GODFREY KAHN S.C.

Investment Management Focus

April 2016

Godfrey & Kahn Investment Management Team Members Responsible for this Update

Leah N. Cry
608.284.2232
lcry@gklaw.com

Ellen R. Drought
414.287.9517
edrought@gklaw.com

Susan M. Hoaglund
262.951.7136
shoaglund@gklaw.com

Pamela M. Krill
608.284.2226
pkrill@gklaw.com

Legal and Regulatory Update

Latest Developments

Department of Labor's Final Fiduciary Rule and Best Interest Contract Exemption

Secretary of Labor Thomas Perez unveiled the Department of Labor's (DOL) long-anticipated final fiduciary rule and best interest contract rule on April 6, 2016. The compliance date for the rule is April 10, 2017, although certain provisions, such as the Best Interest Contract Exemption (discussed below), have a transition period ending on January 1, 2018.

The New Definition of Fiduciary

The final rule replaces the existing regulatory definition of fiduciary investment advice with a new definition. The rule describes the kinds of communications that constitute investment advice and then describes the types of relationships in which such communications give rise to fiduciary investment advice responsibilities.

A person gives investment advice if he or she provides, for a fee or other compensation (direct or indirect), the following types of advice:

- Recommendations regarding the advisability of buying, holding, selling or exchanging securities or other investment property (collectively, securities), including recommendations as to the investment of securities after the securities are rolled over or distributed from a plan or IRA;
- Recommendations as to the management of securities, including, among other things, recommendations on investment policies or strategies, portfolio composition, selection of other persons to provide investment advice or investment management services, selection of investment account arrangements (e.g., brokerage versus advisory), or recommendations with respect to rollovers, transfers, or distributions from a plan or IRA, including whether, in what amount, in what form, and to what destination such a rollover, transfer, or distribution should be made.

A recommendation is a communication that, based on its content, context, and presentation, would reasonably be viewed as a suggestion that the recipient engage in or refrain from taking a particular course of action. The more individually tailored the communication is, the more likely the communication will be viewed as a recommendation.

The types of relationships that must exist for recommendations to give rise to

fiduciary investment advice responsibilities include recommendations made either directly or indirectly (e.g., through or together with any affiliate) by a person who:

- Represents or acknowledges that it is acting as a fiduciary within the meaning of ERISA or the Internal Revenue Code of 1986, as amended (Code);
- Renders advice pursuant to a written or verbal agreement, arrangement or understanding that the advice is based on the particular investment needs of the advice recipient; or
- Directs the advice to a specific recipient regarding the advisability of a particular investment or management decision with respect to securities of the plan or IRA.

Specific examples of communications that would not rise to the level of a recommendation and therefore would not constitute fiduciary investment advice include communications relating to investment education, general communications, platform providers, transactions with independent plan fiduciaries, swap and security-based swap transactions, and communications from employees of plan sponsors, affiliates, employee benefit plans, employee organizations, or plan fiduciaries.

The Best Interest Contract Exemption

ERISA and the Code generally prohibit fiduciaries from receiving payments from third parties and from acting on conflicts of interest in connection with transactions involving an employee benefit plan or IRA. Certain types of fees and compensation common in the retail market, such as brokerage or insurance commissions, trailing commissions, sales loads, Rule 12b-1 fees and revenue sharing payments, fall within these prohibitions when received by fiduciaries as a result of transactions involving advice to plan participants and beneficiaries, IRA owners and small plan sponsors.

The Best Interest Contract Exemption permits financial advisers and the financial institutions that employ them to continue to rely on many current compensation and fee practices, as long as they meet specific conditions intended to ensure that financial institutions mitigate conflicts of interest and that they, and their financial advisers, provide investment advice that is in the best interests of their customers. Specifically, in order to rely on the exemption, a financial institution generally must:

- Acknowledge fiduciary status for itself and its financial advisers;
- Adhere to basic standards of impartial conduct, including:
    - Giving prudent advice that is in the customer's best interest;
    - Avoiding making misleading statements; and
    - Charging no more than reasonable compensation;
- Commit to the impartial conduct standards in an enforceable contract when providing advice to an IRA owner;
- Implement policies and procedures reasonably and prudently designed to prevent violations of the impartial conduct standards;
- Refrain from giving or using incentives for financial advisers to act contrary to the customer's best interest; and
- Fairly disclose the fees, compensation, and material conflicts of interest associated with their recommendations.

