K&L|GATES

Investment Management Update

Lawyers to the investment management industry

Spring 2009

In this issue:

Regulatory Reform Efforts Gain Momentum; Money Market Mutual Funds, Hedge Funds and Derivatives Targets

By Daniel F. C. Crowley and Karishma Shah Page

Congress and the Obama Administration are turning their attention to regulatory reform of the financial system. In light of the tumultuous events of the last year, these reforms will result in profound structural changes for the investment management industry. The most immediate reform efforts will likely focus on management of systemic risk.

continued on page 17

SEC Again in Controversial Territory by Voting to Regulate Indexed Annuities

By Diane E. Ambler and Brian M. Johnson

Seldom does a new SEC rule regulating variable annuities create a stir worthy of editorials in the Wall Street Journal. But the SEC's adoption of Rule 151A under the Securities Act last December has ruffled feathers of major issuers and marketers of the index annuities subject to the rule, who have pulled out all the stops in attempting to block it. Many had voiced their strong dissent in comment letters to the SEC proposal, and their opposition was echoed by Commissioner Paredes, who voted against the rule's adoption with a request that his dissenting speech before the SEC's open meeting be printed in the Federal Register. Given the acrimony developing around the rule's adoption, it was not surprising that the rule was promptly challenged in court.

Unlike traditional fixed annuities that earn fixed rates of interest, indexed annuities tie contract values to the performance of a securities index. Under Rule 151A, indexed annuities that meet the rule's definition and are issued on or after January 12, 2011 must be registered under the Securities Act. The SEC also adopted Rule 12h-7 under the Exchange Act, which provides an exemption from Exchange Act reporting requirements with respect to certain insurance products that are registered as securities and regulated as insurance under state law. Rule 12h-7 was intended to reduce regulatory burdens associated with registration under the Securities Act and has not been swept up in the controversy.

Background and Key Provisions of Rule 151A

Under Section 3(a)(8) of the Securities Act, certain "annuity contract[s]" and "optional annuity contract[s]" are not subject to regulation under that Act. Various forms of life insurance and annuity contracts are currently recognized as falling outside of the Section 3(a)(8) exclusion and are registered with the SEC. Rule 151A clarifies that index annuity contracts are not covered by Section 3(a)(8), and thus are subject to Securities Act regulation, if:

continued on page 15

Compliance Corner

SEC Adopts Mutual Fund Summary Prospectus Rule and Related Amendments to Form N-1A

By Lynn A. Schweinfurth

Overview of the Amendments

The SEC recently issued a final release adopting (1) amendments to Securities Act Rule 498 that essentially replace the existing "profile prospectus" rule with a new "summary prospectus" rule that permits funds to satisfy their prospectus delivery obligations by providing a summary prospectus to investors and making additional information, including the statutory (full) prospectus, available on the Internet and in paper upon request, and (2) related amendments to Form N-1A that, among other things, require every fund's statutory prospectus to include a new summary section (in place of the former risk/return summary) at the beginning of the prospectus. The new summary disclosure is the same in both documents and contains specific key information, in plain English, in a standardized order.

In connection with these amendments, the SEC also adopted amendments to the Form N-1A disclosure requirements for ETFs registered as open-end management investment companies. Subject to these amendments, ETFs may use a summary prospectus to satisfy their prospectus delivery obligations.

The following is a brief summary of the highlights of the amendments.

Content of the New Summary Disclosure

The new summary disclosure – whether used as a stand-alone summary prospectus (which is voluntary) or included as the summary section of the statutory prospectus (which is mandatory) – must contain the following key information, in plain English, in the following standardized order:

- investment objectives and goals
- costs (including fee table and example)
- principal investment strategies, risks, and performance
- management (investment adviser(s) and portfolio manager(s))
- purchase and redemption information
- tax information
- financial intermediary compensation information

The new summary section of the statutory prospectus replaces the former risk/return summary. Although the new summary section requires certain items that the former risk/return summary required, the Form N-1A amendments modify certain items, add new items, and revise the order in which the items must be disclosed. A fund may continue to include in its statutory prospectus information that Form N-1A does not require, but a fund may not include such information in the summary section. If a fund uses a summary prospectus, it may not disclose in its summary prospectus information that is different from (e.g., more or less expansive than) the information it discloses in the summary section of its statutory prospectus. Although not subject to a specific page limit, both the summary prospectus and the summary section of the statutory prospectus should be concise (on the order of three or four pages per fund).

Unlike the former risk/return summary, the summary section of a multiple fund statutory prospectus must present a separate summary for each fund. However, purchase and redemption information, tax information, and financial intermediary compensation information may be integrated if such information is identical for all of the funds. Information for multiple share classes of the same fund may be integrated. A summary prospectus may describe only one fund, but may describe multiple classes of that fund.

Using the New Summary Disclosure as a Stand-Alone Selling Document (Voluntary)

In order for a fund to use the new summary disclosure as a stand-alone selling document (in lieu of the statutory prospectus) and rely on Rule 498 to satisfy its prospectus delivery obligations under Securities Act Section 5(b)(2), the rule requires that: (1) the summary prospectus be provided no later than the time of delivery of the fund security; (2) the summary prospectus not be bound together with any other materials; (3) the summary prospectus satisfy the rule's requirements regarding content; and (4) certain conditions regarding the availability of additional information on the Internet be satisfied, including the following:

- the fund must make its summary prospectus, statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports available, free of charge, at an Internet address (which may not be the SEC's EDGAR address) specified on the cover page or at the beginning of the summary prospectus;
- the online documents must be formatted to be "human-readable" both on a computer screen and after printing on paper;
- the online documents must be formatted to permit investors accessing the statutory prospectus or the SAI to move ("click") back and forth between the section headings in the table of contents and the corresponding sections within the document; and
- the online documents must be formatted to permit investors accessing the summary prospectus (i) to move ("click") back and forth between each section of the summary prospectus and any related section of the statutory prospectus or SAI or (ii) to access these documents' tables of contents.

In this regard, Rule 498 contains a safe harbor for a fund's temporary non-compliance with the above conditions due to events beyond the fund's control (e.g., technological problems, natural disasters, etc.). Provided that a fund has reasonable procedures in place to ensure that the documents are available in the required manner and takes prompt action to ensure that the documents become available as soon as practicable after an online failure, a fund's failure to maintain its documents online would not constitute a violation of Securities Act Section 5(b)(2) (but would, however, constitute a violation of Rule 498).

Rule 498 also requires that the summary prospectus have "greater prominence" than any materials that accompany it and that a fund (or a financial intermediary) send a paper or email copy of its statutory prospectus, SAI, and most recent annual and semi-annual shareholder reports to any investor requesting a copy of the document(s), at no cost to the investor, within three business days. These two requirements are not conditions to a fund's relying on Rule 498 to satisfy its prospectus delivery obligations, and a failure to meet these two requirements would not constitute a violation of Securities Act Section 5(b)(2) (but would, however, constitute a violation of Rule 498).

Finally, Rule 498 permits a fund's summary prospectus to incorporate by reference all of the information in the fund's statutory prospectus and SAI, as well as any information in the fund's annual and semi-annual shareholder reports that the fund has incorporated by reference into its statutory prospectus, provided that certain conditions in the rule are satisfied. All information incorporated by reference into a fund's summary prospectus will be deemed to be conveyed with the summary prospectus. The SEC believes that incorporation by reference, along with the required availability of additional information on the Internet, will reduce industry concerns over potential liability for information omitted from a summary prospectus, but included in the statutory prospectus or other fund documents.

Noteworthy Differences from the Proposed Amendments

The final amendments contain some differences from the proposed amendments. Among these differences, the final amendments do not require that the new summary disclosure include a fund's top 10 portfolio holdings, or that performance information in the summary prospectus be updated quarterly. Instead, a fund that makes updated

performance information available on a website or at a toll-free or collect telephone number must include in its summary prospectus a statement explaining this and providing the website, the telephone number, or both.

