April 12, 2018

Ropes & Gray's Investment Management Update – February - March 2018

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

SEC Proposes Changes to Liquidity Rule Disclosure Items

On March 14, 2018, the SEC published a release (the "Release") in which it proposed to amend portions of the disclosure requirements associated with Rule 22e-4 under the 1940 Act (the "Liquidity Management Rule"). The SEC's proposed amendments came soon after its February 22, 2018 decision, described in this Ropes & Gray Alert, to extend the compliance date for some requirements of the Liquidity Management Rule and related disclosure requirements by six months.

As things now stand, funds will be required to classify their investments into one of four liquidity categories – highly liquid investments, moderately liquid investments, less liquid investments and illiquid investments – and to report this information to the SEC each month using Form N-PORT effective June 1, 2019 (first Form N-PORT filed via EDGAR by July 30, 2019).[1] On a quarterly basis and following a 60-day delay, the SEC will publicly disclose the aggregate percentage of each fund's portfolio holdings that fall within each of the four liquidity categories. Moreover, all of a fund's holdings of a particular instrument must be classified and reported on Form N-PORT as falling within one liquidity category. Finally, at present, Form N-PORT does not require a fund to report its cash position.

In the Release, the SEC made the following proposed disclosure changes.

1. ***Rescind Quarterly Public Disclosure of Aggregate Liquidity Classifications and Replace with Narrative Disclosure.*** The SEC proposed to rescind the requirement in Form N-PORT that a fund publicly disclose, on an aggregate basis, the percentage of its investments allocated to each of the four liquidity classification categories. This requirement would be replaced by a narrative discussion in the fund's annual report of "the operation and effectiveness of the fund's liquidity risk management program during the most recently completed fiscal year." The SEC believes that this discussion will provide investors with enough detail to appreciate the manner in which a fund manages its liquidity risk.

   Because the proposal eliminates public disclosure of a fund's aggregate liquidity classification information, the SEC also proposed to move a portion of Form N-PORT – containing the percentage of a fund's highly liquid investments that are earmarked to cover, or pledged as margin in connection with, derivatives that are classified as less than highly liquid investments – from the public portion to the non-public portion of the Form.

2. ***Splitting Investments into More than One Liquidity Category.*** The SEC proposed to permit a fund, in three specific circumstances, to split its holdings of a particular instrument into more than one classification category. The first circumstance is when a fund has a portfolio holding that is nominally a single security, but different liquidity-affecting features justify treating the holding as two or more separate investments for

[1] This date applies to funds that are members of a "group of related investment companies," holding net assets of at least $1 billion.

liquidity classification purposes. As an example, the SEC cited a fund holding an asset that includes a put option on a percentage, but not all, of the fund's holdings of the asset. The second circumstance would be when subadvisers managing sleeves of a fund have differing views regarding the appropriate liquidity classification of the same holding. The third circumstance would be available to a fund that, for internal risk management purposes, classifies its holdings proportionally across the four liquidity classifications, based on assumed proportional sales of entire positions to meet redemptions. For a fund employing this risk management practice, the SEC believes that reporting of fund holdings proportionally across liquidity categories on Form N-PORT would be more efficient and less costly. In all three circumstances, a fund splitting its holdings of a particular instrument into more than one classification category would be required to disclose on Form N-PORT which of the three circumstances led the fund to split the classification.

3. ***Report of Cash and Cash Equivalents.*** The SEC proposed additions to Form N-PORT to include information about a fund's holdings of cash and cash equivalents. This information would be disclosed publicly each quarter following a 60-day delay.

The SEC seeks comments on all of the proposals in the Release and on the compliance dates for the proposed changes. Comments must be received by the SEC no later than May 18, 2018.

Excessive Fee Claims Rejected by Two Courts in Summary Judgment Decisions

In March, two lawsuits brought pursuant to Section 36(b) of the 1940 Act were dismissed at the summary judgment stage of the litigation. The two decisions, *Goodman v. J.P. Morgan Investment, Inc.* and *Zehrer v. Harbor Capital Advisors, Inc.*, are summarized below with brief analyses.

Goodman v. J.P. Morgan Investment, Inc.

On March 9, 2018, the District Court for the Southern District of Ohio entered summary judgment in favor of J.P. Morgan Investment Management, Inc. and J.P. Morgan Funds Management, Inc. (together, "JPM") in consolidated lawsuits brought pursuant to Section 36(b) of the 1940 Act. After reviewing the parties' briefs and supporting evidence, the court determined that plaintiffs could not muster enough evidence to allow a factfinder at trial to conclude that the advisory and/or administrative fees charged were so disproportionately large that they could not have been the product of arm's-length bargaining, in violation of Section 36(b).

