Simpson Thacher

Registered Funds Alert

May 2020

Table of Contents

The latest edition of Simpson Thacher's Registered Funds Alert discusses regulatory relief granted in response to the COVID-19 pandemic; reviews a highly anticipated rule proposal that would codify practices for fair valuing certain portfolio holdings; and provides our views on the SEC's rules regarding the use of derivatives and other transactions.

Summary of COVID-19 Relief for Regulated Funds

As the coronavirus disease 2019 ("COVID-19") pandemic continues across the globe, regulators have moved to provide targeted relief aimed at lessening the impact felt by regulated funds. To help you stay informed, we have published comprehensive summaries of the available relief, available at the Simpson Thacher COVID-19 Resource Center. In addition, the chart below provides an at-a-glance overview of the relief granted thus far. Additional, short-form guidance published by the SEC staff can be found on the SEC's website.

Closed-End Funds ("CEFs")

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Suspending Requirements of In-person Board Meetings	An *in-person* board meeting is not required for the board of a CEF to enter into, renew or materially amend investment advisory contracts, underwriting and distribution agreements and Rule 12b-1[1] plans, and select its independent public accountant.	Reliance on the relief is necessary or appropriate due to circumstances related to current potential effects of COVID-19 (some boards have been approving a resolution to this effect at the non-in-person meeting).	Required. The board must ratify the actions taken pursuant to the exemptive relief at its next in-person meeting.	None.	August 15, 2020
Filing Deadlines Extended for Form N-CEN, Form N-PORT and Annual and Semi-Annual Reports	A CEF may delay filing its Form N-CEN and Form N-PORT filings and annual and semi-annual reports past the deadlines required by Section 30(e) and Rule 30e-1 thereunder.	A CEF must file the applicable reports as soon as practicable, and must do so no later than 45 days after the original due date.	Not required.	Prompt disclosure on the CEF's website and notice to SEC staff at IM-EmergencyRelief@sec.gov stating intent to rely on the relief. With respect to Form N-CEN and Form N-PORT, the form eventually filed must include a statement of the filer stating it relied on the relief and the reason it was unable to file such report on a timely basis.	June 30, 2020
Disregarding Prior Notice Timing Requirements for Rule 23c-2 Filings	A CEF may call or redeem securities by filing Form N-23C-2 on a date that is closer in time to the call or redemption than the required 30 days prior to calling or redeeming securities. Form N-23C-2 must be filed prior to: any call or redemption of existing securities; the commencement of any offering of replacement securities; and providing notice to the existing shareholders whose securities are being called or redeemed.	A CEF must ensure that the filing of the notice on an abbreviated time frame is permitted under relevant state law and the fund's governing documents, and ensure that the notice otherwise complies with Rule 23c-2.	Not required.	Prompt notice to SEC staff at IM-EmergencyRelief@sec.gov stating the fund's intent to rely on the order.	August 15, 2020

[1] Unless otherwise indicated, all section and rule references herein are to sections of, and rules under, the 1940 Act.

Closed-End Funds ("CEFs")

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Delayed Delivery of Fund Prospectuses for Subsequent Purchases	A relying fund is permitted to delay delivery of its prospectus to investors.	The sale of shares to an investor cannot be an initial purchase of shares. A relying fund must deliver its prospectus to investors as soon as practicable, and no later than 45 days after the date originally required.	Not required.	Prompt notice to the SEC staff at IM-EmergencyRelief@sec.gov. A CEF must post notice on its website.	June 30, 2020
Delaying or Changing the Location of Shareholder Meetings	A CEF may change the date, time or location of its shareholder meeting without mailing additional soliciting materials or amending its proxy materials.	Any changes must also comply with applicable state law requirements.	Not required to rely on the relief (but required to set or change meeting details).	A CEF must issue a press release and file the announcement as definitive additional soliciting material on EDGAR and take all reasonable steps necessary to inform other intermediaries in the proxy process of such change.	Such time as delays in meetings are not due to COVID-19.
Modifications to Interfund Lending	A CEF may make loans through an existing interfund lending ("IFL") facility in an aggregate amount that does not exceed 25% of its current net assets or make additional loans subject to board approval. Closed-end funds are not permitted to borrow through interfund lending.	A CEF must previously have obtained an IFL order from the SEC or it must agree to adhere to the conditions of an order granted to another fund in the 12 months preceding March 23, 2020.	Required to make loans exceeding 25% of current net assets.	Prompt notice to the SEC staff at IM-EmergencyRelief@sec.gov stating the fund's intention to rely on the temporary relief and identifying the existing order it will follow. For a CEF that had previously been able to rely on an existing IFL order, disclose on its public website that it is relying on an SEC exemptive order that modifies the terms of its existing IFL order.	June 30, 2020
Satisfying Item 34.1 of Form N-2[2]	If the CEF's net asset value declines more than 10% from the CEF's net asset value as of the effective date of its registration statement, the CEF must suspend the offering of its shares until the prospectus is amended. The guidance confirms that a CEF may amend its prospectus through a supplement to satisfy this undertaking. The CEF may resume offering its shares upon filing a prospectus supplement pursuant to Rule 497 under the Securities Act.	The FAQ includes certain specific items that CEFs should consider disclosing in the prospectus supplement (*see* Notice Requirements).	Not required to rely on the guidance.	One business day's prior notice to the CEF's Disclosure Review and Accounting Office staff reviewer is recommended in advance of filing the prospectus supplement. SEC Staff suggests the prospectus supplement should include disclosure regarding, among other items, a statement that the CEF's offering has been suspended as of a certain date; the date on which the CEF will restart its offering; and the extent, in dollars and by percentage amount, that the net asset value has fallen from the effective date of the CEF's registration statement.	Such time as market conditions that caused the NAV decline are not due to COVID-19.

[2] *See Division of Investment Management Coronavirus (COVID-19) Response FAQs*, Question III.5, https://www.sec.gov/investment/covid-19-response-faq.

Closed-End Funds ("CEFs")

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Reducing Cash Distribution Requirements	A CEF that relies on the safe harbor for distributions under Revenue Procedure 2017-45 may temporarily reduce the aggregate amount of cash included in distributions to shareholders to 10% (down from 20%).	Only applicable to CEFs that qualify as publicly offered RICs. A publicly offered RIC is a RIC the shares of which are continuously offered pursuant to a public offering, regularly traded on an established securities market, or held by, or held by (or for) no fewer than 500 persons at all times during the taxable year. The other conditions for the safe harbor set forth in Revenue Procedure 2017-45 still apply.	Not required to rely on the relief, but required to set dividends and distributions.	Not required.	December 31, 2020

Business Development Companies ("BDCs")

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Adjusted Asset Coverage Ratio	A BDC can adjust the calculation of its asset coverage ratio for purposes of issuing senior securities.	A BDC will face limitations on new investments; restrictions on the ability of the BDC and its affiliates to receive transaction fees or other remuneration; and the BDC must be able to meet the standard asset coverage ratio at the end of the exemption period.	Required. The board must also obtain certifications from the investment adviser as well as advice from an "independent evaluator" regarding whether the terms and conditions of any senior security issuance in reliance on the relief are fair and reasonable.	A BDC must make an election by filing on Form 8-K prior to issuing or selling covered senior securities.	December 31, 2020
Flexibility for Follow-On Investments	A BDC with an existing co-investment exemptive order may participate in a follow-on investment with affiliated private funds that do not currently hold an interest in the issuer.	Transactions with affiliated registered funds may only be completed if the affiliated registered fund also participated in the initial investment. Any transaction in reliance on this relief must otherwise be effected in accordance with the terms and conditions of the BDC's existing co-investment exemptive order.	Required for negotiated transactions. The board must approve the proposed follow-on investment after considering the opportunity on both on a stand-alone basis and in relation to the total economic exposure to the issuer.	None.	December 31, 2020
Suspending Requirements of In-person Board Meetings	An *in-person* board meeting is not required for the board of a BDC to enter into, renew or materially amend investment advisory contracts, underwriting and distribution agreements and Rule 12b-1 plans, and select its independent public accountant.	Reliance on the relief is necessary or appropriate due to circumstances related to current potential effects of COVID-19 (some boards have been approving a resolution to this effect at the non-in-person meeting).	Required. The board must ratify the actions taken pursuant to the exemptive relief at its next in-person meeting.	None.	August 15, 2020
Disregarding Prior Notice Timing Requirements for Rule 23c-2 Filings	A BDC may call or redeem securities by filing Form N-23C-2 on a date that is closer in time to the call or redemption than the required 30 days prior to calling or redeeming securities. Form N-23C-2 must be filed prior to: any call or redemption of existing securities; the commencement of any offering of replacement securities; and providing notice to the existing shareholders whose securities are being called or redeemed.	A BDC must ensure that the filing of the notice on an abbreviated time frame is permitted under relevant state law and the fund's governing documents, and ensure that the notice otherwise complies with Rule 23c-2.	Not required.	Prompt notice to SEC staff at IM-EmergencyRelief@sec.gov stating intent to rely on the order.	August 15, 2020

