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Press Release

Khuzami Leaves Overhauled SEC Enforcement Unit

After nearly four years on the job as top cop at the SEC, Robert Khuzami leaves behind a much different Division of Enforcement than the one he took charge of in February 2009.

Khuzami, whose last day at the agency is today, began his tenure as the financial crisis continued to roil the markets and the SEC had become a punching bag for failing to detect Bernard Madoff's massive Ponzi scheme.

Since that time, the former federal prosecutor with the U.S. Attorney's Office for the Southern District of New York has made a series of changes that industry insiders say have strengthened the regulator's enforcement efforts and heightened the focus on asset managers.

Perhaps most notable for the asset management industry, Khuzami in early 2010 established five specialized units within the enforcement division that focus on priority areas, with one dedicated to asset management.

Khuzami subsequently announced that the agency was scrutinizing retail mutual fund fees — not just advisory fees, but also transfer agent, custodian and other service provider fees.

Enforcement actions originating from the asset management unit followed, including cases against Morgan Stanley, Scottish fund manager Martin Currie and an array of smaller firms and hedge fund managers.

"I think it would be fair to say that Khuzami has radically changed the SEC's approach to the asset management industry," says Stephen Crimmins, partner at K&L Gates.

"It stems from his creation of the asset management unit within the enforcement division, which over the last two years has had breathtaking case production in the area of funds and advisors."

Indeed, the agency brought a record number of total enforcement actions in fiscal years 2011 and 2012 — 735 and 734, respectively — and those in the asset management arena similarly increased.

In fiscal year 2012, the SEC filed 147 cases against investment advisors. This figure is nearly 30% higher than the number of similar actions brought in fiscal year 2010, and nearly 48% higher than the agency's average over the past 10 years, law firm Gibson Dunn points out.

The SEC said the strong results were due in part to the new specialized units, along with the hiring of industry experts, a flatter management structure and improved abilities to collect, process and analyze tips and complaints.

Mark Schonfeld, partner at Gibson Dunn and formerly head of the SEC's New York regional office, says Khuzami brought some techniques and procedures to the SEC that are generally used more in criminal prosecutions.

For example, also in early 2010 Khuzami created a cooperation program that established incentives for individuals and companies to assist SEC investigations and enforcement actions. The initiative also authorized the use of non-prosecution agreements and deferred prosecution agreements.

"His legacy is that he made the Division of Enforcement look more like a prosecutor's office," says Thomas Zaccaro, partner at Paul Hastings.

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Schonfeld also notes the closer relationship between enforcement and the Office of Compliance, Inspections and Examinations that developed during Khuzami's tenure.

Exams have become a greater source of investigations, and are even sometimes just the beginning of an investigation, he says. "I think it's changed the way in which the industry needs to respond to exams and inspections," he adds.

Yet some question how the changes Khuzami has implemented will play out in the future. Many of the SEC's enforcement cases against asset managers have stemmed from the financial crisis, which has been entirely expected, says Paul Huey-Burns, partner at **Shulman Rogers**.

But the asset management unit was created to develop expertise in investment management and to "look around the corner" for the next big issues affecting the industry, says Huey-Burns. It is unclear whether more of that will occur as the issues of the financial crisis recede.

While the SEC has brought a number of attention-grabbing asset management cases during Khuzami's tenure — the latest example being its action against former Morgan Keegan directors over valuation practices — the agency also has suffered some major defeats, such as its failure to convince a jury that Bruce Bent Sr. and his son Bruce Bent II committed fraud.

Still, at least one fund attorney says he believes Mary Jo White, President Barack Obama's nominee as the new chairman of the SEC, will want to continue the enforcement approach Khuzami put in place. As a result, she is likely to make permanent the interim director of enforcement, George Canellos.

"[I] think [White] will want to continue the efforts that Khuzami began by staying with Canellos as her enforcement director," says K&L Gates's Crimmins.

Both Khuzami and Canellos served in the U.S. Attorney's Office for the Southern District of New York for different stretches when White was U.S. attorney there from 1993 to 2002. Canellos had served as deputy director of enforcement at the SEC since 2012. Previously, he was head of the SEC's New York regional office.

Khuzami has not announced his next move.

It is common for top SEC enforcement officials to join white-shoe law firms or large financial services companies after their time at the SEC.

Linda Chatman Thomsen, Khuzami's predecessor at the SEC from 2005 to 2009, joined law firm **Davis Polk** after leaving the agency. She had worked at the law firm prior to her time at the SEC.

Stephen Cutler, head of enforcement from 2001 to 2005, rejoined WilmerHale after leaving the agency. He then became general counsel of JPMorgan Chase in 2007.

From 2004 until he began work at the SEC in 2009, Khuzami was general counsel for the Americas at Deutsche Bank