ROPES & GRAY UPDATE

Asset Management

June 8, 2018

Ropes & Gray's Investment Management Update – April - May 2018

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

SEC Adopts Rule Permitting Notice and E-Access to Fund Reports to Satisfy Delivery Obligations

Summary. On June 5, 2018, the SEC adopted Rule 30e-3 under the 1940 Act (the "Rule"). Subject to conditions, the Rule will provide registered investment companies the option to satisfy their obligations to transmit shareholder reports by making such reports accessible at a website address specified in a written notice mailed to investors. The Rule includes provisions to permit investors who prefer to receive paper reports to continue that method of receipt by notifying the fund or their financial intermediary. The Rule is subject to an extended transition period. Notices may not be transmitted to investors in place of paper reports under the Rule before January 1, 2021 and, in general, funds are required to give two years' notice (in each prospectus and periodic report sent to shareholders) of their intent to rely on the Rule, if relying on the Rule before January 1, 2022.

SEC Proposes Safe Harbor for Broker-Dealers' Research of Registered Funds and ETPs

In a May 23, 2018 Release (the "Release"), the SEC proposed Rule 139b under the Securities Act (the "Proposed Rule") that would create a safe harbor for independent broker-dealers participating in a securities offering of a "covered investment fund" to publish or distribute a "covered investment fund research report." Specifically, if the conditions of the Proposed Rule are satisfied, a broker-dealer's publication or distribution of such a report would be deemed not to constitute an offer to sell the covered investment fund's securities for purposes of Sections 2(a)(10) and 5(c) of the Securities Act, even if the broker-dealer is participating in a registered offering of the covered investment fund's securities.

The Proposed Rule

The Proposed Rule is a result of the Fair Access to Investment Research Act of 2017 (the "FAIR Act"), which directs the SEC to adopt rule amendments to extend the safe harbor in existing Rule 139. Rule 139 permits the publication or distribution of research reports concerning one or more issuers by a broker-dealer participating in a registered offering of one of the covered issuers' securities.[1] The FAIR Act also specifies that the rule amendments shall be "upon such terms, conditions, or requirements" as the SEC may determine necessary or appropriate.

The Proposed Rule defines ***covered investment fund*** to include registered investment companies (including a series or class thereof), business development companies and certain commodity- or currency-based trusts or funds.[2] A ***covered investment fund research report***must be published by an independent broker-dealer and,

[1] Broadly speaking, Rule 139 is currently available only with respect to research reports covering an issuer that meets the requirements to offer securities on Form S-3. Typically, this means that the issuer has (i) outstanding voting and non-voting common equity held by non-affiliates with a market value of at least $75 million and (ii) filed all periodic reports required by the Exchange Act during the preceding 12 months.

[2] The commodity- or currency-based trust or fund must (i) be issuing securities registered under the Securities Act that are listed for trading on an exchange, (ii) have assets consisting primarily of commodities, currencies or derivative instruments that

therefore, is defined as a research report published or distributed by a broker-dealer about a covered investment fund (or its securities), ***excluding*** a research report published or distributed by (i) the covered investment fund or any affiliated person of the covered investment fund or (ii) a broker-dealer that is the investment adviser, or an affiliated person of the investment adviser, for the covered investment fund.

The Proposed Rule requires that a covered investment fund research report be either an ***issuer-specific research report*** or an ***industry report***.

A. **Issuer-Specific Reports**

1. An issuer-specific research report must, as of the date of reliance on the Proposed Rule, concern a covered investment fund that has been subject to the reporting requirements of Section 30 of the 1940 Act for at least twelve calendar months and that has filed in a timely manner all required 1940 Act reports during the immediately preceding twelve calendar months.

2. If the covered investment fund is not a registered investment company, the fund must have been subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act for at least twelve calendar months and filed in a timely manner all required Forms 10-K and 10-Q during the immediately preceding twelve calendar months.[3]

3. The aggregate market value of voting and non-voting common equity held by non-affiliated persons of the covered investment fund – or, in the case of a registered open-end investment company (other than an ETF) – its net asset value (subtracting the value of shares held by affiliated persons), must be at least $75 million.