Business Development Companies ("BDCs")

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Delaying or Changing the Location of Shareholder Meetings	A BDC may change the date, time or location of its shareholder meeting without mailing additional soliciting materials or amending its proxy materials.	Any changes must also comply with applicable state law requirements.	Not required to rely on the relief (but required to set or change meeting details).	A BDC must issue a press release and file the announcement as definitive additional soliciting material on EDGAR and take all reasonable steps necessary to inform other intermediaries in the proxy process of such change.	Such time as delays in meetings are not due to COVID-19.
Satisfying Item 34.1 of Form N-2[3]	If the BDC's net asset value declines more than 10% from the BDC's net asset value as of the effective date of its registration statement, the BDC must suspend the offering of its shares until the prospectus is amended. The guidance confirms that a BDC may amend its prospectus through a supplement to satisfy this undertaking. The BDC may resume offering its shares upon filing a prospectus supplement pursuant to Rule 497 under the Securities Act.	The FAQ includes certain specific items that BDCs should consider disclosing in the prospectus supplement (*see* Notice Requirements).	Not required to rely on the guidance.	One business day's prior notice to the BDC's Disclosure Review and Accounting Office staff reviewer is recommended in advance of filing the prospectus supplement. SEC Staff suggests the prospectus supplement should include disclosure regarding, among other items, a statement that the BDC's offering has been suspended as of a certain date; the date on which the BDC will restart its offering; and the extent, in dollars and by percentage amount, that the net asset value has fallen from the effective date of the BDC's registration statement.	Such time as market conditions that caused the NAV decline are not due to COVID-19.
Reducing Cash Distribution Requirements	A BDC that relies on the safe harbor for distributions under Revenue Procedure 2017-45 may temporarily reduce the aggregate amount of cash included in distributions to shareholders to 10% (down from 20%).	Only applicable to BDCs that qualify as publicly offered RICs. A publicly offered RIC is a RIC the shares of which are continuously offered pursuant to a public offering, regularly traded on an established securities market, or held by (or for) no fewer than 500 persons at all times during the taxable year. Certain private BDCs will not qualify. The other conditions for the safe harbor set forth in Revenue Procedure 2017-45 still apply.	Not required to rely on the relief, but required to set dividends and distributions.	Not required.	December 31, 2020

[3] *See Division of Investment Management Coronavirus (COVID-19) Response FAQs*, Question III.5, https://www.sec.gov/investment/covid-19-response-faq.

Open-End Funds

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Suspending requirements of In-person Board Meetings	An *in-person* board meeting is not required for the board of a relying fund to enter into, renew or materially amend investment advisory contracts, underwriting and distribution agreements and Rule 12b-1 plans, and select its independent public accountant.	Reliance on the relief is necessary or appropriate due to circumstances related to current potential effects of COVID-19 (some boards have been approving a resolution to this effect at the non-in-person meeting).	Required. A relying fund's board must ratify the actions taken pursuant to the exemptive relief at its next in-person meeting.	None.	August 15, 2020
Filing Deadlines extended for Form N-CEN, Form N-PORT and Annual and Semi-Annual Reports	A relying fund may delay filing its Form N-CEN and Form N-PORT filings and annual and semi-annual reports past the deadlines required by Section 30(e) and Rule 30e-1 thereunder.	A relying fund must file the applicable reports as soon as practicable, and must do so no later than 45 days after the original due date.	Not required.	Prompt disclosure on the relying fund's website and notice to SEC staff at IM-EmergencyRelief@sec.gov stating intent to rely on the relief. With respect to Form N-CEN and Form N-PORT, the form eventually filed must include a statement of the filer stating it relied on the relief and the reason it was unable to file such report on a timely basis.	June 30, 2020
Delayed Delivery of Fund Prospectuses for Subsequent Purchases	A relying fund is permitted to delay delivery of its prospectus to investors.	The sale of shares to an investor cannot be an initial purchase of shares. A relying fund must deliver its prospectus to investors as soon as practicable, and no later than 45 days after the date originally required.	Not required.	Prompt notice to the SEC staff by email at IM-EmergencyRelief@sec.gov. A relying fund must post notice on its website.	June 30, 2020
Delaying or Changing the Location of Shareholder Meetings	A relying fund may change the date, time or location of its shareholder meeting without mailing additional soliciting materials or amending its proxy materials.	Any changes must also comply with applicable state law requirements.	Not required to rely on the relief (but required to set or change meeting details).	A relying fund must issue a press release and file the announcement as definitive additional soliciting material on EDGAR or, if the meeting is held in connection with a business combination described in a registration statement on Form N-14, the announcement should be filed as a prospectus supplement under 1933 Act Rule 497, and take all reasonable steps necessary to inform other intermediaries in the proxy process of such change.	Such time as delays in meetings are not due to COVID-19.
Secured Borrowings from Affiliates	A relying fund may borrow on a secured basis from its investment adviser or other affiliated entities. Provides an exemption from Sections 17(a), 12(d)(3) and 18(f)(1), but not Rule 17d-1.	None.	Board must determine that the loan is in the best interests of the relying fund and will be used to satisfy shareholder redemptions.	Prompt notice to the SEC staff by email at IM-EmergencyRelief@sec.gov stating the fund's intention to rely on the temporary relief.	June 30, 2020

