December 6, 2019

Ropes & Gray's Investment Management Update October-November 2019

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

SEC Re-Proposes Use of Derivatives by Registered Investment Companies and BDCs

On November 25, 2019, the SEC issued a release (the "November Release") re-proposing Rule 18f-4, which would regulate the use of derivatives by funds. An earlier version of the rule was proposed by the SEC in December 2015 but was not adopted. The November Release also contains proposed Rules 15*l*-2 under the Exchange Act and 211(h)-1 under the Advisers Act to regulate the sales practices of broker-dealers and investment advisers when selling shares of leveraged ETFs for retail customers. The November Release will be the subject of a forthcoming Ropes & Gray Alert.

SEC Proposes to Amend Procedures for Exemptive Applications Under the 1940 Act

On October 18, 2019, the SEC issued a release (the "Release") proposing the following changes:

- Amending Rule 0-5 under the 1940 Act to establish expedited review procedures for obtaining exemptive relief where an application for relief is substantially identical to exemptive relief that the SEC has recently provided ("routine applications").
- Promulgating new Rule 17 C.F.R. § 202.13 to establish an informal time frame for the SEC staff to take action on applications for exemptive relief that seek novel, largely unprecedented relief or relief for which some SEC precedent exists, but that raise additional questions of fact, law or policy ("non-routine applications"), within 90 days of the initial filing of, or amendment to, a non-routine application.
- Amending Rule 0-5 to provide that, for any application that does not qualify for expedited review, the application will be deemed withdrawn if the applicants fail to respond in writing within 120 days to any request from the SEC staff for clarification or modification following the initial filing of the application.
- Public release of SEC staff comments on applications, as well as responses thereto.

These proposals are described in detail below.

Expedited Review Procedures for Routine Applications. The Release proposes amending Rule 0-5 to establish expedited review procedures for routine applications. Amended Rule 0-5 would provide that applicants are eligible to request expedited review if the application is "substantially identical" to two other applications for which an order granting the requested relief was issued within two years of the date of the application's initial filing. "Substantially identical" applications are applications that request "relief from the same sections of the [1940] Act and rules thereunder, containing identical terms and conditions, and differing only with respect to factual differences that are not material to the relief requested."

An application submitted for expedited review must include:

1. A prominent notation on its cover page stating: "EXPEDITED REVIEW REQUESTED UNDER 17 CFR 270.0-5(d);"

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2018 Ropes & Gray LLP

ATTORNEY ADVERTISING

2. Exhibits with marked copies of the application that show changes from the final versions of the two substantially identical applications; and

3. A cover letter, signed on behalf of the applicants by the person executing the application that (a) identifies two substantially identical application precedents and (b) certifies that the applicants believe that their application is substantially identical to the two application precedents and its marked copies are complete and accurate.

Within 45 days from the date that an application requesting expedited review is submitted, amended Rule 0-5 would require the SEC staff either (i) to issue a notice that an application has been filed in accordance with the expedited review procedures (*i.e.*, notice of the application, followed by an order disposing of the matter) or (ii) to notify the applicants that the application is ineligible for expedited review because it does not satisfy the necessary criteria or because the SEC staff requires additional time to consider the application. In the latter case, the SEC staff would typically ask the applicants either to withdraw the application or to amend it so that the application can proceed outside of the expedited review process.

> ***Rules regarding the 45-day period.*** The 45-day period restarts upon the filing of an amended routine application that was not solicited by the SEC staff. The 45-day period stops running upon a request by the SEC staff to modify a routine application, and resumes running on the 14th day following the applicants' submission of an amended routine application responsive to the SEC staff's request.[1]
>
> If the applicants fail to file an amendment that is responsive to the SEC staff's request for modification within 30 days of receiving the request, the routine application will be deemed withdrawn.

Time Frame for Non-Routine Application Reviews. Apart from the proposed expedited review process, the Release proposes new Rule 17 C.F.R. § 202.13 (the "Informal Procedure") to provide a time frame for non-routine applications filed under Rule 0-5. More specifically, the Informal Procedure provides that the SEC staff "should take action" on a non-routine application within 90 days of its initial filing or following any amendment thereto. The SEC staff may grant 90-day extensions, with notice to the applicants of any such extension.

Consequently, under the Informal Procedure, the SEC staff's action with respect to a non-routine application would consist of (i) issuing a notice of application, (ii) providing the applicants with comments or (iii) informing the applicants that the application will be forwarded to the full Commission (in which case the application is no longer subject to the provisions of the Informal Procedure). The Release notes that, if the SEC staff does not support a non-routine application, applicants are typically notified that the SEC staff intends to recommend to the full Commission that the non-routine application should be denied, thereby providing applicants the opportunity to withdraw the non-routine application before the staff makes such a recommendation.

Inactive Applications. The Release also proposes to amend Rule 0-5 to deem a non-routine application withdrawn if the applicants fail to respond in writing within 120 days to any request from the SEC staff for clarification or modification following the initial filing of a the non- application. The deemed withdrawal is without prejudice, leaving the applicants free to refile. An application for expedited review is not subject to this deemed withdrawal because, as described above, the Rule 0-5 provisions applicable to expedited review of a routine application deem the routine application withdrawn if the applicants fail to file an amendment that is responsive to the SEC staff's request for modification within 30 days of receiving the request.

