Industry Trends – May 2019

Industry Statistics – Mutual Funds

Fund Category	Net Assets (in billions)		Percentage Change in Net Assets	Dollar Change in Net Assets (in billions)		
					Change Due to	
	Mar-19	Dec-18		Total Change	Net Cash Flows	Market
Stock	$10,418.0	$9,224.4	12.9%	$1,193.6	($27.7)	$1,221.3
Hybrid	$1,487.2	$1,382.8	7.5%	$104.4	($9.7)	$114.1
Taxable Bond	$3,550.3	$3,386.1	4.8%	$164.2	$52.7	$111.5
Municipal Bond	$719.4	$675.4	6.5%	$44.0	$26.5	$17.5
Money Market	$3,079.3	$3,037.1	13.9%	$42.2	$30.8	$11.4
Total	$19,254.2	$17,705.8	8.8%	$1,548.4	$72.6	$1,475.8

- With a strong market to start the new year stock fund assets increased during the quarter by $1,193.6 billion. For the quarter ended March 31, 2019, market appreciation was $1,221.3 billion compared to a depreciation of $1,516.3 billion for the quarter ending December 31, 2018. The net assets for stock funds increased from $9,224.4 billion as of December 31, 2018 to $10,418.0 billion at the end of March 2019.
- Hybrid fund assets increased from $1,382.8 billion as of December 31, 2018 to $1,487.2 billion as of March 31, 2019. This compares to a decrease of $136.2 billion in the fourth quarter of 2018. The increase was the result of market appreciation of $114.1 billion and net outflows of $9.7 billion.
- Bond funds had net inflows of $79.2 billion for the quarter ended March 2019, compared to the previous quarter outflows of $122.8 billion. Assets for all bond funds increased $208.2 billion for the quarter ended March 31, 2019 which included, market appreciation of $129.0 billion.
- Money market funds had net inflows of $30.8 billion for the three months ended March 31, 2019, compared to the previous quarter inflows of $164.2 billion. Money market fund net assets, over for the three-month period, increased from $3,037.1 billion as of December 31, 2018 to $3,079.3 billion as of March 31, 2019.

Source: Investment Company Institute website

REGULATORY UPDATE

SEC Adopts Rules Modifying the Timing for Filing Form N-PORT

The SEC recently adopted amendments to the timing requirements for reporting on Form N-PORT to address cybersecurity concerns raised by the industry. The amendments will provide the SEC with the same data on Form N-PORT as is currently required, but provide for delayed filing of non-public fund data. The amount and timing of Form N-PORT information available to the public will not change.

The amendments require funds to file three monthly reports on Form N-PORT 60 days after the end of the fund's fiscal quarter, rather than filing the reports within 30 days after each month-end. A fund's monthly reports on Form N-PORT for the first two months of the fiscal quarter will remain non-public, and the monthly report for the third month will become publicly available upon filing, except for the data items that are not required to be filed publicly. Funds must maintain the information required by Form N-PORT for each month of the quarter in their records 30 days after the end of such month, and make the information available promptly to the Commission upon request.

The overall compliance dates for N-PORT do not change.

- Large Fund Groups April 1, 2019
- Smaller Fund Groups April 1, 2020

The filing dates for large fund groups would be:

Fiscal Quarter End	First Report on Form N-PORT must be filed on Edgar by	Required Monthly Data
March 31, 2019	May 30, 2019	March 2019
April 30, 2019	July 1, 2019	March, April 2019
May 31, 2019	July 30, 2019	March, April, May 2019

On an ongoing basis funds will file reports on Form N-PORT for each month in the quarter, 60 days from the end of the fiscal quarter. All reports, except for the portfolio holdings contained in Part F will not be made public.

