

A Publication of Seward & Kissel Regulatory Compliance

Adviser Settles Charges for Violating GAAP Valuation Standards

The SEC recently [settled](#) charges against an investment adviser and its principal for materially misstating the value of the adviser's private fund assets. In violation of GAAP standards, the adviser relied on the Level 3-based values provided by an independent pricing service when valuing certain bonds, even though there were relevant Level 2 inputs indicative of fair value, including broker quotes and the prices of the adviser's own trades in the bonds. The SEC alleged that, in doing so, the adviser received excess management fees and overpaid redeeming limited partners. In view of this settlement, advisers should be careful to consider all inputs that may be indicative of fair value when pricing assets.

U.S. House Committee Considers Financial CHOICE Act

The U.S. House Committee on Financial Services is considering the [Financial CHOICE Act](#) (the "Act"), sponsored by Chairman Jeb Hensarling (R-Texas). If passed, the Act would, among other things, exempt private equity fund advisers from registering with the SEC, repeal the Department of Labor's Fiduciary Rule, repeal the Volcker Rule under Dodd-Frank, exempt certain communications from Regulation D's ban on "general solicitations," count "knowledgeable employees" of a private fund or the fund's investment adviser as accredited investors and define "accredited investor" to include those licensed as a broker-dealer or investment adviser by the SEC or other regulatory body. See also SKRC's Compliance Alert on the Act [here](#).

FINRA Provides Guidance on Social Media and Electronic Communications

FINRA recently released a [Regulatory Notice](#) addressing issues related to social media and digital communications, including when a FINRA member has "adopted" or become "entangled" with the content on a linked third-party site, whether a firm is required to retain business communications made through text messaging apps and chat services, whether native advertising is inherently misleading under FINRA's communications rules and whether FINRA rules apply to opinions posted on social networking websites. In light of the Regulatory Notice, FINRA member firms should review their use of social media, digital communications and website content to ensure compliance with the guidance.

SEC Releases Risk Alert on WannaCry Ransomware

The SEC's Office of Compliance Inspection and Examinations recently released a [Risk Alert](#) warning firms of a worldwide ransomware attack known as WannaCry, WCry or Wanna Decryptor. This malware gains access to servers through a vulnerability in Microsoft's Remote Desktop Protocol or through phishing emails and infected websites. The Risk Alert encourages firms to review a related [alert](#) issued by the U.S. Department of Homeland Security and to ensure that appropriate Microsoft operating system patches are installed.

New York City Bans Employers from Requesting Salary History

New York City Mayor Bill de Blasio recently signed into law a [bill](#), effective October 31, 2017, banning employers in New York City from asking job applicants about, or otherwise relying on, their salary history and employee benefits in the interview process unless such information is voluntarily disclosed. Salary history is broadly defined to include "current or prior wage, benefits or other compensation" but excludes "any objective measure of the applicant's productivity such as revenue, sales or other production reports." Penalties for violations of the ban range up to \$250,000. See Seward & Kissel's memorandum on the new law [here](#).

Hedge Fund Partners and Political Intelligence Consultant Charged with Insider Trading

The U.S. Attorney's Office recently [charged](#) three partners and analysts at a hedge fund, a "political intelligence" expert consultant and a federal employee with insider trading. The consultant allegedly provided nonpublic information obtained from the federal employee about pending Medicare reimbursement decisions to the hedge fund employees who then traded on the information on behalf of the funds. The SEC [filed](#) corresponding charges. These charges illustrate the continued interest by law enforcement and regulators in political intelligence consultants and potential insider trading.

Key Upcoming Compliance Dates

- TIC Form S (June 15)
- TIC Form SLT (June 23)
- Quarterly Form 13H (July 10)
- TIC Form S (July 17)
- TIC Form SLT (July 24)
- Code of Ethics Quarterly Transactions Reports (July 31)

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