

Private Fund Manager Settles with SEC for Alleged Compliance Failures Involving Employee Sharing Confidential Information with Spouse

PENpoints

A recent SEC settlement serves as a reminder that an investment adviser's duty to supervise includes taking "sufficient," and not just any, steps to prevent the recurrence of violations of compliance policies and procedures.

The SEC recently entered into [a settlement order](#) with a private fund manager (the "Manager") in connection with an employee of the Manager sharing confidential information with his spouse, who owned and operated a different private fund manager and invested its fund using a substantially similar strategy. The confidential information shared by the employee with his spouse included the Manager's securities positions and recommendations and related research. The Manager allegedly violated the Advisers Act by failing to supervise the employee and failing to implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.

The Manager, when it initially became aware that confidential information, including securities positions and recommendations and related research, was communicated by its employee to his spouse, took certain remedial measures with respect to the employee,¹ including monitoring the employee's email and issuing a confidentiality reminder to the employee from the CCO. The information sharing by the employee to his spouse did not cease, however, including transmissions of confidential information from the employee's monitored email account to his personal email account. The Manager's monitoring of the employee's email account did not detect the transmission of confidential information, even after the Manager became aware of the substantially overlapping positions between the

Manager's private fund and the spouse's fund. The SEC alleged that, while the Manager took a series of remedial measures, it nevertheless failed to take supervisory, remedial and/or disciplinary steps sufficient to prevent further violations by the employee. The Manager agreed to pay a civil penalty of \$250,000 and to cease and desist from future violations of the Advisers Act.

This settlement by the firm serves as a reminder that an investment adviser's duty to supervise includes taking "sufficient," and not just any, steps to prevent the recurrence of violations of its compliance policies and procedures,² and that adviser efforts to monitor employees should be actionable, implemented and conducted on an ongoing basis. It also serves as a reminder that an adviser's CCO should carefully consider potential conflicts and appropriate compliance policies and ongoing monitoring when an employee's spouse works at another financial services firm, particularly one utilizing similar strategies to the employing adviser.

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¹ The Manager's code of ethics prohibited most personal trading, including individual securities, by all employees and spouses. The employee's spouse was granted an exemption from the Manager's code of ethics to allow her to trade the same type of securities in her private fund, but subject to regular monitoring by an outside law firm.

² The failure to adequately address known compliance deficiencies has been present in several recent cases. See e.g., [In the Matter of BlackRock Advisers](#), Investment Advisers Act Release No. 4065 (April 20, 2015) (outside business activities).

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

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PENbriefs

DOJ Solidifies and Sharpens FCPA Enforcement Guidance

The U.S. Department of Justice recently released a new enforcement policy for cases brought under the U.S. Foreign Corrupt Practices Act (FCPA). The new policy goes further than prior efforts in several respects to encourage companies to self-report FCPA misconduct. To learn more, see our recent [Alert](#).

Trump Administration Changes Course on Cuba

Various departments in the Trump Administration recently announced changes to U.S. trade controls on Cuba, which roll back some of the liberalization that took place under the previous administration. At the same time, the new restrictions clarify some murkier areas of compliance, and some companies may be surprised that certain activities may still be permissible. To learn more, see our recent [Alert](#).

PENbriefs

Venezuela's Debt Crisis: Creditors' Options in a Disorderly Default

The Venezuelan President recently acknowledged that Venezuela and its state-owned oil company are unable to pay their debts. Investors in Venezuela debt and

other creditors should be prepared for an Argentina-style disorderly default. To learn more, see our recent [Alert](#).

Making Sure Your Contract Rights Don't Spin Away

Most commercial and corporate contracts provide that the agreement is binding on a party's "successor and assigns." This boilerplate provision covers most corporate transactions scenarios and ensures that the agreement remains with, and binding on, the business that

signed the contract. However, the current popularity of corporate "separate" transactions highlights that this simple clause may be insufficient to address the consequences of spin-offs and other separation transactions. To learn more, see our recent [M&A Update](#).

