

The logo for K&L GATES, featuring the text in white on an orange rectangular background.

K&L GATES

A blurred background image of a city skyline at night, with lights from buildings and streets creating a bokeh effect.

2016 INVESTMENT MANAGEMENT CONFERENCE

Overview of the Investment Company Complex

Fatima S. Sulaiman



OVERVIEW OF FEDERAL AND STATE REGULATION OF INVESTMENT COMPANIES

PRINCIPAL REGULATORY STATUTES APPLICABLE TO INVESTMENT COMPANIES

- Securities Act of 1933
- Securities Exchange Act of 1934
- Investment Company Act of 1940
- Investment Advisers Act of 1940
- State Corporate Laws
- State Securities Laws – “Blue Sky”
- Internal Revenue Code of 1986
- Employee Retirement Income Security Act of 1974
- Sarbanes-Oxley Act of 2002
- Others (e.g., USA Patriot Act, Dodd-Frank Act)

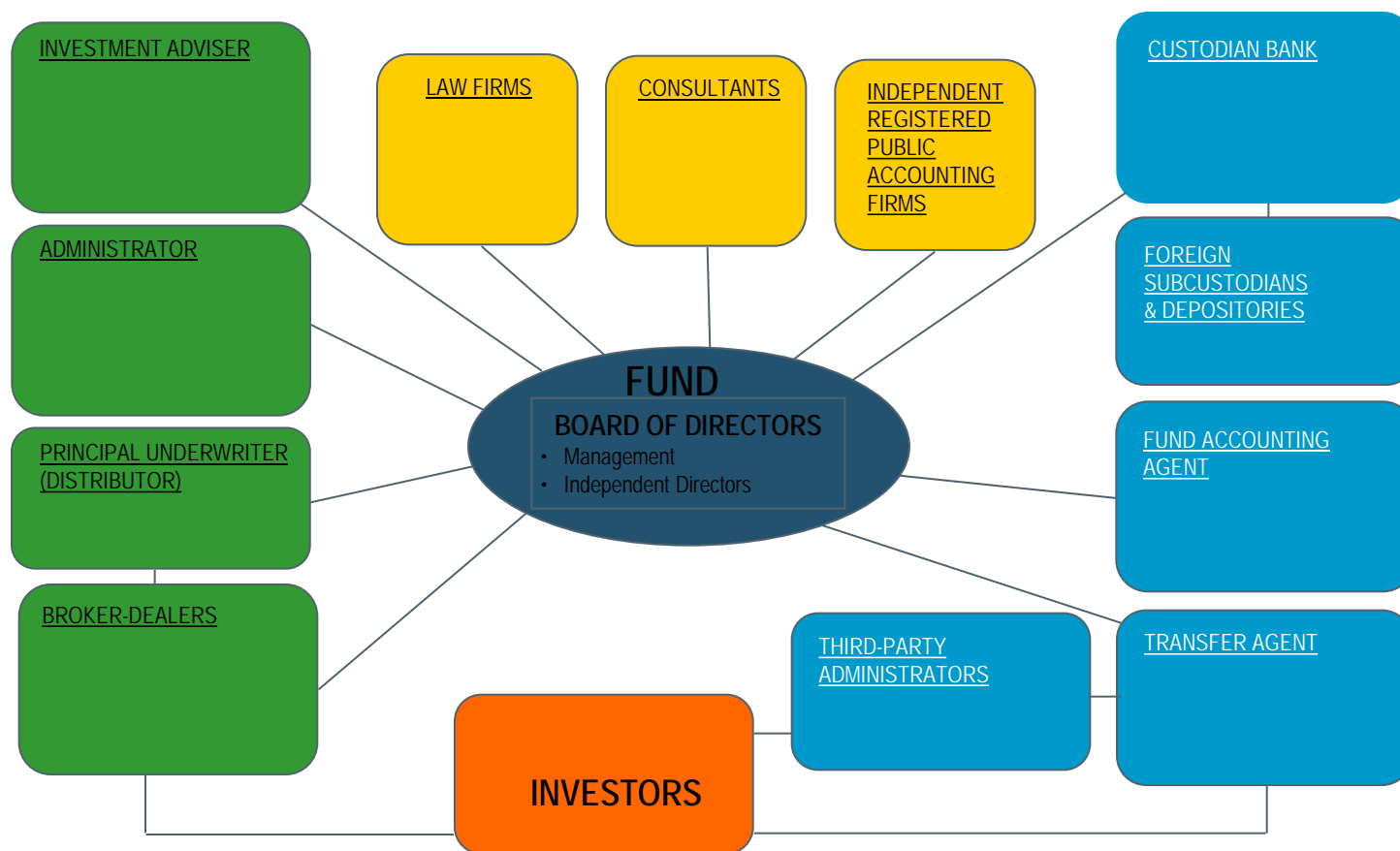
PRINCIPAL GOVERNMENTAL AUTHORITIES APPLICABLE TO INVESTMENT COMPANIES

- Securities and Exchange Commission
- State Securities Commissions
- Internal Revenue Service
- Commodity Futures Trading Commission

Self-Regulatory Organizations

- Financial Industry Regulatory Authority (FINRA)
- Stock Exchanges

TYPICAL STRUCTURE OF FUND COMPLEX



SECURITIES ACT OF 1933

- Regulates public offerings of securities, including investment company shares
- Purpose: “to provide full and fair disclosure... and to prevent frauds... .”
- Philosophy of disclosure: “Sunlight is the best disinfectant”
- Registration of Securities
