

SEC Seeks Industry Support on Valuation Guidance

While speaking at the Investment Company Institute's (the "ICI") Mutual Funds and Investment Management Conference on March 18, 2013, Norm Champ, the Director of the U.S. Securities and Exchange Commission's (the "SEC") Division of Investment Management (the "Division") reaffirmed the SEC's commitment to valuation guidance as previously outlined during his speech to the Investment Advisor Best Practices Summit on March 11, 2013. As part of this initiative, the Division has worked alongside accounting firms, ICI staff, ICI members, and other industry professionals to identify industry trends and best practices in valuation for ultimate recommendation to the SEC. "Mutual fund professionals work every business day to strike a NAV that accurately reflects a fund's value," stated Director Champ. "You [industry professionals] have a wealth of knowledge and practical experience from which the staff can benefit." As such, Director Champ has encouraged all fund firms to provide beneficial feedback so that the SEC may provide effective guidance.

Director Champ's remarks to the Investment Adviser Compliance Best Practices Summit may be accessed at: <http://www.sec.gov/news/speech/2013/spch031113nc.htm>. The full text of Director Champ's speech to the 2013 Mutual Funds and Investment Management Conference may be accessed at: <http://www.sec.gov/news/speech/2013/spch031813nc.htm>.

Massachusetts Wants Criminal Background Check on Applications for Investment Adviser Representatives

On March 14, 2013, the Massachusetts Securities Division (the "Division") of the Secretary of the Commonwealth issued a proposal to amend several requirements of 950 CMR 12.205 (the "Regulations"), most notably a proposal to require a Criminal Offender Record Information ("CORI") check for all new investment adviser representative ("IAR") applications. The Division believes that it is in the best interest of the public, as well as potential investors, to make a criminal background check a mandatory part of the IAR application process.

To facilitate the efficiency of implementing a CORI check as part of the application, the iCORI system is now accessible to the Registrations, Inspections, Compliance and Examinations section of the Division. The iCORI system is an electronic database of criminal records. The proposal, if approved, will not increase the current \$50 fee paid by applicants for IAR applications; however, it will increase the time applicants spend completing the application by approximately ten to twenty minutes. Once an applicant includes a completed, signed and notarized CORI form within his or her application, the Division may then obtain an applicant's criminal history found on iCORI and take that information into account when determining the applicant's candidacy for IAR status.

In addition to the proposal for CORI checks for all new IAR applicants, the Division makes two more proposals to amend the Regulations. The Division is proposing to remove references to certain items in Form ADV, a form that advisers use to register as an investment adviser with the SEC and state securities authorities. The Division also proposes to update certain citations and references to forms with respect to address changes.

The Division's formal proposal may be accessed at: <http://www.sec.state.ma.us/sct/sctiar/Request%20For%20Comment%2003142013.pdf>

HIGHLIGHTS

SEC to work with industry to prepare valuation guidance

MA to institute CORI check of investment advisers

SEC issues guidance update on social media filings by investment companies

Director Norm Champ touts new Risk and Examinations Group at Mutual Funds and Investment Management Conference

SEC Issues Guidance Update on Filing Requirements for Certain Electronic Communications

The U.S. Securities and Exchange Commission's (the "SEC") Division of Investment Management has issued a guidance update to help define the filing requirements for certain electronic communications made by mutual funds and other investment companies on their social media sites.

Mutual funds and other investment companies are required to file certain advertisements under Section 24(b) of the Investment Company Act of 1940, as amended, (the "1940 Act") or Rule 497 under the Securities Act of 1933, as amended. In particular, Section 24(b) of the 1940 Act prohibits certain investment companies from transmitting any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors ("24(b) advertisements") through U.S. jurisdictional means, unless the 24(b) advertisements have been filed with the SEC or are filed within ten (10) days of the transmission. Advertisements falling under the purview of Section 24(b) are deemed filed with the SEC if they are filed with the Financial Industry Regulatory Authority.

The goal of the SEC's guidance update is to better educate investment companies and mutual funds on how to appropriately use social media sites and real time interactive content. The update highlights what information is subject to Rule 24(b) or Rule 497 filing requirements, as well as information that is exempt from the rules. The content, context, and presentation of the particular communication or set of communications determine whether or not the communication needs to be filed.

The SEC's Press Release 2013-40, which details filing requirements for certain electronic communications, may be accessed at: <http://www.sec.gov/news/press/2013/2013-40.htm>.

SEC Division of Investment Management Launching New Risk and Examinations Group

On March 18, 2013, Norm Champ, the Director of the Division of Investment Management (the "Division") at the U.S. Securities and Exchange Commission (the "SEC"), gave a keynote speech to the Mutual Funds and Investment Management Conference highlighting his efforts to instill a "culture of continuous improvement" within the Division of

Investment Management. Recognizing that approximately 44% of all U.S. households owned mutual funds, Director Champ noted the Division of Investment Management needed to refine its mission and upgrade its technology to ensure investor protection, maintenance of fair and orderly markets, and promotion of capital formation. "One area where we are seeking to improve is enhancing our eyes and ears," noted Champ. "This effort involves getting a better and more first-hand understanding of the fund industry...expanding our source of knowledge so that it doesn't come from sitting at desks in Washington, D.C."

One such development, known as the Risk and Examinations Group, will work directly with "strategically important" investment advisers, funds, fund boards, and industry products to compile quantitative and qualitative data from which the Division can determine how to best utilize SEC resources. This non-legal focus, according to Director Champ will allow the SEC staff to be proactive and engage in dialogue with senior management and fund boards, rather than responding to industry practices. "We will be better regulators if we have a better understanding of your business," underscored Director Champ. "And you will hopefully have a better appreciation for the work we do as regulators if you see that we are willing to reach out to you and genuinely listen."

Director Champ's full remarks may be accessed at: <http://www.sec.gov/news/speech/2013/spch031813nc.htm>.

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