4. The broker-dealer must publish or distribute research reports in the regular course of its business and, in the case of a research report regarding a covered investment fund that does not have a class of securities in "substantially continuous distribution," the publication or distribution must not be (i) the initiation of publication of research reports about the covered investment fund or its securities or (ii) the reinitiation of publication following discontinuation of publication of such research reports.

    a. The "regular course of business" and initiation/reinitiation provisions are intended to reduce the possibility that covered investment fund research reports are used as a means to circumvent the prospectus requirements of the Securities Act. Moreover, the SEC stated that broker-dealers that publish or distribute research reports in the regular course of business are more likely to publish analyses that investors recognize as research.

    b. The FAIR Act proscribes the Proposed Rule from applying the initiation/reinitiation prohibition in the case of a covered investment fund with a class of securities in substantially continuous distribution. In the Release, the SEC proposed that the test of whether a class of securities is in substantially continuous distribution should be based on an analysis of facts and circumstances. Nonetheless, the SEC requested comments on whether certain types of covered investment funds raise questions concerning the presence or absence of substantially continuous distribution. The SEC also requested comments on whether it should instead define substantially continuous distribution as including specific types of funds, citing these examples: open-end funds, closed-end interval funds that make periodic repurchase offers pursuant to Rule 23c-3 and other types of funds that are engaged in

reference commodities or currencies and (iii) reflect in its registration statement that its securities may be purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

[3] The relevant reports are Forms N-CSR, N-SAR, N-Q, N-PORT, N-MFP (if applicable) and N-CEN.

continuous offerings either pursuant to Securities Act Rule 415(a)(1)(ix) or shelf takedowns pursuant to Rule 415(a)(1)(x).

B. **Industry Reports**

1. An industry report must, as of the date of reliance on the Proposed Rule, concern a covered investment fund that is subject to the reporting requirements of Section 30 of the 1940 Act (*i.e.*, no twelve-month requirement). If the covered investment fund is not a registered investment company, then the fund must be subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (same).

2. An industry report must contain (a) similar information with respect to a "substantial number of covered investment fund issuers of the issuer's type" (*e.g.*, money market funds, bond funds, balanced funds) or investment focus (*e.g.*, primarily the same industry or country or geographic region) or (b) a comprehensive list of covered investment funds currently recommended by the broker-dealer – excluding any covered investment fund that is advised by the broker-dealer (or by an affiliated person of the broker-dealer) and any covered investment fund that is an affiliated person of the broker-dealer.

3. The industry report's analysis of a covered investment fund may not be given materially greater space or prominence than that accorded any other covered investment fund in the publication.

4. The broker-dealer must publish or distribute research reports in the regular course of its business. To further this requirement in the case of a research report regarding a covered investment fund that does *not* have a class of securities in substantially continuous distribution, the broker-dealer would have include similar information, in similar reports, about the issuer covered in the industry to report. Again, the SEC's goal is to prevent circumvention of the Securities Act's prospectus requirements.

Comments to the SEC

The Release broadly solicits public comments on the Proposed Rule and the contents of the Release, generally. Comments must be filed with the SEC no later than 30 days after publication of the Release in the Federal Register.[4]

Observations

If adopted, the Proposed Rule would enhance the ability of broker-dealers to publish independent, third-party research during a registered securities offering by a covered investment fund, leading to better informed investors and markets. Covered investment funds are likely to benefit from greater independent broker-dealer coverage of their product offerings.

No Action Letter Addresses Use of Performance Record After Merger of Adviser Subsidiaries

On May 8, 2018, the SEC staff issued a no-action letter permitting the post-merger survivor of two wholly owned adviser subsidiaries to use the performance record of the non-surviving adviser in the surviving adviser's advertisements. Specifically, South State Advisory, Inc. ("SSA") and Minis & Co., Inc. ("Minis") are two wholly owned registered investment adviser subsidiaries of the same parent company, South State Bank ("SSB"). To achieve better operating efficiencies, SSB proposes to merge SSA into Minis, with SSA as the merger survivor. Following the merger, Minis would continue as a division of SSA (the "Minis Division"), operating under the Minis

[4] As of June 8, 2018, the Release has not been published in the Federal Register.

brand name with appropriate disclosure regarding the post-merger arrangement. In addition, following the merger, the Minis Division's management team would be the same as the team that formerly managed Minis, and the Minis Division investment committee, consisting of persons responsible for Minis Division's investment decisions and recommendations, would be identical to Minis' investment committee.