- Prospectus Delivery Requirements
- Liability for False or Misleading Registration Statement

SECURITIES EXCHANGE ACT OF 1934

- Purpose: “to provide for the regulation of securities exchanges and over-the-counter markets ... and... to prevent inequitable and unfair practices on such exchanges and markets.”
- Registration of certain Issuers, Exchanges, Broker-Dealers and Transfer Agents
- Disclosure Requirements
 - Proxy Solicitation material
 - Periodic Reports to SEC
 - Periodic Reports to Shareholders
 - Other Reports
- Anti-fraud Provisions – Rule 10b-5

INVESTMENT COMPANY ACT OF 1940

- Background and Objectives: prevention of enumerated abuses, address unique conflicts inherent in fund structure
- Definition of Investment Company
- Types of Investment Companies
- Broad Scope of Substantive Regulation, including:
 - Registration and reporting
 - Transactions between investment company and its “affiliated persons”
 - Contracts with investment adviser and principal underwriter
 - Offering and redemption of fund shares
 - Capital structure and investment policies and practices
 - Responsibilities of investment company Board of Directors/Trustees, including its disinterested directors or trustees

INVESTMENT ADVISERS ACT OF 1940

- Registration: the investment adviser to an investment company registered under the Investment Company Act must be registered under the Advisers Act
- Performance Fee Requirements
- Compliance Program Requirements
- Codes of Ethics