[1] The 45-day period also stops running upon any irregular closure for normal business of the SEC's Washington, DC office, and resumes upon the reopening of the office for normal business.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Release of Comments on Applications and Responses. To provide transparency regarding the applications process, the Release proposes that the SEC staff will publicly disseminate its comments on applications, and responses thereto, within 120 days after the final disposition of an application. Dissemination of this information will be made through EDGAR and the SEC's website, much like the manner in which the Division of Investment Management and the Division of Corporation Finance currently disseminate comment letters and responses for disclosure filings.

SEC Extends Temporary MiFID II No-Action Letter: Broker-Dealers May Continue to Rely on the Broker-Dealer Exclusion in Advisers Act Section 202(a)(11)(C)

In October 2017, the SEC staff issued a temporary no-action letter to the Securities Industry and Financial Markets Association ("SIFMA") (the "First SIFMA Letter") to provide greater certainty to broker-dealers regarding compliance with U.S. law as they sought to comply with the EU's then-imminent updated Markets in Financial Instruments Directive ("MiFID II").[2] The First SIFMA Letter's no-action assurances were set to expire on July 3, 2020. On November 4, 2019, the SEC staff issued a no-action letter to SIFMA (the "Second SIFMA Letter") ***extending the First SIFMA Letter's assurances for three years, until July 3, 2023.***

Background. MiFID II regulates EU financial markets, EU brokers and securities dealers and some EU investment advisers (each, a "MiFID II Adviser"). Some investment advisers are contractually required to comply with MiFID II, as well (each, also, a "MiFID II Adviser") (e.g., a U.S. subadviser to an EU adviser). MiFID II requires a MiFID II Adviser to pay for research from the adviser's own resources, a MiFID II research payment account ("RPA") or a combination of the two sources.

Section 202(a)(11)(C) of the Advisers Act excludes from the definition of "investment adviser" a broker-dealer whose performance of any investment advisory services is "solely incidental" to the conduct of its business as a broker or dealer, provided the broker-dealer receives no "special compensation" for those services. In the U.S., investment advisers rely on a commission-sharing arrangement/client commission arrangement (a "CCA") to pay a single "bundled" commission to broker-dealers for order execution, as well as for Exchange Act Section 28(e) eligible research services.

In SIFMA's incoming letter underlying the First SIFMA Letter, SIFMA noted that, under a CCA and following the framework established by the SEC under Section 28(e), an investment adviser pays a ***bundled payment*** for brokerage and research services. In contrast, an RPA is funded through a ***separately identified research charge*** that is assessed under an agreed-upon research budget and imposed on a trade-by-trade basis ***separately*** from trade-by-trade execution charges. SIFMA expressed concern that a broker-dealer's receipt of payments for research services directly or indirectly out of a MiFID II Adviser's own resources or from an RPA (as required by MiFID II) could subject a broker-dealer to regulation under the Advisers Act by undercutting the broker-dealer's ability to rely on the broker-dealer exclusion in Section 202(a)(11)(C) (*i.e.*, if the payments were deemed "special compensation").

In the First SIFMA Letter, the SEC staff cited SIFMA's concerns that (i) a broker-dealer's receipt of payment for research in the manner required by MiFID II could subject the broker-dealer to regulation under the Advisers Act and (ii) without no-action assurance, MiFID II could have a negative impact upon broker-dealers generally, given the global nature of U.S. capital markets and the reliance by non-U.S. and global investment advisers on research services provided by broker-dealers. Based on these representations, the SEC staff confirmed that it would not recommend enforcement action if a broker-dealer provides research services that constitute investment advice under Section 202(a)(11) to a MiFID II Adviser that is required to pay for the research services from the MiFID II Adviser's own resources, an RPA or a combination of the two sources. The First SIFMA Letter thus permits a broker-dealer to be compensated for providing research to a MiFID II Adviser without the payments being deemed "special compensation" under Section 202(a)(11)

[2] On the same day that it issued the First SIFMA Letter, the SEC staff also issued separate no-action letters to the Investment Company Institute (the "ICI Letter") and SIFMA's Asset Management Group (the "SIFMA-AMG Letter") concerning issues arising under MIFID II. The three letters are described in a Ropes & Gray Alert.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

merely because the payments are made in a manner required by MiFID II. As noted above, the no-action assurances in the First SIFMA Letter were to expire on July 3, 2020.

The Second SIFMA Letter. In the Second SIFMA Letter, the SEC staff noted that the First SIFMA Letter's three-year sunset was intended to provide the SEC staff time to monitor and analyze business practices after MiFID II went into effect. Following the First SIFMA Letter, the SEC staff has tracked developments among broker-dealers, investment managers, clients of investment managers, service providers (*e.g.*, administrators of CCAs) and market participants. The SEC staff also stated in the Second SIFMA Letter that it believes that business practices concerning payments for research continue to evolve, as does understanding of the effects of MiFID II on the supply of and demand for research, but challenges remain. On this last point, the SEC staff cited information provided by SIFMA on the costs a broker-dealer would incur to register as an investment adviser and information provided by advisers indicating that advisers are bearing the costs of research through a combination of CCAs and reimbursement programs.

Accordingly, the Second SIFMA Letter extends the First SIFMA Letter's sunset period until July 3, 2023 to permit the SEC staff to continue to monitor MiFID II's effects and to determine whether additional regulatory guidance or action is desirable. In addition, in the Second SIFMA Letter, the SEC staff stated that it believes the extension will provide time for market-based solutions – regarding payment for research, both domestically and in the EU – to develop more fully.