ETFs

The amendments to Form N-1A include a requirement that ETF prospectuses disclose that investors may pay more than NAV when they buy ETF shares, and may receive less than NAV when they sell ETF shares, at market prices, and a requirement that ETF prospectuses disclose information about the extent to which and the frequency with which the market prices of the ETF's shares have tracked the ETF's NAV (unless the ETF posts such information on a free, publicly available Internet address). The amendments also eliminate the requirement that ETF prospectuses disclose information on how to buy and redeem shares directly from the ETF.

Compliance Dates and Filing Requirements

The amendments are effective as of March 31, 2009. All initial registration statements on Form N-1A, and all post-effective amendments that are annual updates to effective registration statements on Form N-1A or that add a new series, filed on or after January 1, 2010 must comply with the amendments to Form N-1A. Post-effective amendments filed to comply with the amendments generally must be filed under Securities Act Rule 485(a) and will be subject to SEC staff review. However, the SEC staff may consider acceleration requests under appropriate circumstances. In addition, the SEC staff may permit a fund to file a post-effective amendment under Securities Act Rule 485(b), provided that the fund is part of a fund complex that has previously filed post-effective amendments under Securities Act Rule 485(a) for other funds in the complex.

If a fund uses a summary prospectus, the summary prospectus must be filed under Securities Act Rule 497(k) no later than the date it is first used and thereafter at each annual update (i.e., on the same annual cycle as the statutory prospectus). Because the summary prospectus must contain the same key information and in the same standardized order as the summary section of the statutory prospectus (and the SEC staff will have an opportunity to review the new summary disclosure while reviewing a fund's statutory prospectus), the summary prospectus will not be subject to special SEC staff review. ■

K&L Gates, Chicago-based Bell, Boyd & Lloyd Combine on March 1, 2009

The combination of the global law firm K&L Gates LLP and Chicago-based Bell, Boyd & Lloyd LLP became effective on March 1, 2009 following unanimous approval from partners of both firms on January 30, 2009.

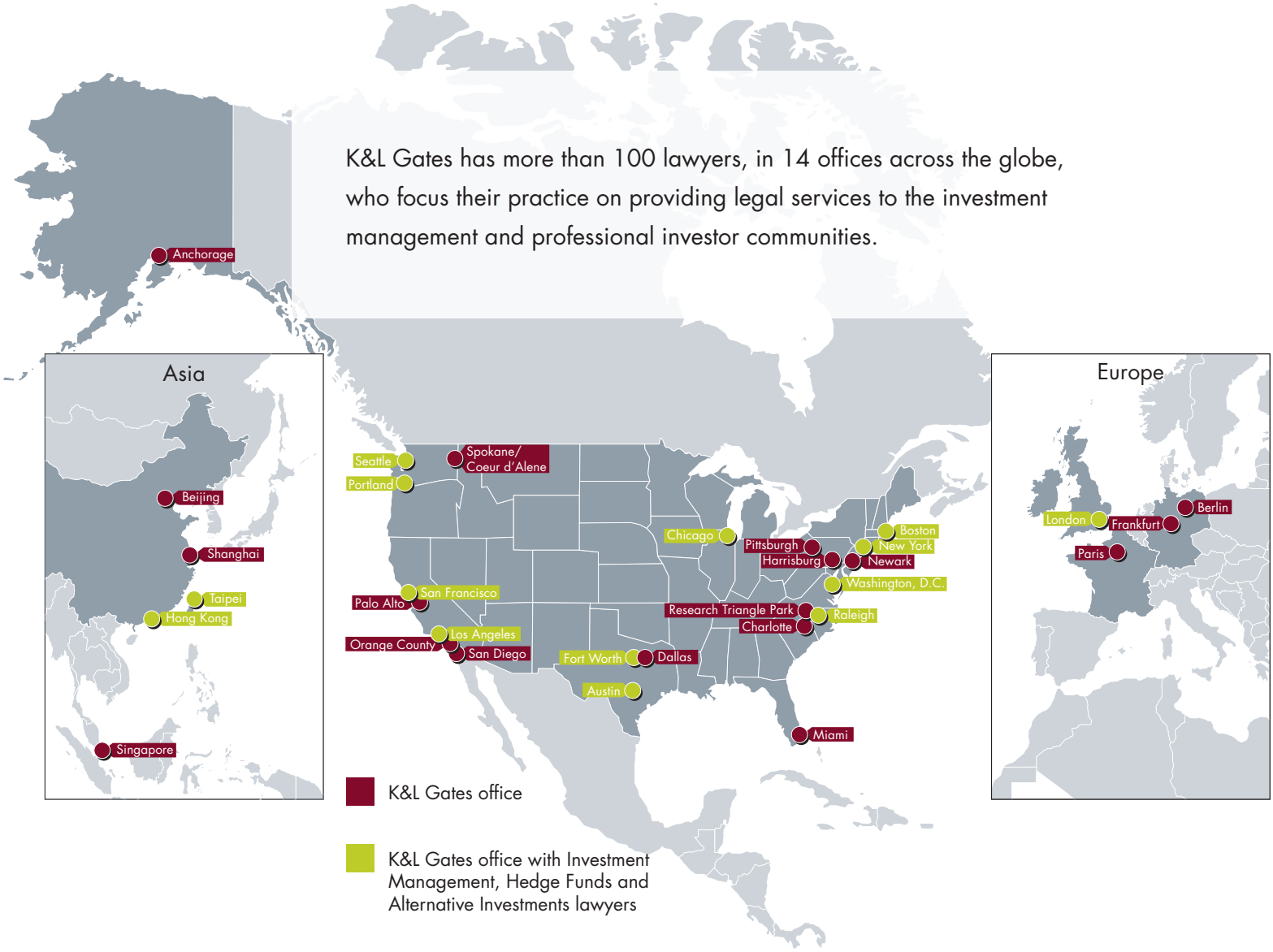
The combined firm comprises approximately 1,900 lawyers in 32 offices throughout the United States, Europe, and Asia, with offices in Anchorage, Austin, Beijing, Berlin, Boston, Charlotte, Chicago, Dallas, Forth Worth, Frankfurt, Harrisburg, Hong Kong, London, Los Angeles, Miami, Newark, New York, Orange County, Palo Alto, Paris, Pittsburgh, Portland, Raleigh, Research Triangle Park, San Diego, San Francisco, Seattle, Shanghai, Singapore, Spokane/Coeur d'Alene, Taipei, and Washington, DC.

In addition to expanding K&L Gates' domestic offerings to include the strategically significant legal markets of Chicago and San Diego, the combination also increases the firm's presence in Washington, D.C. and gives K&L Gates one of the largest Chicago offices of any non-Chicago-based firm.

K&L Gates Investment Management, Hedge Funds and Alternative Investments Practice

Meeting client needs in the global market

K&L Gates has more than 100 lawyers, in 14 offices across the globe, who focus their practice on providing legal services to the investment management and professional investor communities.



How Lehman's Collapse Could Lead to Change in ETF Regulation

By Stacy L. Fuller and Kurt J. Decko

Over the last six months, it has been impossible to talk about the financial services industry without talking about the fall of Lehman Brothers Inc. Similarly, in exchange-traded fund (ETF) circles over the last six months, it has been impossible to talk about ETFs without talking about the lack of seed capital for new products. While these topics may not seem related, one of the repercussions of Lehman's fall may – quite unexpectedly – unclog the flow of seed capital that is currently holding up ETF innovation and encourage the SEC to take a fresh look at other ways to develop a broader, industry-wide, solution to the seed capital problem.

