognizing a 50-minute credit hours including 2.4 hours of ethics.

For NY-licensed attorneys: This transitional CLE program has been approved for all NY-licensed attorneys in accordance with the requirements of the New York State CLE Board of New York MCLE (9.50 total NY transitional MCLE credits including 2.00 hours of Ethics).

SCHOLARSHIPS

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors and solo or small firm practitioners. For more information on scholarships go to www.abacle.org/scholarship.

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PROGRAM CONFIRMATION

Written confirmation of your registration will be sent to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

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David W. Hilgers, Chair, *Brown McCarroll, L.L.P.*, Austin, TX

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- \$825 for ABA Members (\$125 Savings)
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Please check one workshop for each day and time slot.

BREAKOUT SESSION I ■ THURSDAY, 10:15 A.M.

- A. RESERVE ACCOUNTING CASES – THEY'RE BACK
- B. EXTRATERRITORIAL JURISDICTION/VENUE OVER COMPANIES AND INDIVIDUALS

BREAKOUT SESSION II ■ THURSDAY, 11:30 A.M.

- A. THE GOVERNMENT'S "NEW" POLICIES ON PRIVILEGE: PLUS ÇA CHANGE, PLUS C'EST LA MÊME CHOSE **ETHICS**
- B. INTERNAL CONTROLS AND REMEDIAL MEASURES: WHAT IS THE GOVERNMENT'S ROLE?

BREAKOUT SESSION III ■ THURSDAY, 1:45 P.M.

- A. ANATOMY OF A PONZI SCHEME: FROM INITIATION TO DETECTION
- B. IS EVERYTHING CRIMINAL? WHAT EVER HAPPENED TO REGULATORY VIOLATIONS?

BREAKOUT SESSION IV ■ THURSDAY, 3:00 P.M.

- A. THE ROLE OF AUDITORS: IS INDEPENDENCE MUTUALLY EXCLUSIVE FROM A CLIENT RELATIONSHIP?
- B. HEDGE FUND REGULATION - IS IT INEVITABLE? DOES IT ALREADY EXIST?

BREAKOUT SESSION V ■ Thursday, 4:15 P.M.

- A. INSIDER TRADING KNOWS NO BOUNDS: WHAT THEORY WILL THEY COME UP WITH NEXT?
- B. PAY TO PLAY

BREAKOUT SESSION I ■ Friday, 10:15 A.M.

- A. THE IMPACT OF BLOGGERS AND E-MEDIA ON SECURITIES FRAUD INVESTIGATIONS AND PROSECUTIONS
- B. CONFLICTS OF LAWS IN CROSS-BORDER INVESTIGATIONS AND PROSECUTIONS – IS COMITY DEAD?

BREAKOUT SESSION II ■ Friday, 11:30 A.M.

- A. SENTENCING: WE'VE GOT NOTHING BUT TIME **ETHICS**
- B. PRACTICAL ADVICE FOR DEFENDING A SECURITIES FRAUD PROSECUTION OR ENFORCEMENT ACTION

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