

# Chapman Client Alert

December 20, 2016

Current Issues Relevant to Our Clients

## SEC Issues Mutual Fund Disclosure Guidance in Light of DOL Fiduciary Rule

The staff of the Securities and Exchange Commission's ("SEC") Division of Investment Management has released guidance focused on disclosure issues and certain procedural requirements associated with mutual funds implementing intermediary-specific variations to sales loads and adding new share classes. The SEC staff released the guidance as a result of issues being considered by the fund industry in connection with implementation of the Department of Labor's ("DOL") fiduciary rule and exemptions under the Employee Retirement Income Security Act. The full text of the SEC mutual fund guidance is available [here](#) and information on the adoption of the DOL fiduciary rule is available [here](#).

### Guidance

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#### **Disclosure Issues for Intermediary-Specific Variations to Sales Loads**

Certain mutual funds are considering new variations to sales loads that would apply uniformly to investors that purchase mutual fund shares through a single intermediary or category of multiple intermediaries. The staff notes that Form N-1A would require a description of the arrangements that results in breakpoints or the elimination of sales loads, identification of each class of individuals or transactions to which the arrangements apply and breakpoints to be stated both as a percentage of offering price and net amount invested. The staff notes that it would not object to the use of an appendix to the prospectus to disclose the sales load variations for multiple intermediaries subject to certain conditions including filing of the appendix with the prospectus, incorporation of the appendix into the prospectus, clear identification of the location of the disclosures and delivery of the appendix with the prospectus.

#### **Disclosure Issues for New Share Classes**

The staff also notes that certain mutual funds are considering new share classes that differ with respect to sales loads, transaction charges and certain ongoing expenses. The staff indicates that when a mutual fund adds a new share class to an existing mutual fund, a filing under Rule 485(a) is required where the review by the staff focuses on the disclosure of fees, performance and distribution arrangements related to the share class.

#### **Process for Selective Review of Registration Statement**

The staff notes that to add intermediary-specific variations to sales loads or new shares classes, a Fund will need to amend its registration statement under Rule 485(a) under the 1933 Act. The staff encourages mutual funds to seek selective review of a filing if only certain disclosures about a mutual fund, such as adding sales load variations, are changing. In particular, the staff notes that a request for selective review may be appropriate for the Rule 485(a) filing of a mutual fund that first reflects a new share class or sales load variation that is expected to be introduced for other funds in the complex.

#### **Process for Template Review of Registration Statement**

The staff also notes that in circumstances where a mutual fund complex makes substantially identical changes to multiple mutual funds, it may be appropriate for the registrant to request a template review with Rule 485(b)(1)(vii) relief to avoid the need to file multiple Rule 485(a) filings. Any Rule 485(b) filing relying on a template review should include a cover letter or an explanatory note in the filing explaining that it is relying on this relief.

## For More Information

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