Plaintiffs' case at summary judgment challenged (i) the advisory fees for two bond funds and three equity funds and (ii) the administration fees for three bond funds and four equity funds (collectively, the "JPM Funds"). After JPM's voluntary waivers, the advisory fees ranged from 26 to 62 basis points, and the administration fees ranged from 4.4 to 8.2 basis points. Plaintiffs argued that the fees charged to the JPM Funds were unlawfully excessive because the defendants charged the JPM Funds higher fees than JPM charged external funds for which JPM acted as a subadviser or subadministrator, despite offering the same or nearly identical services.

The court's decision focused primarily on the overarching standard articulated by the U.S. Supreme Court in its 2010 decision, *Jones v. Harris Associates L.P.* – whether plaintiffs had met their burden to show that the fees were outside the range that could result from arm's-length bargaining. The court noted at the outset of its analysis that the data showed that "overall the Funds performed better than, and the fees were in line with, other mutual funds of similar scope" and that "Plaintiffs do not and cannot deny this."

In holding that JPM was entitled to summary judgment, the court focused the bulk of its analysis on the comparability of the services JPM offered as adviser versus as subadviser (and as administrator versus subadministrator). The court also addressed economies of scale, the JPM Funds' fees and performance and the board process.

- ***Comparison of services.*** The court rejected plaintiffs' attempts to define the "outer bounds of arm's-length bargaining" by comparing the JPM Funds' contractual language to the language in JPM's subadvised fund agreements. The court concluded that "Defendants . . . presented uncontroverted evidence that the risk

undertaken and scales of services are different" when JPM functions as sponsoring adviser compared to when it functions as subadviser. The court noted that even plaintiffs' expert acknowledged the existence of some differences in risk. As to administration fees, plaintiffs had argued both that other administrators provide the same services for lower fees and that JPM's fees were improperly high because other service providers provided the JPM Funds with some of the services JPM claimed to be providing. The court found that, even crediting plaintiffs' evidence, there were material differences in the services offered by JPM and the services offered by the supposedly comparable administrators. The court noted that even plaintiffs' expert conceded the existence of some differences. As a result, the court held that "the comparisons in this instance are not materially similar and cannot create a genuine issue of material fact."

- ***Economies of scale.*** The court highlighted that plaintiffs did not contest that the JPM Funds shared economies of scale through fee waivers. Instead, plaintiffs argued that the fee waivers were insufficient to stop JPM's profit rates from increasing. The court rejected that argument, holding that whether the JPM Funds could have shared more of the economies of scale is irrelevant. Instead, the relevant issue is whether the board could have "agreed to the level of fee waivers after engaging in good faith negotiations," and the court held that it could have.

- ***The Funds' fees and performance.*** Plaintiffs did not criticize the performance of the JPM Funds, arguing instead that the JPM Funds were "exceedingly profitable; too profitable for their fee contracts to be the product of arm's length negotiations." Analyzing the JPM Funds' fees based on net fees after waivers, rather than the gross fees alleged in the complaint, the court found that the data showed fees "in line with, and often the least expensive among," similar funds, and above-median performance.

- ***Board process.*** Plaintiffs argued that the board's approval of the contracts should receive little deference from the court because JPM provided the board with inaccurate and incomplete information. Specifically, JPM provided information about subadvisory and subadministrative services "as one of several types of 'institutional accounts' (like a pension fund)." The court rejected this argument, concluding that plaintiffs' argument simply pertained to the form in which information was presented to the board, and that there was no evidence that the board's process was anything but robust.

Based on these findings, the court held that JPM was entitled to summary judgment: "[T]he evidence Plaintiffs have adduced establishes at most that others paid different amounts for fewer services. It does not allow a reasonable inference that the amounts paid to the Funds were outside of the range that could be expected to result from arm's length bargaining."

