Skadden

Investment Management Update

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Closed-End Fund Activism Update: Shareholder Rights Plans as an Alternative to State Control Share Statutes

In December 2023, the U.S. District Court for the Southern District of New York (SDNY) ruled in favor of a group of activist investors challenging several Maryland-domiciled closed-end funds' adoption of resolutions opting into Maryland's control share statute.[1]

Control share statutes, such as the Maryland Control Share Acquisition Act, are state corporate laws that say once an acquiring person reaches a certain threshold of ownership, the acquiring person must go to the unaffiliated shareholder base and get its approval before voting shares in excess of the applicable ownership threshold.

The court found that these closed-end funds' resolutions opting into Maryland's control share statute violated Section 18(i) of the Investment Company Act of 1940 (1940 Act), which provides that, "Except … as otherwise required by law, every share of stock … shall be a voting stock and have equal voting rights with every other outstanding voting stock."

This decision aligns with the U.S. Court of Appeals for the Second Circuit's affirmation of a separate ruling that certain Massachusetts-domiciled closed-end funds violated Section 18(i) by adopting provisions in their bylaws mimicking a control share statute. The SDNY ruling on Maryland's control share statute has been appealed to the Second Circuit, and the appeal is pending.

In light of these decisions and continued uncertainty around the status of state control share statutes under the 1940 Act, closed-end funds should consider shareholder rights plans as an alternative to relying on state control share statutes or control share bylaws.

Once adopted, a shareholder rights plan makes a company a harder target for hostile activity by confronting a would-be acquirer with significant dilution in the event they acquire voting shares of the company without board approval in excess of a threshold amount determined by the board (typically 10-20% of outstanding shares).

Upon the rights being triggered, all holders of rights, other than the triggering party, may buy additional shares in the company — or, in certain cases, the stock of the potential acquirer — at a substantial discount to the then-current market price. As a result, parties interested in acquiring a significant ownership position in a company are encouraged to negotiate directly with the board and are discouraged from attempting to seek to achieve a position of substantial influence or control while ignoring the interests of other unaffiliated shareholders.

Courts have been sympathetic to the proposition that rights plans serve as a mechanism to require a bidder to increase its price, to protect the company against an inadequate offer and to give the board time to formulate an alternative to an unsolicited proposal that is not in the best interests of the company and its shareholders.

Although the 1940 Act restricts the use of rights plans by registered investment companies in certain ways, rights plans can be crafted within such restrictions (including to address anti-dilution policy concerns under the 1940 Act) and remain a viable option when an activist threatens long-term shareholder value in a closed-end fund.

[1] *Saba Capital Master Fund, LTD. et al. v. ClearBridge Energy Midstream Opportunity Fund Inc. et al.*, Case No. 23-cv-5568 (SDNY).

The SEC has not publicly expressed a view as to the legality under the 1940 Act of registered investment companies adopting shareholder rights plans. However, its staff has acknowledged that the only federal court cases to consider the legality of a closed-end fund adopting a shareholder rights plan under the 1940 Act concluded that such adoption, and the serial renewal of the shareholder rights plan every 120 days, did not violate the 1940 Act.

Please see our December 7, 2023, client alert for a more complete discussion of the potential use of shareholder rights plans as an alternative to relying on state control share statutes or control share bylaws.

Second Circuit Limits SEC's Ability To Seek Disgorgement

In an October 31, 2023, decision in the case *SEC v. Govil*, the Second Circuit limited the Securities and Exchange Commission's (SEC's) disgorgement powers and widened its split over the issue of SEC disgorgement authority with the U.S. Court of Appeals for the Fifth Circuit.

In 2021, the SEC brought an enforcement action against Aron Govil, a controlling shareholder of Cemtrex, alleging fraud. During a Cemtrex securities offering, the SEC alleged that Govil represented to investors that Cemtrex would use the proceeds of the offering to satisfy outstanding corporate debts and for general corporate purposes, but in fact rerouted more than $7.3 million in proceeds to his personal accounts.

