

# The Fourth Annual National Institute on Securities Fraud

**October  
15-16, 2009**

The Ritz-Carlton  
Washington, DC



Presented by  
**The American Bar Association  
Criminal Justice Section,  
Section of Business Law,  
and the ABA Center for  
Continuing Legal Education**

# The Fourth Annual National Institute on Securities Fraud

October 15-16, 2009 | The Ritz-Carlton | Washington, DC

For more information about this National Institute, the ABA, the ABA Criminal Justice Section, Section of Business Law, and/or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit our Web site at [www.abacle.org](http://www.abacle.org).

## Program Description

The end of 2008 and beginning of 2009 saw the financial markets collapse and administration change hands. Ponzi schemes are back, the FCPA is still hot, good old fashioned financial fraud seems unending, and the drumbeat for more prosecutions, stricter enforcement and stiffer penalties has never been louder. In response, the new teams at DOJ and SEC are already demonstrating renewed vigor and gearing up for aggressive enforcement in an effort to restore investor confidence.

By attending this program, you will gain valuable insights from the very best in the profession: judges, prosecutors, regulators, academics, compliance officers, and defense counsel. Top officials and luminaries from the SEC, DOJ, law schools, corporations, and top-tier law firms will share their insights concerning a multitude of important subjects. Find out what to expect next and how to prepare for these new developments in the ever present, headline-making area of securities fraud.

This educational and professional forum sponsored by the Securities Fraud National Institute Planning Committee, in cooperation with the Criminal Justice Section White Collar Crime Committee and the Section of Business Law, will provide you the opportunity to discuss the legal and ethical issues that arise in securities fraud matters in both plenary and break out sessions.

## Planning Committee

**Thomas A. Hanusik**, Partner, *Crowell & Moring, LLP*, Washington, DC

**Philip H. Hilder**, Partner, *Hilder & Associates, PC*, Houston, TX

**Michael E. Clark**, Partner, *Hamel Bowers & Clark L.L.P.*, Houston, TX

**Marvin G. Pickholz**, Partner, *Duane Morris LLP*, New York

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Assistant Attorney General  
**Lanny A. Breuer**

and

U.S. Securities and Exchange  
Enforcement Director  
**Robert Khuzami**

# Program Agenda

## Day One ■ Thursday ■ October 15, 2009

### 7:30 a.m. Registration

### 8:45 a.m. Opening Remarks

### 9:00 a.m. Plenary Session

Developments, Trends and Expectations in Securities Fraud Investigations and Prosecutions: Listen and learn as this panel of SEC and DOJ insiders and practitioners outlines what to expect on the regulatory, criminal and legislative fronts in the coming year.

**Moderator:** Thomas A. Hanusik  
Bruce Baird Leslie R. Caldwell  
Lanny A. Breuer Robert Khuzami

### 10:00 a.m. Break - Sponsored by Navigant Consulting, Inc.

### 10:15 a.m. Breakout Session I

#### A. RESERVE ACCOUNTING CASES – THEY'RE BACK

Call it a cookie jar, call it a kitty, call it what you will. The temptation to manage the numbers by creating and later dipping into a reserve seems ever present and always provides good fodder for SEC enforcement actions and DOJ prosecutions. Is history just repeating itself or have new methods emerged to avoid detection? Explore the latest trends in reserve manipulation with a panel of SEC, DOJ and defense practitioners who have prosecuted and defended all manner of such cases.

**Moderator:** Pamela J. Parizek  
Gregory G. Faragasso Robert W. Pommer, III  
Glen S. McGorty Russell G. Ryan

#### B. EXTRATERRITORIAL JURISDICTION/VENUE OVER COMPANIES AND INDIVIDUALS

Just how far does the jurisdiction of the United States reach? And how far should it? Is it different for companies than for individuals? For publicly traded v. privately held companies? For U.S. citizens v. foreign nationals? And how do you explain to an overseas client that he is being charged with violating a U.S. law that he never even heard of? Learn different perspectives from a panel of government and private practitioners, from the U.S. and abroad.

