

Private Fund Compliance Forum

New York 2020

AGENDA

Day One: Wednesday, December 9, 2020

7:45 am - 8:45 am | **Registration and networking breakfast**

8:45 am - 9:30 am | **Latest developments and impact of the 2020 election/Brexit on private funds**

- Status of the expansion of private equity industry into retail sector
 - What does the market for retail investing in private equity space look like?
 - What products are currently available in order to make the retail investing happen?
- Rise of interval funds
 - What are they and what's been their utilization thus far?
 - As private equity firms are looking to expand their distribution into interval funds, is greater scrutiny over the core business expected from the SEC?
- Anticipated effects of 2020 election on private equity industry
- Brexit and its impact thus far
- How is ability to market into UK impacted?

9:30 am - 10:00 am | **Keynote address/interview**

10:00 am -10:30 am | **Networking break**

10:30 am -11:15 am | **Key takeaways from the major enforcement and litigation actions against private funds**

- Examination of major enforcement actions against fund managers

- Lessons learned from recent litigation in the PE space
- Addressing the trend involving private actions being brought by LPs

11:15 am - 12:00 pm | ESG considerations for private equity funds

This session will identify and explain the primary approaches a fund can take to incorporating ESG, from meeting minimum requirements to being a “pure” social impact fund. We will discuss ESG compliance issues, including how to incorporate ESG into investments, how to monitor compliance, and whether there is a market for dedicated social impact funds.

12:00 pm - 1:00 pm | Networking luncheon

1:00 pm - 1:45 pm | Moving from single to multiple strategies: As a private equity firm grows, what are the cost-efficient strategies for dealing with the expanding compliance function?

- What is there for a compliance officer to pay attention to when a new strategy (e.g., debt fund) is contemplated by a firm's management?
- What mechanisms would be useful to have in place to identify new risks as they arise (i.e., is it useful to have a risk committee or to have direct contact with senior management or something else?)
- What is the process by which a compliance professional can work to establish policies and procedures to mitigate these risks
- Practical strategies for dealing with conflicts when a firm is engaged in multiple strategies
 - How to monitor and track these conflicts?
 - Should a specific conflict policy be in place?
 - Would a risk matrix be helpful here?

1:45 pm - 2:30 pm | In the interim: How are firms practically handling the SEC's advertising proposal and its potential application to social media platforms?

- What is the industry currently doing – do these proposals have any impact on current policies and procedures?
- How challenging does the industry anticipate the potential rule's adoption will be?
- At this time, what are the restrictions applicable to marketing materials?
- Who should review and approve marketing materials?
- As more and more firms are engaging in social media advertising, how do proposed rules apply to social media platforms?

2:30-2:45 pm | Networking break

2:45 pm -3:30 pm | BREAKOUT SERIES I

Track A | What should a compliance executive think about when a business enters into a co-investment arrangement?

- Suggested good industry practice for allocating deals fairly
- What are the risks and rewards associated with doing co-investments
- Allocation of expenses with co-investors
- If there is a failure to close on a co-investment, how are expenses allocated?

Track B | Conflicts of interest: What Is SEC looking for?

- What have firms been experiencing during exams with respect to the conflicts of interest?
 - What is of a particular interest to the SEC at this time?
 - What are recommended controls and processes in this respect?
- In view of potential conflicts, what are the suggested procedures for allocating deals across funds
- How are expenses allocated at a portfolio company level?
- When a conflict arises in the course of business, how to address/mitigate it since it can't be disclosed in advance?

3:30-4:30 BREAKOUT SERIES II

Track C | Pointers on avoiding and mitigating the impact of a cyber event

Technical aspect

- What protections do firms generally have in place now and how successful have those efforts been in protecting the firms against attacks?
- What should these protections look like and where do most firms fall short? (e.g., Specifics on physical access to servers; two-factor authentication for accessing the network at home; etc.)
- Penetration testing: how often should it be performed?

Compliance aspect

- What's compliance and what's related to technology and doing business: what does cyber security mean from a compliance, not technological, perspective?
- How involved should a compliance officer be and what should he/she know? (e.g., should a CCO have IT personnel with him/her during exams?)
- Developing a checklist of things to do to ensure adequate protections are in place
- Policies and procedures for breaches: In the event of a breach, what needs to happen and who does what?
- What should processes for wire control look like?

Cyber security at a portfolio company level

- In light of the SEC's requirement that fund managers be more involved, what should fund managers be doing with respect to their portfolio companies' network security? What analysis should the firms be doing to assess cyber risk at portfolio companies?
- Should it be limited to doing due diligence upfront before investing or should it be a more thorough and continued monitoring process?
- Ways to balance the need to be involved vs not stepping over the line and getting into the weeds of what a portfolio company should be responsible for

Track D | CCO and CFO and COO and...small(er) firm compliance challenges

- Practical strategies for executing compliance functions for CCOs wearing dual or multi-hats
- What are the most important compliance tasks that need to be executed in order for an officer to feel comfortable that enough has been done?
- Effectively handling personal trading and its reporting requirements at a smaller firm
- IT security for smaller firms

4:30-4:45 | Networking break

4:45-5:30 | BREAKOUT SERIES III

Track E | When is it absolutely necessary to create European-registered investment vehicles?

- Determining if a US Fund is even impacted by the AIFMD: Do you register or not?
- When is it necessary to set up a local AIFM and when can it be outsourced?
- If it is necessary to develop a local fund:
 - How to work with service providers?
 - How to market it?
 - What it means to manage it from the US?
- Where is the overlap with the SEC's Forms PF and ADV; what data is already captured and what's new?
- Best practices with respect to outsourcing of the reporting
- Doing deals under AIFMD
 - What are the restrictions on deal structuring?
 - What is the impact on US deals that may have European subsidiaries?