Govil entered into a settlement agreement with Cemtrex, pursuant to which he paid back $7.1 million of the proceeds ($1.5 million via a promissory note to Cemtrex and the remainder via surrender of all of his Cemtrex securities). Govil also entered into a consent agreement with the SEC, pursuant to which Govil consented to the entry of judgment on all counts of securities fraud. This agreement left the question of disgorgement undetermined.

The SEC secured a partial judgment in district court consistent with the consent agreement and moved for Govil to be ordered to pay an additional approximately $7.3 million — the amount of money that was defrauded from investors. The request was based on Securities Exchange Act amendments from 2021 (Section 21(d)) authorizing federal courts to grant "any equitable relief that may be appropriate or necessary for the benefit of investors" and disgorgement specifically.

Govil opposed the motion, arguing that disgorgement should be reduced by the amount already paid to the company under the settlement agreement. The district court concluded that Cemtrex's investors, not Cemtrex, were harmed by Govil's misconduct and ordered Govil to pay $5.8 million in disgorgement for distribution to the harmed investors, crediting the $1.5 million Govil paid under the promissory note but not the surrender of securities. Govil appealed.

Second Circuit Decision

First, the Second Circuit sided with Govil, stating that additional disgorgement was not authorized by statute. The court observed that in *Liu v. SEC* (2020), the U.S. Supreme Court held that disgorgement was an equitable remedy, and as such the disgorgement amount should:

- Not exceed a defendant's net profits.
- Be awarded to the victims.

The issue in *Govil* was whether the Cemtrex investors should be considered "victims." Although the Supreme Court in *Liu* did not define "victim," it did provide some guiding principles, focused around restoring the status quo. The Second Circuit reasoned that the Cemtrex investors were not, or at least had not yet been determined to be, victims for purposes of disgorgement; disgorgement is proper only where victims suffer pecuniary harm.

Under the record in *Govil*, the Second Circuit concluded that allowing the investors to reap the benefits of disgorgement, if they did not suffer pecuniary harm, would grant them a windfall rather than restoring the status quo. Since the lower court had yet to make a determination regarding pecuniary harm suffered by Cemtrex investors, the Second Circuit remanded the case.

Second, the court determined that, even if disgorgement were authorized, the SEC had erred in calculating the proper amount of disgorgement. The court reasoned that the primary goal of disgorgement is not to compensate victims but to strip the defendant of their ill-gotten gains.

Accordingly, the Second Circuit found that Govil's return of his Cemtrex securities should have been credited when calculating the amount of disgorgement, consistent with Second Circuit precedent. Forcing Govil to pay disgorgement amounts twice would result in a penalty beyond the scope of an equitable remedy, the court found.

In remanding the case, the Second Circuit instructed the lower court that if it is determined that the investors suffered pecuniary harm and disgorgement is thus proper, the securities returned to Cemtrex be credited in determining the overall amount of disgorgement.

Govil severely limits the SEC's ability to seek disgorgement in cases where investors have not been shown to have suffered pecuniary harm as a result of a defendant's alleged misconduct.

The ruling also solidifies the Second Circuit's split with the Fifth Circuit. In *SEC v. Hallam* (2022), the Fifth Circuit ruled that Section 21(d)(7) of the Exchnge Act authorized "disgorgement in a legal — not equitable — sense," meaning disgorgement does not need to follow the Liu requirements for equitable remedies.

Section 24(d)(5) of the Exchange Act only mentions "equitable relief," while Section 21(d)(7), enacted after *Liu*, explicitly mentions the power of disgorgement. The Second Circuit understood Section 21(d)(7) as a clarification that equitable disgorgement is an available remedy.

Conversely, the Fifth Circuit used various canons of interpretation, including Congress' intentional use of different language in the two sections, to reach the conclusion that the "disgorgement" authorized by Section 21(d)(7) is not an equitable remedy but a "legal" one.

Given the significance of the question of available remedies to both regulators and defendants, the Supreme Court may be asked to resolve the circuit split in the near future.

SEC Approves First Spot Bitcoin ETPs

On January 10, 2024, the SEC approved applications from three different national securities exchanges to amend their rules so that they could list and trade shares of 11 different spot bitcoin exchange-traded products (ETPs).

While the SEC previously approved bitcoin futures ETPs, these approvals mark the first time the SEC has approved ETPs that invest directly in bitcoin.