> ***Note.*** *MiFID II and Section 28(e) of the Exchange Act remain largely inconsistent regimes. MiFID II requires the unbundling of research and execution payments to broker-dealers, while Section 28(e) was enacted with such bundling in mind. Therefore, it is not apparent that the SEC staff had any good alternatives to extending the First SIFMA Letter's sunset period, given that Section 28(e) was enacted by Congress. Prospectively, reconciling the two regimes may be beyond the powers of the SEC acting independently.*

SEC Adopts Rule Permitting Testing-the-Waters Communications to All Issuers

On September 26, 2019, the SEC published a release (the "adopting release") promulgating Rule 163B under the Securities Act. Rule 163B provides an exemption from the Securities Act's "gun-jumping" restrictions governing the "offer" of a security before the effective date of the relevant registration statement.[3] In particular, Rule 163B permits all issuers to engage in so-called "testing-the-waters" communications with qualified institutional buyers ("QIBs") and institutional accredited investors ("IAIs") about a contemplated registered securities offering prior to, or following the filing of, a registration statement. Testing-the-waters communications permit an issuer to assess investor interest before committing the time and resources required to conduct a registered offering.[4]

While Rule 163B provides an exemption from the Securities Act gun-jumping restrictions, it does *not* provide an exemption from the 1940 Act's registration requirements. Accordingly, as described below:

- Mutual funds and ETFs are unlikely to rely on Rule 163B.
- Some closed-end funds that register under the 1940 Act – and some closed-end funds that elect to be treated as business development companies ("BDCs") – and initially offer their shares in offerings that are exempt from the Securities Act may benefit.

Rule 163B's effective date was December 3, 2019.

[3] *See* Section 5(c) and Section 5(b)(1) of the Securities Act. In general, Section 5(c) prohibits oral and written offers to sell before a registration statement has been filed, and Section 5(b)(1) prohibits written offers (unless they meet the requirements of a statutory prospectus) during the period between the filing of a registration statement and its effective date.

[4] This Alert discusses Rule 163B and its likely impact on investment companies and BDCs. The impact of the Rule on operating-company issuers is discussed in a separate Ropes & Gray Alert.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Overview. Rule 163B, which was adopted largely in the form that it was proposed in February 2019, extends to all issuers the same accommodations for testing-the-waters communications that the 2012 JOBS Act, which added Section 5(d) to the Securities Act, gives to emerging growth companies. Like Section 5(d), Rule 163B permits an issuer to engage in testing-the-waters communications with QIBs and IAIs prior to, or following, the filing of a Securities Act registration statement for a public offering.

- Rule 163B permits any issuer, or any person authorized to act on its behalf, including an underwriter, to engage in oral or written communications with QIBs and IAIs, either before or after filing a registration statement, to determine their interest in a contemplated registered securities offering.
- Rule 163B mandates no filing or legend requirements. Rule 163B is also non-exclusive, and an issuer may rely concurrently on other Securities Act communications rules or exemptions when determining how, when and what to communicate about a contemplated securities offering.
- Nonetheless, Rule 163B states that communications made in reliance on Rule 163B constitute "offers" as defined in Section 2(a)(3) of the Securities Act, thereby subjecting issuers that rely on Rule 163B to potential liability under Section 12(a)(2) of the Securities Act with respect to material misstatements and omissions. Accordingly, material information in a Rule 163B communication should not conflict with material information in the related registration statement.

Mutual Funds and ETFs. In the adopting release, the SEC recognized that mutual funds and ETFs typically file a registration statement to concurrently register under the Securities Act and 1940 Act and, therefore, mutual funds and ETFs are unlikely to rely on Rule 163B. On this point, the SEC cited the ICI's comment letter (submitted to the SEC in response to the rule's proposal) in which the ICI stated that then-proposed Rule 163B would result in mutual funds and ETFs having the untenable "choice of incurring more time and expense preparing two separate registration statements (one under the [1940 Act] and a subsequent one under both the [1940 Act] and Securities Act) or forego using test-the-waters communications."

Nevertheless, the SEC declined, as urged by the ICI, to expand Rule 163B to permit investment companies to rely on the rule before registering under either the Securities Act or the 1940 Act for the purpose of engaging in testing-the-waters communications with QIBs or IAIs. In the adopting release, the SEC expressly rejected this change, stating:

> [W]e decline to provide a new exemption under the [1940 Act] to allow a fund that would otherwise be required to register under Section 8 of the [1940 Act] to avoid this registration requirement while it engages in communications under Rule 163B. We are concerned an exemption from registration and from the substantive requirements of the [1940 Act] could allow funds potentially to engage in activities that are contrary to the substantive requirements of the [1940 Act] that protect investors and apply outside of a registered fund's offering. For example, such a new exemption could allow a fund to engage in certain self-dealing transactions – which the Act prohibits for registered funds – that benefit its investment adviser or other affiliated persons while the fund is actively considering and soliciting interest in a public offering.