Additionally, a website must be maintained and updated regularly that includes certain information including information about the financial institution's business model and associated material conflicts of interest; a schedule of typical account fees; and a written description of the financial institution's policies and procedures that mitigate conflicts of interest.

All financial institutions relying on the exemption must notify the DOL in advance and retain records that can be made available to the DOL and retirement investors for evaluating compliance with the exemption.

The exemption permits reliance on a negative consent process for existing clients.

Sources: "U.S. Unveils Retirement-Savings Revamp, but with a Few Concessions to Industry," Wall Street Journal (April 6, 2016); White House Fact Sheet: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings (April 6, 2016); Department of Labor Finalizes Rule to Address Conflicts of Interest in Retirement Advice, Saving Middle-Class Families Billions of Dollars Every Year, U.S. Department of Labor Fact Sheet (April 6, 2016), available at http://www.dol.gov/ebsa/newsroom/fs-conflict-of-interest.html; Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice (April 8, 2016), available at https://www.federalregister.gov/articles/2016/04/08/2016-07924/definition-of-the-term-fiduciary-conflict-of-interest-rule-retirement-investment-advice; Best Interest Contract Exemption (April 8, 2016), available at https://www.federalregister.gov/articles/2016/04/08/2016-07925/best-interest-contract-exemption?utm_content=next&utm_medium=PrevNext&utm_source=Article.

"Distribution-in-Guise" Update

SEC staff has indicated that, during exams, the agency is starting to consider whether funds are complying with the distribution-in-guise guidance that the SEC issued in January and we reported on in our *January 2016 Update*. At an Investment Company Institute (ICI) conference in March, Marc Wyatt, director of the SEC's Office of Compliance Inspections and Examinations (OCIE), noted that after assessing firms' compliance with the guidance, OCIE intends to consider whether distribution-in-guise payments are an ongoing risk. A panelist at the same ICI conference confirmed that fund groups have already received questions from SEC examiners about compliance with the guidance. Wyatt further stressed that fund firms should revisit their policies and procedures and consider whether they are in line with the Rule 12b-1 requirements, in addition to the recent guidance.

These statements came after fund group William Blair announced that it had received a Wells notice that the SEC staff intended to recommend an enforcement action to the SEC commissioners relating to shareholder administration fees paid by its Class N shares (available to the general public without a sales load) and Class I shares (available to certain institutional investors and advisory clients without a sales load or distribution (12b-1) fees). In its annual report filed in February 2016, William Blair disclosed that it had filed a response to the Wells notice, and that it believed that any possible claims brought against it would be without merit. However, the firm also noted that, in response to the "preliminary concerns expressed by the SEC staff" in November 2014, it began to waive the 15 basis point shareholder administration fees, payable to William Blair, for Class I and Class N shares of the involved funds. In 2015, William Blair waived approximately $3.6 million in shareholder administration fees across all funds.

In light of the recent guidance update and the SEC's continued focus on distribution-in-guise payments, we recommend that fund boards adopt formal processes to review distribution and sub-transfer agent fees, and to determine whether any portion of sub-transfer agent fees are used to pay for distribution. As Douglas Scheidt, associate director and chief counsel of the SEC's Investment Management division (IM Division), noted at an industry conference in February, "It's very important for fund boards to make those determinations."

Fund advisers have complained that intermediaries will not provide requested information to help fund boards make those determinations. Ken Joseph, associate director of the IM Division's Investment Adviser/Investment Company Examination Program in the New York regional office, told an audience at the Practicing Law Institute's 2016 Investment Management Institute that "I can't get the information is not a valid excuse." He added later, "There is no carveout in the federal securities laws for 'I can't find the information' or 'they won't give it to me.'" Joseph gave the agency's standard disclaimer that he spoke only for himself, making it unclear how prevalent his view is among SEC staff. In response to a question whether it was enough for fund groups to rely on intermediaries' representations and contractual agreements that they would use fund fees to provide certain services, he said "I don't think so. You have the responsibility as a fiduciary to dig a little deeper and get factual information."

Sources: SEC Probing Compliance With Distribution-in-Guise Guidance, Ignites, Beagan Wilcox Volz (March 21, 2016); William Blair Case Proves Distribution Fees Remain SEC 'Priority,' Ignites, Beagan Wilcox Volz (March 2, 2016); No Excuses in Fight for Broker Information: SEC Official, Board IQ, Greg Saitz (March 22, 2016); William Blair Gets Wells Notice Related to Distribution, Board IQ, Greg Saitz (March 8, 2016); SEC Sends William Blair Wells Notice on Distribution, Board IQ, Greg Saitz (March 1, 2016).