**Moderator:** Jonathan R. Barr  
Joshua R. Hochberg Cheryl Scarboro  
Kelly McKinnon William J. Stuckwisch

### 11:15 a.m. Break

### 11:30 a.m. Breakout Session II

#### ETHICS

#### A. THE GOVERNMENT'S "NEW" POLICIES ON PRIVILEGE: PLUS ÇA CHANGE, PLUS C'EST LA MÊME CHOSE

Just when you could say "Holder-Thompson-McNulty" three times fast, former Deputy Attorney General Mark Filip issued another version of the second most controversial memo at DOJ in the past ten years. The SEC is still grappling with its own iterations of the Seaboard Report, Statement on Financial Penalties and Enforcement Manual. Do any of these "new" policies impose additional ethical obligations on the government lawyers? Is there true accountability for those who stray? What about the defense bar? Are there ethical limits on charges of prosecutorial misconduct that these ever changing guidelines seem to inspire? Are there ethical implications for advising clients when the landscape changes almost annually? Learn from those who know what the latest iterations of these policies mean for you and your clients, as well as additional changes that may be in the pipeline.

**Moderator:** Richard C. Smith  
Bradley J. Bondi Michael N. Levy  
James L. Cooper Steven Tyrrell

## **B. INTERNAL CONTROLS AND REMEDIAL MEASURES: WHAT IS THE GOVERNMENT'S ROLE?**

Publicly traded companies are required to maintain a “system of internal accounting controls” and they are expected to implement appropriate “remedial measures” when things go awry. But what is the government’s role in determining the adequacy of a company’s internal controls? Its role in deciding whether certain remedial measures – usually involving separation from key personnel – are necessary? Or whether those results are in the best interest of shareholders? How far can the government go in imposing its views?

**Moderator:** Michael E. Clark  
Colleen A. Conry  
David U. Gourevitch

Robert Gray  
Gerald Hodgkins

### **12:30 p.m. Luncheon Keynote Address**

(Speaker to be announced)

### **1:45 p.m. Breakout Session III**

#### **A. ANATOMY OF A PONZI SCHEME: FROM INITIATION TO DETECTION**

Bernie Madoff pleaded guilty and received a 150-year sentence. Sir Alan Stanford is insisting he will fight to the end, despite deplorable conditions in jail. Both were alleged to have run the largest Ponzi schemes in history for a long time. Learn from this group of experts how Ponzi schemes begin, how they fall apart and, most importantly, how the people who run them get prosecuted.

**Moderator:** Steven R. Peikin  
J. Kevin Edmundson  
Paul Pelletier

F. Joseph Warin

#### **B. IS EVERYTHING CRIMINAL? WHAT EVER HAPPENED TO REGULATORY VIOLATIONS?**

In an age where the SEC and FINRA police the securities markets with ever increasing vigilance, the number of criminal securities fraud prosecutions is still on the rise. Are there any pure regulatory violations left? Does the DOJ ever decline to prosecute when it has jurisdiction in the wake of an SEC or FINRA settlement that it considers appropriate? If so, when? Learn how to keep things civil from this panel of experts who have prosecuted and defended all varieties of charges.

**Moderator:** Saul M. Pilchen  
Joshua E. Levine  
Luis Mejia

Daniel A. Nathan  
David Zinn

### **2:45 p.m. Break**

### **3:00 p.m. Breakout Session IV**

#### **A. THE ROLE OF AUDITORS: IS INDEPENDENCE MUTUALLY EXCLUSIVE FROM A CLIENT RELATIONSHIP?**

The fact that Sarbanes-Oxley changed the dynamic between auditors and their clients is a given, just how much is less clear. Learn from this panel of experts on both sides of the table just how much that relationship has changed as they explore the role of the auditor, the meaning of “pressure” and the expectations for an “independent” audit.