Hedging Disclosure Exemption for Closed-End Funds

At the end of 2018, the SEC adopted a rule requiring that certain exchange-listed companies in their annual proxy statement either (i) describe the company's practices or policies relating to the ability of the company's employees, officers and directors to engage in hedging transactions or (ii) explain that the company does not have such practices or policies. The SEC's goal was to increase disclosure around those identified individuals' ability to offset any decrease in the market value of the company's securities. Closed-end investment companies, open-end investment companies and exchange-traded funds that have shares listed and registered on a national stock exchange are excluded from this rule. In making this exclusion, the SEC acknowledged that closed-end funds are more similar to open-end mutual funds, which the SEC already excluded. The SEC noted that "[n]early all funds, unlike other issuers, are externally managed and have few, if any, employees who are compensated by the fund." Notably, business development companies are not excluded from the new rule.

SEC Adopts Pilot Program to Temporarily Limit Stock Exchange Transaction Fees and Study Regulation NMS

As previously discussed in UMBFS' Industry Trends, the SEC approved a proposal to create a transaction fee pilot program for exchange-listed stocks. Currently, national securities exchanges use a variety of fee models, including the fee-and-rebate pricing model and "maker-taker" pricing model. These models can reward, and in turn take fees from, the opposing broker dealers in a transaction that provide or reduce liquidity. The SEC has shared concerns that these types of fee models could create a conflict of interest between achieving best execution for their clients and receiving economic incentives. The pilot program creates temporary limits on transaction fees imposed by national securities exchanges while also requiring the exchanges to compile and share data gathered during the pilot program. The data will help the SEC determine whether additional regulation is needed surrounding Regulation NMS.

Scrutiny of Transfer Agents' Roles in Safeguarding Securities

The SEC recently published a risk alert relating to deficiencies the SEC identified during examinations of certain registered transfer agents over a three-year period. The SEC's review related to transfer agents' roles as paying agents. Paying agent activities include processing a wide variety of distributions, administering stock purchase or dividend reinvestment plans, and handling escheatment reporting and filing. The SEC focused its concerns on transfer agents failing to comply with Rule 17Ad-12 under the Securities Exchange Act of 1934 and deficiencies on policies and procedures relating to lost shareholders. The risk alert provided examples of policies and procedures that the SEC observed that were more appropriately

tailored to prevent the SEC's concerns. Notably, the concerns discussed throughout the SEC's risk alert appeared to focus on stock transfer agents rather than mutual fund transfer agents, such as UMBFS.

SEC Provides No-Action Relief to Director In-Person Meeting Requirements Under Certain Circumstances

In February 2019, the SEC's Division of Investment Management issued a no-action letter which would allow fund boards to make use of current communications technology, rather than attending in-person meetings, in certain, limited circumstances. These circumstances include bad weather, illness, or travel disruptions.

In instances where the board meeting would not be held in person, the meeting could be held via phone, videoconference, or in any other manner in which directors are able to communicate with each other simultaneously. Records documenting decisions made at such meeting should reflect the reason for meeting electronically.

In addition to the requirements noted above, when the Directors are being asked to: (a) renew an investment advisory agreement or principal underwriting agreement; (b) select the fund's independent public accountant (if the same as the immediately preceding fiscal year); or (c) renew the fund's 12b-1 plan, there must be no material changes to the contract, plan or arrangement and the Directors must ratify the approval at the next in-person meeting.

Alternatively, Directors may also choose to (a) renew or approve an investment advisory contract or principal underwriting agreement; (b) approve an interim investment advisory agreement; (c) select the fund's independent public accountant; or (d) approve or renew a 12b-1 plan for the fund without being required to ratify the approval if the Directors had previously fully discussed and considered all material aspects of the proposed matter at an in-person meeting but did not vote on the matter and that time. Additionally, there must not be an outstanding request for another in-person meeting from any of the Directors.

SEC Requests Comments of Custody of Digital Assets

In a March 12, 2019 letter the Deputy Director and Chief Counsel of the SEC's Division of Asset Management (the "Division") requested comments from industry participants on a series of questions related to the custody of digital assets. The letter noted that the digital asset market has grown rapidly and resulted in demand from advisers to invest in digital assets on behalf of clients. In response to this demand, the Division's staff and the SEC's Strategic Hub for Innovation and Financial Technology have worked with market participants to understand and explore related compliance issues including how characteristics of digital assets affect compliance with the custody rule under the Investment Advisers Act of 1940 (the "Advisers

Act"). These characteristics include the use of blockchain/distributed ledger technology ("DLT") to record ownership, the use of public/private cryptographic key pairings to transfer digital assets, the immutability of blockchains, the inability to restore/recover lost digital assets, the anonymous nature of DLT transactions, and challenges facing auditors of digital assets and DLT.