IM Guidance on Fund Disclosure Reflecting Risks Related to Current Market Conditions

The SEC's IM Division recently issued a guidance update stressing the importance to investors of robust fund risk information and, in particular, disclosure relating to risks that arise as a result of changing market conditions. The IM Division stated that, because degree of risk is dynamic in nature, funds should regularly review and assess their risk disclosures in light of changes in the market. Additionally, a fund adviser should consider providing information to the fund board regarding the steps the adviser has taken to evaluate the fund's current risk disclosures and to consider whether changes are necessary.

The guidance update provided several steps that the IM Division believes a fund should undertake on an ongoing basis in order to ensure its risk disclosure remains accurate and up-to-date as market conditions change:

- **Monitor Market Conditions and Their Impact on Fund Risks.**

  As part of its day-to-day operations, a fund should effectively monitor market conditions and determine the impact of any changes on the fund and the risks associated with its investments.

- **Assess Whether Fund Risks Have Been Adequately Communicated to Investors in Light of Current Market Conditions.**

  If a fund determines that changing market conditions have impacted the fund's risks, the fund should then:

  - Assess the significance of the change;
  - Determine whether it is material to investors; and
  - Consider whether existing disclosures remain adequate.

- **Communicate with Investors.**

  If a fund's risks have changed materially and current disclosures are not adequate, a fund should update its communications to investors, as required by federal securities laws and as otherwise appropriate. Disclosures may need to be updated in a fund's prospectus, particularly if current prospectus risk disclosure is determined to be materially misleading, in shareholder reports, website disclosure, and letters to shareholders.

The guidance update also provided several examples of recent changes in market conditions that may necessitate updated risk disclosures. With respect to fixed income funds, the IM Division noted that the Federal Open

Market Committee's decision in December 2015 to raise the target range for the federal funds rate has prompted some funds to enhance their risk disclosures. New disclosures have highlighted that:

- Current conditions may result in a rise in interest rates, which could result in a decline in the value of fixed income investments;
- A potential rise in interest rates could result in volatility and increased redemptions that could require funds to liquidate securities at disadvantageous prices; and
- Longer-term securities may be more sensitive to interest rate changes.

Puerto Rico's recent failures to make scheduled bond payments were also highlighted as a changing market condition. The IM Division noted that some funds, particularly tax-exempt funds that invest significantly in Puerto Rico debt, have expressly disclosed the fund's exposure to Puerto Rico debt and the heightened risk currently associated with such investments.

Source: Investment Management Guidance Update No. 2016-02, Fund Disclosure Reflecting Risks Related to Current Market Conditions (March 2016), available at https://www.sec.gov/investment/im-guidance-2016-02.pdf.

Litigation and SEC Enforcement Actions

Excessive-Fee Litigation Update

J.P. Morgan Excessive Administration Fees Case

A federal court in Ohio dismissed claims that J.P. Morgan Chase Bank, the affiliated sub-administrator for five J.P. Morgan funds, charged excessive fees for its services. According to the plaintiffs' complaint, the five funds paid J.P. Morgan Chase Bank and J.P. Morgan Funds Management, the funds' administrator, $47.6 million more in fees annually than if rates had been negotiated at arm's length.

The court agreed with J.P. Morgan's argument that the claims against the sub-administrator should be dismissed because it did not receive fees directly from the funds. The funds first paid the administration fees to J.P. Morgan Funds Management, which then paid the sub-administration fees to J.P. Morgan Chase Bank.

Although claims against the sub-administrator were dismissed, the court found that the excessive fee allegations against the administrator could continue on to the next stage of litigation. In the same case, plaintiffs allege that J.P. Morgan charged excessive advisory fees with respect to certain of its funds.

Axa Excessive Advisory and Administration Fees Case

In January, the Axa Equitable excessive fee case became the first under Section 36(b) of the 1940 Act to go to trial since 2009. The shareholders of 12 funds have alleged that Axa wrongly collected the majority of the funds' advisory and administration fees, when subadvisors had provided most of the services for which such fees were paid. The plaintiffs have contended that Axa's Funds Management Group received a profit margin of over 95% with respect to the funds at issue, while industry profit margins range between 17% and 56%. Axa disagrees with this figure and argues that its profit margin was actually between 55% and 57%. The plaintiffs also argue that the funds' board was not fully informed, and that it unquestionably accepted Axa's actions, claims which the defendants also deny. The trial lasted about five weeks, and closing arguments are scheduled for a half-day session in May.

