## Hedge Funds: Law and Regulation

General Editors Iain Cullen Helen Parry



<sup>8</sup>6, 120

Sweet & Maxwell

Published in 2001 by Sweet & Maxwell Limited of 100 Avenue Road London NW3 3PF

(http://www.sweetandmaxwell.co.uk)

Typeset by Wyvern 21 Ltd, Bristol Printed in Great Britain by Bookcraft, Bath Ltd.

A C.I.P. catalogue record for this book is available from the British Library

ISBN 0421 705 701

All rights reserved. U.K. statutory material in this publication is acknowledged as Crown copyright. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.

No natural forests were destroyed to make this product, only natural farmed timber was used and re-planted.

260-06646

© Sweet & Maxwell Ltd 2001

## Contents

For	eword	v
Preface		
Table of Cases		
Table of International Legislation		XV
		para.
1	Hedge Funds: Structure and Documentation	
	By Iain Cullen, Partner at Simmons & Simmons in London	
	Introduction	1.01
	Tax issues	1.02
	Regulatory issues	1.14
	Master-feeder structures	1.22
	Listing issues	1.26
	Domicile	1.29
	Conclusion	1.32
2	Regulatory Creep and Convergence: Hedge Funds and The Regulators	
	By Dick Frase, Partner at Dechert in London	
	How hedge funds look to regulators	2.02
	Long-term capital management LP	2.05
	Regulation via marketing restriction (investor protection)	2.08
	Market price regulation (market manipulation)	2.09
	Direct fund regulation	2.11
	General offshore developments	2.13
	Regulation of fund managers	2.20
	Regulation and the disclosure of information	2.25
	Regulation of service providers and counterparties	2.27
	Conclusion	2.31

3 U.S. Legal and Regulatory Issues Faced by Offshore Funds and their Sponsors

By Robert B. Van Grover, Partner at Seward and Kissell LLP's Investment Management Group in New York

Introduction

	United States federal income taxation U.S. Securities Laws The Commodity Exchange Act The Employee Retirement Income Security Act of 1974	3.02 3.07 3.16 3.20
	Certain U.S. regulatory filing requirements of offshore funds and their managers Conclusion	3.22 3.27
4	<b>Hedge Funds and U.S. Insolvency Law</b> By William Gray Jr, Partner and Kevin R. Toole, Associate at Salans in New York	
	Introduction A bankruptcy primer Major hedge fund and derivatives cases Long-term capital management Legislative history of amendments The ''derivative securities contracts'' sections	4.01 4.02 4.09 4.12 4.13 4.19
5	Hedge Fund Regulation in the Aftermath of Long-Term Capital Management By Paul N. Roth, Partner and Brian H. Fortune, Associate at Schulte Roth and Zabel in New York	
	Introduction Background The LTCM debacle The systemic threat Reports by U.S. and international government and private sector entities Legislative response Regulatory framework and initiatives Analysis Conclusion	5.01 5.03 5.05 5.06 5.15 5.17 5.18 5.21
6	<b>Current Issues in the Regulation of Hedge Funds</b> By Joel Press, Partner at Ernst and Young in New York	
	Introduction Defining hedge funds and their current regulation Exemptions from federal regulation The impetus for change Tax considerations The Internet's impact on hedge funds The aftermath: the good and the sad Conclusion	6.01 6.02 6.06 6.07 6.18 6.24 6.27 6.28
7	Plumbers, Gurus and Global Markets: The Financial Services Authority and the Regulation of Hedge Funds	

By Helen Parry, Senior Lecturer and Dr Michael Grant, Senior Lecturer at London Guildhall University

Introduction

х

	The report of the Working Group on highly leveraged institutions of the Financial Stability Forum Future developments: hedge funds regulation and the Internet Conclusion	7.09 7.11 7.13
8	Marketing Hedge Funds in Europe: Legal, Regulatory and Tax Issues By Simon Firth, Partner at Landwell in London	
	Introduction France Germany Italy Netherlands Spain Switzerland	8.01 8.02 8.06 8.12 8.17 8.21 8.27
9	<b>Irish Domiciled Hedge Funds and the Role of the Prime Broker</b> By Lorcan Tiernan, Partner at Dillon Eustace in Dublin and Deborah Thompson Vice President at Morgan Stanley Dean Witter in London	
	Introduction The "prime broker problem" The regulatory environment in Ireland UCITS and non-UCITS Central Bank's requirement for Irish hedge funds The current position Conclusion	9.01 9.02 9.10 9.14 9.20 9.24 9.25
10	From Masters of the Universe to Aunt Agatha: Protecting the Investor in the Hedge Fund Environment By Helen Parry, Senior Lecturer at London Guildhall University	
	Introduction Fraud by fund managers: 'hedgeclippers' and U.S. securities law Liability of investment advisers Unauthorised trading and exchange enforcement: the hedge fund as victim Alternative investment strategies Regulating hedge fund investment in derivative markets Protecting high net worth individuals Conclusion	10.01 10.02 10.03 10.08 10.09 10.21 10.24 10.25

Index

xi

195