The court's decision should be helpful authority for advisers facing Section 36(b) claims. First, unlike several recent opinions denying summary judgment, it declines to treat the *Gartenberg* factors as though they comprise the liability standard itself, embracing instead the ultimate standard for Section 36(b) liability established in *Jones*: are the fees so excessive that they are beyond the range that could result from arm's-length bargaining? This approach allows a court to focus more on the fees charged and whether they are "beyond arm's-length," rather than getting bogged down in plaintiffs' evidence on the *Gartenberg* factors when that evidence cannot establish beyond-arm's-length fees. The court helpfully recognized that "Section 36(b) does not create a duty that advisers and administrators receive the lowest possible fee amount as compensation for the services they provide." Second, the court recognized the uncontroverted evidence that the risk undertaken and scale of services provided by a sponsoring adviser, as compared to a subadviser, are different such that the comparison was not materially similar and, therefore, could not create a genuine issue of material fact. Finally, the court acknowledged that, in the appropriate circumstances, Section 36(b) cases should be decided at summary judgment instead of deferring to a bench trial, where the parties will simply present much of the same evidence already placed into the record through extensive discovery and summary judgment briefing.

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Zehrer v. Harbor Capital Advisors, Inc.

Separately, on March 13, 2018, the District Court for the Northern District of Illinois granted summary judgment in favor of Harbor Capital Advisers, Inc. ("Harbor") in the consolidated *Zehrer* cases brought under Section 36(b). The plaintiffs in *Zehrer* challenged the advisory fees of two Harbor funds (the "Funds") that are subadvised by other advisers, one by Northern Cross (the Harbor International Fund, or "HIF"), the other by Shenkman Capital (the Harbor High Yield Bond Fund, or "HBF"). HIF has an advisory fee schedule with breakpoints beginning at 75 bps, while HBF has a flat fee, after waiver, of 56 bps. For HIF, Northern Cross' fee begins at 55 bps and has breakpoints. For HBF, Shenkman Capital's fee begins at 40 bps and also has breakpoints.

After articulating the *Jones* standard, the court first surveyed the board process, and determined that the board's approval of the advisory agreements was due substantial deference. The court noted that there might be "room to quibble" about individual trustees' efforts or the fees they approved, but the court recognized that its job was not to evaluate whether the board "might have driven a harder bargain." The court also rejected plaintiffs' challenges regarding how profitability information was presented to the board, noting that the board had considered (and rejected) profitability analysis that looked at subadvisory fees as contra-revenue. Plaintiffs' accounting method would have made Harbor's profit margin 89-90% but, under widely employed GAAP accounting, the pre-tax margins were no more than 38%.

The court also reviewed each of the *Gartenberg* factors. The court declined to evaluate only the services performed by Harbor (and not the subadvisers) and, instead, followed the 2017 decision by the District Court for the District of New Jersey in *Kasilag v. Hartford Investment Financial Services* in holding that the proper inquiry looks at the total advisory fee and all services performed in exchange for it. The court also relied on performance data that showed that HIF and HBF compared favorably to peers in the short term and very favorably in the long term.

In holding that Harbor was entitled to summary judgment, the court noted, but did not expressly rely on, the Seventh Circuit's suggestion in *Jones* on remand that (i) a fee comparable to peers and (ii) favorable performance would be sufficient, together, to establish that Section 36(b) is not violated. Instead, it noted that plaintiffs had not met their burden to show a genuine dispute of material fact on any *Gartenberg* factor, thus establishing that plaintiffs could not show a violation of Section 36(b).

The decision, like the *Goodman* decision involving JPM, is a positive development for the industry. Although it is less factually relevant than *Goodman*, the court's analysis in *Zehrer* shows a continuing trend of judicial rejection of many of the plaintiff bar's arguments and theories, such as attempts to malign the board process or to criticize third-party performance data as being non-objective because advisers sometimes suggest changes to peer groups. The opinion also recognizes that plaintiffs bear the burden in 36(b) cases and is careful to expressly enforce that burden, something courts do not always do.

Lawsuits Follow Volatility Spike and Fund's Losses

Three complaints, each seeking class action status, were filed in February and March in the District Court for the Northern District of Illinois against a mutual fund, the LJM Preservation & Growth Fund, its adviser, trustees and principal underwriter. At the beginning of February, the fund had a per-share NAV in excess of $800, which plunged nearly 80% during the first week in February when the S&P 500 index fell more than 250 points. Each of the three complaints asserts claims under Sections 11 and 12 of the Securities Act, claiming that the fund's prospectus contained untrue statements of material facts and omitted material facts regarding the fund's focus on capital preservation and the fund's risk of loss in a down market.

- Section 11 provides that every person signing a mutual fund's registration statement (which includes the fund), every director or trustee of the fund, the fund's executive officers and auditor, among others, may be liable if "any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading."

