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SEC Adopts Derivatives Overhaul for Funds

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On October 28, 2020, the Securities and Exchange Commission ("SEC") finalized Rule 18f-4 under the Investment Company Act; [1] a new rule designed to provide an updated and comprehensive framework for the use of derivatives by mutual funds, exchange-traded funds (ETFs), registered closed-end funds, and business development companies (BDCs) (each, a "fund"). [2] Under Rule 18f-4, a fund may enter into derivatives transactions, notwithstanding the restrictions on the issuance of senior securities under the Investment Company Act, as long as the fund complies with the conditions set forth in the rule. Additional information regarding Rule 18f-4 and its conditions can be found in our recently published Legal Alert.

If you have any questions regarding the regulation of funds, including the steps a fund will need to take to prepare for implementation of a derivatives risk management program, the mechanics of implementing a VaR model, or whether your fund will qualify as a Limited Use Fund, please feel free to contact us.

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Footnotes

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[1] SEC, Final Rule, Use of Derivatives by Registered Investment Companies and Business Development Companies, available at https://www.sec.gov/rules/final/2020/ic-34084.pdf.

[2] Money market funds are excluded from the definition of "fund" under Rule 18f-4, and therefore are excluded from the full scope of the rule.