



U. S. SECURITIES AND EXCHANGE COMMISSION

Compliance Outreach Program

National Seminar

***For Investment Adviser and Investment Company
Senior Officers***

January 30, 2014



U. S. SECURITIES AND EXCHANGE COMMISSION

Welcoming Remarks

Chair White



U. S. SECURITIES AND EXCHANGE COMMISSION

SEC Standard Disclaimer

The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the authors and do not necessarily reflect the views of the Commission or of the authors' colleagues upon the staff of the Commission



U. S. SECURITIES AND EXCHANGE COMMISSION

Introductory Remarks

*Drew Bowden
Norm Champ
Andrew Ceresney*



U. S. SECURITIES AND EXCHANGE COMMISSION

Program Priorities

Jane Jarcho
David Grim
Julie Riewe

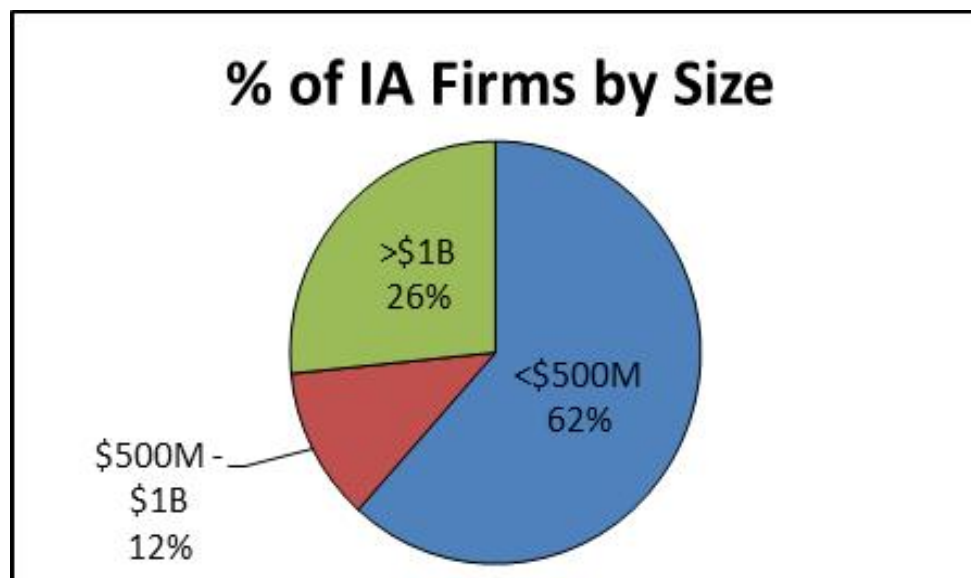


U. S. SECURITIES AND EXCHANGE COMMISSION

Question & Answer Session

(Advisers with \$1 Billion or Less in RAUM)

FY 2014





U. S. SECURITIES AND EXCHANGE COMMISSION

Question & Answer Session

*Kristin Snyder
Maureen Dempsey
William Delmage
Igor Rozenblit
John Farinacci
Daniel Kahl
Holly Ceci-Hunter*



