

Comply Die or

LAW FIRMS HELP THEIR
HEDGE FUND CLIENTS STAY ON
THE RIGHT SIDE OF THE
LEGAL LINE.

By Ben Baris

HEDGE FUND FIRMS HAVE COME UNDER FIRE FROM THEIR INVESTORS FOR FAILING to deliver strong performance. But those few that have done exceptionally well have faced another kind of scrutiny: subpoenas from the U.S. Securities and Exchange Commission.

As part of the SEC's Aberrational Performance Inquiry, launched in 2009, some hedge fund firms that have delivered performance in excess of certain benchmarks have also earned visits from agency auditors, who poke around to make sure those returns are not too good to be true. The SEC already has ensnared at least half a dozen firms as part of the inquiry, and the regulator has indicated it will stay vigilant at policing hedge funds whose returns raise suspicions.

Enter the lawyers. "We recently handled a number of subpoenas to hedge fund managers whose funds have outperformed the relevant indices or have shown consistent returns over the

TOP LAW FIRMS

RANK	COMPANY
ONSHORE	
1	Sidley Austin
2	Schulte Roth & Zabel
3	Akin Gump Strauss Hauer & Feld
4	Katten Muchin Rosenman
5	Seward & Kissel
6	Bingham McCutchen
7	Dechert
8	Shartsis Friese
9	Simmons & Simmons
10	Sadis & Goldberg
OFFSHORE	
1	Ogier
2	Maples and Calder
3	Walkers

years," says Michael Schmidtberger, New York-based co-head of the investment funds, advisers and derivatives group for Chicago law firm Sidley Austin. Schmidtberger says that in the past year the firm's work has included resolving several enforcement matters, representing hedge fund managers in an enforcement initia-

tive concerning short sales and secondary offerings and going to trial for cases related to the Bernard Madoff fraud. "The work was certainly more than routine regulatory and compliance advice," he says.

The SEC's increased scrutiny of performance — coupled with a long list of post-2008 regulatory changes, including the Dodd-Frank Wall Street Reform and Consumer Protection Act, form PF, Rule 506 amendments and overseas regulations like the Alternative Investment Fund Managers Directive — means that hedge funds just may spend more time complying than investing.

The law firms that hedge fund managers say have best guided them through this complex web of post-financial crisis rules and regulations top this year's 2014 Alpha Awards ranking. Leading this year's list of onshore law firms, as chosen by hedge fund firms, is Sidley Austin, which ranks No. 1 in five of the six categories on which hedge fund managers were asked to rate their law firms. Longtime hedge fund specialist Schulte Roth & Zabel lands at No. 2 in the rankings, with Akin Gump Strauss Hauer & Feld taking the No. 3 spot. In the offshore law firm rankings, Cayman Islands-based Ogier comes out on top. Island neighbor Maples and Calder takes the No. 2 spot, with Cayman-headquartered Walkers coming in third.

Schmidtberger says that in addition to hiring in-house compliance officers, hedge fund firms are increasingly reliant on their lawyers to help them stay on top of new regulations. "For many of them, they recognize regulatory risk as their biggest risk — not performance," says Schmidtberger, who is also managing partner of Sidley's New York office. "They have long-term track records. Clients understand they will underperform a bull market but they will outperform a bear market; they don't under-

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MICHAEL SCHMIDTBERGER, SIDLEY AUSTIN

stand, and have a hard time dealing with, regulatory failings."

Schmidtberger points out that following the letter of the law can be more critical for hedge fund firms than for other companies: "Large corporates in the industrial sectors in heartland America can pay fines to the Environmental Protection Agency for pollution or pay trading fines, and it's a cost of doing business, but in the hedge fund business, a serious regulatory allegation or investigation can be enough to put a firm out of business."

As a result, Sidley is keen on keeping its clients up-to-date on regulatory matters, even hosting talks with SEC staff members to encourage dialogue between the regulator and the law firm's clients. Managers appreciate the extra effort: The firm ranks No. 1 in the Client Service, Document Preparation & Fund Formation, Hedge Fund Expertise, Regulatory & Compliance and Tax Law Expertise categories.