Specifically, the letter seeks input on the following questions, among others:

What challenges do investment advisers face in complying with the Custody Rule with respect to digital assets?

To what extent are investment advisers construing digital assets as "funds", "securities", or neither, for purposes of the Custody Rule?

To what extent do investment advisers use state-chartered trust companies or foreign financial institutions to custody digital assets?

What role do internal control reports, such as System and Organization Controls ("SOC") 1 and SOC 2 reports (Type 1 and 2), play in an adviser's evaluation of potential digital asset custodians?

How should concerns about misappropriation of digital assets be addressed and what are the most effective ways in which technology can be leveraged to address such concerns? How can client losses due to misappropriation of digital assets most effectively be remedied?

What is the settlement process of peer-to-peer digital asset transactions (i.e., transactions where there is no intermediary) and what risks does this process present?

To what extent do investment advisers construe digital assets as "securities" for purposes of determining whether they meet the definition of an "investment adviser" under section 202(a)(11)[16] of the Advisers Act?

To what extent can DLT be used more broadly for purposes of evidencing ownership of securities?

The Division has established an email address for responsive comments (IMOCC@sec.gov) and no deadline for submission was provided.

CFTC Issues Enforcement Advisory to Encourage Self-Reporting

On March 6, 2019, the Commodity Futures Trading Commission ("CFTC") published an Enforcement Advisory to encourage self-reporting of violations of the Foreign Corrupt Practices Act ("FCPA"). Such self-reporting may achieve a resolution without a civil monetary penalty.

The CFTC regulates futures and options traded on U.S. commodity exchanges, swaps, and market intermediaries such as commodity pool operators and commodity trading advisors. The CFTC can bring enforcement actions for fraud in connection with the purchase and sale of cash commodities in which futures contracts are traded or may be traded in the future.

The CFTC seeks to regulate misconduct that undermines U.S. markets through corrupt practices, which may include fraud, manipulation, false reporting or other violations under the Commodity Exchange Act ("CEA"). According to the Enforcement Advisory, to qualify for the proposed resolution, a company must timely and voluntarily self-report to the CFTC violations of the FCPA, fully cooperate with the ensuing investigation and implement corrective measures to prevent recurrence. The CFTC will consider aggravating circumstances, such as the nature of the offense and the offender as well as the pervasiveness of the misconduct in a company.

The CFTC's role with respect to the enforcement of the FCPA is somewhat unclear as the FCPA has been enforced by the Department of Justice ("DOJ") and the SEC. It is unclear whether the CFTC will be able to establish a relationship between an FCPA violation. The CFTC's Enforcement Advisory is similar in nature to the DOJ's Corporate Enforcement Policy and the SEC's Enforcement Cooperation Program regarding the circumstances in which companies may earn declinations for voluntary self-reporting of potential violations of the FCPA. Time will tell in terms of how the DOJ and SEC will react to a disclosure to the CFTC, although the DOJ and SEC have policies in place to avoid adding on to investigations and/or penalties by other enforcement authorities.

Pricing Vendor Due Diligence Visits

In February, officers and trustees of the Investment Managers Series Trusts participated in due diligence visits to ICE Data Services, Pricing Direct, and Refinitiv (Thomson Reuters). During those visits the pricing vendors went over their firms, structure, compliances and pricing methodologies. These vendors provided material including their pricing methodologies, business continuity plans and other material. Below is a summary of some of that material.

ICE Data Services - ICE Data Pricing & Reference Data, LLC (f/k/a Interactive Data Pricing and Reference Data LLC) has been in business since 1968, and is a Delaware Limited Liability Company. ICE Data Services, Inc. (f/k/a Interactive Data Corporation) is the sole member of ICE Data Pricing & Reference Data, LLC. ICE Data Services, Inc. is wholly owned by Intercontinental Exchange, Inc. In addition to its ownership of ICE Data Service, Inc. ICE operates the leading network of regulated exchanges and clearing houses. ICE's futures exchanges and clearing houses serve global commodity and financial markets, providing risk management and capital efficiency.

