

The NED

Independent intelligence on fund director issues

Issue 11 • July 2012

Directors: Are you up to speed on FATCA?

The Foreign Account Tax Compliance Act (FATCA) is something that fund directors need to focus on - urgently. Most of those contacted by The NED, whilst being conscious of the measure, are not yet aware of the responsibilities that that the Act imposes upon funds.

FATCA requires what the US calls foreign financial institutions (FFIs), including offshore funds, to enter into an agreement with the IRS to identify their American account holders and then report them annually to the IRS. The definition of an FFI is very broad indeed. It includes banks, brokers, insurance companies as well as funds – offshore or onshore. If an FFI does not reach an agreement with the IRS then it will suffer a 30 percent withholding tax on payments of US source income or capital into the institution, irrespective of whether payments are made to the FFI itself or on behalf of the FFI's clients.

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Merkin disaster leaves many questions for its directors

New York hedge fund manager Ezra Merkin has reached a \$405 million settlement with investors for his part in the Madoff debacle. Merkin's alleged crime was to pose as a primary portfolio manager and charge full hedge fund fees, when in practice he was funnelling investments on to Madoff.

The investors didn't know what he was doing, they thought their assets were being managed by Merkin himself. The truth only came to light when Madoff's empire collapsed and Merkin was forced to admit to \$1.2 billion in losses. After a lengthy legal process, Merkin has agreed to compensate his investors with this \$405 million settlement that will be paid over three years.

However, according to people familiar with the matter, the settlement still leaves a lot of questions unanswered - particularly on the topic of the directors of his offshore hedge funds.

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Companies and Associations mentioned in this issue:

ALFI	Financial Times
Amaranth Fund	JFSC
Ariel Fund	Madoff
Ascot Fund	Maples & Calder
Belgravia Fund	Merkin
Bloomberg	New York Times
Citi Prime Finance	Ogier
Credit Suisse	Standard Bank
Deloitte	Tremont
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IBAN: GB58MIDL40353541444530
SWIFTBIC: MIDLGB2148J

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