Approximately 120 of Sidley's 1,800 lawyers worldwide are focused on investment funds, working in such areas as fund formation and overall fund operations. Additional lawyers not included in that number specialize in tax, ERISA, employee benefits or market regulation. "This is a big practice within what is a very large and very geographically diverse law firm," Schmidtberger says.

TOP FIRMS BY ASPECTS OF SERVICE

RANK	COMPANY	RANK	COMPANY
ONSHORE		TAX LAW EXPERTISE	
BUSINESS PLANNING & CORPORATE FINANCE		1	Sidley Austin
1	Schulte Roth & Zabel	2	Schulte Roth & Zabel
2	Sidley Austin	3	Akin Gump Strauss Hauer & Feld
3	Akin Gump Strauss Hauer & Feld	4	Dechert
4	Seward & Kissel	5	Seward & Kissel
CLIENT SERVICE		OFFSHORE	
1	Sidley Austin	BUSINESS PLANNING & CORPORATE FINANCE*	
2	Schulte Roth & Zabel	1	Maples and Calder
3	Seward & Kissel	2	Ogier
4	Bingham McCutchen	CLIENT SERVICE	
5	Akin Gump Strauss Hauer & Feld	1	Ogier
DOCUMENT PREPARATION & FUND FORMATION		2	Maples and Calder
1	Sidley Austin	3	Walkers
2	Schulte Roth & Zabel	DOCUMENT PREPARATION & FUND FORMATION	
3	Katten Muchin Rosenman	1	Ogier
4	Seward & Kissel	2	Walkers
5	Dechert	3	Maples and Calder
HEDGE FUND EXPERTISE		HEDGE FUND EXPERTISE	
1	Sidley Austin	1	Ogier
2	Schulte Roth & Zabel	2	Walkers
3	Akin Gump Strauss Hauer & Feld	3	Maples and Calder
4	Shartsis Friese	REGULATORY & COMPLIANCE	
5	Seward & Kissel	1	Ogier
REGULATORY & COMPLIANCE		2	Walkers
1	Sidley Austin	3	Maples and Calder
2	Schulte Roth & Zabel	TAX LAW EXPERTISE	
3	Katten Muchin Rosenman	1	Maples and Calder
4	Shartsis Friese	2	Walkers
5	Akin Gump Strauss Hauer & Feld	3	Ogier

*Only two firms had enough voter responses to qualify in this area.

Sidley hired several big-name lawyers in 2013. In April, Man Group general counsel Stephen Ross joined as co-head of the London investment funds group. Also in April, the firm added approximately 30 lawyers from the highly regarded securities enforcement and regulatory division of Boston-based law firm Bingham McCutchen. In an effort to strengthen its Asian

presence and offerings, Sidley added four lawyers to its Singapore office in September, including former Clifford Chance partner and renowned international fund expert Han Ming Ho. It also hired former Kaye Scholer investment fund chairman Timothy Spangler for its Los Angeles office.

With 375 lawyers, New York-based Schulte Roth is smaller than many of its peers, but its longevity in the hedge fund business has put it in good stead with clients. The firm, founded in 1969, represents about half of the world's 100 biggest hedge fund firms in a large capacity of services, including fund structuring and marketing, investments and compliance. Co-founding partner Paul Roth, who still chairs the investment management practice, remains a well-known name in the field, recognized by his peers for his expertise in hedge fund law.

Stephanie Breslow, co-head with Steven Fredman of the firm's investment management group and a member of Schulte Roth's executive committee, shares the survey respondents' sentiment that her firm's experience in the hedge fund industry sets it apart from many other practices. "Schulte is an unusual firm in the sense of our concentration of focus in this sector," she says. "We've really been in it a very long time — decades, back to the first hedge fund."