Note: *Of course, when a mutual fund or ETF registers under the Securities Act and 1940 Act to offer its shares to the public, both statutes' investor-protection provisions apply, including (i) mandatory disclosure of material facts regarding any prior or continuing self-dealing transactions that could affect the fund and (ii) prohibition of prospective self-dealing transactions. Curiously, the SEC simply asserts that these protections are likely to provide inadequate protection to investors in mutual funds and ETFs that have engaged in testing-the-waters communications with QIBs and IAIs before a registered offering.*

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP
ATTORNEY ADVERTISING

Closed-end funds and BDCs. Some closed-end funds that register solely under the 1940 Act – and some closed-end funds that elect to be treated as BDCs – initially offer their shares in offerings that are exempt from the Securities Act. If contemplating a public offering, these entities already communicate and discuss the terms of the contemplated public offering with underwriters and other entities that participate in the offering. Nonetheless, Rule 163B should provide incremental assurance that these communications and discussions will not be deemed a prohibited offer before the effective date of a closed-end fund or BDC's registration statement.

> ***Note:*** *As described above, Rule 163B is non-exclusive, meaning that an issuer may rely concurrently on other Securities Act gun-jumping exemptions. In March 2019, the SEC issued a release (described in this Ropes & Gray Alert) proposing, among other things, rule changes that would permit closed-end funds and BDCs to rely on gun-jumping exemptions that are already available to operating companies, including Rule 163 and Rule 164 under the Securities Act, which permit eligible issuers to engage in communications with any investor, including an investor that is not a QIB or IAI.*
>
> - *Rule 163 provides an exemption to Securities Act Section 5(c) – thereby permitting issuers that qualify as "well-known seasoned issuers"("WKSIs") under Securities Act Rule 405 to make unrestricted oral and written offers prior to filing a registration statement (subject to certain filing and legend requirements for written communications). In contrast, Rule 163B provides WKSIs and non-WKSIs an exemption to Section 5(c), without filing and legend requirements, but only with respect to testing-the-waters communications with QIBs and IAIs.*
> - *Rule 164 permits an issuer (other than "ineligible issuers" as defined in Rule 405) to use free writing prospectuses ("FWPs") without violating Section 5(b)(1) only after a registration statement is filed (subject to certain filing and legend requirements for written communications). In contrast, Rule 163B provides all issuers an exemption to Section 5(b)(1), without filing and legend requirements, but only with respect to testing-the-waters communications with QIBs and IAIs.*
>
> *The SEC's March 2019 rulemaking proposal was issued as directed by the Registered CEF Act (as defined below) and the Small Business Credit Availability Act (the "BDC Act"), which was enacted in March 2018 and directed the SEC to amend certain of its existing rules and forms no later than March 23, 2019 to permit BDCs to use the securities offering and proxy rules that are available to operating companies (including Rules 163 and 164). Further, the BDC Act provided that, if the SEC failed to complete the required revisions by that date, a BDC may deem the required revisions to have been made for the period beginning on March 24, 2019 and ending on the day the SEC completes the required revisions. As a result, since March 24, 2019, the "self-implementing" provision of the BDC Act has permitted BDCs to rely on Rules 163 and 164, pending the adoption of final rules by the SEC. Registered closed-end funds, however, remain unable to rely on these exemptions. Under the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Registered CEF Act"), enacted in May 2018, the SEC was directed to make certain amendments to its rules and forms to permit registered closed-end funds to also use the securities offering and proxy rules that are available to operating companies. The SEC has until May 24, 2020 to finalize such amendments for registered closed-end funds.*

SEC Approves Amendments of FINRA New Issues Rules 5130 and 5131

On November 5, 2019, the SEC published its approval of FINRA's proposed amendments to FINRA Rule 5130 ("Restrictions on the Purchase and Sale of Initial Equity Public Offerings") and FINRA 5131 ("New Issue Allocations and Distributions") (the "Rules") (available here). In general, FINRA Rule 5130 is intended to protect IPOs ("new issues") from abuse by broker-dealers, their associated persons, their owners and other industry insiders potentially involved in the distribution of a new issue ("restricted persons"). In the same vein, FINRA Rule 5131 targets certain abusive *quid pro quo* allocations generally and abusive reciprocal arrangements by broker-dealers in their allocations of new issues to persons at investment banks who can direct the hiring of broker-dealers ("spinning").

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

The principal amendments, which we expect FINRA to declare effective in the near future, are summarized below.

Family Investment Vehicles and Family Offices. Rule 5130 currently exempts any "family investment vehicle" from its provisions. The amendments to FINRA Rule 5130 expand the rule's definition of "family investment vehicle" – formerly limited to include only owners that are "immediate family members" – to make the definition consistent with the definition of "family office" in Rule 202(a)(11)(G)-1 under the Advisers Act. Specifically, the Advisers Act's definition of family office includes key employees of the family office (as "family clients").[5] Consequently, key investment professionals employed by a family office now will be able to invest together with immediate family members under the amended definition of family investment vehicle without jeopardizing the vehicle's exemption from Rule 5130.

Foreign Public Investment Companies. FINRA Rule 5130 currently contains a general exemption from its prohibitions for new issues purchased by a foreign investment company, provided the investment company is listed on a foreign exchange (or is authorized for sale to the public by a foreign regulatory authority) *and* that no person who owns more than 5% of the investment company is a restricted person. It is operationally difficult for a foreign investment company to confirm that none of its 5% owners is a restricted person. Therefore, the amendments to FINRA Rule 5130 provide that, instead of satisfying this condition, the foreign investment company is exempt if it has either (i) 100 or more direct investors or (ii) 1,000 or more indirect investors. However, the exemption is unavailable if the foreign investment company was formed for the specific purpose of investing in new issues. This amendment includes a corresponding exemption to Rule 5131's anti-spinning provisions.

