



Investment Services Regulatory Update

July 2020

Monthly Version

NEW RULES, PROPOSED RULES, GUIDANCE AND ALERTS 2

GUIDANCE AND ALERTS..... 2

OCIE Issues Ransomware Risk Alert2

NEW RULES 2

SEC Adopts Expedited Review Process for Exemptive Applications Under the
Investment Company Act2

Agencies Adopt Volcker Rule Amendments Relating to Covered Funds.....3

OTHER DEVELOPMENTS..... 4

SEC Publishes Semi-Annual Regulatory Agenda for Spring 20204

New Rules, Proposed Rules, Guidance and Alerts

GUIDANCE AND ALERTS

OCIE Issues Ransomware Risk Alert

Responding to an apparent increase in sophistication of ransomware attacks on SEC registrants, and attacks impacting registrants' service providers, the SEC's Office of Compliance Inspections and Examinations (OCIE) issued a risk alert on July 10, 2020 encouraging market participants to consider enhancements to cybersecurity preparedness and operational resiliency to address these attacks. OCIE cited the importance of assessing, testing and periodically updating incident response and resiliency policies and procedures, such as contingency and disaster recovery plans, in maintaining operational resiliency. OCIE also suggested measures such as:

- awareness and training programs, including phishing exercises;
- programs to ensure all firmware, operating systems and other applications are updated and have the appropriate anti-virus and anti-malware solutions;
- policies and procedures to limit access and controls so users operate with only those privileges necessary to accomplish their tasks (i.e., least privilege access); and
- implementing perimeter security capabilities, such as firewalls, intrusion detection systems, email security capabilities and web proxy systems with content filtering.

In addition to the foregoing, OCIE encouraged registrants to monitor the cybersecurity alerts published by the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA). CISA Alerts are available [here](#).

You can read the full risk alert [here](#).

NEW RULES

SEC Adopts Expedited Review Process for Exemptive Applications Under the Investment Company Act

On July 6, 2020, the SEC adopted amendments to Rule 0-5 under the Investment Company Act of 1940, establishing an expedited review process for exemptive applications. Under amended Rule 0-5, an applicant may request expedited review if an application is substantially identical to two other applications for which an order granting the requested relief has been issued within three years of the date of the application's initial filing. An application is "substantially identical" if it contains identical terms and conditions, and differs only with respect to factual differences that are not material to the relief requested. An applicant seeking expedited review must (i) prominently state that expedited review is requested, (ii) submit exhibits with marked copies of the application showing changes from the two precedent applications and (iii) submit a cover letter identifying the precedent applications, and explaining why the applicant chose those particular precedents if more recent applications of the same type have been approved. An applicant must also certify that the application meets the requirements of the expedited review process.

Under the expedited review process, the SEC staff will issue a notice of application no later than 45 days from the initial filing date, unless the staff determines that the application is ineligible for expedited treatment or that further consideration is required. The 45-day period will pause if the staff requests that an application be modified and will resume on the 14th day after the applicant files an amended application responsive to the staff's request. If an unsolicited amendment is filed, the 45-day period will similarly pause, but resume on the 30th day following the amendment filing. Whether or not requested by the staff, amended applications

must include a marked copy showing any changes made and a certification that it is complete and accurate. If the SEC staff notifies the applicant under Rule 0-5(f)(1)(ii) that an application is not eligible for expedited review, it will give the applicant the option to either withdraw the application or amend it to make changes so that the application could proceed outside of the expedited review process.

Other amendments adopted by the SEC include an informal procedure setting forth the intended timeframe for exemptive applications filed outside of the expedited review process—i.e., “standard review”—directing that the SEC staff should take action within 90 days of the initial filing and each of the first three amendments thereto, and within 60 days of any subsequent amendment thereafter. In addition, if an applicant has not responded in writing to a request for clarification or modification of an application filed under standard review within 120 days after the request, the application will be deemed withdrawn.

The amendments will become effective 270 days after the date of their publication in the Federal Register.

The SEC’s final rule is available [here](#).

Agencies Adopt Volcker Rule Amendments Relating to Covered Funds

On June 25, 2020, the Federal Reserve Board, FDIC, OCC, SEC and CFTC adopted amendments to certain Volcker Rule restrictions relating to banking entity activities with hedge funds or private equity funds (covered funds). Currently, the Volcker Rule restricts the ability of banking entities to hold an ownership interest in, sponsor or have certain other relationships with a covered fund. The amendments, which will become effective on October 1, 2020, reduce the extraterritorial impact of Volcker Rule regulations on foreign funds and clarify and expand the Volcker Rule’s covered fund provisions applicable to banking entities to allow banking entities to provide

comprehensive financial services in a manner consistent with the requirements and spirit of the Volcker Rule.