Open-End Funds

Relief Granted (and link to STB alert)	Application	Applicable Conditions (other than approval or notice)	Board Approval	Notice Requirements	Relief Extends Until
Modifications to Interfund Lending	A relying fund may make loans through an existing interfund lending ("IFL") facility in an aggregate amount that does not exceed 25% of its current net assets at the time of the loan notwithstanding any lower limitation in an existing IFL order (typically 15% of current net asset value). A relying fund may borrow or make loans through the facility for any term (up to and including the date this temporary relief is rescinded), notwithstanding any conditions normally limiting the term of such loans.	A relying fund must previously have obtained an IFL order from the SEC or it must agree to adhere to the conditions of one granted to another fund in the 12 months preceding March 23, 2020. The term of any IFL made in reliance on the relief may not extend beyond the expiration of the temporary relief.	Board approval required to extend the maximum term of an interfund loan.	Prompt notice to the SEC staff by email at IM-EmergencyRelief@sec.gov stating the fund's intention to rely on the temporary relief and, if the fund does not have an IFL order, identifying the existing order it will adhere to. For a fund that had previously been able to rely on an existing IFL order, disclose on its public website that it is relying on an SEC exemptive order that modifies the terms of its existing IFL order.	June 30, 2020
Deviation from Registration Statement Policies	A relying fund may enter into lending or borrowing transactions that deviate from any relevant policy recited in its registration statement without prior shareholder approval.	None.	Required.	Prompt notice to the SEC staff by email at IM-EmergencyRelief@sec.gov stating the fund's intention to rely on the temporary relief. Must notify shareholders of the deviation by filing a prospectus supplement and includes a statement on the applicable fund's public website.	June 30, 2020
Permitting Additional Affiliated Transactions to Provide Liquidity	A relying fund's affiliates that are not registered investment companies may purchase debt securities held by the relying fund notwithstanding the restrictions of Section 17(a).	The debt securities must be sold at fair market value in cash-settled transactions. If the relying fund's affiliate later sells the purchased security for a higher price than paid to the relying fund, the affiliate must pay the relying fund the difference.	Not required.	Prompt notice to the SEC staff by email at IM-EmergencyRelief@sec.gov and publicly posted on the relying fund's website stating the name of the affiliate, the securities sold and the quantity and purchase price.	Notice from the SEC staff that the relief is withdrawn.
Reducing Cash Distribution Requirements	A relying fund that relies on the safe harbor for distributions under Revenue Procedure 2017-45 may temporarily reduce the aggregate amount of cash included in distributions to shareholders to 10% (down from 20%).	Only applicable to relying funds that qualify as publicly offered RICs. A publicly offered RIC is a RIC the shares of which are continuously offered pursuant to a public offering, regularly traded on an established securities market, or held by fewer than 500 persons at all times during the taxable year. The other conditions for the safe harbor set forth in Revenue Procedure 2017-45 still apply.	Not required to rely on the relief, but required to set dividends and distributions.	Not required.	December 31, 2020

The SEC Proposes a New Rule Regarding Fair Valuation Practices for Regulated Funds

On April 21, 2020, the Securities and Exchange Commission published a long-awaited and highly anticipated rule proposal that, if adopted, would clarify valuation practices and the role of the board of directors in fair valuations of the investments held by a registered investment company or business development company (a "Regulated Fund"). The text of the new proposed rule—Rule 2a-5 under the Investment Company Act of 1940 (the "1940 Act")—is summarized below. Comments to the proposal are due ***July 21, 2020***.

Our Initial Views of the Proposal

The proposal appears to address quite a few concerns that have been raised by the industry regarding uncertainties with respect to valuation oversight. The Regulated Fund industry has long sought clarification on several matters related to valuation, and in particular the appropriate role of the board in the fair valuation process. Indeed, several prior Directors of the SEC's Division of Investment Management have promised such clarification, especially in light of high-profile SEC enforcement actions regarding valuation that have, in some instances, involved findings against independent board members.

In general, we believe boards of Registered Funds will welcome the proposal. It reflects the SEC's acknowledgement of the practical reality of the roles of the adviser and board in setting valuations, as well as an appreciation by the SEC that the adviser may ultimately be better positioned to make valuation determinations than the board.

> *"It reflects the SEC's acknowledgement of the practical reality of the roles of the adviser and board in setting valuations, as well as an appreciation by the SEC that the adviser may ultimately be better positioned to make valuation determinations than the board."*

We note in particular that the proposal calls for a formal new rule, as compared to SEC guidance. A rule should provide comfort to boards that their decision to delegate valuation responsibilities to an adviser (within the conditions established under a final rule) will present less potential for second-guessing than if the SEC only issued guidance, which inherently is less specific.

Notwithstanding the many positive attributes of the SEC's proposal, we anticipate that boards, advisers and other interested parties will wish to comment on the proposal in an effort to enhance the final product. In particular, the proposed rule's provisions regarding when market quotations are not "readily available" for purposes of valuations require close attention (see summary below).

We will be analyzing the proposal in depth and stand ready to assist in assessing topics that may be appropriate for comment.

Background and Overview of the Proposal

Section 2(a)(41)[1] defines the term "value" as it is used throughout the 1940 Act and requires that a Regulated Fund value its portfolio investments using the market value of its portfolio securities when market quotations for those securities are "readily available." When a market quotation for a portfolio security is not readily available, the Regulated Fund must use the fair value of that security, as determined in good faith by the Regulated Fund's board.

Proposed Rule 2a-5, if adopted as proposed, would impose specific required functions for determining fair value in good faith in accordance with the mandate of Section 2(a)(41). The proposed rule would also allow a Regulated Fund's board to delegate the determination of an investment's fair value to the Regulated Fund's adviser, sub-adviser, or some combination thereof, while the board would retain only certain oversight responsibilities.

Below, we summarize key components of the proposed rule.

The Board May Delegate Fair Value Determinations to One or More Investment Advisers

- Proposed Rule 2a-5 would expressly permit a Regulated Fund's board of directors to delegate the fair value determination relating to any or all investments to the Regulated Fund's primary investment adviser, one or more sub-adviser, or any combination thereof. This would remove the significant uncertainty that exists today about the extent to which a board may delegate fair value determinations to an adviser. Because the 1940 Act, by its terms, gives the power to determine valuation solely to the board, the extent to which an adviser or sub-adviser could

1. Unless otherwise indicated, all section and rule references herein are to sections of, and rules under, the 1940 Act.

make a fair value determination has always been in doubt, although in practice such entities routinely make such fair value determinations pursuant to board-adopted policies and procedures.

- For example, the proposal permits the board of a Regulated Fund with a primary adviser and one or more sub-advisers to delegate the determination of fair value for all the fund's investments to the primary adviser. In the alternative, the board could delegate that responsibility to each sub-adviser for the portion of the Regulated Fund's portfolio that the sub-adviser manages.

- If the board of a Regulated Fund opts to delegate to an adviser, the adviser would become the party required to carry out the required functions described in proposed Rule 2a-5 (and summarized below). In addition to those required functions, the following requirements are imposed in the case of delegation to an adviser:

    - *The board must continue to oversee valuation processes.*

        - Proposed Rule 2a-5 does not specify precisely what a Regulated Fund's board must do to satisfy this requirement. Consistent with its fiduciary duties and other obligations under the 1940 Act, we expect that it will likely seek to identify potential conflicts of interest, monitor such conflicts, and take steps necessary to ensure the appropriateness of the adviser's fair value processes.

    - *The adviser must report to the board.*

        - Proposed Rule 2a-5 requires that the adviser, at least quarterly, provide the board a written assessment of the adequacy and effectiveness of the adviser's process for determining the fair value of the assigned portfolio of investments.

        - The proposed rule also requires that the adviser promptly report to the board in writing on matters associated with the adviser's valuation process that materially affect, or could have materially affected, the fair value of the assigned portfolio of investments, including material changes in the Regulated Fund's valuation risks.

        - The amount and timing of reporting prescribed by proposed Rule 2a-5 will likely be a focus of many comments. The prompt notification requirement, which requires written notification to the board within three business days of certain changes or events, in particular, seems likely to be controversial.

    - *The adviser must clearly assign duties among its personnel.*

        - If the board assigns the fair value determination requirements for one or more investments to an adviser, the proposed rule requires the adviser to specify to the board the titles of the persons responsible for determining the fair value of the assigned investments, including by specifying the particular functions for which the persons identified are responsible.

    - *The adviser must keep additional records relevant to the delegation.*

        - Under the proposed rule, in addition to the records that would need to be kept as part of a good faith determination of fair value generally, an adviser must also keep records related to the fair value determinations assigned to the adviser for a period of at least five years after the end of the fiscal year in which those records were provided to the board.

Required Functions for Determining Fair Value in Good Faith

- Proposed Rule 2a-5 requires the performance of certain functions to comply with the mandate of determining fair value in good faith. These functions must be performed by either the board, or if the board has elected to delegate, the Regulated Fund's adviser or advisers. These functions include:

    - *Periodically assessing and managing material risks associated with fair value determinations, including material conflicts of interest.*

        - Other than material conflicts of interest, the proposed rule does not identify the specific valuation risks that must be assessed under this requirement. Each Regulated Fund's risks would depend on the facts and circumstances of its particular investments.

