GODFREY KAHN S.C.

Investment Management Focus

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Godfrey & Kahn Investment Management Team Members Responsible for this Update

Christopher M. Cahlamer
414.287.9338
ccahlamer@gklaw.com

Leah N. Cry
608.284.2232
lcry@gklaw.com

Julie A. D'Angelo
608.284.2622
jdangelo@gklaw.com

Carol A. Gehl
414.287.9255
cgehl@gklaw.com

Susan M. Hoaglund
262.951.7136
shoaglund@gklaw.com

Legal and Regulatory Update

Latest Developments

DOL Issues Request for Information Regarding Fiduciary Rule and Best Interest Contract Exemption

On June 29, 2017, the DOL issued a request for information in connection with its examination of the fiduciary rule expanding the definition of "fiduciary" under ERISA and the Internal Revenue Code (Code), as well as the new and amended prohibited transaction class exemptions (PTEs) published in conjunction with the fiduciary rule, including the best interest contract exemption (BIC Exemption). The request specifically seeks public input regarding whether the January 1, 2018 applicability date should be delayed and input that could form the basis for new exemptions or revisions to the fiduciary rule and the PTEs. The deadline for submitting responses relating to extending the January 1, 2018 applicability date is July 21, 2017, and the deadline for all other responses is August 7, 2017.

Potential Delay of January 1, 2018 Applicability Date. As we reported in our April 2017 Update, the expanded fiduciary definition and the "Impartial Conduct Standards" in the BIC Exemption for investment advisers and other fiduciaries who make recommendations to "retirement investors" (which includes many smaller plans, participants in a 401(k) plan and IRA owners) went into effect June 9, 2017. The DOL simplified compliance with the BIC Exemption during the transition period from June 9, 2017 to December 31, 2017 (Transition Period). During the Transition Period, advisers only have to comply with the Impartial Conduct Standards and not the other conditions of the BIC exemption, such as written disclosure requirements. The DOL is seeking comment on an extension of the Transition Period and a delay in the January 1, 2018 applicability date.

Possible Additional Exemption Approaches or Revisions to the Fiduciary Rule. The DOL noted in its request that recent public input on the fiduciary rule and the PTEs has suggested it may be possible to create "new and more streamlined exemptions and compliance mechanisms" as a result of recent innovations in the financial services industry, such as the use of "clean shares" as a long-term approach to mitigating conflicts of interest with respect to mutual funds. The DOL stated that it is particularly interested in public input on whether it would be appropriate to adopt an additional, more streamlined exemption or other rule changes for advisers and brokers committed to taking new approaches based on the potential for reducing conflicts of interest and increasing transparency.

General Questions. The DOL also requested responses to several general questions, including the following:

- Do the fiduciary rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest?
- Do the fiduciary rule and PTEs effectively allow advisers and brokers to provide a wide range of products that can meet each investor's particular needs?
- What is the likely impact on firms' compliance incentives if the DOL eliminated or substantially altered the contract requirement for IRAs under the BIC Exemption?
- What is the likely impact on firms' compliance incentives if the DOL eliminated or substantially altered the warranty requirements?
- Would mutual fund clean shares allow firms to develop policies and procedures that avoid compensation incentives to recommend one mutual fund over another?
- Do commenters anticipate that some mutual funds will proceed with T share offerings instead of, or in addition to, clean shares? If so, why?
- Could the DOL base a streamlined exemption on a model set of policies and procedures?
- If the SEC were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for firms that comply with or are subject to those standards?
- Are there ways to simplify the BIC Exemption disclosures or to focus the investor's attention on a few key issues, subject to more complete disclosure upon request?
- Should recommendations to make or increase contributions to a plan or IRA be expressly excluded from the definition of investment advice?

