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Regulatory Update and Recent SEC Actions

REGULATORY UPDATES

SEC Announces Leadership Changes

Anthony ("Tony") C. Thompson was appointed to a second term as a board member of the Public Company Accounting Oversight Board ("PCAOB"), which will run until October 24, 2027. Prior to joining the PCAOB, Mr. Thompson served as the executive director and chief administrative officer of the Commodity Futures Trading Commission. Mr. Thompson also held senior positions at the U.S. Department of Agriculture, where he was responsible for leading a workforce of more than 400 personnel and a broad range of programs, including budget and financial management. Before entering civilian government service, Mr. Thompson served in the U.S. Air Force for 32 years, including serving as the chief budget officer for the service branch after previously serving as chief financial officer for several Air Force bases.

Lori H. Price was appointed as the director of the Office of Credit Ratings ("OCR"), effective August 14, 2022. Ms. Price has more than 30 years of experience in various roles at the U.S. Securities and Exchange Commission (the "SEC"), where she began working in 1987. After leaving in 2000 to work in private practice, she returned in 2003 to work in the Office of the General Counsel. She held several roles before her position as the associate general counsel and led a team of advisers on some of the agency's most complex rulemaking initiatives and interpretive matters. Ms. Price joined the OCR in August 2020.

SEC Adopts Amendments to Proxy Rules Governing Proxy Voting Advice

The SEC announced its adoption of final amendments to rules governing proxy voting advice. The amendments, adopted on July 13, 2022, were proposed by the SEC in November 2021 in response to continued concerns expressed by institutional investors and other proxy voting advice business ("PVAB") clients regarding the proxy rules' impact on their ability to receive independent proxy voting advice promptly. The final amendments rescind certain conditions to the availability of exemptions from the proxy rules' information and filing requirements on which PVABs, such as Institutional Shareholder Services ("ISS") and Glass Lewis, often rely. The rescinded conditions had required that: (1) companies that are the subject of proxy voting advice have such advice made

available to them in a timely manner; and (2) clients of proxy voting advice businesses are notified of any written responses by companies to proxy voting advice. The final amendments also affirmed that proxy voting advice generally is subject to liability under the proxy rules. Finally, the adopting release rescinded guidance that the SEC previously issued in 2020 to investment advisers regarding their proxy voting obligations. The final amendments, which were passed by SEC commissioner votes of three to two along party lines, became effective on September 19, 2022.

SEC Proposes Amendments to Shareholder Proposal Rule

The SEC has proposed amendments to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), known as the shareholder proposal rule, which governs the process for requiring the inclusion of shareholder proposals in a company's proxy statement. Among other things, Rule 14a-8 provides several grounds upon which a company may exclude shareholder proposals from its proxy statement. The proposed amendments, announced on July 13, 2022, revise three of the grounds for exclusion. First, a proposal may be excluded under Rule 14a-8(i)(10) if the company has already implemented the "essential elements" of the proposal. Second, under Rule 14a-8(i)(11), a proposal "substantially duplicates" another proposal previously submitted for the same shareholder meeting if it addresses the same subject matter and seeks the same objective by the same means. Finally, under Rule 14a-8(i)(12), a proposal constitutes a resubmission if it "substantially duplicates" another proposal previously submitted for the same company's prior shareholder meetings. The public comment period for the proposed amendments ended on September 12, 2022.

SEC Re-Proposes Amendments to Exemption from National Securities Association Membership

The SEC re-proposed rule amendments that would narrow the exemption from Section 15(b)(8) of the Exchange Act, which requires any broker or dealer registered with the SEC to become a member of a national securities association unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. Financial Industry Regulatory Authority ("FINRA") is the only registered national securities association. Exchange Act Rule 15b9-1 provides an exemption from Section 15(b)(8) under which certain SEC-registered dealers may engage in unlimited proprietary trading of securities on any national securities exchange of which they are not a member or in the over-the-counter market without triggering Section 15(b)(8)'s FINRA membership requirement. The proposed amendments, which the SEC announced on July 29, 2022, would replace this proprietary trading exemption with narrow exemptions. Under the proposed amendments, a registered broker or dealer would be required to join FINRA if it effects securities transactions other than on an exchange of which it is a member unless (i) it is a member of a national securities exchange, (ii) it carries no customer accounts, and (iii) either (A) such transactions result solely from orders that are routed by a national securities exchange where the broker-dealer is a member to comply with Rule 611 of Regulation NMS or (B) such transactions are solely for the purpose of executing the stock leg of a stock-option order. The public comment period for the proposed amendments ended on September 27, 2022.

