

Effects of the Federal Government Shutdown on Investment Companies and Advisers Registered With the Securities and Exchange Commission

Without the passage of a fiscal year 2011 appropriations bill or another continuing resolution, the federal government will “shut down” on April 9, 2011. Investment companies and advisers registered with the Securities and Exchange Commission (the “SEC”) will be affected by the shutdown, as described in this Alert.

The SEC has indicated that the shutdown will halt all but “essential” functions of the agency and that the SEC’s capacity to perform many of its routine operations will be greatly reduced. Under the SEC’s contingency plan outlining its operations in the event of a shutdown, only a small number of essential workers will remain on the job to respond to emergency situations, including law enforcement, allegations of ongoing fraud and misconduct, and certain market-monitoring activities. In addition, the SEC’s Commissioners will continue working, with the assistance of one designated member of the SEC staff (the “Staff”), as government rules prevent the Commissioners from being furloughed. The impact of the shutdown on the following areas of SEC operations may be of particular interest to registered investment companies and registered investment advisers:

- **Filings** – The SEC’s EDGAR electronic filing system will continue to operate as normal during the shutdown and registrants will be required to make timely filings and pay applicable filing fees during this period. However, the Division of Investment Management and the Office of Compliance Inspections and Examinations will not be able to process filings or conduct any other routine activities, such as providing interpretive advice, issuing no-action letters or confirming the absence of stop orders. Registrants should expect a delayed review and response by the Staff regarding any filings, including registration statements, made during the shutdown or those under any stage of review at the time of the shutdown. The processing of new and pending applications for exemptive relief will also be suspended during the pendency of a shutdown.

The Investment Adviser Registration Depository (“IARD”) system will not be affected by the shutdown, and therefore filings on Form ADV and amendments thereto may still be made. However, the SEC will be unable to grant applications for registration by investment advisers made during the shutdown or those under review at the time of the shutdown.

There is some uncertainty regarding whether certain filings scheduled to become effective during the pendency of the shutdown or that are otherwise subject to time-based requirements will be “tolled” during the shutdown, including, for example, most Form N-14s and initial investment adviser registration filings on Form ADV. We do not expect registration statements to be declared effective or accelerated during this period. We would expect that registration statements and post-effective amendments eligible for automatic effectiveness, such as Form N-14s filed pursuant to Rule 488 under the Securities Act of 1933, as amended (the “Securities Act”), or post-effective amendments under Form N-1A eligible to be filed pursuant to Rule 485(b) under the Securities Act, will continue to become automatically effective as set forth in the applicable rules. Similarly, for those registrants

filing preliminary proxy materials during a shutdown, we believe that definitive proxy materials could be filed and mailed pursuant to the applicable proxy rules.

We expect that existing exchange-traded fund providers will not be able to launch new exchange-traded funds during this period, even with respect to funds eligible to file registration statements pursuant to Rule 485(b), because the SEC will not process filings on Form 19b-4 under the Securities Exchange Act of 1934, as amended, and because it is unlikely that processing of the necessary (new or supplemental) listing applications will occur, given the coordination required between the SEC Staff and the listing exchanges.

- Examinations – The Office of Compliance Inspections and Examinations will be unable to conduct routine functions during the shutdown. Only emergency examinations and inspections to protect public and private property will be conducted. The SEC’s contingency plan instructs the Staff to notify the appropriate parties of all cancellations and postponements of meetings, hearings and other previously arranged business.
- Enforcement/Investigations – The staffing of the SEC’s Division of Enforcement will be reduced significantly during the shutdown, but it will handle emergency enforcement matters, such as allegations of ongoing fraud and misconduct. According to the SEC’s contingency plan, the Division of Enforcement will suspend ongoing litigation, except with respect to matters that cannot be deferred because there is a threat to public and private property. Similarly, the Office of Investor Education and Advocacy will have only limited staff on hand to review investor complaints and will be unable to respond to complaints, questions, or requests for information.
- Rulemaking – Even though the Commissioners are exempt from furlough during the shutdown, the Commissioners rely heavily on the Staff in connection with the proposal or finalization of any rules. During the shutdown, all hearings attended by the Staff have been canceled. Therefore, there will be no action with respect to any of the myriad rules that have been proposed but not yet finalized, or are yet to be proposed, in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act, including, but not limited to, rules regarding the registration of private fund advisers. Comment letters regarding any proposed rules may be submitted during the shutdown.

The shutdown will not close securities exchanges or non-governmental organizations, such as the Financial Industry Regulatory Authority (“FINRA”). Similarly, banking systems will not close during the shutdown, as their operations are considered essential government functions.

Additional information outlining SEC operations during the government shutdown may be found at the SEC’s web site [here](#).

If you have any questions about the affect of the shutdown on the SEC, please contact the Ropes & Gray attorney who normally advises you.