The ICE Data Pricing & Reference Data business provides global securities pricing, evaluations, reference data and corporate actions designed to support financial institutions' and investment funds' pricing activities, securities operations, research, and portfolio management. They collect, edit, maintain, and deliver data on more than 11 million securities, including daily evaluations for approximately 2.7 million fixed income and international equity issues. They specialize in 'hard-to-get' information and evaluate many 'hard-to value' instruments. Their evaluated pricing spans approximately 145 countries and covers a wide range of financial instruments including sovereign, corporate and municipal bonds, structured products, leveraged loans, and Fair Value Information Services for international equities, options, futures and fixed income products.

Refinitiv – At the end of 2018, Blackstone (55%) and Thomson Reuters (45%) formed a new partnership that purchased the financial and risk business of Thomson Reuters. The new entity is known as Refinitiv. Refinitiv provides evaluated fixed income and derivative prices on over 2.6 million securities to over 40,000 customers worldwide.

PricingDirect – PricingDirect is a wholly owned subsidiary of JPMorgan Chase. PricingDirect offers evaluated prices for fixed income, distressed securities and derivatives. On a daily basis they are pricing nearly 1.5 million securities. PricingDirect believes that they benefit from having direct access to the trading desks, research and technology of J.P. Morgan.

If you would like copies of any of the material provided, please contact your client service manager.

Cayman Court Determines Certain Tender Practices are Not Valid

In July 2018, the Cayman Grand Court ruled on the validity of certain tender offer practices in place between an affiliated master and feeder fund. *In the matter or Ardon Maroon Asia Master Fund (in official liquidation)*, the Court found that in light of certain provisions in the Master Fund's governing documents, an "automatic" redemption of master fund shares held by a feeder fund, without any other supporting documentation, was invalid.

The Ardon Maroon Asia Dragon Feeder Fund (the "Feeder") was a feeder fund of the Adron Maroon Asia Master Fund Limited (the "Master"). The Feeder did not retain any cash or otherwise liquid assets and only held shares of the Master. For each redemption request received by the Feeder, a tender was automatically recorded and processed by the Master without the completion of any redemption documents by the Feeder. The case arose out of the liquidation of the Master and a liquidator's determination that without a written redemption request, the

redemption was not valid. As noted above, the Court determined that the redemption was not valid because the Master's governing documents required that a completed redemption notice be required by the Feeder and that the Master's Board did not otherwise act to waive such requirement. The Court also found unpersuasive the Board's position that an automatic back-to-back process was commonplace in the industry.

Fund companies may want to review their governing documents to see what is required in redemption situations. When a feeder fund is not submitting redemption paperwork, there may be a risk that such tenders would not be valid. To avoid such situations, fund companies may decide to complete such paperwork to avoid any challenges or complications.

Breakpoints Losing Favor

According to Morningstar, only 39% or 2,577 mutual funds on the market have breakpoints, and more than half are too small to trigger management fee discounts. Similarly, 23%, or 284 mutual funds launched in 2018 featured breakpoints. Traditionally, breakpoints have provided a way for shareholders to benefit from economies of scale. Breakpoints also reduce flexibility because funds are obligated to lower management fees at predetermined asset levels. From a gatekeeper's perspective, given the competitive landscape, a fund is going to have fees consistent with peers and therefore breakpoints typically are not a consideration. Overall lower fees have impacted asset managers' profits and facing such pressure may be another reason fund shops may not want to be contractually obligated to cut fees on their funds, particularly their best-selling products. As breakpoints are losing popularity, waivers are becoming more prevalent.

Privacy Update

OCIE Risk Alert Highlights Reg S-P Compliance Issues

The staff of the Office of Compliance Inspections and Examinations ("OCIE") of the Securities and Exchange Commission issued a Risk Alert on April 16, 2019 detailing common compliance issues regarding Regulation S-P that it has observed in recent examinations of investment advisers and broker-dealers (collectively, "registrants"). The Risk Alert is intended to assist registrants in providing compliant privacy and opt-out notices, and in adoption and implementation of effective policies and procedures for safeguarding customer records and information under Regulation S-P.