Approval Follows DC Circuit's Remand

The SEC's approvals are a response to the U.S. Court of Appeals for the District of Columbia Circuit's August 2023 order vacating the SEC's denial of NYSE Arca, Inc.'s application to list and trade shares of Grayscale's Bitcoin Trust as a spot bitcoin ETP and remanding the application to the SEC for further review.[2]

The SEC rejected NYSE Arca's proposed bitcoin ETP in June 2022 because the exchange had not met its burden under the Exchange Act to demonstrate that its proposal was consistent with Section 6(b)(5)'s requirement that the rules of the exchange be "designed to prevent fraudulent and manipulative acts and practices."

Specifically, the SEC asserted that NYSE Arca failed to meet the SEC's requirement of having a sufficient surveillance-sharing agreement with a related and regulated market because the Chicago Mercantile Exchange (CME) failed the SEC's "significant market" test. In addition, the SEC asserted that NYSE Arca failed to demonstrate "other means" sufficient to satisfy Section 6(b)(5).

The D.C. Circuit noted, however, that the SEC had approved in spring 2022 two bitcoin futures ETPs wherein the SEC found that the exchange for both products had a surveillance-sharing agreement with the CME that the SEC found satisfied the significant market test.

Further, the D.C. Circuit stated Grayscale Bitcoin Trust's proposed spot bitcoin ETP was materially similar to the two approved bitcoin futures ETPs, given that:

- Prices of bitcoin and bitcoin futures are closely correlated.
- The surveillance-sharing agreements with CME should have the same likelihood of detecting fraudulent or manipulative conduct on the listed exchanges.

The court deemed the spot bitcoin ETP as being similar enough to the approved bitcoin futures ETPs to merit receiving similar regulatory treatment and found the SEC had failed to provide a "coherent explanation" for the differential applications of the significant market test for the two products.

Therefore, the court held that the SEC's rejection of NYSE Arca's application for the spot bitcoin ETP was "arbitrary and capricious" in failing to follow the administrative law principle that "like cases must receive like treatment."

Reasoning for SEC's 180-Degree Change in Position

In the SEC's approval order for the spot bitcoin ETPs, the SEC underscored that the listing exchange having a surveillance-sharing agreement with a market of significant size related to the underlying bitcoin was not the only way for an exchange to meet its Section 6(b)(5)

[2] *Grayscale Investments, LLC v. SEC*, No. 22-1142, 82 F.4th 1239 (D.C. Cir. 2023).

obligation. The SEC noted that the exchange could also satisfy this obligation by demonstrating that it had "other means to prevent fraudulent manipulative acts and practices" that justified waiving the necessity of having a surveillance-sharing agreement that meets the significant market test.

Based on this alternative path, the SEC found that NYSE Arca had satisfied its Section 6(b)(5) obligation. The purpose of a surveillance-sharing agreement between two markets is that if one manipulates a product in a nonsurveilled market, the surveilled market will be able to detect this misconduct by assessing the correlated impact of the misconduct on another related product in the surveilled market and then share this information with the nonsurveilled market.

Here, spot bitcoin ETPs do not trade on the CME, and the CME does not surveil spot bitcoin markets. However, bitcoin futures ETPs trade on the CME, and the CME surveils bitcoin futures markets. To the extent that manipulation of the spot bitcoin markets on NYSE Arca is correlated with the CME bitcoin futures market, the CME can assess the impact of the misconduct, and the surveillance-sharing agreement between NYSE Arca and CME may be sufficient to prevent fraudulent and manipulative acts and practices.

After conducting a correlation analysis between the prices in the CME bitcoin futures market and the spot bitcoin market, the SEC found that the CME bitcoin futures market is consistently highly correlated with the spot bitcoin market, such that misconduct impacting prices in the spot bitcoin market would likely similarly impact CME bitcoin futures prices.

Given that the surveillance-sharing agreement allows CME to assist NYSE Arca in detecting this misconduct through the correlated price changes in the CME bitcoin futures market, the SEC concluded that NYSE Arca's proposal was consistent with Section 6(b)(5).