This may be a good opportunity for advisers to show their support for the comments submitted by the Investment Adviser Association (IAA) on the fiduciary rule. The IAA notes that virtually all of its members are fee-based discretionary investment managers and, as such, are already fiduciaries under ERISA and subject to prohibited transaction provisions of the Code with respect to their ongoing relationships with their retirement plan and IRA clients. The IAA further notes that the fiduciary rule "nevertheless will have significant, unwarranted – and in some cases, unintended – consequences for advisers that are already ERISA fiduciaries" because the rule applies to pre-contract and sales discussions with prospective retirement investor clients. The IAA urged the DOL to re-propose the rule and exemptions to carve out such pre-contract discussions from the rule's application.

Sources: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions, U.S. Department of Labor, Employee Benefits Security Administration, RIN 1210-AB82 (June 29, 2017), available at https://www.gpo.gov/fdsys/pkg/FR-2017-07-06/pdf/2017-14101.pdf; Investment Adviser Association, Comments Regarding Fiduciary Rule Examination, RIN 1210-AB79 (April 17, 2017), available at https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/170417cmnt.pdf.

SEC Requests Comments on Standards of Conduct Applicable to Investment Advisers and Broker-Dealers Advising Retail Investors

In a public statement on June 1, 2017, SEC Chairman Jay Clayton invited comments from retail investors and other interested parties on the standards of conduct for investment advisers and broker-dealers providing investment advice to retail investors.

Citing significant developments in the marketplace since the SEC last solicited information from the public on this subject in 2013 (*e.g.*, financial innovations, changes to investment adviser and broker-dealer business models, and regulatory developments), Chairman Clayton expressed his belief that an updated assessment of the current regulatory framework, the current state of the market for retail investment advice and current market trends "is important to the Commission's ability to evaluate the range of potential regulatory actions." To that end, the SEC established a webform and an email box for members of the public to use to make their views on these issues known publicly in advance of any future SEC action. The SEC has not provided a deadline for comments.

Chairman Clayton's statement included numerous questions on specific subjects about which he is requesting comment, including:

- the definition of investment advice;
- conflicts of interest;
- robo-advisers;
- the effect on market participants of differing standards for investment advisers and broker-dealers and whether those standards should be harmonized;
- the best approach for the SEC to take on regulatory actions: incremental or comprehensive;
- the availability of private remedies;
- regulatory developments in foreign jurisdictions; and
- the experience of market participants with implementing the DOL fiduciary rule.

Chairman Clayton noted that the fiduciary rule may have significant effects on retail investors and entities regulated by the SEC. He indicated that he and DOL Secretary Alexander Acosta plan to "engage constructively" and coordinate their concurrent reviews and analyses of fiduciary standards.

Source: Public Statement of SEC Chairman Jay Clayton, Public Comment on Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers, June 1, 2017, available at https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

OCIE Issues Ransomware Alert

On May 17, 2017, the SEC's Office of Compliance Inspections and Examinations (OCIE) issued a Risk Alert regarding the global ransomware attack, known as WannaCry, which began on May 12, 2017. OCIE stated that the purpose of the Risk Alert was to highlight "the importance of conducting penetration tests and vulnerability scans on critical systems and implementing system upgrades on a timely basis."

OCIE referred to its Cybersecurity Examination Initiative during which it examined 75 SEC-registered broker-dealers, investment advisers and investment companies to assess industry practices and legal, regulatory and compliance issues associated with cybersecurity preparedness. It highlighted some of the risks and issues that OCIE identified during its examinations that firms should consider to (i) assess their supervisory, compliance and/or other risk management systems related to cybersecurity risks, and (ii) make any changes necessary to address or strengthen those systems. In particular, OCIE noted the following weaknesses, all of which are particularly relevant to small registrants:

- failure to conduct periodic risk assessments of critical systems to identify cybersecurity threats, vulnerabilities and the potential business consequences;
- failure to conduct penetration tests and vulnerability scans on systems that the firms considered to be critical; and
- failure to install important updates to critical and high-risk security patches.

OCIE reminded firms that both the SEC and FINRA have provided guidance and information for firms on cybersecurity risks and response capabilities and cited several IM Guidance Updates and National Exam Program Risk Alerts, as well as FINRA's webpage that has links to cybersecurity-related resources for member firms.

