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Regulatory Update and Recent SEC Actions

REGULATORY UPDATES

Mark T. Uyeda and Jaime Lizárraga to Serve as SEC Commissioners

On June 16, 2022, the United States Senate voted to confirm Mark T. Uyeda and Jaime Lizárraga to serve as commissioners at the U.S. Securities and Exchange Commission ("SEC"). Commissioner Uyeda, a Republican, was sworn in on June 30, 2022, and fills the seat vacated by Commissioner Elad Roisman, who resigned at the end of January. Lizárraga, a Democrat, will succeed Commissioner Allison Herren Lee, who earlier announced that she would not seek a second term. Upon Lizárraga's swearing in, the SEC will continue to have a 3-2 Democrat-led majority.

Commissioner Uyeda has served on the staff of the SEC since 2006, including as senior advisor to Chairman Jay Clayton, senior advisor to Acting Chairman Michael S. Piwowar, counsel to Commissioner Paul S. Atkins, and in various staff positions in the Division of Investment Management. He most recently served on detail from the SEC to the Senate Committee on Banking, Housing, and Urban Affairs as a securities counsel to the committee's minority staff. Prior to joining the SEC, Commissioner Uyeda served as chief advisor to the California Corporations Commissioner, the state's securities regulator. He also worked as an attorney at the law firms of K&L Gates in Washington, D.C., and O'Melveny & Myers LLP in Los Angeles. Commissioner Uyeda earned his bachelor's degree in business administration at Georgetown University and his law degree with honors at the Duke University School of Law. He is the first Asian Pacific American to serve as a commissioner at the SEC.

Lizárraga currently serves as senior advisor to Speaker of the House Nancy Pelosi. Throughout his 31-year public service career, Lizárraga has advised congressional leaders and heads of executive agencies on policy and legislative strategy. He previously served on the Democratic staff of the House Financial Services Committee, and as a presidential appointee at the U.S. Department of the Treasury and the SEC. Lizárraga graduated from the University of California, San Diego with high honors and earned a master's degree from the Lyndon B. Johnson School of Public Affairs at the University of Texas.

Other SEC Leadership Changes

On May 24, 2022, the SEC announced the appointment of Richard R. Best as director of the Division of Examinations, effective immediately. Prior to his appointment, Best had served as the Division's acting director since March 23, 2022. Best joined the SEC in 2015 and previously served as the director of the New York Regional Office. Prior to joining the SEC, he held supervisory, litigation, and investigative positions at the Financial Industry Regulatory Authority and served as a prosecutor in the Office of the Bronx County District Attorney.

On April 27, 2022, the SEC announced that Inspector General Carl W. Hoecker would retire from the agency as of May 7, 2022. Hoecker led the Office of Inspector General since February 2013. Deputy Inspector General for Audits, Evaluations, and Special Projects Rebecca Sharek will serve as acting inspector general.

On May 27, 2022, the SEC announced that Investor Advocate Rick A. Fleming would depart the agency effective July 1, 2022. Fleming was appointed in February 2014 to be the first director of the Office of the Investor Advocate at the SEC. Marc Sharma will continue in the role of chief counsel of the Office and help administer its functions until a new investor advocate is appointed.

SEC Proposes Rules to Include Certain Significant Market Participants as "Dealers" or "Government Securities Dealers"

The SEC recently proposed new rules 3a5-4 and 3a44-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Under the proposed rules, published on March 28, 2022, any market participant that engages in activities as described in the rules would qualify as a "dealer" or "government securities dealer" and, absent an exception or exemption, be required to register with the SEC under Section 15(a) or Section 15C, as applicable; become a member of a self-regulatory organization; and comply with federal securities laws and regulatory obligations. Market participants that assume certain dealer-like roles and/or engage in certain levels of buying and selling government securities will be considered "dealers" under the proposed rules. The proposed rules would exclude any person who has or controls total assets of less than $50 million as well as any investment company registered under the Investment Company Act of 1940, as amended (the "1940 Act") but not private funds or registered investment advisers; instead, the proposing release expressly anticipates that certain advisers and private funds would have to register as dealers if the proposed rules are adopted.