The SEC also found that the proposal was consistent with Section 11A(1)(C)(iii), which requires that listed products be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets in order to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

Implications of Spot Bitcoin ETP Passage

In SEC Chair Gary Gensler's statement on the order, he cabined the scope of the approvals. He underscored that bitcoin is a nonsecurity commodity, but that he viewed "the vast majority of crypto assets [as] investment contracts and thus subject to the federal securities laws" — a public position he has consistently taken. Chair Gensler also stated that the approvals did not serve as an endorsement of bitcoin, and investors should remain cautious of it being a "speculative, volatile asset that's also used for illicit activity."

While the spot bitcoin ETP approval does not serve as the SEC's endorsement of bitcoin, it does help provide retail and institutional investors more direct access to bitcoin. Taking the form of an exchange-traded product allows investors to buy or sell shares of spot bitcoin ETPs at prices that track bitcoin prices. In addition, investors may trade such ETPs with the benefit of access to public registration statements and periodic filings.

FINRA Releases 2024 Regulatory Oversight Report

On January 9, 2024, the Financial Industry Regulatory Authority (FINRA) published the 2024 FINRA Annual Regulatory Oversight Report (the Report), which identifies key findings, emerging risks and continuing priorities.

New topics addressed by the Report include:

- Market integrity, including Over-the-Counter (OTC) Quotations in Fixed Income Securities (Rule 15c2-11 under the Exchange Act), Advertised Volume (FINRA Rule 5210) and the Market Access Rule (Rule 15c3-5 under the Exchange Act).
- Cryptoassets.
- Considerations regarding firms' compliance with books and records requirements, with a focus on "off -channel communications."
- The potential impact of artificial intelligence (AI) and the 2023 amendments to Rule 17a-4 under the Exchange Act regarding the maintenance and preservation of electronic records.

Notable findings and emerging risks in the Report include:

- **Cryptoasset developments.** The Report provides considerations for firms that may want to manage cryptoasset-related risks and guidance for firms looking to engage in cryptoasset-related activities.
- **Advertised volume.** FINRA highlighted findings such as inflating trade volume due to technical or procedural failures, and failing to establish and maintain supervisory systems reasonably designed to achieve compliance with FINRA Rule 5210. This rule prohibits member firms from publishing or circulating, or causing to be published or circulated, any communication that purports to report any transaction as a purchase or sale of any security unless such member believes that such transaction was a bona fide purchase or sale of such security.
- **Market Access Rule.** The Report includes findings and considerations for firms required to comply with the Market Access Rule. This rule requires firms with market access or that provide market access to their customers to appropriately control the risks associated with market access so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets and the stability of the financial system.

Continuing areas of focus for FINRA include:

- **Reg BI and Form CRS.** FINRA will continue to focus on examination of firms' implementation of Reg BI and Form CRS obligations.
- **Consolidated Audit Trail (CAT).** FINRA will continue to evaluate the CAT Rule compliance of member firms that receive or originate orders in National Market System stocks, OTC equity securities and listed options.
- **Anti-money laundering (AML) fraud and sanctions.** FINRA will continue to focus on the requirement for member firms to develop, implement and maintain written AML policies and procedures reasonably designed to achieve and monitor compliance with the Bank Secrecy Act and regulatory scheme.
- **Cybersecurity.** FINRA has observed an increase in the frequency, sophistication and variety of certain cybersecurity incidents, including insider threats, ransomware, imposter websites and cybersecurity events at critical vendors. FINRA will continue to focus on firms' cybersecurity risk management programs.

SEC Share Repurchase Disclosure Modernization Rule Overturned

On December 19, 2023, the Fifth Circuit vacated the SEC's Share Repurchase Disclosure Modernization Rule (the Rule), finding that the SEC violated the Administrative Procedure Act (APA) by acting "arbitrarily and capriciously" in issuing the Rule.[3]

The Rule would have broadened the disclosure requirements for stock buybacks by requiring issuers to report daily share repurchase information, such as how many shares they repurchased on a given day and the average price at which the shares were repurchased. Additionally, the Rule would have required issuers to disclose the criteria used to determine repurchase amounts, as well as whether certain members of management traded in such shares within four business days of a repurchase announcement.

