April 27, 2020

Ropes & Gray's Investment Management Update February–March 2020

COVID-19-Related Alerts

Since our last IM Update, we have monitored the extensive number of COVID-19-related regulatory and legal developments affecting the mutual fund/investment management industry, which we covered in separate client Alerts and podcasts. The last section of this IM Update contains a short summary of, and a hyperlink to, the full text of (or transcript of), each of these Alerts and podcasts.

The Ropes & Gray Coronavirus Resource Center also maintains these Alerts and podcasts, as well as additional materials regarding a range of COVID-19-related issues.

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

SEC Extends Securities Offering Reforms to Closed-End Funds and Business Development Companies

On April 8, 2020, the SEC issued a release (the "Release") containing amended rules and forms intended to streamline the registration, communications and offering practices for business development companies ("BDCs") and registered closed-end investment companies ("registered CEFs"), including interval funds and tender offer funds (collectively, "Affected Funds"). The Release's rule and form amendments will permit Affected Funds, subject to limitations described below, to use the securities offering rules that are already available to operating companies. The Release will be discussed in a forthcoming Ropes & Gray Alert.

SEC Requests Comments on Fund Names and Rule 35d-1

On March 2, 2020, the SEC published Request for Comments on Fund Names (the "Release"), seeking public input on:

- Challenges presented by Rule 35d-1 under the 1940 Act (the "Names Rule"), especially in view of market changes since the 2001 adoption of the Names Rule, and
- Potential alternatives to the existing regulatory framework prohibiting the use of names by registered funds and business development companies (each, a "BDC") that are likely to deceive or mislead investors about a fund or BDC's investment risks.

Overview

A substantial portion of the Release summarized the history leading to the SEC's 1997 proposal of the Names Rule and its 2001 adoption of the rule, as well as the substantive requirements of the Names Rule. The Release notes that, at present, "fund names remain a common area for staff comment as part of the disclosure review process."

The Release described "factors" (or causes) that the SEC identifies as contributing to current challenges in applying the Names Rule. We summarize these factors below.

Causes of the Challenges in Applying the Names Rule

The Release identified the following five factors as contributing to current challenges in applying the Names Rule:

1. According to the Release, because the Names Rule is an "asset-based" test, it may be poorly suited to funds that rely on derivatives to provide significant exposure to a "type of investment" (as specified in the Names Rule). The SEC stated that an asset-based test "may not provide an appropriate framework when the market values of derivative investments . . . are relatively small but the potential exposure is significant."
2. The number of funds with investment mandates that require a qualitative assessment of certain issuer characteristics (such as ESG funds) has grown. These funds often include their mandate in their name. The SEC staff has observed that "some funds appear to treat terms such as 'ESG' as an investment strategy (to which the Names Rule does not apply) . . . while others appear to treat 'ESG' as a type of investment (which is subject to the Names Rule)."
3. Funds are increasingly using certain hybrid financial instruments that have only some of the characteristics of more common asset types used in a fund's name.
4. For competitive reasons, some funds adopt a name because it is more likely to attract assets (*e.g.*, names suggesting various emerging technologies), but this practice may be inconsistent with the purpose of the Names Rule.
5. Indices are not investment companies and not subject to the Names Rule. However, the SEC staff has seen instances of an index in a fund name notwithstanding the fact that the index's components are not closely related to the type of investment suggested by the index's name.

Procedures and Next Steps

The proposed fund derivatives rule (proposed Rule 18f-4) recognizes that value-at-risk (VaR) is a better measure of a fund's exposure from a derivatives transaction. That said, the SEC did not mention that rulemaking in the Release.

With respect to the Release's ESG-related issues, presumably, the rapid growth of ESG funds has the SEC staff looking for information and solutions from as many sources as possible. The responses that the Release generates—**due at the SEC no later than May 5, 2020** (although that date may be extended)—may assist the SEC in determining how to proceed with any further regulation of ESG funds.

SEC Adopts Variable Products Summary Prospectus and "Notice and Access" for Underlying Fund Prospectuses—May Implicate Fund Prospectus Delivery Generally

In a March 10, 2020 adopting release (the "Release"), the SEC adopted Rule 498A under the Securities Act to permit, for the first time, the use of a summary prospectus to satisfy prospectus delivery obligations under Section 5 of the Securities Act for variable life and variable annuity contracts ("variable contracts") issued by an insurer's separate account.

