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REGULATORY UPDATES

SEC Continues to Look at a Uniform Fiduciary Standard for Broker-Dealers and Investment Advisers

The SEC and FINRA apparently believe it is time to address the issue of whether to impose a uniform fiduciary standard on broker-dealers and investment advisers, but neither agency seems to have a clear view about timing.

At SIFMA's annual meeting in mid-November, SEC Chair Mary Jo White told the delegates that resolving this issue is a "high priority," but she has not imposed a timeline on the SEC staff. At the same meeting, Richard Ketchum, the head of FINRA, told the delegates that broker-dealers should worry less about the legal standard and focus more on acting in the best interest of clients ahead of any SEC rulemaking.

These comments arise in the context of Section 913 of the Dodd-Frank Act, which directed the SEC to conduct a study regarding the effectiveness of the existing standards of conduct and gave the SEC the authority, but not the obligation, to impose a uniform standard. A January 2011 study by the SEC's staff recommended that the SEC propose a uniform conduct standard, but it has not yet done so.

That said, momentum appears to be building. Earlier this year, the SEC published a request for quantitative data and economic analysis relating to the benefits and costs that could result from imposing a uniform fiduciary standard (more information about that request can be found in our client alert). In late November, the SEC's Investment Advisory Committee recommended that the SEC enact rules to impose a fiduciary duty on broker-dealers when they provide personalized investment advice to retail investors. The Committee said it favors narrowing the broker-dealer exclusion under the Investment Advisers Act and providing a safe harbor for brokers who do not engage in or hold themselves out as providing investment advisory services.

Although the SEC is under no obligation to act on the Committee's recommendation, it is notable that the Committee was established under the Dodd-Frank Act for the specific purpose of advising the SEC on, among other things, initiatives to promote investor confidence and the integrity of the securities markets. If the SEC does act, whether it will follow the course suggested by the Committee or determine to establish a new standard specifically for broker-dealers engaged in advising retail accounts remains to be seen.

The SEC's recently published Fall 2013 rulemaking agenda relegated consideration of uniform conduct standards to long-term actions. While this is not dispositive, it seems to indicate that consideration of this initiative is no longer on the SEC's front burner.

SEC Grants Unusual Exemptive Relief from Pay-to-Play "Time-Out" Provision

In what appears to be a case of first impression, the SEC exempted a registered adviser from the "time-out" provision of the pay-to-play rule.

The pay-to-play rule, among other things, prohibits registered investment advisers from providing investment advisory services for compensation to a government entity within two years after an adviser or any of its covered associates contributes money to an official of the government entity.

A registered investment adviser to a private fund requested the order. Three of the investors in the fund are Ohio pension plans. The plans' board of trustees oversees investment decisions and the Treasurer of the State of Ohio appointed one member of the board of trustees.

In the spring of 2011, a managing member and senior investment professional of the investment adviser contributed to the federal senate campaign of the incumbent Ohio State Treasurer, mistakenly believing that any contribution to a federal campaign was excluded from the adviser's pay-to-play policy. The offending contribution was discovered in the course of routine compliance testing by the investment adviser's compliance team, and the adviser took swift and deliberate actions to rectify the problem.

The relief was largely predicated on specific and prompt efforts made by the investment adviser to correct the error and to prevent opportunities for similar errors in the future. It demonstrates the value of a strong compliance culture at an advisory firm. For more details on the exemptive relief, and the actions taken by the adviser, read our client alert.

Fund Names Are No Place for "Guaranteed!" or "Protected!"

The SEC's Division of Investment Management is cracking down on funds that use names that suggest safety or protection from loss.

In Guidance Update No. 2013-12, the staff said that fund names suggesting safety or protection from loss may contribute to investor misunderstanding of investment risks. The staff said that it recently requested that some funds change what it believes are misleading names. It also "encouraged" funds that expose investors to market, credit or other risks, and whose names suggest safety or protection from loss, to reevaluate their names.

The staff raised specific concerns about funds with names that include terms such as "protected" or "guaranteed" "without additional qualification." High on the staff's watch list are funds that use the term "protected" in their names and seek to manage volatility by investing a portion of their assets in cash, short-term instruments or short positions on exchange-traded futures.

