

# Financial Services CLE SuperCourse – 2014 Edition

September 12, 2014

## AGENDA and COURSE DESCRIPTION

9:00a – 9:10a                    Opening Remarks and Welcome

9:10a – 9:30a                    **IN A FEW WORDS -- WHAT EVERY PRACTITIONER SHOULD KNOW ABOUT FINRA'S NEWLY CONSOLIDATED SUPERVISION RULES**

*Anthony Soukenik - Sandberg Phoenix & von Gontard (St. Louis, MO)*

In Regulatory Notice 14-10, the SEC approved FINRA's revised supervision rules. The new FINRA Rules 3110 (Supervision), 3120 (Supervisory Control System), 3150 (Holding of Customer Mail) and 3170 (Tape Recording of Registered Persons by Certain Firms) become effective December 1, 2014. This session will discuss the revised rules, and the changes to the manner in which customer accounts must be supervised.

9:30a - 9:50a                    **CYBERSECURITY - NEW TRENDS AND EMERGING STANDARDS IN THE COURTS AND ECONOMIC MARKETPLACE**

*Judy Burnthorn - Deutsch Kerrigan & Stiles (New Orleans, LA)*

Cybersecurity is at the forefront of compliance efforts at virtually all financial services firms. Reports of data breaches and identity theft dominate the headlines every week. This session will explain the potential for liability, damages, and other relief as a result of cybersecurity breaches, the Computer Fraud and Abuse Act, insurance issues relating to cybersecurity coverage, and the impact of the National Institute of Standards and Technology(NIST) Cybersecurity Framework.

9:50a - 10:10a                    **INDEPENDENT CONTRACTORS - SUPERVISION AND SURVEILLANCE BEST PRACTICES**

*Kathy Klock - Akerman (West Palm Beach, FL)*

The independent contractor model enables broker-dealers to expand their network of registered representatives with reduced overhead, and provides a platform for independent representatives to offer a full range of products and services through the broker-dealer while maintaining independence in the ownership and management of their own business. The business model also presents supervisory challenges. This session will focus on risk, supervision and surveillance considerations for independent contractors, and a review of the findings underlying regulatory and SRO decisions involving failure to supervise independent contractor registered representatives.

10:10a - 10:50a

**PANEL: FINANCIAL SERVICES IN-HOUSE COUNSEL**

*Moderator: Brian Rubin - Sutherland Asbill & Brennan (Washington, DC)*

Hear from in-house counsel at financial services firms about what keeps them awake at night; where they think the regulators will be focusing next; what they look for when they hire outside counsel; and how law firms can help them do a better job.

10:50a - 11:20a

Refreshment and Coffee Break

11:20a - 11:40a

**CLASS ACTION REFORMATION**

*Scott O'Connell - Nixon Peabody (Boston, MA)*

The rapidly changing case law interpreting the scope of federal and state class actions poses significant challenges for financial services firms. The Supreme Court continues to demonstrate its interest in class actions with another full docket of cases. This session will examine the ways in which the Supreme Court continues to reform this procedural device and the implications these changes have for consumer facing companies.

11:40a - 12:00p

**IMPACT OF ADMISSIONS IN REGULATORY SETTLEMENTS**

*Olga Greenberg - Sutherland Asbill & Brennan (Atlanta, GA)*

Securities regulators continue to pursue multimillion dollar settlements against financial services firms. In recent months, the Securities and Exchange Commission has shifted away from its long-standing policy of settling cases on a neither admit nor deny basis by requiring admissions of wrongdoing in certain cases. This session will explore the new policy, discuss recent cases that applied it, and address potential implications for future cases.

12:00p - 12:20p

**CANADIAN CROSS-BORDER INVESTIGATIONS AND SECURITIES ENFORCEMENT**

*Sean Boyle - Blake Cassels & Graydon (Canada)*

US-based clients that intentionally or unintentionally offer their financial services or products across international borders often face complex regulations and, at times, are the subject of investigations and enforcement proceedings. Securities regulators in Canada and the United States routinely share information and conduct joint investigations that cross the jurisdictional boundaries. This session will examine the frequency of anti-corruption investigations, cross border exchanges of information, recent developments relating to the enforcement of SEC verdicts in Canada, and constitutional issues that may arise in joint Canadian/ SEC securities investigations.

12:20p - 1:00p

**PANEL: A CONTINUING TREND - INVESTIGATIONS, ENFORCEMENT ACTIONS AND PROSECUTIONS**

*Moderator: John Fagg - Moore & Van Allen (Charlotte, NC)*

While the financial crisis is in the rearview mirror, the financial services industry continues to be a major focus of governmental investigations and actions by federal, state, and international regulators and law enforcement entities. Hear from a panel of government enforcement attorneys and prosecutors about the continuing efforts to bring enforcement actions and criminal prosecutions against individuals and companies across the financial services industry.