In its incoming letter, SSB maintained that the SEC staff's earlier no-action letters – *Great Lakes and Horizon*[5] – could be read to mean that a successor adviser may use a predecessor's performance record only if the persons principally responsible for a predecessor adviser's record remain at the succeeding adviser, "not just at the time of the succession, but for so long as the successor uses the track record." SSB stated that it was not seeking the SEC staff's opinion regarding SSB's interpretation of *Great Lakes and Horizon*, which both involved a change in control. Instead, SSB emphasized, it was requesting that the Minis Division be permitted to continue to use the Minis performance record in its advertisements to the same extent as Minis could have used that record, as if there had been no merger. Thus, SSB maintained, the Minis Division could advertise Minis' performance notwithstanding the fact that composition of the Minis Division's management team and investment committee may change *over time* (although no changes were anticipated in connection with the merger). After all, SSB argued, while there would be a natural evolution of personnel, management, culture and processes at the Minis Division over time, the same would have been true if Minis had remained a stand-alone entity.

The SEC provided the requested no-action assurances. While those assurances arguably were implicit in *Great Lakes and Horizon* and various reorganization no-action letters involving an adviser (deemed not to result in a change in control of the adviser), the SSB no-action letter clarifies permissible advertising portability in a situation involving a cleaner set of facts. Critically, in a footnote to the no-action letter, the SEC staff noted that the "positions expressed in the [*Great Lakes and Horizon*] no-action letters continue to represent the staff's positions with respect to the circumstances presented therein."

No-Action Letter – Transfer Agents Delaying Redemptions When Senior Abuse Suspected

In 2017, FINRA adopted Rule 2165 empowering a FINRA member (*i.e.*, a broker-dealer) to place a temporary hold on the disbursement of funds from the account of a "Specified Adult" (as defined below) if the broker-dealer has a reasonable belief that "financial exploitation" of a Specified Adult has occurred or is occurring. A Specified Adult is a natural person (i) age 65 and older or (ii) age 18 and older who the broker-dealer reasonably believes is unable to protect his or her own interests due to an impairment. Financial exploitation is the wrongful or unauthorized taking, withholding or appropriation of a Special Adult's funds or securities.

In a June 1, 2018 no-action letter to the Investment Company Institute (the "ICI"), the SEC staff provided no-action assurances to any mutual fund or its SEC-registered transfer agent under Section 22(e) of the 1940 Act if the transfer agent, acting on behalf of the mutual fund, temporarily delays for more than seven days the disbursement of redemption proceeds from the mutual fund account of a Specified Adult ***held directly with the transfer agent*** based on the transfer agent's reasonable belief that financial exploitation of a Specified Adult has occurred or is occurring.

FINRA Rule 2165 applies only to broker-dealers and is voluntary, and reliance on the no-action letter by any mutual fund and its transfer agent is voluntary. The no-action letter requires that a fund and transfer agent relying on the no-action letter must satisfy the conditions in the ICI's incoming letter. These conditions include (i) the transfer agent establishing and maintaining written procedures reasonably designed to achieve compliance with the terms and conditions set forth in the ICI's incoming letter and (ii) the fund establishing, as part of the fund's Rule 38a-1 compliance policies and procedures, escalation and periodic reporting protocols under which the transfer agent will provide the fund with information regarding instances in which the transfer agent relied upon the no-action relief.

[5] Great Lakes Advisors, Inc., SEC No-Action Letter (pub. avail. Apr. 3, 1992) and Horizon Asset Management, LLC, SEC No-Action Letter (pub. avail. Sep. 13, 1996).

The information should include the information upon which the transfer agent based its reasonable belief about the occurrence of financial exploitation of a Specified Adult.

REGULATORY PRIORITIES CORNER

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

SEC Regulatory Agenda – A New Derivatives Rule?

In the SEC's November 2017 Regulatory Agenda, the SEC's December 2015 rule proposal, *Use of Derivatives by Registered Investment Companies and Business Development Companies* (the "Derivatives Release") was moved from the Final Rule Stage category to the Long-Term Actions category.

The SEC's April 2018 Regulatory Agenda brought the Derivatives Release to the Proposed Rule Stage. The updated narrative in the April Agenda states that "[t]he Division is considering recommending that the Commission ***re-propose*** a new rule designed to enhance the regulation of the use of derivatives by registered investment companies" and "[t]he proposed rule would regulate registered investment companies' use of derivatives and ***require enhanced risk management measures***."[6]

Additions to Investment Company Reporting Modernization FAQs

On April 10 and, then, on April 27, 2018, the Division of Investment Management added FAQs to its website to respond to more questions arising under the SEC's Investment Company Reporting Modernization initiative adopted in October 2016 and revised in December 2017. Salient points from the new FAQs are summarized below.