Funds that offer third-party principal protection against NAV shortfall also concern the staff. The staff said that funds that contract with third parties to make up NAV shortfalls should not use the term "protected" unless the fund's name adequately communicates the limitations of the "protection." The staff said it is not enough to disclose the limitations of third-party protection in the text of the prospectus. Rather, the name itself must reveal those limitations.

The staff encouraged investment advisers and funds' boards of directors to carefully evaluate any fund name that suggests safety or protection from loss and to consider whether a name change is appropriate to address any potential for investor misunderstanding.

MFDF Updates Best Practices – Fund Directors Should Be Independent and Fully Informed

The Mutual Fund Directors Forum's October 13 report, Practical Guidance for Mutual Fund Directors – Board Governance and Review of Investment Advisory Agreements, reflects legal developments affecting fund directors over the 10 years since the MFDF's first report was released.

The report affirms many widely accepted and non-controversial practices concerning the role of fund directors as fiduciaries, and reflects an evolving consensus of best practices including, among other things, the following:

- Directors should focus on oversight, rather than micromanagement;
- At least 75 percent of a fund's directors should be independent of the fund's adviser and affiliates;
- Boards should "explore a variety of options to facilitate turnover" of board members;
- Independent directors should meet in executive session at every board meeting; and
- Independent directors "should retain knowledgeable counsel" to advise and assist them.

The report does not contain any groundbreaking recommendations that would shock diligent independent directors. Nonetheless, it serves as a valuable reminder that fund directors should be well informed, independent and diligent in carrying out their fiduciary responsibilities, particularly with respect to compliance oversight, the contract renewal process and valuation of portfolio securities.

White on Serving as Fund Director: Not for the Uninitiated or Faint of Heart

The MFDF isn't alone in reminding fund directors of the need for diligence and independence. In remarks at the Securities Enforcement Forum on October 9, 2013, SEC Chair Mary Jo White dismissed suggestions that the SEC's recent focus on "gatekeepers," including fund directors, may drive away qualified candidates "for fear of being second-guessed or blamed for every issue that arises."

While White said she is "sensitive" to that concern, she effectively stated that if you can't stand the heat, get out of the kitchen. "[B]eing a director or in any similar role where you owe a fiduciary duty is not for the uninitiated or the faint of heart," she said.

But, take heart: the Chair said that the SEC won't come after gatekeepers that do their jobs by "asking the hard questions, demanding answers, looking for red flags" and raising their hands. All you have to do, fund directors, is do your job and carry out your fiduciary responsibilities. And remember, the SEC is watching you!

FINRA Warns Investors to Look Behind Closed-End Fund Distribution Rates

FINRA issued an Investor Alert concerning closed-end fund distributions, principally to warn the public that a fund's distributions might include a return of principal. A corollary to this is that financial firms that create or distribute closed-end funds should assume that FINRA will be looking at their practices in this regard.

The Alert provides a primer in closed-end fund pricing, trading and distributions. Among other things, the Alert notes that listed shares of closed-end funds trade like stocks, with a price that is determined by the forces of supply and demand. The Alert explains that while closed-end fund shares historically trade at a discount to NAV, they can trade at a premium. According to FINRA, one reason for a premium might be that investors looking for a high distribution rate may be willing to pay a higher market price.

According to FINRA, closed-end funds usually pay distributions on a monthly or quarterly basis. Distributions can include interest income, dividends and capital gains, as well as a return of principal. FINRA cautioned that paying distributions from fund assets can create greater risk, since repayment of principal erodes the fund's asset base used to generate income.

The Alert also warns investors not to confuse this distribution rate with the fund's total return or its yield. Indeed, some funds set a specific distribution rate regardless of income generated by the fund—a "managed distribution policy"—which increases the likelihood that the fund will have to return principal at some point. FINRA cautions investors to make sure to ask how the fund sets its distribution rate.

For broker-dealers, investment advisers and other financial entities involved in creating and selling closed-end funds, the implication of the Alert may be that FINRA is examining sales practices involving these funds. Indeed, the Alert indicates that in using high distribution rates to attract investors, closed-end funds are similar to non-traded REITs (the subject of a recent FINRA sweep), business development companies (one of FINRA's announced priorities for 2013) and master limited partnerships, all of which are entities that have been the focus of FINRA examination and enforcement efforts. Nobody should be surprised if FINRA's next examination focus—or enforcement focus—is on these funds.