One ETF family recently asked the SEC for exemptive relief from the Investment Company Act to permit its control affiliates that are broker-dealers to engage in in-kind transactions with the ETF as authorized participants (the dealers authorized to transact in creation units, the heart of the arbitrage mechanism that keeps ETF shares trading at or near NAV). According to the application, the requested relief could increase liquidity and tighten spreads in the ETFs' shares. Although unstated in the application, this relief would also allow the affiliate to provide seed capital to future ETFs. If granted, the exemptive order could provide similarly-situated ETFs that have an affiliated broker-dealer (if they received their own order) with a new tool to address liquidity problems and seed capital shortages plaguing their products. It should also be noted, however, that this application has only recently been filed, the request is novel and the SEC is taking time to carefully review requested relief for any ETF given their surge in popularity. If this request is successful, and depending on conditions that the SEC may eventually require before granting the relief, some doors may open for others to seek similar relief.

The Newest Application for Novel ETF Relief

The exemptive application was filed by iShares Trust and iShares, Inc. on January 12, 2009 (and is available on the SEC website). As is widely accepted, the Investment Company Act, as drafted in 1940, did not contemplate ETFs. As a result, ETF sponsors must obtain an SEC exemptive order establishing the terms and conditions of ETF operations before launching and operating an ETF. No ETF order issued by the SEC to date has permitted an ETF affiliate to act as an authorized participant in its shares, *unless* the affiliate was only an affiliate by virtue of its ownership of the ETF's shares. The iShares application seeks this novel relief to permit a control affiliate (*i.e.*, a "sister company" of the ETF's sponsor) to act as an authorized participant in iShares.

The Reasons for the Requested Relief

The application explains that the takeover by an iShares affiliate of a division of Lehman unnecessarily eliminated from the market one authorized participant for iShares – namely, the former Lehman division that became an iShares affiliate when the parent company of iShares' manager bought the U.S. Lehman broker-dealer from the Lehman holding company's bankruptcy estate. The application states that, prior to Lehman's collapse:

- Lehman was responsible for approximately 4% of authorized participant activity in all iShares; and
- Lehman was responsible for approximately 20% of authorized participant activity in fixed income iShares.

The application does not allege or offer data to show that iShares have been harmed by the loss of the now-affiliated market participant, but rather argues that permitting the former Lehman division to do what it was doing prior to the takeover – with appropriate safeguards, such as firewalls – would create additional liquidity in the market for iShares and, therefore, result in greater market efficiency and better pricing for iShares. In short, the application contends that the novel relief requested is warranted by the enhanced liquidity in, and pricing efficiencies of, the ETF's shares that may result from activity by the affiliate in the market as an authorized participant.

If granted, the requested order could open the door for other ETFs to seek the same relief. Accordingly, if granted, the requested order could provide a subset of ETFs – namely those with an affiliated broker-dealer – with a partial antidote to the liquidity issues that may be plaguing their existing ETFs and to the seed capital problems that may threaten the viability of ETFs "in the pipeline."

Potential Conditions the SEC May Seek to Impose

Although the iShares application seeks unconditional exemptive relief, one can imagine that the SEC may seek to impose conditions similar to those applicable to in-kind redemptions by traditional mutual funds, including conditions cited in *Signature Financial Group, Inc.,* SEC Staff No-Action Letter (Dec. 28, 1999). In *Signature,* the SEC staff permitted in-kind redemptions by affiliated shareholders of a mutual fund provided that, among other things, the redeeming fund's board, including a majority of the independent directors, approved the in-kind redemption and the affiliate did not receive any special treatment or opportunity that was not afforded to other redeeming shareholders and did not have an opportunity to "cherry pick" securities out of the fund's portfolio. Similarly, here the SEC could require (1) that the affiliate's creation and redemption transactions be effected in the same manner and on the same basis as other authorized participants' transactions and that the ETF's independent Board members review these transactions on a regular basis and make certain findings with respect to them, (2) that the affiliate have no role in selecting, or influencing the selection of, securities included in the baskets delivered to (or from) the ETF in connection with creations (or redemptions), and (3) that firewalls be implemented to restrict the communication of such information. The SEC may argue that these or similar conditions would prevent opportunities for the affiliate to receive any sort of favorable treatment that might dilute the interest of other shareholders.

Potential Implications for ETFs Facing Liquidity and Seeding Issues

If the SEC and iShares can agree on appropriate conditions for the requested relief, the SEC may indeed grant the relief requested. As noted, such relief would only partially contribute to an industry-wide solution to the liquidity and seed capital issues facing ETFs because only ETFs with broker-dealer affiliates could rely on the requested relief for seed capital. The application may, however, *indirectly* contribute to an industry-wide resolution of these issues: because the relief requested would provide an advantage to ETF managers in large financial conglomerates, the resulting effect on competition should interest the SEC in dealing with these issues on an industry-wide basis.

To deal with these issues on an industry-wide basis, the SEC could, and should, revisit the application of the Order Protection Rule in Regulation NMS to ETFs. Prior to Regulation NMS, market makers provided seed capital to ETFs and made a decent profit on commissions when maintaining an active market in the ETFs' shares. The Order Protection Rule, however, has dramatically reduced market makers' ability to make a profit on commissions, which has dramatically reduced market makers' incentives to provide seed capital and liquidity to ETFs.

The adopting release for Regulation NMS, in discussing the policy reasons for the Order Protection Rule suggested that market makers were, in part, opposed to the rule because it would prevent them from making a profit on market volatility. Underlying the SEC's policy rationale thus appears to be a belief that market makers have an incentive – and the ability – to foster a volatile market in the securities in which they make a market.

However, it is highly unlikely that a market maker could foster volatility in an ETF's shares in a way that justifies application of the Order Protection Rule in this context. ETF shares are fundamentally different from other equity securities in that they represent an interest in a basket of publicly traded securities whose individual and aggregated values are transparent. As a result, their intrinsic value is known to the market, and they are thus inherently less volatile than other (single-issuer) securities.

To restore the incentives of market makers – and, therefore, seed capital and liquidity to the ETF market – the SEC should revisit its decision to apply the Order Protection Rule to ETFs. This would be the most direct, and arguably the most useful, means of achieving for all ETFs the goal of the iShares application – to restore significant liquidity to the ETF market and thereby "enhance the arbitrage mechanism that historically has successfully limited premiums and discounts in the market price of [ETF] Shares."

Conclusion

On its face the pending iShares application seeks – and will only lead to – exemptive relief to permit an ETF family to rely on a corporate affiliate to provide liquidity in, and potentially seed capital for, the family's ETFs. In the bigger picture, however, the application may lead the SEC to address the liquidity and seed capital issues facing ETFs on a more global scale, which should include reconsidering the appropriateness of applying the Order Protection Rule to ETF securities. ■

Regulation of Hedge Funds:

The European and U.K. Response

By Danny Brower and Majinder Cacacie

The hedge funds industry has been criticized for playing a role in the global market downturn that some argue is due to "light-touch" regulation. Among other things, the regulators of various jurisdictions banned short selling blaming short sellers, in part, for the collapse of major financial institutions. In addition, issues such as the decades-long Madoff fraud have forced regulators to look into hedge fund transparency and whether additional regulation needs to be imposed on hedge funds. Below are some views recently expressed by European and U.K. regulators on the subject.

European consultation paper on hedge funds

1. On December 18, 2008, the European Commission (the "Commission") published a consultation paper on hedge funds (the "Consultation Paper") which sought views and evidence on a range of issues including systemic risks, market efficiency and integrity, risk management and transparency towards investors and investor protection.

1.1 The Consultation Paper was part of the Commission's comprehensive review of European Union ("EU") regulatory and supervisory frameworks for all financial market actors (the principal actors in the hedge fund business being: (i) the hedge fund manager; (ii) the fund itself; (iii) the administrator of the fund; and (iv) the prime broker) in the EU. It is due to be finalized in 2009. The review is in line with the G20 objective to "ensure that all financial market products and participants are regulated or subject to oversight, as appropriate to their circumstances."