Hartford Excessive Advisory Fees Case

In a March 24 decision, a court denied summary judgment of the plaintiffs' claims that The Hartford charged excessive fees with respect to six subadvised funds. The plaintiffs argued that, while the subadvisors provided the majority of advisory services to the funds, The Hartford received significantly more in fees. Unless the parties settle, the case will now go to trial.

Although The Hartford's motion for summary judgment was denied, the court viewed favorably its arguments regarding the central issue of the board's approval of the fees and agreed that the board's approval of the mutual fund fees is entitled to "substantial weight." Further, the court ruled that, if The Hartford is found to have charged excessive fees, the plaintiffs can collect damages from the date the complaint was filed in 2011 to an undetermined date close to the trial. However, the plaintiffs can only recover the portion of the fees considered to be excessive, rather than all advisory fees collected by the firm.

Calamos Excessive Advisory and Distribution Fees Case

In March, a federal court denied Calamos' motion to dismiss claims that it charged excessive advisory and Rule 12b-1 distribution fees with respect to its Growth Fund. Total distribution fee rates were 0.25%, 1.00%, 1.00% and 0.50% for Class A, Class B, Class C and Class R shares of the Fund, respectively. The plaintiffs allege that certain services included in the total distribution fees are already paid for under agreements with other service providers. This marks the first case involving claims of excessive 12b-1 fees that has survived a motion to dismiss. The court noted that, even if distribution fees comply with the rule's fee limits, such fees may still be found excessive under Section 36(b).

Sources: J.P. Morgan Whittles Claims of Excessive Admin Fees, Ignites, Beagan Wilcox Volz (March 3, 2016); Axa Excessive-Fee Trial Kicks Off, Ignites, Joe Morris (January 14, 2016); Hartford Gets Good News in Fee Suit, but Trial Looms, Ignites, Beagan Wilcox Volz (March 29, 2016); Calamos Fee Suit, With 12b-1 Claim, Moves Forward, Ignites, Beagan Wilcox Volz (March 31, 2016); Goodman v. J.P. Morgan Inv. Mgmt., Inc., Nos. 2:14-CV-414, 2:15-CV-2923, 2016 WL 759654 (S.D. Ohio Feb. 26, 2016); Kasilag v. Hartford Inv. Fin. Servs., Civil No. 11-1083 (RMB/KMW), 2016 U.S. Dist. Lexis 47063 (D. N.J. Mar. 24, 2016); Chill v. Calamos Advisors LLC, 15 Civ. 1014 (ER), 2016 WL 1258984 (S.D. NY Mar. 28, 2016).

SEC Orders AIG Broker-Dealer Affiliates to Pay $9.5 Million for Steering Mutual Fund Clients to Expensive Share Classes

The SEC charged three of AIG's affiliates, Royal Alliance Associates, SagePoint Financial, and FSC Securities Corporation, with breaching their fiduciary duties under the Advisers Act. According to the SEC's investigation, the affiliates steered their clients toward share classes with Rule 12b-1 marketing and distribution fees, even though other fund classes without 12b-1 fees were available. The investments in the more expensive share classes allowed the affiliates to collect approximately $2 million in Rule 12b-1 fees, but the affiliates did not disclose this conflict of interest to their clients. They disclosed in their ADVs that they may receive Rule 12b-1 fees from mutual fund investments, but did not disclose that they had a conflict of interest with respect to selecting mutual fund share classes due to a financial incentive to place advisory clients in higher-fee share classes over lower-fee share classes of the same mutual fund.

Additionally, the SEC's order instituting a settled administrative proceeding states that the affiliates did not monitor their advisory accounts on a quarterly basis to prevent "reverse churning" as required by their compliance policies and procedures. All three firms had compliance policies and procedures in place to ensure that accounts charged an inclusive fee for both advisory services and trading costs were in the best interest of clients not making frequent trades. More specifically, they were required to review inactive wrap fee accounts

with three or fewer transactions during the previous 18-month period on a quarterly basis. The purpose of the review was to make sure that these wrap fee accounts remained in the best interest of advisory clients with minimal trading activity. Even though SEC examination staff previously had cited the firms for failing to conduct monitoring several years earlier in 2009 and 2010, the SEC found that the firms did not conduct their inactive account review on a timely basis during 2013.