- ***Form N-PORT***: The FAQs clarify the compliance dates for Form N-PORT. After giving effect to the December 2017 revisions, for a fund within a larger group (*i.e.*, a fund within the same group of related registered funds with net assets of at least $1 billion or more as of the end of the fund's most recent fiscal year), Form N-PORT information must be maintained as a required record, in lieu of filing reports with the SEC, until April 1, 2019. Thus, funds in larger groups that previously would have been required to submit their first reports on Form N-PORT on EDGAR no later than July 30, 2018 (for the period ending June 30, 2018) will be required to file their Form N-PORT on EDGAR no later than April 30, 2019 (for the period ending March 31, 2019). Funds within a smaller group must submit their first reports on Form N-PORT by April 30, 2020 (for the period ending March 31, 2020), but these funds are not subject to a requirement to prepare and maintain Form N-PORT information as a separate required record.
- ***Liquidity information on Forms N-PORT and N-CEN***: The compliance date for the liquidity information in Form N-PORT is June 1, 2019 for funds in larger groups, and December 1, 2019 for other funds. The compliance date for the liquidity information in Form N-CEN is December 1, 2018 for funds in larger groups and June 1, 2019 for other funds.
- ***Money market funds and Form N-Q***: While the December 2017 amendments extended the effective date for the rescission of Form N-Q until May 1, 2020, money market funds that were relying on the original (August 1, 2019) rescission date for Form N-Q will not be required to file reports on Form N-Q after August 1, 2019, despite the new Form N-Q rescission date of May 1, 2020.
- ***First publicly available Forms N-PORT***: Reports filed on Form N-PORT for the months ended March 31 through August 31, 2019 will be non-public. Reports filed on Form N-PORT for the months ended September 30, 2019 and later will be made public (but only reports covering the third month of a fund's fiscal quarter).
- ***Funds with April 30 or May 31, 2018 fiscal mid-years***: Form N-SAR, which requires a fund to make a mid-year filing that is due 60 days after its fiscal mid-year, is scheduled to be rescinded on June 1, 2018. A fund

[6] Emphasis supplied.

with a fiscal mid-year date of April 30 or May 31, 2018 (*i.e.*, 60 days after which Form N-SAR will be rescinded) will not be required to file a report on Form N-SAR for the mid-year ending April 30 or May 31, 2018.

OCIE Issues Risk Alert on Advisers' Fee Violations

On April 12, 2018, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a Risk Alert outlining the most common advisory fee billing violations mentioned in deficiency letters sent to SEC-registered investment advisers over the past two years. The Risk Alert states that its purpose is to encourage advisers to examine their advisory fee and expense practices, related disclosures and compliance programs to ensure that advisers are complying with the Advisers Act and their fiduciary duties.

The Risk Alert noted that the most frequent compliance issues related to advisory fees and expenses include the following.

- *Fee-Billing Based on Incorrect Account Valuations.* OCIE staff has identified client accounts that were overbilled for advisory fees because the adviser valued certain assets in the client's accounts using a different metric and/or process than that specified in the client's advisory agreement.
- *Billing Fees in Advance or with Improper Frequency.* OCIE staff has observed issues with advisers' billing practices concerning their timing and frequency. For example, advisory fees were billed on a monthly basis, instead of the quarterly basis in the relevant advisory agreement or as disclosed in an adviser's Form ADV Part 2. Other advisers were observed (i) billing a new client for advisory fees in advance for an entire billing cycle, while the advisory agreement stated that fees would be billed in arrears or (ii) billing a new client for whole billing cycle for a relationship that began mid-billing cycle, instead of prorating the fee.
- *Applying Incorrect Fee Rate.* OCIE staff has identified advisers that applied a rate higher than the rate agreed upon in a client's advisory agreement and advisers that double-billed a client.
- *Omitting Rebates and Applying Discounts Incorrectly.* OCIE staff has observed advisers that did not apply certain discounts or rebates to their clients' advisory fees, as specified in advisory agreements, causing the clients to be overcharged.
- *Disclosure Issues Involving Advisory Fees.* OCIE staff has identified several issues with respect to advisers' disclosures of fees or billing practices, including (i) billing practices that are inconsistent with the adviser's disclosure in its Form ADV and (ii) failing to disclose fees or markups charged to clients that are in addition to advisory fees, such as expenses for third-party execution/clearing and additional compensation earned by the adviser on certain asset purchases for client accounts.
- *Adviser Expense Misallocations.* OCIE staff has observed advisers that allocated distribution and marketing expenses, regulatory filing fees and travel expenses to clients instead of the adviser, notwithstanding contrary provisions in advisory agreements or in disclosures to clients.