- The proposed rule also does not include a specific frequency for the required periodic re-assessment of a Regulated Fund's valuation risks. Each Regulated Fund's board or adviser would be responsible for determining the appropriate interval.

◦ *Selecting, applying and testing fair value methodologies, including specifying the key inputs and assumptions specific to each asset class and which methodologies should apply to new types of investments.*

- The proposed rule does not specify the tests to be performed and the frequency with which such tests should be performed. Each Regulated Fund's board or adviser would be responsible for determining the appropriate tests and testing intervals.

◦ *Overseeing and evaluating any pricing services used, including establishing criteria for initiating price challenges.*

- The rule proposal includes criteria that the board or adviser should consider when evaluating a pricing service, including such factors as qualifications, experience and history of the pricing service; the valuation methods or techniques, inputs and assumptions; and the pricing service's potential conflicts of interest.

- This element of the rule proposal has the potential to change current practice and, therefore, may draw pushback. Currently, as is acknowledged by the proposing release, many Regulated Funds rely on the expertise and proprietary know-how of pricing services when determining fair value of investments. As with hiring any service provider, Regulated Funds currently perform diligence to ensure they are hiring competent third parties. The proposed rule, however, appears to require a level of diligence that goes beyond typical service provider diligence, and contemplates an in-depth examination of the techniques, formulas and inputs pricing services use. If adopted as proposed, this element could call for much more extensive and frequent investigation of pricing services than is common practice today.

◦ *Adopting and implementing written policies and procedures addressing fair value determinations and instituting certain recordkeeping requirements.*

- Under the proposed rule, where the board determines the fair value of investments, the board-approved fair value policies and procedures would be adopted and implemented by the fund. Where the board assigns fair value determinations, the fair value policies and procedures would be adopted and implemented by the adviser, subject to board approval and oversight under Rule 38a-1.

- While existing Regulated Funds and their advisers will likely already have policies and procedures in place that address fair value determinations, they would need to update their existing policies and procedures to account for the specific requirements of proposed Rule 2a-5.

- Proposed Rule 2a-5 also requires that all Regulated Funds retain appropriate documentation to support fair value determinations, including information regarding the specific methodologies applied and the assumptions and inputs considered when making fair value determinations, as well as any necessary or appropriate adjustments in methodologies, for at least five years from the time the determination was made.

Readily Available Market Quotations

- A Regulated Fund's investments must be fair valued where market quotations are not "readily available." Proposed Rule 2a-5 treats a market quotation as "readily available" only when that quotation is a quoted price (unadjusted) in ***active*** markets for identical investments that the Regulated Fund can access at the measurement date.

- The proposal also provides that a market quotation is not readily available if such quotation is unreliable. A quote would be considered unreliable under proposed Rule 2a-5(c) in circumstances where it would require adjustment or require consideration of additional inputs in determining the value of the security under the generally accepted accounting principles of the United States.

- The proposal here has the potential to change the standard for assessing whether a security does not have a readily available quotation and therefore must be fair valued. As such, this aspect of the proposal requires close attention and likely warrants commenters' feedback.

Rescission of Prior Commission Releases and Review of Relevant Staff Guidance

- The SEC also proposes to rescind a number of staff letters and other SEC and staff guidance addressing fund valuation matters covered by the proposal. The existing guidance, some of which is problematic today, would no longer be applicable if the SEC adopts Rule 2a-5.
- The SEC proposes to rescind two SEC releases if Rule 2a-5 is adopted: Accounting Series Release 113 and Accounting Series Release 118, which provide Commission guidance on, among other things, how to determine fair value for restricted securities.

SEC Positioned to Adopt Rule Governing Regulated Funds' Use of Derivatives and Other Transactions

The SEC re-proposed Rule 18f-4 under the 1940 Act last year.[1] The proposal provides a conditional exemption from the asset coverage requirements under Sections 18 and 61 of the 1940 Act for registered funds and business development companies (collectively, "Regulated Funds") when entering into derivatives, short sale borrowings, unfunded commitments and reverse repurchase agreements or similar financing transactions.

The comment period for the proposal expired last month. Commenters generally viewed the framework of the rule as an improvement over the SEC's prior proposal, but certain modifications are necessary. We expect the SEC to adopt a final rule before the end of the year.

This Alert provides background on the current regulation of these transactions under the 1940 Act and an overview of how that would change under the proposed rule. This article then examines potential issues with the proposed rule in its current form and suggests potential revisions for the SEC staff to consider prior to adopting a final rule.

Background

Section 18 of the 1940 Act limits a Regulated Fund's ability to obtain leverage or incur obligations to persons other than its common shareholders through the issuance of senior securities.[2] Section 18 itself does not answer the question of how it applies to derivatives and other types of instruments that may be characterized as providing portfolio leverage. The answer to this question has significant implications for how much structural leverage a fund may utilize.

Regulated Funds use derivatives, reverse repurchase agreements and similar instruments in reliance on highly fragmented guidance from the SEC and its staff that has evolved over many decades. In the SEC's Release 10666,[3] issued in 1979, the Commission issued a general statement of policy concluding that reverse repurchase agreements and similar arrangements meet the "functional meaning" of the term "evidence of indebtedness" for purposes of Section 18 of the 1940 Act. The Commission stated that a Regulated Fund's use of reverse repurchase agreements and similar arrangements will not be subject to the asset coverage requirements in Section 18 if the Regulated Fund "covers" its obligation under the reverse repurchase agreement or similar arrangement by segregating and maintaining liquid assets equal to the Regulated Fund's obligation under the arrangement.

The SEC staff, after Release 10666 was issued, sought to clarify the application of Section 18 to instruments other than reverse repurchase agreements. The staff, for example, extended the policy statement in Release 10666 to futures, forwards, written

1. At the same time it re-proposed Rule 18f-4, it also proposed new rules under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 that govern sales practices for leveraged/inverse ETFs and similar investment vehicles.

2. Section 61 of the 1940 Act modifies the asset coverage requirements under Section 18 that apply to BDCs. The general principles discussed in this article apply equally to the asset coverage requirements that apply to a BDC under Sections 18 and 61.

3. *See* Investment Company Act Release No. 10666 (Apr. 27, 1979).

options and similar derivative instruments. The staff subsequently issued a no-action letter that many interpret as allowing Regulated Funds the ability to "cover" their obligations under derivatives, reverse repurchase agreements and similar transactions with cash or other highly liquid instrument.[4]

Over the years, advisers to Regulated Funds have taken various interpretations of the permitted use of derivatives and similar instruments under this guidance when operating Regulated Funds and developing new registered products. Without a clear set of rules to reference, somewhat predictably, the Regulated Funds industry became more governed by lore than law with respect to the use of derivatives, short sales, unfunded commitments, reverse repurchase agreements and similar instruments.

"Without a clear set of rules to reference, somewhat predictably, the Regulated Funds industry became more governed by lore than law with respect to the use of derivatives, short sales, unfunded commitments, reverse repurchase agreements and similar instruments."

Recognizing this reality, over the last decade, the SEC has taken steps to codify its position on how Regulated Funds may use derivatives and other instruments. The process kicked off with an ABA Task Force Report in 2010 and the subsequent issuance of an SEC concept release seeking input from the industry and other interested commentators in 2011. In 2015, the SEC, by proposing Rule 18f-4, made a first attempt at a rule to codify the regulation of the use of derivatives and similar instruments by Regulated Funds. To say the least, this proposal was highly controversial and, if it had been adopted, would have resulted in adverse impacts to certain Regulated Funds, in particular those with a fixed income investment strategy. This is because the proposal included a blunt notional cap on a Regulated Fund's use of derivatives that would have forced certain funds to limit their use of less volatile derivatives for risk mitigation, hedging and investment purposes. The 2015 proposed rule also would have treated unfunded commitments in the same manner as reverse repurchase agreements, without accounting for the differences in their use by Regulated Funds.

