

GETTING PERSONAL: SEC Action Seen as Wake-Up Call on Fund Valuations

--"Cop is on the beat," says a mutual-fund consultant

--Case shouldn't create uncertainty for robust fund boards, says investor advocate

--Valuation decisions are too detailed for fund boards, an expert says

By Daisy Maxey, Dow Jones Newswires, December 11, 2012

NEW YORK--Federal regulators' civil charges against eight former board members of Morgan Keegan & Co. mutual funds mark a rare effort to hold a fund's board accountable for a manager's alleged misdeeds.

Among those charged by the Securities and Exchange Commission was [Allen B. Morgan Jr.](#), one of the founders of Morgan Keegan. He and the others were accused of handing off key responsibilities for five funds with holdings that included mortgage-backed debt, and which plunged in value when the housing market collapsed in 2008.

Some investor advocates complain that too many mutual fund boards fail to vigorously oversee fund managers, but regulatory action against them hardly ever occurs. According to the commission, the Morgan Keegan fund directors delegated the oversight of fund pricing to a subcommittee, which in turn failed to adequately oversee valuation of fund holdings.

"It's a highly unusual thing for the SEC to sue a fund's board," said mutual-fund consultant Geoff Bobroff. While many boards likely wouldn't run into valuation issues, those that might should make sure their procedures are functioning and effective, he said. "One could argue that the cop is on the beat."

Niels Holch, an attorney who started the Coalition of Mutual Fund Investors in 2003 to push for reform, said, "This enforcement action shows that the SEC's asset-management unit means business."

"Clearly, asset valuation is a focus of this unit, so fund boards would be smart to take a look at what they're doing and make sure it's a robust process," Mr. Holch said.

Raymond James Financial Inc. acquired Morgan Keegan from Regions Financial Corp. (RF) in April. Officials of both Raymond James and Morgan Keegan

declined comment, while lawyers for the directors said they would contest the charges. The funds were RMK High Income, RMK Multi-Sector High Income, RMK Strategic Income, RMK Advantage Income and Morgan Keegan Select.

In 2011, Morgan Keegan settled an SEC lawsuit that accused fund managers of defrauding investors by inflating the value of risky subprime-mortgage securities, and agreed to pay about \$200 million. Morgan Keegan also has faced a long string of claims, some reaching into the millions of dollars, from investors who lost money in the funds.

The SEC's case against the directors appears fairly straightforward, in that the valuation responsibilities of the funds' boards were clearly spelled out, Mr. Holch said. "This case is not one where it would create uncertainty for a fund board on their role," he said.

[Peter Anderson](#) , an attorney with New York law firm Sutherland Asbill & Brennan LLC, who represents two defendants in the case-- [J. Kenneth Alderman](#) and [Allen B. Morgan Jr](#) .--said in a statement that he's troubled that the enforcement action comes more than five years after the fact.

"The SEC seeks to impose liability for alleged failures to meet never-before-articulated standards for director involvement in day-to-day fund operations," Mr. Anderson said. Mr. Alderman and Mr. Morgan "diligently performed their duties as directors" in accordance with the SEC's existing guidance, and "will vigorously defend themselves against these misguided and unfounded charges," he said.

Jeffrey Maletta, who represents the six other board members-- [Jack R. Blair](#) , Albert C. Johnson, James Stillman R. McFadden, W. Randall Pittman, Mary S. Stone and [Archie W. Willis III](#) --said they plan to contest the case vigorously.

"This is really a departure from what we've seen from the SEC in the past," he said. The directors relied appropriately on advice from outside auditors that the valuation procedures in place were appropriate and functioning appropriately, Mr. Maletta said. In addition, no comment was made on valuation processes as a result of a 2005 SEC staff exam, he said.

John Morley, an associate professor at the University of Virginia School of Law, who has studied mutual-fund governance, said overseeing valuations isn't a "terribly useful" thing for boards to be doing in the first place.

"The decisions are too detailed for boards to really be involved in," Mr. Morley said. This most recent case "just means that boards will spend more time putting more procedures in place to give the illusion that they're seriously involved," he said.

Rachel McTague, a spokeswoman for the Independent Directors Council, a directors' group affiliated with the Investment Company Institute, the fund-industry trade group, declined to comment on the SEC's action.

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