PENnotes

PENews Conference Call Series

Kirkland regularly hosts short PENews conference calls covering topics most critical to private equity business professionals. Recent topics include "[The Dramatic Impact of the Proposed Tax Reform on the Private Equity Industry and Transactions](#)" and "[Senate Tax Reform Proposal: Key Distinctions from House Proposal for Private Equity Sponsors and Portfolio Companies](#)."

PLI Drafting and Negotiating Corporate Agreements 2018

New York NY, January 18, 2018

Chicago, IL, January 31, 2018

This PLI seminar will teach the basics of drafting and negotiating corporate agreements — from how the provisions of an agreement fit together, to the fundamental drafting and negotiating principles common to all corporate agreements. Kirkland partners Jonathan Davis and Keith Crow will be panelists at the New York and Chicago events, respectively. Click [here](#) for more information or to register.

45th Annual Securities Regulation Institute Coronado, CA, January 22-24, 2018

Hosted by Northwestern Law, the 43rd Annual Securities Regulation Institute will take place in Coronado, California. One of the most visible and highly regarded securities and corporate law conferences in the country, the Securities Regulation Institute reaches prominent attorneys from both firm and in-house practices. Kirkland partner Scott Falk is on the planning committee and will be a panel member for the Mergers & Acquisitions session. Click [here](#) for more information or to register.

17th Annual Beecken Petty O'Keefe & Company Private Equity Conference Chicago, IL, February 23, 2018

Kirkland is a sponsor of this annual event, which brings together financiers, students and entrepreneurs to network and share insights into the dynamics of investing in a constantly changing economy. This year's conference is themed "Remaining Nimble and Achieving Returns While Facing Uncertainty and Volatility." Click [here](#) for more information.

PENnotes**13th Annual Stern Private Equity Conference
New York, NY, March 2, 2018**

Kirkland will sponsor New York University's Stern School of Business' 13th Annual Stern Private Equity Conference. The conference will provide a forum for industry leaders to discuss the opportunities and risks of today's private equity and venture capital environment, including how tepid global growth, regulatory dynamics, political pressure and financial market conditions are posing challenges to fundraising, deal financing and operations. More information to follow.

**2018 Kellogg Private Equity and Venture
Capital Conference
Chicago, IL, April 25, 2018**

Kirkland is a sponsor of this annual student-led conference, which brings industry professionals, alumni, students and Kellogg faculty together for a day of discussion on the current state of the industry and its most pressing issues. More information to follow.

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Kirkland & Ellis' nearly 500 private equity attorneys handle leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and fund formations on behalf of more than 400 private equity firms and hedge funds around the world.

Kirkland has been widely recognized for its preeminent private equity practice. The Firm was named "Private Equity Group of the Year" in each of the last six years by *Law360* and was commended as being the most active private equity law firm of the last decade in *The PitchBook Decade Report*. U.S. News Media Group and Best Lawyers have ranked Kirkland as a Tier 1 law firm for Leveraged Buyouts and Private Equity Law for seven consecutive years and as a top-tier firm for Private Funds/Hedge Funds Law since 2012. The Firm was recognized as the #1 law firm for private equity in the 2017 Vault 100 rankings, and, in 2016, Private Equity International named the Firm "Law Firm of the Year in North America: Fund Formation" for the third year in a row.

In 2012-2016, Chambers and Partners ranked Kirkland as a Tier 1 law firm for Investment Funds in the United States, United Kingdom, Asia-Pacific and globally. The Firm was ranked as the #1 law firm for both Global and U.S. Buyouts by deal volume in Mergermarket's *League Tables of Legal Advisors to Global M&A for Full Year 2011-2016*, and has consistently received top rankings among law firms in Private Equity by The Legal 500, the Practical Law Company and IFLR, among others.

The Lawyer magazine has recognized Kirkland as one of its "Transatlantic Elite," having noted that the Firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

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