SEC Asks for Comments on Proposed Enhancements for Registered Investment Advisers

May 17, 2018 - Last month, the Securities and Exchange Commission ("SEC") issued a two-part release (the "Release") that, as described below, could impact investment managers - including loan managers. The first part proposes an interpretation (the "Proposed Interpretation") regarding the standard of conduct the SEC expects from investment advisers and we addressed that previously. The second part of the Release requests comments regarding enhanced investment adviser regulation (the "Proposed Enhancements"). The SEC's questions focus on three discrete areas: (i) Whether representatives of registered investment advisers should be required to become licensed and subject to continuing education requirements; (ii) whether investment advisers should be required to provide clients with account statements; and (iii) whether investment advisers should be subject to a comprehensive financial responsibility program. These proposals would affect all registered advisers, including advisers who manage loans, and compliance with some of these enhancements could be quite expensive and burdensome, especially for smaller investment advisers. We focus on those proposals below.

Federal Licensing and Continuing Education

The SEC requests comment on whether there should be federal licensing and continuing education requirements for personnel of SEC-registered investment advisers designed to address minimum ongoing competency requirements. These requirements would be similar to the licensing requirements imposed on representatives of broker-dealers (such as Series 7 exams).

Provision of Account Statements

The SEC requests comment on whether even advisers that do not have custody of client assets should be required to provide account statements.

Financial Responsibility Requirements

The SEC requests comment on whether registered advisers should be subject to net capital requirements or required to obtain fidelity bonds (neither of which condition applies today).

As noted by Cadwalder in a recent memo, these proposals, if adopted, "would move the regulatory framework for investment advisers closer to that of broker-dealers". They believe that imposing such a framework would be very costly and could be very challenging for small advisers especially. Interestingly, they also suggest that the SEC is itself not properly staffed to enforce such rules against registered advisers and cautions the SEC against taking on these added responsibilities without any visible commensurate benefit.

The Release was published in the Federal Register last week and comments are due on August 7, 2018. The LSTA will work with its members and other trade associations in addressing the issues presented.