U. S. SECURITIES AND EXCHANGE COMMISSION

BREAK



U. S. SECURITIES AND EXCHANGE COMMISSION

Private Fund Adviser Topics

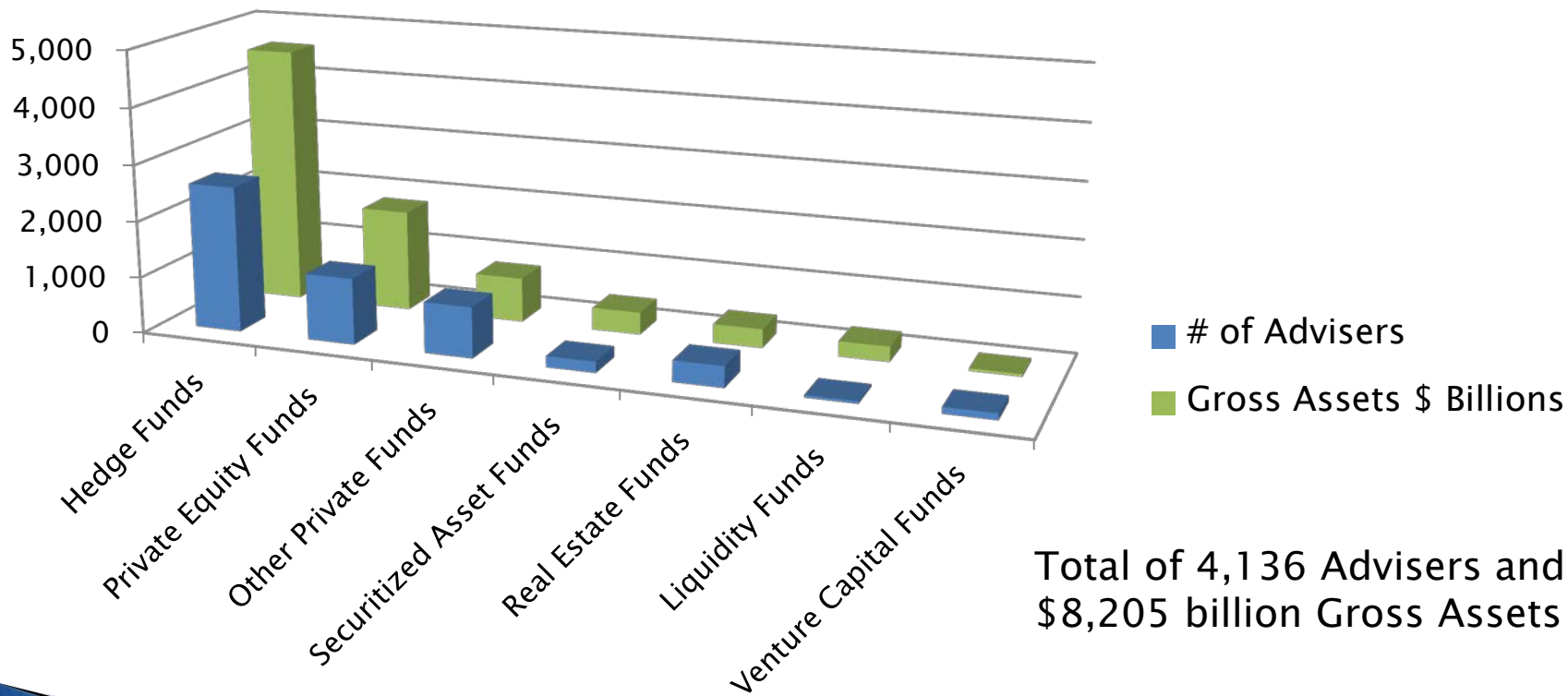
Ashish Ward
Alpa Patel
Igor Rozenblit
James Capezzuto
Barbara Burns



U. S. SECURITIES AND EXCHANGE COMMISSION

Private Equity and Hedge Funds

Private Fund Registrant Universe – SEC-registered advisers:

