

## SEC Announces 2017 Examination Priorities and Continues Adviser Enforcement Focus

### *2017 Examination Priorities*

On January 12, 2017, the SEC's Office of Compliance Inspections and Examinations ("OCIE") published its [Examination Priorities for 2017](#), many of which could impact private fund advisers, including:

- a continued examination concentration on private fund advisers, focusing on conflicts of interest and disclosure of conflicts and actions that appear to benefit the adviser at the expense of investors;
- an expanded never-before-examined adviser initiative to include focused, risk-based examinations of newly registered and never-before-examined advisers;
- a continued focus on advisers providing advisory services from multiple locations, with a particular focus on the design and implementation of the adviser's compliance program and the oversight of advisory services provided from various offices;<sup>1</sup>
- a continued focus on cybersecurity compliance policies and procedures, including testing the implementation of such procedures and controls as part of OCIE's effort to examine structural risks to the U.S. economy; and
- a continued use of analytics to identify individuals with a track record of regulatory problems and examine investment advisers that employ such persons.<sup>2</sup>

In announcing these and other priorities, OCIE noted that its list was not exhaustive, and that it intends to conduct examinations focused on risks, issues and policy matters that arise from market developments, new information learned from examinations or other sources, including tips, complaints and referrals, and coordination with other regulators, as well as regulatory developments.

### *Adviser Enforcement Actions Continue*

So far in 2017, the SEC has also continued its enforcement focus on investment advisers, including:

- **Undisclosed Conflicts.** On January 10, 2017, the SEC entered into a consent [order](#) with a private equity fund adviser for the adviser's failure to disclose rela-

tionships between certain of its principals and a third-party information technology service provider used by portfolio companies of the private funds and the potential conflicts of interest resulting from those relationships.

- Whistleblowers. On January 17, 2017, the SEC entered into a consent [order](#) with a fund sponsor over the adviser's use of separation agreements in which exiting employees were required to waive their ability to obtain whistleblower awards, demonstrating the SEC's continued focus on the role of the whistleblower and on anti-retaliation measures.
- Pay-to-Play. Also on January 17, 2017, the SEC entered into consent orders with 10 investment advisers related to alleged violations of the pay-to-play rule. Notably, some of the settling advisers were exempt reporting advisers, and some of the matters involved modest contributions that were returned to the donor.<sup>3</sup>

Registered investment advisers, including advisers to private funds, should continue to remain aware of the SEC's examination and enforcement priorities.

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1 This follows a [December 2016 OCIE Risk Alert](#) on the same topic.

2 In this connection, OCIE stated that it would, for example, assess the compliance oversight and controls of investment advisers that employ recidivists, including those who have been subject to a regulatory action or barred from associating with a broker-dealer. See also [OCIE Risk Alert: Examinations of Supervision Practices at Registered Investment Advisers](#) (Sept. 12, 2016).

3 See [press release](#).

If you have any questions about the matters addressed in this *KirklandAIM*, please contact the following Kirkland attorneys or your regular Kirkland contact.

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