- Rule 498A, which was adopted in substantially the same form as it was proposed, along with other rule and form amendments in the Release, also permits mutual funds that are investment options offered under variable contracts to satisfy prospectus delivery obligations by relying on an optional "notice and access" framework.
- In the underlying 2018 proposing release,[1] the SEC discussed and solicited comments on certain parallel provisions of rule 498 and registration forms applicable to other types of registered investment companies. The Release states that the SEC staff is now considering the "comments received and reviewing the disclosure regime

[1] The proposing release is discussed in a 2018 Ropes & Gray IM Update.

for investment companies as to these and other potential amendments as part of a broader modernization initiative." Therefore, the SEC may be contemplating additional changes to mutual fund prospectus delivery obligations as part of its modernization initiative.

A discussion of the Release follows.

Summary Prospectuses

A. Variable Contract Summary Prospectuses

Variable contracts are generally securities under the federal securities laws. A "separate account" established by the sponsoring insurance company is the legal entity that registers these securities. Most separate accounts are organized as a unit investment trust. A unit investment trust registers its securities with the SEC (each such registrant, a "UIT") either on Form N-4 (variable annuity contracts) or Form N-6 (variable life contracts).[2] A UIT is further divided into subaccounts, each of which invests in the shares of a mutual fund that is an "investment option" offered under a variable contract.

As issuers of variable contracts, UITs currently maintain their offering documents by filing annual post-effective amendments to Forms N-4 and N-6 and supplementing (or stickering) their prospectus or statement of additional information ("SAI"), as necessary. This regime is similar to mutual funds' Form N-1A practices. After an annual update, a variable contract issuer generally sends the new statutory prospectus to all variable contract holders accompanied by prospectuses for the mutual funds that serve as underlying investment options.

The Release, including Rule 498A and related rule and form amendments, creates two types of variable contract summary prospectuses: (i) an "initial summary prospectus" to be provided to first-time variable contract investors and (ii) an "updating summary prospectus" to be provided annually to existing investors.[3]

1. An initial summary prospectus must be limited to a description of a single variable contract offered under the related statutory prospectus, and contain specific key information about the variable contract, including the contract's most salient components, risks and benefits. The initial summary prospectus must be "sent or given no later than the time of the carrying or delivery of the contract security" to satisfy prospectus delivery obligations.
2. An updating summary prospectus must contain a short description of certain changes to the variable contract(s) effected during the previous year, along with a subset of the information in the initial summary prospectus. An updating summary prospectus is permitted to describe one or more variable contracts offered under the related statutory prospectus.

Both an initial summary prospectus and an updating summary prospectus must have an appendix that provides summary information about the mutual funds that are underlying investment options offered under a variable contract, including each fund's name, type or investment objective, adviser and subadviser, expense information, and average annual returns for the past year, five years, and ten years, along with a hyperlink to a website where contract holders can find the prospectuses and other information about the mutual funds that serve as underlying investment options.

Reliance on Rule 498A is conditioned on (i) public availability of the variable contract's current initial summary prospectus, updating summary prospectus, statutory prospectus and SAI at a website address hyperlinked to, or identified

[2] According to the Release, in 2019, there were five variable annuity separate accounts registered as management investment companies on Form N-3 and 670 separate accounts organized as UITs. The UITs were either variable annuity separate accounts registered on Form N-4 or variable life insurance separate accounts registered on Form N-6. Because most separate account registrants are UITs, the discussion that follows is limited to UITs.

[3] Use of either type of summary prospectus to satisfy a variable contract issuer's prospectus delivery obligations is optional.

on, the cover page or beginning of a related summary prospectus and (ii) the ability of any recipient of a variable contract summary prospectus to request and receive, either on paper or electronically, the variable contract's statutory prospectus and SAI.

B. Prospectuses of Underlying Mutual Fund Investment Options

The Release, including Rule 498A and related rule and form amendments, also provides alternative ways for a mutual fund offered under a variable contract to satisfy its prospectus delivery obligations. Specifically, a mutual fund's prospectus delivery obligations are satisfied if (i) an initial summary prospectus is used for each currently offered variable contract within the UIT's registration statement, (ii) a summary prospectus is used by the mutual fund, (iii) the mutual fund's summary and statutory prospectuses, SAI and most recent shareholder reports are available online at a website address hyperlinked to, or identified on, the cover page or beginning of the variable contract's summary prospectus and (iv) any recipient of a variable contract summary prospectus may request and receive, either on paper or electronically, the items listed in (iii).

The following table compares the requirements, under current rules and under the new optional summary prospectus regime, for effecting delivery of information to contract holders.