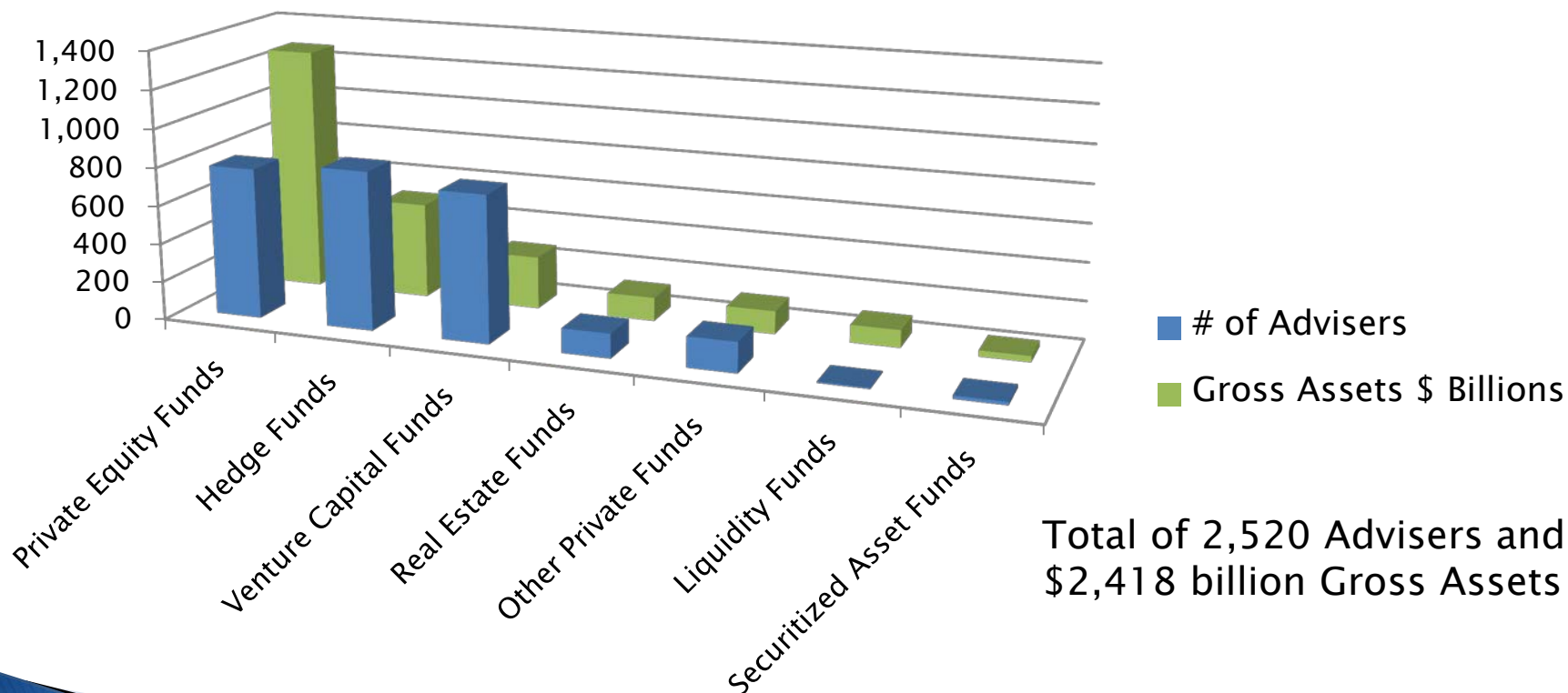




U. S. SECURITIES AND EXCHANGE COMMISSION

Private Equity and Hedge Funds

Private Fund Registrant Universe – exempt reporting advisers:





U. S. SECURITIES AND EXCHANGE COMMISSION

Private Equity and Hedge Funds

Some Key Focus Areas in Presence Exams:*

- 1. Investment Conflicts of Interest*
 - Personal and Affiliates' Transactions (private equity)*
 - Allocations of Investment Opportunities (private equity and hedge funds)*
 - Fees to GPs/advisers and expenses to funds/portfolio companies*
- 2. Marketing and Fund Raising*
 - Placement Agents (private equity and hedge funds)*
 - Performance marketing (hedge funds)*
- 3. Valuation*
- 4. Custody*

**Over 250 Presence Exams completed to date, with significant findings in each of these focus areas*



U. S. SECURITIES AND EXCHANGE COMMISSION

Private Fund Adviser Topics

Private Equity Regulatory Concerns

Igor Rozenblit



U. S. SECURITIES AND EXCHANGE COMMISSION

Concerning Industry Structures and Norms

Fund Structures

Vague / Broad
LPAs

Few Information
Rights

Long Lockups
High Barriers to
Action for
Disgruntled LP

Norms

Acceptance of
Poor Transparency

GPs Have Operating
Control of Port Cos.

