Proskauer

Proskauer Releases 2020 Investment Funds Annual Review

February 17, 2021

BOSTON, February 17, 2021 – Proskauer, a leading international law firm, today released its 2020 Investment Funds Annual Review.

“2020 was an extraordinary year in so many ways, and we saw a number of significant regulatory changes and court decisions which will have a major impact on the investment community in 2021 and beyond,” said Robert Leonard, the lead author and a Corporate partner.

“From rulings related to insider trading to new rules around data privacy, SEC enforcements and changes in the US and European Tax codes, our guide provides a comprehensive, one-stop summary of these changes and the impact they will have on investors and fund managers,” said Howard Beber, co-head of the Private Funds Group.

Highlights of the Review include:

- **A summary of SEC examination priorities and enforcement developments** impacting the private funds industry, including a review of recent staff-level guidance, allocation of fees and expenses and conflicts of interest.
- **A review of SEC policy and rulemaking initiatives**, including the recent adoption of amendments to both the advertising rule under the Investment Advisers Act of 1940 and the “accredited investor” definition under the Securities Act of 1933 and also the SEC’s proposed conditional exemption from federal broker registration for certain “finders” who assist issuers in raising capital in private placements with accredited investors.
- **An analysis of the current state of insider trading law**, including analysis of two important decisions from the U.S. Court of Appeals for the Second Circuit, one addressing insider trading in breach of a confidentiality agreement, and another making clear that the U.S. government can bring criminal charges for insider trading without needing to establish that the tipper of material, nonpublic information breached a fiduciary duty or received an improper personal benefits.

This year's update also analyzes criminal charges filed against a hedge-fund founder for allegedly misusing confidential information he obtained through his service on the creditors' committee of a bankrupt issuer.

- **U.S. and UK tax updates**, including an overview of updates to U.S. regulations providing guidance on section 1061 of the Internal Revenue Code of 1986 with respect to carried interest, and also important developments in relation to the sixth version of the European Union's Directive on Administrative Co-operation (DAC6).
- **An extensive review of employment law developments at the federal and state level potentially impacting advisers**, including developments in the areas of harassment and discrimination, diversity and representation, safe and sick leave laws and COVID-19 anti-retaliation measures.
- **Developments relating to cybersecurity and privacy law**, including a review of the U.S. Department of Justice guidance on legal considerations when gathering online cyber threat intelligence and purchasing data from illicit sources and the updates by the U.S. Attorney General's cyber-digital task force to the cryptocurrency enforcement framework.
- **Regulatory developments in the European Union**, including an update on the impact of Brexit and the expected loss of the financial services cross-border "passport" for the UK and the new rules relating to the pre-marketing of funds coming into force in August 2021.
- **A comprehensive overview of required U.S. regulatory filings** across the many agencies overseeing the private funds industry, including a quick reference table for monthly filings in 2021.

Proskauer offers a full suite of services for the investment management industry, with a market-leading global team dedicated solely to advising hedge fund, private equity and other asset managers, investment funds, financial institutions and institutional investors across all asset classes. The cross border team of over 150 lawyers is based in the U.S., UK, Asia and Latin America and includes specialists in tax, ERISA, regulation, financial services, capital markets, M&A, employment, insurance, fund finance, litigation and risk management who understand the unique technical and commercial issues relevant to investment managers.

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