The three firms consented to the SEC's order without admitting or denying the findings and agreed to pay over $9.5 million to settle the charges, including more than $2 million in improper fees plus prejudgment interest and a $7.5 million penalty.

Sources: AIG Affiliates Charged With Mutual Fund Shares Conflict, SEC Press Release 2016-52 (March 14, 2016), available at https://www.sec.gov/news/pressrelease/2016-52.html; In the Matter of Royal Alliance Associates, Inc., SagePoint Financial, Inc. and FSC Securities Corporation, Investment Advisers Act Release No. 4351 (March 14, 2016), available at https://www.sec.gov/litigation/admin/2016/34-77362.pdf.

SEC Charges Municipal Advisor for Failing to Disclose Conflict of Interest

The SEC brought its first enforcement action involving a municipal advisor's fiduciary duty, created by the Dodd-Frank Act, which requires municipal advisors to put their clients' interests ahead of their own. The SEC charged Central States Capital Markets (Central States), its CEO, and two employees with breaching the new duty for failing to disclose a conflict of interest to a municipal client.

According to the SEC's order, Central States served as a municipal advisor to a city client in 2011 with respect to municipal bond offerings. The city relied on Central States to advise it about the terms of offerings, including interest rates, the selection of underwriters, and underwriting fees. Two Central States employees, in consultation with the CEO, arranged for the city's offerings to be underwritten by a broker-dealer where all three individuals worked as registered representatives. In addition to the municipal advisory fees that Central States collected from the client, it also received 90 percent of the underwriting fees that the city paid to the broker-dealer. Although aware of the conflict, the CEO and two employees failed to inform the client of their relationship with the broker-dealer or the fact that they would receive a financial benefit from their positions with the broker-dealer. The SEC found this to be a violation of the fiduciary duty of municipal advisors to put their client's interests ahead of their own.

The SEC ordered Central States and the three individuals to cease and desist from similar future securities law violations and violations of Rule G-17 of the Municipal Securities Rulemaking Board, which requires advisors to deal fairly with their clients. Central States and the three individuals consented to the order without admitting or denying the findings. Central States agreed to pay nearly $300,000 in disgorgement and interest and an $85,000 civil penalty, while the CEO and the two employees agreed to pay individual civil money penalties and agreed to suspensions and bars from the financial services industry ranging from six months to two years.

Sources: In the Matter of Central States Capital Markets, LLC; Mark R. Detter; David K. Malone; and John D. Stepp, Investment Advisers Act Release No. 4352 (March 15, 2016), available at https://www.sec.gov/litigation/admin/2016/34-77369.pdf; Municipal Advisor Charged for Failing to Disclose Conflict, SEC Press Release 2016-54 (March 15, 2016), available at https://www.sec.gov/news/pressrelease/2016-54.html.

Additional Rule Proposals, Rule Adoptions and Guidance

Money Market Fund Reform Update

Deadline Arrives for Diversification, Stress Testing, and Disclosure Requirements
Several new money market fund requirements took effect as of April 14, 2016. These requirements include those relating to diversification, stress testing, website reporting, and registration statement and advertisement disclosure.

Diversification. The amendments to Rule 2a-7 under the 1940 Act include changes to current requirements that money market funds be diversified with respect to the issuers of securities in which they invest. Previously, a money market fund could invest no more than 5% of its total assets in a single issuer. Under the new requirements, a fund must aggregate affiliates of issuers when calculating this 5% limit.

Rule 2a-7 previously required a money market fund to invest no more than 10% of its total assets in securities that are subject to demand features or guarantees from a single institution. Under the new requirements, sponsors of special purpose entities issuing asset-backed securities as guarantors must be included when calculating this limit. However, if the fund's board of directors determines that the fund is not relying on the sponsor's financial strength or ability to provide support in determining the quality and liquidity of the asset-backed security, then the sponsor need not be included in the calculation.

Although a money market fund generally may not invest more than 10% of total assets in demand features and guarantees issued by a single entity, the rule had provided an exception that allowed up to 25% of a fund's total assets to be invested in demand features and guarantees from a single issuer. Under the new requirements, this exception no longer exists for taxable money market funds, and the exception for tax-exempt money market funds has a 15% limit.

