

## A Publication of Seward & Kissel Regulatory Compliance

---

### ERA Charged with Failure to Register with the SEC

The SEC recently agreed to [settle](#) with a registered investment adviser (“RIA”), an affiliated exempt reporting adviser (“ERA”), and its principal for violations of the Investment Advisers Act of 1940 (the “Advisers Act”). Among other findings against the RIA and the ERA, including inflated asset valuations and failure to comply with the Custody Rule, the SEC determined that the ERA was not exempt from SEC registration because it was under common control and operationally integrated with the RIA. The SEC noted that the ERA and RIA were both owned by the same individual, shared the same employees, operated in the same office and shared the same technology systems.

### Adviser Settles Charges for Improperly Borrowing Fund Assets

The SEC recently [settled](#) charges against an investment adviser, its co-CEO and former CFO/CCO for improperly borrowing assets from private equity funds managed by the adviser and causing the general partners of those funds to not make timely capital contributions. According to the SEC, these practices were not authorized by the funds’ operating documents and were not adequately disclosed to the funds’ investors. In addition, the adviser’s former CFO/CCO made false entries in the adviser’s books and records to cover up his personal misuse and improper advancement of non-client funds from the adviser.

### SEC Releases Risk Alert on Cybersecurity

The SEC’s Office of Compliance Inspection and Examinations (“OCIE”) recently released a [Risk Alert](#) describing its findings after conducting examinations of SEC-registered broker-dealers, investment advisers and investment companies in an effort to assess industry practices and legal and compliance issues associated with cybersecurity preparedness. The OCIE staff noticed overall improvement in cybersecurity awareness and the implementation of written policies and procedures in comparison to the first round of exams in 2014, yet identified issues it believes firms would benefit from considering in order to improve their policies, procedures and practices. The OCIE staff also highlighted policies of firms it believed had robust cybersecurity controls.

### FINRA Fines Broker-Dealer for Recordkeeping Violations

FINRA recently fined State Street Global Markets for committing a series of recordkeeping violations, determining that it failed to (i) maintain certain

electronic records in a non-erasable and non-rewritable format; (ii) store separately from the originals duplicate copies of electronic records; (iii) implement an audit system for inputting records in electronic storage media; and (iv) establish, maintain and enforce certain written supervisory procedures relating to electronic record storage.

### Broker-Dealer Settles Charges Relating to Misuse of Material Nonpublic Information

A broker-dealer and its president recently agreed to [settle](#) charges brought by the SEC for failing to protect against the misuse of material nonpublic information. The SEC found that the broker-dealer violated Section 15(g) of the Securities Exchange Act by, among other things, not enforcing its prohibition regarding information sharing among certain personnel and failing to establish policies and procedures to track and prevent improper trading, such as by requiring its restricted trading list to be updated on a timely basis.

### Additional CPO-PQR and CTA-PR Questions

Form CPO-PQR, which is required to be filed by registered commodity pool operators (“CPOs”), and Form CTA-PR, which is required to be filed by registered commodity trading advisors (“CTAs”), have been [updated](#) to include two new questions. CPOs and CTAs now need to report their ratio of current assets to current liabilities and their ratio of total revenue to total expenses.

### CFTC Position Limits Aggregation Relief

The Commodity Futures Trading Commission (the “CFTC”) [amended](#) their rules regarding aggregation of accounts for purposes of the CFTC’s position limits in December 2016. Among the changes implemented by this amendment is a new notice filing requirement for certain exemptions from aggregation. Pursuant to a recent [No-Action Letter](#), the CFTC effectively postponed the requirement to proactively make such notice filings until August 12, 2019.

### Key Upcoming Compliance Dates

- TIC Form S (September 15, October 16)
- TIC Form SLT (September 25, October 23)
- Amendments to Form ADV and Advisers Act Rule 204-2 take effect (October 1)
- Quarterly Form 13H (October 10)
- Code of Ethics Quarterly Transaction Reports (October 30)

---

Seward & Kissel Regulatory Compliance (SKRC) is a service provided by Seward & Kissel LLP.

SKRC offers [Compliance Services](#) as well as an [Online Compliance Subscription Service](#).

The information contained in this report is for informational purposes only and is not intended and should not be considered to be legal advice on any subject matter. As such, recipients of this report, whether clients or otherwise, should not act or refrain from acting on the basis of any information included in this report without seeking appropriate legal or other professional advice. This is presented without any warranty or representation as to its accuracy or completeness, or whether it reflects the most current legal developments. This report may contain attorney advertising. Prior results do not guarantee a similar outcome.