SEC's Champ to Fund Directors: Let's Work Together to Advance a Common Purpose

The Director of the SEC's Division of Investment Management seeks a "successful collaboration" between fund directors and the SEC staff to further a common purpose: to protect investors.

In October remarks to the Independent Directors Council, Norm Champ said fund directors protect fund investors through oversight as "independent watchdogs," and noted that the SEC's mission is also to protect investors. Champ sees "common themes to our mission to the role that independent directors play," and wants to advance that common purpose.

The key to a successful collaboration, Champ said, is communication between fund directors and the staff.

Champ said that the staff seeks to continuously improve how it oversees funds. But fund directors, he said, have a "special perspective that makes your oversight different from but complimentary to ours." Fund directors are on the "front lines," and thus are best positioned to understand the funds they oversee, on matters ranging from valuation to distribution to advisory contracts and securities lending.

Champ said that the Division has identified a number of fund boards that the staff would like to meet with, and that some meetings have already occurred. In these meetings, the staff seeks to learn from fund directors about how specific fund risks are being managed and what directors view as critical risks to the industry. Champ said that these meetings allow the staff to "obtain a first-hand view of the systems, controls, personnel" and culture of fund firms, and that he hopes the meetings will result in "increased cooperation and more effective communication" between independent directors and the staff.

While some fund directors may think twice before accepting an invitation to meet with an SEC staff that has become increasingly aggressive in bringing enforcement cases against fund directors, Champ emphasized that the staff's "interest in this collaboration is not new." Moreover, he suggested that there is a benefit to this collaboration. "Working together, we are better positioned to accomplish our common mission of protecting investors," he said.

FINRA Tells Broker-Dealers How to Better Manage Conflicts of Interest

A much-anticipated FINRA report concludes that broker-dealers must do more to manage conflicts of interest.

FINRA said that the report, published on October 14, 2013, highlights "effective conflicts management practices that may go beyond current regulatory requirements and identify potential problem areas," according to the statement of FINRA CEO Rick Ketchum.

The report focuses on how firms can strengthen their conflicts frameworks, starting with a "tone from the top" and flowing through the firm's structures, policies, processes, training and culture. FINRA states that the report emphasizes the process of and approach to identifying and managing conflicts, rather than listing an inventory of conflicts that firms face. The report also summarizes best practices that FINRA observed related to each of these approaches, and attempts to distinguish between procedures at large and small firms. Our client alert includes a discussion of FINRA's recommended best practices.

ENFORCEMENT + LITIGATION

SEC Brings Fraud Charges Against Money Market Fund Manager

In late November, the SEC announced fraud charges against an investment advisory firm and an individual portfolio manager for deceiving the trustees of a money market fund and failing to comply with the risk provisions of Rule 2a-7 under the 1940 Act. The SEC alleged that the adviser made false statements to the fund's board regarding the credit risk and diversification of the portfolio and its exposure to European markets during the credit crisis in 2011.

The SEC also said that, given the fund's failure to adhere to the risk limiting requirements of Rule 2a-7, the fund was not entitled to use the amortized cost method of valuing securities and should not have offered its shares at a stable $1 net asset value (NAV). Shareholders should have received a market-based, fluctuating NAV for purchases and redemptions of the fund's shares, the SEC said.

The case arises from an ongoing analysis of money market fund data by the SEC's Division of Investment Management, which identified the performance of this money market fund as consistently different from its peers. An investigation by the Division of Enforcement resulted in charges that the adviser and the portfolio manager misrepresented or withheld critical facts from the fund's trustees, including:

- the adviser frequently exceeded self-imposed holding period restrictions for securities in the fund's portfolio;
- the fund regularly purchased securities with credit risk profiles that exceeded the firm's guidelines for "minimal credit risk";
- throughout the European credit crisis in 2011, the fund continually purchased securities issued by Italian-affiliated entities despite the portfolio manager's claim that the adviser would unload even secondhand exposure to the Italian market; and
- The fund's portfolio was not sufficiently diversified and thus had not reduced risk exposure as portrayed to trustees.

SEC's Recent Actions Against Two Investment Advisers Provide Important Lessons for All Investment Advisers

Recently announced cases against two registered investment advisers and certain of their executives serve as timely reminders of where the SEC is focusing its attention. Although they are based on alleged intentional violations or disregard of certain regulations, the SEC's actions impart important lessons for law-abiding registered investment advisers. Advisers should be aware of the SEC's focus areas as they prepare for the annual review of their compliance programs required by Rule 206(4)-7 under the Investment Advisers Act.