The Risk Alert noted that some advisers have responded to the OCIE staff's observations by changing their practices, enhancing policies and procedures and reimbursing clients by the overbilled amount of advisory fees and expenses. The Risk Alert noted favorably that some advisers have reimbursed clients for incorrect fees and expenses identified by policies and procedures that provide for periodic internal testing of billing practices.

SEC Issues FAQs for Share Class Selection Disclosure Initiative

As described in a recent prior Ropes & Gray Investment Management Update, 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.

On May 1, 2018, the Division's staff posted FAQs to its website regarding the SCSD Initiative, providing additional information on adviser eligibility, disgorgement and the re distribution of funds to clients. Salient points from the FAQs are summarized below.

- To be eligible for the SCSD Initiative, an adviser must self-report by notifying the Division by June 12, 2018. The FAQs announce that the Division does not anticipate extending the deadline, but reminds advisers that no data or narrative is due at that time.
- The FAQs clarify the scope of the SCSD Initiative, confirming that the SCSD Initiative applies only to conduct articulated in the February SCSD Initiative announcement. Other self-reported conduct is ineligible for the SCSD Initiative. The SCSD Initiative is available only to advisers that meet the definition of a "Self-Reporting Adviser," as defined in the February announcement, that have self-reported their conduct in the prescribed manner. The FAQs state that there is no minimum threshold for self-reporting and that the Division does not plan to recommend different settlement terms based on "severity and scope" of the reported conduct.
- The FAQs confirm that an adviser is required to disclose to the SEC both "types" of 12b-1 conflicts: (i) disclosing the conflict to clients and (ii) selecting a more expensive 12b-1 fee paying share class when a lower cost share class was available for the same fund. The Division also provided a non-exclusive list of factual examples in which the Division staff would conclude a lower-cost share class was "available" for the same fund.
- The FAQs provided details regarding disgorgement. To determine the amount to be disgorged, the Division will rely on data provided by the investment adviser in the Questionnaire for Self-Reporting, but will also take into account a submission (of no more than 20 pages) by the investment adviser describing additional information about the circumstances leading to the disclosure failures. The Division may take into account the fact that an adviser reduced or offset its advisory fee by the amount of 12b-1 fees, but the Division's recommendation will depend on the particular facts and circumstances. In recommending a settlement to the Commission, the Division will consider the potential for significant financial ramifications to the adviser and its clients if the adviser is required to satisfy the full monetary relief within a certain period and, to that end, the Commission may approve a payment plan.

New York Attorney General Focuses on Active Share Disclosure

On April 5, 2018, the Investor Protection Bureau of the State of New York Office of the Attorney General (the "NYOAG") published a report titled, *Mutual Fund Fees and Active Share* (the "Report"). The Report summarizes the findings and outcomes of the NYOAG's investigation into mutual fund fees and disclosures. In particular, the investigation focused on actively managed equity mutual funds because, the Report states, such funds "typically charge significantly higher fees than passively managed, or index funds" and "[b]ecause investors choosing an actively managed equity fund are, presumably, interested in their ability to outperform the fund's benchmark index" as measured by the degree of overlap between the holdings in the fund and the holdings in the fund's benchmark index, also known as its "active share."

The Report makes several "Key Findings," most notably that retail investors (i) cannot necessarily conclude that a higher fund *expense ratio* means that a fund will have a greater level of active management, as measured by a fund's active share and (ii) do not have access to active share information (unlike institutional investors). The Report noted that following the NYOAG's investigation, 13 of the 14 fund complexes that were surveyed for the Report agreed to publish the active share metric for their actively managed equity funds. The fourteenth fund complex surveyed was already publishing the active share for its relevant funds.