1.2 The Consultation Paper was also launched in response to: (a) the reports adopted by the European Parliament in September 2008 on hedge funds and private equity and transparency of institutional investors; and (b) the European Parliament's request that the Commission review existing financial services regulation to identify any legislative gaps regarding hedge funds and private equity and to put forward proposals for regulation to address any such gaps.

1.3 The Consultation Paper considered the following issues:

(a) Systemic risks: Views were invited on whether existing systems of macro-prudential oversight were sufficient to allow regulators to monitor and react to risks which were originated in the hedge fund sector and then transmitted to the wider market through counterparties, including prime brokers, and through the impact on asset prices.

(b) Market efficiency and integrity: Comments were sought on whether and under what circumstances the activities of hedge funds posed a threat to the efficiency and integrity of financial markets.

(c) Risk management: Comments were also sought on whether public authorities should concern themselves more with the way in which hedge funds managed the risks to which they and their investors were exposed, valued their asset portfolios and managed any potential conflicts of interest.

(d) Transparency towards investors and investor protection: Views were also invited on whether hedge fund investors were adequately protected and received the information required for sound investment decisions.

2. The deadline for responses to the Consultation Paper was January 31, 2009. The issues contained in the Consultation Paper and the feedback from the consultation were discussed at the "European Commission conference on private equity and hedge funds" in Brussels on February 26 and 27, 2009.

2.1 The European Commission intends to use responses to the Consultation Paper as a basis for developing a European regulatory initiative for the hedge fund industry and providing European input into the discussions on hedge funds at an international level. These are being

taken forward by the G20 and International Organisation of Securities Commissions ("IOSCO"),based on their views that hedge funds are prominent actors in global financial markets and cannot be overlooked in a comprehensive assessment of vulnerabilities in the financial system.

2.2 The Consultation Paper plays an important role in identifying and shaping the European response to vulnerabilities emanating from the hedge fund sector.

Responses to the Consultation Paper by the U.K.'s HM Treasury, the U.K.'s Financial Services Authority and the U.K.'s Hedge Fund Standards Board

3. On February 10, 2009, HM Treasury and the Financial Services Authority (the "FSA") (together, the "U.K. Authorities") published a joint response to the Consultation Paper. The response stated that the risks posed by hedge funds are not unique. Hedge fund managers in the U.K. are subject to FSA regulation (and ultimately EU regulation), similar to any other asset manager (e.g., retail asset managers etc.). An important element of this regime is the registration process for managers, which focuses on ensuring the fitness and propriety of the manager. Once authorized, a hedge fund manager is required to follow FSA's rules and principles, which include requirements on management and control, for example, risk management systems. In addition, hedge fund managers are required to file regular reports to the FSA, and the FSA conducts visits of hedge fund managers. The FSA also maintains direct relationships with the largest hedge fund managers in the U.K. The U.K. Authorities do not consider that EU legislation aimed at hedge fund activity alone is likely to be the right means to deliver the necessary improvements. However, the U.K. Authorities welcomed the European Commission's focus on the above issues and supported the need to re-examine the EU regulatory framework that applies to hedge funds and their managers. In addition, the U.K. Authorities also confirmed their commitment to working closely with partners in the EU and the G20 to address the need for greater regulatory oversight of all entities which could contribute to macro-prudential risk.

4. The Hedge Fund Standards Board ("HFSB") has set out detailed standards covering all relevant areas of risk management, including portfolio risk management, liquidity risk management and operational and outsourcing risk. HFSB was an initiative by a number of U.K. hedge funds to produce a set of good practice standards for hedge fund managers. On February 18, 2009, HFSB published its response to the Consultation Paper. HFSB believes that hedge fund managers play an important role in the global markets, that regulation and standards currently in place are sufficient and that there is no requirement for additional regulation in the European context (particularly in the U.K.).

5. In the area of administration, HFSB has dedicated standards on the segregation of functions in valuation and believes that independent third-party valuation arrangements are the most satisfactory way to mitigate conflicts of interest in this area. HFSB is also looking into strengthening its requirements on independent administration. Disclosure and transparency are at the heart of the approach taken by HFSB regime, and managers who sign up to the standards commit to ongoing disclosure requirements in areas such as investment policy, risk taking, operational arrangements, fund governance and commercial terms. Beyond disclosure, the standards set a benchmark for operational practices that investors can compare managers against. Therefore, HFSB considers that there is no need for any large-scale reform of the regulation of hedge funds or hedge fund managers in the U.K. and, consequently, does not support additional EU regulation for hedge funds or hedge fund managers. However, HFSB is prepared to work with policy-makers to help enhance the current regulatory regime (if necessary).

Current developments

Meeting of the European members of the G20 group in Berlin

6. The heads of Europe's biggest economies met in Berlin on February 22, 2009 to arrive at a common EU policy in advance of London's G20 summit in April 2009. The Berlin gathering is a precursor to the next meeting of the G20 group of major developed and developing countries in London on April 2nd, which aims to rewrite the rules of the global financial system. European leaders in Berlin have agreed on the need to regulate all financial markets, including hedge funds. The exact details of the accord will not be released until all EU states have reviewed the text but the proposals are clearly more radical than the U.K. Treasury's plan for calibrated measures.

7. In a response to the EU decision to regulate the hedge funds market, the U.K.'s Alternative Investment Management Association ("AIMA") made a statement that it would support the supervision of managers based on a model proposed by the FSA and a new regulatory code based on proposals from various international bodies. AIMA is the U.K.'s primary hedge fund industry's trade association. AIMA hopes that its pre-emptive concessions will be enough to prevent the adoption of the strict rules that it claims would adversely impact funds' ability to make money. AIMA chief executive Andrew Baker said, "We want to dispel once and for all this misconception that the hedge fund industry is opaque and uncooperative. That is why we are declaring our support for the principle of full transparency of systematically significant positions and risk exposures by hedge fund managers to their national regulators."

8. In light of the recent turmoil in global financial markets, it is right to reassess the regulatory framework, including the regulatory approach to hedge funds and their managers. We will have to wait and see what measures will be taken in the G20 meeting in April 2009 to regulate hedge funds. ■

The Supreme Court Agrees to Hear Section 36(b) Case

By: Jeffrey B. Maletta and Nicholas G. Terris

The U.S. Supreme Court has agreed to review the decision in *Jones v. Harris Associates L.P.*, 527 F.3d 627 (7th Cir. 2008), in which the Seventh Circuit Court of Appeals rejected the *Gartenberg* test (from *Gartenberg v. Merrill Lynch Asset Management, Inc.*, 694 F.2d 923 (2d Cir. 1982)), for guidance in evaluating an adviser's fee structure. This is the first time that the Supreme Court will address the substantive standards courts must apply in excessive fee cases under Section 36(b) of the Investment Company Act of 1940.

In *Jones*, prominent free market proponent Judge Frank Easterbrook, writing for a three-judge panel of the Seventh Circuit, rejected *Gartenberg* because it relied too little on markets. Judge Easterbrook found that, given the competitive market conditions evidenced by the large number of investment companies, an investment company board's decision to approve a particular fee structure should seldom be second-guessed by courts applying Section 36(b). The Seventh Circuit accordingly adopted a standard that would avoid "rate regulation" by limiting judicial intervention to cases where fees were so large as to be evidence of deception on the part of the adviser in connection with its discussions with the fund board. The full appellate court denied rehearing over an unusually pointed dissent by the Seventh Circuit's other leading free market champion, Judge Richard Posner. Judge Posner, joined by four other judges, took the panel to task for casting aside a "slew of positive citations" to *Gartenberg* and for making *Jones* "the only appellate opinion … disagreeing with *Gartenberg*." (After the Supreme Court agreed to review *Jones*, in *Gallus v. Ameriprise*, the Eighth Circuit Court of Appeals issued its first published opinion addressing Section 36(b), and stated in that case that it generally adheres to the *Gartenberg* approach for determining whether a fee is excessive). Judge Posner argued that a key practical difference between *Jones* and *Gartenberg* is that *Gartenberg* may allow for comparisons between investment advisory fees paid by investment companies and those charged by other institutional advisors, whereas Judge Easterbrook would not. (The Eighth Circuit's recent *Ameriprise* decision echoed Judge Posner's view in this regard, concluding that "the argument for comparing mutual fund advisory fees with the fees charged to institutional accounts is particularly strong [where] the investment advice may have been essentially the same for both accounts"). Thus, in addition to a split among the circuit courts of appeal on the proper reading of Section 36(b), there is a split between two noted Seventh Circuit jurists whose views usually are aligned.