The SEC's more recent re-proposal of Rule 18f-4 implements lessons learned from the response to the 2015 proposal. The re-proposal provides a more comprehensive and more sophisticated approach to codifying how Regulated Funds may utilize derivatives and similar instruments in compliance with the 1940 Act, although certain modifications, including to the VaR test calculations, are necessary to mitigate the risk of market disruption. Most significantly, the re-proposed rule would eliminate the current asset segregation requirement for the use of derivatives by Regulated Funds and would rescind and replace prior staff guidance on this topic. We summarize the highlights of the proposed rule below.

Overview of Proposed Rule 18f-4

In lieu of complying with the asset coverage requirements under Sections 18 and 61, as applicable, the proposed rule includes a number of conditions that a Regulated Fund must comply with to rely on the exemption in Rule 18f-4 when it uses derivatives, short sale borrowings, unfunded commitments, reverse repurchase agreements and similar financing transactions.

- *Derivatives Risk Management Program.* The proposed rule requires that a Regulated Fund (other than a limited derivatives user) that enters into derivatives transactions adopt and implement a written derivatives risk management program designed to manage the risks that arise when entering into such transactions. The program will be administered by a derivatives risk manager ("DRM"), which may be a committee or an individual, and must be approved by the fund's board of directors. If an individual, the DRM cannot be a portfolio manager and, if a committee, a majority of the committee cannot be comprised of portfolio management. The derivatives risk management program should be tailored to the particular types of derivatives that the Regulated Fund routinely uses and their related risks, and must address the following elements:

4. *See Merrill Lynch Asset Management, L.P., SEC No-Action Letter (July 2, 1996).*

1. Risk identification and assessment;
2. Risk guidelines that provide for quantitative and measurable criteria;
3. Stress testing to evaluate potential losses to a Regulated Fund's portfolio under stress conditions;
4. Backtesting of the value at risk ("VaR") calculation model that the Regulated Fund uses each business day;
5. Internal reporting and escalation of certain derivative matters to the fund's portfolio management and board of directors; and
6. A periodic review of the program, at least annually, to evaluate the program's effectiveness.

- *Proposed VaR-Based Limit*. The proposed rule generally requires that a Regulated Fund (other than a limited derivatives user) that engages in derivatives transactions comply with a VaR-based limit on fund leverage risk. VaR is an estimate of an instrument's or portfolio's potential losses over a given period of time and at a specific confidence level.

  Under the proposed rule, a fund's portfolio VaR will not be permitted to exceed 150% of the VaR of a designated reference index specific to that fund, as selected by the DRM (the "Relative VaR Test"). The designated reference index must be unleveraged and reflect the markets or asset classes in which the fund invests. If the DRM is unable to identify an appropriate designated reference index, the fund must use an absolute VaR test in which the VaR of the fund's portfolio cannot exceed 15% of the value of the fund's net assets (the "Absolute VaR Test"). The VaR model that a fund uses must take into account all significant and identifiable market risk factors associated with its investments. The Relative VaR Test or the Absolute VaR Test must be conducted at a consistent time at least once each business day, take into account and incorporate all significant and identifiable market risk factors associated with a Regulated Fund's investments, use a 99% confidence level and a time horizon of 20 trading days and be based on at least three years of historical data.

- *Limited Derivative Users*. The proposed rule provides an exception from the derivatives risk management program and VaR test requirements for certain Regulated Funds, known as "limited derivatives users." This exception is available if a fund adopts and implements procedures reasonably designed to manage the fund's derivative risk and the fund either (1) limits its derivatives exposure to 10% of its net assets (with adjustments solely to convert the notional amount of interest rate derivatives into 10-year bond equivalents and to delta adjust the notional amounts of options contracts) or (2) uses derivatives solely to hedge certain currency risks.

- *Reverse Repurchase Agreements*. Reverse repurchase agreements and similar financing transactions will be treated separately from derivatives transactions under the proposed rule, as the SEC believes that such transactions have economic effects similar to secured borrowings. Under the proposed rule, a fund may engage in reverse repurchase agreements or similar financing transactions if the fund includes the aggregate amount of indebtedness associated with such transactions when calculating its asset coverage ratio under Section 18 of the 1940 Act.

- *Unfunded Commitments*. The SEC believes that unfunded commitments are distinguishable from derivatives transactions. Therefore, under the proposed rule, a Regulated Fund may enter into unfunded commitment agreements if it reasonably believes, at the time it enters into such agreement, that it will have sufficient cash and cash equivalents to meet its obligations with respect to all of its unfunded commitment agreements as they come due. The Regulated Fund must document the basis for this belief, and the proposed rule includes certain specific factors that the fund must take into account.

- *Board Oversight and Reporting*. The proposed rule requires a fund's board to approve the designation of the fund's DRM. The board must take into account the manager's relevant experience regarding the management of derivatives risk. At least annually, the DRM must provide regular written reports to the board regarding the program's implementation and effectiveness and the results of any stress testing. The board is also responsible for ensuring the fund's compliance with the proposed rule.

The proposed rule would replace the asset coverage requirements that currently apply to Regulated Funds under Release 10666 and related staff guidance. Importantly, the proposed rule would not impose notional limits on a Regulated Fund's use of derivatives, a significant improvement over the prior proposal.

> *“The proposed rule would replace the asset coverage requirements that currently apply to Regulated Funds under Release 10666 and related staff guidance.”*

Key Issues We Hope the SEC Will Reconsider

We generally support the SEC’s adoption of the proposed rule, but some aspects of the proposal warrant further consideration and revision.

The DRM should be able to choose which VaR test to comply with regardless of its ability to identify an appropriate “designated reference index”.

We believe the DRM should be permitted to choose the more appropriate VaR test for each Regulated Fund. Under the proposed rule, a DRM must either identify an appropriate designated reference index when conducting the daily VaR test or, if a designated reference index is unavailable, the DRM must ensure that the fund complies with an Absolute VaR Test.

Requiring a Regulated Fund to use a Relative VaR Test unless the DRM is “unable to identify” a designated reference index would create an ambiguous standard that could be applied arbitrarily. Neither the proposing release nor the proposed rule clearly defines what “unavailable” means in the context of identifying a designated reference index. This lack of a definition would put the DRM in a difficult position of needing to determine the point at which an appropriate reference index is (or becomes) unavailable for use and could lead to potential second guessing of the DRM’s decision. Moreover, the definition of “designated reference index” in the proposed rule is overly broad. The proposed rule states that a designated reference index must either be an appropriate broad-based securities market index or an “additional index” within the meaning of Form N-1A. For funds that seek absolute return, an additional index may exist that reflects markets or asset classes in which the fund invests, but such an index may not be an appropriate index for the fund due to differences in volatility, asset class weightings, short exposures and/or capacity constraints, among other factors. A DRM should be permitted to select the VaR test that is most appropriate for a fund’s investment objective, policies and risks.

Permitting a DRM to choose which VaR test to comply with for each Regulated Fund under the DRM’s supervision would allow a global asset manager to more closely align risk testing across its product line. As a practical matter, many asset managers operate global businesses that must comply with various regulatory regimes. In the European Union, the Committee of European Securities Regulators Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS govern the risk measurement and the calculation of global exposure and counterparty risk for public investment companies offered in Europe (the “UCITS Guidelines”). The UCITS Guidelines recognize that the effectiveness of a VaR test depends on various factors, such as a fund’s investment objective, which the fund’s adviser is best positioned to determine. The UCITS Guidelines make the UCITS responsible for deciding which VaR approach is the most appropriate methodology given the risk profile and investment strategy of the UCITS. The UCITS must be able to demonstrate that the VaR approach it utilizes is appropriate and must fully document its underlying assumptions. If the SEC were to adopt a similar approach, it would allow global asset managers to streamline their risk management programs and more closely tailor their VaR tests to the risks and objectives of each Regulated Fund. The SEC should consider the experience of these global fund managers in adopting and finalizing this proposed rule.