Retirement Plans. FINRA Rule 5130 currently provides a general exemption from its prohibitions for any ERISA benefits plan that is qualified under Section 401(a) of the Internal Revenue Code and is not sponsored solely by a broker-dealer. The amendments to Rule 5130 add a similar general exemption for U.S. and foreign retirement benefits plans, provided the plan (i) has at least 10,000 participants and beneficiaries and $10 billion in assets, (ii) is operated in a non-discriminatory manner, (iii) is administered by a fiduciary and managers that have fiduciary obligations to administer the plan in the best interests of the participants and beneficiaries and (iv) is not sponsored by a broker-dealer. Again, this amendment includes a corresponding exemption to Rule 5131's anti-spinning provisions.

Offshore Offerings and Offerings by SPACs. The amendments expressly exclude from the Rules any IPO effected pursuant to reliance on the Regulation S safe harbor under the Securities Act or otherwise offered outside of the U.S., provided the offering outside of the U.S. is not registered for sale in a concurrent IPO in the U.S. Separately, the amendments exclude IPOs by any special purpose acquisition company ("SPAC") from Rules 5130 and 5131.[6]

Sovereign Entities Including Sovereign Wealth Funds. The amendments exclude a sovereign entity, defined to include sovereign wealth funds, from being deemed a restricted person under Rule 5130 simply because the sovereign entity owns a broker-dealer. However, a broker-dealer owned by a sovereign entity still will be a restricted person under FINRA Rule 5130.

---

[5] In FINRA's final version of the amendments, FINRA confirmed that key employees who are not "immediate family members" – as defined in FINRA Rule 5130 – would not be deemed "portfolio managers." Otherwise, as portfolio managers, the key employees could have been deemed restricted persons under Rule 5130.

[6] A SPAC is a "blind pool" that offers its registered securities for use in a future acquisition of a private company. SPACs generally have 18 to 24 months after their public offerings to identify an acquisition target and execute a purchase agreement with the target company.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

REGULATORY PRIORITIES CORNER

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

Changes to the SEC's Regulatory Agenda

In November, the federal Office of Information and Regulatory Affairs published the Fall 2019 Unified Agenda of Regulatory and Deregulatory Actions (available here), which includes the SEC's Current Agency Agenda (the "Current Agenda") and the SEC's Current Long Term Actions (the "Long-Term Actions"). Both the Current Agenda and the Long-Term Actions were last updated in May 2019, and the following items are changes to the Agenda and the Long-Term Actions of interest to the mutual fund/investment management industry. The items listed below reflect only the priorities of SEC Chairman Clayton and do not necessarily reflect the view and priorities of any other Commissioner. The SEC has not provided any further detail regarding the matters described below.

New item on the Current Agenda

- Investment Company Summary Shareholder Report. The Division of Investment Management (the "Division") is considering recommending that the SEC propose a new streamlined shareholder report under the 1940 Act. This was a Long-Term Actions item in May 2019.

New items in the Long-Term Actions

- Amendments to Rule 17a-7. The Division is considering recommending that the SEC propose amendments to Rule 17a-7 under the 1940 Act.

- Amendments to the Family Office Rule. The Division is considering recommending that the SEC propose targeted amendments to the family office rule under Section 202(a)(11) of the Advisers Act of 1940.

SEC Sued by ISS to Block Enforcement of Proxy Advice Release

On October 21, 2019, Institutional Shareholder Services Inc. ("ISS") filed a complaint in the U.S. District Court for the District of Columbia against the SEC seeking to block enforcement of the SEC's "Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice" (published in the *Federal Register* on September 10, 2019) (the "Release"). ISS, a registered investment adviser, is the largest proxy advisory firm in the U.S. and, among other things, provides advice and recommendations to investment advisers about how to vote shares in funds and accounts managed by the investment advisers.

In its complaint, ISS claimed that, contrary to the SEC's guidance in the Release, proxy voting advice does not constitute a solicitation of a proxy under Section 14(a) of the Exchange Act and, therefore, ISS's proxy voting advice was not subject to the proxy rules promulgated under that section. Instead, ISS claimed, its proxy voting advice amounted to advice about securities, subjecting ISS to registration and regulation under the Advisers Act. ISS also alleged that the SEC's assertion in the Release that proxy voting advice constituted a solicitation of a proxy under Section 14(a) of the Exchange Act marked an about-face from the SEC's longstanding interpretation that advice rendered in the context of a fiduciary relationship does not constitute a solicitation.

ISS offered three rationales for the district court to issue a declaratory judgment and an injunction to prevent enforcement of the Release: (i) proxy voting advice provided in the course of a fiduciary relationship does not constitute solicitation of a proxy and, therefore, in issuing the Release, the SEC has exceeded its statutory authority under Section 14(a); (ii) the Release is invalid under the Administrative Procedure Act (the "APA") because the SEC failed to promulgate the Release's redefinition of the term "solicitation" through APA-mandated notice-and-comment procedures; and (iii) the

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Release was arbitrary and capricious in violation of the APA because the Release marks a dramatic change in the regulatory regime applicable to proxy advice, and the SEC has failed to provide a reasoned analysis for the change.