Stress Testing. Under the new requirements, a money market fund must engage in periodic stress tests, including tests relating to the fund's ability to invest at least 10% of its total assets in weekly liquid assets and to minimize principal volatility. Additionally, a stable net asset value (NAV) money market fund must periodically test its ability to maintain a stable NAV per share under certain conditions. Such tests must be conducted based on varying levels of shareholder redemptions. The stress testing reports that a fund's adviser provides to the fund board must include a summary of the significant assumptions made, assessments of the fund's ability under certain hypothetical circumstances, and any other information reasonably necessary for the board to evaluate such tests.

Website Reporting. Under the amendments, a money market fund must prominently disclose on its website certain information as of the end of each business day. This information includes:

- The percentage of total assets invested in daily liquid assets and weekly liquid assets during the preceding six months;
- Daily net inflows and outflows during the preceding six months; and
- The fund's current NAV per share during the preceding six months.

Registration Statement and Advertisement Disclosure. The amendments require a money market fund to include risk disclosure in its summary prospectus and advertisements that states the following:

- Investors may lose money by investing in the fund;

- The fund cannot guarantee to preserve the value of a share at $1.00 (or, with respect to institutional funds, that the share price will fluctuate);
- The fund may impose redemption fees and gates (except with respect to government money market funds that will not use redemption fees and gates);
- The fund is not guaranteed by the Federal Deposit Insurance Corporation; and
- The fund's sponsor has no legal obligation to, and should not be expected to, provide financial support to the fund at any time.

Additionally, a money market fund must include in its statement of additional information instances in the previous ten years (but after the compliance date) in which an affiliate, promoter or principal underwriter, or any of their affiliates, provided financial support to the fund.

In light of the new requirements, money market funds should consider whether updates to their policies and procedures, registration statements, and advertisements are required in order to maintain compliance with the rule. The remaining money market fund requirements have a compliance date of Oct. 14, 2016.

Source: Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014).

SEC Staff Updates Money Market Fund Reform FAQ

As we noted in our *July 2015 Update*, the SEC staff maintains frequently asked questions (FAQs) relating to the money market fund reforms adopted in July 2014. The SEC updated the FAQs to answer some questions about Form N-CR, a new form that money market funds must file with the SEC within one business day after certain events, including the imposition or lifting of liquidity fees or redemption gates, occur. Among other items, the staff stated that, if a stable NAV money market fund engages in a reverse stock split in order to increase or stabilize its NAV per share, that action may be reportable on Form N-CR. Specifically, if the fund would have experienced a downward deviation of more than ¼ of 1 percent from its intended stable price per share but for the reverse stock split, then the deviation should be disclosed on Form N-CR. The deviation should be calculated as if the reverse stock split had not occurred. Additionally, the staff indicated that, although EDGAR does not currently allow unregistered funds to electronically file a report on Form N-CR, private money market funds that comply with Rule 2a-7 to permit registered investment companies to invest in the fund in excess of Section 12(d) limits should still file the form. Rather than filing electronically, such funds should file in paper format and email a PDF copy of the filing to the Director of Investment Management or its designee on the same date the paper filing is postmarked.

The updated FAQs also noted that a multi-class money market fund may disclose on its website its NAV per share separately for each class, rather than for the fund as a whole. The staff also clarified that a money market fund using the term "government" in its name must comply with Rule 2a-7(a)(16) (which defines a government money market fund as a money market fund investing 99.5% or more of its total assets in cash, government securities, and/or repurchase agreements that are fully collateralized by cash or government securities (repos)) and Rule 35d-1 (the "Names Rule") (which requires a fund to adopt a policy to invest, under normal circumstances, at least 80% of the value of its net assets in government securities and repos). The staff stated that a government money market fund should disclose that it complies with these two requirements.

Additional updates provide clarification on certain matters relating to Form N-MFP. With respect to Item A.10 of the form, which requires a fund to select an applicable category of fund, the SEC staff notes that the "Government/Agency" option refers to a government money market fund that has chosen to rely on the ability

to impose a liquidity fee or gate, while "Exempt Government" refers to a government money market fund that has chosen not to impose such a fee or gate. With respect to Item B.6a-7, weekly gross redemptions should only include the amount actually paid to redeeming shareholders and should not reflect deductions for liquidity fees imposed by a fund.

Source: 2014 Money Market Fund Reform Frequently Asked Questions, Division of Investment Management (Revised March 18, 2016), available at https://www.sec.gov/divisions/investment/guidance/2014-money-market-fund-reform-frequently-asked-questions.shtml.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.