Hedge Funds: Structuring, Advising, and Regulating
UC Berkeley School of Law, Boalt Hall
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Objectives: The class introduces students to the legal landscape in which hedge funds operate. Students learn about the basic regulatory framework applicable to funds, structuring of funds, agreements among the parties involved with funds, and current trends. In addition the course will critically analyze the current regulation of funds and proposals for reform.

Prerequisites: The class has no course prerequisites. Students who are interested in advising hedge funds, in regulating hedge funds, or in reforming the hedge fund industry will all benefit from the course. Students should have a basic understanding of the financial industry (at a New York Times level) and a general understanding of tax and corporate law terminology.

Course Format: Over half of the classes are lectures and class discussions covering, at a high level, key substantive legal and regulatory topics. The remaining classes are split evenly between: 1) in-depth discussions of a current 'hot topic' and 2) guest speakers. The first few weeks will consists exclusively of lectures and class discussion.

Course Grading: 10% class participation, 90% final exam

Class Times and Office Hours: Class will meet Wednesday evenings from 6:25pm to 8:15pm in Room 141. Office hours will be held each Wednesday in the law school café from 5:30pm until 10 minutes before class starts.

Lectures:

1. Hedge Fund Overview

a) Distinctions and definitions of various pools of capital (venture capital, private equity, hedge funds, mutual funds, etc.)
b) What is a hedge fund?
c) History of the industry
d) Important figures and funds in the industry (Robertson, LTCM, Soros, SAC, Renaissance, etc.)
e) Strategies used by hedge funds (equity long-short, distressed, credit funds, etc.)
f) Key terms used in the industry

Class Readings:

1) "An Introduction to Hedge Funds" by Gregory Connor and Mason Woo http://www.iam.uk.com/press/lse-publications/An-Introduction-to-Hedge-Funds.pdf
2) "An Introduction to Hedge Fund Strategies" by Gregory Connor and Teo Lasarte http://www.iam.uk.com/press/lse-publications/An-Introduction-to-Hedge-Fund-Strategies.pdf

2. Hedge Fund Structuring

a) tax overview and tax efficient structuring
b) legal entity choices
c) Investment Company Act of 1940 exemptions (3(c)(1) and 3 (c)(7) funds)
d) 'Onshore funds'
e) 'Offshore funds'
f) Master-Feeder structure/ Mini-Master Structure
g) Investor profiles for various structures

Class Readings:

1) "Demystifying Hedge Funds: A Design Primer" by Henry Ordower http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1270265

2) "The U.S. Federal Income Tax Treatment of Hedge Funds, Their Investors, and Their Managers" By David Miller and Jean Bertrand
Pages: 1-10, 104-108, 26-33
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1758748&http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1758748

3. Regulatory and Legal Framework (Funds)

a) Board of Directors of funds (*Weavering* case in Cayman Islands)
b) Fund launch (walk through all the aspects of a launch)
c) CIMA/FSC registration and regulation
d) 40 Act exemptions further discussion
e) Private placement rules (Form D, 4(2)) including impact of JOBS Act
f) Offering documents (disclosure requirements generally)
g) Exchange Act Sections 13 & 16
h) '34 Act including impact of JOBS Act

Class Readings:

1) *Weavering* Case (Grand Court of the Cayman Islands)

http://www.opalesque.com/files/20110826_Weavering_Judgement.PDF

2) Sample launch checklist and Offering Memorandum [Provided in class #2]

3) Securities Offerings – Compliance with State and Federal Securities Law by 360 Venture Law
http://www.businesslaw360.com/wp-content/plugins/downloads-manager/upload/Securities%20Law%20Primer%20for%20Clients%20and%20Friends%20of%20360VL%20010910.pdf

4) Section 13 SEC Reporting by Advisers and Brokers and Section 16 SEC Reporting by "Insiders" of Public Companies by Paul Hastings
http://www.paulhastings.com/assets/publications/1827.pdf

5) JOBS Act: Senate Passes Legislation To Raise the 500 Shareholder Threshold for SEC Registration and To Relax General Solicitation Prohibition in Reg D Offerings
http://www.davispolk.com/files/Publication/72edd0a9-13eb-4787-b44a-2980a3dff2ac/Presentation/PublicationAttachment/f2a02a3f-57c0-48f5-ab69-2afdd06d1a9a/032312_JOBS_Act..pdf

4. Regulatory Framework (Investment Advisors)

a) Advisers Act of 1940
b) Registration
c) Form ADV
d) Fiduciary duties
e) Fees, the custody rule, recording keep, code of ethics
f) § 206 liability for failure to supervise (liability without scienter)
g) Role of Chief Compliance Officer