SEC Proposes Rules to Improve Clearing Agency Governance and to Mitigate Conflicts of Interest

The SEC has proposed new rules regarding governance arrangements of registered clearing agencies. The proposed rules, announced on August 8, 2022, include requirements concerning board composition, independent directors, nominating committees, and risk management committees. The proposed rules would require new policies and procedures regarding conflicts of interest, board obligations to oversee relationships with service providers for critical services, and a board obligation to consider stakeholder viewpoints. The proposed rules also impose new policies and procedures requiring clearing agencies that clear security-based swaps to identify, mitigate, or eliminate conflicts of interest and document those actions. The public comment period for the proposed rules ended on October 7, 2022.

SEC Proposes to Enhance Private Fund Reporting

The SEC proposed amendments to sections of Form PF, the confidential reporting form for certain SEC-registered investment advisers to private funds. Among other things, the proposed amendments require:

(i) enhanced reporting on qualifying hedge funds, (ii) additional information about advisers and their private funds, including identifying information, assets under management, withdrawal and redemption rights, gross asset value and net asset value, inflows and outflows, base currency, borrowings and types of creditors, fair value hierarchy, beneficial ownership and fund performance, and (iii) more detailed information about hedge fund investment strategies. In its August 10, 2022, announcement, the SEC noted that the proposed amendments are designed to enhance the Financial Stability Oversight Council's ("FSOC") ability to assess systemic risk, improve data quality and comparability, and reduce reporting errors by providing greater insight into the operations and strategies of private funds and private fund advisers. The public comment period for the proposed amendments ended on October 11, 2022.

"In the decade since the SEC and CFTC jointly adopted Form PF, regulators have gained vital insight with respect to private funds. Since then, though, the private fund industry has grown in gross asset value by nearly 150 percent and evolved in terms of its business practices, complexity, and investment strategies," said SEC Chair Gary Gensler. "I am pleased to support the proposal because, if adopted, it would improve the quality of the information we receive from all Form PF filers, with a particular focus on large hedge fund advisers. That will help protect investors and maintain fair, orderly, and efficient markets."

SEC Publishes Draft FY22-26 Strategic Plan

The SEC released a draft strategic plan for fiscal years 2022 to 2026. Issued on August 24, 2022, the plan establishes three primary goals: (i) protecting working families against fraud, manipulation, and misconduct; (ii) developing and implementing a robust regulatory framework that keeps pace with evolving markets, business models, and technologies; and (iii) supporting a skilled workforce that is diverse, equitable, inclusive, and fully equipped to advance agency objectives. To meet these goals, the SEC seeks to enhance the use of market and industry data to prevent, detect, and prosecute improper behavior. It also seeks to modernize design, delivery, and content of disclosures so that investors can access consistent, comparable, and material information when making investment decisions. In addition, the SEC noted its intention to update its existing rules and approaches to reflect evolving technologies, business models, and capital markets. The draft strategic plan emphasized a need to build expertise in, and devote resources to, product markets beyond equities—including crypto assets, derivatives, and fixed income—and continue to update the disclosure framework to offer investors information about climate risk, cybersecurity, and companies' personnel. In addition, the SEC noted that, to support its diversity and inclusion efforts, it will also focus on recruiting, training, and retaining staff with appropriate skills, experience, and expertise, and encourage employees to participate in job rotations.