The proposed leverage limits should be increased to a 200% relative VaR limit and a 20% absolute VaR limit.

We agree with the many commenters who strongly support increasing the proposed Relative VaR Test to a 200% limit and the proposed Absolute VaR Test to a 20% limit. These limits would be in line with the UCITS Guidelines, which global asset managers have operated under for many years, including during the current COVID-19 crisis. Such an approach would allow global asset managers to streamline their risk management programs in a manner that has proven effective during the current market crisis. Moreover, the rule should allow a DRM to choose a 95% VaR confidence level in order to obtain additional observations to produce a more robust and stable measure of risk, the results of which could then be rescaled to a 99% confidence level equivalent. This would further align the rule with the UCITS Guidelines under which global asset managers currently operate. Certain commenters provided data supporting the conclusion that, without these and other enhancements to the VaR tests, a potentially large number of funds that were not otherwise stressed would have had to substantially alter their investment strategies during the COVID-19 crisis in order to comply with the rule. We urge the SEC to modify the final rule to address these concerns.

The "limited derivatives user" definition in the proposed rule should be revised to modify the 10% derivatives exposure limit.

We support the exception in the proposed rule that excludes "limited derivatives users" from the requirements to adopt a risk management program and implement VaR-based testing, but it should be revised to make currency hedging derivatives a global exception rather than a standalone one. Under the proposed rule, limited derivatives users must fall into one of two categories: those that limit their overall use of derivatives to 10% of their net assets with certain limited adjustments ***or*** those that exclusively use derivatives for currency hedging. We believe, however, that the two alternatives should be collapsed into one set of criteria; in other words, the rule should permit a Regulated Fund to qualify as a limited derivatives user if its derivatives exposure does not exceed 10% of net assets, excluding any currency hedges.

This is a particular concern for alternative credit managers managing Regulated Funds that provide capital to small and mid-size businesses. Many of these Regulated Funds will use interest rate swaps and credit default swaps to hedge exposures in their portfolios, along with currency derivatives to hedge any non-U.S. investments. These Regulated Funds do, in fact, use derivatives for limited purposes, but it is quite possible the cumulative notional amount of derivatives used will exceed 10% of net assets when including currency derivatives and, therefore, these Regulated Funds will not qualify as limited derivative users under the rule as proposed.

The proposed rule would force many Regulated Funds who have very limited use of derivative outside of currency hedging to adopt derivatives risk management programs and conduct VaR tests that are burdensome and not necessary when compared to the volatility of their portfolios, which are generally comprised of loans and bonds.

This should not be the case. The goal of the limited derivatives user exception should be to exclude Regulated Funds whose use of derivatives does not raise the concerns that Section 18 is meant to address. We urge the Commission to combine the separate parts of the proposed limited derivatives user exception into one test in the final rule, and to allow a DRM to risk adjust the notional amounts of derivatives when calculating the percentage of net assets test.

Reverse repurchase agreements are not analogous to bank borrowings and should not be subject to the 300% asset coverage requirement.

We do not agree with the proposed rule's treatment of reverse repurchase agreements as the functional equivalent of bank borrowings. The Commission and the staff have maintained a long-standing policy that they will not object to Regulated Funds engaging in reverse repurchase agreements without complying with the asset coverage and other requirements of Section 18, provided that such investment companies segregate assets, or otherwise "cover" their obligations under the instruments. The framework set forth in Release 10666 has been functioning appropriately for more than 40 years and should continue to be applied to these types of arrangements.

"We do not agree with the proposed rule's treatment of reverse repurchase agreements as the functional equivalent of bank borrowings."

Bank borrowings and reverse repurchase agreements are two unique transactions that do not warrant the same type of treatment under Section 18 of the 1940 Act. A key distinction between the two is that one creates an unequivocal monetary liability while the other only creates a future contractual liability that might not actually result in a financial liability. A bank borrowing involves an extension of credit to a fund, creating a financial liability that the fund must repay by a certain date. Reverse repurchase agreements and similar financing transactions create a potential liability to pay a fixed sum of money at a future date, but because the underlying securities to be repurchased may have appreciated in the time since the parties entered into the repurchase agreement, reacquiring the securities may well be accretive to the fund. A Regulated Fund has the ability to adequately address the potential, but not the certainty, of future liability by setting aside and marking to market liquid assets that cover the fund's exposure to the potential liability. The guidance in Release 10666 reached the correct conclusion and should continue to be applied to reverse repurchase agreements and similar arrangements.

If, however, the SEC determines that it must repeal the guidance under Release 10666, then reverse repurchase agreements and similar financing transactions would be better treated in the same manner as derivatives under the proposed rule. As the SEC acknowledges in the proposing release, any portfolio leveraging effects of reverse repurchase agreements or similar financing transactions for Regulated Funds subject to the VaR test would be included and restricted in the VaR-based limit, which covers all of a fund's investments. There is no reason why the Section 18 limitations on senior securities need to apply directly to reverse repurchase agreements when funds that utilize them extensively would become subject to a VaR-based limit on fund leverage risk. Any portfolio leveraging effect of reverse repurchase agreements or similar transactions would be included and restricted through the VaR-based limit, which estimates a fund's risk of loss after taking into account all of the fund's investments.

Next Steps

The proposed rule is a positive step in providing a clearer, modern regulatory framework for how Regulated Funds use derivatives and similar arrangements. Nonetheless, there are components of the proposed rule that we believe the SEC should reconsider. If these concerns are addressed in a final rule, the new regulatory regime will be a welcome improvement to the regulation of the use of derivatives, unfunded commitments and reverse repurchase agreements or similar financing transactions by Regulated Funds.

M&A Transactions

Acquiror	Acquired or Target Company	Type of Transaction and Status
1251 Capital Group, a financial services holding company.	**Ziegler Capital Management**, an asset management firm with approximately $10.5 billion total adjusted AUM (approximately $1.9 billion of fixed income assets are excluded from the deal).	Acquisition of majority stake with 1251's management becoming Ziegler shareholders with representatives becoming part of Ziegler's board of directors. (Further terms not disclosed)
Advisor Group, Inc., a network of independent financial advisers with $271 billion in client assets.	**Landenburg Thalmann Financial Services Inc.**, a publicly-traded diversified financial services company.	Acquisition through cash merger. The total value of the transaction is approximately $1.3 billion.
Aksia LLC, investment advisory firm that advises on more than $85 billion of client alternative allocations including more than $8.5 billion AUM.	**TorreyCove Capital Partners LLC**, an investment advisory firm with more than $75 billion in assets under advisement.	Acquisition. (Terms not disclosed)
Ares Management Corporation, an alternative asset manager with approximately $149 billion in AUM.	**Crestline Denali Capital L.P.**, an asset management company with approximately $2.6 billion in AUM.	Acquisition through which a subsidiary of Ares will acquire a managing interest of Crestline in an all cash transaction. (Further terms not disclosed)
ArrowMark Partners, a registered investment adviser with approximately $18.9 billion AUM.	**StoneCastle Asset Management**, the external investment adviser to StoneCastle Financial Corp., a registered, non-diversified, closed-end investment company.	Acquisition of the platform and assets. (Terms not disclosed)
Blucora, Inc., a wealth management firm with approximately $67 billion in total client assets.	**HK Financial Services**, a registered investment adviser.	Acquisition through a stock purchase with a purchase price of $160 million. (Further terms not disclosed)
Bluespring Wealth Partners, a wholly-owned subsidiary of Kestra Financial a financial services platform with approximately $24.5 billion AUM.	**Vector Wealth Management**, a management firm with approximately $1.1 billion AUM.	Acquisition. (Terms not disclosed)
Captrust Financial Advisors, a registered investment adviser with approximately $368 billion in AUM.	**Welch Hornsby, Inc.**, a fee-only investment adviser with approximately $5.5 billion in AUM.	Acquisition. (Terms not disclosed)
Creative Planning, Inc., a wealth management firm with approximately $45 billion AUM.	**Hogan Financial Management LLC**, a registered investment adviser with approximately $300 million AUM.	Acquisition. (Terms not disclosed)
Dyal Capital Partners, a private equity fund with approximately $21.5 billion in AUM; a division of Neuberger Berman that has approximately $339 billion in AUM.	**Owl Rock Capital Group**, an alternative asset manager with approximately $14.6 billion.	Acquisition of passive, non-voting minority stake. (Terms not disclosed)