Source: National Exam Program Risk Alert, Cybersecurity: Ransomware Alert, Office of Compliance Inspections and Examinations (May 17, 2017), available at: https://www.sec.gov/files/risk-alert-cybersecurity-ransomware-alert.pdf.

Funds Allowed to Retain Interim Sub-adviser beyond Rule 15a-4 Extension Period without Shareholder Approval

Background. Nuveen Fund Advisors, LLC (Nuveen) requested assurance that the staff of the SEC's Division of Investment Management (IM Division) would not recommend an enforcement action against NWQ Investment Management Company, LLC (NWQ) under Section 15(a) of the Investment Company Act if NWQ continued to serve as investment adviser to certain series (Funds) of two registered open-end investment companies, Nuveen Investment Trust and Nuveen Investment Trust II (Trusts), pursuant to sub-advisory agreements that were not approved by shareholders.

Section 15(a) of the Investment Company Act prohibits a person from serving as an investment adviser of a registered investment company without a written contract that has been approved by a vote of a majority of the outstanding voting securities of the registered investment company. Rule 15a-4 under the Investment Company Act provides a temporary exemption from the shareholder approval requirement where, among other circumstances, the registered investment company's board of directors has terminated the previous advisory contract. In that case, the rule permits a person to act as an adviser under an interim advisory contract without the required shareholder approval for up to 150 days following the date on which the previous contract was terminated, subject to certain requirements.

Discussion. In its letter to the staff, Nuveen, which serves as investment adviser to the Funds, explained that, at a May 2016 meeting, the Board of Trustees (Board) of the Trusts approved the termination of each Fund's sub-advisory agreement with Tradewinds Global Investors, LLC, the previous sub-adviser, and appointed NWQ as sub-adviser to each of the Funds pursuant to interim sub-advisory agreements. Each interim sub-advisory agreement was scheduled to terminate no later than December 29, 2016 (Expiration Date), which was 150 days after the agreements with NWQ became effective.

At the same meeting, the Board determined that the reorganization of the Funds into another series was in the best interests of each Fund. The Board also approved the longer-term appointment of NWQ as the sub-adviser to each Fund pursuant to a new sub-advisory agreement in the event a Fund's reorganization was not approved by shareholders and completed before the Expiration Date.

After sending a joint proxy statement/prospectus to shareholders soliciting approval of the reorganization and the new sub-advisory agreements, Nuveen and its proxy solicitor actively solicited votes in an effort to achieve a quorum for each Fund. However, by November 2016, Nuveen determined that neither Fund would receive the

number of votes necessary to reach a quorum by the Expiration Date. Accordingly, Nuveen requested assurance from the IM Division that it would not recommend enforcement action against NWQ under Section 15(a) of the Investment Company Act if NWQ continued to serve as sub-adviser to the Funds for an additional period after the interim period allowed by Rule 15a-4. The additional period would not exceed the earliest of (i) completion of the reorganization, (ii) shareholder approval of the applicable Fund's new sub-advisory agreement, or (iii) 60 days after the Expiration Date. Nuveen and the Trusts had determined that extending the interim sub-advisory agreements would be in the best interests of the Funds and the Board approved the extension. Nuveen argued that, without the extension, it may have been necessary to liquidate the Funds.

No-action relief. In reviewing Nuveen's request, the staff took particular note of the representations by the Funds and Nuveen that they would take the following steps during the additional period:

- Nuveen and the Funds, with the assistance of their proxy solicitor, would continue their proxy solicitation efforts to seek to reach a quorum. Nuveen would bear all proxy solicitation expenses during the additional period.
- Nuveen would waive the portion of each Fund's investment advisory fee in an amount equal to the amount of the sub-advisory fee that would have been payable by Nuveen to NWQ under the original terms of the interim sub-advisory agreements.
- Except as necessary to reflect the relief granted, the terms and conditions of the interim sub-advisory agreements would not change.

Based on these representations and the facts presented in Nuveen's letter, the staff granted Nuveen no-action relief, allowing for the extension of the interim sub-advisory agreements without shareholder approval beyond the 150 days allowed under Rule 15a-4.