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:

Proposed Revisions to the Volcker Rule—Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds
June 4, 2018

On May 30, 2018, the Federal Reserve Board issued a notice of proposed rulemaking and asked for comment on a proposed rule to simplify and tailor compliance requirements relating to the regulation implementing section 13 (commonly known as the "Volcker Rule") of the Bank Holding Company Act (the "Proposal"). The Proposal was developed jointly with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, and the Commodity Futures Trading Commission (together, the "Agencies").

Investment Companies Affected by the Economic Growth, Regulatory Relief, and Consumer Protection Act
May 30, 2018

President Trump signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Growth Act") into law on May 24, 2018. Most of the news headlines regarding the Growth Act have focused on its rolling back provisions of the Dodd-Frank Act (the impacts of the Growth Act on the Dodd-Frank Act are described in a separate Ropes & Gray Alert). However, the Growth Act also contains provisions relevant to the investment management industry.

New Banking Law Takes First Step in Rolling Back Dodd-Frank Reforms
May 25, 2018

On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Act"), marking the first set of much anticipated roll-backs of the Dodd-Frank Act of 2010. Although heralded in the media as a dramatic step away from regulatory reforms introduced by Dodd-Frank, the changes included in the Act will generally have the greatest impact on small banks.

SEC Proposes Rule Change to Address Funds' Auditor Independence Problem
May 9, 2018

In a May 3, 2018 release, the SEC proposed amendments to the "Loan Rule," part of the SEC's auditor independence rule, Rule 2-01 of Regulation S-X. If adopted as proposed, the amendments should virtually eliminate the problems that led to the SEC staff's 2016 no-action letter regarding the application of the Loan Rule to an investment company complex.

Department of Labor Announces New Enforcement Policy Following Fifth Circuit's Fiduciary Rule Decision
May 7, 2018

On May 7, 2018, the U.S. Department of Labor (the "DOL") announced a new temporary enforcement policy in anticipation of the Fifth Circuit Court of Appeals issuing a mandate to vacate the DOL's fiduciary rule. Field Assistance Bulletin 2018-02 (the "FAB") is intended to address the "uncertainty about fiduciary obligations and the scope of exemptive relief" following the Fifth Circuit's actions, by providing that financial institutions may continue to rely on the temporary enforcement relief policy that the DOL adopted under Field Assistance Bulletin 2017-02. As a result, the DOL will not pursue claims against fiduciaries who are working diligently and in good faith to comply with the impartial conduct standards for transactions that would have been exempted under the BIC Exemption or

Principal Transactions Exemption, or treat such fiduciaries as violating the applicable prohibited transaction rules, even following the Fifth Circuit's mandate to vacate those exemptions. In addition, the DOL acknowledged that "some financial institutions have devoted significant resources to comply with the BIC Exemption and the Principal Transactions Exemption and may prefer to continue to rely upon the new compliance structures," and it extended this transition relief to future reliance on those exemptions by institutions pending further guidance. The FAB also confirms that the Treasury Department and the IRS will follow a similar non-enforcement policy.

SEC Proposals – Form CRS Client Relationship Summary for Advisers and Broker-Dealers; Best Interest Standard of Conduct for Broker-Dealers
May 2, 2018

On April 18, 2018, the SEC released three sets of proposals that the SEC press release stated were "designed to enhance the quality and transparency of investors' relationships with investment advisers and broker-dealers." Two of these proposals are addressed in this Alert.

- *The SEC's Relationship Summary proposal* (the "CRS Proposal") proposed new and amended rules and forms intended to improve retail investors' understanding of the different investment-related services provided by registered broker-dealers, registered investment advisers and dually registered firms (each, a "firm").
- *The SEC's Regulation Best Interest proposal* (the "Best Interest Proposal") followed years of industry speculation that the SEC would propose a uniform fiduciary standard applicable to broker-dealers and investment advisers alike. However, Regulation Best Interest would not impose a fiduciary standard for broker-dealers—at least not on its face.

The CRS Proposal and the Best Interest Proposal are summarized in this Alert. The SEC's third proposal, titled Interpretation Regarding Standard of Conduct for Investment Advisers, is described in a separate Ropes & Gray Alert.

SEC Releases Proposed Adviser Conduct Standard and Request for Comment on Enhancing Adviser Regulations
April 23, 2018

On April 18, 2018, the SEC issued a release entitled, "Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers" (the "Adviser Conduct Proposal"), along with a request for comment on "Enhancing Investment Adviser Regulations."