- Section 12 similarly provides that "any person who offers or sells" fund shares (which includes the mutual fund) shall be liable to any investor who purchases the fund's shares by means of a prospectus that includes a material misstatement of fact or omits a fact necessary to make the statements therein not misleading.

In general, plaintiffs can prevail in lawsuits under Sections 11 and 12 without showing that (i) they relied on the misstatements in a fund's prospectus or (ii) there was fault on the part of any defendant with respect to the misstatements. However, defendants have an affirmative defense to claims under Sections 11 and 12 that depends on a showing that, even if a prospectus contained misstatements, plaintiffs' losses were not caused by the misstatements. This is a "loss causation" defense, and it has been deployed successfully by mutual funds and related defendants in other lawsuits under Sections 11 and 12.

While some federal district courts have accepted this loss causation defense as dispositive in cases against a mutual fund and related defendants, others have rejected the defense.

SEC Permits Closed-End Fund Shelf Offerings to Include Senior Securities

On February 14, 2018, the SEC staff issued a no-action letter permitting Eagle Point Credit Company Inc., a registered closed-end management investment company (the "Eagle Point Fund"), to file immediately effective post-effective amendments to its shelf offering registration statement for securities other than common stock, pursuant to Rule 486(b) under the Securities Act. The no-action letter expands upon the scope of Rule 486(b) no-action assurance that the staff has previously granted to other closed-end funds with active common stock shelf offerings.

In general, a closed-end fund offering securities pursuant to an active shelf registration statement is required to annually file a post-effective amendment to update the financial statements contained in its registration statement. Rule 486(b) provides for automatic effectiveness for certain post-effective amendments filed by closed-end interval funds, which make periodic repurchase offers in accordance with Rule 23c-3 under the 1940 Act, but Rule 486(b) does not extend to post-effective amendments filed by traditional closed-end funds engaged in active shelf offerings. Therefore, without no-action assurances, every post-effective amendment filed by a non-interval closed-end fund is subject to SEC staff review and must be declared effective by the SEC, which can increase the administrative costs and burdens associated with such offerings.

The SEC staff has regularly provided no-action assurances to non-interval closed-end funds with active shelf offerings, permitting such funds to file automatically effective post-effective amendments under Rule 486(b). However, these no-action letters have generally been limited to shelf offerings of common stock. The Eagle Point Fund no-action letter is noteworthy because it applies to the fund's offerings of preferred stock, subscription rights, and debt securities (in addition to common stock). Moreover, the Eagle Point Fund no-action letter imposes substantially the same conditions as those imposed in prior no-action letters issued to other closed-end funds with active common stock shelf offerings.

The no-action letter specifically states that it applies only to the Eagle Point Fund "[i]n light of the very fact-specific nature of [the request for relief]" and no other party may rely on the relief granted in the letter. Other closed-end funds may wish to consider seeking a similar no-action letter in connection with future offerings of securities other than common stock.

Investment Company Act Amendments Applicable to BDCs

The Consolidated Appropriations Act, signed into law by President Trump on March 23, 2018, included the Small Business Credit Availability Act (the "SBCAA"). The SBCAA amends section 61 of the 1940 Act to change the minimum asset coverage requirement for a business development company ("BDC") from 200% to 150% – effectively doubling the amount of leverage that a BDC may employ – subject to shareholder or board approval and SEC reporting requirements. Before a BDC may rely on the 150% asset coverage requirement (the "150% Minimum"), the BDC must obtain approval of its shareholders or of its board of directors. With shareholder approval, the 150% Minimum may be relied upon the day after approval, but with approval from a BDC's board of directors, the 150% Minimum may be relied upon no earlier than one year following the date of board approval.

Within five business days of the date of either type of approval, a BDC must disclose that the 150% Minimum was approved, as well as the effective date of the approval in (i) a filing submitted to the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act (Form 8-K or annual/quarterly report) and (ii) a notice on the BDC's website.

Thereafter, a BDC relying on the 150% Minimum must comply with continuing disclosure requirements in its periodic Exchange Act filings by providing information about the BDC's senior securities and the BDC's asset coverage percentage as of the date of the BDC's most recent financial statements included in a filing. The BDC's periodic filings also must disclose the principal risk factors associated with the BDC's senior securities described in the filing.

If a BDC whose equity securities are not publicly traded (a "non-traded BDC") seeks to rely on the 150% Minimum, the SBCAA requires the non-traded BDC to offer to repurchase shares belonging to shareholders as of the date of shareholder or board approval of the 150% Minimum, with 25% of the shares to be repurchased in each of the four calendar quarters following the calendar quarter in which the approval occurred.