Sources: Nuveen Fund Advisors, LLC, SEC No-Action Letter (June 20, 2017), available at https://www.sec.gov/divisions/investment/noaction/2017/nuveen-fund-advisors-15a-062017.htm; Incoming Letter available at https://www.sec.gov/divisions/investment/noaction/2017/nuveen-fund-advisors-15a-062017-incoming.pdf.

SEC Issues New FAQs Interpreting Form ADV Part 1A Amendments

As we reported in our October 2016 Update, the SEC adopted amendments to Form ADV and the Advisers Act that will take effect for most advisers (*i.e.*, those with December 31 fiscal year-ends) beginning with the annual update to Form ADV due in March 2018, as well as for advisers filing interim amendments to Form ADV on or after the October 1, 2017 compliance date. The amendments added new reporting requirements designed to collect additional information about an adviser's separately managed accounts and other data and to allow "umbrella registration" for certain private fund advisers.

On June 12, 2017, the SEC issued new FAQs interpreting the amendments. The staff's guidance addresses a number of disclosure items, including the following:

- *Item 1.I (social media platforms)*: Pursuant to the amendments, advisers must now disclose accounts they hold on publicly available social media platforms (*e.g.*, Twitter, Facebook and LinkedIn) for which the adviser controls the content. In its FAQs on this item, the staff reiterated that advisers should not provide the address of accounts on these platforms if the platforms are controlled by unaffiliated third parties, such as distributors or solicitors. In addition, the staff clarified that this disclosure requirement was not intended to extend to the social media accounts of employees, regardless of whether the adviser controls the content. However, advisers may need to report the address of a social media account controlled by its parent company that references the adviser's business if the adviser provides content for the account and is aware that its parent company uses the account to promote the adviser's business.

- *Item I.J (outsourced Chief Compliance Officer (CCO))*: Pursuant to the amendments, advisers must now indicate if their CCO is compensated or employed by someone other than the adviser. In its FAQ on this item, the staff clarified that an adviser does not need to disclose that its CCO provides CCO services to, and gets compensated by, other firms if those firms are not compensating the CCO for services provided to the filing adviser.
- *Item 5.D (types of clients)*: Pursuant to the amendments, advisers must now disclose the specific number of clients and the amount of regulatory assets under management (Regulatory AUM) attributable to each category of clients (*e.g.*, institutions, high net worth individuals, etc.). In its FAQs on this item, the staff indicated that an adviser should treat each wrap program participant to whom the adviser provides advisory services as a client. In addition, the staff clarified that a firm that subadvises an investment company, business development company or other pooled investment vehicle is providing advice to that company or vehicle and should report those assets in the corresponding rows of Item 5.D and not under "other investment advisers." With respect to the definition of "pooled investment vehicles," the staff clarified that the term is not limited to private funds (*i.e.*, Section 3(c)(1) or 3(c)(7) funds) but may also include other pooled vehicles, depending on the facts and circumstances. For example, Section 3(c)(5) and 3(c)(11) funds, as well as UCITS regulated by the European Commission, would typically be considered pooled investment vehicles. In addition, a single-investor fund may be treated as a pooled investment vehicle if, for example, the fund has one investor because the other investors in the fund have redeemed their interests.
- *Item 5.K and Schedule D, Section 5.K (separately managed account (SMA) clients)*:
  - Item 5.K(1) and Section 5.K(1) of Schedule D require advisers to report the approximate percentage of their SMA Regulatory AUM invested in twelve broad asset categories. In its FAQ on this item, the staff indicated that an adviser to private funds that reports information about parallel managed accounts to those private funds on Form PF should treat those accounts as SMAs.
  - Item 5.K(2) and Section 5.K(2) of Schedule D require advisers with at least $500 million in Regulatory AUM attributable to SMAs to report information regarding the use of borrowings and derivatives in SMAs. With respect to borrowing transactions, the staff clarified that those transactions should include traditional lending activities (*e.g.*, client bank loans), other secured and unsecured borrowings, synthetic borrowings and transactions involving synthetic borrowings, short sales and transactions in which variation margin is owed (but has not been paid by the client as a result of not reaching a certain threshold). The staff also clarified that advisers are not required to report client borrowings of which they are not aware – *e.g.*, if a client arranged a personal loan without the adviser's knowledge and used those loan proceeds to invest assets in the client's advisory account.
- *Schedule R (relying adviser)*: New Schedule R codifies umbrella registration for certain private fund advisers previously allowed under the staff's January 18, 2012 no-action letter to the American Bar Association. In one of the FAQs relating to Schedule R, the staff withdrew its response to Question 4 of the letter because it has been superseded by the SEC's adoption of the amendments to Form ADV. The staff also clarified that an adviser should not file Schedule R with respect to a special purpose vehicle (SPV) that was created to act as a private fund's general partner or managing member and that relies upon the adviser's registration. The staff continues to hold the position expressed in prior no-action letters that it would not recommend enforcement action against an SPV that does not file a Schedule R but meets the fact patterns and conditions described in those letters. Finally, the staff clarified that umbrella registration is not permitted for exempt reporting advisers.