SEC Issues First Fee Rate Advisory for Fiscal Year 2023

The SEC announced that the fees that public companies and other issuers pay to register their securities with the SEC increased from $92.70 per million dollars to $110.20 per million dollars, effective October 1, 2022. The SEC's fee rate advisory announcement, issued on August 26, 2022, stated that the new fee rate would apply to the registration of securities under Section 6(b) of the Securities Act, the repurchase of securities under Section 13(e) of the Exchange Act, and proxy solicitations and statements in corporate control transactions under Section 14(g) of the Exchange Act. The SEC determined the statutory target amount for the fiscal year 2023 to be $815,557,629 by adjusting the fiscal year 2022 target collection amount of $747,806,372 million for the rate of inflation.

PCAOB Enters into an Agreement with China and Hong Kong

The PCAOB announced that it had signed a Statement of Protocol with the China Securities Regulatory Commission and the Ministry of Finance of the People's Republic of China, taking the first step towards opening access for the PCAOB to completely inspect and investigate registered public accounting firms headquartered in

mainland China and Hong Kong, consistent with U.S. law. Under the protocol, announced on August 26, 2022, the Chinese authorities have committed to four critical items: (i) the PCAOB has independent discretion to select any issuer audits for inspection or investigation; (ii) the PCAOB gets direct access to interview or take testimony from all personnel of the audit firms whose issuer engagements are being inspected or investigated; (iii) the PCAOB has the unfettered ability to transfer information to the SEC; and (iv) the PCAOB inspectors can see complete audit work papers without any redactions. The Statement of Protocol relates to the Holding Foreign Companies Accountable Act ("HFCAA"), which was passed by Congress in 2020. The HFCAA requires the SEC to identify, every year, any public companies that file annual reports with financials that have been audited by an auditor that the PCAOB has determined it is unable to inspect or investigate completely because of positions taken by a foreign authority. After three consecutive years of being a SEC-identified issuer, trading in the issuer's securities the United States will be prohibited. In 2021, the PCAOB determined that the Chinese authorities prevented the PCAOB from completely inspecting and investigating audit firms in mainland China and Hong Kong. As a result, issuers audited by such audit firms were designated as SEC-identified issuers pursuant to the HFCAA and trading in the securities of such issuers will be prohibited if such issuers continue to be SEC-identified issuers for three consecutive years. If successful, the Statement of Protocol will provide a path for the PCAOB to determine it has the ability to completely inspect and investigate audit firms headquartered in mainland China and Hong Kong, and subsequently for issuers that are audited by such audit firms to no longer be designated as SEC-identified issuers under the HFCAA.

"While important, this framework is merely a step in the process," SEC Chair Garry Gensler said. "This agreement will be meaningful only if the PCAOB actually can inspect and investigate completely audit firms in China." He further added that "if it cannot, roughly 200 China-based issuers will face prohibitions on trading of their securities in the U.S. if they continue to use those audit firms."

Fifth Circuit Hears Arguments Regarding Nasdaq Board Diversity Rule

The U.S. Court of Appeals for the Fifth Circuit heard oral arguments on August 29, 2022 regarding a proposed Nasdaq rule related to board diversity from the SEC, which defended the rule, and from the Alliance for Fair Board Recruitment ("petitioners"), a group led by conservative activists, who claim the rule is unconstitutional because it confers preferential status on certain demographics, including minorities, women, and members of the LGBTQ+ community. The rule, which Nasdaq proposed in 2020, requires Nasdaq-listed companies to disclose board-level diversity data and to explain in writing if the board does not meet a certain diversity benchmark. Shortly after the SEC approved this proposed rule in August 2021, the petitioners filed a legal challenge against the rule in the Fifth Circuit. The SEC was the entity initially sued in this case, though Nasdaq later moved to intervene in order to defend the rule. In a brief submitted to the court in April 2022, the SEC argued that it was not responsible for the content of the rule, but rather its only role was to determine whether the disclosures violated the Exchange Act. The SEC further argued that the Nasdaq rule does not violate the Exchange Act since it will facilitate more consistent and comparable disclosure of information important to investors' investment and voting decisions. In challenging that conclusion, petitioners contend that the Nasdaq rule is "not intended to facilitate disclosure but rather to coerce companies into satisfying a diversity quota" and that the disclosures required by the rule are not material to investor decision-making because there is insufficient evidence to suggest that board diversity "improves corporate governance, transparency, accountability or decision-making."

