

RISKY BUSINESS: EXAMINING CURRENT ISSUES IN THE HEDGE FUND INDUSTRY

Every year, the *Columbia Business Law Review* chooses a major business law topic as the subject of its Survey and presents articles exploring relevant legal developments and timely issues in the area. This year's Survey is dedicated to current legal issues surrounding the hedge fund industry. Hedge funds are lightly regulated investment vehicles that have gained popularity in the private investment sector, largely because of their potentially high rates of return. According to recent financial data, the total value of assets invested in hedge funds is nearing two trillion dollars, with these funds currently accounting for 30% of both equity and fixed income trading in the United States securities markets. Because hedge funds are not as comprehensively regulated as retail investment vehicles, they are able to engage in highly leveraged transactions and risky investment strategies, such as short selling and trading in derivatives. These unique characteristics, as well as hedge funds' expanding role in the equity and debt markets, present unique and relevant issues for the business law community.

The first article, *Empty Manipulation: Bankruptcy Procedure Rule 2019 and Ownership Disclosure in Chapter 11 Cases*, examines the unique risks hedge funds pose in the context of bankruptcy claims trading. Comparing the situation to conflicts of interest seen outside bankruptcy, the article concludes that greater disclosure of bankruptcy claims and interests is necessary to protect both investors and Chapter 11 debtors.

The second article, *Navigating the Safe Harbors: Two Bright Line Rules to Assist Courts in Applying the Stockbroker Defense and the Good Faith Defense*, discusses several issues that arise when a hedge fund files for bankruptcy. The article focuses on two safe harbor provisions typically invoked by financial counterparties during this process and recommends two bright line rules

that will provide greater consistency and clarity for parties seeking such protections.

The third article, *Job Well Done: Preventing the Use of Private Placement Life Insurance to Wrap Hedge Fund Investments*, analyzes the purchasing of private placement life insurance contracts to avoid paying tax on gains from hedge fund investments. The article argues that recent rulings from the Internal Revenue Service and changes in the tax regulations have efficiently curtailed widespread use of private placement life insurance policies as a tax avoidance mechanism.

The fourth article, *Hedge Fund Activism: A New Hope for the Market*, explores the impact of hedge fund activism on the market. The article concludes that the market is likely to benefit from hedge fund activism by showing that the risk of short termism, the most frequently mentioned concern, is overstated.

The final article, *Much Ado About Nothing: An Analysis of the "Accredited Natural Person" Standard*, analyzes Proposed Rules 216 and 509, which would increase the threshold natural persons must meet before investing directly in hedge funds. The article concludes that the SEC's justifications for adopting the "accredited natural person" standard are unfounded and that the change would actually harm the individuals excluded under the proposed regulatory regime.

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