Sources: Updates to Form ADV Frequently Asked Questions, IM Information Update 2017 IM-INFO-2017-04, SEC Division of Investment Management (June 2016), available at https://www.sec.gov/investment/im-info-2017-04.pdf; Frequently Asked Questions on Form ADV and IARD, available at https://www.sec.gov/divisions/investment/iard/iardfaq.shtml.

Court Rules Against Use of "Fiduciary Exception"

As discussed in our April 2017 Update, plaintiffs in the *Chill v. Calamos Advisors LLC* excessive fee case recently argued that the "fiduciary exception" should be applied to allow them access to board materials that had been withheld during discovery under the attorney-client privilege. Under the fiduciary exception theory, as originally applied in the *Kenny v. PIMCO Investments* case, the attorney-client privilege does not apply to communications between a fund's independent directors and their counsel due to the fiduciary nature of the relationship between the directors and the fund.

In April 2017, the judge in the *Calamos* case ruled on the issue, rejecting the plaintiffs' argument that the fiduciary exception should be applied and denying them access to the privileged documents. The judge held that, in order to establish that the fiduciary exception should apply, the plaintiffs must establish (i) a fiduciary relationship and (ii) good cause for overcoming the attorney-client privilege. To establish good cause for overcoming the attorney client privilege, plaintiffs should demonstrate the necessity of the information and its unavailability from other sources. The judge ruled that the plaintiffs in the case failed to meet this requirement, as they cited nothing from discovery or depositions to suggest that the documents contained necessary information that was unavailable elsewhere. Although the judge acknowledged that the plaintiffs cannot know the exact contents of privileged documents, there must be more than "mere conjecture" that the documents contain critical information.

"Good cause" was not required in the *Kenny v. PIMCO Investments* case, reflecting that courts in different jurisdictions are taking varying approaches to determining whether director communications ultimately remain privileged.

Source: Court Refuses to Apply Fiduciary Exception to Attorney-Client Privilege, FundLaw, John M. Baker (May 1, 2017).

Distribution-in-Guise Settlements

Calvert Investment Management and Calvert Investment Distributors

In May 2017, the SEC charged Calvert Investment Management, Inc. (Calvert), the former investment adviser to the Calvert Funds, with violating Section 206(2) of the Advisers Act and Section 34(b) of the Investment Company Act. In addition, the SEC charged Calvert and its affiliated broker-dealer, Calvert Investment Distributors, Inc. (Calvert Distributor), the former distributor of the Calvert Funds, with causing the funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder. Without admitting or denying the findings, Calvert and Calvert Distributor agreed to pay $17.8 million in disgorgement, $3.8 million in pre-judgment interest, and a $1 million civil monetary penalty, totaling approximately $22.6 million. The SEC stated that these payments would be returned to the accounts of affected shareholders.