> ***Note:*** *Observers have noted that, if the SEC's interpretation and guidance relating to the solicitation of proxy votes prevails, ISS may face limitations on its ability to provide the proxy voting services upon which many funds and advisers currently rely. As a result, we are watching this case closely.*
>
> *Separately, on November 5, 2019, the SEC issued a release – "*Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice*" (described in this Ropes & Gray* Alert*) – proposing amendments to the proxy rules. Specifically, the proposed amendments would condition the availability of certain existing exemptions from the proxy rules' information and filing requirements by proxy voting advisers upon compliance with new disclosure and procedural requirements. The effect of the ISS lawsuit upon the SEC's timetable for the proposed amendments is unknown.*

SEC FAQs on Adviser Disclosure of Compensation Conflicts

On October 18, 2019, the SEC's Division of Investment Management posted on its public website "Frequently Asked Questions Regarding Disclosure of Certain Financial Conflicts Related to Investment Adviser Compensation" (the "FAQs"), providing guidance regarding certain compensation arrangements and related disclosure obligations "arising from both the investment adviser's fiduciary duty and Form ADV."

The organizing principles of the FAQs are that an adviser (i) "must make full and fair disclosure to its clients of all material facts relating to the advisory relationship" and (ii) "must eliminate or at least expose through full and fair disclosure all conflicts of interest that might incline it – consciously or unconsciously – to render advice that is not disinterested." The SEC staff's answers in the FAQs expressly rely on the full-and-fair disclosure standard articulated by the SEC in its June 2019 release, "Commission Interpretation Regarding Standard of Conduct for Investment Advisers" (the "Conduct Interpretation").

The introduction to the FAQs states that the SEC staff's guidance addresses an investment adviser's disclosure obligations with respect to types of compensation received, including 12b-1 fees and revenue sharing. However, the guidance is intended to show principles and disclosure obligations that apply to other forms of compensation, including the direct or indirect receipt of compensation in the form of service fees from a clearing broker-dealer, marketing-support payments from a mutual fund's investment adviser and payments from a mutual fund's investment adviser to defray an adviser's costs to educate and train personnel about certain investment products. The following are the five "questions" posed in the FAQs to which the SEC staff provides its answers as guidance:

1. What requirements must an investment adviser consider with respect to disclosure of conflicts of interest related to compensation that it, its affiliates or its associated persons receive in connection with the investments it recommends?

2. What are some examples of material facts that, in the staff's view, an adviser should disclose about its practices related to recommending investments or services with different adviser compensation characteristics, such as mutual fund share classes, and the related conflicts, if applicable, in light of the principles and disclosure requirements discussed above?

3. Similar to an investment adviser's receipt of 12b-1 fees, the receipt of revenue-sharing payments creates incentives for investment advisers that, in turn, give rise to conflicts of interest. In addition to the principles and disclosure requirements discussed above, as relevant, what particular Form ADV disclosure requirements relate to an adviser's receipt of revenue-sharing payments?

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP
ATTORNEY ADVERTISING

4. What are some examples of material facts that an investment adviser should disclose about its practices related to revenue-sharing arrangements, if applicable?

5. If an investment adviser materially amends or supplements its disclosures concerning share-class recommendations or revenue-sharing arrangements in an annual update, is it required to highlight the new disclosure in its Form ADV's summary of material changes?

Note: *As indicated above, the SEC staff's answers in the FAQs rely expressly on the full-and-fair disclosure standard articulated by the SEC in the Conduct Interpretation. The SEC staff also makes the additional point, first articulated in the Conduct Interpretation, that "an adviser disclosing that it 'may' have a conflict is not adequate disclosure when the conflict actually exists."*

SEC Issues FAQs on Form CRS

On November 26, 2019, the SEC's Division of Investment Management posted on its public website, "Frequently Asked Questions on Form CRS" (the "CRS FAQs"), providing guidance with respect to Form CRS. The SEC's release adopting Form CRS (described in this Ropes & Gray Alert) adopted Advisers Act Rule 204-5 and Exchange Act Rule 17a-14, which will require registered investment advisers and broker-dealers to deliver to new and prospective *retail* clients their current Form CRS beginning June 30, 2020.

The CRS FAQs provide SEC staff responses to questions regarding the permissible format of a Form CRS and delivery requirements. Most notably, the SEC staff appears to confirm that an investment adviser to a private fund is not required to deliver a Form CRS to retail investors in the private fund.

SEC Issues Risk Alert on Compliance Issues Observed in Fund Examinations

On November 7, 2019, the SEC's Office of Compliance Inspections and Examinations ("OCIE") issued a Risk Alert (the "Alert") summarizing the most common issues identified by OCIE staff in its recent examinations of investment companies. The Alert also includes deficiencies observed in OCIE's examination initiatives focusing on money market funds and target date funds. The following text summarizes the principal deficiencies described in the Alert:

Fund Compliance Rule Deficiencies

- Compliance programs that did not take into account business activities or risks specific to the fund. Funds that did not follow or enforce their compliance policies and procedures, as well as funds that did not adopt and implement policies and procedures that were reasonably designed to oversee compliance by service providers.

- Funds that did not conduct annual reviews of their policies and procedures (or that lacked documentation indicating that such annual reviews were completed), as well as annual reviews that failed to address the adequacy of the funds' policies and procedures and the effectiveness of their implementation.