SEC Division of Corporation Finance to Add Industry Offices Focused on Crypto Assets and Industrial Applications and Services

The SEC's Division of Corporation Finance ("Corp Fin") announced plans to add an Office of Crypto Assets and an Office of Industrial Applications and Services to Corp Fin's Disclosure Review Program ("DRP"). The September 9, 2022, announcement stated that the two new offices would join the seven existing offices that provide focused review of issuer filings and are grouped by

industry expertise to further Corp Fin's work to promote capital formation and protect investors. According to the announcement, the Office of Crypto Assets will focus on the unique and evolving filing review issues related to crypto assets and the Office of Industrial Applications and Services will focus on non-pharma, non-biotech, and non-medicinal product companies. The DRP anticipates establishing the new offices this fall.

SEC Proposes Rule Changes Regarding Clearance and Settlement Requirements

The SEC proposed rule changes that it indicated would enhance risk management practices for central counterparties in the U.S. Treasury market and facilitate additional clearing of U.S. Treasury securities transactions. The proposal, announced on September 14, 2022, updates the membership standards required of covered clearing agencies for the U.S. Treasury market concerning a member's clearance and settlement of specified secondary market transactions. In addition, the proposal requires that clearing agencies in the U.S. Treasury market adopt policies and procedures designed to require their members to submit for clearing certain specified secondary market transactions, including: all repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities entered into by a member of the clearing agency; all purchase and sale transactions entered into by a member of the clearing agency that is an interdealer broker; and all purchase and sale transactions entered into by a clearing agency member and either a registered broker-dealer, a government securities broker, a government securities dealer, a hedge fund, or a particular type of leveraged account. For customer margin, the proposal permits broker-dealers to include margin required and on deposit at a clearing agency in the U.S. Treasury market as a debit in the customer reserve formula, subject to certain conditions. In addition, the proposal requires clearing agencies in the U.S. Treasury market to collect and calculate margin for house and customer transactions separately. Finally, the proposal would require covered clearing agencies to have policies and procedures designed to ensure they have appropriate means to facilitate access to clearing and settling services, including for indirect participants. Comments on the proposal are due 60 days after publication in the Federal Register.

Office of Investor Advocate Releases Research Study on Fund Performance Benchmarks

The SEC's Office of the Investor Advocate ("OIAD") released an independent research study examining the impact of mutual fund performance benchmarks on investor decision-making and potential strategic behavior by firms in displaying benchmarks. Released on September 19, 2022, and published on the OIAD website, the study examines market data and the results of a large behavioral experiment to understand how funds employ benchmarks and how investors respond to benchmark presentation. The study was placed in the comment file for an SEC rulemaking proposal from August 2020 that would, among other things, modernize open-end fund shareholder reports by requiring concise and visually engaging shareholder reports. The SEC noted that the analysis in the study might be informative for evaluating comments on the proposal's requirements regarding funds' performance disclosure. Comments on this supplemental information may be submitted to the comment file for the rulemaking proposal.

Financial Industry Groups Ask SEC to Scale Back ESG Disclosure Requirements

In response to the SEC's proposed rule requiring increased environmental, social, and governance ("ESG") disclosure, certain groups, including Managed Funds Association and the Investment Company Institute, have filed comment letters arguing that the rule is overly prescriptive, too costly, and may lead to investor confusion. One common complaint from some in the industry is the breadth of the proposal, which divides funds into three categories (integration funds, ESG-focused funds, and impact funds) and imposes varying disclosure requirements based on such categories. The groups specifically took issue with integration funds, which the proposed rule defines as funds for which the strategy merely considers one or more ESG factors, but such ESG factors are "generally no more significant than other factors in the investment selection

process." They argued that this would "render the term ESG meaningless by capturing strategies that no reasonable person would consider ESG-focused." They further added that it would act as a catch-all for most, if not all, funds, leading to an overly prescriptive and detailed disclosure that could ultimately mislead investors by overemphasizing some factors over others, and that they were "concerned that these disclosures will be required of too many advisers who do not intend to present themselves as managing or providing access to ESG products." The comment period for the SEC's proposed rule ended on August 16, 2022, but was temporarily re-opened by the SEC (see "SEC Reopens Comment Periods for Several Rulemaking Proposals" below).