**Moderator:** R. Daniel O’Connor  
John Carney  
Richard Haynes

David L. Kornblau  
Claudius Modesti

## **B. HEDGE FUND REGULATION – IS IT INEVITABLE? DOES IT ALREADY EXIST?**

Are hedge funds responsible for the collapse of the financial markets? Did anyone really believe that they were? Should they have to pay the price for the misdeeds of Bernie Madoff and others? Will that approach solve anything or will it just make it more expensive to invest? Learn from this panel of expert practitioners with different perspectives — in-house at a hedge fund, SEC enforcement and investment management and the defense bar — what has changed, what is likely to change and what might change when it comes to hedge fund regulation and enforcement.

**Moderator:** Daniel L. Zelenko  
Tom Biolsi  
Robert B. Kaplan

Manish K. Mital  
Walter G. Ricciardi

**4:00 p.m. Break**

**4:15 p.m. Breakout Session V**

### **A. INSIDER TRADING KNOWS NO BOUNDS: WHAT THEORY WILL THEY COME UP WITH NEXT?**

As it stands now, a hacker in the Ukraine cannot trade on inside information obtained from the U.S. if he was deceptive in getting access to it, but the 5%+ investor in Texas (who might also own a pro basketball team) can as long as he never promised not to? Do these cases make sense? Is there now a split in the circuits? Is a fiduciary duty required everywhere except the Second Circuit? Learn from experts in the field what the latest theories of prosecution are for insider trading cases, which defenses are effective, and which are not.

**Moderator:** William B. Mateja  
Michael A. Collora  
Michael S. Dry

Scott W. Friestad  
George B. Parizek

### **B. PAY TO PLAY**

It used to be that pay to play involved a corrupt politician and some bond work or maybe a government contract for a new building. And sometimes it still does. But now, the SEC is proposing rules to curtail “pay to play” practices by investment advisers who want to manage money for state and local governments. Both the SEC and DOJ are becoming ever more vigilant in prosecuting those who “pay to play” and those who get “paid.” Explore the latest series of prosecutions and rule proposals with this panel of experienced counsel in the “pay to play” arena.

**Moderator:** Elizabeth P. Gray  
David Blass  
David Rosenfeld

Jeffrey H. Rutherford  
David K. Willingham

**5:15 p.m. Adjourn**

**5:15 p.m. Reception - Sponsored in part by KPMG**

## **Day Two ■ Friday ■ October 16, 2009**

**9:00 a.m. Plenary Session**

The FCPA: It's Not Just Another Four Letter Word: Record breaking settlements with Siemens and KBR. There is a surge in the number of individuals, both domestic and foreign, being investigated and prosecuted. Come hear what prosecutors, in house counsel and defense lawyers who deal with the FCPA have to say concerning these cases and the ones in the pipeline, and on issues ranging from the challenges of obtaining evidence abroad (even from clients!) to extradition.

**Moderator:** Philip H. Hilder  
Peter B. Clark  
Stephen Korotash  
Mark F. Mendelsohn

C.E. Rhodes, Jr  
Robert W. Tarun

**10:00 a.m. Break**

## 10:15 a.m. Breakout Session I

### A. THE IMPACT OF BLOGGERS AND E-MEDIA ON SECURITIES FRAUD INVESTIGATIONS AND PROSECUTIONS

If they existed ten years ago, no one noticed. However, blogs now have become an all important source of real-time information. Their constituents include juries, judges, prosecutors and defense lawyers. What does all of this mean for the latest form of citation to find its way into briefs filed in courts all over the country?

**Moderator:** David Z. Seide  
Bruce Carton  
Thomas O. Gorman  
Professor Ellen S. Podgor

### B. CONFLICTS OF LAWS IN CROSS-BORDER INVESTIGATIONS AND PROSECUTIONS: IS COMITY DEAD?

Whether the issue is producing personal data subject to strict privacy laws, interviewing foreign nationals about potential violations of U.S. laws, or trying to defend/extradite a foreign national for U.S. based charges, the conflicts are not getting any easier to understand or address. Listen in as this panel of U.S. and non-U.S. experts discuss some of the obstacles they have encountered as well as the solutions that helped resolve them.

