StradleyRonon

Independent Trustee Counsel

Independent trustees serve in a complex role, overseeing the management and operations of investment companies and helping to ensure that the funds are managed by their investment advisers in the best interests of the funds and their shareholders. The role presents a wide range of challenges that vary over time, from evaluating proposed product strategy changes to dealing with organizational or operational changes at the investment adviser. Investment companies are highly regulated, board decisions can be scrutinized, and board governance can present its own challenges and complexities.

Our Technical Skills and Business Acuity

As one of only four firms with a Band 1 ranking for registered funds nationwide by *Chambers USA*, we are known for our technical abilities, deep wealth of experience and business acuity, which we routinely bring to bear in advising our independent trustee clients. Stradley Ronon has been serving as independent legal counsel to independent trustees for decades, and we represent independent directors to more than 100 fund groups and more than 20% of all independent trustees serving on fund boards. The breadth and variety of the investment funds that our independent trustee clients oversee allows us to implement a comprehensive, well-informed approach to help independent trustees fulfill their regulatory obligations.

The breadth of our practice covers all kinds of fund structures, including open-end retail funds, closed-end funds, closed-end tender offer funds, mutual funds of variable insurance products, exchange-traded funds (ETFs), money market funds and more. Another aspect of that breadth is investment strategy, and our independent trustee clients have responsibilities for all kinds of offerings, from traditional asset classes to alternative asset classes (like private equity and debt). We work with fund groups of all sizes, providing practical advice that is tailored to the unique circumstances at hand.

We assist our independent trustee clients as they navigate the annual management agreement renewal process, valuation and oversight of derivatives and liquidity risk management programs. We seek to help our independent director clients maintain productive relationships with management, while satisfying their fiduciary duties.

Board Governance

We help fund boards meet their fiduciary duties with confidence and clarity. We are well-versed in assisting boards with a wide range of governance issues such as compensation, insurance, indemnification, the annual board self-assessment, committee structures and composition, retirement policies, trustee transitions, term limits, expense policies and fund reorganizations. We have helped our clients develop practices and guidelines in those areas.

We also assist in providing counsel related to audit committee governance and financial reporting, including key functions and responsibilities, compliance, assessment, and regulatory challenges.

Investment Advisory Contracts

We routinely assist our independent trustee clients in fulfilling their obligation to review and consider the approval of a fund’s investment advisory and/or subadvisory contracts pursuant to Section 15(c) of the Investment Company Act of 1940. We advise our clients on the application of the legal standards that apply to this task, seeking to ensure an approach that is calibrated to the particular fund group. We focus on developing a robust record showing the work of the independent trustees, which includes meeting materials, minutes and management's responses to trustee questions. We seek to ensure that independent trustees retain the full protection of the business judgment rule.

A Collaborative Approach to Fund Management

We seek to help our independent trustee clients collaborate productively with management, while helping to ensure that the decision-making of the independent trustees remains independent with the full protection of the business judgment rule.

SEC Inquiries, Investigations and Securities Enforcement Matters

We stand ready to work closely with members of our securities enforcement and litigation teams to assist independent trustees in connection with U.S. Securities and Exchange Commission (SEC) matters and general litigation. Such SEC matters can include inquiries, investigations and examinations relating to various transactions and activities of fund investment advisers. We have represented independent trustees facing SEC enforcement action under the liquidity rule as well as in class action litigation alleging improper revenue sharing and breach of fiduciary duties. We have also prepared independent trustees for interviews with SEC staff concerning fund securities lending practices and alternative investment strategies.

Director-Initiated Inquiries

We have experience conducting inquiries at the direction of independent trustees into practices of a fund's investment adviser. The focus of such inquiries can range from consideration of compliance policies and procedures to valuation, liquidity and specific investment practices, such as regarding the use of derivatives.

Insurance Needs

We routinely assist independent trustees in evaluating the adequacy of their existing coverage and indemnity arrangements. Lawyers in our insurance and litigation practices regularly assist our investment management team in the review of independent director liability and fund directors and officers (D&O)/errors and omissions (E&O) insurance policies to help ensure that coverage is appropriate and that the policies contain the best terms in the industry.

Experience

Secures SEC Dismissal in First-Ever Liquidity Rule Enforcement Action

The U.S. Securities and Exchange Commission (SEC) voluntarily dismissed charges with prejudice against two mutual fund independent trustees in the agency's first enforcement action brought pursuant to the Liquidity Rule (Rule 22e-4) promulgated under the Investment Company Act of 1940 (the Act). The case was filed in the U.S. District Court for the Northern District of New York against registered investment adviser Pinnacle Advisors, two of its officers and two independent trustees of a mutual fund that Pinnacle advised. The SEC alleged that the independent trustees aided and abetted the mutual fund's purported misclassification of illiquid securities in violation of the Liquidity Rule.

Stradley Ronon argued on behalf of the independent trustees that the SEC had no legal basis for its aiding and abetting charges as the independent trustees did not write, review, or even see the liquidity classifications that formed the basis for those charges, did not substantially assist the alleged violation, and otherwise complied with all of their obligations pursuant to the Liquidity Rule. Stradley Ronon further argued that the agency lacked the necessary congressional authority pursuant to the Act to promulgate the Liquidity Rule.

The challenge to the agency's authority to promulgate the Liquidity Rule led the Court to order additional briefing to address the framework for interpreting federal statutes established by the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo.* Stradley Ronon re-filed its motion to dismiss all charges on April 28 arguing that the plain text of the statute did not grant rulemaking authority related to fund liquidity and resubmitted its arguments challenging the SEC's failure to state a claim for aiding and abetting liability against the independent trustees. Following the briefing, the SEC agreed to dismiss all charges against the independent trustees with prejudice, meaning that the SEC cannot refile the charges.

“We are very pleased that the court took the merits of our arguments seriously and that the SEC responded by dismissing the complaint,” said the NYSA Fund independent trustees. “We always believed in the strength of our case and are grateful for our lead attorney Jan Folena and Stradley Ronon’s guidance, knowledge, and litigation capabilities that made this outcome possible.”

Lead trial counsel Jan Folena was assisted by Eric Porter, Samantha Kats, Sara Crovitz, Dave Grim, and Eric Purple.