

### A Publication of Seward & Kissel Regulatory Compliance

#### FINRA Announces its 2018 Regulatory and Examination Priorities

FINRA published its [2018 Regulatory and Examination Priorities](#). Among the notable areas of focus are financial technology innovations, including cybersecurity and supervision of transactions involving cryptocurrencies, initial coin offerings and oversight of illicit activity involving the exploitation of senior investors. FINRA also announced changes in the manner in which it schedules and performs examinations, including the incorporation of machine learning techniques to aid in the detection of manipulative trading activity.

#### Private Equity Fund Adviser Settles Charges of Failure to Disclose Receipt of Accelerated Monitoring Fees

The SEC settled an [enforcement proceeding](#) against a private equity fund adviser for failing to disclose to its funds, and to the funds' limited partners prior to their commitment of capital, that it may accelerate future monitoring fees upon termination of monitoring agreements. The SEC concluded that the adviser failed to adopt or implement policies and procedures reasonably designed to prevent violations of the Investment Advisers Act arising from the conflicts of interest associated with the undisclosed receipt of fees and ordered the adviser to pay over \$12 million in a civil money penalty and disgorgement.

#### NFA Issues Additional Report Requirements for CPOs and CTAs that Trade Virtual Currency Products

The NFA issued [additional reporting requirements](#) for CPOs and CTAs that trade virtual currency products. A CPO or CTA must immediately notify the NFA if it executes any transactions involving a virtual currency or virtual currency derivative on behalf of a pool or managed account and report the number of its pools or managed accounts that executed such transactions during each calendar quarter.

#### Investment Adviser Settles Charges of Compliance Deficiencies

An investment adviser [settled charges](#) by the SEC of multiple violations of the Investment Advisers Act, including various compliance-related deficiencies, misrepresentations in Forms ADV, and failure to produce documents to SEC examination staff. In particular, the adviser did not disclose in its Form ADV that its principal held managerial interests in, and stood to receive fees and a share of profits from, private funds that the adviser recommended to its clients. The adviser also failed to conduct requisite annual reviews, implement policies requiring disclosure of the principal's outside business activities in the adviser's Form ADV or adopt policies related to the calculation and refunding of advisory fees.

#### Fund Administrator Agrees to Settle Fraud Charges with SEC

A fund administrator [settled charges](#) by the SEC that it was a cause of violations of the Investment Advisers Act's anti-fraud provisions by a registered investment company and its principal by including fake assets that were purportedly worth over \$15 million but actually worthless in the fund's net asset value ("NAV"). The SEC alleged that, although the administrator did not know that the assets were fake at the time it was calculating the NAV, the administrator did know that the fund's custodian did not have adequate proof of the existence of many of these assets and that there were therefore significant discrepancies between the ad-

ministrators' records and those of the custodian. The administrator, however, failed to take any further steps, such as investigating the problem with the assets, notifying the investing public or the fund's board of directors, or reducing the NAV.

#### FINRA Releases Interpretive Guidance on Use of Mobile Applications to Satisfy Written Representations under New Issue Rules

FINRA released an [interpretive letter](#) providing guidance regarding the use of mobile applications to satisfy the written representation provisions of FINRA Rules 5130 and 5131 related to new issues. FINRA concluded that written representations could be obtained electronically through a mobile application, provided that the method for obtaining the representations complies with SEC and FINRA guidance regarding electronic communications and the representations satisfy the requirements of Rules 5130 and 5131.

#### OCIE Releases its 2018 Examination Priorities

The SEC's Office of Compliance Inspections and Examinations ("OCIE") released its [2018 National Exam Program Examination Priorities](#). OCIE's exam priorities are organized around five themes: (i) matters of importance to retail investors; (ii) compliance and risks in critical market infrastructure; (iii) FINRA and MSRB; (iv) cybersecurity; and (v) anti-money laundering programs. With respect to the protection of retail investors, OCIE will focus the disclosure and calculation of fees, electronic investment advice, wrap fee programs, never-before-examined investment advisers, certain high risk mutual funds and exchange traded funds, cryptocurrencies, initial coin offerings, and blockchain. Seward and Kissel's memorandum summarizing OCIE's exam priorities is available [here](#).

#### SEC to Hold National Compliance Outreach Seminar for Investment Companies and Investment Advisers

The SEC [announced](#) the opening of registration for its compliance outreach program's national seminar for investment companies and investment advisers. The event will be held on April 12, 2018 in Washington, D.C., and is intended to help chief compliance officers and other senior personnel enhance their compliance programs for the protection of their investors.

#### Key Upcoming Compliance Dates

- Form PQR for large CPOs (March 1)
- Form PF Quarterly Update for "large hedge fund advisers" (March 1)
- Annual Exemption Affirmation for CPOs and CTAs relying upon CFTC Rules 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), 4.13(a)(5) and/or 4.14(a)(8) (March 1)
- Periodic Report of Account Statements for CPOs (March 2 and March 30)
- TIC Form S (March 15)
- TIC Form SLT (March 23)
- Annual Report for CPOs (March 30)
- Form PQR for small or mid-size CPOs (March 30)
- Annual Amendment of Form ADV for advisers with a December 31 fiscal year end (March 31)

SKRC's 2018 Compliance Calendar is available on our [Online Subscription Service](#).

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