



COMPLIANCE FLASH

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OCIE Issues Risk Alert on COVID-19 Related Compliance Risks and Considerations

The SEC's Office of Compliance Inspections and Examinations ("OCIE") released a [risk alert](#) to share its observations of COVID-19 related issues, risks and practices relevant to SEC-registered investment advisers and broker-dealers. The risk alert groups OCIE's COVID-19 related observations and recommendations into the following categories: (1) protection of investor assets; (2) supervision of personnel; (3) practices relating to fees, expenses, and financial transactions; (4) investment fraud; (5) business continuity; and (6) the protection of investor and other sensitive information.

SEC Settles Enforcement Action against Adviser for Misallocating Costs and Expenses

The SEC settled an [enforcement action](#) against an adviser for misallocating costs and expenses relating to the adviser's performance of certain "third party tasks," including asset-level due diligence, accounting, valuation and other similar services, for two real estate private equity funds (collectively, "Funds") managed by the adviser. The SEC found that the adviser misallocated to the Funds cost and expenses for third party tasks that should have been allocated to related co-investment vehicles also managed by the adviser. The adviser subsequently remediated the Funds. Further, the SEC found that the adviser represented to each Fund's limited partner advisory committee that the costs and expenses of third party services were "at or below market rates," but following an initial market rate analysis, failed to obtain any updated information or perform any analysis to support this claim. The SEC also found that the adviser failed to fully disclose to the advisory committees an increase in employee overhead expenses charged to the Funds attributable to third party tasks. The adviser was censured and ordered to pay a \$350,000 civil money penalty. Seward & Kissel's client alert on this enforcement action is available [here](#).

SEC Issues Supplemental Guidance on Proxy Voting Responsibilities of Advisers

The SEC issued [supplemental guidance](#) ("Guidance") regarding the proxy voting responsibilities of registered investment advisers ("advisers") under the Investment Advisers Act of 1940. The Guidance offers additional guidance on policies and procedures and disclosure requirements for advisers that use a third-party proxy advisory firm's electronic vote management system. In particular, the Guidance provides that advisers should consider whether its policies and procedures address circumstances where the adviser becomes aware of additional information from an issuer after the proxy advisory firm has pre-populated the adviser's votes but prior to the proxy submission deadline. Seward & Kissel's client alert on the Guidance is available [here](#).

OCIE Issues Cybersecurity Risk Alert on Ransomware

OCIE released a [risk alert](#) providing observations to assist SEC registrants ("registrants") in their consideration of enhanced cybersecurity preparedness and operational resiliency to address ransomware attacks. Recognizing that there is no "one-size fits all" approach, the risk alert provides a list of measures that registrants have utilized to address ransomware attacks, including incident response and resiliency policies, procedures and plans; operational resiliency; awareness and training programs; vulnerability scanning and patch management; access management; and perimeter security. Seward & Kissel's client alert on this risk alert is available [here](#).

Supreme Court Allows Disgorgement in SEC Enforcement Actions within Limits

The US Supreme Court held in [Liu v. SEC](#) that federal courts can order disgorgement in SEC enforcement actions under principles of equitable relief, but limited the remedy to the defendant's net profits. The Court noted that equitable relief is meant to strip the defendant of its ill-gotten gains, which should go to the victims of the defendant's conduct. Seward & Kissel's client alert on this case is available [here](#).

OCIE Issues Risk Alert Highlighting Private Fund Adviser Exam Deficiencies

OCIE released a [risk alert](#) providing an overview of certain compliance issues commonly observed during the examinations of advisers that manage private equity funds or hedge funds. The risk alert discusses three general areas of deficiencies identified in examinations of private fund advisers: (A) conflicts of interest, (B) fees and expenses, and (C) policies and procedures relating to material non-public information. Seward & Kissel's client alert on this risk alert is available [here](#).

Upcoming Compliance Due Dates

- TIC Form SLT (8/24)
- Quarterly update to Form PF (8/29)
- Periodic report for CPOs (8/30)
- Form CPO-PQR for all CPOs (8/31)
- BE-180 (8/31, extension available to 9/30)
- TIC Form S (9/15)
- TIC Form SLT (9/23)
- Periodic Report for CPOs (9/30)
- BE-180 (extension available to 9/30)

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