All investment advisers subject to the Advisers Act, including wealth managers, institutional shops, and private fund advisers, should take notice of the Adviser Conduct Proposal, as it seeks to consolidate in one place the salient attributes of the federal fiduciary standard applicable to investment advisers. This Alert summarizes the Adviser Conduct Proposal, identifies certain aspects of the Adviser Conduct Proposal that we anticipate will generate significant interest and industry comment during the review period, and concludes by summarizing the request for comment on Enhancing Investment Adviser Regulations.

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.

United States

Mark I. Bane
New York, NY
+1 212 841 8808
mark.bane@ropesgray.com

Jason E. Brown
Boston, MA
+1 617 951 7942
jebrown@ropesgray.com

Bryan Chegwidden
New York, NY
+1 212 497 3636
bryan.chegwidden@ropesgray.com

Sarah Clinton
Boston, MA
+1 617 951 7375
sarah.clinton@ropesgray.com

Sarah Davidoff
New York, NY
+1 212 596 9017
sarah.davidoff@ropesgray.com

Gregory C. Davis
San Francisco, CA
+1 415 315 6327
gregory.davis@ropesgray.com

Timothy W. Diggins
Boston, MA
+1 617 951 7389
timothy.diggins@ropesgray.com

Isabel R. Dische
New York, NY
+1 212 841 0628
isabel.dische@ropesgray.com

Michael G. Doherty
New York, NY
+1 212 497 3612
michael.doherty@ropesgray.com

John D. Donovan
Boston, MA
+1 617 951 7566
john.donovan@ropesgray.com

John C. Ertman
New York, NY
+1 212 841 0669
john.ertman@ropesgray.com

Laurel FitzPatrick
New York, NY
+1 212 497 3610
laurel.fitzpatrick@ropesgray.com

Leigh R. Fraser
Boston, MA
+1 617 951 7485
leigh.fraser@ropesgray.com

Pamela Glazier
Boston, MA
+1 617 951 7420
pamela.glazier@ropesgray.com

Thomas R. Hiller
Boston, MA
+1 617 951 7439
thomas.hiller@ropesgray.com

William D. Jewett
Boston, MA
+1 617 951 7070
william.jewett@ropesgray.com

Susan A. Johnston
Boston, MA
+1 617 951 7301
susan.johnston@ropesgray.com

Jeffrey R. Katz
Boston, MA
+1 617 951 7072
jeffrey.katz@ropesgray.com

Christopher A. Klem
Boston, MA
+1 617 951 7410
christopher.klem@ropesgray.com

John M. Loder
Boston, MA
+1 617 951 7405
john.loder@ropesgray.com

Brian D. McCabe
Boston, MA
+1 617 951 7801
brian.mccabe@ropesgray.com

Stephen C. Moeller-Sally
Boston, MA
+1 617 951 7012
ssally@ropesgray.com

Deborah A. Monson
Chicago, IL
+1 312 845 1225
deborah.monson@ropesgray.com

Mark V. Nuccio
Boston, MA
+1 617 951 7368
mark.nuccio@ropesgray.com

Jessica Taylor O'Mary
New York, NY
+1 212 596 9032
jessica.omary@ropesgray.com

Paulita A. Pike
Chicago, IL
+1 312 845 1212
paulita.pike@ropesgray.com

George B. Raine
Boston, MA
+1 617 951 7556
george.raine@ropesgray.com

Elizabeth J. Reza
Boston, MA
+1 617 951 7919
elizabeth.reza@ropesgray.com

Adam Schlichtmann
Boston, MA
+1 617 951 7114
adam.schlichtmann@ropesgray.com

Gregory D. Sheehan
Boston, MA
+1 617 951 7621
gregory.sheehan@ropesgray.com

Robert A. Skinner
Boston, MA
+1 617 951 7560
robert.skinner@ropesgray.com

Jeremy C. Smith
New York, NY
+1 212 596 9858
jeremy.smith@ropesgray.com

David C. Sullivan
Boston, MA
+1 617 951 7362
david.sullivan@ropesgray.com

James E. Thomas
Boston, MA
+1 617 951 7367
james.thomas@ropesgray.com

Joel A. Wattenbarger
New York, NY
+1 212 841 0678
joel.wattenbarger@ropesgray.com

London

Matthew Judd
London
+44 20 3201 1633
matthew.judd@ropesgray.com

Asia

Daniel M. Anderson
Hong Kong
+852 3664 6463
daniel.anderson@ropesgray.com