



A Financial Times Service

[Print](#) | [Close Window](#)

#MeToo Shakes Up Manager Due Diligence: Here's What to Expect

By Danielle Walker June 27, 2018

Asset managers must prepare to address the inevitable due diligence queries about sexual harassment policies and past misconduct, as the #MeToo movement has prompted institutional investors and consultants to search more thoroughly for red flags and related business risks.

Already, at least two large pensions, the \$355 billion California Public Employees' Retirement System (CalPERS) and the \$56 billion Los Angeles County Employees Retirement Association (LACERA) have ramped up their efforts surrounding sexual harassment due diligence for asset managers, as reported.

Additionally, consultants are following suit to stay abreast of harassment-related issues, in a signal that these concerns will remain top of mind for institutional investors.

Here's a rundown of what asset managers can expect as investors hold managers to task on this front.

If It's on the Web, It's Fair Game.

Kroll, a division of **Duff & Phelps** which does investigations for the financial services industry, may initially comb the internet for social media posts or profiles of individuals at the company and dig through online or physical court filings to see if harassment allegations surface in divorce proceedings or separate complaints made by current or ex-spouses or significant others, **Monica Monticello**, associate director, business intelligence and investigations, says.

Monticello spoke last week during an online workshop on sexual harassment due diligence hosted by the **Investment Management Due Diligence Association (IMDDA)**.

Sometimes, bits of information found here serve as a starting point for delving further into claims which should be taken seriously and investigated "to the fullest extent," she said.

Additionally, at the corporate level, investigators will look up lawsuits brought by current and former employees or shareholders that may reveal whether "things are happening at a higher level within [a] company that might not be reported," Monticello said during the webinar.

Investors May Contact Ex-Employees, But You Won't Always Get a Courtesy Call.

Once due diligence investigators have exhausted public records, they may decide to contact former employees who can speak to the reputation of an asset manager or an individual in question. But managers should not always expect advanced notice when due diligence pros are reaching out to former employees.

Investor clients determine on a case-by-case basis whether they will tell a company that they plan to interview former employees, Monticello said during the webinar.

"We might want to go to [the manager] and say, 'Hey, listen. We know that five years ago your firm was sued for sexual misconduct. We're going to reach out to the person [involved] and we want to let you know and give you a heads up,'" Monticello said during the webinar. "Or [a client] may make the decision to do it discreetly and see what we can find, but then you risk it getting back to the person that you're thinking of investing with, and they may, or may not, react negatively to that."

For asset managers, pushing back against due diligence efforts that involve past employees could raise more questions, **Andrew Borowiec**, executive director of IMDDA, said in an interview with *FundFire* following the webinar.

"I think the investor should share that they are going to take that route," Borowiec adds of interviewing former employees. However, "if [asset managers] don't want you to talk to past employees, you have to ask yourself why."

Confidential Info May Come Up, But NDAs Have Their Drawbacks.

There are different instances where non-disclosure agreements (NDAs) may come up in due diligence conversations. Managers may use them as a pre-condition for sharing confidential information, whether financial or about prior misconduct, with investors. Or firms may, separately, face their own limits on communication about cases, if certain parties have signed an NDA in the course of a settlement agreement.

The use of NDAs in either scenario can be a dicey subject in matters involving sexual misconduct, **Dan Schorr**, managing director, business intelligence and investigations at Kroll, said in an interview with *FundFire*.

"There's been a lot of criticism of sexual harassment victims being pressured to sign NDAs. If they can't disclose what happened, often the predator is able to still sexually harass other people and no one can know about it. That's a problem for a lot of reasons," Schorr says.

It's also possible that a manager won't want to disclose their sexual harassment policies and procedures without an NDA, he adds.

When NDAs prevent an asset manager from disclosing settled legal matters, specifically, interviews with current or former employees, or those involved in disputes, become all the more important, "to get a sense of the real-world climate that is at that entity," Schorr said during the webinar.

Know Your Client and Their Risk Tolerance.

If an asset manager does come forward about a previous incident involving sexual harassment or misconduct from some time ago, investors will want to know what's changed since the occurrence.

In fact, "a very important part of this isn't just the incident of sexual harassment, it's what they did in response to that," Schorr said during the webinar.

"So maybe one person is responsible for the sexual harassment, but the whole firm is responsible for what they did to address it... That's really important to understand if there was an old incident... How have you reformed? How is it different? What would prevent that from happening now?" he continued.

Ultimately, the risk tolerance of the investor takes precedence.

"If you [as an investor] have an answer you're comfortable with then it's more likely you can proceed with the investment. But if you feel, this is going to be our deep, dark secret that hopefully people won't find out about, that's a real problem," Schorr added.

It All Comes Down to Trust.

First and foremost, asset managers should be aware that investors, or a third-party they hire to investigate misconduct, are concerned with trust well before the due diligence legwork starts, says **Kenneth Springer**, founder and president of **Corporate Resolutions Inc.**, which conducts background investigations for investment clients.

"Is there anything I need to know?" Those seven words cover it all, from complaints to lawsuits or controversial social media posts. That's kind of the 'all honesty' question and its geared to gauge trust," Springer says of his approach.

Springer, who founded CRI in 1991, was previously a special agent with the **Federal Bureau of Investigation** (FBI).

If an NDA precludes individuals at an asset manager from answering, or providing all the specifics, there are still alternative routes that will show the firm is willing to be upfront, since "often [investors] want independent verification of the facts," to get to the truth, he says.

Managers can direct investors to someone else who can talk about a particular incident without being bound by a confidentiality agreement.

"[I'll ask] can you direct me to someone who can talk?" Springer offers. "You want to give someone a vehicle to report."

Particularly in today's climate, asset managers could lose business upon sharing information about an ongoing or past harassment case, but it's worse for investors to feel blindsided, Springer says.

"I think the investors will be willing to listen to what happened... But if the manager doesn't disclose it and the background check or reference checks comes up with it, they aren't going to get funded anyway," he says.

Contact the reporter on this story at dwalker@fundfire.com or 212-542-1209.

FundFire is a copyrighted publication. FundFire has agreed to make available its content for the sole use of the employees of the subscriber company. Accordingly, it is a violation of the copyright law for anyone to duplicate the content of FundFire for the use of any person, other than the employees of the subscriber company.

An Information Service of Money-Media, a Financial Times Company