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Regulatory Update and Recent SEC Actions

REGULATORY UPDATES

SEC Adopts Amendments to Exemptive Applications Procedures

On July 6, 2020, the Securities and Exchange Commission (the "SEC") announced the adoption of rule amendments that establish an expedited review procedure for exemptive and other applications under the Investment Company Act of 1940 (the "1940 Act") that are substantially identical to recent precedent, as well as a new informal internal procedure for applications that would not qualify for the new expedited process. The amendments, among other things, establish an expedited review procedure for certain applications and establish an internal time frame for review of applications outside of the expedited procedure. The amendments are intended to grant relief as efficiently as possible, while also ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards, in addition to providing certainty and transparency regarding the process. These new procedures will be effective 270 days following their publication in the Federal Register.

"The application process under the Investment Company Act is an important component of our regulatory structure. The process provides economic benefits to fund shareholders, expands investor choice, and facilitates innovation in the asset management industry, all with a steadfast commitment to transparency and investor protection," said SEC Chairman Jay Clayton. "The changes approved today will modernize and streamline this process, resulting in improved transparency, reduced costs, and a more efficient use of our staff's resources."

SEC Proposes Update Form 13F Reporting Threshold

On July 10, 2020, the SEC announced proposed amendments to Form 13F that update the reporting threshold for institutional investment managers and make other targeted changes. The threshold has not been adjusted since the SEC adopted Form 13F more than 40 years ago with a threshold of $100 million. The SEC's proposal raises the reporting threshold to $3.5 billion, reflecting proportionally the same market value of U.S. equities that $100 million represented in 1975, the time of Form 13F's statutory directive. The new threshold would retain disclosure of over 90 percent of the dollar value of the holdings data currently reported while eliminating the Form 13F filing requirement and its attendant costs for the nearly 90 percent of filers that are smaller managers.

"Monitoring equity holdings of large institutional investment managers is an important part of our regulation and oversight of the securities markets," said SEC Chairman Jay Clayton. "Today's proposal will update, for the first time in over 40 years, the 13F reporting threshold to a level that furthers the statutory goal of enabling the SEC to monitor holdings of larger investment managers while reducing unnecessary burdens on smaller managers."

SEC Adopts Proxy Voting Rule Amendments

On July 22, 2020, the SEC adopted amendments to its rules governing proxy solicitations designed to ensure that clients of proxy voting advice businesses have reasonable and timely access to more transparent, accurate, and complete information on which to make voting decisions. The amendments condition the availability of two exemptions from certain of the federal proxy rules often used by proxy voting advice businesses on compliance with tailored and comprehensive conflicts of interest disclosure requirements. The exemptions are also conditioned on two principle-based requirements designed to ensure that: (1) registrants that are the subject of proxy voting advice have such advice made available to them in a timely manner; and (2) clients of proxy voting advice businesses are provided with an efficient and timely means of becoming aware of any written responses by registrants to proxy voting advice. These conditions reflect certain observed market practices and are intended to ensure that proxy voting advice clients have access to information that is more transparent, accurate, and complete. In addition, the amendments codify the SEC's longstanding view that proxy voting advice generally constitutes a solicitation under the proxy rules, and make clear that the failure to disclose material information about proxy voting advice may constitute a potential violation of the antifraud provision of the proxy rules. The amendments will be effective 60 days after publication in the Federal Register, but affected proxy voting advice businesses subject to the final rules are not required to comply until December 1, 2021. The SEC also supplemented prior guidance issued to investment advisers regarding their proxy voting responsibilities. The supplemental guidance is published on the SEC's website and follows a question-and-answer format, similar to the prior guidance, and provides examples to help facilitate compliance.

"The majority of our Main Street investors participate in our public markets through ownership of mutual funds and ETFs managed by professional market participants," said SEC Chairman Jay Clayton. "Today's actions ensure that those who take on the responsibility of investing and voting on behalf of our Main Street investors have the accurate and decision useful information necessary to make an informed voting decision for the benefit of those investors."