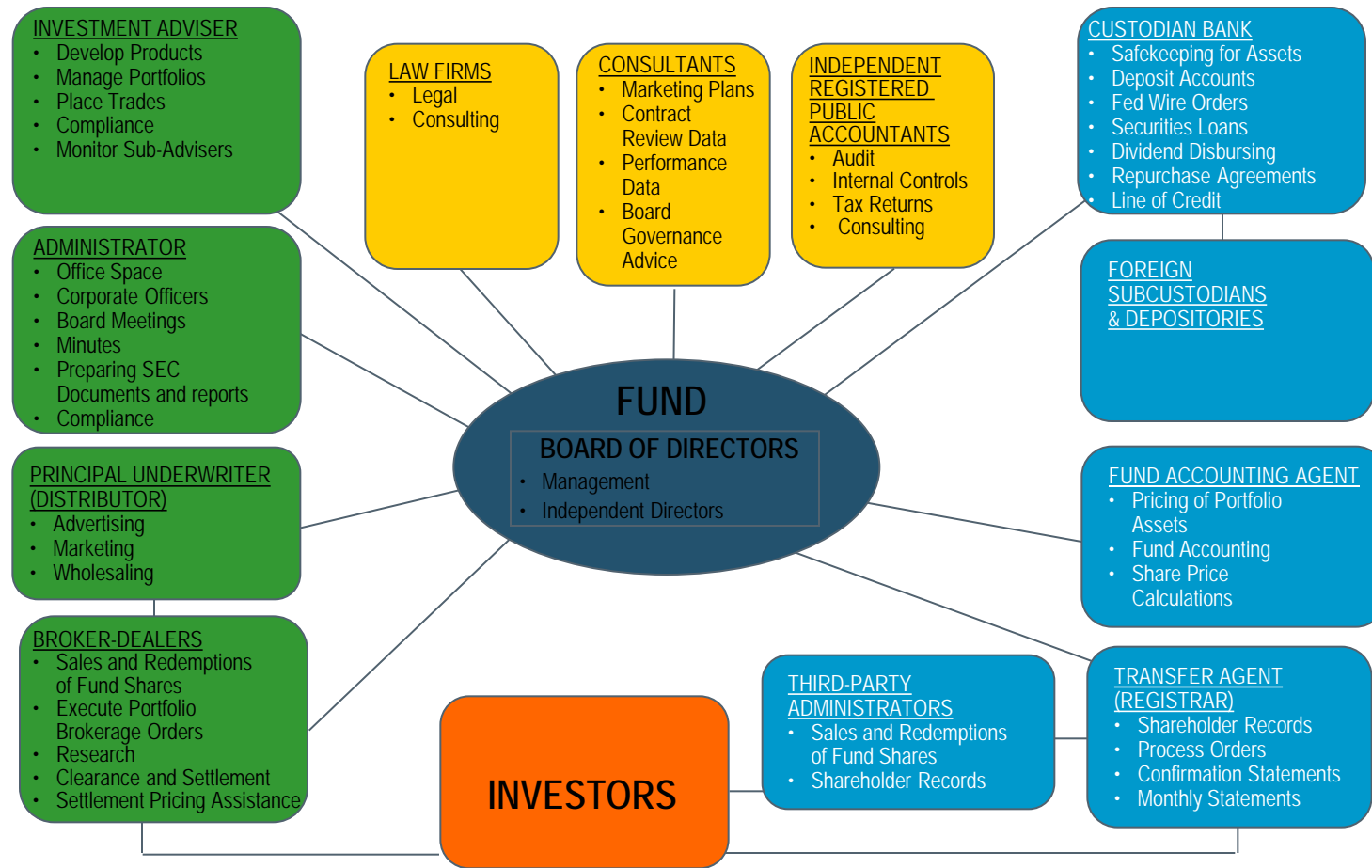
STATE LAW

- State Corporate or Trust Law – source of various requirements relating to:
 - Organization
 - Governing documents
 - Dividends and other distributions
 - Directors/Trustees and Officers
 - Shareholders and shareholder meetings
 - Reorganizations
- State Securities Laws – substantive regulation mostly preempted, but retain anti-fraud power



OVERVIEW OF INVESTMENT COMPANY SERVICE PROVIDERS AND BASIC AGREEMENTS

SERVICE PROVIDERS





INVESTMENT COMPANY SERVICE PROVIDERS AND THE BASIC AGREEMENTS

INVESTMENT ADVISERS AND INVESTMENT ADVISORY CONTRACTS

- Scope of investment adviser's responsibilities
- Contract requirements, including:
 - Written contract
 - Manner of approval and amendment
 - Description of compensation
 - Manner of continuance
 - Termination upon "assignment" – no trafficking
- Other advisory contract considerations

PRINCIPAL UNDERWRITERS AND UNDERWRITING CONTRACTS

- Responsibilities – Marketing and Distribution of Fund Shares
- Contract requirements, including:
 - Written contract
 - Manner of approval and amendment
 - Termination upon assignment
- 12b-1 Plans – Fund Paying for Distribution

ADMINISTRATORS AND ADMINISTRATION ARRANGEMENTS

- Responsibilities – Corporate Matters, Regulatory Filings
- Contract considerations

Transfer Agents and Providers of Related Shareholder Servicing

- Responsibilities
- Contract considerations

CUSTODIANS AND CUSTODY ARRANGEMENTS

- Safekeeping of the Fund's Assets
- General Investment Company Act requirements applicable to types of custody arrangements:
 - Bank custody
 - Broker-dealer custody
 - Self-custody
 - Central depositories and book-entry systems
 - Margin for futures contract transactions
 - Foreign custody

INSURANCE CONTRACTS

- Required fidelity bond
 - Amount
 - Form of bond
 - Annual consideration
 - Filing of bond
- Directors and officers/errors and omissions liability insurance
 - Industry practice
 - Form of policy
- Supplemental coverage for independent directors

INDEPENDENT AUDITORS

- Selection of Accounting Firm
 - Independent directors approve in person
 - Rule 32a-4 – exemption from shareholder ratification requirement for a fund with an independent audit committee, with a written charter
- Defining the Scope of Services
- Sarbanes-Oxley Act imposes additional requirements regarding auditor independence

K&L GATES