The SEC approved the Rule in May 2023, and the U.S. Chamber of Commerce, the Longview Chamber of Commerce, and the Texas Association of Business challenged the Rule that same month, arguing that the Rule violated the APA.

In October 2023, the Fifth Circuit remanded the Rule to the SEC and gave the SEC until November 30, 2023, to correct the defects identified in the adoption Rule. Specifically, the court found that the SEC failed to adequately respond to comments submitted by the U.S. Chamber of Commerce and other business groups and failed to conduct a proper cost-benefit analysis in connection with the Rule.

The SEC stayed the Rule and asked the Fifth Circuit to allow for more time to correct the defects, but the Fifth Circuit declined, instead vacating the Rule in its entirety.

Following the Fifth Circuit's ruling, the SEC staff is expected to present new rulemaking recommendations regarding share repurchase disclosures to the commission.

[3] *Chamber of Commerce of the United States of America et al. v. SEC*, Case No. 23-60255 (5th Cir. 2023).

Outstanding Regulatory Proposals Primed for SEC Action in 2024

SEC rulemaking activity in the coming year could address several outstanding proposals introduced in 2022 and 2023, including:

- **Predictive data analytics/conflict of interest rule.** The SEC proposed new rules on July 26, 2023 (the Proposed Conflicts Rules), under the Exchange Act and the Advisers Act to remove or counteract the impact of specific conflicts of interest related to broker-dealers or investment advisers engaging with investors through the use of technologies that optimize, predict, guide, forecast or direct investment-related behaviors or outcomes. See our August 10, 2023, client alert for a detailed discussion of the Proposed Conflicts Rules.
- **Safeguarding advisory client assets.** On February 15, 2023, the SEC proposed a new rule under the Advisers Act to address how investment advisers safeguard client assets. The SEC proposed to amend certain provisions of the current custody rule for enhanced investor protections and is proposing corresponding amendments to the record-keeping rule under the Advisers Act, to require more detailed records of trade and transaction activity and to Form ADV for investment adviser registration under the Advisers Act. As proposed, the changes would also expand the reach of the custody rule beyond client funds and securities to include all "funds, securities, or other positions held in a client's accounts," including cryptoassets, of which an SEC-registered investment adviser has custody. The SEC reopened the comment period for this proposal on August 23, 2023. See our March 24, 2023, client alert for more information on the proposal.
- **Best Execution/Order Competition Rule.** The SEC's Regulation Best Execution rules proposal, issued December 14, 2022, would enhance the existing regulatory framework concerning the duty of best execution by requiring detailed policies and procedures for all broker-dealers. The proposal would also require more robust policies and procedures for broker-dealers engaging in certain conflicted transactions with retail customers, as well as related review and documentation requirements. See the SEC's proposing release for more information.
- **Liquidity risk management programs and swing pricing.** The SEC proposed amendments to the current rules for registered open-end funds with respect to liquidity risk management programs, swing pricing and various reporting forms on November 2, 2022. According to the SEC, the amendment proposals are designed to improve liquidity risk management programs, better prepare funds for stressed conditions, improve transparency in liquidity classifications and "mitigate dilution of shareholders' interests in a fund by requiring any open-end fund, other than a money market fund or exchange-traded fund (ETF), to use swing pricing" under certain conditions. See "Liquidity Rule Amendments: Interval Funds to the Rescue?" in the April 2023 issue of this newsletter for a more complete discussion of the proposed amendments.
- **Outsourcing by investment advisers.** On October 26, 2022, the SEC proposed a new Rule 206(4)-11 and amendments to Rule 204-2 under the Advisers Act, as well as amendments to Form ADV, regarding the use of third-party service providers by investment advisers who are registered or required to be registered under the Advisers Act. See our November 22, 2022, client alert for a detailed discussion of the proposal.
- **ESG fund and adviser disclosures.** On May 25, 2022, the SEC proposed enhanced disclosure requirements applicable to funds, business development companies and investment advisers that consider environmental, social and governance factors in their portfolios. Standardization of disclosure requirements, as part of an effort to provide more decision-useful information to investors, provided the impetus for the proposal, which outlines tiers of disclosure requirements for the applicable entities. See our "SEC Rules Update" in the August 2022 issue of this newsletter for further details.

