

## Private Equity Regulatory Update

February 25, 2021

### COVID-19 Update

#### Industry Update

- SEC Requests Comments on Potential Money Market Fund Reforms
- Acting Chair Allison Herren Lee Issues Statements on Empowering Enforcement and Contingent Settlement Offers Involving Waivers

### COVID-19 Update

Please refer to Davis Polk's "[Coronavirus Updates](#)" webpage for content related to the outbreak.

### Industry Update

#### SEC Requests Comments on Potential Money Market Fund Reforms

There is a broad consensus that the money market fund ("MMF") reforms adopted in the wake of the 2008 crisis have not fully achieved their intended aims. Indeed, a report by the President's Working Group on Financial Markets released in December 2020 (the "**Report**") concluded that, notwithstanding reforms adopted by the Securities and Exchange Commission ("**SEC**") in 2010 and 2014, "more work is needed to reduce the risk that structural vulnerabilities in prime and tax-exempt MMFs will lead to or exacerbate stresses in short-term funding markets."

On February 4, 2021, the SEC requested comment on the Report, including with respect to (1) the effectiveness of previously enacted MMF reforms and (2) the effectiveness of implementing policy measures described in the Report, either in addition to, or a replacement for, previously enacted reforms. The SEC's request for comment is an important step in the MMF reform process, but – as the SEC itself acknowledges – MMF reform is likely to require coordinated action by several regulatory agencies, and perhaps the private sector. Davis Polk has published a [Client Memorandum](#) discussing the SEC's request.

#### Acting Chair Allison Herren Lee Issues Statements on Empowering Enforcement and Contingent Settlement Offers Involving Waivers

On February 9, 2021, SEC Acting Chair Allison Herren Lee issued a public [statement](#) indicating that she had re-authorized senior officers in the Division of Enforcement to approve the issuance of formal orders of investigation, effectively allowing such officers to subpoena documents and take sworn testimony. "Returning this authority to the division's experienced senior officers, who have a proven track record of executing it prudently, helps to ensure that investigative staff can work effectively to protect investors in an era when the pace of fraud – like the pace of markets themselves – is ever more rapid," Lee said.

Parties considering whether to settle an SEC enforcement investigation or criminal proceeding have a reasonable expectation that they will know the likely consequences of a settlement. This includes whether they can expect to receive a waiver from certain statutory disqualifications. However, on February 11, 2021, the Acting Chair Allison Herren Lee announced that the Division of Enforcement will

not recommend any settlement offer that is conditioned on the settling party receiving a waiver. If this statement reduces transparency between SEC staff and parties negotiating a possible settlement, the result likely will be a more difficult and protracted process for both sides as it becomes difficult for settling parties to make informed decisions about the full implications of a resolution. Davis Polk has published a [Client Memorandum](#) discussing the implications of the Acting Chair's statement.

---

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

<b>James H.R. Windels</b>	212 450 4978	<a href="mailto:james.windels@davispolk.com">james.windels@davispolk.com</a>
<b>John G. Crowley</b>	212 450 4550	<a href="mailto:john.crowley@davispolk.com">john.crowley@davispolk.com</a>
<b>Leor Landa</b>	212 450 6160	<a href="mailto:leor.landa@davispolk.com">leor.landa@davispolk.com</a>
<b>Gregory S. Rowland</b>	212 450 4930	<a href="mailto:gregory.rowland@davispolk.com">gregory.rowland@davispolk.com</a>
<b>Michael S. Hong</b>	212 450 4048	<a href="mailto:michael.hong@davispolk.com">michael.hong@davispolk.com</a>
<b>Lee Hochbaum</b>	212 450 4736	<a href="mailto:lee.hochbaum@davispolk.com">lee.hochbaum@davispolk.com</a>
<b>Sarah E. Kim</b>	212 450 4408	<a href="mailto:sarah.e.kim@davispolk.com">sarah.e.kim@davispolk.com</a>
<b>Marc J. Tobak</b>	212 450 3073	<a href="mailto:marc.tobak@davispolk.com">marc.tobak@davispolk.com</a>

---

© 2021 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.