LPs Understaffed
and Outgunned

Inherent
Conflicts of
Interest

Trends

Industry
Consolidation

Increasing
Importance of
Separate Account

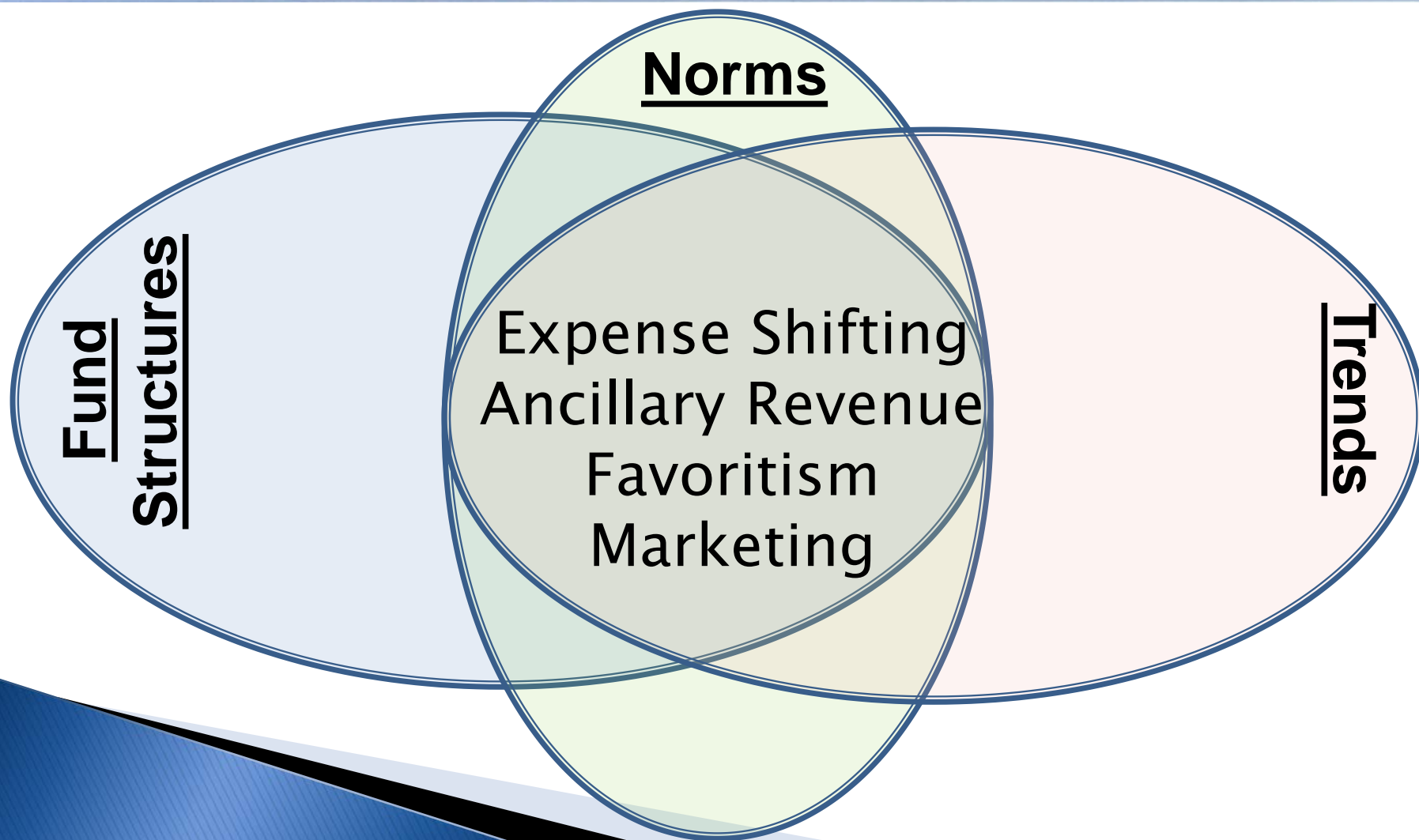
Decreasing Reliance
on Carry

Cost Pressure /
Expansion of Back
Office



U. S. SECURITIES AND EXCHANGE COMMISSION

Regulatory Concerns





U. S. SECURITIES AND EXCHANGE COMMISSION

Expense Shifting

Issue:

Moving expenses out of management company and into funds without proper disclosure and LP consent.

Examples:

- Use of related party service providers which appear to be full members of a manager's team (e.g. operating partners, senior advisers, captive consulting firms).
- Automating standard processes with costs paid by funds (SAAS).
- Outsourcing traditional back office functions to related parties (i.e. accounting, legal, risk)



U. S. SECURITIES AND EXCHANGE COMMISSION

Ancillary Revenue

Issue:

Generating additional revenue while reducing available cash to funds without proper disclosure and LP consent.

Examples:

- Monitoring fee accelerations esp. the inclusion of evergreen features in monitoring agreements.
- Use of related party service providers that kick cash back to manager (e.g. some captive consulting firms, some group purchasing programs)



U. S. SECURITIES AND EXCHANGE COMMISSION

Favoritism

Issue:

Favoring certain clients or funds or favoring certain investors without proper disclosure.

Examples:

- Co-Investment allocation (Rule 206(4)-8 and other antifraud provisions might be violated without adequate disclosure)
- Improperly giving mezzanine/lending business to favored investors.
- Primary investments made to support a secondary or co-investment business.



