


11th Annual Federal Securities Law Forum

Private Securities Law Update

Hon. Michael M. Baylson
United States District Court
Eastern District of Pennsylvania

A stylized silhouette of a mountain range in shades of teal, located at the bottom right of the slide.

Major Events in the CFTC Action

- ◆ June 2005 - Judge Padova appoints Receiver for the Offshore Fund
- ◆ Issuance of Statutory Restraining Order under 7 U.S.C. § 3(a-1)
- ◆ Entry of Consent Decree with Eustace
- ◆ Motion to Hold Eustace in Contempt
- ◆ Motion for Approval of Settlement
- ◆ Order approving settlement (\$96.5 million) including Bar Order

Major Issues - CFTC Case

- ◆ To what extent does the Receiver stand in the shoes of the Offshore Fund and is bound by its agreements?
- ◆ Cooperation/lead role/CFTC and Receiver
- ◆ Man Financial's compliance with the Statutory Restraining Order
- ◆ Permission to initiate lawsuits and disclosure of the letters requesting approval
- ◆ Consent Decree entered between CFTC and Eustace
- ◆ Settlement approval issues, including entry of a bar order against any investors who did not file a claim within the allowable time under the settlement agreement

Issues in Hodgson/ Harmelin Case

- ◆ Venue issues - Opinion dated September 18, 2002, 2006 WL 2707397
 - Receiver argued venue was proper under:
 - ◆ Receivership Statutes, 28 U.S.C. § 754
 - ◆ Commodity Exchange Act, 7 U.S.C. § 75(c)
 - ◆ RICO, 18 U.S.C. § 1965(a) - (b)
 - ◆ Ancillary jurisdiction

Issues in Hodgson/ Harmelin Case

- Motion for Transfer to the Northern District of Illinois under 28 U.S.C. § 1404(a)
 - ◆ Forum selection clause in the Customer Agreement (between Offshore Fund and Man Financial)
 - ◆ Issue whether binding on Receiver
 - “Stands in shoes”
 - “Ratification” by Offshore Fund Directors, and if so, binding on Receiver?

Issues in Hodgson/ Harmelin Case

- ◆ Defendants' Motion to Dismiss (Opinion dated October 5, 2006, 2006 WL 2869532
 - Allegations against Man Financial and individual defendants
 - ◆ Tort claims
 - ◆ Fraud claims
 - ◆ Commodity Exchange Act, 7 U.S.C. §§ 4 and 6
 - ◆ RICO
 - ◆ Deepening insolvency
 - Although breach of contract was not originally plead, the Receiver subsequently added it

Issues in Hodgson/ Harmelin Case

◆ Personal jurisdiction issues

- Man Financial brought in the Offshore Fund Directors as third party defendants, who moved to dismiss for lack of personal jurisdiction in that they claimed that all of their activities on behalf of the Offshore Fund were performed in the Cayman Islands. Denied without prejudice, Opinion dated December 22, 2006, 2006 WL 3791341.

Issues in Hodgson/ Harmelin Case

- ◆ Issues in Motions for Summary Judgment
 - Statute of limitations – holding that the statute has been tolled by the litigation stay imposed on the Receiver, requiring the Receiver to secure court permission before instituting any lawsuits. 2007 WL 2702638 (12/12/07)
 - Whether the evidence was sufficient under the Commodity Exchange Act. *Id.*
 - Whether the evidence was sufficient under RICO. 2007 WL 2874043 (10/2/07)

Issues in Hodgson/ Harmelin Case

– Issues as to the Offshore Fund Directors and PAAMCo employees:

- ◆ Personal jurisdiction
- ◆ As to the indemnity claims, indemnity was not available under Pennsylvania law
- ◆ Allowing claims for contribution on tort issues

2007 WL 2932866 (10/2/07); 2007 WL 3085867 (10/10/07)

– UBS liability. 2007 WL 3146666 (10/26/07)

**PHILADELPHIA ALTERNATIVE ASSET
MANAGEMENT CO., LLC**

(“PAAMCo”)

PAUL EUSTACE

**PHILADELPHIA ALTERNATIVE ASSET
FUND**

**(“OFFSHORE FUND”)
CAYMAN ISLANDS**

**DIRECTORS
OFFSHORE FUND
CAYMAN ISLANDS**

**ADMINISTRATOR
UBS CAYMAN**

**TRADING
MAN FINANCIAL
FUTURES COMISSION MERCHANT**

THOMAS GILMARTIN

COMMODITY FUTURES TRADING COMMISSION : CIVIL ACTION
("CFTC") :
 :
v. :
 :
PAUL M. EUSTACE and PAAMCo : NO. 05-2973

C. CLARK HODGSON, RECEIVER : CIVIL ACTION
STEPHEN J. HARMELIN, RECEIVER AD LITEM :
 :
v. :
 :
MAN FINANCIAL INC. and THOMAS GILMARTIN :
 :
v. :
 :
DIRECTORS/OFFSHORE FUND :
 :
EMPLOYEES/PAAMCo. : NO. 06-1944
 :
UBS CAYMAN :

GRAND COURT - CAYMAN ISLANDS

APPOINTMENT OF JOINT LIQUIDATORS
PROTOCOL - JOINT LIQUIDATORS AND RECEIVER