The cases involve two investment advisers and certain of their executives who allegedly engaged in thousands of principal transactions through an affiliated brokerage firm without informing their clients. One of the firms and its CCO were also charged with violations of the custody rule and failure to adopt a compliance program reasonably designed to ensure compliance with the federal securities laws, as required by Rule 206(4)-7.

The SEC has been clear that it is focused on investment advisers' compliance with their regulatory obligations, particularly in the following areas:

- conflicts of interest;
- principal transactions;
- the custody rule; and
- the need to adopt and maintain compliance programs designed to prevent violations of the federal securities laws.

These two actions are particularly timely examples of the SEC staff putting its money where its mouth is. As we approach the end of the year, many registered investment advisers will start to plan for the annual review of their compliance programs required under Rule 206(4)-7. Advisers should consider consulting experienced counsel to ensure that such programs are appropriately drafted and maintained in light of their particular business and the SEC's focus areas.

For more information on these two actions, see our recent client alert.

SEC Chair Says Commission Is Prepared to Try More Cases on Heels of Change to Settlement Policy

In early November, SEC Chair Mary Jo White told a crowd of white-collar lawyers and judges in Washington, D.C. that the SEC is prepared to try more cases in the wake of its recent policy change requiring certain respondents to admit wrongdoing as a condition of settling enforcement cases. This was another in a series of "get tough" pronouncements by the Chair in recent months.

Chair White used the keynote address at an annual lecture series on the justice system to speak glowingly about the role of trials in the American legal system. Trials, she said, offer public accountability and encourage development of precedent on important legal issues. Noting the steady decline in the number of trials over the last few decades, the Chair questioned whether there is adequate public accountability for the government and defendants alike in today's justice system. She highlighted the civil enforcement context in particular, where she said cases are oftentimes resolved with settlement agreements that merely recount the allegations, rather than in-court guilty pleas before a judge, as in criminal cases.

Having described the legal system as "trial-light," the Chair acknowledged that the SEC's policy change, announced in June, of encouraging enforcement staff to secure more admissions of wrongdoing where there is evidence of particularly serious violations or conduct may cause more individuals and firms to try their luck in court rather than settling with the SEC. She said she welcomed this prospect, reiterating that an increase in the number of trials would foster public accountability and provide a more complete record than pretrial briefs and motions practice. Chair White said the SEC was willing to take cases to trial even if it meant exchanging blows in court with the nation's best private litigators.

Whether the SEC follows through on the Chair's tough talk remains to be seen. Even the Chair acknowledged during her speech that, despite the policy change, she expects most enforcement cases still to be settled on terms permitting the respondent to "not admit or deny" wrongdoing. In the meantime, no one can say they weren't warned of Chair White's resolve to use all available judicial means to hold violators of the securities laws accountable.

SEC Commissioner Draws Some Clean Enforcement Lines

The SEC should put more of its efforts into pursuing regulatory violations, such as failure to supervise, instead of trying to pursue fraud theories on weak facts, according to an SEC Commissioner.

In his November 7, 2013 remarks to the FINRA Enforcement Conference, SEC Commissioner Daniel Gallagher observed that, in some cases, the Commission chooses to pursue weaker, non-scienter fraud charges against an entity rather than pursuing a cleaner regulatory violation against both the entity and the culpable individuals. Gallagher opined that such cases would make "excellent failure-to-supervise cases" and said that he would much prefer such cases to "shoehorning" bad facts into a weak fraud theory. In Gallagher's view, a failure-to-supervise theory may often provide an elegant solution to factual and legal difficulties posed by questionable fraud charges, such as non-scienter fraud charges based on "some ethereal notion of 'collective negligence.'"

At the same time, Gallagher warned both the SEC and FINRA to use caution in bringing failure-to-supervise cases against chief compliance officers, general counsels or their subordinates, who should be encouraged to run "towards problems, not away from them." He suggested that these gatekeepers should not be threatened with liability for "trying to be part of the solution." Gallagher said he was pleased with the SEC's Division of Trading and Markets' issuance of FAQs on the issue of compliance personnel liability, and recommended that FINRA provide similar guidance in the form of FAQs or a formal guidance document.

SEC Enforcement Division to CCOs: We Are in This Together!