SEC Proposes Comprehensive Modifications to Fund Shareholder Reports and Disclosures

On August 5, 2020, the SEC proposed comprehensive modifications to the disclosure framework for mutual funds and exchange-traded funds ("ETFs") registered on Form N-1A ("open-end funds") that would highlight key information for investors. The proposed disclosure framework would feature concise and visually engaging shareholder reports that would highlight information that the SEC believes is particularly important for retail investors to assess and monitor their fund investments. The SEC's proposal: (i) requires streamlined reports to shareholders that would include, among other things, fund expenses, performance, illustrations of holdings, and material fund changes; (ii) significantly revises the content of these items to better align disclosures with developments in the markets and investor expectations; (iii) encourages funds to use graphic or text features (such as tables, bullet lists, and question-and-answer formats) to promote effective communication; and (iv) promotes a layered and comprehensive disclosure framework by continuing to make available online certain information that is currently required in shareholder reports but may be less relevant to retail shareholders generally. In addition, the SEC proposes to exclude open-end funds from the scope of Rule 30e-3 (which allows funds, beginning as early as January 1, 2021, to satisfy shareholder report transmission requirements by making the materials available online) as the open-end funds would send tailored annual and semi-annual reports under the proposed modified disclosure framework. The proposal would not affect the availability of Rule 30e-3 for other registered management companies (such as registered closed-end funds) or registered unit investment trusts. The public comment period for the proposal began following its publication on SEC.gov and will remain open for 60 days.

SEC Publishes Risk Alert Regarding Select COVID-19 Compliance Risks and Considerations for Broker-Dealers and Investment Advisers

On August 12, 2020, the SEC's Office of Compliance Inspections and Examinations ("OCIE") published a risk alert that identified a number of COVID-19-related issues, risks, and practices relevant to SEC-registered investment advisers and broker-dealers. In the alert, OCIE noted that market volatility related to COVID-19 may have heightened the risks of misconduct in various areas. The staff believed these heightened risks merit additional attention and provided observations and recommendations that fall broadly into the following six categories: (1) protection of investors' assets; (2) supervision of personnel; (3) practices relating to fees, expenses, and financial transactions; (4) investment fraud; (5) business continuity; and (6) the protection of investor and other sensitive information.

SEC Issues Fee Rate Advisory #1 for Fiscal Year 2021

On August 26, 2020, the SEC announced that in fiscal year 2021 the fees that public companies and other issuers pay to register their securities with the SEC will be set at $109.10 per million dollars. The securities laws require the SEC to make annual adjustments to the rates for fees paid under Section 6(b) of the Securities Act of 1933 and Sections 13(e) and 14(g) of the Securities Exchange Act of 1934. This new rate became effective on October 2, 2020.

SEC Modernizes the Accredited Investor Definition

On August 26, 2020, the SEC adopted amendments to the "accredited investor" definition, one of the principal tests for determining who is eligible to participate in U.S. private capital markets. The amendments update and improve the definition to more effectively identify institutional and individual investors that have the knowledge and expertise to participate in those markets. The amendments to the accredited investor definition add new categories of qualifying natural persons and entities and make certain other modifications to the existing definition. The amendments allow investors to qualify as accredited investors based on defined measures of professional knowledge, experience, or certifications in addition to the existing tests for income or net worth. The SEC also adopted amendments to the "qualified institutional buyer" definition that similarly expand the list of eligible

entities under that definition. The amendments and order become effective 60 days after publication in the Federal Register.

"Today's amendments are the product of years of effort by the Commission and its staff to consider and analyze approaches to revising the accredited investor definition," said SEC Chairman Jay Clayton. "For the first time, individuals will be permitted to participate in our private capital markets not only based on their income or net worth, but also based on established, clear measures of financial sophistication. I am also pleased that we have expanded and updated the list of entities, including tribal governments and other organizations, that may qualify to participate in certain private offerings."

SEC Adopts Amendments to Modernize Shareholder Proposal Rule

On September 23, 2020, the SEC adopted amendments to modernize its shareholder proposal rule, which governs the process for a shareholder to have its proposal included in a company's proxy statement for consideration by all of the company's shareholders. The principal requirements for initial inclusion in the proxy statement (the amount and length of ownership of the proposing shareholder) and for subsequent resubmission if the proposal is not approved (the amount of support from other shareholders) have not been substantively amended since 1998 and 1954, respectively. The amendments will facilitate engagement among shareholder-proponents, companies, and other shareholders, including preserving the ability of smaller shareholders to access the proxy statements of the companies in which they have demonstrated a continuing interest. Under the rules, any shareholder may submit an initial proposal after having held $2,000 of company stock for at least three years, or higher amounts for shorter periods of time. The rules also revise the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholder meetings from three percent, six percent, and 10 percent for matters previously voted on once, twice or three or more times in the last five years, respectively, with thresholds of five percent, 15 percent, and 25 percent, respectively. The amendments will be effective 60 days after publication in the Federal Register, and the final amendments will apply to any proposal submitted for an annual or special meeting to be held on or after January 1, 2022.

"Today's amendments reflect many years of the staff's engagement with investors and market participants as well as their extensive experience with shareholder proposals," said SEC Chairman Jay Clayton. "These amendments ensure there is an appropriate alignment of interests between shareholder-proponents and their fellow shareholders and illustrate again why retrospective review and, as appropriate, modernization of our rules is necessary. There have been many significant changes in communication methods and technology, as well as the methods investors, particularly retail investors, use to access our markets in the 20 years and 75 years since the initial and resubmission thresholds were last revised."

