

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 server rack with glowing lights in blue, yellow, and green.

2016 INVESTMENT MANAGEMENT CONFERENCE

# Organizing A Registered Investment Company

Tyler Kirk

# ORGANIZING A RIC

## Time and Responsibility Schedule

- Decide form and content early
- Allow appropriate review time
- Reviewers include:
  - Internal Personnel
    - Portfolio Managers
    - Legal/Compliance
    - Operations
  - Fund Counsel (Tax Counsel)
  - Directors/Independent Director Counsel
  - Independent Accountants (consent required)

## ORGANIZING A RIC *(CONTINUED)*

- Form of Organization
  - Corporations
    - (Maryland, Delaware)
  - Business/Statutory Trusts
    - Massachusetts Business Trusts
    - Delaware Statutory Trusts

## ORGANIZING A RIC *(CONTINUED)*

- **Governing State Law**
  - Maryland Corporate Law
    - A well-developed and detailed statute
  - Massachusetts Business Trust Law
    - Virtually no substantive statutory provisions
  - Delaware Statutory Trust/Corporate Law
    - Highly developed case law

## ORGANIZING A RIC *(CONTINUED)*

- **Organizational and Corporate Documents**
  - Charter (Declaration of Trust, Trust Instrument or Articles of Incorporation)
    - Name
    - Number of Directors
    - Powers Clause
    - Purpose Clause
    - Limitation of Liability & Indemnification
  - Bylaws
    - Election of Directors
    - Board Committees
    - Duties of Officers
    - Conduct of Board and Shareholder Meetings

## ORGANIZING A RIC *(CONTINUED)*

- Organizational Meeting
  - Approving the Charter and Adopting the By-laws
  - Formal election of directors and officers
  - Establishing Board Committees (e.g., Audit, Nominating, Valuation)
  - Ratification of prior actions
  - Business transactions (e.g., approve arrangements with fund service providers)
  - Authorization to file the fund's registration statement

## ORGANIZING A RIC *(CONTINUED)*

- Structure and Distribution
  - Separate Entities
  - Series Funds
  - Multiple Class
  - Master-Feeder Arrangements

# SEC REGISTRATION

- **Primary Laws Governing Federal Registration**
  - **Securities Act of 1933 (the '33 Act)**
    - Section 5 – Registration of Securities
    - Section 10 – Information Required in a Prospectus
    - Regulation C – Rules 421, 480-486 and 495-497
    - Sections 11 and 12 – Liability
  - **Investment Company Act of 1940 (the '40 Act)**
    - Section 8 - Registration of Investment Companies



## SEC REGISTRATION *(CONTINUED)*

- **The Registration Process**
  - Notification of Registration (Form N-8A)
    - Registers entity as an investment company
  - Registration Statement (Forms N-1A and N-2)
    - Registers the fund and its shares
    - SEC Staff Review
    - Registration Statement ordered “effective” by SEC
    - File definitive prospectus and SAI within 5 days of effectiveness
    - XBRL (15 business days after effectiveness)
  - Registration Under Securities Exchange Act of 1934 (Form 8-A)

## SEC REGISTRATION *(CONTINUED)*

- **Form N-8A: Notification of Registration**
  - Registers entity as investment company
    - Short Form (file concurrent with Form N-1A)
    - Long Form (file Form N-1A within 3 months)

## SEC REGISTRATION *(CONTINUED)*

- **Form N-1A: Registration Statement**
  - Facing Sheet
  - Part A: Prospectus
  - Part B: Statement of Additional Information (SAI)
  - Part C: Other Information
  - Signature Pages
  - Exhibit Index/Exhibits
  - Transmittal Letter

# PART A: PROSPECTUS

- **Cover/Back Page**
- **Fund Summary**
  - Objectives, Performance, Fee Table, Summary of Investments, Risks, Fund Management Information, Purchase/Sale Information, Tax Information and Financial Intermediary Compensation
- **Fund Details**
  - Investment Objectives, Principal Investment Strategies, Related Risks and Disclosure of Portfolio Holdings
- **Fund Management, Organization and Capital Structure**
  - Adviser
  - Portfolio Managers
- **Shareholder Services**
  - Shareholder Information including Valuation, Purchase/Sale and Tax Information and Policies about Frequent Purchases and Sales
  - Distribution Arrangements
- **Financial Information**