Marketing

Issue:

Managers stretching for capital may overstate or misstate material facts.

Examples:

- Improperly constructed interim valuations (Oppenheimer matter, Jenkinson and Barber / Yasuda papers confirm concern).
- Improper attribution disclosures esp. in cases of departing team members.
- Key investment team departures esp. in cases of changes occurring immediately after closing.



U. S. SECURITIES AND EXCHANGE COMMISSION

Compliance Considerations

- Senior support is key -- ensure management understands costs of an enforcement action.
- Integrate into business -- attend key meetings.
- Understand your business and focus on mitigating your conflicts of interests
- Design robust disclosures where eliminating or otherwise mitigating conflict is not possible.



U. S. SECURITIES AND EXCHANGE COMMISSION

Hedge Funds

Perennial and New Risks to be Mindful Of:

- 1. Other Investment and Trading Conflicts (e.g., Soft Dollars and Fund Redemptions/Liquidations)*
- 2. Controlling Non-public Information about Publicly Traded Companies (e.g., use of expert networks)*
- 3. Controlling Non-public Information about Clients/Funds (e.g., collaborating on ideas with other managers)*
- 4. Form PF Reporting*
- 5. CCO Knowledge/Authority and Tailored/Robust Compliance Program*



U. S. SECURITIES AND EXCHANGE COMMISSION

Private Equity and Hedge Funds

Hot Topics for Discussion/Debate:

- 1. Investment Conflicts of Interest*
 - Why care about co-investors?*
 - What is considered a “fair” allocation of investments or expenses?*
 - As a fiduciary, how far can you go with disclosure?*
- 2. Marketing and Fund Raising*
 - How much can you rely on the sophistication level of institutional investors?*
- 3. Valuation*
 - Why care if the values are audited or not used to charge fees?*
- 4. Addressing Criticism About the SEC Exam Process*
 - Are examiners focusing on the relevant and highest risk areas?*
 - Are examiners adequately trained to critically review alternative asset advisers?*



U. S. SECURITIES AND EXCHANGE COMMISSION

Private Equity and Hedge Funds

Questions



U. S. SECURITIES AND EXCHANGE COMMISSION

LUNCH

Return at 1:30 pm



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

*Steven Dittert
Renee Esfandiary
Douglas Scheidt
John Farinacci
Charles McCain
Victor Frye*



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

- *Distribution in Guise*
- *15c Process/Observations*
- *Alternative Mutual Funds*
- *Exchange Traded Products*