An additional point of interest, and potential concern, arising from Supreme Court review is the possibility that the Court might be asked to define a new standard for evaluating advisory fees. The plaintiffs' lawyers who successfully persuaded the Court to hear *Jones* have been waging a campaign against the *Gartenberg* standards for much of the decade, dating back to the *Nelson* litigation filed against 24 fund advisers and distributors in federal court in East St. Louis, Illinois. These well-funded institutional plaintiffs' counsel, some of whom are veterans of tobacco litigation, have argued consistently that review under *Gartenberg* and subsequent decisions following it has been too limited. The Supreme Court, with no prior precedent binding it, may view itself as writing on a blank slate. Oral argument is expected to be heard during the October 2009 Term. ■

A New Era of Credit Default Swaps:

ISDA Launches the Big Bang Protocol on March 12, 2009

By Gordon F. Peery and Robert A. Wittie

On March 12, 2009, the International Swaps and Derivatives Association, Inc. ("ISDA") published the much anticipated "Big Bang" credit derivatives protocol (the "BB Protocol") and supplement (the "March 2009 Supplement") to the 2003 ISDA Credit Derivatives Definitions (the "2003 Definitions"). By adhering to the BB Protocol, adhering parties will incorporate the March 2009 Supplement into their existing credit default swap ("CDS") documentation. The principal effect of this will be threefold:

(i) Existing settlement options will be replaced by an "auction" settlement – a system developed by ISDA in recent years that now will effectively be hardwired into CDS documentation. The choice made in current CDS documentation between settlement in "cash" or by "physical delivery" will be converted to an auction methodology, unless the parties opt for one of those two methods;

(ii) Regional "Determinations Committees" established by ISDA will be authorized to make binding determinations with respect to key matters, including whether a "Credit Event" has taken place and which securities may be used to satisfy any physical delivery settlement requirements; and

(iii) Standardized "lookback" limits or "Backstop Dates" will be established, effectively limiting the time that may elapse from the occurrence of certain Credit Events until the time that they are asserted by a party.

For parties adhering to the BB Protocol, the "hardwiring" of auction settlements and the establishment of the Determinations Committees will become effective on April 8, 2009; the lookback limits will become effective on June 20, 2009. ISDA intends the March 2009 Supplement to be incorporated into new CDS confirmations going forward from the effective date until January 1, 2011, at which point the provisions of the March 2009 Supplement will be standardized in boilerplate CDS documentation. Market participants may voluntarily adhere to the BB Protocol from *March 12, 2009,* to *April 7, 2009* by using the form of adherence letter that has been published on ISDA's website. Parties to CDSs will still be able to affirmatively opt for cash or physical settlement, but it is expected that the auction methodology will be the prevailing means for settling CDSs going forward.

Credit Default Swaps

Generally

In a CDS, one party, the "Protection Seller," undertakes to provide credit protection to the other party, the "Protection Buyer," with respect to one or more debt obligations issued by a reference entity or, in some cases, a basket of reference entities. The Protection Buyer pays a premium or "coupon" to the Protection Seller in exchange for the Protection Seller agreeing to make a payment if and when a so-called Credit Event – generally, a default under the reference obligations or the insolvency of the reference issuer – occurs.

CDS Settlement

The Protection Seller will be required to make a settlement payment to the Protection Buyer if a Credit Event occurs prior to the scheduled termination date for the swap, and the Protection Buyer provides the requisite notice and satisfies certain other conditions. Under current documentation, a CDS may be either cash-settled (meaning that the Protection Seller pays an amount equal to the par or other agreed-upon percentage of the notional amount of the reference obligation minus the then-current market value of an appropriate "deliverable" obligation) or by physical settlement (meaning that the Protection Seller pays the par or other agreed-upon

percentage of the notional amount of the reference obligation against delivery of a deliverable obligation by the Protection Buyer) as specified in the confirmation. Due to potential uncertainties relating to the amount properly payable in cash-settled transactions, most confirmations opt for physical settlement. But because the volume of CDSs with respect to a given reference entity can far outstrip the quantity of physical securities actually issued, physical settlement is also not ideal – when a default occurs, Protection Buyers may rush to purchase outstanding debt of the reference issuer, thus pushing up the price they must pay and thereby decreasing the practical value of their CDS protection.

Hardwiring Auction Settlement

To address this problem, ISDA developed a series of ad hoc auction terms that allowed market participants to determine an appropriate price for reference obligations and effectively facilitate cash settlements at a fair price, even when the parties had chosen physical settlement. However, because auction terms were determined on a case-by-case basis and because utilizing them was purely optional, CDS participants have had to consider whether to adhere to the terms of a particular auction process on a case-by-case basis and to complete paperwork each time to evidence adherence. The BB Protocol and the March 2009 Supplement "hardwire" these auction procedures into standard CDS documentation, alleviating the need for adherence to individual auction protocols.

CDSs that become subject to the March 2009 Supplement will be settled by "Auction Settlement," unless the parties have affirmatively chosen an alternative method. Auction Settlement thus becomes a third, but also the preferred, method of settling a CDS. If Auction Settlement applies, then the auction rules set forth in the March 2009 Supplement operate to bring about settlement of the CDS.

ISDA intends the March 2009 Supplement to standardize the manner in which auctions are conducted. ISDA indicates that it will publish Auction Settlement Terms for each auction that a new ISDA Determinations Committee deems necessary by majority vote. ISDA will publish two schedules to the March 2009 Supplement to further clarify standard deliverable obligations and other auction specific terms. These schedules, a new Article XII to the 2003 Credit Derivatives Definitions and the decisions made by the new Determinations Committee to auctions, will collectively constitute the standard method for settling CDSs going forward.

These are significant developments affecting the CDS market and its participants, warranting careful review and consideration. If you would like further information, please contact the authors or others within the K&L Gates investment management practice. ■

Tax Update

The American Recovery and Reinvestment Act of 2009 and Recent IRS Guidance

By Roger S. Wise

The American Recovery and Reinvestment Act of 2009 ("Act"), signed into law on February 17, 2009, contains a number of provisions regarding tax-exempt and tax credit bonds that are relevant for regulated investment companies ("RICs"). The Internal Revenue Service ("IRS") has also issued guidance recently to make it easier for publicly traded RICs (primarily closed-end funds and exchange-traded funds) to use stock dividends to satisfy their distribution requirements and to clarify how money market funds should treat certain payments received from their advisers.

The American Recovery and Reinvestment Act of 2009

Alternative Minimum Tax Relief

The Act provides relief from the alternative minimum tax ("AMT") for interest on certain bonds issued in 2009 and 2010. This relief will also apply to "exempt-interest dividends" paid by RICs that hold these bonds.

In general, interest on most private activity bonds, although exempt from regular income tax, is an item of tax preference for purposes of the AMT ("tax preference item"). In addition, interest on all tax-exempt bonds, except tax-exempt housing bonds, is generally included in a corporation's "adjusted current earnings" for AMT purposes ("ACE") and thus indirectly increases the corporation's AMT liability.