INFORMATION AVAILABLE TO VARIABLE CONTRACT INVESTORS

	Current Prospectus Delivery Regime	***Optional Summary Prospectus Regime***
Contract Statutory Prospectus	Delivered to all investors	Required to be available online and delivered (in paper or electronic format) upon request
Contract SAI	Available upon request	Required to be available online and delivered (in paper or electronic format) upon request
Contract Part C Information	Not delivered to investors or required to be available online, but is filed with registration statement (available on EDGAR)	Not delivered to investors or required to be available online, but is filed with registration statement (available on EDGAR)
Initial Summary Prospectus	N/A	Delivered to new investors
Updating Summary Prospectus	N/A	Delivered to existing investors
Investment Option Mutual Fund Prospectuses	Delivered to all investors	Delivered to investors, or, if the new option to satisfy portfolio company prospectus delivery is relied upon, required to be available online and delivered (in paper or electronic format) upon request

C. Format and Contents of Registration Statements

The SEC website contains hyperlinks to Form N-3, Form N-4 and Form N-6, each as amended to implement Rule 498A's summary prospectus framework. With respect to variable contracts currently offered to new investors, registrants will be required to use the Inline eXtensible Business Reporting Language ("XBRL") format for the submission of certain required disclosures in the variable contract statutory prospectus.

Compliance Dates

Beginning July 1, 2020, a registrant can rely on Rule 498A to satisfy its obligations to deliver a variable contract's statutory prospectus by delivering a summary prospectus, provided the registrant is also in compliance with the amendments to Forms N-3, N-4 or N-6 (as applicable). Beginning January 1, 2022, all initial registration statements on Forms N-3, N-4 and N-6, and all post-effective amendments that are annual updates to effective registration statements on these forms, must comply with Rule 498A and form amendments. No later than January 1, 2023, registrants must submit to the SEC certain specified disclosures in XBRL format.

Observations

Variable contract prospectuses are frequently lengthy and complex, and industry practice is to bundle the summary prospectuses of mutual funds that serve as underlying investment options with the variable contract prospectus. Consequently, the disclosure documents delivered to first-time variable contract purchasers and annually thereafter are often voluminous. The Release's rule and form changes will streamline variable contract disclosure for investors.

Separately, the Release's approach to satisfy a mutual fund's prospectus delivery obligations is noteworthy because it incorporates aspects of the notice-and-access delivery framework. As noted above, the SEC stated in the Release that the SEC staff is now considering the "comments received [to the proposing release] and reviewing the disclosure regime for investment companies as to these and other potential amendments *as part of a broader modernization initiative*." (Emphasis added).

Whether the SEC contemplates amending Rule 498 to permit a notice-and-access framework for the delivery of information in funds' summary prospectuses in other contexts is unknown. However, the SEC's statements and actions suggest that such a framework is at least being considered.

SEC Allows Exchanges to Automatically List ETFs

On April 13, 2020, the SEC issued an order approving NYSE Arca's rule change to extend generic listing standards to shares of ETFs that operate in reliance on Rule 6c-11 under the 1940 Act. Earlier in April, the SEC issued similar orders to Cboe BZX Exchange and The Nasdaq Stock Market. The three SEC orders permit an ETF relying on Rule 6c-11 (described in this Ropes & Gray Alert) to rely on generic listing standards in connection with its exchange listing process. The new rules eliminate most of the quantitative requirements of the existing generic listing standards (such as diversification requirements and minimum position sizes), as well as the requirement to make an intraday indicative value (IIV) available. The elimination of these quantitative requirements will greatly reduce the number of ETFs that will have to submit to the potentially lengthy delays of an Exchange Act Rule 19b-4 process.

Massachusetts Governor's Order Temporarily Permits Virtual Shareholder Meetings

On March 30, 2020, Massachusetts Governor Charles Baker issued an order regarding the conduct of shareholder meetings by "public corporations" incorporated under the laws of the Commonwealth of Massachusetts (the "Order"). Effective immediately and ending 60 days after the end of the current state of emergency in Massachusetts, the Order allows Massachusetts public corporations to conduct solely virtual shareholder meetings notwithstanding a provision in the Massachusetts corporations statute, M.G.L. c. 156D, § 7.08, prohibiting public corporations from holding solely virtual shareholder meetings. The Order also provides relief to public corporations that have already provided notice of an upcoming annual or special shareholder meeting to be held in person, permitting them to change to a solely virtual meeting by complying with the notice provisions in the Order (in lieu of the statutory notice requirements).