- **Public company climate risk disclosure.** On March 21, 2022, the SEC issued a rule proposal aimed at standardizing climate-related disclosure by public companies. A registrant, under the proposed rules, would be required to furnish disclosures about greenhouse gas emissions, certain financial statement disclosures, and qualitative and governance disclosures within its annual reports (*e.g.*, Form 10-K) and registration statements. For more information on the proposed rules, see our March 24, 2022, client alert and "SEC Proposals Update" in the May 2022 issue of this newsletter.

Upcoming Compliance Dates for Recently Adopted Final Rules

Amended Rules on Proxy Vote and Executive Compensation Vote Reporting

On July 1, 2024, amendments to Form N-PX requiring disclosure of certain proxy voting practices (the Form N-PX Amendments) will become effective. Mutual funds, ETFs and certain other registered funds (collectively, Covered Funds), as well as investment managers, must file their first reports covering the period from July 1, 2023, to June 30, 2024, on amended Form N-PX by August 31, 2024.

Among other things, the Form N-PX Amendments will require Covered Funds to:

- Identify the matters that they vote on and to present them in the same order as the matters appear in the proxy card.
- Disclose the number of shares voted or instructed to be cast and how those shares were voted.
- Categorize the votes that they report by selecting from a set of categories that appear on the new Form N-PX.

In addition, the Form N-PX Amendments require investment managers subject to the reporting requirements of Section 13(f) of the Exchange Act to report annually on Form N-PX each say-on-pay vote over which they exercised voting power.

For more information on the Form N-PX Amendments, see "Amended Rules on Proxy Vote and Executive Compensation Vote Reporting" in the February 2023 issue of this newsletter.

Restructured Mutual Fund/ETF Shareholder Reports and Amended Advertising Requirements

On July 24, 2024, open-end management investment companies registered on Form N-1A (OEFs) must comply with rule and form amendments that alter shareholder reporting requirements and prescribe express disclosure standards for the presentation of fees and expenses in registered investment company and business development company advertisements, sales literature and other offering-related communications (the Amendments).

According to the adopting release, the Amendments will require OEFs to:

- Provide concise, tailored shareholder reports that highlight particularly important information for shareholders, *i.e.*, fund expenses, performance and portfolio holdings.
- Make available online certain information that may be more relevant to investors and financial professionals who desire more in-depth information.
- Send the tailored shareholder reports directly to shareholders, as OEFs will no longer be able to rely on Rule 30e-3.

In addition, the Amendments would require that presentations of investment company fees and expenses in advertisements and sales literature be consistent with relevant prospectus fee table presentations and be reasonably current.

For a more detailed description of the Amendments, see "Restructured Mutual Fund/ETF Shareholder Reports and Amended Advertising Requirements" in the February 2023 issue of this newsletter.

Securities Loan Reporting Rule

On January 2, 2026, Covered Persons, as defined below, will be required to comply with Rule 10c-1a under the Exchange Act.

A Covered Person is:

- Any person that agrees to a covered securities loan on behalf of the lender other than a clearing agency when providing only the functions of a central counterparty or a central securities depository.
- Any person that agrees to a covered securities loan as the lender when an intermediary is not used.
- The broker or dealer when borrowing fully paid or excess margin securities.

Rule 10c-1a requires that a Covered Persons report specified information about securities loans to a registered national securities association (RNSA), in the format and manner required by the RNSA, and within specified time periods. In addition, Rule 10c-1a requires RNSAs to make publicly available certain information they receive, within specified time periods, and to keep confidential certain information they receive.

Short Sale Reporting Rule

On January 2, 2025, institutional investment managers (Managers) will be required to comply with new Rule 13f-2 and related Form SHO and an amendment to the national market system plan (NMS Plan) governing the consolidated audit trail (CAT). Rule 13f-2 will require Managers that meet or exceed certain prescribed reporting thresholds to report on Form SHO certain short position and short activity data for equity securities.

Among other changes, the amendment to the NMS Plan will require CAT reporting firms to indicate whether an order is a short sale effected by a market maker in connection with bona fide market making activities for which the bona fide market making exception in Rule 203(b)(2)(iii) of Regulation SHO is claimed.