Finally, the SBCAA directs the SEC, over the year following the SBCAA's enactment, to amend existing rules and forms to permit ***all BDCs*** to use the securities offering and proxy rules that are available to non-investment company issuers that are required to file reports under Sections 13(a) or 15(d) of the Exchange Act. Among other things, these amendments will permit a BDC (i) to qualify as a "well-known seasoned issuer" and use a free-writing prospectus, (ii) to disseminate factual information about the BDC and to make certain forward-looking statements during an offering and (iii) to make shelf registrations for follow-on offerings.

Regulatory Priorities Corner

The following brief updates exemplify trends and areas of current focus of relevant regulatory authorities:

May 11, 2018 Compliance Date for FinCEN Customer Due Diligence Rules Approaches

As described in this Ropes & Gray Alert, in 2016, the U.S. Treasury's Financial Crimes Enforcement Network ("FinCEN") published a final rules release containing new rules to strengthen customer due diligence ("CDD") requirements for "financial institutions," which term includes mutual funds (but not registered investment advisers). The CDD requirements require mutual funds to identify and verify the identity of beneficial owners of fund shares that are owned by legal entities, subject to certain exclusions and exemptions. The 2016 release also amended the anti-money laundering ("AML") compliance program rules applicable to all financial institutions, including mutual funds. As amended, mutual funds' AML compliance programs are required to adopt risk-based procedures for conducting ongoing customer due diligence. The compliance date for all of the foregoing requirements is May 11, 2018.

Separately, on April 3, 2018, FinCEN published a guidance memorandum in the form of FAQs to assist affected financial institutions understand the scope and application of the CDD requirements. The April FAQs are in addition to FinCEN's 2016 guidance memorandum concerning the CDD requirements, also published in the form of FAQs.

Investment Company Institute (ICI) Clarifies Scope of MiFID II SEC No-Action Letter

As described in this Ropes & Gray Alert, in October 2017, the SEC staff issued a no-action letter to the ICI (the "ICI Letter"). The ICI Letter stated that the SEC staff would not recommend enforcement action against an investment adviser that aggregates orders for the sale or purchase of securities on behalf of its clients relying on the 1995 SMC Capital, Inc. no-action letter. The ICI Letter was intended to accommodate differences between permissible U.S. arrangements and arrangements permitted by the Markets in Financial Instruments Directive ("MiFID II") concerning payment for research. Footnote 6 of the ICI Letter stated, "This position does not apply to an investment adviser that is not subject to MiFID II (either directly or contractually)." Therefore, a strict reading of footnote 6 seemed to limit the scope of the ICI Letter only to SEC-registered investment advisers that were directly or contractually subject to MiFID II. This reading caused uncertainty about whether the ICI Letter would apply to SEC-registered investment advisers not directly or contractually subject to MiFID II that, nevertheless, aggregate orders

for the sale or purchase of securities with affiliated managers subject to MiFID II. In a March 12, 2018 memorandum to its members, the ICI reported that the SEC staff had confirmed to the ICI and its members that footnote 6 in the ICI Letter was not intended to limit the ICI Letter to MiFID II-obligated firms.

SEC Announces Share Class Selection Disclosure Initiative

On February 12, 2018, the SEC's Division of Enforcement (the "Division") announced its Share Class Selection Disclosure Initiative (the "SCSD Initiative") targeted at investment advisers that have failed to make required disclosures to clients regarding the availability of a lower-cost share class when the adviser selects a mutual fund share class, resulting in payments of a Rule 12b-1 fee to the adviser (as a dually registered broker-dealer), its related entities or individuals. Advisers are required to disclose in their Form ADV brochures their conflicts of interest in selecting a share class associated with Rule 12b-1 fees if the fees are received directly or indirectly (through affiliated broker-dealers or supervised persons). Over the past several years, the SEC has initiated numerous actions against investment advisers concerning this type of disclosure failure.

The SCSD Initiative permits investment advisers that failed to disclose their conflicts of interest in the relevant Form ADV brochure the opportunity to self-report their situations to the Division. An investment adviser that self-reports and meets the requirements of the SCSD Initiative is eligible to accept a standardized settlement that includes the Division's agreement to recommend that the SEC not impose a civil penalty. To be eligible for the favorable standardized settlement under the SCSD Initiative, an investment adviser must self-report to the SEC no later than June 12, 2018.