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

Distribution in Guise



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

15c Process/Observations



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

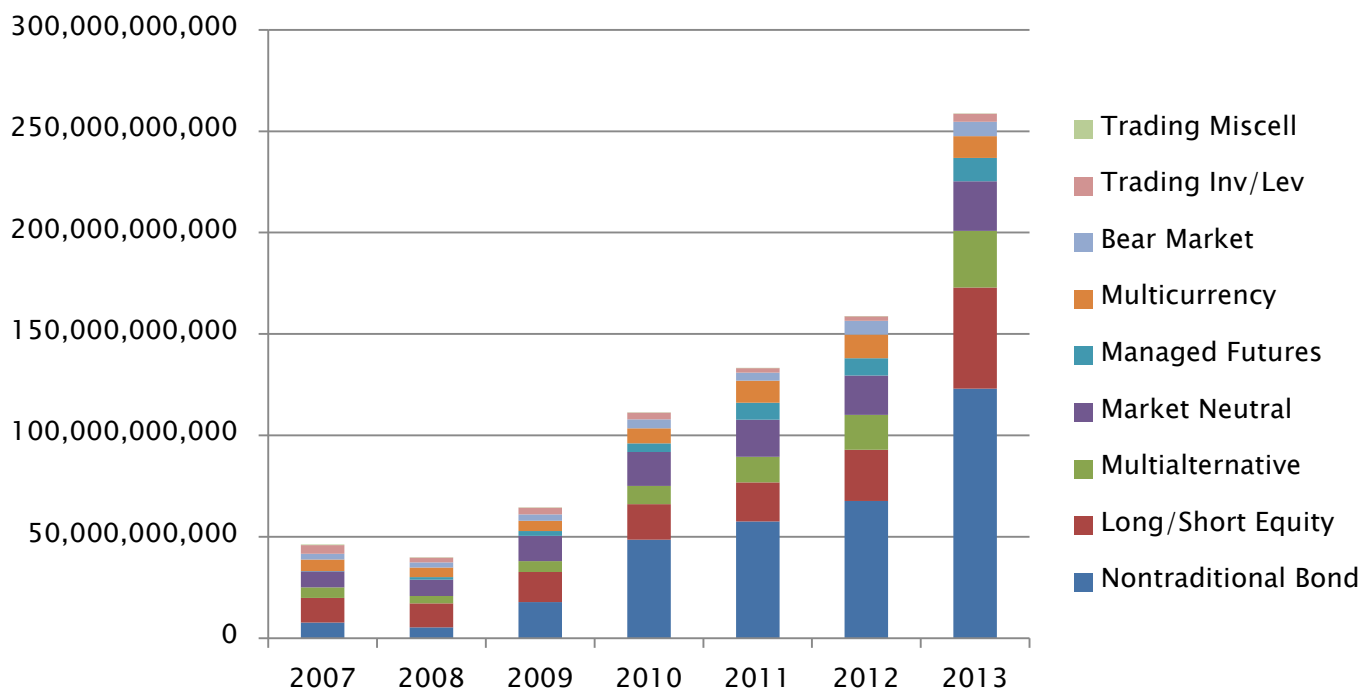
Alternative Mutual Funds



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

Alternative Mutual Funds – Strong Asset Growth **Total Net Assets in Alternative Mutual Funds (2007–2013)**



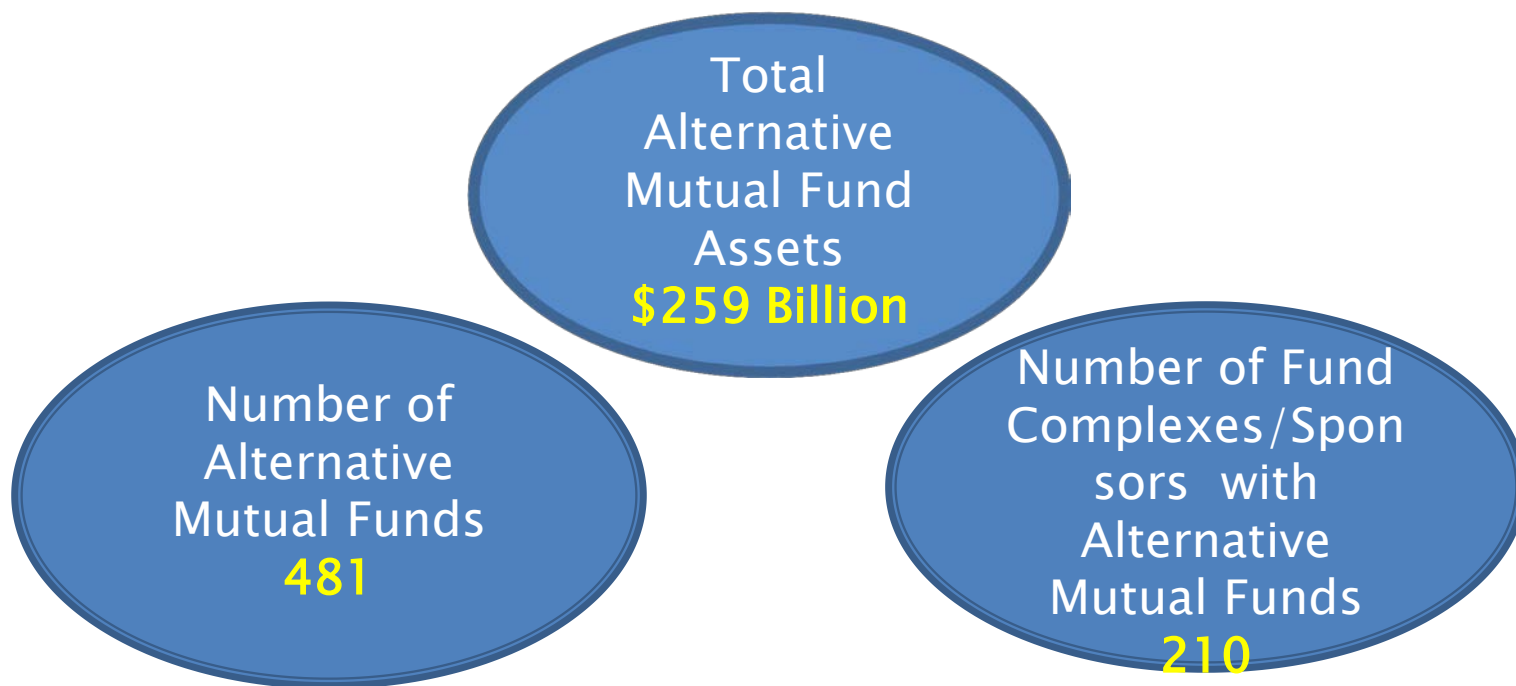
Based on Data from Morningstar, Inc. and SEC's Office of Risk Analysis and Surveillance