Foreign Funds. The amendments codify a 2017 policy statement from the staffs of the federal banking regulators (the Federal Reserve Board, FDIC and OCC) that limits the extraterritorial impact of the Volcker Rule and streamline foreign fund restrictions. The Volcker Rule currently excludes foreign public funds from its covered funds provisions, subject to certain restrictions. The amendments modify these restrictions to more closely align with those related to the exclusion for domestic registered investment companies. In addition, the amendments exempt from certain covered fund restrictions foreign funds that are controlled by foreign banking entities, which funds are subject to the more rigorous compliance obligations applicable to banking entities.

Exclusions from the Covered Fund Provisions. The amendments also modify, expand or add exclusions from the Volcker Rule’s covered fund provisions.

- The Volcker Rule currently excludes loan securitizations from its covered fund provisions. The amendments codify existing guidance from the staffs of the federal banking regulators, the SEC and the CFTC regarding this exclusion to allow loan securitizations to hold a small amount of debt securities.
- The amendments revise the exclusion for small business investment companies to clarify how the exclusion applies to a fund that surrenders its SBIC license during the wind-down phase of its life cycle, and they also create a new exclusion for venture capital funds that allows banking entities to directly invest in such funds. The amendments also clarify the application of the public welfare investment exclusion to include rural business investment companies and qualified opportunity zone funds.
- The amendments create a new exclusion that will allow banking entities to invest in, and have certain relationships with, credit funds that extend credit that the banking entity may otherwise provide directly.

- The amendments exclude entities created and used to facilitate customer transactions and investment strategies and exclude wealth management vehicles for family portfolios, with the aim of allowing banking entities to provide comprehensive financial services through a covered funds structure.

Transactions with Sponsored Covered Funds. The amendments modify the Volcker Rule to permit a banking entity to engage in certain covered transactions with a covered fund sponsored or advised by the banking entity. This aspect of the final rule is intended to allow banking entities to provide low-risk, traditional banking services to related covered funds, such as standard payment, clearing and settlement services.

Ownership Interest Definition. The amendments modify the treatment of certain loans to covered funds, which are currently deemed to be ownership interests of the lending banking entity. The amendments provide a safe harbor for bona fide senior loans or senior debt instruments to be excluded from the definition of ownership interest in a covered fund. The amendments also simplify the manner in which banking entities calculate ownership interests in covered funds.

The adopting release for the Volcker Rule amendments is available [here](#).

OTHER DEVELOPMENTS

SEC Publishes Semi-Annual Regulatory Agenda for Spring 2020

The SEC published its semi-annual regulatory agenda for spring 2020, as required by the Regulatory Flexibility Act. The short-term agenda identifies rules that the SEC expects to consider in the next twelve months. Other actions under consideration are placed on the long-term agenda.

Short-Term Agenda. The spring 2020 short-term agenda includes proposed Rule 2a-5 under the Investment Company Act of 1940, addressing investment company fair valuation, and amendments to Form PF for which a proposal

has not yet been issued, each of which are new items to the SEC's rulemaking agenda. Amendments to the proxy process and amendments to Rule 17a-7, concerning the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons, have been moved from the long-term agenda to the short-term agenda. Items that remain on the short-term agenda from fall 2019 include proposed Rule 18f-4 under the 1940 Act, regarding the use of derivative instruments by registered investment companies, amendments to the custody rules for investment advisers, for which a proposal has not yet been issued, as well as amendments to Rules 206(4)-1 and 206(4)-3 under the Investment Advisers Act of 1940 regarding marketing communications and practices by investment advisers and amendments to fund-of-funds arrangements under the 1940 Act, for which the SEC has issued rule proposals.

Long-Term Agenda. The spring 2020 long-term agenda includes proposed rulemaking regarding names of registered investment companies and business development companies under Section 35(d) of and Rule 35d-1 under the 1940 Act, as well as rule and form amendments regarding investment company proxies, each of which are new items to the SEC's rulemaking agenda. Items that remain on the long-term agenda from fall 2019 include amendments to the custody rules for investment companies, as well as rule and form amendments to modernize investment company disclosure.

The SEC's complete rulemaking agendas are available [here](#).

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Investment Services Group

With significant experience in all matters related to design, organization and distribution of investment products, Vedder Price can assist with all aspects of investment company and investment adviser securities regulations, compliance issues, derivatives and financial product transactions, and ERISA and tax inquiries. Our highly experienced team has extensive knowledge in structural, operational and regulatory areas, coupled with a dedication to quality, responsive and efficient service.