M&A Transactions *(continued)*

Acquiror	Acquired or Target Company	Type of Transaction and Status
Fiduciary Trust Company International, a wealth management firm and wholly-owned subsidiary of Franklin Resources, Inc. with more than $75 billion in assets under management and administration.	**Athena Capital Advisers, LLC**, a registered investment adviser with approximately $6 billion in AUM.	Acquisition through merger. (Terms not disclosed)
Fiduciary Trust Company International, a wealth management firm and wholly-owned subsidiary of Franklin Resources, Inc. with more than $75 billion in assets under management and administration.	**The Pennsylvania Trust Company**, a wealth management firm with more than $4.7 billion in assets under management and administration.	Acquisition. (Terms not disclosed)
First Eagle Investment Management, LLC, an investment management firm with approximately $99 billion AUM.	**THL Credit Advisors LLC**, an alternative investment manager with approximately $16.8 billion AUM.	Acquisition. (Terms not disclosed)
Franklin Resources, Inc., a global investment manager with approximately $688 billion AUM.	**Legg Mason, Inc.**, an investment management firm with approximately $806 billion in AUM.	Acquisition through an all-cash transaction. Franklin will pay $50 per share of common stock for a total consideration of $4.5 billion that will be funded from the company's existing balance sheet cash, and will assume approximately $2 billion of Legg Mason's outstanding debt. Legg Mason affiliate EnTrust Global will repurchase its business.
FS Investments, an asset manager with more than $24 billion in AUM.	**Chiron Investment Management**, an investment management firm with approximately $1.8 billion in assets.	Acquisition. (Terms not disclosed)
Goldman Sachs BDC, Inc. ("GSBD"), a specialty finance company that has elected to be regulated as a BDC.	**Goldman Sachs Middle Market Lending Corp. ("MMLC")**, a specialty finance company that has elected to be regulated as a BDC.	Merger of affiliated BDCs.
Hub International Limited, a global insurance broker managing more than $38 billion in assets and services.	**Perennial Pension and Wealth**, an independent financial services company.	Acquisition. (Terms not disclosed)
Kudu Investment Management, LLC, a registered investment adviser with investment partners that collectively manage more than $50 billion.	**Creation Investments Capital Management, LLC**, an investment management that manages approximately $707 million in private funds.	Acquisition of minority interest. (Terms not disclosed)
Kudu Investment Management, LLC, a registered investment adviser with investment partners that collectively manage more than $50 billion and Pacific Current Group Limited, an asset management firm.	**Pennybacker Capital Management, LLC**, an alternative investment manager with more than $1.9 billion in AUM.	Acquisition of minority interest. (Terms not disclosed)

M&A Transactions *(continued)*

Acquiror	Acquired or Target Company	Type of Transaction and Status
Lovell Minnick Partners, a private equity firm with approximately $3.3 billion of committed capital.	**Pathstone**, a registered investment adviser with more than $15 billion in AUM.	Acquisition of interest. (Terms not disclosed)
North Square Investments LLC, an investment firm with more than $10 billion in AUM.	**C.S. McKee, L.P.**, an investment management firm with more than $8 billion in AUM.	Acquisition. (Terms not disclosed)
Oak Hill Capital Partners, a private equity firm managing funds with approximately $15 billion of initial capital commitments and co-investments since inception.	**Mercer Global Advisors Inc.**, a registered investment adviser and financial planning firm with more than $16.5 billion in AUM.	Acquisition from current private equity owners Genstar Capital LLC and Lovell Minnick Partners. (Terms not disclosed)
Resolute Investment Managers, Inc., a diversified, multi-affiliate asset management platform with approximately $75.1 billion in AUM.	**National Investment Services**, a fixed income and equity strategies manager with approximately $8.6 billion in AUM.	Acquisition of majority interest. (Terms not disclosed)
Sanctuary Wealth, a global wealth management firm with approximately $9 billion AUM through this acquisition.	**Northview Asset Management LLC**, a registered investment adviser.	Acquisition. (Terms not disclosed)
Sandy Spring Bancorp, parent company of Sandy Spring Bank, which upon completion of the acquisition will have approximately $4.5 billion AUM.	**Rembert Pendleton Jackson**, an investment and financial advisory firm with more than $1.3 billion in AUM.	Acquisition. (Terms not disclosed)
Savant Capital Management, a fee-only wealth management firm with more than $6 billion AUM.	**Huber Financial Advisors**, a registered investment adviser with more than $1.6 billion in total assets.	Acquisition through merger. (Terms not disclosed)
The Charles Schwab Corporation, a financial services provider with approximately $4.05 trillion in client assets.	**TD Ameritrade**, a financial services firm with approximately $1.3 trillion in assets.	Acquisition through a $26 billion all-stock transaction. TD Ameritrade stockholders will receive a 17% premium over the 30-day volume weighted average price exchange ratio as of November 20, 2019, with each TD Ameritrade stockholder receiving 1.0837 Charles Schwab shares for each TD Ameritrade share.
Wealth Enhancement Group, a wealth management firm with almost $15.1 billion in client brokerage and advisory assets.	**BPU Investment Management**, a financial advisory and investment firm with approximately $990 million in AUM.	Acquisition. (Terms not disclosed)

4th Quarter 2019 and 1st Quarter 2020 Closed-End Fund Public Offerings

AllianzGI Artificial Intelligence & Technology Opportunities Fund

Structure:	Diversified, closed-end management investment company.
Investment Objectives/Policies:	The Fund's investment objective is to provide total return through a combination of current income, current gains and long-term capital appreciation. The Fund will seek to achieve its investment objective by investing across the capital structure in companies across a broad range of industries and technologies positioned to benefit from the evolution and disruptive power of artificial intelligence and other new technologies. The Fund will seek to achieve its investment objective by investing in a combination of convertible securities, equity securities, and debt and other income-producing instruments. Through a combination of these asset classes and strategies, the Fund attempts to simultaneously capture equity market exposure and current income utilizing a disciplined, fundamental, bottom-up research process combined with traditional credit analysis. The Fund attempts to reduce the risk of capital loss through, among other things, independent credit analysis focused on downgrade and default risks and the implementation of a clearly defined sell discipline strategy. The Fund will normally not invest more than 20% of its managed assets in income producing securities (such limit does not apply to convertible securities).
Investment Adviser:	AllianzGI U.S.
Lead Underwriters:	BofA Securities, Inc., Morgan Stanley & Co. LLC, UBS Securities LLC and Wells Fargo Securities, LLC

BlackRock Health Sciences Trust II

Structure:	Non-diversified, closed-end management investment company.
Investment Objectives/Policies:	The Trust's investment objectives are to provide total return and income through a combination of current income, current gains and long-term capital appreciation. Under normal market conditions, the Trust will invest at least 80% of its total assets in equity securities of companies principally engaged in the health sciences group of industries and equity derivatives with exposure to the health sciences group of industries. As part of its investment strategy, the Trust intends to employ a strategy of writing (selling) covered call options on a portion of the common stocks in its portfolio, writing (selling) other call and put options on individual common stocks, and, to a lesser extent, writing (selling) call and put options on indices of securities and sectors of securities. This options writing strategy is intended to generate current gains from options premiums and to enhance the Trust's risk-adjusted returns. The Trust may invest up to 20% of its total assets in other investments, including equity securities issued by companies that are not principally engaged in the health sciences group of industries and debt securities issued by any issuer, including non-investment grade debt securities.
Investment Adviser:	BlackRock Advisors, LLC
Lead Underwriters:	Morgan Stanley & Co. LLC, BofA Securities, Inc., UBS Securities LLC, Raymond James & Associates, Inc. and Wells Fargo Securities, LLC