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

Alternative Mutual Funds - Demographics



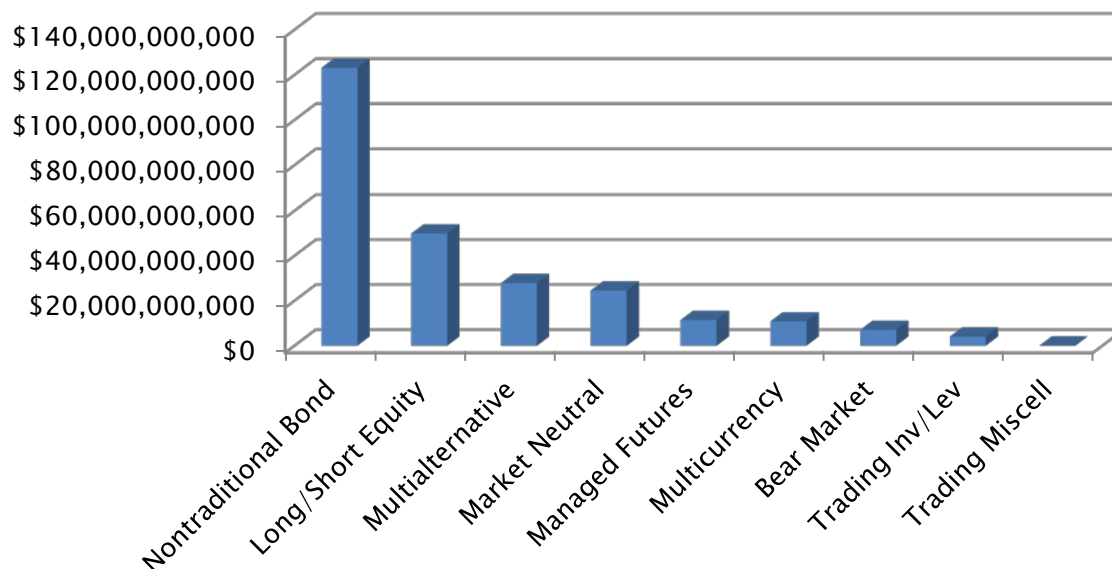
Based on Data from Morningstar, Inc. and SEC's Office of Risk Analysis and Surveillance



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

AUM by Alternative Mutual Fund Investment Category (as of 12/31/13)



Based on Data from Morningstar, Inc. and SEC's Office of Risk Analysis and Surveillance



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

*Alternative Mutual Funds –
Worlds Collide (to an extent)*

Private Fund
Managers –
New to
Registered
Mutual Funds

Boards of
Directors,
CCOs, and
Operations –
New to
Overseeing
Alt Strategies
and Instruments

Registered
Fund
Managers –
New to Alt
Strategies and
Instruments



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

Alternative Mutual Funds – Risks/Considerations





U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

*Alternative Mutual Funds – Panel
Discussion*

*National Exam Program
Division of Investment Management
Division of Enforcement – Asset
Management Unit
Industry*

Questions?