Class Readings:

1) Investment Advisors Act of 1940 [as amended through P.L. 112-7, approved March 31, 2011]
http://www.sec.gov/about/laws/iaa40.pdf

2) Rules and Regulations, Investment Advisers Act of 1940
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a61aacf9c1d91d53459ec7d696980de0&rgn=div5&view=text&node=17:3.0.1.1.18&idno=17

3) Guide to SEC Investment Adviser Registration for Hedge Fund and Private Equity Fund Managers
http://www.bingham.com/ExternalObjects/Docs/Bingham_Guide%20to%20Registration_(5969).pdf

5. Investment Advisor Regulatory Compliance

a) Personal account trading control
b) Trade allocation policy
c) Pricing committee
d) Best execution and use of soft dollar (explanation of soft-dollars)
e) Proxy voting
f) AML
g) ERISA 'plan asset' test
h) Public filings (13F, 13D, 13G, 13H)

Class Readings:

1) Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934
http://www.sec.gov/rules/interp/2006/34-54165.pdf

2) Guide to U.S. Anti-Money Laundering Requirements (4th Edition) [Pages 9-24 Only]
http://www.protiviti.com/en-US/Insights/Browse-by-Content/Resource-Guides/Documents/Guide-to-US-AML-Requirements-4thEdition-Protiviti.pdf

3) DOL ERISA Advisory Council: "The Conundrum Facing ERISA Plans that invest in Hedge Funds and Fund of Funds"
http://www.dol.gov/ebsa/pdf/hymowitz071911.pdf

4) What to Do if Your Fund Becomes Subject to ERISA
http://www.morganlewis.com/pubs/IL_SubjectToERISA.pdf

6. Dodd-Frank Overview

a) Impact on hedge funds
b) SEC vs. CFCT areas of substantive oversight
c) Arguments for and against
d) Comparison between US approach (Dodd-Frank) and European approach (AIFM)

Class Readings:

1) Dodd-Frank Progress Report
http://www.davispolk.com/files/Publication/0070db24-e562-4666-832c-03ad96defd42/Presentation/PublicationAttachment/b1836732-9b89-46be-a9e5-07c77a08d62a/Jan2012_Dodd.Frank.Progress.Report.pdf

2) Impact of the Dodd-Frank Act on Private Equity Funds, Hedge Funds and Their Investment Advisers
http://www.davispolk.com/files/Publication/66d6504a-7e38-43e2-b1f6-00e52e205c19/Presentation/PublicationAttachment/507520c9-230f-4669-a368-0622e2cbb2cf/091510_PE_NL.pdf

3) Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010

http://www.davispolk.com/files/Publication/efb94428-9911-4472-b5dd-006e9c6185bb/Presentation/PublicationAttachment/efd835f6-2014-4a48-832d-00aa2a4e3fdd/070910_Financial_Reform_Summary.pdf

7. Key Industry participants and the agreements governing their relationships

a) Prime Brokers (asset protection issues)
b) Derivatives counter parties (ISDA architecture)
c) Custody Agreements
d) Investment Advisor
e) Auditors
f) Trading counterparties
g) Fund Administrators

Class Readings:

1) Trends in Prime Brokerage
http://www.davispolk.com/files/Publication/030265d8-47e5-4de9-8a35-656619e6e4aa/Presentation/PublicationAttachment/6499d894-1466-4470-866f-6a4af93f322b/njordan.rcolby.practicallaw.article.apr10.pdf

2) An Introduction to the Documentation of OTC Derivatives
http://www.isda.org/educat/pdf/documentation_of_derivatives.pdf

3) An Introduction to the Documentation of OTC Derivatives-"Ten Themes"
http://www.isda.org/educat/pdf/ten-themes.pdf

4) The 10 Questions Hedge Fund Managers Need to Ask When Outsourcing Fund Administration
http://www.geminifund.com/marketing/articles/outsourcing_hedge_fund_administration.pdf

5) Lehman Brothers' Bankruptcy -- Lessons learned for the survivors
http://www.pwc.com/jg/en/events/Lessons-learned-for-the-survivors.pdf

8. Investors/Marketing/Distribution

a) Who invests in hedge funds?
b) Side letters
c) The due diligence process
d) Private placement laws
e) Sophisticated investor rules (and fee structures)
f) HNW platforms and Third-party marketers
g) Transparency
h) Pay-to-play rules (CA-Lobbying rules)
i) Prime Brokerage 'Cap Intro' services