SEC Proposes Rules to Enhance Disclosure Relating to Special Purpose Acquisition Companies ("SPACs"), Shell Companies, and Projections

The SEC proposed new rules and amendments requiring enhanced disclosures in initial public offerings by SPACs and in business combination transactions involving shell companies, such as SPACs, and private operating companies. The proposed new rules and amendments, which were published on March 30, 2022, would require, among other things, additional disclosures about SPAC sponsors, conflicts of interest, and sources of dilution. They also would require additional disclosures regarding business combination transactions between SPACs and private operating companies, including disclosures relating to the fairness of such transactions. Further, the new rules would address issues relating to projections made by SPACs and their target companies, including the Private Securities Litigation Reform Act safe harbor for forward-looking statements and the use of projections in SEC filings and in business combination transactions. In addition, under the proposed rules, SPACs that satisfy certain conditions (limiting their duration, asset composition, business purpose, and activities) would not be required to register under the 1940 Act.

SEC Issues Risk Alert on Investment Adviser MNPI Compliance Issues

The SEC's Division of Examinations (the "Exams Division") issued a risk alert (the "Risk Alert") highlighting deficiencies that the Exams Division staff observed related to Section 204A of the Investment

Advisers Act of 1940, as amended (the "Advisers Act") and Rule 204A-1 (the "Code of Ethics Rule") thereunder, as well as associated material non-public information ("MNPI") issues. The Risk Alert, issued on April 26, 2022, highlighted the following deficiencies:

- Compliance Issues Related to Section 204A:
  - *Policies and procedures related to Alternative Data*—advisers used data from non-traditional sources ("alternative data"), but did not appear to adopt or implement reasonably designed written policies and procedures to address the potential risk of receipt and use of MNPI through alternative data sources
  - *Policies and procedures related to "value-add investors"*—advisers did not have or did not appear to implement adequate policies and procedures regarding investors (or in the case of institutional investors, key persons) who are more likely to possess MNPI, including officers or directors at a public company, principals or portfolio managers at asset management firms, and investment bankers
  - *Policies and procedures related to "expert networks"*—advisers did not appear to have or did not appear to implement adequate policies and procedures regarding their discussions with expert network consultants who may be related to publicly traded companies or have access to MNPI
- Compliance Issues Related to the Code of Ethics Rule:
  - *Identification of access persons*—advisers did not identify and supervise certain employees as access persons in accordance with the Code of Ethics Rule; and adviser codes did not define "access person" or accurately reflect which employees are considered access persons
  - *Access persons did not obtain required pre-approval for certain investments*—adviser access persons purchased beneficial ownership in initial public offerings and limited offerings without requisite pre-approval
  - *Personal Securities Transactions and Holdings*—the required reports regarding access persons' personal securities transactions and holdings were incomplete or deficient
  - *Written acknowledgement of receipt of the code and any amendments*—supervised persons were not provided with a copy of the code or did not provide written acknowledgement of their receipt of the code or any amendments; or the code did not contain provisions to reflect the written acknowledgment requirement of Rule 204A-1(a)(5) under the Advisers Act

The Risk Alert also set forth practices that should be considered by advisers in crafting their codes, including incorporating restricted lists of issuers and procedures for allocating investment opportunities. Finally, Exams Division staff encouraged advisers to review their practices, policies, and procedures in these areas to ensure compliance with the provisions of the Advisers Act and rules thereunder.

SEC Office of Minority and Women Inclusion ("OMWI") Reports Highlight Progress in Diversity, Equity, and Inclusion

The SEC recently published the 2020 Diversity Assessment Report which analyzes information received from regulated entities in response to the OMWI's invitation to such entities to conduct and submit voluntary self-assessments of their diversity policies and practices. Although there was an incremental increase in participation of voluntary self-assessments by SEC-regulated entities since the SEC began collecting voluntary self-assessments in 2018, the SEC noted its continued focus on encouraging SEC-regulated entities to conduct and share self-assessments.

The 2020 Diversity Assessment Report, which the SEC published on May 2, 2022, noted the following accomplishments with regard to diversity efforts among the entities that submitted voluntary self-assessments:

- 87 percent have a diversity and inclusion policy;
- 70 percent take proactive steps to promote a diverse pool of candidates when selecting members of their board of directors or other governing body;
- 88 percent publish information about their diversity and inclusion efforts on their website;
- 62 percent include the progress they have made toward achieving diversity and inclusion in their workforce; and
- 55 percent maintain a list of qualified minority-owned and women-owned businesses that may compete for upcoming contracting opportunities.