Regulation S-P requires each registrant to provide clear and conspicuous initial and annual notices to customers that accurately reflect the registrant's privacy policies and practices ("Privacy Notices"). Customers must also be notified of the right to opt-out of some disclosures of non-public personal information about the customer to nonaffiliated third parties ("Opt-Out

Notices"). In addition to the notice requirements, registrants must adopt written policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information.

The following are the most common Regulation S-P compliance issues identified by OCIE:

- Failure to provide Privacy Notices and Opt-Out Notices.
- Lack of written policies and procedures.
- Policies not implemented or reasonably designed to safeguard customer records or information.
- Specific deficiencies with regard to safeguarding customer information included:
    - Personal Devices – policies failed to account for customer information held on personal devices.
    - Electronic Communications – policies did not address the inclusion of personally identifiable information ("PII") in electronic communications.
    - Training and Monitoring Deficiencies
    - Unsecure Networks
    - Outside Vendors – failure to require outside vendors to follow customer information policies.
    - Lack of PII Inventory
    - Insufficient Incident Response Plans
    - Unsecure Physical Locations
    - Login Credential Controls
    - Access Rights of Former Employees

The Risk Alert encourages registrants to review their policies and procedures, including implementation, to ensure compliance with Regulation S-P.

The OCIE Risk Alert is available at the following URL:

https://www.sec.gov/ocie/announcement/ocie-risk-alert-regulation-s-p

Proliferation of State Privacy Legislation

Since the enactment in June 2018 of the California Consumer Privacy Act of 2018 ("CCPA"), a sweeping privacy law that grants California residents new rights, state legislative activity regarding consumer privacy has increased. At least five states have introduced privacy bills modeled on the CCPA, including Hawaii, Maryland, Massachusetts, New Mexico and Rhode Island. In addition, bills have been introduced in Illinois, New Jersey, New York, Oregon,

Virginia and Washington that would implement new or targeted consumer information protection regimes applying to business that receive certain customer information.

The CCPA takes effect on January 1, 2020; however, the California Attorney General may not begin enforcement of the CCPA until the sooner of six months after the publication of final regulations or July 1, 2020. The Attorney General's office has indicated that proposed regulations are expected to be released in the fall of 2019.

For a summary of the CCPA, please refer to the November 2018 issue of Industry Trends available at the following URL:

https://umbfs.umb.com/footer/news-and-insights/industry+updates

2019 Russell US Index Reconstitution

On an annual basis, Russell reviews and reconstitutes fully their US Indexes to ensure that they continue to accurately reflect the U.S. equity markets. Changes that are captured during reconstitution include shifts in market capitalization, sector composition, company rankings, and style orientation. For 2019, the schedule is as follows:

- May 10 – Rank Day
- June 7 – Preliminary and delete lists available
- June 14 and June 21 – Updated add and delete lists available
- June 28 – Reconstitution is final after market close

Expense Ratios of Actively Managed Funds Continue to Decline

In the most recent ICI Mutual Fund Fact Book, fund expenses continued to decline. On an asset-weighted basis, average expense ratios incurred by mutual fund investors have fallen substantially. In 2000, equity mutual fund investors incurred expense ratios of 0.99 percent, on average. By 2017, that average had fallen to 0.59 percent, a decline of 40 percent. Hybrid and bond mutual fund expense ratios also have declined. The average hybrid mutual fund expense ratio fell from 0.89 percent in 2000 to 0.70 percent in 2017, a reduction of 21 percent. In addition, the average bond mutual fund expense ratio fell from 0.76 percent in 2000 to 0.48 percent in 2017, a decline of 37 percent.

FINRA's 529 Plan Share Class Initiative Encourages Self Reporting

In January 2019, Financial Industry Regulatory Authority, Inc. ("FINRA") released Regulatory Notice 19-04 announcing its 529 self-reporting initiative ("Initiative"). The FINRA Notice explained that the Initiative encourages firms to self-report violations where firms have failed to reasonably supervise brokers' recommendations of multi-share class products.

