

Client Alert

FUND MANAGER SETTLES SEC CLAIM FOR MISALLOCATION OF “BROKEN DEAL” EXPENSES

June 30, 2015 - “The Securities and Exchange Commission announced that Kohlberg Kravis Roberts & Co. had agreed to pay a \$30 million fine to settle charges that KKR had violated its fiduciary duties to its private equity fund investors by misallocating so-called “broken deal expenses” over a seven year period beginning in 2005. The payment included a \$10 million penalty.

The SEC had alleged that the large asset manager had violated the Investment Advisers Act of 1940 by:

- allocating all of the expenses relating to transactions that had failed to close, or diligence expenses related to unsuccessful buyout opportunities solely to its fund investors with no portion allocated to the prospective co-investors in those deals (which include, among others, a number of KKR executives);
- failing to adequately disclose in its limited partnership agreements or offering materials that co-investors would not be allocated any portion of broken deal expenses; and
- failing to implement a written compliance protocol with respect to its fund allocation policy until the end of 2011.

KKR neither admitted nor denied the allegations.

This settlement, the first against a registered investment adviser for misallocating broken deal expenses, highlights the SEC’s increasingly elevated focus on private equity fund investor protections, particularly with respect to disclosure to such investors.

If you have any further questions, please contact your Morrison Cohen attorney.