

## STATEMENT ON BEHALF OF THE FORMER INDEPENDENT DIRECTORS OF THE REGIONS MORGAN KEEGAN FUNDS

The former independent directors of the Regions Morgan Keegan Funds emphatically deny the allegations against them in the SEC administrative proceeding filed today. They intend to contest this case vigorously, and they are confident that they will ultimately be vindicated.

More than 5 years after the events concerned, the SEC staff now seeks to pursue administrative charges against a group of independent directors alleging that they unintentionally caused regulatory violations related to portfolio valuation. However, the SEC has chosen to ignore a host of facts and circumstances which demonstrate that these directors at all times acted diligently and in good faith during the unprecedented market turmoil of 2007. For example, the SEC complaint fails to note that the SEC itself specifically determined in its 2011 enforcement case against Morgan Asset Management that these same directors were defrauded by fund management, who concealed improper valuation practices from them.<sup>1</sup> Apparently, the SEC now seeks to punish the victims of this fraudulent activity. Moreover, at the very time in 2007 that the SEC contends these directors should have known that valuation procedures were deficient, the directors were advised by experienced independent auditors from a major accounting firm that the funds' valuation procedures were reasonable and appropriate, and that the process was working properly and producing correct fair valuations. Similar assurances were received from the funds' Chief Compliance Officer, and a 2005 SEC staff exam had produced no adverse comments on the fair valuation procedure or process. The current SEC action rejects the ability of directors to take any comfort from such experts or from the absence of any "red flags" concerning the fair valuation process.

The SEC action can only be explained as a misguided attempt to retroactively regulate by enforcement in an area in which the SEC has been unwilling or unable to provide meaningful guidance through the normal regulatory process. Fair valuation has been described as a "notoriously gray area" by the SEC staff,<sup>2</sup> and a senior SEC staff member recently admitted that the SEC has for years "tabled" efforts to issue a comprehensive interpretative release providing guidance in this area.<sup>3</sup> Nevertheless, the SEC now has decided to use enforcement proceedings to make new rules, and "send a message" to mutual fund boards, by holding these independent directors to standards not applicable at the time and, in any event, based on allegations not supported by the actual facts and circumstances.

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<sup>1</sup> See *Morgan Asset Management, Inc.*, Exchange Act Release No. 64720, Investment Company Act Release No. 29704 (June 22, 2011).

<sup>2</sup> See Office of the Inspector General, Report of Investigation, Case No. OIG-496: Allegations of Conflict of Interest, Improper Use of Non-Public Information and Failure to Take Sufficient Action Against Fraudulent Company, available at <http://www.sec-oig.gov/OOI/IR.html>.

<sup>3</sup> See Douglas J. Scheidt, Associate Director and Chief Counsel, Division of Investment Management, Securities and Exchange Commission, Board Oversight of Valuation: The SEC's Perspective, Webinar for the Mutual Fund Directors Forum (Sept. 20, 2012).