A fund organized as a Massachusetts business trust (an "MBT")[4] considering a virtual shareholder meeting should review its declaration of trust and bylaws because, in some cases, amendments may be required to effect a virtual meeting. Moreover, an MBT and its adviser should also consult with its proxy vendor regarding the technical feasibility of conducting a virtual shareholder meeting, especially if there are non-standard proposals (*e.g.*, contested elections) to be voted on at the meeting.

ROPES & GRAY ALERTS AND PODCASTS SINCE OUR DECEMBER–JANUARY UPDATE

COVID-19: Available Extension for BEA Form BE-10

April 20, 2020
The U.S. Department of Commerce, through the Bureau of Economic Analysis (the "BEA"), requires reporting on Form BE-10 from any U.S. person (including entities or individuals) that had a "Foreign Affiliate" at any point during the U.S. person's 2019 fiscal year (each person, a "U.S. Reporter"). Form BE-10 is a five-year benchmark survey, and is required of U.S. Reporters with Foreign Affiliates, regardless of whether they have been contacted by the BEA. The original filing deadline for Form BE-10 was May 29, 2020 if a U.S. Reporter is filing to report fewer than 50 Foreign Affiliates, or June 30, 2020 if a U.S. Reporter is filing to report 50 or more Foreign Affiliates. However, in a conversation with the BEA staff, the BEA stated that this deadline has been extended until at least August 31, 2020 as a result of the recent novel coronavirus (COVID-19) outbreak.

Podcast: COVID-19: TALF 2.0: Anticipating the 2020 Term Asset-Backed Securities Loan Facility Program

April 20, 2020
In this Ropes & Gray podcast, asset management partner Mike Doherty and counsel Laura Hirst discussed the 2009 Term Asset-Backed Securities Loan Facility (TALF) program which the Fed established in response to the 2008-2009 financial crisis, and, given current market conditions, what might be expected for the 2020 TALF program.

CFTC Reproposes Rules on Position Limits for Futures and Swaps

April 15, 2020
The U.S. Commodity Futures Trading Commission (the "Commission") recently extended the comment period on its latest proposal to expand its speculative position limit rules (the "Proposed Rules" or the "Proposal"). The Proposed Rules would establish new and amended spot month speculative position limits for certain physical and cash-settled commodity futures and options contracts and economically equivalent swaps. In addition, the Proposed Rules would revise certain exemptions from speculative position limits, including for bona fide hedges, and add or amend certain definitions. The Commission is now seeking comment on the Proposed Rules until May 15, 2020. Adopting new position limit rules has been a priority for the Commission, and we expect that final rules will be enacted before the end of the year. Asset managers and other market participants should analyze the Proposal's impact to determine whether to submit a comment letter to the Commission, as well as to prepare for the changes.

Podcast: COVID-19: Recent Developments in Credit Funds Secondaries: Has the Pandemic Introduced New Opportunities?

April 15, 2020
In this Ropes & Gray podcast, asset management partners Isabel Dische and Katie Waite discussed some of the reasons why the credit funds secondaries market has historically been smaller than the private equity secondaries market, and

[4] MBTs are not Massachusetts corporations. In some cases, however, particularly where a fund's organizational documents are silent on a matter, Massachusetts courts have applied the requirements of M.G.L. c. 156D in rulings regarding funds organized as MBTs.

why and how that has been changing recently, including as a result of market declines triggered by the COVID-19 pandemic.

SEC Order Temporarily Exempts BDCs from Certain Asset-Coverage Requirements and Joint Transaction Prohibitions

April 14, 2020
On April 8, 2020, the SEC issued an order (the "Order") that provides temporary flexibility for business development companies ("BDCs") (i) to issue and sell senior securities and (ii) to participate in certain joint transactions that would otherwise be prohibited by Section 57(a)(4) of the 1940 Act and Rule 17d-1 thereunder. The Order provides exemptions to assist BDCs in providing capital to their portfolio companies in specific limited situations and subject to certain conditions.

Managing Volatility in a Pandemic? Document your Derivatives Transactions Appropriately

April 13, 2020
The emergence of the COVID-19 pandemic and the response of governments worldwide have resulted in market volatility unprecedented not only in its magnitude, but also in its reach across asset classes. While the natural result of such market turbulence has been to stifle (or at least pause) dealmaking and related financing activity in public and private company M&A, it has resulted in opportunities for market participants seeking to capitalize on either (or both) depressed asset prices and volatility itself by entering into derivatives transactions, including options and swaps.