Track F | Addressing the heightened emphasis on AML globally

- Overview of AML requirements in a global context
 - For those firms that need to comply with global AML regulations, what is the best strategy for doing that (i.e., is it the case that if a firm has operations in Europe, it has to comply with European regulations; if in Caymans, then with Caymans' directive, etc?)

- What has been the impact thus far of the new Cayman laws?
- What third-parties have firms been using to help with the AML compliance?
- Best strategies for performing risk assessments and monitoring

5:30pm-6:30pm | Cocktail reception

Day Two: Thursday, December 10, 2020

7:45 am - 8:45 am | Registration and networking breakfast

7:45 am - 8:45 am | CCO Think-Tank (*Invitation-only*)

Being a Part of the Business: How does a CCO continue to show value and be an integrated member of a team?

- Practical side of being a CCO
 - Bringing concerns to the business side
- How to effectively say “no” to senior executives: what things a CCO should push back against?
- Ways to ensure that the business side continues to see value in the compliance function and the importance of keeping compliance team members in the loop at all times

8:45 am - 9:15 am | SEC Keynote

9:15 am - 10:15 am | Ensuring the effectiveness of current and developing additional processes and controls for a successful management of a compliance department

- What should a CCO keep in mind when it comes to the management of a compliance department?
 - Resources
 - Onshoring vs offshoring
 - Budgets
- How to effectively execute a restructuring of a compliance department? Given that a lot of firms are looking to expand, what are the suggestions for deciding who will be doing what and how to develop a focused working groups to track everything?
- Performing a mock audit: What should its scope be – full or limited? How frequently should it be performed? Should a third-party vendor do it or should it be done internally? If a third-party vendor should be doing it, whom do firms generally use?
- How to effectively perform forensic testing around accounting and trading activity?
- Real-world examples for testing and monitoring: What are compliance teams missing and should be doing to identify risks?

- Ensuring compliance has a seat at the table

What should the internal risk function look like

- Do firms use risk matrices to identify everything that can potentially go wrong and what to do in the event of any of these occurring? (e.g., error in financial statements – what to do? harassment complaint – what to do if this claim is made against a firm and what to disclose to prospective clients? etc.)

What technology do firms use currently to help them automate certain compliance tasks

- Other than the code of conduct, where are compliance professionals using technology to help them? (e.g., onboarding investors? vendor management?)
- Whom are firms generally using?
- Use of technology to help with allocating deals fairly among funds managed by a firm
- Workflow management
- Use of programs that facilitate creation and review of marketing materials
- Incorporating AI and machine learning into compliance programs

CCO's personal liability

- Addressing SEC's recently increased focus on CCO's personal liability
- What risks should a CCO be aware of?

10:15 am -11:00 am | Key Takeaways from the SEC Exams

In this session we will focus on the lessons learned from the recent exams as well as what the industry can expect going forward.

11:00 am -11:1 am 5 | Networking break

11:15 am - 12:00 pm BREAKOUT SERIES IV

Track G | Designing a data privacy program that meets various states' CCPA-like standards

- Addressing the practical implications of CCPA:
 - How feasible is it for private equity firms to implement CCPA requirements?
 - How to treat employees' personal information? LPs'? Other third-parties' personal information?
- What are the overlaps between various jurisdictions?
- Performing GAP analysis
- How does it compare to the GDPR?

- How to think through data privacy issues if one is a US-based firm which also has exposure to Europe?
- Should fund managers insist that the portfolio companies pay attention to the CCPA and GDPR compliance?
- Working with IT/data management team members in order to sensitize them as to what the regulations are as well as what is feasible to do now as opposed to what will be long-term cost-intensive approach data management categorization

Track H | How should compliance be in a valuation process?

- In addition to the deal team, who should participate in the process and make sure there is independence in valuation?
- Should there be separate valuation committees?
- When is it advisable to use a third-party appraiser?
- How involved should compliance be (i.e., should they just be sitting on committees or should they check documents and test inputs of valuation, etc)

12:00 pm -12:45 pm | BREAKOUT SERIES V

Track I | Developing workable policies for vendor management

- How to develop a policy around vendor management? What are the most important items that should be in vendor agreements?
- How to centralize the process?
- Is a procurement individual needed?
- How to manage it all when there are many vendors:
 - How to risk-rate one's vendors? Developing different touch points with key vendors
 - Is it recommended to have a third-party to help with the review of vendors? What technology is the industry using for vendor management and how decisions are made to outsource that?
 - What is the basic roadmap of things to accomplish when there are 100s of vendors?
 - If some vendors are not complying with a manager's requirements, what steps should be taken with respect to obstructing vendors? What needs to be shown to the SEC to prove that a manger did its best to address a vendor's practices?

Track J | Clarifying what exactly can be charged back and how to effectively treat expenses as they occur?

- What additional items are managers looking to charge back? What mechanism do firms have in place to review "gray" expenses which are not clear? What about one off expenses or if an expense is not mentioned in an LP agreement?
- Suggested ways for effectively building into agreements that a manger will charge particular costs to a fund
 - How can compliance teams ensure that these items are appropriately disclosed?

- How to operationally monitor fees and expenses allocation?
- What processes do firms have in place to ensure expenses charged to LPs are in accordance with fund documents? (Back-testing; sampling of expenses charged to funds; monthly internal reports that need to be reviewed, etc.)

Allocation of expenses

- Suggested ways for allocating expenses across funds – what do firms generally do? What can be allocated in the first place? What should be a portfolio company's expense vs fund's vs adviser's?
Suggested strategies around *dead deal* expense allocations

12:45 pm - 1:45 pm | Networking Luncheon