1:00p - 2:00p

## **WORKING-LUNCH BREAK-OUT SESSIONS**

### **Track A:**

#### **STAYING AHEAD OF COMPLIANCE ISSUES / INTERNAL INVESTIGATIONS / WHISTLEBLOWERS**

*Moderator: Brad Mirkin - Nixon Peabody (Boston, MA)*

This session will focus on practical, real world advice for avoiding claims and investigations in the first place, and ways to respond quickly yet prudently if they inevitably come.

### **Track B:**

#### **BANKING AND INSURANCE ISSUES**

*Moderator: Lewis Wiener - Sutherland Asbill & Brennan (Washington, DC)*

As some semblance of stability has arguably returned to the markets, in 2014 the insurance and banking industries still face greater challenges than ever in many arenas, whether it be Congress, cyberspace, new markets or new technologies.

### **Track C:**

#### **STAYING AHEAD OF COMPLIANCE ISSUES / INTERNAL INVESTIGATIONS / WHISTLEBLOWERS**

*Moderator: Brad Mirkin - Nixon Peabody (Boston, MA)*

This session will focus on practical, real world advice for avoiding claims and investigations in the first place, and ways to respond quickly yet prudently if they inevitably come.

2:00p – 2:20p

## **THE LONG AND WINDING ROAD: FINRA EXPUNGEMENTS AND PROPOSED RULE 2081**

*Jeff Hines - Goodell DeVries Leech & Dann (Baltimore, MD)*

Recent FINRA rule changes have greatly expanded the Central Record Depository (“CRD”) reporting requirements for registered representatives identified in customer complaints. Increasingly, these reps seek to expunge customer dispute information from their CRD records. The presentation will review FINRA’s approach to expungements over the last few years and the various rule changes that have culminated in the proposal to adopt FINRA Rule 2081, which would impose additional conditions before a registered person could obtain an expungement.

2:20p -2:40p

## **ARE WE COVERED FOR THIS?**

*John Mitchell - Thompson Hine (Cleveland, OH)*

The meter can rapidly turn when outside-counsel are brought in conduct internal investigation or to defend companies, corporate officers, and executives facing unwanted governmental scrutiny. While most companies have insurance for such situations, it is key that these policies be drafted to provide coverage for myriad of different situations that can develop during a governmental investigation. This session will discuss the different types of policies in place to cover these situations, analyze the case law involved, and suggest “best practices” to insure coverage is in place when the government comes knocking.

2:40p -3:00p

**ETHICS: DEFENDING A FALSE STATEMENT CHARGE? HOW TO AVOID GETTING YOURSELF ENTANGLED**

*Ken McCracken - Schiff Hardin (Washington, DC)*

New authority to prosecute false statements is among the many expansions of jurisdiction now enjoyed by the Commodity Futures Trading Commission as a result of Dodd-Frank. The CFTC has been actively enforcing its new false statement authority; other government agencies have done the same with their respective powers. This ethics will address how to recognize and avoid problems associated with the ethical implications for attorneys arising from aggressive enforcement of these false statement laws.

3:00p -3:20p

**ETHICS: THE CFPB AND THE ATTORNEY-CLIENT PRIVILEGE: PRACTICAL IMPLICATIONS AND ETHICAL CONCERNS**

*Todd Gale - Dykema (Chicago, IL)*

12 USC 1828(x) states that submission of privileged information to a regulator does not waive the privilege as to any other person or entity. This can be cold comfort, though, given both the regulator's enforcement responsibilities and 12 USC 1821(t), entitled "Agencies may share information without waiving privilege." This session will discuss how we might protect important privileges and uphold our ethical obligations to our clients, given this statutory scheme.

3:20p -3:40p

**ETHICS: MULTIJURISDICTIONAL PRACTICE AND FINRA ARBITRATION - WHAT CAN YOU DO AND WHERE CAN YOU DO IT?**

*Matt Fischer - Snell & Wilmer (Phoenix, AZ)*

The nature of the securities industry, combined with SRO dispute resolution and hearing locations around the country, translates to a national practice for securities attorneys. Several states have imposed restrictions on the ability of out of state attorneys to appear in and defend arbitrations. This session discusses how in-house counsel and outside counsel can avoid unauthorized practice of law issues when handling FINRA arbitrations.

3:40p - 3:45p

Closing Remarks