According to the order, from 2008 to 2014, Calvert and Calvert Distributor improperly used mutual fund assets to pay for (1) the distribution and marketing of fund shares outside of a written, board-approved Rule 12b-1 plan and (2) sub-TA services in excess of board-approved limits. In addition, the SEC found that the funds' prospectuses contained material misstatements concerning the funds' payments for distribution-related services.

Improper Distribution Payments

Although certain of Calvert Distributor's agreements with intermediaries, such as its agreements with Intermediary A and Intermediary B, called for the provision of distribution and marketing services, Calvert and Calvert Distributor treated those agreements as being for sub-TA services, and improperly caused the funds to pay for those services outside of a Rule 12b-1 plan.

In addition to the payments made to Intermediary A and Intermediary B pursuant to certain agreements specified in the order, Calvert and Calvert Distributor also caused the funds to pay approximately $14.87 million in fees for marketing and distribution services to numerous other intermediaries. Calvert and Calvert Distributor similarly were prohibited from using the funds' assets to make such payments to these intermediaries because the payments were made outside the funds' written, approved Rule 12b-1 plans.

Calvert's Disclosures to the Board

Calvert periodically reported to the funds' boards of trustees and directors regarding payments for distribution and sub-TA services. In certain reports provided to the boards, Calvert allegedly inaccurately disclosed that the fees paid for distribution and marketing services under certain agreements specified in the order were sub-TA fees.

Fund Disclosures regarding Distribution Payments

According to the SEC, the funds' disclosures contained material misstatements concerning payments for distribution-related services. The funds' prospectuses included a statement indicating that Calvert, Calvert Distributor and/or their affiliates, *at their own expense*, may incur costs and pay expenses associated with the distribution of shares of the funds. However, in connection with certain agreements specified in the order, the funds, and not Calvert, Calvert Distributor or their affiliates, bore distribution and marketing expenses that were above the fees covered by the funds' Rule 12b-1 plans.

Annual Limits on Sub-TA Expenses

Furthermore, the SEC found that Calvert and Calvert Distributor improperly caused the funds to pay intermediaries for sub-TA services. Pursuant to Calvert's and Calvert Distributor's agreements with the funds, the funds' assets were not to be used to pay intermediaries for sub-TA services in excess of 30 basis points annually. Nevertheless, between January 1, 2008 and December 31, 2014, Calvert and Calvert Distributor improperly caused the funds to pay approximately $2.96 million worth of expenses in excess of these annual expense limits.

Source: In the Matter of Calvert Investment Distributors, Inc. and Calvert Investment Management, Inc., Investment Company Act Release No. 32,624 (May 2, 2017), available at https://www.sec.gov/litigation/admin/2017/ia-4696.pdf.

William Blair & Company

In May 2017, the SEC charged William Blair & Company, L.L.C. (William Blair), investment adviser to and distributor of the William Blair Funds, with violating Section 206(2) of the Advisers Act and Section 34(b) of the Investment Company Act and causing the funds to violate Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder. Without admitting or denying the findings, William Blair agreed to pay a $4.5 million civil monetary penalty.

According to the order, from 2010 to 2014, as a result of erroneous payments, William Blair negligently used mutual fund assets to pay for (1) distribution and marketing of fund shares outside of a written, board-approved Rule 12b-1 plan, and (2) sub-TA services in excess of board-approved limits. The SEC order also found that William Blair failed to fully and fairly disclose to the funds' board that the firm was retaining a fee that, when approved by the board, was expected to be paid to third parties to provide shareholder administrative services. The SEC found that the erroneous payments totaled approximately $1.25 million and caused certain disclosures in the funds' prospectus and statement of additional information (SAI) to be inaccurate.

Erroneous Distribution Payments

William Blair, as distributor, entered into agreements with two intermediaries that included the provision of distribution and marketing services (Intermediary One and Intermediary Two). The agreements with the

intermediaries included a representation that William Blair or an affiliate would pay the fees and the fees would not be paid by the funds or from assets of the funds. However, William Blair modified its oversight of intermediary arrangements by transitioning from manual oversight to an increasingly automated system. During the transition, William Blair inadvertently misclassified the fees payable to Intermediary One and Intermediary Two as sub-TA fees payable by the funds and began using the funds' assets to pay Intermediary One and Intermediary Two. William Blair caused $901,947 of the funds' assets to be used to make payments to the intermediaries for distribution and marketing services outside of a Rule 12b-1 plan. These payments were in addition to payments made to Intermediary One and Intermediary Two pursuant to the funds' Rule 12b-1 plan.