If at least 50% of a RIC's assets at the close of each quarter of its taxable year consists of municipal bonds the interest on which is tax-exempt, the RIC is able to pay exempt-interest dividends to its shareholders. Exempt-interest dividends are dividends designated by a RIC that are attributable to such interest and, when received by its shareholders, are exempt from federal income tax in the same manner as interest they receive directly on municipal bonds, including being subject to the AMT rules described above.

The Act provides that interest on private activity bonds issued in 2009 and 2010 will not be a tax preference item and that interest on all tax-exempt bonds issued in those years will not be included in a corporation's ACE. In addition, refunding bonds issued during those years to refund bonds issued after 2003 and before 2009 qualify for this AMT relief. This relief also will apply to the part of exempt-interest dividends a RIC pays that are attributable to interest it receives on such bonds.

Tax Credit Bonds

The Act also amends the Internal Revenue Code ("Code") so that a RIC can elect to pass through to its shareholders tax credits from "tax credit bonds." Those bonds consist of "qualified tax credit bonds" – which are (1) qualified forestry conservation bonds, (2) new clean renewable energy bonds, (3) qualified energy conservation bonds, and (4) qualified zone academy bonds (provisions regarding all four categories having been added to the Code in 2008), and (5) qualified school construction bonds (which were added by the Act) – "build America" bonds, and any other bonds for which a tax credit is allowable. The qualified tax credit bonds generally provide a tax credit instead of paying interest, whereas a "build America" bond – a new type of tax credit bond created by the Act – provides a tax credit in addition to paying interest. If a RIC makes this election, the effect would be similar to its making a foreign tax credit pass-through election, in that each shareholder would be entitled to a proportionate share of the RIC's aggregate credit and would have to include in gross income an amount equal to his or her proportionate share of the interest income the RIC would have included in gross income in the absence of the election. Because all these provisions are relatively new, it is not clear how

many of these bonds will be issued and thus the extent to which RICs will be able to take advantage of the pass-through of these credits.

Recent IRS Guidance

Taxable Stock Dividends

Revenue Procedure 2009-15, issued on January 7, 2009, allows publicly traded RICs to satisfy their distribution requirements by distributing stock to their shareholders, so long as the shareholders also have a right to receive cash. (It extends to RICs guidance that had been provided to real estate investment trusts late last year.)

A RIC generally must distribute at least 90% of its investment company taxable income each taxable year to avoid an entity-level tax. Normally, a stock dividend does not satisfy the distribution requirement because it is not taxable. If shareholders have a choice of receiving a dividend in cash or in stock, however, the stock dividend will be taxable and will count toward satisfaction of the distribution requirement. One question under current law has related to the kinds of limits that can be placed on the cash portion of any such distribution. Prior guidance, in the form of private letter rulings, has generally permitted only a 20% cap on the cash portion in order for the stock dividend to satisfy the distribution requirement. The revenue procedure provides that such a cap may be as small as 10%.

The revenue procedure makes it easier for a RIC to satisfy the distribution requirement while still holding on to its cash. This will be helpful in situations where a RIC has taxable income but no matching cash (so-called "phantom" income), such as mark-to-market gains under Code section 1256. For shareholders, the stock dividend is fully taxable, based on the fair market value of the stock.

This guidance applies to dividends declared after December 31, 2007, with respect to any taxable year ending by December 31, 2009.

Money Market Funds

Money market funds generally strive to maintain a stable net asset value of $1 per share, but that net asset value can drop below $1 (or "break the buck") if a fund has unexpected losses, as was the case for many funds in 2008. In this situation, advisers often contributed assets to their money market funds to prevent them from breaking the buck. The tax treatment of such a payment to a fund, however, was not entirely clear.

In December 2008, the IRS issued Revenue Procedure 2009-10, which provides that it will not challenge a money market fund's treatment of a payment it receives from the fund's adviser to prevent the fund from breaking a buck – where the amount is not determined by reference to the adviser's fees, is not a loan, and does not give the adviser an ownership stake in the fund – as short-term capital gain. This revenue procedure also applies when an adviser purchases assets from a fund for an amount in excess of the assets' fair market value; the excess payment also may be treated as short-term capital gain. ■

Continued from page 1

SEC Again in Controversial Territory by Voting to Regulate Indexed Annuities

- amounts payable by the insurer under the contract are calculated at or after the end of one or more specified crediting periods in whole or in part by reference to the performance during the crediting period(s) of a security, including a group or index of securities; and
- amounts payable by the insurer under the contract are "more likely than not" to exceed the amounts guaranteed under the contract.

An insurer's determination, at or before the issuance of a contract, that the amounts payable under the contract are (or are not) "more likely than not" to exceed contractual guarantees will be conclusive, provided that:

- the insurer's methodology and economic, actuarial and other assumptions are reasonable (e.g., assumptions that are inconsistent with historical experience generally would not be reasonable, absent a reasonable basis to deviate from the insurer's historical experience; insurers also generally are expected to use assumptions that are consistent with the assumptions they use for other purposes, such as pricing and valuation);
- the insurer's computations are materially accurate (i.e., computational errors do not affect the outcome of the insurer's determination); and
- the determination is made not earlier than six months prior to the date on which the form of contract is first offered.

Unlike the proposal, Rule 151A as adopted does not require insurers to re-assess the status of each of their annuities every three years, and the rule was narrowed and clarified to make clear that it does not apply to traditional fixed annuities. In addition, in making the computation required by the rule, surrender and other charges should be reflected in both the amounts payable and the amounts guaranteed under the contract.

A group of industry participants and a coalition of state legislators have both filed separate petitions challenging Rule 151A in the Court of Appeals for the District of Columbia Circuit. These petitions have been consolidated into one proceeding, in which the National Conference of Insurance Legislators and others will participate as amici. The matter is on an expedited briefing schedule to allow the Court of Appeals to render a decision this term, and thus to provide clarity sufficiently before the January 2011 effective date.

Generally, the coalition of industry participants, who are the lead petitioners, assert that Rule 151A is inconsistent with precedent under Section 3(a)(8) and otherwise deficient primarily because (i) its characterization of "investment risk" is inconsistent with past court decisions, SEC precedents and common understanding; (ii) the SEC did not meaningfully consider the manner in which indexed annuities are marketed; and (iii) the SEC failed to weigh all relevant factors in its cost-benefits analysis.

Seldom does a new SEC rule regulating variable annuities create a stir worthy of editorials in the Wall Street Journal.

Adoption of Rule 12h-7

The SEC also adopted Rule 12h-7, which exempts insurers from certain reporting requirements under the Exchange Act with respect to securities that (1) are not equity interests in the insurer; and (2) are either subject to regulation under the insurance laws of the insurer's home state or are guarantees of securities subject to such regulation. Insurers required to file Exchange Act reports for reasons other than the issuance of securities covered by the rule must continue to do so. To qualify for Rule 12h-7, the following key conditions must also be satisfied:

- An insurer claiming the exemption must file an annual statement of financial condition with, and be supervised and examined by, the insurance regulator in the insurer's home state;
- The securities to which the exemption relates may not be listed, traded, or quoted on an exchange, alternative trading system, inter-dealer quotation system, electronic communications network, or any similar system;
- The insurer must take steps reasonably designed to ensure that a trading market does not develop for the securities to which the exemption relates, including, except to the extent prohibited by law or the act of an appropriate regulator, requiring written notice to and acceptance by the insurer prior to any transfer of the securities; and
- The prospectus for the relevant securities must state that the insurer is relying on the exemption.

To the extent that insurers whose contracts comply with the conditions of Rule 12h-7 intend to rely on the rule, they will no longer be able to incorporate by reference into their S-1 registration statements information currently found in Exchange Act reports. Moreover, insurers that are wholly-owned subsidiaries of Exchange Act reporting companies may be omitting or abbreviating certain information in their 10-Ks, as permitted by the instructions to that form, while also incorporating those 10-Ks by reference to satisfy certain requirements of Form S-1.

