

The following summarizes recent legal developments of note affecting the mutual fund/investment management industry:

SEC Proposes Stricter Standards to Protect Privacy of Customer Information

Regulation S-P was promulgated by the SEC on June 29, 2000, pursuant to the requirements of the Gramm-Leach-Bliley Act ("GLBA"). Rule 30(a) of Reg. S-P requires brokers, investment companies, and investment advisers registered with the SEC to adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information (the "Safeguards Rule"). Pursuant to the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), the SEC amended Regulation S-P in 2004 to protect consumers against the improper disposal of consumer report information (the "Disposal Rule").

In response to its determination that there has recently been an increased frequency in the number and size of reported information security breaches, the SEC is proposing comprehensive amendments to Regulation S-P to conform it more closely to similar regulations promulgated by other regulators, most notably the regulations that apply to the banking industry. Under these amendments, the SEC is proposing more specific standards under the Safeguards Rule, including a requirement that regulated financial institutions must develop, implement and maintain a comprehensive "information security program." Included in the proposed requirements for such a program are written policies and procedures for responding to a security breach. The proposed new security breach response provisions require that notice of the breach be given to affected individuals if misuse of sensitive personal information has occurred or is reasonably possible. The proposed amendments also require that notice be given to the SEC (or for certain broker-dealers, their designated examining authority) under circumstances in which an individual identified with the information has suffered substantial harm or inconvenience, or an unauthorized person has intentionally obtained access to or used sensitive personal information.

The proposed revisions to Reg. S-P also amend the scope of the information covered by the Safeguards and Disposal Rules and broaden the types of institutions and persons covered by the rules. Institutions subject to the Safeguards Rule and the Disposal Rule would also need to maintain written records of their policies and procedures and their compliance with those policies and procedures. Finally, the SEC is proposing a new exception from Regulation S-P's notice and opt-out requirements to allow investors to more easily follow a representative who moves from one brokerage or advisory firm to another. Comments on the SEC's proposal must be submitted on or before May 12, 2008.

Sudan Divestment Disclosure Requirements Proposed

In accordance with the Sudan Accountability and Divestment Act of 2007 (the "Sudan Divestment Act"), the SEC is proposing amendments to the annual and semi-annual reports filed by registered investment companies that would require disclosure of divestments of securities of issuers that conduct or invest in certain business operations in Sudan. The Sudan Divestment Act, signed into law by the President on December 31, 2007, is aimed at cutting investment ties with companies doing business in Sudan with a goal of pressuring Sudan to end the violence and genocide in the Darfur region. Among other things, the Sudan Divestment Act provides that no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser of the investment company, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, conduct or have direct investments in certain business operations in Sudan. However, registered investment companies seeking to

rely on the protections of the Sudan Divestment Act must disclose the divestments in accordance with rules adopted by the SEC.

Under the proposed rules, investment companies would provide the disclosure on an amended Form N-CSR, and unit investment trusts would provide the disclosure on an amended Form N-SAR. The proposal requires the disclosure of information that identifies the securities divested and the percentage of the fund assets represented by the divestment. Further, if the registered investment company continues to hold any securities of the divested issuer, the amount of such holdings must be disclosed. Comments on the SEC's proposal must be submitted on or before March 17, 2008.

U.S. Supreme Court Rules that Individual 401(k) Plan Participants Can Sue Under ERISA

On February 20, 2008, the United States Supreme Court ruled in the case of LaRue v. DeWolff, Boberg & Associates, Inc., that an individual defined contribution plan participant, who claimed that his 401(k) account was harmed by a plan administrator's breach of its fiduciary duties, could bring a claim against the fiduciary under ERISA. Previously, in Massachusetts Mutual Life Ins. Co. v. Russell, the Court ruled that ERISA §502(a)(2) does not provide a remedy for individuals, and instead a remedy must be sought for an entire plan. The Court distinguished its decision in Russell from the case presented in LaRue on the grounds that the plan involved in the Russell case was a defined benefit plan and the harm alleged, delay in processing a claim, was one which affected the entire plan. In contrast, the Court found that a fiduciary breach occurring with respect to a defined contribution plan, like the one at issue in LaRue, could harm either an entire plan or the owners of the individual accounts.

Final Regulations Adopted for Form D Filings

On February 6, 2008, the SEC issued a final rule release adopting amendments to Form D, substantially in the form originally proposed in its June 29, 2007, release. A key impact of the rule change is to mandate electronic filing of Form D beginning on March 16, 2009, although issuers may file electronically voluntarily beginning September 15, 2008.

Contact Information

For further information, please contact the Ropes & Gray attorney who normally advises you.

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