



## Monthly Update for our Members

**This update includes:**

- May Luncheon Recap
- RSVP info for June Luncheon – in San Francisco!
- Upcoming educational webinars – Discounted price available
- Announcing our FIRST Newsletter of 2009! Download it today

### May Luncheon Recap:

The luncheon touched on a variety of regulatory and legislative initiatives and was led by Jeff Blumberg, a partner in the Chicago office of Drinker Biddle & Reath, LLP.

**Stop Tax Haven Abuse Act** would tax offshore hedge funds at regular United States corporate income tax rates if the management of the offshore vehicle was controlled by US persons. The Act does not have momentum and the offshore taxation section of this Act is not in President Obama's budget proposal. This is mostly due to the removal of the ability to defer incentive fees generated by offshore funds.

#### **Hedge Fund Transparency Act.**

There was immediate push back on the section requiring disclosure of investors in hedge funds. This Act is going nowhere.

#### **President Obama's Budget Proposal**

The allocation of incentive fees would be taxed as ordinary income and subject to self-employment tax because the income is derived from the performance of services. The proposal would be effective for tax years beginning after December 31, 2010.

Section 1256 treatment would be removed from commodities dealers, commodity derivative dealers, options and securities dealers. The income would be treated as ordinary. There would be no need to mark to market at the end of the year. The proposal would be effective for taxable years beginning after the date of enactment.

By entering into equity swaps, foreign portfolio investors may receive the economic benefit of dividends paid and price appreciation with respect to U.S. stock without being subject to 30% withholding. The Treasury department intends to revoke Notice 97-66 and issue guidance that eliminates the benefit of equity swaps and have such transactions subject to withholding. The proposal would be effective for payments made after December 31, 2010.

#### **Hedge Fund Advisor Registration Act**

Would remove the de minimis exception of 15 clients needed to register as an investment advisor. A law requiring registration will probably be passed sometime in 2009. A 12 – 18 month implementation period will probably be granted. If a management company registers, it could advertise but not refer to the hedge funds it manages.

All swaps (total return, credit default, interest rates) and other derivative contracts would need to be registered and cleared through an exchange. The benefit would be the ability to determine the magnitude of leverage imbedded in the contracts. The downside is more standardization in the contracts and less customization.

### **Other**

Self-Regulation Initiatives proposals are being discussed. Jeff believes that FINRA would be a bad choice for the oversight body. There have been discussions for having the National Futures Association as the oversight body. The NFA understands most of the securities in hedge fund portfolios and have a less contentious attitude during examinations. The NFA's attitude is more on making the business operate better as opposed to the SEC attitude of having to find something to justify their presence.

Incentive fee claw backs are starting to make some headway. Currently very few funds provide for incentive fee claw backs but believe it could increase in the future.

Some managers are changing the high water mark provisions in their legal documents where the manager will reduce the incentive fee by 50% but must earn twice the drawdown before the incentive fee returns to the normal rate. Jeff has seen new funds adopt this provision from the outset. This provides the manager the ability to compensate and retain talent during the period the fund is under the high water mark.

Jeff has seen several funds of hedge funds switch to primarily managed accounts. One problem seen on the SMA platform is portfolio pricing. If one SMA sells an illiquid security at an extremely low price just to exit the position, this could adversely affect the pricing of a similar security in another SMA or investment fund, even if the other SMA or investment fund intends to hold the security for a longer term.

### **Short-Selling**

Jeff thinks the requirement to file Form SH to report short positions to the SEC will not be extended past the August termination date.

To prevent short sale abuse there may be certain procedures invoked, such as reinstating the uptick rule or instituting a "circuit breaker" where a security could not be sold short if the price has declined by a certain percentage.

## **RSVP for Our Next Luncheon!**

Hedge Fund and Fund of Fund Executives are invited to join the HFBOA in San Francisco, June 11<sup>th</sup> for a brown bag luncheon, ½ hour presentation and discussion session, led by Patricia Watters and Mason Snyder, co-founders of Catalina Partners, a newly launched firm offering business risk advisory services:

### **Operational Risk Measurement: Identifying and capturing meaningful business risk measures**

This lunch will be a "brown bag" gathering, so bring your lunch and join us for great conversation, lively debates, and the most up-to-date information for fund operation executives.

Time:

12:00 pm Pacific – 1:30 pm Pacific

Location:

Pillsbury Winthrop Shaw Pittman LLP  
50 Fremont Street  
6th Floor  
San Francisco, CA 94105

If you're interested in attending the June luncheon at Pillsbury Winthrop Shaw Pittman LLP in San Francisco, please email: [krdriguez@hfboa.org](mailto:krdriguez@hfboa.org) to confirm your spot. We have a limited number of seats available, so RSVP early to attend in person. Call-ins are, of course, unlimited.

## **MARK YOUR CALENDAR!**

### **Educational Events and HFBOA Networking functions:**

- **June 3, 2009: WEBINAR (Email me for a special rate – save \$75) Legal, Accounting & Tax Issues Related to Redemptions**
- June 11, 2009: HFBOA HF & FoF Executives Closed Door Luncheon in San Francisco
- June 11, 2009: WEBINAR: Schedule K-1 Essential for Hedge Fund of Funds
- June 15, 2009: WEBINAR: Everything an LP Needs to Know Before Entering into the Secondary Market
- June 23, 2009: WEBINAR: Effects of the Stimulus Act on Financing Renewable Energy Projects
- June 24, 2009: WEBINAR: Hot Button issues in tax, accounting, valuation and auditing
- June 25, 2009: WEBINAR: Hedge fund regulatory and compliance update
- **The 4<sup>th</sup> Annual Meeting of the HFBOA Membership & Educational Conference – Join Us September 24-25, 2009 in NYC!**

To see our calendar of events: <http://www.hfboa.org/calendar.aspx>

And don't forget the HFBOA's exclusive pricing option – 15% off all educational and networking events offered by Financial Research Associates. To claim your discount, reference priority code FA01327 when registering for any FRA event.

## **ASSOCIATION UPDATES:**

### **NEW! The first newsletter of 2009 now Available!**

Visit our website to download the latest HFBOA newsletter, a compilation of interviews focused on Treasury Management today. Hear directly from hedge fund CFOs – how their views of treasury management have evolved since Q3 of 2008, and what they're doing differently in today's tough environment. Plus, read commentary from industry expert Carl Versella of HC Associates on this timely issue.

Visit: <http://www.hfboa.org/newsletter.aspx> and click on "May 2009 newsletter" to view.

If you haven't already, connect with us on LinkedIn! Use this open platform to network with other HFBOA members around the globe. We encourage all members to:

- Post interesting articles
- Discuss recent events
- Share best practices and ask for suggestions from other fund managers and ops execs

We look forward to connecting with you online!