Stephen Cohen, the SEC's Associate Director of Enforcement, recently tied robust compliance programs to enforcement "credits."

In remarks to compliance and ethics professionals at the annual conference of the Society of Corporate Compliance and Ethics, Cohen said that there is "no doubt . . . that a strong compliance and ethics program not only provides direct economic benefits to your company, but will also allow you to reap significant credit should you ever deal with us or our law enforcement colleagues." In a post-financial crisis, post-Dodd-Frank world, Cohen said, "rigorous compliance must be at the forefront of every company's attention."

Cohen said that the enforcement staff gives credit to registrants that demonstrate effective compliance programs and a "genuine commitment to ethical principles." In addition, according to Cohen, the staff will give much more credit to registrants that demonstrate that "misconduct is an outlier in a highly ethical and compliance-driven culture rather than a remedial step after investors have suffered losses."

Cohen also said that a recent enforcement action against a portfolio manager charged with misleading his firm's CCO sends a clear message that "professionals have an obligation to adhere to compliance policies, and that the Commission will not tolerate interference with CCOs who enforce those policies" (see our blog post about this case). Moreover, he said, investment company boards have a vital responsibility to fulfill their oversight role. He cited a recent case against mutual fund directors charged with failing to fulfill their obligations to fair value assets held by a fund. (For more information on this case, see our recent client alert.)

Cohen also discussed the SEC's whistleblower program, and said that its purpose is to "bolster, not supplant, the compliance framework in the private sector." He said that a majority of the whistleblower claims relate to reports first made internally, and this can benefit a company's overall compliance program.

Cohen outlined the warning signs of inadequate programs that compliance and ethics professions should be looking for, including:

- pushing the envelope and tolerating close-to-the-line behavior;
- an overly technical approach to issues of ethics;

- explanations that don't add up; and
- limiting access of legal and compliance personnel to a company's senior leadership.

Conversely, Cohen identified several hallmarks of an effective compliance program including:

- proper governance and a strong "tone at the top";
- a strong ethical culture;
- integrating expectations of integrity, compliance and ethics into a firm's performance management and compensation systems;
- ensuring that employees believe that they can raise concerns confidentially and without fear of retaliation; and
- keeping pace with developments and leading best practices in the industry.

More information about Cohen's remarks can be found in this blog post.

SEC to Focus on Fixing "Broken Windows" It Finds in the Securities Industry

In a speech on October 9, 2013, Mary Jo White described a broad expansion of the SEC's enforcement program to reflect her desire "to see that the SEC's enforcement program is—and is perceived to be—everywhere, pursuing all types of violations of our federal securities laws, big and small."

The Chair said that "[i]nvestors do not want someone who ignores minor violations, and waits for the big one that brings media attention. Instead, they want someone who understands that even the smallest infractions have victims, and that the smallest infractions are very often just the first step toward bigger ones down the road."

That said, from all indications the SEC's enforcement staff is perennially most interested in pursuing the high-profile, high-dollar amount violations, at least in part in response to pressures from Congress, the press and other sectors of the public to bring to justice those responsible for the financial crisis. Moreover, it has proven difficult for the SEC's enforcement attorneys to shift gears between high-profile cases and small matters, and increased enforcement of minor violations without abandoning the large cases would require an increase in resources. SEC enforcement staff have made no secret of their concerns about the lack of sufficient resources to do the job they currently have.

Chair White's description of actionable minor violations was a bit fuzzy. A good analogy in the securities industry to broken windows that allow crime to grow unchecked would involve inadequate supervisory procedures, weak supervision and deficient recordkeeping and reporting. It is not clear, however, that the SEC views those types of violations as minor. Indeed, some cases involving systemic failures to supervise or recordkeeping have led to seven-figure fines. In other cases, the SEC will not bring a case based on deficient procedures because the federal securities laws require an underlying violation in order to name a firm for a failure to supervise; investigating the underlying violation likely would take the case out of the broken windows realm.

How the SEC approaches the broken windows initiative will be apparent as the enforcement staff opens and brings new cases. It is reasonable to conclude, given the Division of Enforcement's complete restructuring in recent years, that a shift to pursue more minor cases will be more incremental than dramatic. In any event, this policy announcement is likely to increase the angst of broker-dealers, investment advisers and independent directors of investment companies who already are concerned that the Commission has been turning up the heat through increasingly aggressive enforcement campaigns.