Clients agree: They rank the firm No. 1 for Business Planning & Corporate Finance, and it takes second place in the other five service area categories. More than 80 of the firm's attorneys are focused on investment funds and managers around the globe.

Clients single out Schulte Roth's tax department, and specifically partner Shlomo Twerski, for work in the investment management sector, but others note the firm's attention to market standards and best practices.

"We are a very high-touch solution," Breslow says. "We're not interested in being a commoditized, low-cost provider — which is not to say we're the most expensive solution, but we really try to do things in a hands-on and focused way." The practice has 16 fund formation partners, a three-partner dedicated compliance group, tax partners and litigators, a derivatives group and three partners focused on employment issues.

Long-lasting relationships have allowed No. 3-ranked, Washington-based Akin Gump to grow alongside its hedge fund clients. The firm was founded in 1945 in Dallas, where it still operates one of its 20 offices for its more than 800 lawyers. "We really do span the scope of the industry," says Kelli Moll, a partner in the investment management practice, "And we really have grown with our clients, many of whom are 20- or 30-year relationships."

The firm's New York office started with three clients: Angelo, Gordon & Co.; Apollo Global Management; and George

Soros. Akin Gump built out its business from there. The firm's investment management practice now boasts 60 lawyers plus 45 tax attorneys.

Hedge fund managers rank Akin Gump highly in the areas of Business Planning & Corporate Finance, Hedge Fund Expertise and Tax Law Expertise; the firm also cracks the top five in Client Service and Regulatory & Compliance.

Like other firms in the rankings, Akin Gump has spent a great deal of time since the financial crisis helping its clients handle the new rules. "From an industry perspective I think grappling with all the new regulation has been the hardest thing our clients have had to deal with," Moll says. New measures put forth by regulatory agencies can be daunting, with clients unsure which forms are applicable to them.

Offshore law firms have played a substantive role in the hedge fund industry. James Bergstrom, a Cayman-based partner in top-ranked Ogier's investment funds practice, says the firm serves about 25 percent of the top 100 hedge fund firms.

Ogier has about 25 lawyers on its funds team, recruited from firms around the world, with many coming from London. Setting the firm apart from the other two big names in the islands — Maples and Calder, and Walkers — is its ability to "simplify the complex" nature of the hedge fund business, Bergstrom says.

The firm has offices around the world in addition to the Cayman Islands, with outposts in the British Virgin Islands, Guernsey, Hong Kong, Jersey and Luxembourg.

Ogier's funds team is its largest, and Bergstrom is seeing a resurgence in start-ups as the climate for capital-raising begins to improve. The bulk of the firm's business continues to come from the larger managers, which remain very active in product launches, including bespoke structures for institutional investors.

Bergstrom has also noted a rise in the use of limited partnerships, as opposed to the more traditional private limited company structure. "That must be driven by some sort of tax issue onshore or investor preference," he says.

Ogier received positive feedback across the spectrum of factors presented to survey participants. Its expertise in fund formation was a recurrent focal point, as was its understanding of regulatory issues.

The stigma once associated with doing business offshore continues to fade. Long thought of as tax shelters for the ultra-wealthy, offshore locations like the Cayman Islands are gaining more respect for their consideration to compliance. "This year [2013] you can see a turning point with recognitions," Bergstrom says. "It's the first time [British Prime Minister] David Cameron said: 'Lay off these guys. If you look at their compliance regimes, they've done more than the U.S. or U.K.'" ■

ORDER OF IMPORTANCE TO CLIENTS

RANK	ASPECT
ONSHORE	
1	Regulatory & Compliance
2	Hedge Fund Expertise
3	Document Preparation & Fund Formation
4	Client Service
5	Tax Law Expertise
6	Business Planning & Corporate Finance
OFFSHORE	
1	Regulatory & Compliance
2	Document Preparation & Fund Formation
3	Hedge Fund Expertise
4	Client Service
5	Tax Law Expertise
6	Business Planning & Corporate Finance