A firm that participates in the Initiative will avoid any fine that FINRA might otherwise impose in an Enforcement action concerning the firm's failure to supervise the suitability of 529 plan share class recommendations. In addition, a firm that participates in this Initiative will have the benefit of a discussion with FINRA about the steps it plans to take to remediate its supervisory failures and pay restitution to customers.

Some firms may be concerned that the self-report would also trigger a formal Enforcement action. But not all self-reports will necessarily result in formal disciplinary action. Under these circumstances, FINRA would consider the lack of customer harm when determining an appropriate outcome and may, based on the facts and circumstances, determine that the matter should be resolved informally or with no further action.

Firms are **not required** to participate in the Initiative; it is voluntary. To be eligible, firms must self-report by providing notification to FINRA Enforcement by April 30, 2019. Firms that cannot complete their supervisory review before the new April 30 deadline may request an extension.

"Frequently Asked Questions Regarding the 529 Share Class Initiative" may be found on the FINRA website using the link below.

https://www.finra.org/industry/faq-frequently-asked-questions-regarding-529-plan-share-class-initiative

FINRA Staff Permits Pre-Inception Index Performance in Institutional Communications for Open End Funds

On January 31, 2019, Financial Industry Regulatory Authority, Inc. ("FINRA") released an interpretative letter establishing the conditions under which it is permissible to include the use of pre-inception index performance ("PIP") **in institutional communications concerning registered** passively managed, index-based, o**pen-end investment companies.**

This is an expansion of the 2013 interpretive letter which provided similar guidance regarding the use of pre-inception performance data relating to exchange-traded products, providing the communication is limited to distribution solely to institutional investors.

The PIP data may be shared with institutional investors so long as the communications comply with several conditions and disclosure requirements that are listed in FINRA's letter.

FINRA reiterated its long-standing position prohibiting the use of hypothetical back-tested performance data in communications with retail investors.

OTHER

SEC Launches New Cyber-Security Sweep

The United SEC's Office of Compliance Inspections and Examinations (the "OCIE") launched a sweep of cyber security threats during the first quarter of 2019. This sweep is in line with the SEC's 2019 exam priorities. The SEC plans to focus on firms with recent mergers and acquisitions as they see heightened cyber-security risk in these scenarios.

The SEC views firms that have recently undergone a merger or acquisition as high risk due to gaps that can develop as companies combine their processes and systems. In such scenarios, firms should be prepared to explain the cyber-security risks involved in the transactions. Of note are risks related to third-party relationships, data flows, and system architecture. Advisors should be prepared to demonstrate to the SEC their understanding of the risks opened by a merger or acquisition.

The SEC expects to see cyber security programs evolve over time to keep up with cyber risks that change quickly. Additionally, they are interested in any failures that have occurred and the procedures for filing notice of a breach.

TAX UPDATE

Regulatory

Wall Street Tax Bill Would Hurt 401(k) savings

The Wall Street Tax Act, the U.S. Senate bill introduced March 5, along with a companion bill introduced in the U.S. House of Representatives, would levy a ten-basis-point tax on sales of stocks, bonds and derivatives, which sponsors of the bill project would generate $777 billion in taxes over a decade. The sponsors of the bill say the bill also aims at "addressing inequality and reducing high risk and volatility in the market". The American Retirement Association, a lobbying group, cautioned that the proposed tax would erode 401(k) savings. The lobbying group cites figures from a 401(k) fee report by the Council of Economic Advisors, contending that the tax could have the effect of reducing retirement savings by three percent by the time a worker retires.

Qualified REIT Dividends Paid by RICs are Eligible for the Code Section 199A Deduction

Internal Revenue Code Section 199A provides a deduction of up to 20 percent of qualified business income from certain U.S. trades or businesses that are operated in a pass-through entity. Code Section 199A also allows certain taxpayers to deduct up to 20 percent of their combined qualified REIT dividends (defined in Code Section 199A(e)(3) as any dividend from a REIT that is not a capital gain dividend or qualified dividend income), including REIT dividends earned from a pass-through entity.