Section 15(c) Process Deficiencies

- Fund boards that may not have requested or considered information reasonably necessary to evaluate a fund's investment management agreement, as well as fund boards that received incomplete materials but did not request the omitted information. In addition, funds that did not keep copies of written materials the board considered in approving advisory contracts or failed to retain documentation indicating what information fund boards requested and considered.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

- Shareholder reports that did not adequately discuss the material factors and conclusions behind a board's approval of an investment management agreement.

Fund Code of Ethics Deficiencies. Funds that failed to implement procedures reasonably necessary to prevent violations of their codes of ethics, and funds that that failed to use reasonable diligence to prevent violations of their codes of ethics (failures in execution and enforcement).

Money Market Fund Initiative Deficiencies

- Funds that had not adopted and implemented compliance policies and procedures reasonably designed to address certain requirements under Rule 2a-7.
- Funds that provided stress test results to their boards where the reports lacked a necessary summary of significant assumptions used in the stress tests.
- Funds that did not post on their websites all information required under Rule 2a-7 and/or posted inaccurate information on their websites.

Target Date Fund ("TDF") Initiative Deficiencies. TDFs that had incomplete and potentially misleading disclosures in their prospectuses and advertisements, as well as TDFs that had incomplete or missing policies and procedures (*e.g.*, monitoring asset allocation, overseeing changes to fund's glide path).

IRS Provides Tax Guidance on LIBOR Transition

On October 9, 2019, the IRS published proposed regulations (the "Proposed Regulations") to provide guidance regarding the U.S. tax effects of the expected transition from LIBOR and other interbank offered rates ("IBORs") on debt instruments (*e.g.*, loans, notes and bonds) and non-debt contracts (*e.g.*, swaps and other derivatives). The IRS stated that the Proposed Regulations "are necessary to address the possibility that an alteration of the terms of a debt instrument or a modification of the terms of other types of contracts to replace an IBOR . . . with a new reference rate could result in the realization of income, deduction, gain, or loss for Federal income tax purposes or could result in other tax consequences."

Broadly speaking, the Proposed Regulations provide that changes to a debt instrument or non-debt contract to replace an IBOR with a new reference rate will not result in a taxable event, provided that certain requirements are met. One such requirement is that the replacement rate must be a "qualified rate." The Proposed Regulations include a non-exclusive list of several rates that qualify, including the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York ("SOFR"). Another requirement is that the fair market value of the applicable instrument or contract must be substantially equivalent before and after the relevant modifications. To determine fair market value, taxpayers are permitted to use any reasonable, consistently applied valuation method, taking into account the value of any one-time payment made in connection with the modification. Affected parties should seek to assure that reference rate substitutions and related changes in their debt instruments and non-debt contracts conform to the Proposed Regulations to avoid a taxable event.

Taxpayers are permitted to rely on the Proposed Regulations until the IRS publishes final regulations, provided that taxpayers apply the Proposed Regulations consistently during that period.

CFTC Inspections of CPOs and Swap Dealers

In an October 30, 2019 speech, Joshua Sterling, Director of the CTFC's Division of Swap Dealer and Intermediary Oversight ("DSIO"), provided information about DSIO's planned initiative to have its staffers visit select large

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP
ATTORNEY ADVERTISING

commodity pool operators ("CPOs") and swap dealers. He observed that these visits will be DSIO's first direct reviews of CPOs and swap dealers, and stated that a limited number of CPOs and swap dealers will be reviewed. Mr. Sterling also stated that the visits are for the purpose of gathering information to inform potential rule changes for CPOs and swap dealers and not for the purpose of identifying matters to be referred to the CFTC's Division of Enforcement. Finally, regarding which firms will be selected for the visits, Mr. Sterling said, "We will attempt to select firms for the review process that are likely to have a significant impact on the derivatives markets . . . the size of the firm and the relative amount of its derivatives trading will be important considerations for us at this stage."

ROPES & GRAY ALERTS AND PODCASTS SINCE OUR OCTOBER-NOVEMBER UPDATE

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

***PErspectives*: Private Equity Industry Insights**

November 26, 2019
The inaugural edition of *PErspectives* – our quarterly publication featuring news, trends and legal developments in the private equity industry. This new publication features contributions from a cross section of our preeminent global private equity team. We encourage you to send us feedback on the content or topics you would like to see covered in future issues. In this Fall 2019 issue, we explore these and other probing questions:

- Will private investment fund opportunities be expanded to retail investors?
- Why the recent increase in partnerships with digital health companies?
- Will the use of SPACs continue to grow in the Asia market?
- What is happening to the "marketing period" in syndicated all-bank acquisition financings?
- What trends are we seeing in the market relating to the use of rep & warranty insurance in lieu of seller indemnity?

Flash Analysis: Making Sense of the Non- and Semi-Transparent Active ETF Models

November 19, 2019
On November 14, 2019, the SEC issued notices for four "semi-transparent" active ETF models – the T. Rowe, Fidelity, Blue Tractor and Natixis/NYSE applications. These "semi-transparent" models noticed for approval reflect variations of a "proxy portfolio" approach, where there is some transparency into the ETF's holdings and baskets available to authorized participants and other market participants. This Alert contains a brief comparison of some of the principal features of the non- and semi-transparent active ETF exemptive models.

