SEI Trust Company
Quarterly Update
June 30, 2022

REGULATORY/LEGAL UPDATE

In an effort to keep you updated on changing regulations, requirements and litigation that may affect our industry, we are providing you with a summary of recent legislation, legal decisions and/or regulatory guidance that may impact collective investment trusts ("CITs") and their service providers, such as banks and investment managers.

Regulatory Update

- **Update on the New Marketing Rule for Investment Advisors and Its Application to CITs**

  On December 22, 2020, the Securities and Exchange Commission ("SEC") finalized its long-awaited overhaul of the Advertising Rule under the Investment Advisers Act of 1940. Beginning May 4, 2021, advisors may comply with the entire rule at any time during the transition period, but will not be permitted to "pick and choose" provisions of the new rule. The compliance date was November 4, 2022. Some highlights of the new rule are:

  - Replaces the current advertising rule with a more expansive principles-based provisions;
  - Permits the use of testimonials, endorsements, and third party ratings subject to certain conditions;
  - Provides tailored requirements for the presentation of performance results based on an advertisement's intended audience;
  - Expands the solicitation rule to cover solicitation arrangements involving all forms of compensation subject to a new de minimus threshold;
  - Updates aspects of the solicitation rule and requires additional disclosure regarding solicitor conflicts of interest.

  SEI Trust Company is not a registered investment advisor and, therefore, is not required to comply with the amended rule. While CITs themselves are also outside the scope of this new rule, registered investment advisors are likely in the process of ensuring that their firm's policies and procedures comply with the new rule, and making associated edits to marketing materials which may have a downstream impact on CIT marketing materials. For example, if firms are showing or linking separately managed account or other related strategy performance in CIT materials, firms may be considering how that performance may need to be amended in light of the new rule. Relatedly, the SEI team that reviews CIT marketing materials will be asking for the addition of the following disclosure to CIT materials to emphasize that the intent of the materials is to offer the CIT and not any related strategy or composite performance that are provided in connection with your offer of the CIT: "This material represents an offer of a collective investment trust and does not constitute an offer of any of the investment advisor's strategies, products or services discussed herein."

- **Amendments Proposed by the DOL to the Qualified Professional Asset Manager Exemption**

  Although it was anticipated that the US Department of Labor would issue amendments to the Qualified Professional Asset Manager Exemption ("QPAM")[1] most practitioners were slightly surprised of the breadth of the proposed amendments to the exemption that were issued during the last week of July, 2022.

  As matter of high level background, QPAM provides broad exemptive relief for transactions with plans and

[1] Prohibited Transaction Class Exemption 84-14

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their parties in interest (and their fiduciaries executing such transactions), and is relied upon heavily for plans that participate in more complex transactions, including alternative investments and various derivative transactions. This is why so many investment managers that manage plans and funds subject to Employee Retirement Income Security Act of 1974, as amended ("ERISA") seek to comply with the exemption. While providing broad exemptive relief for party in interest transactions, the QPAM exemption does not provide relief for the so called "conflict in interest" transactions that are outlined in Section 406(b) of ERISA.

The amendments were anticipated in line with a recent set of issues arising out of the requirement that neither QPAM, nor any of its affiliates, can be found guilty of a crime. There had been an ongoing question as to whether this disqualification provision applies to foreign (non-US) criminal convictions, although the DOL had been clear for years that it does (although that position has moderated from time to time). In the event that a US investment entity is associated with a foreign affiliate that is convicted of a crime, the US investment entity associated with that foreign affiliate automatically loses its ability to rely on the exemption and is then required to seek an individual prohibited transaction exemption from the DOL, a long process that puts on going and new transactions enacted by the QPAM for the plans in a state of legal limbo. The proposal now makes it clear that a foreign affiliate's conviction of a crime (or pleading guilty of a crime) negatively taints the US investment entity's use of QPAM going forward. This can create difficulties for large financial entities with various foreign affiliates, as the decisions being made at the foreign entity level may not include implications on the US entity's ability to continue to provide services to ERISA plans.

In addition to actual crimes, the DOL expanded the conduct that would disqualify an entity's use of the QPAM exemption by adding a new category to the disqualification provisions: "Participating in Prohibited Misconduct", which is defined as any of the following:

1) Any conduct that forms the basis for a non-prosecution or deferred prosecution agreement that, if successfully prosecuted, would have constituted a covered crime, or for a substantially equivalent agreement under foreign law; note that these types of agreements were previously excluded by DOL interpretation from being considered disqualifying.