In its announcement, the SEC also noted that information about the SEC's actions and progress concerning the diversity policies and practices of SEC-regulated entities can be found in OMWI's recently submitted annual report to Congress. The OMWI annual report to Congress summarizes the agency's actions and progress in advancing diversity, equity, and inclusion internally and externally, as well as the goals under its Diversity and Inclusion Strategic Plan. Among the annual report's highlights for FY2021:

- 26.8 percent of SEC supervisors and managers identify as minorities;
- 45.8 percent of Senior Officers at the SEC are women;
- 45.4 percent of new hires identify as minorities;
- 18 diverse college and graduate student interns participated in a new paid internship program along with five high school scholars interns from the SEC's partnership with the Office of the Comptroller of the Currency internship program; and
- 38.8 percent of total SEC contract awards were to Minority Women-Owned Businesses.

SEC Issues Guidance Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues

The SEC's Division of Corporate Finance (the "Division") issued guidance ("Guidance") and a sample letter to companies regarding disclosure obligations under the federal securities laws related to the direct or indirect impact that Russia's invasion of Ukraine and the international response has had or may have on their business. The Guidance, which was published on May 3, 2022, advises companies to provide detailed disclosure, to the extent material or otherwise required, regarding: (1) direct or indirect exposure to Russia, Belarus, or Ukraine through their operations, employee base, investments in Russia, Belarus, or Ukraine, securities traded in Russia, sanctions against Russian or Belarusian individuals or entities, or legal or regulatory uncertainty associated with operating in or exiting Russia or Belarus; (2) direct or indirect reliance on goods or services sourced in Russia or Ukraine or, in some cases, in countries supportive of Russia; (3) actual or potential disruptions in supply chains; or (4) business relationships, connections to, or assets in, Russia, Belarus, or Ukraine. The Guidance further notes that financial statements may also need to reflect and disclose the impairment of assets, changes in inventory valuation, deferred tax asset valuation allowance, disposal or exiting of a business, de-consolidation, changes in exchange rates, and changes in contracts with customers or the ability to collect contract considerations. The Guidance advises companies to consider how these matters affect management's evaluation of disclosure controls and procedures, management's assessment of the effectiveness of internal control over financial reporting, and the role of the board of directors in risk oversight of any action or inaction related to Russia's invasion of Ukraine, including consideration of whether to continue or to halt operations or investments in Russia and/or Belarus. As part of the Guidance, the Division provided an illustrative letter containing sample comments that the Division may issue to companies based on their specific facts and circumstances.

SEC Nearly Doubles Size of Enforcement's Crypto Assets and Cyber Unit

Recently the SEC announced the allocation of 20 additional positions to the unit responsible for protecting investors in crypto markets and from cyber-related threats. The announcement, made on May 3, 2022, noted that the newly renamed Crypto Assets and Cyber Unit (formerly known as the Cyber Unit) in the Division of Enforcement will grow to 50 dedicated positions. The expanded Crypto Assets and Cyber Unit will focus on investigating securities law violations related to: (1) crypto asset offerings; (2) crypto asset exchanges; (3) crypto asset lending and staking products; (4) decentralized finance platforms; (5) non-fungible tokens; and (6) stablecoins. In addition, the unit will continue to tackle the omnipresent cyber-related threats to the nation's markets.

"The U.S. has the greatest capital markets because investors have faith in them, and as more investors access the crypto markets, it is increasingly important to dedicate more resources to protecting them," said SEC Chair Gary Gensler. "The Division of Enforcement's Crypto Assets and Cyber Unit has successfully brought dozens of cases against those seeking to take advantage of investors in crypto markets. By nearly doubling the size of this key unit, the SEC will be better equipped to police wrongdoing in the crypto markets while continuing to identify disclosure and controls issues with respect to cybersecurity."

SEC Extends Comment Period for Proposed Rules on Climate-Related Disclosures, Reopens Comment Periods for Proposed Rules Regarding Private Fund Advisers and Regulation ATS

The SEC extended the public comment period on the proposed rulemaking to enhance and standardize-climate-related disclosures for investors until June 17, 2022. The original comment period was set to expire 30 days after the proposed rules were published, a time period many criticized as too short. The proposed rules garnered a lot of attention and the SEC received thousands of comments from individual investors, academics, climate activists, industry groups, professional associations, and corporate entities. In the May 9, 2022 announcement, the SEC also stated that it will reopen the comment periods on the proposed rulemaking to enhance private fund investor protection and on the proposed rulemaking to include significant Treasury markets platforms within Regulation ATS for 30 days.