SEC Updates Regulatory Framework for Fund of Funds Arrangements

On October 7, 2020, the SEC adopted a new rule designed to streamline and enhance the regulatory framework for funds that invest in other funds ("fund of funds" arrangements). The new rule reflects the SEC's decades of experience with fund of funds arrangements and creates a consistent and efficient rules-based regime for the formation and oversight of such arrangements. New Rule 12d1-4 under the 1940 Act will replace the SEC's existing approach, which depends on exemptive orders and varies based on the type of acquiring fund. Open-end funds, unit investment trusts, closed-end funds (including business development companies), exchange-traded funds, and exchange-traded managed funds will all be able to rely on Rule 12d1-4 as both

acquiring and acquired funds. The rule, which contains elements from current exemptive orders, is tailored to enhance investor protections and includes: (i) limits on control and voting; (ii) required evaluations and findings; (iii) required fund of funds investment agreements; and (iv) limits on complex structures. The related package of amendments adopted by the SEC rescinds Rule 12d1-2 under the 1940 Act and most exemptive orders granting relief for fund of funds arrangements. The SEC also adopted amendments to Rule 12d1-1 under the 1940 Act and Form N-CEN. The new rule will be effective 60 days after publication in the Federal Register.

"The framework adopted today will provide flexibility to fund managers to allocate and structure investments efficiently, without the costs and delays of seeking individualized exemptive orders, as long as the arrangements satisfy a number of conditions designed to enhance investor protection," said SEC Chairman Jay Clayton.

ENFORCEMENT ACTIONS

***SEC v. David Hu* (Case 1:20-cv-05496 S.D.N.Y.)**

On July 17, 2020, the SEC charged David Hu, the co-founder and chief investment officer of International Investment Group LLC ("IIG"), a former registered investment adviser, with fraud for his role in a $60 million Ponzi-like scheme. The SEC's complaint, filed in federal district court in Manhattan, alleges that from October 2013, Hu orchestrated multiple frauds on IIG's investment advisory clients. According to the complaint, Hu grossly overvalued the assets in IIG's flagship hedge fund, resulting in the fund paying inflated fees to IIG. In addition, through IIG, Hu allegedly sold at least $60 million in fake trade finance loans to other investors and used the proceeds to pay the redemption requests of earlier investors and other liabilities. The complaint alleges that Hu deceived IIG clients into purchasing these loans by directing others at IIG to create and provide the clients with fake loan documentation to substantiate the non-existent loans, including fake promissory notes and a forged credit agreement. The complaint charges Hu with violating the antifraud provisions of the federal securities laws and seeks permanent injunctive relief, disgorgement, and civil penalties. In addition, on July 17, 2020, the U.S. Attorney's Office for the Southern District of New York announced criminal charges against Hu. The SEC previously charged IIG with fraud on November 21, 2019, and revoked IIG's registration as an investment adviser on November 26, 2019. On March 30, 2020, the SEC obtained a final judgment on consent that enjoins IIG from violating the antifraud provisions of the federal securities laws and requires IIG to pay more than $35 million in disgorgement and prejudgment interest.

***In the Matter of WBI Investments, Inc. and Millington Securities, Inc.* (SEC File No.: 3-19904)**

On August 5, 2020, the SEC announced it had settled charges against affiliated registered investment advisers WBI Investments Inc. ("WBI") and Millington Securities Inc. ("Millington") for making material misrepresentations to clients about compensation Millington received for sending client orders to certain other brokerage firms for execution. According to the SEC's order, WBI and Millington served as advisers to a series of mutual funds and a series of exchange-traded funds, among other clients. The order found that Millington, which also served as WBI's primary introducing broker, agreed to route WBI's client orders to certain other brokerage firms that agreed to pay Millington amounts they characterized as "payments for order flow." According to the order, the payments to Millington were $0.0125 to $0.0150 per share. The order further found that over time, the brokerage firms executing WBI's client trades adjusted the execution prices by $0.02 to $0.03 per share higher for client buy orders and lower for client sell orders. According to the order, Millington and the brokerage firms mutually understood that the adjusted

execution prices allowed the brokerage firms to recoup their payments to Millington and generate profits. The order found that WBI and Millington falsely assured the boards of the mutual funds and the ETFs that these institutional payment for order flow arrangements did not adversely affect the funds' execution prices. Without admitting or denying the findings, WBI and Millington consented to the entry of a cease-and-desist order and censures. As part of the settlement, WBI and Millington agreed to pay a combined total of one million dollars in penalties.

