In our inaugural survey of over 1,200 hedge funds, top onshore hedge fund law firm went to Seward & Kissel.

A long history of working with hedge funds helps inform Seward & Kissel's advice on the interpretation and implementation of new regulation.

Historical perspectives

Seward & Kissel, a New York law firm established in 1890, believes the value of the advice it gives its clients derives in a large part from its wide experience across every part of the industry.

Seward & Kissel was involved in establishing AW Jones & Co, the pioneer of the hedge fund concept and the world's first hedge fund which involved a private investment partnership implementing an investment programme of long/short equity investing, the use of modest leverage, combined with compensation of the manager through the use of a performance fee. The firm continues to act as the fund's counsel.

The firm has eight partners in its hedge fund practice and about 85 lawyers across the whole firm who work with hedge funds covering fund formation, regulation, tax and employment law.

"Because of our footprint and large network in the industry, we see a lot of different things and are able to have a strong sense of where the consensus view is on business terms and on where the regulator is going to end up on legal matters," says John Tavss, head of the investment management group at Seward & Kissel.

The value of having such a long history with the industry gives the firm a unique perspective. This is particularly important as hedge funds are now having to cope with a wave of regulation which is often ambiguous in its language and unclear in exactly how it should be followed.

"Given the breadth of information being requested in some of these new forms, managers will need to work out precisely what sort of information they need to provide, balancing the disclosure requirement with the fact that some of this data will be publicly available. There's still a lot of uncertainty as to what's precisely required, how much effort it's going take, who is going to look at it and what good is it going to do," says Tavss.

"A lot of the questions that are asked on these various forms and reports are subject to interpretation and it's not necessarily clear yet what the regulators want. They could be interpreted multiple ways and we're trying to figure out what is the intended most rational, practical meaning. I think the industry, with regulatory guidance, will evolve as to how they interpret the questions and as to what the regulators want. It's going to be a gradual process."

Tavss believes the firm is well placed to help managers interpret the legislation and mitigate the risks of non-compliance. "Whether a manager wants to take an aggressive or conservative view on regulation, or whatever part of the spectrum they might want to be on, we seek to provide them with a risk assessment as to where they are in relation to other managers," says Tavss.

Steven Nadel, a partner in Seward & Kissel's investment management group, points to another layer of regulatory complexity that could further unnerve managers. "We are also involved in a fair amount of regulatory co-ordination. We will have clients down the road who may have to be registered with more than one US regulator and potentially in certain non-US jurisdictions as well. Counsel will need to have the ability to juggle different regulatory regimes – something we've done for many clients in the past," he says.

Nadel believes the firm's broad experience can help with other areas related to hedge funds. "When we set up new funds, we often will get a term sheet from a client saying we are going to charge this fee for this class and this fee for that class. In light of our deep industry understanding, we are able to say things like 'We don't think, given you're a credit fund, that the market will accept a two-year lock up.' Because we see so much in that area, we are able to provide that sort of practical industry colour."

From their vantage point Tavss and Nadel can spot trends in the industry. "The biggest trend is the move away from large-asset allocators going into funds directly and instead either asking for 'funds of one' or managed accounts or other bespoke vehicles. That's a big development that seems to be continuing and you're going to see more of in 2012," says Nadel.

Tavss believes the effect of regulation and the re-allocation of capital may not be temporary. "For 2012 one area we expect more of would probably be the industry reaching and dealing with an accelerated maturation stage. I think you're going to see some more consolidation in the industry and it's going to be a little bit harder for smaller firms to deal with greater investor demands coupled with increased regulatory scrutiny. This will lead to some consolidation or at least some push from being smaller to mid-size," says Tavss. ■

Top five rankings: legal onshore