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From: Fallon-Houle, Nancy
Sent: Sunday, August 28, 2011 9:26 PM
To: Fallon-Houle, Nancy
Subject: FW: [ABA-BL-STATERECS-BD] Dodd-Frank Act Investment Adviser Article; SEC v. Kramer Decision
Attachments: Dodd-Frank Article_July 20, 2011.doc
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From: Broker-Dealers and Investment Advisors Subcommittee [<mailto:BL-BROKERDEALERS@MAIL.AMERICANBAR.ORG>]
On Behalf Of Parness, Alan
Sent: Tuesday, August 23, 2011 10:12 AM
To: BL-BROKERDEALERS@MAIL.AMERICANBAR.ORG
Subject: [ABA-BL-STATERECS-BD] Dodd-Frank Act Investment Adviser Article; SEC v. Kramer Decision

Courtesy of Ann Walker, Chair of the Small Business Issuers Subcommittee of the ABA Federal Regulation of Securities Committee, I pass along the attached article, which I trust a number of you will find of interest.

I'm also passing along the following link to a PDF copy (it runs 38 pages) of the decision in *SEC v. Kramer*, Case No. 8:09-cv-455-T-23TBM (M.D. Fla. 4/1/11), which David Katz discussed at our 8/8/11 Committee meeting in Toronto. As you will note from the Findings of Fact and Conclusions of Law, beginning on p. 15 of the opinion, the court held that Mr. Kramer was not acting as an unregistered broker in violation of Exchange Act Sec. 15(a), despite the fact that he was paid commissions in the form of cash and shares of a company for introducing certain investors to the company (*i.e.*, "transaction-based compensation," the fatal factor in the SEC's [Brumberg, Mackey & Wall](#) 5/17/10 no-action letter discussed in the decision). Key to the court's decision was its conclusion that the SEC failed to prove that Kramer "engaged in the business of effecting transactions in securities for the accounts of others" so as to be a "broker" within the meaning of Exchange Act Sec. 3(a)(4).

<http://lettersblogatory.com/wp-content/uploads/2011/04/kramer.pdf>

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