SEC Reopens Comment Periods for Several Rulemaking Proposals

The SEC reopened the public comment periods for one request for comment and eleven SEC rulemaking proposals, including proposals regarding cybersecurity, climate risk, ESG, and special-purpose acquisition companies. In its October 7, 2022, announcement, the SEC indicated it was taking this action because a technological error had prevented the SEC from receiving a number of public comments submitted through the SEC's Internet comment form. Most of the affected comments were submitted in August 2022; however, the technological error was known to have occurred as early as June 2021. The SEC advised all commenters who submitted public comments between June 2021 and August 2022 to check the relevant comment file posted on the SEC website to determine whether their comment was received and posted. The comment periods are scheduled to stay reopened until 14 days following publication of the reopening release in the Federal Register.

Anti-ESG Legislation

In the spring of 2022, the SEC issued a pair of rule proposals related to the use of ESG investment practices by registered investment companies and business development companies. These proposals attracted considerable attention and hundreds of public comments were submitted to the SEC and additional comments may be received during the temporary reopening of the comment period for these proposals (see "SEC Reopens Comment Periods for Several Rulemaking Proposals" above). At the same time, lawmakers in several states have introduced legislation to limit ESG investing, citing concerns that ESG investing is putting policy and social objectives ahead of financial objectives, and that ESG investing could hurt their local economies. The proposed legislation is sometimes referred to as "Anti-ESG Bills." These laws, if passed, would require state entities to take certain anti-ESG actions, such as prohibiting state funds from investing in vehicles that have an ESG focus or refusing to contract with companies that engage in so-called "ESG-focused discrimination," such as boycotting investment in firearms or mining companies or denying services to fossil fuel-related energy companies. Texas was the first state to pass anti-ESG legislation using the anti-boycott format in June 2021. The Texas law prohibits state financial institutions (including its pension funds) from contracting with or investing in businesses that divest from coal, oil, or natural gas companies. West Virginia was the next state to pass anti-ESG legislation when it passed a law requiring that all branches of state government cease doing business with any bank or investment firm engaged in a "boycott" of fossil fuel companies. West Virginia and Texas have compiled lists of companies that would be ineligible to do business with the states under their anti-ESG bills, which include financial firms, mutual funds, SMAs, ETFs, and big-name institutional investors.

SEC AND OTHER ENFORCEMENT ACTIONS

Global Investment Management Firm Enters into a Settlement with Massachusetts Securities Regulators

The Securities Division of the Commonwealth of Massachusetts announced on July 6, 2022, that it had entered into a settlement agreement with a global investment management firm's subsidiary (the "firm") under which the firm agreed to pay approximately $6.25 million to settle allegations arising from an investigation into potential tax disclosure and marketing issues with certain of the firm's target date funds. According to regulators, in December 2020, the firm created an incentive for investors approaching retirement to move their money into a different set of funds, forcing the target date funds to sell large portions of their portfolio securities, generating significant capital gains taxable to certain investors. The firm agreed to establish a $5.5 million fund to make restitution payments to eligible Massachusetts residents for a portion of the tax liabilities they incurred and to make

a one-time $500,000 payment to the Commonwealth. The firm also agreed to pay an additional $250,000 to administer the fund.

SEC Charges Three Firms with Deficiencies Relating to the Prevention of Customer Identity Theft

The SEC charged two investment advisory firms and an online brokerage firm (collectively, the "respondents") for deficiencies in their programs to prevent customer identity theft, in violation of the SEC's Identity Theft Red Flags Rule, or Regulation S-ID. Per the SEC's orders, issued on July 27, 2022, from at least January 2017 to October 2019, each respondent's identity theft prevention program had multiple deficiencies, including failures to: (i) include reasonable policies and procedures to identify relevant red flags of identity theft in connection with customer accounts or to incorporate those red flags into the programs, and (ii) include reasonable policies and procedures to respond appropriately to detected identity theft red flags, or to ensure that the programs were updated periodically to reflect changes in identity theft risks to customers. The SEC's orders find that each respondent violated Rule 201 of Regulation S-ID. Without admitting or denying the SEC's findings, each respondent agreed to cease and desist from future violations of the charged provision, to be censured, and to pay penalties ranging from $425,000 to $1.2 million.

