

SEC Charges 13 Private Fund Advisers for Repeated Filing Failures

PENpoints

The SEC's enforcement actions against 13 registered private fund advisers for failing to file Form PF over multi-year periods emphasizes the importance of filing timely, accurate and complete required reports.

On June 1, 2018, the U.S. Securities and Exchange Commission (the "SEC") announced settlements with 13 registered investment advisers for each adviser's alleged violation of the Investment Advisers Act's reporting requirements by repeatedly failing to file required private fund reports on Form PF.¹ Each adviser was censured, was issued a cease and desist order and paid a civil penalty of \$75,000.

Form PF, a data-collection tool used by financial regulators, is required to be filed annually or more frequently by private fund advisers managing \$150 million or more of assets, and requires information pertaining to an adviser's assets under management and the size, leverage and performance of the adviser's private funds. Advisers to hedge funds, liquidity funds or private equity funds that are considered "large" per certain thresholds set forth in Form PF's instructions are required to report additional information regarding such funds.

In announcing the settlements, the SEC noted the significance of the information collected on Form PF to

various financial regulators. In particular, the SEC's announcement noted its own use of Form PF as a data-collection tool to monitor industry trends, inform rule-making, identify compliance risks and target examination and enforcement investigations. The SEC also publishes aggregated information and statistics derived from Form PF data to inform the public about the private fund industry.

These actions emphasize the importance of filing timely, accurate and complete required reports with the SEC and other financial regulators. Based on these settlements, private fund advisers should consider whether they are meeting their required reporting obligations.

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¹ See [SEC Press Release](#). The advisers ranged in size from \$207 million to \$2.69 billion in assets under management.

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

Reed T. Schuster
<http://www.kirkland.com/rschuster>
 +1 312-862-2117

Scott A. Moehrke, P.C.
<http://www.kirkland.com/smoehrke>
 +1 312-862-2199

Jaime D. Schechter
<http://www.kirkland.com/jaimeschechter>
 +1 212-446-4979

PENbriefs

Is Delaware Really a ‘Sandbagging State’?

The popular belief among dealmakers has been that Delaware is generally “pro-sandbagging” meaning that, absent an express provision barring post-closing claims for known breaches, pre-closing knowledge of a breach is not a bar to seeking indemnification recovery as actual reliance by the buyer on the false representation is not a requisite component of a breach claim. Recent comments in a Delaware Supreme Court decision, however, cast some doubts on the state’s “pro-sandbagging” reputation. Read more in our recent [M&A Update](#).

Supreme Court Decision Expected Soon in Amex “Anti-Steering” Case

The U.S. Supreme Court is expected to rule in *Ohio v. American Express*, which examines how the “rule of reason” should be applied to a two-sided market like the credit card industry, where companies simultaneously serve both merchants and cardholders during a transaction. Practitioners and scholars see this case as an important opportunity for the court to provide guidance on the appropriate application of the rule of reason, as well as the effect of two-sided markets on that analysis. Read more in our recent [Alert](#).

PENnotes

2018 SuperReturn Energy Boston, MA, June 18-19, 2018

Kirkland is a sponsor of this specialized energy private equity event. Bringing LPs and GPs together, SuperReturn Energy provides a platform for energy investors to come together to share expertise, build partnerships and do deals. Kirkland partner John Pitts will participate on the “Private Equity Oil & Gas Deal Sourcing.” panel Click [here](#) for more information.

Private Debt Investor CFOs & COOs Forum 2018 New York, NY, June 20-21, 2018

Kirkland is a sponsor of this event, which will delve into the complexities of managing the finance and operations of firms that invest across the capital structure, including senior secured loans, subordinated debt, hybrid financing and more. Kirkland partner Stephanie Berdik will address how LPs evaluate private debt and credit funds, and partner Norm Champ will discuss the before and after of an SEC exam. Click [here](#) for more information.

PLI Annual Private Equity Forum New York, NY, July 16-17, 2018

This annual event is designed to provide an overview of the legal issues that need to be considered in marketing a private equity fund, current regulatory and compliance hot buttons, issues in negotiating the terms of private equity funds, GP-led fund restructurings, sponsor

stake sales, and other developments. Kirkland partner Beau Brashares will speak on “General Partner Arrangements: Structure and Terms.” Click [here](#) for more information.

Kirkland Registered Adviser Seminar & CCO Summit New York, NY, September 25, 2018 Boston, MA, September 27, 2018 Chicago, IL, October 2, 2018 Houston, TX, October 9, 2018 Los Angeles, CA, October 17, 2018 San Francisco, CA, October 18, 2018

As the SEC continues its focus on private fund managers registered as investment advisers, firms must be familiar with the evolving regulatory environment. This seminar is designed specifically for private fund manager CCOs, general counsel and other senior executives. More information to follow.

PLI Understanding the Securities Laws Chicago, IL, September 26-27, 2018

This program will provide an overview and discussion of the basic aspects of the U.S. federal securities laws by in-house and law firm practitioners, as well as SEC staff. Emphasis will be placed on the interplay among various regulations, as well as significant legislative and regulatory changes and proposals. Kirkland partner Maggie Flores will be a panelist. Click [here](#) for more information.

Private Equity Practice at Kirkland & Ellis

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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 seven 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 2018 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 2012-2017, 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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EDITORS

Jack S. Levin, P.C.
 Margaret A. Gibson, P.C.

SUBSCRIPTIONS

To subscribe to *KirklandPEN*, please email
kirklandpen@kirkland.com
 +1 (312) 862-3356

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