When Legal or Compliance Personnel May Be Subject to Failure to Supervise Liability Under the Securities Laws

The SEC provided some much-needed clarity on the issue of when compliance or legal personnel may face liability for failure to supervise. On September 30, 2013, the SEC's Division of Trading and Markets issued eight FAQs providing guidance relating to potential liability of broker-dealer CCOs and other compliance and legal personnel under Sections 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934. Broker-dealers should carefully review these FAQs to understand when their compliance or legal personnel function as "supervisors." The FAQs strongly suggest that the Division is articulating a test for finding supervisory authority to replace the test set out in the 2010 initial decision in the *Theodore Urban* administrative proceeding.

Section 15(b)(6) authorizes the SEC to institute proceedings against a natural person associated with a broker-dealer for failure to supervise if someone under that person's supervision violates the provisions of certain federal securities laws and related rules or regulations. The Exchange Act does not presume that broker-dealer compliance or legal personnel are supervisors solely by virtue of their compliance or legal functions; rather, the inquiry turns on whether compliance or legal personnel have supervisory authority over business units or other personnel outside the compliance and legal departments.

While it has brought many actions alleging failure to supervise against individuals with supervisory authority, the SEC has only infrequently brought actions against broker-dealer legal or compliance personnel. Typically, those actions arise only in the limited circumstances in which compliance and legal personnel have been delegated, or have assumed, supervisory responsibility for particular activities or situations, and therefore have "the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue." Ultimately, the responsibility for a broker-dealer's compliance resides with its chief executive officer and senior management, and the FAQs clarify that "[a]s a general matter, the staff does not single out compliance or legal personnel," but the staff encourages "compliance officers and other compliance and legal personnel to take strong and vigorous action regarding indications of misconduct."

Determining if a particular person is a supervisor comes down to whether, under the facts and circumstances of a particular case, that person has the requisite degree of responsibility, ability or authority to affect the conduct of the employee whose behavior is at issue. A person's actual responsibilities and authority, rather than his "line" or "non-line" status, determine whether he is a "supervisor" for purposes of Sections 15(b)(4) and 15(b)(6). Some relevant factors include whether:

- the person was clearly entrusted with, or assumed, supervisory authority or responsibility for particular business activities;
- the firm's policies and procedures or other documentation identify the person as responsible for supervising, or for overseeing, business persons or activities;
- the person has the power to affect another's conduct by hiring, rewarding or punishing that person;
- the person had such authority and responsibility that he could have prevented the violation from continuing, even if he did not have the authority to fire, demote or reduce the pay of the person in question;
- the person knew that he was responsible for the actions of another, and could have taken effective action to fulfill that responsibility; or
- the person should have known in light of all the facts and circumstances that he had the authority or responsibility within the administrative structure to exercise control to prevent the underlying violation.

Click here to read our full client alert.

TIDBITS

- Kevin W. Goodman was named the head of the SEC's broker-dealer examination program within the Office of Compliance Inspections and Examinations. Previously, Mr. Goodman was the acting national associate director of the program and the acting regional director of the SEC's Denver Regional Office.
- Julie Lutz was appointed as the director of the Denver Regional Office, overseeing the enforcement and examination programs in a seven-state region. Ms. Lutz previously supervised the Denver Regional Office's enforcement program.
- LeeAnn Ghazil Gaunt was named as the head of the Division of Enforcement's Municipal Securities and Public Pensions Unit. Ms. Gaunt has worked in this specialized unit since its inception in 2010.
- David Glockner was appointed as director of the SEC's Chicago Regional Office. Mr. Glockner spent 25 years as a criminal prosecutor in the U.S. Attorney's Office for the Northern District of Illinois.
- In early December, the SEC convened a roundtable on proxy advisory services. The roundtable was designed to provide a forum to discuss issues related to the services provided to institutional investors and investment advisers by proxy advisory services as well as transparency and conflicts issues related to such services.
- In early December, three industry trade groups filed a complaint against the Commodity Futures Trading Commission (CFTC) alleging that the CFTC improperly bypassed the formal rulemaking process in order to ensure the CFTC is the main regulator of international swaps trading. The case was filed in U.S. District Court in Washington, D.C.

CONTACT

Kelley A. Howes
(303) 592-2237
khowes@mofo.com

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