SEC Charges Investment Advisors with Misleading Investors

The SEC charged an Atlanta-based investment advisory firm and its portfolio manager (collectively, the "respondents") with misleading investors about the firm's fix-and-flip loan securitization's delinquency rates. According to the SEC's order, issued on August 10, 2022, in March 2018, the adviser raised $90 million through "fix-and-flip" loans, which were originated by an adviser-affiliated entity. The SEC alleged that the respondents had artificially reduced delinquency rates on the loans by improperly diverting funds ostensibly held to reimburse borrowers for renovations made to the mortgaged properties, using them to instead pay down outstanding loan balances. According to the SEC, this resulted in investors being provided with an inaccurate view of the actual delinquency rates on the mortgages in the securitization pool as well as an inaccurate view of the securitization's compliance with the early repayment trigger. The SEC's order found that the adviser and portfolio manager violated the antifraud provisions of both the Securities Act of 1933 (the "Securities Act), as amended, and the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Without admitting or denying the SEC's findings, the respondents agreed to a cease-and-desist order, a censure, and the imposition of civil monetary penalties.

SEC Charges 18 Defendants in International Scheme to Manipulate Stocks Using Hacked U.S. Brokerage Accounts

The SEC charged 18 individuals and entities for their roles in a fraudulent scheme in which dozens of online retail brokerage accounts were hacked and improperly used to purchase microcap stocks to manipulate those stocks' price and trading volume. Those charged include an individual from Alberta, Canada, who is alleged to have coordinated the hacking attacks, and several others in and outside the United States who allegedly benefited from or participated in the scheme. According to the SEC's August 15, 2022, complaint, in late 2017 and early 2018, hackers accessed at least 31 U.S. retail brokerage accounts and used them to purchase the securities of two issuers. The unauthorized purchases allegedly enabled fraudsters, who already controlled large blocks of stock of the two issuers, to sell their holdings at artificially high prices and reap more than $1 million in illicit proceeds. The SEC's complaint charges violations of the antifraud and beneficial ownership reporting provisions of the Securities Act and the Exchange Act and names two relief defendants who received proceeds from the hacks. The SEC seeks the return of ill-gotten gains plus interest, penalties, bars, and other equitable relief.

SEC Alleges Advisory Firm and Executives Schemed to Defraud Clients

The SEC charged a Malta-based registered investment adviser ("Adviser") and two individuals, one the owner of the Adviser and the other the Adviser's portfolio manager (collectively, the "respondents"), for defrauding clients out of more than $75 million through undisclosed transactions that benefited themselves and their companies.

Per the SEC's complaint, issued on August 30, 2022, from 2017 through 2018, the respondents breached their fiduciary duties to their advisory clients by fraudulently causing the clients to engage in undisclosed related-party transactions that were not in their best interests. The SEC's complaint further alleges that the respondents misappropriated more than $57 million in client funds and that the Adviser collected more than $21.4 million in advisory fees generated in connection with these schemes. The SEC's complaint charged the respondents with violating the antifraud provisions of the Advisers Act, and seeks disgorgement plus prejudgment interest, penalties, and permanent injunctions.

SEC Charges Venture Capital Adviser Energy Innovation Capital Management for Overcharging Fees

The SEC has charged Energy Innovation Capital Management, LLC ("EIC"), a venture capital adviser, with violations of the Advisers Act in connection with EIC's overcharging two funds it managed. The order, issued on September 2, 2022, found that from January 2020 through March 2022, EIC made several errors in its favor when calculating the management fees to be charged to the funds, including: failing to adjust fee calculations for securities subject to write-downs; inaccurately basing fees on invested capital at the portfolio company level instead of at the individual portfolio company security level; incorrectly including accrued but unpaid interest as part of the basis of the calculation; and failing to begin the fee period at the correct date. The order found that EIC violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. Without admitting or denying the SEC's findings, EIC agreed to cease and desist from committing or causing any future violations of these provisions and to censure in addition to the penalty. EIC has returned $678,681 plus interest to the funds and their limited partners and has agreed to settle the SEC's charges by paying a $175,000 penalty.