**Moderator:** Marvin G. Pickholz  
Ashish S. Joshi  
Raymond Lohier  
Jonathan R. Tuttle  
Philip Urofsky

## 11:15 a.m. Break

## 11:30 a.m. Breakout Session II

### ETHICS

### A. SENTENCING: WE'VE GOT NOTHING BUT TIME

Bernie Madoff received 150 years after accepting responsibility for his crimes. Other major securities fraud cases with losses measuring in the \$100s of millions resulted in sentences between 1 and 10 years in the same year. What are the ethical requirements for defense lawyers and prosecutors at the sentencing stage? Do judges have an ethical obligation to maintain some consistency in how sentences are applied from one district to another? Within the same district? Learn from the best as this panel, moderated by a federal judge, explores these issues and more.

**Moderator:** Honorable Amy St. Eve  
Christine C. Ewell  
James Mutchnik  
Gil M. Soffer  
Brian A. Sun

### B. PRACTICAL ADVICE FOR DEFENDING A SECURITIES FRAUD PROSECUTION OR ENFORCEMENT ACTION

Trials, trials, trials. Everyone wants trials. But securities fraud criminal prosecutions and enforcement present complications and hurdles that other cases do not. Explore the factors that differentiate securities fraud cases from others, including the complexity of the underlying transactions, the need for and role of outside experts, evidentiary issues and affirmative defenses that work (and those that do not!).

**Moderator:** Sean M. Berkowitz  
John C. Hueston  
Janet I. Levine  
Gary S. Lincenberg  
Lorin L. Reisner  
Jane Raskin

## 12:30 p.m. Conference Concludes

# UNABLE TO ATTEND?



See registration and order form for course materials and audio CD from this program.

For more information about this National Institute, the ABA, the ABA Criminal Justice Section, Section of Business Law, and/or ABA-CLE, phone ABA Member Services at 800.285.2221 or visit our Web site at [www.abacle.org](http://www.abacle.org).

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## REGISTRATION FEES

To register, or for additional information, call 800.285.2221 or 312.988.5522 or visit the ABA-CLE Web site at [www.abacle.org/programs/n09sfr1.html](http://www.abacle.org/programs/n09sfr1.html).

- **\$950** for the General Public
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Every registrant will receive a copy of the informative course materials book that can be used as a comprehensive resource long after the program is held.

## GROUP AND OTHER DISCOUNTS

Register three or more people at the same time to receive an additional \$50 reduction on each program tuition. Larger group discounts and special rates for full-time law students, academics and government employees also are available. Contact Earnestine Murphy at 312.988.6204.

## MCLE

Mandatory continuing legal accreditation has been requested from all states that require continuing legal education. 9.25 hours of CLE credit have been requested from those states recognizing a 60-minute credit hour including 2.0 hours of Ethics and 11.1 hours of CLE credit have been requested from those states recognizing a 50-minute credit hours including 2.4 hours of ethics.

**For NY-licensed attorneys:** This transitional CLE program has been approved for all NY-licensed attorneys in accordance with the requirements of the New York State CLE Board of New York MCLE (9.50 total NY transitional MCLE credits including 2.00 hours of Ethics).

## SCHOLARSHIPS

Scholarships to defray tuition expense for National Institutes are available upon application. Preference will be given to public interest lawyers, government lawyers, law professors and solo or small firm practitioners. For more information on scholarships go to [www.abacle.org/scholarship](http://www.abacle.org/scholarship).

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If special arrangements are required, please contact Earnestine Murphy at 312.988.6204. Reasonable advance notice is requested.

## SPONSORSHIP OPPORTUNITIES

For information on sponsorship opportunities, please contact Earnestine Murphy at 312.988.6204.

## CANCELLATIONS

Cancellations received 5 business days or more before the program will receive a 100% refund, less a \$50 cancellation fee. No refunds will be provided

for cancellations after that date; however, substitute registrants are welcome at any time. To cancel your registration or substitute another individual, please call the ABA Service Center at 800.285.2221 or fax your request to 312.988.5850. Registrants who do not cancel within the allotted time period and who do not attend the program will receive a copy of the program course materials after the program.