Other Developments

Since the last issue of our Investment Management Update, we have also published the following separate Alerts of interest to the investment management industry:

2018 ICI Mutual Funds and Investment Management Conference
April 6, 2018
Ropes & Gray's memorandum summarizing the 2018 ICI Mutual Funds and Investment Management Conference sponsored by the ICI and the Federal Bar Association is available. The Conference included sessions that discussed the following industry and regulatory developments, among others:

- Near-term initiatives of the SEC that include the fund board outreach initiative, an exchange-traded fund rule, a shareholder report delivery rule and a best-interest standard of conduct.
- The SEC's current examination and enforcement focus areas.
- The Tax Act of 2017.
- A review of developments in mutual fund civil litigation.
- The impact of EU regulations on the trading desks of global asset managers.
- Developments affecting UCITS funds, including consequences of Brexit for UCITS managers.

Cybersecurity Oversight
March 22, 2018
Financial Regulators continue to expand their reach in the cybersecurity space, and funds, fund sponsors, and advisers should take note. Most recently, on February 12, the CFTC filed a simultaneous Order and Settlement against AMP Global Clearing LLC ("AMP"), a registered futures commission merchant, related to a breach of its networks in April 2017 by a third party who obtained approximately 97,000 AMP files, including customers'

personal information. Notably, the CFTC did not charge AMP under its regulation requiring that registrants have in place policies and procedures to safeguard customer records and information; rather, the CFTC proceeded under a separate regulation requiring that registrants diligently supervise any delegated entity tasked with performing any aspect of the registrant's business activities. The Order and Settlement highlight the importance for funds, fund sponsors, and advisers of adequately supervising their service providers' cybersecurity measures.

Fifth Circuit Raises New Questions by Ruling that the Fiduciary Rule Is Invalid
March 21, 2018
On March 15, 2018, the Court of Appeals for the Fifth Circuit vacated the Department of Labor's conflict of interest rule and related exemptions (the "fiduciary rule"). The decision exacerbates what was already significant uncertainty about the future of the fiduciary rule. This Alert sets out key information for asset managers and financial services providers to consider as they plan for potential changes in the regulatory landscape on investment advice.

SEC Extends Compliance Date for Some Requirements of the Liquidity Risk Management Rule and Related Disclosure Requirements – Additional Guidance and FAQs
March 8, 2018
On February 22, 2018, the SEC adopted an interim final rule (the "IFR") that extends, for six months, the compliance date for some of the requirements of Rule 22e-4 under the 1940 Act (the "Liquidity Rule") and related disclosure requirements (collectively, the "Liquidity Rule Requirements"). Most notably, the IFR provides a six-month extension for compliance with these Liquidity Rule Requirements:

- Classification of a fund's portfolio investments into one of four liquidity categories ("bucketing")
- Determination of a fund's highly liquid investment minimum
- Board approval of a liquidity risk management program

In addition, because the IFR does not extend the compliance date for the Liquidity Rule's 15% illiquid investments limit, the IFR provides guidance to (i) In-Kind ETFs, which are not required to classify their portfolio investments under the Liquidity Rule, and (ii) funds not engaging in portfolio classification during the six-month period, regarding compliance with the 15% limit.

Finally, concurrent with the adoption of the IFR, the staff of the SEC's Division of Investment Management expanded its posted FAQs that respond to questions about the Liquidity Rule Requirements.

Volcker Rule Regulatory Changes Are Coming
March 6, 2018
Federal financial regulators responsible for enforcement of the Volcker Rule are about to embark on a process that will culminate in a significant revision to the regulations that went into effect eighteen months ago. In a March 5, 2018 speech at the Institute of International Bankers Annual Washington Conference in Washington, D.C., Randal K. Quarles, Federal Reserve Board Vice Chairman for Supervision, outlined the expected principal areas of focus. He also endorsed legislative efforts to pull community banks out from under the Volcker Rule.

SEC Announces 2018 Examination Priorities
February 14, 2018
The National Examination Program, which is administered by the SEC's Office of Compliance Inspections and Examinations ("OCIE"), recently published its Examination Priorities for 2018 (the "2018 Exam Priorities"). In the 2018 Exam Priorities, OCIE listed priorities affecting the mutual fund/investment management industry, which are described in this Alert.

If you would like to learn more about the developments discussed in this Update, please contact the Ropes & Gray attorney with whom you regularly work or any member of the Ropes & Gray Investment Management group listed below.

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