Presumably, Rule 12h-7 was not intended to create disclosure requirements for these 10-K filers where one previously did not exist, but the SEC staff has not yet publicly stated a view. Indeed, the SEC staff has recently suggested that insurers issuing variable annuity contracts or variable life insurance policies would be newly subject to Exchange Act reporting requirements absent reliance on Rule 12h-7. Until these technicalities raised by the rule are resolved, reliance on Rule 12h-7 in some cases may be more of a burden than a benefit. ■

Continued from page 1

Regulatory Reform Efforts Gain Momentum; Money Market Mutual Funds, Hedge Funds and Derivatives Targets

Money Market Mutual Funds

Money market mutual funds are likely to be a reform target. Although traditionally considered stable investment vehicles, in September 2008, the Reserve Management Co.'s Primary Fund posted a net value of less than $1 per share and caused a $468 billion run on the money fund mutual fund market in one week.

The Obama Administration and Congress are likely to consider a massive restructuring of the money market mutual fund regulatory framework. One proposal, espoused by the recent G30 Report (see *G30 Financial Reform: A Framework for Financial Stability* at www.group30.org/pubs/pub_1460.htm), recommends a bifurcated regulatory system. Under the proposal, money market mutual funds offering bank-like services, such as account transactions, would be required to reorganize as special-purpose banks. Special-purpose banks would be subject to prudential regulation and supervision, and, in turn, the funds in the special-purpose banks would be government insured. Money market mutual funds electing not to reorganize as special-purpose banks would be required to offer only conservative investment options.

Hedge Funds

A number of hedge fund-related bills have been introduced in the 111th Congress. Congressman Michael Castle (R-DE) recently introduced H.R. 711, the Hedge Fund Advisor Registration Act of 2009, and H.R. 712, the Pension Security Act of 2009. Bills have also been introduced calling for studies and investigations of the hedge fund industry. Some of the concepts espoused by these bills may be incorporated into broader legislative efforts moving forward.

Most notably, Senators Chuck Grassley (R-IA) and Carl Levin (D-MI) introduced the Hedge Fund Transparency Act. The legislation would amend the Investment Company Act of 1940, changing the definition of an investment company. Hedge funds that meet the definition and manage $50 million or more in assets would be placed under the jurisdiction of the SEC. The legislation would require that these funds register with the SEC, file annual disclosure forms, comply with SEC record-keeping standards, and cooperate with regulatory examinations. Although it contains provisions related to disclosure, the legislation notably does not call for the establishment of required capital,

The Obama Administration and Congress are likely to consider a massive restructuring of the money market mutual fund regulatory framework.

liquidity, and risk management standards. The G30 Report takes the position that these changes are necessary to manage the systemic risk created by these funds.

Derivatives

On February 12, 2009, the House Committee on Agriculture approved the "Derivatives Markets Transparency and Accountability Act of 2009," introduced by Chairman Peterson. Among other provisions, the bill would generally require the clearing of swap transactions and give the CFTC, in certain cases, the authority to suspend Credit Default Swap (CDS) trading. For more information on this bill, see K&L Gates Alert, *Opening Salvo Fired In Financial Market Reform Effort, But Many Battles Lie Ahead* at www.klgates.com/newsstand.

In early January, Senator Tom Harkin (D-IA) introduced S. 272, the Derivatives Trading Integrity Act of 2009. The legislation would eliminate the distinction between "excluded" and "exempt" commodities, re-categorize most swaps as futures contracts, and require that all futures contracts trade on a designated contract market or a derivatives transaction execution facility.

The Obama Administration has indicated that it is also developing a proposal requiring increased transparency and regulation of complex financial products, such as CDSs. Treasury Secretary Tim Geithner has stated that the proposal may require that CDSs be traded through a central clearinghouse and possibly on one or more exchanges.

The K&L Gates public policy group is closely monitoring these developments on behalf of the firm's policy clients. ■

Art Delibert and Team Neuberger Berman Win Mutual Fund Industry Award

On March 19, 2009, Washington, DC partner Art Delibert was named the Independent Counsel of the Year by the editors of Institutional Investor's Fund Action and Fund Directions for his work with the Board of the Neuberger Berman Funds. Joining Art in this award were the K&L Gates Neuberger Berman Team with lawyers Ndenisarya Bregasi, Jennifer Gonzalez, Lori Schneider, Lynn Schweinfurth, Fatima Sulaiman, Michelle Mesack, Frank Na and Nicole Trudeau and paralegals Deborah Currie, Shayne Julius and Jonathan Maier.

The award was presented at the 16th Annual Mutual Funds Industry Awards dinner in New York. This is the second year in a row that K&L Gates lawyers have won this award. In 2008, Paulita Pike and Paul Dykstra of the Chicago office were co-winners of this award.

Industry Events

Please visit our website at www.klgates.com for more information on the following upcoming investment management events in which K&L Gates attorneys will be participating:

Mark D. Perlow: The Future of OTC Derivatives, Mutual Funds and Investment Management Conference, Investment Company Institute, March 24, 2009, Palm Desert, CA

Alan C. Porter: Investment Advisors-The Perspective of the Advisor, 2009 Annual Seminar, SIFMA, March 24, 2009, Phoenix, AZ

Alan P. Goldberg: 2009 ISIA Information Meeting, Illinois Securities Industry & Financial Markets Association, March 26, 2009, Chicago, IL

Michael S. Caccese: Managing Non-Public Information, East Coast Regional Membership Meeting, National Society of Compliance Professionals, March 30, 2009, Boston, MA

Francine J. Rosenberger and George P. Attisano: New Summary Prospectus Rule and Form N-1A Changes, K&L Gates Webinar, April 14, 2009

Clifford J. Alexander, David Dickstein, Michael J. King and Beth R. Kramer: Gifts and Business Entertainment Policies for Broker-Dealers, Investment Advisers, Investment Companies and Other Regulated Entities, K&L Gates Seminar and Webinar, K&L Gates LLP, April 21, 2009, New York, NY

Jeff Bornstein, Matt Morley, Howard Chen and Edward Fishman: Doing Business Internationally: Understanding and Mitigating FCPA Risks, K&L Gates Seminar, April 21, 2009, San Francisco, CA

Michael S. Caccese: Spring 2009 Compliance Conference, ACA Compliance Group and ACA Insight, April 23, 2009, Las Vegas, NV

Michael S. Caccese: Best Execution and Soft Dollars: Getting it Right; ERISA Update, NRS Twenty-Fourth Annual Spring Investment Adviser and Broker-Dealer Compliance and Risk Management Conference, National Regulatory Services, April 27-29, 2009, Orlando, FL

Bruce A. Rosenblum: Board Oversight in Turbulent Times, Annual Policy Conference, Mutual Fund Directors Forum, May 4-5, 2009, Washington, DC

Michael S. Caccese: Managing Non-Public Information, Second East Coast Regional Membership Meeting, National Society of Compliance Professionals, May 18, 2009, New York, NY

Kay Gordon and Philip J. Morgan: Infrastructure and Renewable Alternative Investment Funds, Bird & Bird, May 28, 2009, Milan, Italy

Mark D. Perlow: The Changing Landscape of SEC Examinations, NICSA West Coast Regional Meeting, May 28, 2009, Los Angeles, CA

Please join us for our Webinar

New Summary Prospectus Rule and Form N-1A Changes

Tuesday, April 14, 2009

Speakers: Francine J. Rosenberger, Jeff Levering (NewRiver, Inc.) and George P. Attisano

This complimentary Webinar will cover the SEC's new summary prospectus rule and the substantial revisions to Form N-1A, including changes specific to mutual funds, ETFs and underlying funds.