***In the Matter of SCF Investment Advisors, Inc.* (SEC File No.: 3-19912)**

On August 13, 2020, the SEC announced that SCF Investment Advisors, Inc. ("SCF"), a Fresno, California-based investment advisory firm, has agreed to settle charges that it selected mutual funds and cash sweep money market funds for clients that provided undisclosed revenue to the firm's affiliated broker-dealer and were more expensive than other available options for the same funds. The settlement includes a distribution of money to harmed clients of SCF. According to the SEC's order, SCF engaged in several practices that violated its fiduciary duty to its clients. The SEC found that SCF purchased, recommended, or held certain mutual fund share classes for its advisory clients that charged 12b-1 fees, which were received by SCF's affiliated broker-dealer, SCF Securities, Inc. ("SCFS"), instead of lower-cost share classes of the same funds that were available to clients. In addition, the SEC found that SCF purchased or recommended for advisory clients certain money market funds for which SCFS received revenue sharing payments from its clearing broker, without disclosing receipt of this compensation to clients. The SEC's order states that SCF failed to disclose these practices or related conflicts of interest to its clients and failed to adopt and implement policies and procedures designed to prevent violations of federal securities laws regarding its mutual fund and money market sweep fund share class selection practices, and that SCF violated its duty to seek best execution. The order also finds that SCF did not self-report to the SEC pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative, even though it was eligible to do so. Without admitting or denying the SEC's findings, SCF agreed to disgorge the alleged ill-gotten gains plus prejudgment interest and pay a civil penalty. In addition, SCF agreed to a cease-and-desist order, to be censured, and to distribute the funds to harmed investors.

***SEC v. David C. Coggins and Coral Gables Asset Management LLC* (Case 1:20-cv-23444 S.D. Fla.)**

On August 26, 2020, the SEC announced that it has filed an emergency action against Florida-based investment adviser Coral Gables Asset Management LLC and its sole owner, David C. Coggins, in connection with an alleged fraudulent offering. The SEC's request for emergency relief was granted, including an asset freeze and an order for records preservation, against Coggins and Coral Gables, as well as two entities charged by the SEC as relief defendants. According to the SEC's complaint, Coral Gables and Coggins solicited investors for a private fund they managed by misrepresenting the fund's past performance, the amount of assets they were managing, and Coggins' experience as a portfolio manager. For example, the complaint alleges that one document Coggins provided to investors and potential investors showed 37 months of positive monthly performance even though, in reality, in approximately 26 months during the specified time frame the fund had negative performance. The complaint further alleges that Coral Gables and Coggins falsified brokerage records and investor account statements and created and sent fake audit opinions to investors and third parties. As alleged, within hours of receiving a request from the SEC to preserve documents, Coggins destroyed evidence related to his fraudulent conduct. According to the complaint, Coggins misappropriated investor funds for personal use, including a luxury vehicle and travel. The SEC's complaint, filed in the U.S. District Court for the Southern District of Florida, charges the defendants with violating antifraud provisions of the federal securities laws. It also charges Coggins, in the alternative, with aiding and

abetting Coral Gables' violations of the Investment Advisers Act of 1940. The SEC seeks injunctions, disgorgement of allegedly ill-gotten gains with prejudgment interest, and financial penalties.

***In the Matter of Signature Financial Services, Ltd.* (SEC File No.: 3-19963)**

On September 3, 2020, the SEC announced that it had settled charges against Illinois-based registered investment adviser Signature Financial Services, Ltd. ("Signature") arising out of its mutual fund share class selection practices. The SEC's order found that, from 2014 to 2019, Signature failed to adequately disclose the conflict of interest arising from its selection of mutual fund share classes that charged 12b-1 fees that financially benefitted Signature, instead of lower-cost share classes of the same funds. In addition, the order found that Signature breached its duty to seek best execution for its clients by causing certain advisory clients to invest in fund share classes that charged 12b-1 fees when share classes of the same funds that presented a more favorable value for these clients under the particular circumstances in place at the time of the transactions were available. According to the SEC's order, Signature also failed to adopt and implement written policies and procedures reasonably designed to prevent these violations. Although Signature did not self-report pursuant to the Division of Enforcement's Share Class Selection Disclosure Initiative even though it was eligible to do so, the SEC's order recognized Signature's cooperation with the SEC and the firm's prompt remedial actions. Without admitting or denying the findings, Signature consented to cease and desist from violations of these provisions and agreed to an order of disgorgement of $252,460 plus prejudgment interest of $24,120, which will be offset by reimbursements that Signature has already made to clients, and a civil penalty of $80,000.

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