SEC Proposes Changes to Fund Names Rule

The SEC proposed amendments to enhance and modernize Rule 35d-1 under the 1940 Act, known as the "Names Rule," to address changes in the fund industry and compliance practices that have developed in the approximately 20 years since the Rule was adopted. The proposed amendments, published on May 25, 2022, follow a request for comment the SEC issued in March 2020 to gather public feedback on potential reforms to the Rule. The Names Rule currently requires registered investment companies whose names suggest a focus in a particular type of investment (among other areas) to adopt a policy to invest at least 80 percent of the value of their assets in those investments (an "80 percent investment policy"). The proposed amendments would require more funds to adopt an 80 percent investment policy. Specifically, the proposed amendments would extend the requirement to any fund name with terms suggesting that the fund focuses on investments that have (or whose issuers have) particular characteristics. This would include fund names with terms such as "growth" or "value" or terms indicating that the fund's investment decisions incorporate one or more environmental, social, or governance ("ESG") factors. Further, to address the Names Rule's application to derivatives investments, the proposal requires a fund to use a derivatives instrument's notional amount, rather than its market value, for the purpose of determining the fund's compliance with its 80 percent investment policy.

The proposal also specifies the particular circumstances under which a fund may depart from its 80 percent investment policy, such as sudden changes in market value of underlying investments, including specific time frames for returning to 80 percent. In addition, under

the proposal, a registered closed-end fund or business development company ("BDC") whose shares are not listed on a national securities exchange is prohibited from changing its 80 percent investment policy without a shareholder vote.

The proposal also includes amendments requiring prospectus disclosure defining the terms used in the fund's name, including the specific criteria the fund uses to choose the investments described by the terms. Under the proposal, a fund that considers ESG factors alongside but not more centrally than other, non-ESG factors in its investment decisions would not be permitted to use ESG or similar terminology in its name. The comment period will remain open for 60 days after publication in the Federal Register.

"A lot has happened in our capital markets in the past two decades. As the fund industry has developed, gaps in the current Names Rule may undermine investor protection," said SEC Chair Gary Gensler. "In particular, some funds have claimed that the rule does not apply to them—even though their name suggests that investments are selected based on specific criteria or characteristics. Today's proposal would modernize the Names Rule for today's markets."

SEC Proposes to Enhance Disclosures by Certain Investment Advisers and Investment Companies About ESG Investment Practices

The SEC proposed amendments to certain rules and reporting forms which will require additional disclosure concerning funds' and advisers' incorporation of ESG factors. The proposed amendments, published on May 25, 2022, would apply to certain registered investment advisers, advisers exempt from registration, registered investment companies, and BDCs. The amendments would require funds that consider ESG factors in their investment process to disclose additional information regarding their strategy. The amount of required disclosure depends on how central ESG factors are to a fund's strategy and follows a "layered" framework, with a concise overview in the prospectus supplemented by more detailed information in other sections of the prospectus or in other disclosure documents, all of which would be reported in a structured data language. The proposal identifies the following three types of ESG funds.

- Integration Funds. Funds that integrate ESG factors alongside non-ESG factors in investment decisions would be required to describe how ESG factors are incorporated into their investment process.
- ESG-Focused Funds. Funds for which ESG factors are a significant or main consideration would be required to provide detailed disclosure, including a standardized ESG strategy overview table.
- Impact Funds. A subset of ESG-Focused Funds that seek to achieve a particular ESG impact would be required to disclose how they measure progress on their objective.

Advisers that consider ESG factors would be required to make generally similar disclosures in their brochures with respect to their consideration of ESG factors in the significant investment strategies or methods of analysis they pursue and report certain ESG information in their annual filings with the SEC. ESG-Focused Funds would be required to disclose the greenhouse gas emissions associated with their portfolio investments. In addition, the proposed amendments would require funds that use proxy voting or engagement with issuers as a significant means of implementing their ESG strategy to provide additional information about their proxy voting or ESG engagements, as applicable. The proposing release will be published in the Federal Register. The comment period will remain open for 60 days after publication in the Federal Register.

"I am pleased to support this proposal because, if adopted, it would establish disclosure requirements for funds and advisers that market themselves as having an ESG focus," said SEC Chair Gary Gensler. "ESG encompasses a wide variety of investments and strategies. I think investors should be able to drill down to see what's under the hood of these strategies. This gets to the heart of the SEC's mission to protect investors, allowing them to allocate their capital efficiently and meet their needs."