2) Engaging in a systematic pattern or practice of violating, or intentionally violating, the condition of the QPAM Exemption in connection with otherwise nonexempt prohibited transactions.

3) Providing materially misleading information to DOL in connection with the conditions of the exemption.

Disqualification under this category would be initiated by DOL administrative action, generally following an investigation by a DOL field office and a written warning to the affected QPAM, and subject to due process procedures that would be spelled out in the exemption.

If a QPAM becomes ineligible to use the exemption, the QPAM exemption would then rely on the mandatory wind-down period. The exemption would ensure that the disqualification would not come into effect immediately—it would be subject to a one-year winding-down period. This is intended to permit time for existing plan clients of the disqualified QPAM to decide whether to terminate the manager, given that manager transitions can be complex and take time to put in place. However, the winding-down period a proposed could only be used to transition existing clients out of existing investment alternatives. This provision would provide clarity between the time that the QPAM exemption becomes unavailable and the time that the assets were moved to a suitable replacement investment and/or financial entity's services. The QPAM would be required to notify all of its clients of the issues and the wind down period.

This amendment would make the following increase in asset and equity thresholds for entities that could use the QPAM exemption:

- Owners' equity for banks, savings and loan associations, and insurance companies would be

increased from $1 million to $2.72 million
- Registered investment advisers:

Assets under management: increase from $85 million to $135.87 million

Owners' equity: increase from $1 million to $2.04 million

In addition, going forward, DOL would be able to make annual adjustments for inflation to these thresholds, rounded to the nearest $10,000, no later than January 31 of each year.

Further, the DOL staff has had an ongoing concern about the so-called "QPAM for a day" or "rent-a-QPAM" scenario: where a QPAM is brought in to approve a fully negotiated transaction and is therefore not providing any independent fiduciary role in that transaction as a discretionary investment manager. DOL is now proposing to formally amend the exemption to require that (1) the "terms of the transaction, commitments, investment of fund assets, and any corresponding negotiations on behalf of the Investment Fund are the sole responsibility of the QPAM," and (2) the prohibited transaction relief in the exemption applies "only in connection with an Investment Fund that is established primarily for investment purposes" and that "[n]o relief is provided under this exemption for any transaction that has been planned, negotiated, or initiated by a Party in Interest, in whole or in part, and presented to a QPAM for approval because the QPAM would not have sole responsibility with respect to the transaction."

The rule would also impose a one-time filing requirements for entities expecting to rely on the exemption plus certain recordkeeping requirements. And the proposal requires certain written contractual requirements, including an indemnification in favor of clients that would need to be added to contracts in the event those terms are not there already. Comments on the proposal on September 26, 2022.

About SEI's Investment Manager Services Division

SEI's Investment Manager Services supplies investment organizations of all types with advanced operating infrastructure they must have to evolve and compete in a landscape of escalating business challenges. SEI's award-winning global operating platform provides investment managers and asset owners with customized and integrated capabilities across a wide range of investment vehicles, strategies and jurisdictions. Our services enable users to gain scale and efficiency, keep pace with marketplace demands, and run their businesses more strategically. SEI partners with more than 550 traditional and alternative asset managers, as well as sovereign wealth funds and family offices, representing over $40 trillion in assets, including 49 of the top 100 asset managers worldwide.* For more information, visit seic.com/ims.

*Based on Pensions & Investments' "Largest Money Managers" 2021 ranking.

About SEI Trust Company

SEI Trust Company (STC) is a non-depository trust company chartered under the laws of the Commonwealth of Pennsylvania that provides trust and administrative services for various collective investment trusts. SEI Trust Company is a wholly-owned subsidiary of SEI Investments Company (SEI). For more information, visit www.seic.com/stc.

About SEI

SEI (NASDAQ:SEIC) delivers technology and investment solutions that connect the financial services industry. With capabilities across investment processing, operations, and asset management, SEI works with corporations, financial institutions and professionals, and ultra-high-net-worth families to solve problems, manage change and help protect assets—for growth today and in the future. As of June 30, 2022, SEI manages, advises, or administers approximately $1.3 trillion in assets.

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