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SEC Updates Names Rule FAQs: K&L Gates

On 8 January 2025, the staff of the Division of Investment Management of the US Securities and Exchange Commission (the SEC) released an updated set of Frequently Asked Questions (the FAQs) related to the amendments to Rule 35d-1 (Names Rule) under the Investment Company Act of 1940, as amended (the 1940 Act) and related form amendments (collectively, the Amendments) adopted in 2023. The FAQs modify, supersede, or withdraw portions of FAQs released in 2001 (the 2001 FAQs) related to the original adoption of the Names Rule. In addition to the FAQs, the SEC staff also released Staff Guidance providing an overview of the questions and answers withdrawn from the 2001 FAQs (Staff Guidance). Together, the FAQs and the Staff Guidance on the withdrawn FAQs are intended to provide guidance to the various implementation issues and interpretative questions left unclear by the adopting release of the Amendments to the Names Rule (2023 Adopting Release). While the FAQs and the Staff Guidance do not address all key issues and questions related to the Names Rule, they do provide new guidance on certain areas and suggest interpretive frameworks that can be more universally applied.

Revisions to Fundamental Policies

In the revised FAQs the SEC staff updates certain FAQs, broadening the reach of those FAQs' applicability. For instance, the SEC staff modifies the 2001 FAQ relating to the shareholder approval requirement for a fund seeking to adopt a fundamental 80% Policy to also provide guidance in instances where an 80% investment policy (an 80% Policy) that is fundamental is being revised. The SEC staff provides clarification concerning the process required to revise fundamental investment policies. The FAQ states that a fundamental 80% Policy may be amended to bring such policy into compliance with the requirements of the amended Names Rule without shareholder approval, provided the amended policy does not deviate from the existing policy or other existing fundamental policies. The FAQs restate that individual funds must determine, based on their own individual circumstances, whether shareholder approval is necessary within this framework. Accordingly, funds may take the position that clarifications or other nonmaterial revisions to a fundamental 80% Policy in response to the amended Names Rule would not require shareholder approval. If it is determined that nonmaterial revisions have been made to a fundamental 80% Policy, notice to the fund's shareholders is required.¹ Funds should also continue to provide 60 days' notice (as required by amended Rule 35d-1) for any changes to nonfundamental 80% policies. A similar analysis can be applied in determining whether a post-effective amendment filed pursuant to rule 485(a) under the Securities Act of 1933 is required in connection to the Names Rule implementation process.

Guidance on Tax-Exempt Funds

The FAQs provide insight into the SEC staff's view of the applicability of the Names Rule to funds whose names suggest their distributions are exempt from both federal and state income tax. According to the FAQs, such funds fall within the scope of the Names Rule and, per Rule 35d-1(a)(3), must adopt a fundamental policy to invest, under normal circumstances, either:

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