SEC Requests Information and Comment on Advisers Act Regulatory Status of Index Providers, Model Portfolio Providers, and Pricing Services

The SEC has requested information and public comment on matters related to the activities of certain "information providers," including whether, under particular facts and circumstances, information providers are acting as "investment advisers" under the Advisers Act. The request, published on June 15, 2022, specifically focuses on index providers, model portfolio providers, and pricing services. Investment adviser status has regulatory implications under the Advisers Act and the 1940 Act, including being subject to regulation thereunder as well as potential registration requirements. The request will facilitate consideration of whether regulatory action is necessary and appropriate. The request was published on sec.gov and in the Federal Register. The public comment period will remain open for 60 days following publication on the SEC's website or 30 days following publication in the Federal Register, whichever period is longer.

"In recent decades, the use of information providers has grown, changing the asset management industry," said SEC Chair Gary Gensler. "The role of these information providers today raises important questions under the securities laws as to when they are providing investment advice rather than merely information. In order to help the Commission determine when—and under what facts and circumstances—these providers are giving investment advice, the Commission seeks information and public comment to help guide our approach."

SEC Announces Spring 2022 Regulatory Agenda

On June 22, 2022, the SEC's Office of Information and Regulatory Affairs released its Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions. The report lists short- and long-term regulatory actions that administrative agencies plan to take. The SEC's rulemaking list includes final and proposed rules regarding climate-related risk disclosure, human capital, cybersecurity, short sales, SPACs, and ESG initiatives for investments.

"The U.S. is blessed with the largest, most sophisticated, and most innovative capital markets in the world," said SEC Chair Gary Gensler. "But we cannot take that for granted. As SEC alum Robert Birnbaum and his team said decades ago, 'no regulation can be static in a dynamic society.' That core idea still rings true today. When I think about the SEC's agenda, I'm driven by two public policy goals: continuing to drive efficiency in our capital markets and modernizing our rules for today's economy and technologies. Doing so will help us to achieve our three-part mission: protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation."

SEC Adopts Rules to Require Electronic Filing for Investment Advisers and Institutional Investment Managers

The SEC adopted amendments to require the electronic filing or submission of certain documents filed by investment advisers, institutional investment managers, and certain other entities. The rule and form amendments, which were adopted on June 23, 2022, require the electronic filing or submission of: (1) applications for orders under the Advisers Act on EDGAR, (2) confidential treatment requests for Form 13F filings on EDGAR, and (3) Form ADV-NR (through the IARD system). The amendments also include technical amendments to modernize Form 13F and enhance the information provided. With the exception of the amendments to Form 13F, the new rules and form amendments will be effective 60 days after publication in the Federal Register. The amendments to Form 13F will be effective on January 3, 2023. The SEC is providing a six-month transition period to provide filers with adequate time to prepare to submit these documents electronically.

SEC ENFORCEMENT ACTIONS

SEC Files Fraud Charges Alleging a Massive Market Manipulation Scheme

On April 27, 2022, the SEC charged Archegos Capital Management, LP ("Archegos") and affiliated individuals with committing fraud and manipulating stock prices using total return swaps in a fraudulent scheme that resulted in billions of dollars in losses. The SEC's complaint alleges that from at least March 2020 to March 2021, Archegos purchased on margin billions of dollars of total return swaps. As alleged, Archegos frequently entered into certain of these swaps without any economic purpose other than to artificially and dramatically drive up the prices of the various companies' securities, which induced other investors to purchase those securities at inflated prices. As a result of this trading, Archegos allegedly underwent a period of rapid growth, increasing in value from approximately $1.5 billion with $10 billion in exposure in March 2020 to a value of more than $36 billion with $160 billion in exposure at its peak in March 2021. The complaint also alleges that, as part of the scheme, Archegos repeatedly and deliberately misled many of its counterparties about Archegos' exposure, concentration, and liquidity in order to get increased trading capacity so that Archegos could continue buying swaps in its most concentrated positions, thereby driving up the price of those stocks. Ultimately in March 2021, price declines in Archegos' most concentrated positions allegedly triggered significant margin calls that Archegos was unable to meet, and Archegos' subsequent default and collapse resulted in billions of dollars in credit losses among its counterparties. The SEC's complaint charges the defendants with violating antifraud and other provisions of the federal securities laws and seeks permanent injunctive relief, return of allegedly ill-gotten gains, and civil penalties. The SEC also seeks to bar individual defendants from serving as a public company officer and director. In parallel actions, the U.S. Attorney's Office for the Southern District of New York announced criminal charges for similar conduct, and the Commodity Futures Trading Commission announced civil charges.