Podcast: Key ESG Considerations for Family Offices and Foundations

November 18, 2019
In this Ropes & Gray podcast, asset management partners Isabel Dische and Melissa Bender, and tax and benefits counsel Morey Ward, provide an overview of key considerations for family offices and foundations as they consider whether, and how, to integrate ESG factors and/or impact investing into their investment processes.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Podcast: Credit Funds: Hot Topics in BDC Regulation

November 18, 2019
In this Ropes & Gray podcast, Mike Doherty, Brian McCabe and Paul Tropp discuss important regulatory developments and current issues affecting business development companies (BDCs). The SEC recently (1) issued a rule proposal intended to streamline the registration, communications and offering practices of BDCs and (2) proposed a new Rule 12d1-4 under the 1940 Act relating to the regulation of funds that invest in other funds. This podcast explains how these new rules affect BDCs. In addition, the podcast explores the argument for modifications to the disclosure requirements for registered investment companies relating to acquired fund fees and expenses (AFFEs).

Podcast: Credit Funds: Compliance Considerations for Valuation

November 13, 2019
In this Ropes & Gray podcast, Jeremiah Williams and Casey White discuss compliance issues surrounding the valuation of debt investments held by credit funds. Debt investments create unique valuation challenges for sponsors making such determinations, such as managing potential conflicts of interest. This podcast discusses certain regulatory compliance considerations relevant to the valuation of debt instruments and the importance of instituting and following valuation policies and procedures.

SEC Proposes Amendments to Regulate Proxy Voting Advice and Modernize the Shareholder Proposal Rule

November 11, 2019
Reform of proxy advisory firms and the shareholder proposal process has been on the business community's agenda for some time. On November 5, 2019, the SEC proposed amendments to regulate proxy voting advice (the "Proxy Release") and amendments to modernize the process for shareholder proposals under Exchange Act Rule 14a-8 (the "Shareholder Proposal Release"). The SEC issued the releases in separate 3-2 votes, with Chairman Clayton and Commissioners Peirce and Roisman forming the majority in both instances and Commissioners Jackson and Lee dissenting. This Alert summarizes key aspects of the two rule proposals.

Podcast: Private Funds Update: The UK Stewardship Code 2020

November 11, 2019
In this Ropes & Gray podcast, asset management partners Melissa Bender and Isabel Dische discuss the recently published revised edition of the UK Stewardship Code. In particular, the revised Code specially requires that UK asset manager signatories explain how their investment policies enable them to practice stewardship and adds related ESG-related reporting obligations.

New State Bills Inspired by the California Consumer Privacy Act May Reappear Next Year

November 7, 2019
The California Consumer Privacy Act inspired legislators in several other states to attempt to pass similar legislation aimed at protecting the privacy rights of consumers. As the legislative calendars for most of those states have wound to a close before the recent election, this Alert reviews those bills as a preview to what we should expect in the next legislative session, particularly as several states will be returning a more progressive assembly.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Staff Responds to Questions About Non-Traded BDCs and Section 61(a) of the 1940 Act

October 31, 2019
On October 17, 2019, the SEC's Division of Investment Management published "Staff Responses to Inquiries Regarding Business Development Companies and Section 61(a) of the Investment Company Act of 1940," concerning compliance by business development companies whose common shares are not exchange listed (a "non-traded BDC") with the repurchase-offer requirements within recently amended Section 61(a).

2019 Final ETF Rulemaking – Summary and Analysis

October 15, 2019
The SEC recently adopted a final ETF rule, largely in the form proposed in June of 2018, but with several important changes in response to industry comments. Ropes & Gray has compiled a brochure (available here) that summarizes and analyzes the final ETF rule and provides thoughts on next steps for existing ETF sponsors and potential new entrants into the space.

Credit Funds Report – The Road Ahead: Driving Success in 2020

October 3, 2019
The private credit fund sector grew by leaps and bounds over the past decade: AUM jumped to $769 billion as of June 2018, from $275 billion in 2009. In this thought leadership report, Ropes & Gray collected five articles from members of the firm's credit funds team that highlight key issues in the formation and operation of credit funds. These articles touch on the conflicts inherent in managing both credit and PE funds, the prevalence of key person terms, the intricacies of BDC regulation and value-based payment arrangements in the health care industry, and the potential changing landscape of foreign credit support.

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP
ATTORNEY ADVERTISING

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 Asset Management group listed below.

United States

Nathan Briggs Washington DC +1 202 626 3909 nathan.briggs@ropesgray.com	**Jason E. Brown** Boston, MA +1 617 951 7942 jebrown@ropesgray.com	**Jim Brown** New York, NY +1 212 596 9696 james.brown@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 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	**Josh Lichtenstein** New York, NY +1 212 841 5788 joshua.lichtenstein@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	**Deborah A. Monson** Chicago, IL +1 312 845 1225 deborah.monson@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

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING

Amy Roy
Boston, MA
+1 617 951 7445
amy.roy@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

Eve Ellis
London
+44 20 3201 1530
eve.ellis@ropesgray.com

Anna Lawry
London
+44 20 3201 1590
anna.lawry@ropesgray.com

Asia

Vince Ip
Hong Kong
+852 3664 6560
vincent.ip@ropesgray.com

This alert should not be construed as legal advice or a legal opinion on any specific facts or circumstances. This alert is not intended to create, and receipt of it does not constitute, a lawyer-client relationship. The contents are intended for general informational purposes only, and you are urged to consult your attorney concerning any particular situation and any specific legal question you may have. © 2019 Ropes & Gray LLP

ATTORNEY ADVERTISING