Erroneous Sub-TA Payments

William Blair entered into agreements with two intermediaries for sub-TA services (Intermediary Three and Intermediary Four). The funds' board set a cap on the amount of fees to be paid out of fund assets to Intermediary Three and Intermediary Four for sub-TA services. The cap, which was the higher of 15 basis points on the amount of assets maintained at the intermediary or $15 per account per year, was disclosed in the funds' prospectuses. All sub-TA fees due to Intermediary Three and Intermediary Four were initially paid by William Blair. The funds then reimbursed William Blair either the amount it paid to Intermediary Three and Intermediary Four, or the amount of the cap, whichever was less.

William Blair entered into an agreement with Intermediary Three in 2008 in which Intermediary Three agreed to provide sub-TA services for a fee of 0.10% of the funds' assets maintained at Intermediary Three. In 2010, William Blair entered into another agreement with Intermediary Three with respect to a platform sponsored by Intermediary Three in which William Blair agreed to pay a 0.15% fee. Intermediary Three sent two separate invoices: one invoice covering the 2008 agreement and a separate invoice covering the 2010 agreement. In 2014, William Blair learned that the separate invoices included fees that were calculated using the same underlying assets. As a result, from 2010 to 2014, William Blair caused the funds to pay $262,244 in excess of the 0.15% sub-TA cap set by the board to Intermediary Three. Similarly, William Blair entered into multiple agreements with Intermediary Four and Intermediary Four sent separate invoices with respect to the agreements. In 2014, William Blair also learned that Intermediary Four's separate invoices included fees that were calculated using the same underlying assets. As a result, from 2011 to 2014, William Blair caused the funds to pay $83,306 in excess of the 0.15% sub-TA cap set by the board to Intermediary Four.

Source: In the Matter of William Blair & Company, L.L.C., Investment Company Act Release No. 32,621 (May 1, 2017), available at https://www.sec.gov/litigation/admin/2017/ia-4695.pdf.

Compliance Dates for Final Rules

Final Rule	Compliance Date(s)
Amendments to Form ADV	October 1, 2017
Amendments to Books and Records Rule: Performance Information	October 1, 2017
FinCEN Clarifies and Strengthens Customer Due Diligence Requirements for Mutual Funds and Broker-Dealers	May 11, 2018
Investment Company Reporting Modernization: New Forms N-PORT and N-CEN	New Form N-PORT: Fund complexes with $1 billion or more in net assets: June 1, 2018 (first filing date is July 30, 2018, based on June 30, 2018 data) Fund complexes with less than a $1 billion in net assets: June 1, 2019 (first filing date is July 30, 2019, based on June 30, 2019 data) New Form N-CEN: June 1, 2018 for all funds (first filing date is 75 days from the end of a fund's fiscal year after June 1, 2018)
Swing Pricing	November 19, 2018 (for those funds that wish to implement swing pricing)
Amendments to Form N-1A, Regulation S-X and Form N-CEN associated with swing pricing	November 19, 2018
Liquidity Risk Management Programs (Rule 22e-4)	Fund complexes with $1 billion or more in net assets: December 1, 2018 Fund complexes with less than $1 billion in net assets: June 1, 2019
Amendments to Form N-PORT and Form N-CEN associated with liquidity rule	Fund complexes with $1 billion or more in net assets: December 1, 2018 Fund complexes with less than $1 billion in net assets: June 1, 2019
Amendments to Form N-1A associated with liquidity rule (information regarding redemptions)	June 1, 2017 (compliance with amendments only required for registration statements filed on or after December 1, 2017)
Form N-LIQUID	Fund complexes with $1 billion or more in net assets: December 1, 2018 Fund complexes with less than $1 billion in net assets: June 1, 2019