Trending Video: Active Nontransparent ETFs

April 9, 2020
In this video, Brian McCabe, Ropes & Gray asset management partner, discusses active nontransparent ETFs and the opportunities they offer to investors and asset managers of traditional mutual funds.

SEC No-Action Letter Temporarily Expands Ability of Affiliates to Purchase Debt Securities from Mutual Funds

March 30, 2020
In a March 26, 2020 no-action letter (the "Letter") addressed to the Investment Company Institute, the SEC staff stated it would not recommend enforcement action against a registered open-end investment company that is not an ETF or a money market fund (each, a "Fund") or an affiliated person (or an affiliated person of an affiliated person) of the Fund (each, an "Affiliate Purchaser") that is not a registered investment company, if the Affiliate Purchaser purchases a debt security from a Fund. Rule 17a-9 under the 1940 Act already permits an Affiliate Purchaser of a money market fund to purchase certain securities from the money market fund—the Letter temporarily expands the relief provided by the rule by permitting purchases from non-money market funds. The SEC staff's no-action position was based on conditions in the Letter.

SEC and Federal Reserve Actions to Enhance Funds' Liquidity

March 27, 2020
On March 23, 2020, the SEC issued an Order (the "Order") providing registered funds (except money market funds) exemptions from certain 1940 Act requirements to enhance their ability to obtain short-term funding from affiliates. The Order follows a March 19, 2020 no-action letter relaxing the conditions of Rule 17a-9 under the 1940 Act for bank purchases of securities from affiliated money market funds. The SEC's actions coincide with the Federal Reserve's creation of the Money Market Mutual Fund Liquidity Facility (MMLF) and other facilities as steps to improve the liquidity of the money markets and capital markets, generally.

In Response to COVID-19 CFTC and NFA Issue Temporary Relief to Commodity Pool Operators and Commodity Trading Advisors

March 24, 2020
On March 20, 2020, in response to the COVID-19 pandemic, the Division of Swap Dealer and Intermediary Oversight of the U.S. Commodity Futures Trading Commission ("CFTC") issued temporary no-action relief to asset managers who are registered commodity pool operators ("CPOs") from certain obligations under the Commodity Exchange Act and CFTC regulations (the "Relief"). The National Futures Association followed the Relief on March 23, 2020 by issuing Notice to Members I-20-15, which granted similar relief from rules applicable to member CPOs and commodity trading advisors.

Considerations for Registered Closed-End Funds and Their Advisers

March 23, 2020
As closed-end funds and their advisers respond to the significant challenges arising from the COVID-19 virus, Ropes & Gray attorneys have responded to a number of common questions and concerns from our clients. This Alert summarizes various ideas and reminders that our attorneys have distilled from these discussions.

Podcast: COVID-19: Insights into Key Practice Areas Across the Globe

March 19, 2020
In this Ropes & Gray podcast, New York-based finance partner Leonard Klingbaum led a discussion on the impact COVID-19 is having on various practice areas across the globe. Leonard was joined by his finance partner Alyson Gal, based in Boston; finance partner Malcolm Hitching, based in Europe; special situations partner Dan Anderson, who heads the practice in Asia; bankruptcy partner Matt Roose, based in New York; private equity partner Jay Freedman, located in San Francisco; and asset management partner Jessica O'Mary, who is a leader of the firm's credit funds team, also based in New York. These global colleagues offer insights on the impact the COVID-19 pandemic is having on (1) event-driven and bespoke financing transactions, (2) creditor representations, and (3) private equity and credit fund investments.

In Response to COVID-19 NFA Issues Guidance Regarding Application of Branch Office Requirements to Remote APs, CFTC Relief Expected

March 17, 2020
On March 13, 2020, the National Futures Association ("NFA") issued a notice to members that addressed concerns raised by members regarding the application of the NFA's branch office requirements to associated persons who are temporarily working remotely in response to the coronavirus.

COVID-19: Implications for Private Fund Managers

March 16, 2020
This Alert summarizes aspects of the current public health crisis that we expect are of particular interest to private fund managers.