To register for this event, please go to www.klgates.com/events

Please join us for our Seminar and Webinar

Gifts and Business Entertainment Policies for Broker-Dealers, Investment Advisers, Investment Companies and Other Regulated Entities

Tuesday, April 21, 2009

Speakers: Clifford J. Alexander, David Dickstein, Michael J. King and Beth R. Kramer

This seminar will be presented live at our New York City office or you may attend via Webinar.

The provision and receipt of gifts and business entertainment by broker-dealers, investment advisers, investment companies, other regulated entities, and their employees are subject to pervasive regulation. This program will address these regulations in the context of a series of real-life and hypothetical scenarios and will provide guidance on drafting supervisory policies.

To register for this event, please go to www.klgates.com/events

Please join us for our Seminar

Doing Business Internationally: Understanding and Mitigating FCPA Risks

Tuesday, April 21, 2009

Speakers: Jeff Bornstein, Matt Morley, Howard Chen, Edward Fishman, David Thelander (Deloitte) and Joe Zier (Deloitte)

This program will be presented live in our San Francisco office.

In recent years, enforcement of the Foreign Corrupt Practices Act has expanded dramatically, including new criminal and civil enforcement activities brought by the Department of Justice and the SEC, as well as litigation by private plaintiffs. Please join K&L Gates and Deloitte for an executive roundtable that will discuss identifying and controlling your FCPA risks and practical challenges and potential solutions for FCPA compliance in high-risk countries.

To register for this event, please go to www.klgates.com/events

To learn more about our Investment Management practice, we invite you to contact one of the lawyers listed below, or visit www.klgates.com.

Austin

Robert H. McCarthy, Jr.	512.482.6836	robert.mccarthy@klgates.com

Boston

Joel D. Almquist	617.261.3104	joel.almquist@klgates.com
Michael S. Caccese	617.261.3133	michael.caccese@klgates.com
Mark P. Goshko	617.261.3163	mark.goshko@klgates.com
Thomas A. Hickey III	617.261.3208	thomas.hickey@klgates.com
Nicholas S. Hodge	617.261.3210	nicholas.hodge@klgates.com
Peter N. McIsaac	617.261.3225	peter.mcissac@klgates.com
Clair E. Pagnano	617.261.3246	clair.pagnano@klgates.com
Gordon F. Peery	617.261.3269	gordon.peery@klgates.com
Rebecca O'Brien Radford	617.261.3244	rebecca.radford@klgates.com
George Zornada	617.261.3231	george.zornada@klgates.com

Chicago

Cameron S. Avery	312.807.4302	cameron.avery@klgates.com
Paul H. Dykstra	312.781.6029	paul.dykstra@klgates.com
David P. Glatz	312.807.4295	david.glatz@klgates.com
Alan P. Goldberg	312.807.4227	alan.goldberg@klgates.com
Anna Paglia	312.781.7163	anna.paglia@klgates.com
Paulita A. Pike	312.781.6027	paulita.pike@klgates.com
Donald S. Weiss	312.807.4303	donald.weiss@klgates.com

Fort Worth

Scott R. Bernhart	817.347.5277	scott.bernhart@klgates.com

London

Danny A. Brower	+44.20.7360.8120	danny.brower@klgates.com
Philip J. Morgan	+44.20.7360.8123	philip.morgan@klgates.com

Los Angeles

William P. Wade	310.552.5071	william.wade@klgates.com

New York

David Dickstein	212.536.3978	david.dickstein@klgates.com
Edward G. Eisert	212.536.3905	edward.eisert@klgates.com
Kay A. Gordon	212.536.4038	kay.gordon@klgates.com
Alan M. Hoffman	212.536.4841	alan.hoffman@klgates.com
Beth R. Kramer	212.536.4024	beth.kramer@klgates.com

Raleigh

F. Daniel Bell III	919.743.7335	dan.bell@klgates.com

San Francisco

Kurt J. Decko	415.249.1053	kurt.decko@klgates.com
Elaine A. Lindenmayer	415.249.1042	elaine.lindenmayer@klgates.com
J. Matthew Mangan	415.249.1046	matt.mangan@klgates.com
David Mishel	415.249.1015	david.mishel@klgates.com
Mark D. Perlow	415.249.1070	mark.perlow@klgates.com
Richard M. Phillips	415.249.1010	richard.phillips@klgates.com

Seattle

James A. Andrus	206.370.8329	james.andrus@klgates.com

Taipei

Christina C. Y. Yang	+886.2.2175.6797	christina.yang@klgates.com

Washington, D.C.

Clifford J. Alexander	202.778.9068	clifford.alexander@klgates.com
Diane E. Ambler	202.778.9886	diane.ambler@klgates.com
Mark C. Amorosi	202.778.9351	mark.amorosi@klgates.com
Catherine S. Bardsley	202.778.9289	catherine.bardsley@klgates.com
Ndenisarya M. Bregasi	202.778.9021	ndenisarya.bregasi@klgates.com
Beth Clark	202.778.9432	beth.clark@klgates.com
Daniel F. C. Crowley	202.778.9447	dan.crowley@klgates.com
Arthur C. Delibert	202.778.9042	arthur.delibert@klgates.com
Stacy L. Fuller	202.778.9475	stacy.fuller@klgates.com
Jennifer R. Gonzalez	202.778.9286	jennifer.gonzalez@klgates.com
Robert C. Hacker	202.778.9016	robert.hacker@klgates.com
Kathy Kresch Ingber	202.778.9015	kathy.ingber@klgates.com
Rebecca H. Laird	202.778.9038	rebecca.laird@klgates.com
Deborah A. Linn	202.778.9874	deborah.linn@klgates.com
Cary J. Meer	202.778.9107	cary.meer@klgates.com
Marc Mehrespand	202.778.9191	marc.mehrespand@klgates.com
R. Charles Miller	202.778.9372	chuck.miller@klgates.com
Dean E. Miller	202.778.9371	dean.miller@klgates.com
R. Darrell Mounts	202.778.9298	darrell.mounts@klgates.com
Molly Moynihan	202.955.7027	molly.moynihan@klgates.com
Lawrence B. Patent	202.778.9219	lawrence.patent@klgates.com
C. Dirk Peterson	202.778.9324	dirk.peterson@klgates.com
David Pickle	202.778.9887	david.pickle@klgates.com
Alan C. Porter	202.778.9186	alan.porter@klgates.com
Theodore L. Press	202.778.9025	ted.press@klgates.com
Eric S. Purple	202.955.7081	eric.purple@klgates.com
Francine J. Rosenberger	202.778.9187	francine.rosenberger@klgates.com
Bruce A. Rosenblum	202.955.7087	bruce.rosenblum@klgates.com
Robert H. Rosenblum	202.778.9464	robert.rosenblum@klgates.com
William A. Schmidt	202.778.9373	william.schmidt@klgates.com
Lori L. Schneider	202.778.9305	lori.schneider@klgates.com
Lynn A. Schweinfurth	202.778.9876	lynn.schweinfurth@klgates.com
Donald W. Smith	202.778.9079	donald.smith@klgates.com
Fatima S. Sulaiman	202.778.9223	fatima.sulaiman@klgates.com
Andras P. Teleki	202.778.9477	andras.teleki@klgates.com
Stacy H. Winick	202.955.7040	stacy.winick@klgates.com
Roger S. Wise	202.778.9023	roger.wise@klgates.com
Robert A. Wittie	202.778.9066	robert.wittie@klgates.com
Robert J. Zutz	202.778.9059	robert.zutz@klgates.com

K&L GATES

Anchorage Austin Beijing Berlin Boston Charlotte Chicago Dallas Fort Worth Frankfurt Harrisburg Hong Kong London Los Angeles Miami Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Washington, D.C.

K&L Gates comprises approximately 1,900 lawyers in 32 offices located in North America, Europe and Asia, and represents capital markets participants, entrepreneurs, growth and middle market companies, leading FORTUNE 100 and FTSE 100 global corporations and public sector entities. For more information, visit www.klgates.com.