

Shutdown Felt by Fund Managers, Lawyers

January 16, 2019

Hedge Fund Alert

With the **SEC** in shutdown mode, hedge fund lawyers are struggling to advise their clients on a range of issues, from interpreting new rules to the timing of fund launches.

David Tittsworth, a member of the investment-management practice at **Ropes & Gray**, said client queries about basic regulatory matters such as how and when to register as investment advisors have become more difficult to answer. The problem: The government shutdown, now in its 26th day, has left the SEC with a skeleton staff of perhaps 275, compared to the agency's usual headcount of about 4,500. The **CFTC** has been similarly affected, causing regulatory delays for commodity-trading advisors.

“We and our clients contact the SEC regularly to ask questions and seek guidance about a wide range of issues,” said Tittsworth, former head of the trade group **Investment Adviser Association**. “You can't get that. I've made several calls to the SEC the last four or five days and get the same recording that says, 'This is so-and-so. I'm not working right now because there's been a lapse in appropriations. I will not be checking my messages until after the shutdown.' ”

For now, it seems, the SEC has stopped processing investment-advisor registrations and most other filings. That's potentially a big problem for managers that have reached \$150 million of gross assets and technically must be registered before taking in more capital.

“My understanding is that filings are still being accepted by the SEC, but there is reduced staff to speak with regarding questions, which can present difficulties,” said **Debra Franzese**, a partner in **Seward & Kissel's** hedge fund practice. “I would imagine the review process for investment-advisor registration filings may be significantly delayed, which could negatively impact a fund launch timeline.”

Other functions the SEC has suspended under its shutdown plan include audits, enforcement, litigation, rule-making and rule interpretations — including decisions about exemptive relief.

“If the shutdown continues, the issues will become bigger,” said **Antonia Savaria**, founder of compliance consultant **Atlantia Advisers** of New York. “New advisor applications will not be processed, no-action letters will not be issued.”

That raises the prospect of continued delays even after the government reopens, given the growing backlog of cases. A veteran hedge fund lawyer said he’s never seen anything like it. During past government shutdowns, he said, the SEC was able to tap surplus funding to maintain key operations. Not this time.

“I talked to someone at the SEC in a position to know,” the lawyer said. “He said there’s really no answer, saying that ‘Once the shutdown ends, we’ll be providing some guidance about how to deal with the backlog. But I don’t know what that will be.’”

Another way the shutdown has affected fund managers: Public companies haven’t been able to get approval for share sales, resulting in a drought of initial public offerings, **The Wall Street Journal** reported last week.

One long/shore equity manager who invests in IPOs said his strategy has hit a wall “We had a number of companies we were extremely interested in investing in,” he said. “I’m under the same pressure from my LPs to make money, but I can’t do it how I want to do it.”

The budget impasse in Washington also is affecting the cryptocurrency market. Perhaps most notably, **Intercontinental Exchange’s** plans for a bitcoin futures exchange are on hold until regulators can solicit public comments, **CoinDesk** reported on Jan. 14. The new venue, called **Bakkt**, originally was scheduled to go live on Jan. 24.

On Dec. 31, Bakkt said it had raised \$182.5 million of funding from an investor group that includes hedge fund mogul **Alan Howard**, **Boston Consulting Group**, **Microsoft's** venture capital arm and crypto-fund operator **Pantera Capital**.

Reprinted with permission from the January 16, 2019 edition of Hedge Fund Alert © 2019 Harrison Scott Publications. All rights reserved. Further duplication without permission is prohibited.