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

Exchange Traded Products



U. S. SECURITIES AND EXCHANGE COMMISSION

Registered Investment Company Topics

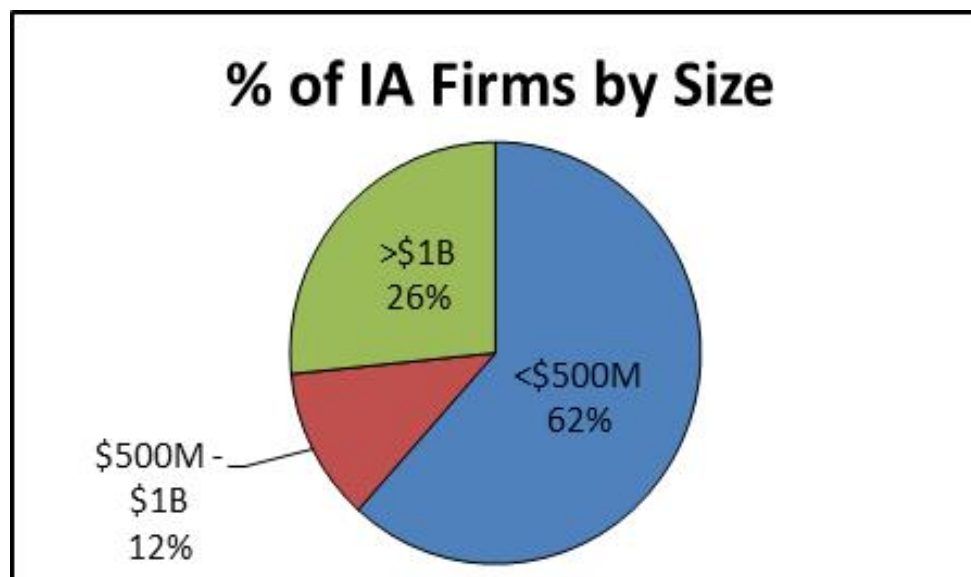
Questions



U. S. SECURITIES AND EXCHANGE COMMISSION

Question & Answer Session

***(Advisers with More Than 1 Billion in RAUM)
FY 2014***





U. S. SECURITIES AND EXCHANGE COMMISSION

Question & Answer Session

Michael Garrity

Ashish Ward

Mark Dowdell

Igor Rozenblit

John Farinacci

Alpa Patel

Doug Scheidt



U. S. SECURITIES AND EXCHANGE COMMISSION

BREAK



U. S. SECURITIES AND EXCHANGE COMMISSION

Valuation Issues

Jeffrey Blockinger

Leo Chan

Jaime Eichen

Matthew O'Toole

Sarah ten Siethoff



U. S. SECURITIES AND EXCHANGE COMMISSION

Valuation Issues

- *Why is valuation so important?*
- *Basic Legal Framework*
 - *“Value” and “Fair Value”*
- *Accounting Framework*
- *Valuation Techniques and Practices*



U. S. SECURITIES AND EXCHANGE COMMISSION

Valuation Issues

- *Difficult to Value Investments*
- *Role of Persons other than the IA (e.g., Board, Pricing Services)*
- *Exam Process & Observations*
- *Enforcement cases*
- *IM's RIC valuation bibliography -*
<http://www.sec.gov/divisions/investment/icvaluation.htm>



U. S. SECURITIES AND EXCHANGE COMMISSION

Chief Compliance Officer Obligations

*Mark Dowdell
Janet Grossnickle
Marshall Sprung
Christophe Marzullo
Judy Werner*



U. S. SECURITIES AND EXCHANGE COMMISSION

Chief Compliance Officer Obligations

- ***Introduction***
- ***Overview – Applicable Rules***
 1. ***Rule 206(4)-7 under the Inv. Advisers Act***
 2. ***Rule 38a-1 under the Inv. Company Act***
- ***Best Practices***
 1. ***SEC***
 2. ***Industry***



U. S. SECURITIES AND EXCHANGE COMMISSION

Chief Compliance Officer Obligations

- ***Panel Discussion***
 1. ***Industry Concerns***
- ***Resources (Provided as Handouts)***
 1. ***2009 CCO Outreach Seminar Document***
 2. ***Press Release AMU Compliance Initiative***
 3. ***Compliance Cases***
- ***Enforcement-AMU***



U. S. SECURITIES AND EXCHANGE COMMISSION

Chief Compliance Officer Obligations

Enforcement

- **AMU's Compliance Initiative**
 - ***In re OMNI Investment Advisors***
 - ***SEC v. GEI Financial Services***
 - ***In re Equitas Capital Advisors/In re Gisclair***
- ***In re Northern Lights Compliance Services***
- ***In re Carl D. Johns***



U. S. SECURITIES AND EXCHANGE COMMISSION

Chief Compliance Officer Obligations

Questions



U. S. SECURITIES AND EXCHANGE COMMISSION

Closing Remarks

Drew Bowden