

## Highlights of BSAS Career Related Events

### **CFA Institute Standards of Conduct: Getting it Right in a Difficult Climate**

Some CFA charterholders fear they'll become targets as the national and state regulatory environment for financial services continues to heat up. This topic was addressed in a June 17 presentation on "CFA Institute Standards of Conduct: Getting it Right in a Difficult Climate" by Andrea J. Robinson and Jonathan A. Shapiro, both senior partners in Wilmer Cutler Pickering Hale and Dorr LLP's Litigation and Securities Departments who represent mutual fund complexes and other financial services clients.

The SEC has become much more aggressive over the past two years. Until then, enforcement often followed civil actions, such as lawsuits by shareholders. Now regulators frequently are taking the lead, creating opportunities for plaintiffs' lawyers to ride their coattails with civil actions that pick up on the issues raised by the SEC, NASD and others.

In addition, the SEC's inspections are leading more frequently and rapidly to enforcement actions. The stakes are higher, too. "Enforcement is digging deeper into organizations. It's not just the high level executives; it's also the mid level employees, who had previously been off the SEC's radar screen. The same goes for outside directors, trustees, and even vendors and auditors," said Robinson.

While financial services employees may adhere to the letter of the law, that won't necessarily protect them being sued. "The law isn't mattering as much as it should. Lawsuits are brought because 'I lost money, you made money, and you were supposed to look out for me,' " said Robinson. It's this kind of issue – revolving around asserted breaches of fiduciary duty or negligence – that's most likely to ensnare more CFA charterholders in the future. The more traditional litigation about analyst research is on a downtrend, with only 17 cases in 2003.

In this environment, plaintiffs' lawyers might attempt to use the CFA Institute's "Code of Ethics and Standards of Professional Conduct" against charterholders or their employers in litigation. "For example, plaintiffs' lawyers could try to argue that the Code imposes some extra standard beyond what's dictated by law," said Robinson.

That "extra standard" could be something as simple as the CFA Standard of Professional Conduct stating that members shall "Maintain knowledge of and comply with all applicable laws, rules, and regulations (including AIMR's Code of Ethics and Standards of Professional Conduct) of any government, governmental agency, regulatory organization, licensing agency, or professional association governing the members' professional activities." Robinson and Shapiro used a mock deposition to entertain and enlighten BSAS lunch goers. Their hypothetical example of a plaintiff's attorney browbeating a charterholder over her knowledge of the Code and Standards inspired many attendees to vow to review those documents regularly.

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