MARSH

REGULATION RISK READY

POST CREDIT-CRISIS RISK MITIGATION

Across industries and issues, the demands of regulators are ever increasing — perhaps none more than those aimed at the financial institutions (FIs) at the center of our economy. FIs saw the spotlight increase following the 2008 credit crisis, a trend that is expected to continue as regulators continue to expand responsibilities and fine tune longstanding rules. Among the sectors facing a high level of scrutiny are:

- Banking and capital markets.
- Asset management.
- Alternative asset management.
- The insurance industry.

Successfully navigating this landscape — both in the US and internationally — requires an in-depth understanding of regulatory demands and proven insurance and risk management strategies to address them. The following is an overview of the top regulation risks facing the alternative asset management sector.

ALTERNATIVE ASSET MANAGEMENT

1. **FEES AND DISCLOSURE:** In the past six months, the Security and Exchange Commission's (SEC's) most frequent settlements have centered on improper disclosure of fees to limited partners. These include monitoring and deal breakup fees as well as legal costs — there have been settlements as high as $39 million.

   What to Watch for: This area is a major focus of the SEC, and includes issues around the disclosure of insurance premiums. While there is not uniformity in the way insurance premiums are allocated among alternative asset managers, it seems that the SEC is most concerned with the methodology used to determine the percentage that managers are paid.

2. **CONFLICTS OF INTEREST:** Various investment vehicles need to be adequately managed.

   What to Watch for: As investors become more sophisticated and are willing to invest larger amounts of money at one time, preferential terms in the form of sidecars, or separately managed accounts (SMA), are becoming more frequent. The preferential nature of these arrangements is coming under increasing scrutiny by the SEC. The issue surrounds disclosure of those preferential terms to other limited partners tin traditional investment vehicles who are also part of a fund that is investing along with the sidecar or SMA. The risk here is getting a black mark from the SEC — being investigated and forced to pay a fine for not adequately disclosing the preferential terms of these side agreements.

3. **INSIDER TRADING AND COMPLIANCE CULTURE:** Insider trading continues to pose the longest running regulatory threat to alternative asset managers. On the heels of several high profile insider trading settlements, the SEC is focusing on personal liability of individual bad actors.

   What to Watch for: For the first time, chief compliance officers (CCOs) may be found to be *personally liable* not for their own bad acts, but for a deficient compliance culture. Innovations in insurance products and services can help mitigate this risk.