## **PART B: STATEMENT OF ADDITIONAL INFORMATION (SAI)**

- Detailed description of fund matters (incorporated into prospectus)
  - Investment Policies and Limitations
  - Investment Descriptions
  - Fund Management/Board of Directors/Service Providers
  - Description of the Trust/Corporation
  - Control Persons
  - Portfolio Transactions
  - Valuation
  - Tax Information
  - Performance
  - Portfolio Holdings Disclosure
  - Financial Statements

## PART C: OTHER INFORMATION

- Exhibits:
  - Organizational documents
  - Fund contracts
  - Legal opinions and consents
  - Rule 12b-1 Plan(s)
  - Rule 18f-3 Plan
  - Code of Ethics
- Indemnification, Business Connections of Adviser and Underwriter, Recordkeeping, Undertakings
- Signature Pages

# SEC REGISTRATION

- Signature Pages (Directors, certain Officers)
  - Powers of Attorney
  - Section 11 of the 1933 Act
    - Civil remedy for purchasers
    - Liability for content of registration statement
    - Liability extends to:
      - Each person that signs the registration statement (directors are required to sign)
      - Each person that provides an expert opinion (attorney and accountants)
      - Underwriter
      - Any controlling person

## **SEC REGISTRATION** *(CONTINUED)*

### ▪ **SEC Staff Review**

- Division of Investment Management
- Selective Review
- Comments
- Responses

### ▪ **Order of Effectiveness**

- Delaying amendment
- Definitive prospectus and SAI (file within 5 days of receipt of the Order of Effectiveness)
- Summary Prospectus (file before or on day of first use)



## POST-EFFECTIVE REQUIREMENTS

- **Maintain good standing with the State of organization**
- **Annual update of registration statement**
  - Update no later than 16 months (stale financials)
    - 120 days for 1940 Act compliance
  - Rule 485(a): Non-routine “material” changes
    - Effective 60 days after filing (75 days for new series)
  - Rule 485(b): Non-material “routine” changes
    - Automatically effective upon filing
    - May use to update 485(a) filing
  - Rule 497 stickers

## POST-EFFECTIVE REQUIREMENTS *(CONTINUED)*

- Due Diligence Checklist for Post-Effective Amendments
  - Updated copy of Form N-1A
  - Board materials and resolutions
  - Proxy statements
  - Stickers/Supplements
  - Shareholder reports
  - Exemptive Orders/No-Action Letters
  - Sign-off (portfolio managers, counsel, accountants)

## POST-EFFECTIVE REQUIREMENTS *(CONTINUED)*

- Useful Resources
  - Plain English Handbook
  - Proposing and Adopting Releases of Disclosure Rules
  - Generic Comment Letters, “Dear Registrant” and “Dear Financial Officer” Letters
  - Old N-1A Disclosure Guidelines
  - SEC Staff No-Action and Interpretive Letters

## POST-EFFECTIVE REQUIREMENTS *(CONTINUED)*

### ■ Shareholder Reports

- Annual and semi-annual delivered to shareholders within 60 days of period end date

### ■ Form N-CSR

- Used to file shareholder reports with the SEC within 10 days such reports are sent to shareholders
- Sarbanes-Oxley Act certifications
- Includes additional information

## POST-EFFECTIVE REQUIREMENTS *(CONTINUED)*

### ■ **Form N-Q**

- File complete portfolio holdings with the SEC within 60 days of the end of the first and third fiscal quarter
- No delivery to shareholders, but available to shareholders upon request
- Sarbanes-Oxley Act certifications

### ■ **Form 24F-2**

- Filing fees
- File notice within 90 days of fiscal year end
- Fees based on shares sold less shares redeemed

## POST-EFFECTIVE REQUIREMENTS *(CONTINUED)*

- **Form N-SAR**
  - Filed with the SEC within 60 days of the end of a fund's semi-annual period and fiscal year end
  - Not distributed to shareholders
- **Form N-PX**
  - Record of proxy votes for 12-month period ending June 30
  - Due no later than August 31 for all funds
- **Form N-MFP**
  - Applies only to money market funds
  - Shows all portfolio holdings
  - File by the 5<sup>th</sup> business day of each month

## New Forms

- Form N-Q will be replaced by Form N-PORT
  - June 1, 2018 for Large Funds
  - June 1, 2019 for Small Funds
  
- Form N-SAR will be replaced by Form N-CEN
  - June 1, 2018 for all funds
  - Reporting of Lending/Borrowing Information delayed until
    - December 1, 2018 for Large Funds
    - June 1, 2019 for Small Funds

## QUESTIONS?

- Keep a time and responsibility chart when organizing a RIC
- Keep a compliance calendar



K&L GATES