Amendments to Beneficial Ownership Reporting (13D/G)

On September 30, 2024, reporting persons must comply with the rule and form amendments regarding beneficial ownership reporting under Sections 13(d) and 13(g) of the Exchange Act (the Beneficial Ownership Amendments).

Beneficial ownership reporting rules require investors who own more than 5% of a covered class of equity securities to file a Schedule 13D or 13G.

The Beneficial Ownership Amendments:

- Shorten the deadlines for initial and amended Schedule 13D and 13G filings.
- Clarify the Schedule 13D disclosure requirements with respect to derivative securities.
- Require that Schedule 13D and 13G filings be made using a structured, machine-readable data language.

For further details regarding the Beneficial Ownership Amendments, see "SEC Adopts Amendments to Beneficial Ownership Reporting Rules" in the November 2023 issue of this newsletter.

Amendments to Fund Names Rule

On December 10, 2025, and June 10, 2026, fund groups with net assets of $1 billion or more and fund groups with net assets of less than $1 billion, respectively, must comply with the amendments to Rule 35d-1 (the Fund Names Rule) under the 1940 Act as well as several forms and disclosure requirements (collectively, the Names Rule Amendments).

Among other things, the Names Rule Amendments:

- Expand the current requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus the fund's name suggests.
- Provide new enhanced disclosure and reporting requirements.
- Require that funds review the classifications of their portfolio assets with respect to their 80% investment policies on at least a quarterly basis. If a fund is not in compliance with its 80% investment policy upon such review, the fund must come back into compliance within 90 days.
- Update the rule's current notice requirements and establish record-keeping requirements.

The Names Rule Amendments significantly alter the regulatory landscape for registered funds and business development companies, and require careful consideration of whether changes to existing fund names, 80% investment policies and disclosures are necessary. If they are, parties should determine how such changes should be disclosed, including whether a post-effective amendment to a registration statement pursuant to Rule 485(a) or Rule 485(b) under the Securities Act or a prospectus sticker is required.

For a more complete discussion of the Names Rule Amendments, see "SEC Adopts Amendments to Fund Names Rule" in the November 2023 issue of this newsletter.

Money Market Fund Reforms

The SEC adopted amendments to certain rules that govern money market funds under the 1940 Act (Money Market Reforms).

Among other things, the Money Market Reforms:

- Increase minimum daily and weekly liquidity requirements.
- Remove provisions from Rule 2a-7 that permit a money market fund to temporarily suspend investor redemptions (*i.e.*, impose a gate) and remove the regulatory tie between the imposition of liquidity fees and a fund's liquidity level.
- Require institutional prime and institutional tax exempt money market funds to implement a liquidity fee framework.
- Enhance certain reporting requirements on Forms N-MFP, N-CR and PF.

Compliance with the Money Market Reforms is required over a 12-month period as follows:

- Removal of the redemption gate provisions: by October 2, 2023.
- Increased minimum liquidity requirements: by April 2, 2024.
- Amendments to Forms N-MFP, N-CR and PF: by June 11, 2024.
- Mandatory liquidity fee framework: by October 2, 2024.

T+1 Standard Settlement Times for Most Securities Transactions

On May 28, 2024, broker-dealers and investment advisers must begin complying with the SEC's new Rule 15c6-2 and amendments to Rule 15c6-1 (the Settlement Rules) under the Exchange Act.

Under the Settlement Rules, broker-dealers will be prohibited from entering into:

- Securities transactions (other than for exempt securities) that provide for settlement later than T+1, *i.e.*, that result in the payment of funds and delivery of securities later than one business day after the transaction date.
- Firm commitment offerings priced after 4:30 p.m. Eastern time that provide for settlement later than T+2, *i.e.*, that result in the payment of funds and delivery of securities later than two business days following the transaction date.

In addition, broker-dealers and investment advisers must comply with new requirements related to affirmations, confirmations and allocations following execution of certain institutional transactions.

For additional discussion of the Settlement Rules, see "T+1 Standard Settlement Times for Most Securities Transactions" in the February 2023 issue of this newsletter.