SEC Charges Adviser with Failing to Disclose SPAC-Related Conflicts of Interest

The SEC charged a New York-based investment adviser (the "Adviser") for failing to disclose conflicts of interest regarding its personnel's ownership of sponsors of special purpose acquisition companies ("SPACs") into which the Adviser counseled its clients to invest. The SEC's order, issued on September 6, 2022, found that the Adviser repeatedly invested assets of a private fund client in certain transactions that helped complete the SPACs' business combinations to the benefit of the Adviser's personnel without timely disclosing these conflicts to the private fund. The SEC's order also found that the Adviser failed to timely file a required report on Schedule 13D concerning its beneficial ownership of stock in a public company that resulted in the Adviser improperly acquiring beneficial ownership of additional stock in the public company. 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 Rules 206(4)-7 and 206(4)-8 thereunder, as well as Section 13(d) of the Exchange Act and Rule 13d-1 thereunder. Without admitting or denying the findings, the Adviser agreed to a cease-and-desist order, a censure, and a $1.5 million penalty to settle the charges.

SEC Charges Four Underwriting Firms Under Municipal Bond Disclosure Law

The SEC has announced it has settled charges against three underwriting firms, and initiated charges against a fourth underwriting firm, in connection with the alleged failure by the underwriting firms to comply with municipal bond offering disclosure requirements. Per the SEC's announcement on September 13, 2022, during different periods since 2017, the four firms sold new issue municipal bonds without obtaining required disclosures for investors. Each of the firms purported to rely on an exemption to the typical disclosure requirements called the limited offering exemption, but they did not take the steps necessary to satisfy the exemption's criteria. The SEC's orders found that each of the three settling underwriting firms violated Rule 15c2-12 under the Exchange Act, which establishes disclosures that must be provided to investors, as well as Municipal Securities Rulemaking Board ("MSRB") Rule G-27 and Section 15B(c)(1) of the Exchange Act. Without admitting or denying the SEC's findings, the three settling underwriting firms agreed to settle the charges, cease and desist from future violations of those provisions, be censured, and pay the monetary relief per the order. The fourth firm is charged with the

same violations as above in connection with at least 354 offerings. The complaint also alleges that the fourth firm made deceptive statements to issuers in violation of MSRB Rule G-17, which prohibits deceptive, dishonest, or unfair practices. The SEC seeks permanent injunctions, disgorgement plus prejudgment interest, and a civil money penalty against the fourth firm. As a result of its findings in these investigations, the SEC staff has begun investigations of other firms' reliance on the limited offering exemption.

SEC Charges Broker-dealer Firm for Violating Municipal Advisor Registration Rule

The SEC charged a Chicago-based broker-dealer firm (the "firm") for providing advice to a municipal entity without registering as a municipal advisor. According to the SEC's order, issued on September 14, 2022, between September 2017 and February 2019, the firm advised a Midwestern city to purchase particular fixed income securities, which the city purchased using the proceeds of its municipal bond issuances. In addition, the SEC's order found that the firm did not maintain a system reasonably designed to supervise its municipal securities activities and had inadequate procedures, including insufficient methods to identify potential violations of the municipal advisor registration rules. The firm agreed to settle with the SEC and consented, without admitting or denying any findings, to the entry of an SEC order finding that it violated the rules regarding municipal advisor registration and supervision requirements, censuring it, and ordering it to pay disgorgement and prejudgment interest of $5,456.73 and a civil penalty of $100,000.