Asset Manager to Pay $10 Million Penalty for Misleading Investors and Clients

On April 28, 2022, the SEC announced that Medley Management ("Medley") and its former co-CEOs have agreed to settle charges that they misled investors and clients. According to the SEC's order, since at least August 2016, in multiple public filings, including bond offering materials, Medley overstated its assets under management by including "committed capital" amounts from non-discretionary clients whose agreements with Medley imposed no obligation to invest with Medley and whose investing activity through Medley was minimal. The order additionally found that in June 2018 the former co-CEOs used positive projections of Medley's likely future growth, for which they had no reasonable basis, to recommend to advisory clients a merger whereby Medley's two BDC clients would acquire Medley and give the former co-CEOs contracts for high-paying jobs. The order found that the materially misleading projections were incorporated into calculations of the "expected" benefit included in the proxy materials that encouraged investors to vote in favor of the transaction. Without admitting or denying the SEC's findings, the former co-CEOs and Medley agreed to cease and desist from committing or causing any future violations of these provisions, to be censured, and to pay a total of $10 million in civil penalties. The defendants are expected to satisfy their obligation to pay this penalty by making payments to bondholders in the bankruptcy proceeding of Medley's operating affiliate.

SEC Obtains Emergency Relief to Halt Pre-IPO Stock Fraud Scheme by Unregistered Broker-Dealer Defendants

On May 16, 2022, the SEC announced that it obtained asset freezes and other emergency relief against StraightPath Venture Partners LLC, StraightPath Management LLC, and several of their affiliates (collectively, the "defendants") to halt ongoing securities violations, including allegedly selling pre-initial public offering ("IPO") shares they did not own, pocketing undisclosed fees, and commingling investor funds,

resulting in Ponzi scheme-like payments. The relief arose from fraud and registration charges filed by the SEC. The SEC alleges that the defendants, running an unregistered broker-dealer with a vast network of sales agents, raised at least $410 million from more than 2,200 investors from November 2017 through February 2022. The SEC also alleges that the defendants repeatedly told investors that each investment would be kept separate and that they were charging no upfront fees, but the defendants freely commingled investor funds, paid themselves more than $75 million, and paid their sales agents nearly $48 million from illegal, undisclosed markups on the pre-IPO shares that were, in some cases, as high as 100 percent. The defendants also allegedly concealed from investors that two of the individual defendants ran the funds despite being barred from the brokerage industry. The SEC's complaint charges the defendants with violating antifraud and other provisions of the federal securities laws. The complaint seeks permanent injunctive relief, return of allegedly ill-gotten gains, and civil penalties. The SEC obtained a court order to freeze the assets of the defendants. The order further temporarily enjoins the defendants from violating these provisions of the federal securities laws and orders them not to destroy any additional relevant documents.

SEC Charges Broker-Dealer With Anti-Money Laundering Related Violations

On May 20, 2022, the SEC charged a broker-dealer firm (the "Firm") for failing to file at least 34 Suspicious Activity Reports ("SARs") in a timely manner between April 2017 and October 2021. According to the SEC's order, due to the Firm's deficient implementation of and failure to test a new version of its internal anti-money laundering ("AML") transaction monitoring and alert system, the system failed to reconcile the different country codes used to monitor foreign wire transfers. As a result, the Firm did not timely file at least 25 SARs related to suspicious transactions in its customers' brokerage accounts involving wire transfers to or from foreign countries that it determined to be at a high or moderate risk for money laundering, terrorist financing, or other illegal money movements. The order also found that, beginning in April 2017, the Firm failed to timely file at least nine additional SARs due to a failure to appropriately process wire transfer data into its AML transaction monitoring system in certain other situations. The SEC's order found that the Firm violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. Without admitting or denying the SEC's findings, the Firm agreed to a censure, a cease-and-desist order, and a $7 million penalty.