## PROGRAM CONFIRMATION

Written confirmation of your registration will be sent to you upon receipt. Please bring it with you to the National Institute as proof of registration. If you do not receive the confirmation notice prior to the presentation, please call the ABA at least 24 hours in advance to confirm that your registration was received and the program is being held as scheduled.

## HOTEL INFORMATION

The Ritz-Carlton, Washington, DC  
1150 22nd Street, NW  
Washington, DC 20037  
P: 202.835.0500 | F: 202.835.1588  
Single/Double: \$339

All room rates are subject to city occupancy and sales tax. **Mention this ABA meeting to receive the special discounted rate.**

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Discounted fares are available from ABA Orbitz for Business including ABA negotiated discounts on American, United and Continental Airlines. To book online, go to [www.abanet.org/travel](http://www.abanet.org/travel) click under the Orbitz for Business logo at the top of the page click on the appropriate link in the Self Paid Travel box. For assistance with online or offline reservations, call toll free 1.877.222.4185.

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**David W. Hilgers**, Chair, *Brown McCarroll, L.L.P.*, Austin, TX

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**Rick Vittenson**, Director  
**Earnestine Murphy**, Deputy Director of Programming

# Registration and Order Form

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October 15-16, 2009 | The Ritz-Carlton | Washington, DC

### TUITION

- \$950 for the General Public
- \$825 for ABA Members (\$125 Savings)  
ABA # \_\_\_\_\_
- \$775 for Criminal Justice Section and Section of Business Law Members (\$175 Savings)
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Please check one workshop for each day and time slot.

#### BREAKOUT SESSION I ■ THURSDAY, 10:15 A.M.

- A. RESERVE ACCOUNTING CASES – THEY'RE BACK
- B. EXTRATERRITORIAL JURISDICTION/VENUE OVER COMPANIES AND INDIVIDUALS

#### BREAKOUT SESSION II ■ THURSDAY, 11:30 A.M.

- A. THE GOVERNMENT'S "NEW" POLICIES ON PRIVILEGE: PLUS ÇA CHANGE, PLUS C'EST LA MÊME CHOSE **ETHICS**
- B. INTERNAL CONTROLS AND REMEDIAL MEASURES: WHAT IS THE GOVERNMENT'S ROLE?

#### BREAKOUT SESSION III ■ THURSDAY, 1:45 P.M.

- A. ANATOMY OF A PONZI SCHEME: FROM INITIATION TO DETECTION
- B. IS EVERYTHING CRIMINAL? WHAT EVER HAPPENED TO REGULATORY VIOLATIONS?

#### BREAKOUT SESSION IV ■ THURSDAY, 3:00 P.M.

- A. THE ROLE OF AUDITORS: IS INDEPENDENCE MUTUALLY EXCLUSIVE FROM A CLIENT RELATIONSHIP?
- B. HEDGE FUND REGULATION - IS IT INEVITABLE? DOES IT ALREADY EXIST?

#### BREAKOUT SESSION V ■ Thursday, 4:15 P.M.

- A. INSIDER TRADING KNOWS NO BOUNDS: WHAT THEORY WILL THEY COME UP WITH NEXT?
- B. PAY TO PLAY

#### BREAKOUT SESSION I ■ Friday, 10:15 A.M.

- A. THE IMPACT OF BLOGGERS AND E-MEDIA ON SECURITIES FRAUD INVESTIGATIONS AND PROSECUTIONS
- B. CONFLICTS OF LAWS IN CROSS-BORDER INVESTIGATIONS AND PROSECUTIONS – IS COMITY DEAD?

#### BREAKOUT SESSION II ■ Friday, 11:30 A.M.

- A. SENTENCING: WE'VE GOT NOTHING BUT TIME **ETHICS**
- B. PRACTICAL ADVICE FOR DEFENDING A SECURITIES FRAUD PROSECUTION OR ENFORCEMENT ACTION

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