Proskauer

UPDATE: SEC Extends Relief for In-Person Meetings of Fund Boards Through December 31, 2020

June 24, 2020

On Friday, June 19, 2020, the U.S. Securities and Exchange Commission (the "SEC") issued an order (the "Order") under the Investment Company Act of 1940, as amended (the "1940 Act"), extending the duration of previously-granted conditional relief with regard to in-person voting requirements for boards of directors of registered investment companies and business development companies (together, "funds"). The Order extends the exemptive relief through at least December 31, 2020.

The SEC previously granted two orders providing relief to investment advisers and funds from, among other requirements, certain in-person board meeting requirements under the 1940 Act. For additional information about the broader relief, see our previous client alerts here (March 13, 2020 order) and here (March 25, 2020 order, which superseded the March 13, 2020 order, the "March 25 Order").

Scope of the Relief

The Order provides that, until December 31, 2020, a fund and any investment adviser of or principal underwriter for such fund is exempt from the requirements imposed under Sections 15(c) and 32(a) of the 1940 Act, and Rules 12b-1(b)(2) and 15a-4(b)(2)(ii)[1] under the 1940 Act that require votes of the fund's board of directors be cast in person, provided that:

- reliance on the Order is necessary or appropriate due to circumstances related to current or potential effects of COVID-19;
- the votes required to be cast at an in-person meeting are instead cast at a meeting in which directors participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting; and
- the board of directors, including a majority of the directors who are not "interested persons" (as defined in the 1940 Act) of the fund, ratifies the action taken pursuant to the Order by vote cast at the next in-person meeting.

These conditions have not changed from those contained in the March 25 Order. In addition, this Order only supersedes the March 25 Order with respect to the in-person meeting requirements relief. The other relief provided in the March 25 Order, along with the SEC's statement on prospectus delivery, will expire as currently provided.

Conclusion

The SEC and its staff continue to assess impacts relating to the coronavirus on investors and market participants. The SEC may provide additional relief as circumstances warrant and, as evidenced by these recent events, may extend and/or modify currently available relief.

---

[1] These statutory and rule provisions require, among other things, a fund board of directors to approve the fund's advisory contract and underwriting (or distribution) agreement (Section 15(c)), independent public accountant (Section 32(a)), Rule 12b-1 plan (Rule 12b-1(b)(2)), and certain interim advisory contracts (Rule 15a-4(b)(2)(ii)) at an "in person" meeting.