Investment Management Industry News Summary - November 2010

NOVEMBER 30, 2010

This Summary, which draws from a wide range of sources, endeavors to condense important investment management regulatory news of the preceding week into one, easily digestible source. This Summary is not intended as legal advice. Readers should not act upon information contained in this Summary without professional legal counsel. This Summary may be considered advertising under the rules of the Supreme Judicial Court of Massachusetts.

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Chairman Names Acting Director of Division of Investment Management

November 19, 2010 11:28 AM

On November 19, 2010, Chairman Mary L. Shapiro named Jennifer B. McHugh as Acting Director of the Division of Investment Management, replacing Andrew J. Donohue, who left the agency after four years of service as Director.

For more information, please see http://www.sec.gov/news/press/2010/2010-227.htm

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SEC Proposes Rules to Implement Exemptions to Registration Under the Investment Advisers Act and Make Other Changes to Registration and Reporting Requirements

November 19, 2010 10:20 AM

On November 19, 2010, the SEC proposed rules ("Proposed Rules") to implement amendments to the Investment Advisers Act of 1940 ("Advisers Act") effected by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act"). The Proposed Rules would define venture capital funds for purposes of the exemption for venture capital fund advisers; define key terms used in determining who is an exempt "foreign private adviser"; change the reporting requirements for both registered and unregistered investment advisers, including advisers to hedge funds and other private funds; implement a new exemption for advisers to private funds with less than $150 million in assets under management; and define terms used in determining whether an adviser is eligible for SEC or state registration. In addition, the Proposed Rules would amend Form ADV Part 1 and Rule 206(4)-5, the recently adopted pay-to-play rule.

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SEC Staff States That Anti-Takeover Measure is Inconsistent with Section 18(i)

November 15, 2010 11:09 AM

On November 15, 2010, the SEC's Division of Investment Management issued a letter stating its belief that a closed-end investment company ("Closed-End Fund"), by opting in to the Maryland Control Share Acquisition Act ("MCSAA"), would be acting in a manner inconsistent with Section 18(i) of the Investment Company Act of 1940 ("Investment Company Act"). The MCSAA, an anti-takeover measure, only applies to certain Maryland corporations and is not applicable to registered open-end investment companies. By default, a Closed-End Fund is excluded from the measure, but may elect to opt in to the measure. The MCSAA seeks to compel prospective acquirers to deal directly with a corporation's management, rather than obtaining significant voting power through market purchases of such corporation's shares. Specifically, when a person obtains, directly or indirectly, ownership of, or the power to direct the exercise of voting power of "control shares," a control share acquisition has occurred under the MCSAA. Once a control share acquisition has occurred, the holders of control shares lose their voting rights. As holders of control shares lose their voting rights, such holders are not permitted to vote their control shares unless and until the stockholders vote to restore the voting rights with an affirmative vote of two thirds of votes entitled to be cast at a special meeting called for such purposes. Control shares are generally shares of stock that would equal or exceed certain percentages of the total voting power of the corporation if aggregated with other shares of stock of the corporation owned by a person or in respect of which

such person is entitled to exercise or direct the exercise of voting power.

The SEC staff believes that Closed-End Funds' use of the MCSAA to restrict the ability of certain shareholders to vote control shares would be inconsistent with the fundamental requirements of Section 18(i) of the Investment Company Act that every share of stock issued by the Fund be voting stock and have equal voting rights with every other outstanding voting stock. According to the SEC staff, securities of a Closed-End Fund using the MCSAA would contain provisions that discriminate against any person who acquires control shares or whose investment objectives and capacity for investment make it likely that such person may acquire control shares. These provisions would favor shareholders whose circumstances make such an acquisition highly unlikely. Further, these provisions would fail to protect the right to vote one's shares, an essential privilege of share ownership.

For more information, please see
http://www.sec.gov/divisions/investment/noaction/2010/bouldertotalreturn111510.htm

transaction or matter addressed herein.

SEC Staff Permits Certain Non-Interval Funds to Use Rule 486(b) for Registration Statement Amendments

November 9, 2010 11:22 AM

On November 9, 2010, the SEC staff stated that it would not recommend any enforcement action under Section 5 or Section 6(a) of the Securities Act of 1933 ("Securities Act") against certain registered closed-end management investment companies ("Funds") if the Funds file post-effective amendments to their registration statements pursuant to Rule 486(b) under the Securities Act. Rule 486(b) states, among other things, that a post-effective amendment to a registration statement filed by a registered closed-end fund which makes periodic repurchase offers under Rule 23c-3 under the Investment Company Act ("Interval Fund") is effective on the date on which it is filed with the SEC, provided that certain conditions are met. Each Fund is not an Interval Fund and, therefore, is not permitted to file post-effective amendments to their registration statements by Rule 486(b).

Each Fund's board of trustees concluded that a continuously effective shelf registration statement would be beneficial to each Fund and its shareholders. The SEC staff permitted each Fund to use Rule 486(b) to fulfill the requirement that each Fund have a continuously effective registration statement and annually file post-effective amendments to its registration statement pursuant to Section 8(c) of the Securities Act to register additional shares of common stock and bring the Fund's financial statements up to date. The SEC staff noted that it had previously stated that certain closed-end funds that are not interval funds may benefit from the flexibility to take advantage of favorable market conditions to raise additional capital through continuous or delayed offerings of their securities.

For more information, please see
http://www.sec.gov/divisions/investment/noaction/2010/nuveenassetmgmt110910.htm

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SEC Requests Comment on President's Working Group Report on Money Market Fund Reform

November 3, 2010 1:15 PM

On November 3, 2010, the SEC requested public comment regarding the options discussed in the report on money market fund reform released by the President's Working Group on Financial Markets. The public comment period will remain open for 60 days following publication of the comment request in the Federal Register.

The report does not discuss how the proposed options relate to the changes required by Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, except for mentioning the provision in a footnote related to second-tier securities. Section 939A directs federal agencies to remove all references to credit ratings from their rules one year after enactment.

For more information, please see:

http://www.wilmerhale.com/publications/periodicals/investment_management/blog.aspx?entry=3475

The SEC's request may be found at: http://www.sec.gov/rules/other/2010/ic-29497.pdf

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SEC Clarifies that Investment Company Boards May Not Delegate Determinations Under Rules 10f-3, 17a-7 and 17e-1 of the Investment Company Act

November 2, 2010 1:10 PM

On November 2, 2010 the SEC's Division of Investment Management released a letter clarifying that investment company boards cannot delegate the determinations required under Rules 10f-3, 17a-7 and 17e-1 under the Investment Company Act of 1940. Rules 10f-3, 17a-7 and 17e-1 each require an investment company board to make a determination, no less frequently than quarterly, that each transaction made during the preceding quarter was effected in compliance with procedures reasonably designed to provide compliance with the requirements of the relevant rule. The Division stated that investment company boards may, where consistent with their fiduciary duties, make these determinations in reliance on summary quarterly reports of the transactions effected in reliance on these rules prepared by chief compliance officers or other designated persons. However, even if boards rely on CCOs or others to provide them with quarterly reports, boards still retain ultimate responsibility for making the determinations required by Rules 10f-3, 17a-7 and 17e-1, and boards cannot delegate that responsibility.

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