4th Quarter 2019 and 1st Quarter 2020 Closed-End Fund Public Offerings *(continued)*

Calamos Long/Short Equity & Dynamic Income Trust

Structure:	Diversified, closed-end management investment company.
Investment Objectives/Policies:	The Fund will invest, under normal circumstances, at least 80% of its managed assets in a globally diversified portfolio comprised of equity securities which are defined to include common stock, preferred stock, convertible securities and exchange-traded funds (the “Equity Sleeve”), as well as long and short equity positions managed pursuant to a long/short equity strategy (the “Long/Short Component”). The Long/Short Component will comprise at least 50% of the Fund’s managed assets with a focus on absolute returns in a risk-managed format. The Fund may invest up to 20% of its managed assets opportunistically in globally diversified income-producing securities including high-yield and investment grade corporate securities, leveraged loans, distressed debt securities, securitized products, U.S. Treasuries and sovereign debt issued by foreign governments (the “Fixed Income Sleeve”). Under current market conditions, it is anticipated that the Fund will initially invest 80% of its managed assets in equities, of which 60% will be invested in the Long/Short Component and 20% of its managed assets in the Fixed Income Sleeve.
Investment Adviser:	Calamos Advisors LLC
Lead Underwriters:	UBS Securities LLC, Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC and RBC Capital Markets, LLC

DoubleLine Yield Opportunities Fund

Structure:	Non-diversified, closed-end management investment company.
Investment Objectives/Policies:	The Fund’s investment objective is to seek a high level of total return, with an emphasis on current income. Under normal market conditions, the Fund will seek to achieve its investment objective by investing in a portfolio of investments selected for its potential to provide a high level of total return, with an emphasis on current income. The Fund may invest in debt securities and other income-producing investments of issuers anywhere in the world, including in emerging markets, and may invest in investments of any credit quality. The Fund expects initially, and may thereafter continue, to invest substantially in debt instruments of below investment grade quality (including debt securities commonly referred to as “high yield” securities or “junk bonds”) and unrated instruments. The Fund may invest in securities of any or no maturity or negative duration, and there are no limits on the duration of the Fund’s portfolio. The Fund’s investment adviser allocates the Fund’s assets among sectors of the debt market, and among investments within those sectors, in an attempt to construct a portfolio providing the potential for a high level of total return, with an emphasis on current income, consistent with what the adviser considers an appropriate level of risk in light of market conditions prevailing at the time.
Investment Adviser:	DoubleLine Capital LP
Lead Underwriters:	UBS Securities LLC, BofA Securities, Inc., Morgan Stanley & Co. LLC and Wells Fargo Securities, LLC

4th Quarter 2019 and 1st Quarter 2020 Closed-End Fund Public Offerings *(continued)*

RiverNorth Flexible Municipal Income Fund, Inc.

Structure:	Diversified, closed-end management investment company.
Investment Objectives/Policies:	The Fund's primary investment objective is current income exempt from regular U.S. federal income taxes (but which may be includable in taxable income for purposes of the Federal alternative minimum tax). The Fund's secondary investment objective is total return. Under normal market conditions, the Fund will seek to achieve its investment objectives by investing, directly or indirectly, at least 80% of its managed assets in municipal bonds. The Fund will seek to allocate its assets among two principal investment strategies. The Tactical Municipal Closed-End Fund Strategy (allocated 25-65% of managed assets) will seek to (i) generate returns through investments in closed-end funds, exchange-traded funds and other investment companies that invest least 80% of their net assets in Municipal Bonds, and (ii) derive value from the discount and premium spreads associated with closed-end funds that invest at least 80% of their net assets in Municipal Bonds. The Municipal Bond Income Strategy (allocated 35-75% of managed assets) seeks to capitalize on inefficiencies in the tax-exempt and tax-advantaged securities markets through investments in Municipal Bonds. Under normal market conditions, the Fund may not directly invest more than 25% of the managed assets allocated to this strategy in Municipal Bonds in any one industry or in any one state of origin, and the Fund may not directly invest more than 5% of the Managed Assets allocated to this strategy in the Municipal Bonds of any one issuer. The Fund may invest up to 30% of the managed assets allocated to this strategy in Municipal Bonds that pay interest that may be includable in taxable income for purposes of the Federal alternative minimum tax. The Fund will generally invest in Municipal Bonds that have a maturity of five years or longer at the time of purchase.
Investment Adviser:	RiverNorth Capital Management, LLC
Sub-Adviser:	McKay Shields LLC
Lead Underwriters:	UBS Securities, LLC, Wells Fargo Securities, LLC, RBC Capital Markets, LLC and Stifel, Nicolaus & Company, Incorporated

Simpson
Thacher

David W. Blass
Partner
+1-202-636-5863
david.blass@stblaw.com

Rajib Chanda
Partner
+1-202-636-5543
rajib.chanda@stblaw.com

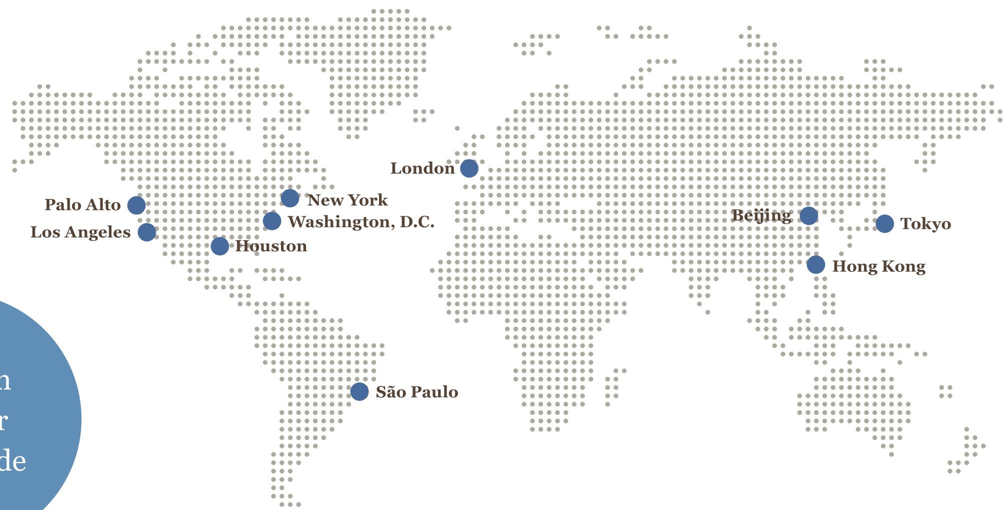
Benjamin Wells
Partner
+1-212-455-2516
bwells@stblaw.com

Simpson Thacher's dynamic, long-standing Registered Funds Practice encompasses all aspects of the investment management business. Our practice focuses on alternative asset managers seeking to access retail investor channels, asset management mergers and acquisitions, and advising on cutting-edge regulatory policy and strategy matters.

Allison Scher Bernbach
Senior Counsel
+1-212-455-3833
allison.bernbach@stblaw.com

Ryan Brizek
Counsel
+1-202-636-5806
ryan.brizek@stblaw.com

Steven Grigoriou
Counsel
+1-202-636-5592
steven.grigoriou@stblaw.com



Simpson Thacher Worldwide

UNITED STATES

New York
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston
600 Travis Street, Suite 5400
Houston, TX 77002
+1-713-821-5650

Los Angeles
1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto
2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.
900 G Street, NW
Washington, D.C. 20001
+1-202-636-5500

EUROPE

London
CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing
3901 China World Tower A
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong
ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Tokyo
Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo
Av. Presidente Juscelino
Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000