Class Readings:

1) The Spectrum of Hedge Fund Investors and a Roadmap to Effective Marketing by Suber, Quartarao, and McCurdy
http://merlinsecurities.com/media/uploads/spectrum.pdf

2) Principles and Best Practices for Hedge Fund Investors (Report of the Investors' Committee to The President's Working Group on Financial Markets)
http://www.amaicmte.org/Public/Investors_Committee_Report.pdf

In-depth Modules:

1. The Short Selling Debates

a) Mechanics of short selling
b) Regulatory attempts to control abusive short selling
c) Market efficiency and short selling
e) Uptick rule
f) Naked short selling (the company perspective)
g) Form SH and international reporting requirements

Class Readings:

1) Background, overview and mechanics of a Short Sale
http://www.interactivebrokers.com/en/p.php?f=shortableStocks
http://en.wikipedia.org/wiki/Short_(finance)

2) Questioning the Benefit of Curbing Short Sales (NYTimes)
http://www.nytimes.com/2011/12/16/business/questioning-the-evil-of-short-sales-high-low-finance.html?pagewanted=all

3) Short Selling by Menachem Brenner and Marti Subrahmanyam
http://pages.stern.nyu.edu/~mbrenner/research/short_selling.pdf

4) Market Declines: Is Banning Short Selling the Solution? By Battalio, Mehran, Schultz
http://www.newyorkfed.org/research/staff_reports/sr518.pdf

5) In Pursuit of the Naked Short by Alexis Brown Stokes
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1769014

2. The Galleon Case: Understanding Insider Information issues for Hedge Funds

a) Defining Material Non-Public Information
b) History of regulation
c) Different approaches to regulation
d) Current and important cases
e) Hedge Fund's use of Expert Networks

Class Readings

1) Recent Developments in the Law of Insider Trading and Material Non-Public Information
http://www.cov.com/files/Publication/5bd8d976-2faa-490a-86a1-ac2265dd9bc4/Presentation/PublicationAttachment/cbc992cb-aa02-42d1-95a9-b019dc56ede3/Recent%20Developments%20in%20the%20Law%20of%20Insider%20Trading%20and%20Material%20Nonpublic%20Information.pdf

2) Memorandum and Order, US v. Rajaratnam, S1 09 CR 1184, SD NY, August 16, 2011
http://www.law.du.edu/documents/corporate-governance/criminal/rajaratnam/Memorandum-and-Order-US-v-Rajaratnam-S1-09-CR-1184-SD-NY-August-16-2011.pdf

3) Government's Sentencing Memorandum, US v. Rajaratnam, S1 09 CR 1184, SD NY, August 9, 2011
http://www.law.du.edu/documents/corporate-governance/criminal/rajaratnam/Governments-Sentencing-Memorandum-US-v-Rajaratnam-S1-09-CR-1184-SD-NY-August-9-2011.pdf

4) Sentencing Memorandum on Behalf of Raj Rajaratnam, US v. Rajaratnam, S1 09 CR 1184, SD NY, August 9, 2011
http://www.law.du.edu/documents/corporate-governance/criminal/rajaratnam/Sentencing-Memorandum-on-Behalf-of-Raj-Rajaratnam-US-v-Rajaratnam-S1-09-CR-1184-SD-NY-August-9-2011.pdf

3. Regulatory proposals

Each student will be asked to outline a financial regulation or the repeal of a financial industry regulation that they would propose to Congress. They will prepare arguments in favor of the proposal, anticipate arguments against, and present an overview to the class. The class will discuss and debate the merits of the proposed legislation.

Class Readings:

There are no assigned readings for this class. If you want to pass out any materials or articles in connection with your class proposal, please email them to me a few days before class and I will print and bring them with me to class.

Expert lectures:

1. Raj Venkatesan and Doug Dillard, Co-Managing Partners, Standard Pacific Capital, LLC

Portfolio construction and process at a global equity long-short fund, risk control, key terms of art (exposure, risk specific hedging, etc.), daily trading levels, research, expert networks, consensus views, industry insights.

Class Readings:

[TBD]

2. Institutional Investor Representative [TBD]

Institutional investors, aligning institutional investors' and managers' economic interests, structuring long term investment relationships.

Class Readings:

[TBD]

3. Cindy Powers, PwC and Dave Lindberg, CFO, Standard Pacific Capital, LLC

Hedge fund accounting basics; FATCA

Class Readings:

[TBD]