The Internal Revenue Service issued proposed regulations permitting regulated investment companies ("RICs") to pay "Section 199A Dividends" to their shareholders. A Section 199A Dividend is "any dividend or part of such dividend that a RIC pays to its shareholders and reports as a section 199A dividend in written statements furnished to is shareholders." Non-corporate shareholders receiving Section 199A Dividends would treat such dividends as qualified REIT dividends as defined in section 199A(e)(3), provided that the shareholder meets the holding period and certain other requirements for its shares in the RIC. To benefit, the RIC shareholder must hold the RIC shares for more than 45 days during the 91-day period beginning on the date that is 45 days before the date on which the RIC becomes ex-dividend with respect to the dividend. The amount of the RIC's Section 199A Dividends for a taxable year would be limited to the excess of the RIC's qualified REIT dividends for the taxable year over allocable expenses.

IRS Provides Penalty Relief for Partnerships that Fail to Report Negative Tax Basis Capital Accounts

The IRS recently released new instruction for the 2018 Form 1065, "U.S. Return of Partnership Income", which requires partnerships to report negative tax basis capital amounts on Schedule K-1. The new instructions had not been widely publicized, and many partnerships were unware of the new requirements. The IRS acknowledged that certain partnerships were having difficulty complying on a timely basis and issued Notice 2019-20 to waive penalties for furnishing a partner a Schedule K-1 and for filing a Schedule K-1 with a partnership return that fails to report negative tax basis capital account information if certain other conditions are met. The partnership must timely file otherwise complete Schedules K-1 with the IRS and furnish copies to partners, and the partnership files a schedule with the IRS by no later than 180 days after the six-month extended due date of the partnership's Form 1065. The schedule must set forth for each partner for whom the partnership is required to provide negative tax basis capital account information, the partner's name, address, taxpayer identification number, and the amount of the partner's tax basis capital account at the beginning and end of the tax year. The partnership does not have to furnish an amended Schedule K-1 to each partner as part of the penalty waiver process.

IRS Issues Final Regulations Under Section 851 on Investments in CFCs and PFICs

The Internal Revenue Service and the U.S. Treasury Department have released final regulations under Internal Revenue Code ("IRC") Section 851 regarding whether investment by regulated investment companies ("RIC"s) in controlled foreign corporations ("CFC"s) and passive foreign investment companies ("PFIC's) qualify as "good income" under IRC Section 851(b).

The final regulations adopt the proposed regulations requirement that inclusions from a CFC under section 951 or from a PFIC under section 1293 would be treated as "dividends" to the extent that the CFC or PFIC had made a distribution out of its earnings and profits. Further, the final regulations specify that amounts included in gross income under section951 or section 1293 that are derived with respect to a RIC's business of investing in stock, securities, or currencies are "other income" described in IRC section 851(b)(2)(A).

Hyperinflation in Argentina has Tax Implications for RICs that Invest in Certain Argentine Debt and Financial Products

Ernst & Young, LLP has determined that the Argentina peso should be treated as hyperinflationary for US federal income tax purposes in addition to their determinations that the Argentina peso is hyperinflationary for US GAAP and IFRS purposes. A hyperinflationary

currency is a currency of a country in which there is a cumulative inflation during a "base period" of at least 100%, as determined by reference to a consumer price index (CPI) of the country. The determination of whether a currency is hyperinflationary generally is made on a calendar-year basis, based on changes in the CPI as reported in the monthly issues of the "International Financial Statistics" or a successor publication of the International Monetary Fund (IMF) for the 30 calendar months immediately preceding the first day of the calendar year ("base period"). If a country's currency is not listed in the monthly issues of the "International Financial Statistics," U.S. Treasury regulations permit a taxpayer to use any other reasonable method consistently applied for determining the country's consumer price index.

Regulated investment companies ("RICs") that hold bonds denominated in, and/or certain derivative contracts on, the Argentine peso will be subject to a mark-to-market regime on these instruments. The mark-to-market regime does not apply to Argentine bonds and other financial instruments that are U.S. dollar denominated. The mark-to-market regime for the Argentine peso will apply to RICs for tax years beginning after December 31, 2018.