Financial Services Firm to Pay $35 Million for Extensive Failures to Safeguard Personal Information of Millions of Customers

The SEC announced charges against a multinational financial services firm (the "firm") stemming from the firm's extensive failures, over a five-year period, to protect the personal identifying information ("PII") of approximately 15 million customers. The SEC's September 20, 2022, order found that, as far back as 2015, the firm failed to properly dispose of devices containing its customers' PII. The order alleged that, on multiple occasions, the firm hired a moving and storage company with no experience or expertise in data destruction services to decommission thousands of hard drives and servers containing the PII of millions of its customers and the firm failed to properly monitor the moving company's work. The SEC's investigation found that the moving company sold thousands of the firm's devices including servers and hard drives to a third-party, some of which contained customer PII, and which were eventually resold on an Internet auction site without removal of such customer PII. The SEC found that, while the firm recovered some of the devices, which contained thousands of unencrypted customer data, the firm has not recovered most of the devices. The SEC's order also found that the firm failed to properly safeguard customer PII and properly dispose of consumer report information when it decommissioned local office and branch servers as part of a broader hardware refresh program and that a records reconciliation exercise undertaken by the firm during this decommissioning process revealed that 42 servers, all potentially containing unencrypted customer PII and consumer report information, were missing. The SEC also found that, during this process, the firm learned that the local devices being decommissioned were equipped with encryption capability, however, the firm had failed to activate the encryption software for years. Without admitting or denying its findings, the firm consented to the SEC's order finding that the firm violated the Safeguards and Disposal Rules under Regulation S-P and agreed to pay the $35 million penalty to settle the SEC charges.

SEC Charges Investment Adviser with Violating the Proxy Voting Rule

The SEC announced that it settled charges against registered investment adviser Toews Corporation ("Toews"), in connection with proxy votes Toews made on behalf of clients. The SEC alleged that Toews made such votes without taking any steps to determine whether they were in the clients' best interests and failed to implement policies and procedures reasonably designed to ensure it voted client securities in the best interests of its clients. The SEC's order, issued on September 20, 2022, found that Toews directed its third-party service provider to vote all of the proxies for the funds that it managed pursuant

to a standing instruction, i.e., to always vote in favor of the proposals put forth by the issuers' management and against any shareholder proposals. The service provider did so without exception during the relevant period. The SEC also noted that Toews did not review the proxy materials for any of the relevant shareholder meetings and did not otherwise take steps to determine whether such votes were being cast in the funds' best interests, or implement any policies and procedures reasonably designed to ensure that it did so as required by the Advisers Act. The SEC's order found that Toews violated Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-6 thereunder. Without admitting or denying the SEC's findings, Toews consented to a cease-and-desist order, a censure, and agreed to pay a civil monetary penalty of $150,000.

SEC Charges 16 Wall Street Firms with Widespread Recordkeeping Failures

The SEC announced charges against 15 broker-dealer firms and one affiliated investment advisory firm for widespread and longstanding failures by the firms and their employees to maintain and preserve electronic communications. The firms cooperated with the investigation by gathering communications from the personal devices of a sample of the firms' personnel. The SEC's September 27, 2022, order stated that from January 2018 through September 2021, the firms' employees routinely communicated about business matters using text messaging applications on their personal devices. The SEC's order found that the firms violated federal securities laws by not maintaining or preserving the majority of these off-channel communications. The SEC's order noted that the firms' actions likely deprived the SEC of these off-channel communications in various SEC investigations. The failings occurred across all 16 firms and involved employees at multiple levels of authority, including supervisors and senior executives. Each of the 15 broker-dealer firms and the investment advisory firm was charged with violating certain recordkeeping provisions of either the Exchange Act or the Advisers Act and failing to reasonably supervise with a view to prevent and detect those violations. In addition to the significant financial penalties, each of the firms was ordered to cease and desist from future violations of the relevant recordkeeping provisions and were censured. In agreeing to settle the charges, the firms admitted the facts set forth in their respective SEC orders, acknowledged that their conduct violated recordkeeping provisions of the federal securities laws, and agreed to pay penalties aggregating to more than $1.1 billion. The firms also agreed to retain compliance consultants to, among other things, conduct comprehensive reviews of their policies and procedures relating to the retention of electronic communications found on personal devices and their respective frameworks for addressing non-compliance by their employees with those policies and procedures. Separately, the Commodity Futures Trading Commission announced settlements with the firms for related conduct.

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

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