SEC Charges Investment Adviser for Misstatements and Omissions Concerning ESG Considerations

On May 23, 2022, the SEC charged a registered investment adviser (the "Adviser") with making material misstatements and omissions concerning the consideration of ESG principles in making investment decisions for certain mutual funds advised by the Adviser. The SEC's order found that from July 2018 to September 2021, the Adviser represented or implied in various statements that all investments in the funds had undergone an ESG quality review, even though that was not always the case and that numerous investments held by certain funds did not have an ESG quality review score as of the time of investment. The Adviser consented to the entry of the SEC's order finding that it violated Sections 206(2) and 206(4) of the Advisers Act, and Rules 206(4)-7 and 206(4)-8, and Section 34(b) of the 1940 Act. Without admitting or denying the SEC's findings, the Adviser agreed to a cease-and-desist order, a censure, and to pay a $1.5 million penalty. The SEC's order noted that the Adviser promptly undertook remedial acts and cooperated with the SEC staff in its investigation.

SEC Charges Distributor with Improper Switching of Variable Annuities

On May 25, 2022, the SEC announced it had settled charges against RiverSource Distributors Inc. ("RiverSource") for improper switching or replacing of variable annuities in what was the SEC's first enforcement proceeding under Section 11 of the 1940 Act, which prohibits any principal underwriter from making

or causing to be made an offer to exchange the securities of registered unit investment trusts (including variable annuities) unless the terms of the offer have been approved by the SEC or they fall within certain limited exceptions, none of which was applicable to RiverSource. According to the SEC's order, RiverSource offered and sold variable annuities to retail investors through an affiliated broker-dealer/investment adviser. The order finds that certain employees of RiverSource developed and implemented a sales practice that caused exchange offers to be made to holders of variable annuities to switch from one variable annuity to another which had the effect of increasing sales commissions for RiverSource's employees, while also increasing RiverSource's variable annuity related revenues. According to the order, these types of transactions increased significantly from 2016 until 2018 when RiverSource's compliance department put a stop to the sales practice. Without admitting or denying the SEC's findings, RiverSource consented to an order finding that it violated Section 11 of the 1940 Act and imposing a cease-and-desist order, a censure, and a $5 million civil penalty.

SEC Charges Investment Advisers With Misleading Robo-Adviser Clients about Absence of Hidden Fees

On June 13, 2022, the SEC charged three investment adviser subsidiaries of a multinational financial services firm (the "Firm") with failing to disclose that they were allocating client funds in a manner that their own internal analyses showed would be less profitable for their clients under most market conditions. According to the SEC's order, from March 2015 through November 2018 the Firm's mandated disclosures for its robo-adviser product stated that the amount of cash in the robo-adviser portfolios was determined through a "disciplined portfolio construction methodology," and that the robo-adviser would seek "optimal return[s]." The SEC found that, in reality, the Firm's own data showed that under most market conditions, the cash in the portfolios would cause clients to make less money even while taking on the same amount of risk. The Firm advertised the robo-adviser as having neither advisory nor hidden fees but did not inform clients about this cash drag on their investment. According to the SEC, the Firm made money from the cash allocations in the robo-adviser portfolios by sweeping the cash to its affiliate bank, loaning it out, and then keeping the difference between the interest it earned on the loans and what it paid in interest to the robo-adviser clients. Without admitting or denying the SEC's findings, the Firm's investment adviser subsidiaries agreed to a cease-and-desist order prohibiting them from violating the antifraud provisions of the Advisers Act, censuring them, and requiring them to pay approximately $52 million in disgorgement and prejudgment interest, and a $135 million civil penalty. The subsidiaries also agreed to retain an independent consultant to review their policies and procedures relating to their robo-adviser's disclosures, advertising, and marketing, and to ensure that they are effectively following those policies and procedures.

SEC Charges Private Equity Adviser for Failing to Disclose Disproportionate Expense Allocations to Fund

On June 14, 2022, the SEC charged an investment adviser (the "Adviser") with allocating undisclosed, disproportionate expenses to a private equity fund it advises. According to the SEC's order, the Adviser led an investment consortium to acquire the stock of a public company in what is referred to as a take-private transaction. In connection with this transaction, which closed in March 2018, the Adviser agreed that third-party co-investors would not have to bear expenses related to a credit facility used to finance the transaction. As a result, the SEC's order found that the Adviser allocated a disproportionate share of these expenses to a private equity fund it advised without disclosure. The SEC's order found that, under the fund's organizational documents, these expenses should have either been disclosed or not allocated in this manner. The Adviser

consented to the entry of the SEC's order finding that the firm violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 and 206(4)-8 thereunder. Without admitting or denying the SEC's findings, the Adviser agreed to a cease-and-desist order and censure, in addition to the $1 million penalty. The Adviser also voluntarily paid back more than $3.3 million to the private equity fund.