Podcast: COVID-19 and Derivatives Trading Agreements: Considerations for the Buy-Side

March 16, 2020
In this Ropes & Gray podcast, Isabel Dische, partner in the asset management group, and Molly Moore, counsel in the asset management group, discussed steps buy-side market participants can take to understand and mitigate possible

implications of the COVID-19 pandemic on their derivatives contracts. Topics covered included events of default and termination events, as well as super-collateral events that may be triggered by the COVID-19 pandemic, credit-related considerations, force majeure provisions, and understanding how governmental and trading exchange actions such as market closures may affect valuation and payment dates or otherwise trigger disruption events.

SEC Provides Conditional Relief from In-Person Fund Board Meeting Requirements, Select 1940 Act (Forms N-CEN, N-PORT, N-23C-2) and Advisers Act (Forms ADV and PF) Filing Deadlines and Prospectus Delivery Requirements

March 15, 2020
On March 13, 2020, the SEC issued a 1940 Act exemptive order and an Advisers Act exemptive order providing relief for funds and investment advisers whose operations may be affected by the COVID-19 virus. In its related press release, the SEC acknowledged that the impacts of COVID-19 may delay or prevent funds and advisers operating in affected areas from meeting certain regulatory obligations due to restrictions on large gatherings, travel and access to facilities, the potential limited availability of personnel and similar disruptions. The SEC indicated that the relief provided by the orders is designed to enable funds and advisers to meet their regulatory obligations and to continue their operations, while recognizing that there may be temporary disruptions outside of their control.

California State Appeals Court Holds that ETF Investors Cannot Assert Securities Act Claims

March 5, 2020
On January 23, 2020, the Court of Appeal of the State of California issued its opinion in *Jensen v. iShares Trust*, affirming a trial court's holding, after a bench trial, that investor-plaintiffs who purchased shares of an ETF lacked standing to bring claims under the civil liability provisions (Section 11 and Section 12(a)(2)) of the Securities Act of 1933. *Jensen* is an intermediate appellate court decision, and the plaintiffs have filed an appeal to the California Supreme Court. Even assuming it is affirmed by the state's high court, the holding will not be binding on any federal courts or in any other state. However, given the court's very thorough analysis, *Jensen's* reasoning may prove to be persuasive to courts in other jurisdictions when considering similar ETF litigation in the future.

Proposed Revisions to the Volcker Rule—Prohibitions and Restrictions on Certain Interests in, and Relationships with, Covered Funds

February 24, 2020
On January 30, 2020, the Federal Reserve Board issued a notice of proposed rulemaking and asked for comments on a proposed rule to simplify, streamline and tailor the "covered fund" provisions under the regulation implementing Section 13 (commonly known as the "Volcker Rule") of the Bank Holding Company Act (the "Proposal").

The Proposal is the culmination of a process first announced in March 2018 to significantly revise all aspects of the Volcker Rule's implementing regulations in light of the experience of the federal banking agencies—the Federal Reserve Board, the Office of the Comptroller of the Currency, the Securities and Exchange Commission, the Commodity Futures Trading Commission and the Federal Deposit Insurance Corporation (together, the "Agencies")—since the final rule was issued in December 2013. It is the first time the Agencies have targeted the implementing regulations related to the Volcker Rule's general prohibition on banking entities investing in or sponsoring hedge funds or private equity funds—known as "covered funds."

The Proposal will be of interest to the asset management industry. Working within the confines of the statute, the Proposal would introduce four new exclusions from the definition of covered fund (credit funds, venture capital funds, family wealth management vehicles and customer facilitation vehicles) and simplify three existing ones. In addition, it would expand the scope of permissible relationships that a banking entity may have with covered funds, codify existing

guidance related to certain foreign funds and clarify issues surrounding ownership interests and permissible parallel investments by a banking entity and its employees.

SEC Proposes Amendments to Modernize Auditor Independence Rule

February 12, 2020
On December 30, 2019, the SEC issued a release containing proposed amendments to its auditor independence rule, Rule 2-01 of Regulation S-X. Among other things, the proposed amendments would amend the definitions of "affiliates of the audit client" and "investment company complex" by adding "materiality" qualifiers to the common control provisions within these definitions. This would have the effect of narrowing the number of common control affiliates of the audit client that an auditor must monitor for relationships that can impair the auditor's independence.

Some Thoughts on the SEC's Re-Proposal of Rule 18f-4 and Proposed Sales Practices Rules

February 12, 2020
We asked the attorneys in our Asset Management Group to share their views on the SEC's much-anticipated reproposal of Rule 18f-4 under the 1940 Act as well as its two new proposed sales practices rules relating to leveraged and inverse investment vehicles. We previously published a summary of the Rule and the sales practices rules and this Alert shares some additional thoughts.

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.

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