



K&L GATES

2017 BOSTON INVESTMENT MANAGEMENT CONFERENCE

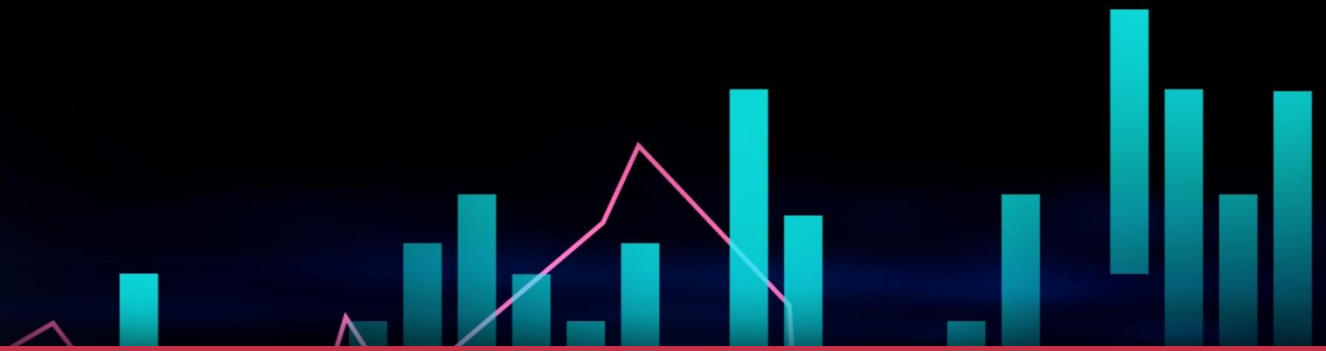
# Regulatory Developments

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# AGENDA

- SEC Developments under the Trump Administration
- Implementation of New Rules
  - Liquidity Risk Management Program
  - Investment Company Reporting Modernization
  - Form ADV Amendments
- Potential New Rulemaking
- Examination Process



# Developments under Trump administration



## NEW LEADERSHIP AT THE SEC

- New Leadership at the SEC
  - Jay Clayton sworn in on May 4, 2017 as SEC Chairman
  - Dalia Blass appointed Director of the Division of Investment Management on August 31, 2017
- Significant reduction in the SEC's rulemaking agenda
- Expected to focus on matters related to capital formation and access to capital instead of increased regulation
- Enforcement is expected to focus on individual accountability as opposed to large corporate penalties

# STATE OF THE COMMISSION

- There are currently only three SEC commissioners:
  - Jay Clayton (since 2017 – term expires in 2021)
  - Kara M. Stein (since 2013 – term expires in 2017)
  - Michael S. Piwowar (since 2013 – term expires in 2018)
- President Trump has made nominations for the two open seats:
  - Hester Peirce (Republican)
  - Robert L. Jackson Jr. (Democrat)



# Implementation of new rules

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# LIQUIDITY RISK MANAGEMENT RULE

- Rule 22e-4 was adopted October 2016 to promote effective liquidity risk management for mutual funds and ETFs
- Current compliance dates for Liquidity Risk Management Program and related disclosures on Form N-PORT, N-CEN, N-LIQUID:
  - December 1, 2018 for most funds (fund groups with more than \$1 billion in assets under management)
  - June 1, 2019 for all other funds
- Implementation presents a number of challenges for the industry

## LIQUIDITY RISK MANAGEMENT RULE – INDUSTRY RESPONSE

- ICI actively engaged with SEC on behalf of its members
  - Letter to SEC in July 2017 urging the SEC to allow each fund to create its own classification policies and procedures, among other requests, and to delay compliance dates
  - Letter to SEC in November 2017 reiterating the request for delay noting significant vendor-related implementation delays
- Many firms in direct discussions with SEC on similar issues



## SEC'S MODERNIZED REPORTING RULE - FORMS N-PORT/N-CEN: OVERVIEW

- Enhances data reporting for mutual funds, ETFs and other registered investment companies
- Registered funds required to file new monthly portfolio reporting form (Form N-PORT) and new annual reporting form (Form N-CEN) that requires census-type information
- Significant amounts of new data required for Forms N-PORT and N-CEN
- Current compliance dates on Form N-PORT/N-CEN
  - December 1, 2018 for most funds (fund groups with more than \$1 billion in assets under management)
  - June 1, 2019 for all other funds

# SEC'S MODERNIZED REPORTING RULE - FORMS N-PORT/N-CEN: DEVELOPMENTS

- ICI actively engaged with SEC on behalf of its members
  - July 2017 ICI Letter urged SEC to require quarterly (instead of monthly) reporting of portfolio holdings on Form N-PORT until the SEC managed to address information security concerns adequately
  - Also urged SEC to delay the compliance deadlines for the Form N-PORT and Form N-CEN reporting requirements for at least six months

## FORM ADV AMENDMENTS

- As of October 1, 2017, all investment advisers required to use an amended version of Part 1A
  - Must provide aggregate information about the separately managed accounts (“SMAs”) managed by advisers in a new section
    - Includes the percentage of SMA regulatory assets under management across different asset categories, the use of borrowings and derivatives, and the identification of custodians that account for at least 10% of SMA regulatory assets under management
    - For purposes of reporting on Form ADV, SMAs are advisory accounts other than those that are pooled investment vehicles

## FORM ADV AMENDMENTS (CONT'D)

- Revised Form ADV creates new disclosure protocol for advisers relying on umbrella registration and codifies the registration requirements in the 2012 SEC Guidance
- Amended Items 1.I., 1.F., and 1.J.
  - Item 1.I. requests information regarding the registrant's accounts on publicly available social media platforms
  - Item 1.F. requests total number of offices from which adviser conducts investment advisory business and provides information
  - Item 1.J. requests whether the chief compliance officer ("CCO") is compensated or employed by any person other than the adviser for providing CCO services to the adviser



# Potential new rulemakings



# POTENTIAL RULES ON THE HORIZON

- Derivatives Rule (proposed rule 18f-4 under Section 18 of the Investment Company Act of 1940)
  - Seeks to regulate the use of derivatives by registered investment companies and business development companies
    - Establishes limits on the size of derivatives and other senior security positions
    - Codifies asset segregation requirements and requires regulated funds with large positions in derivatives to establish risk management programs
  - Unclear if Rule will be adopted
  - October 2017 Treasury Report addressed Rule
    - Reconsider what, if any, portfolio limits should be part of the Rule
    - Reconsider the scope of assets that would be considered qualifying coverage assets

# POTENTIAL RULES ON THE HORIZON (CONT'D)

- SEC Fiduciary Rule
  - SEC drawing up proposed rule with the DOL, whose fiduciary standard already went into effect this year
  - Clayton has mentioned four key elements to a potential rule
    - Preservation of investors' choice to use a broker or advisor
    - Clarity
    - Application to retirement and non-retirement accounts
    - Cooperation between the SEC and the Labor Department
  - No timeframe provided



# Examination process





## EXAMINATION PROCESS UPDATES

- Reduction in funding to OCIE's National Examination Program
- Agency on track this year to examine 20% more investment advisors
  - Increase attributed to 100 SEC staff members reassigned to national examination program's investment advisor unit in 2016
- Likely to see shorter, more focused exams



Questions?