SEC Charges Firm and Five Brokers with Violations of Regulation Best Interest

On June 16, 2022, the SEC charged Western International Securities, Inc. ("Western") and five of its registered representatives or brokers (collectively, the "defendants") with violating Regulation Best Interest ("Reg BI"). The SEC's complaint alleges that between July 2020 and April 2021, the defendants recommended and sold an aggregate of $13.3 million of unrated, high-risk debt security, known as L Bonds, to retail customers, many of whom were on fixed incomes and had moderate risk tolerances, despite the issuer of such L Bonds stating that the L Bonds were high risk, illiquid, and only suitable for customers with substantial financial resources. The defendants allegedly failed to comply with Reg BI's "Care Obligation" both because they did not exercise reasonable diligence, care, and skill to understand the risks, rewards, and costs associated with L Bonds, and also because they recommended L Bonds to at least seven particular customers without a reasonable basis to believe that the L Bonds were in such customers' best interests. The complaint also alleges Western failed to comply with Reg BI's "Compliance Obligation" because it did not adequately establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Reg BI. The complaint seeks permanent injunctive relief, return of allegedly ill-gotten gains, and civil penalties.

Global Financial Services Firm to Pay $25 Million to Settle SEC Fraud Charges Involving Complex Options Trading Strategy

On June 29, 2022, the SEC announced that a global financial services firm (the "Firm") agreed to pay approximately $25 million to settle fraud charges relating to a complex investment strategy. According to the SEC's order, the Firm marketed and sold the strategy to approximately 600 investors through its platform of domestic financial advisors from February 2016 through February 2017. The order finds that during this time, the Firm did not provide its financial advisors with adequate training and oversight in the strategy, and although the Firm recognized and documented the possibility of significant risk in the strategy's investments, it failed to share this data with advisors or clients. As a result, the order finds that some of the Firm's advisors did not understand the risks and were unable to form a reasonable belief that the advice they provided was in the best interest of their clients. The Firm consented to the entry of the SEC's order finding that it violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 thereunder. Without admitting or denying the SEC's findings, the Firm agreed to a cease-and-desist order, a censure, and to pay disgorgement of $5.8 million and prejudgment interest of $1.4 million, which is deemed satisfied by payments made to investors in related arbitration proceedings. The Firm also agreed to pay a civil penalty of $17.4 million, which it will undertake to distribute to harmed investors pursuant to the fair fund provisions of the Sarbanes-Oxley Act of 2002.

Global Accounting Firm to Pay $100 Million Penalty for Employees Cheating on CPA Ethics Exams and Misleading Investigation

On June 28, 2022, the SEC charged a global accounting firm (the "Firm") in connection with alleged cheating by its audit professionals on exams required to obtain and maintain Certified Public Accountant ("CPA") licenses, and for withholding evidence of this misconduct from

the SEC's Enforcement Division during the Division's investigation of the matter. The Firm admitted the facts underlying the SEC's charges and agreed to undertake extensive remedial measures to fix the firm's ethical issues and to pay a $100 million penalty, which is the largest penalty imposed by SEC against an audit firm. The Firm admitted that, over multiple years, a significant number of its audit professionals cheated on the ethics component of CPA exams and various continuing professional education courses required to maintain CPA licenses, including ones designed to ensure that accountants can properly evaluate whether clients' financial statements comply with Generally Accepted Accounting Principles. The Firm further admitted that during the Enforcement Division's investigation of potential cheating at the firm, the Firm made a submission conveying to the Division that the Firm did not have current issues with cheating when, in fact, it had been informed of potential cheating on a CPA ethics exam. The Firm also admitted that it did not correct its submission even after it launched an internal investigation into cheating on CPA ethics and other exams and confirmed there had been cheating. The SEC order found that the Firm did not cooperate in the SEC's investigation regarding its materially misleading submission and that the Firm violated a Public Company Accounting Oversight Board rule requiring the firm to maintain integrity in the performance of a professional service, committed acts discreditable to the accounting profession, and failed to maintain an appropriate system of quality control.

For additional information and assistance, contact Thomas R. Westle, Stacy H. Louizos, or a member of Blank Rome's Investment Management Group.

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