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REGULATORY DEVELOPMENTS FOR DUAL REGISTRANTS

As dual registrants have grown in popularity, they currently face increasing regulatory scrutiny from both FINRA and the SEC. The authors discuss the current situation, focusing first on a proposed FINRA rule and then turning to other regulatory issues. They discuss wrap fee programs, conflicts of interest, and best execution. Finally, they detail two issues of particular interest to dual registrants: share class selection and digital investment advice.

Cheryl L. Haas and Alex M. Madrid *

Recent years have seen an uptick in the dual registration model, whereby financial services companies and individual advisors are registered both as broker-dealers with the Financial Industry Regulatory Authority (“FINRA”) and as Registered Investment Advisors (“RIAs”) with the Securities and Exchange Commission or with a state agency. Dual registrants, also often referred to as “hybrid” firms and advisors, have grown in popularity as financial service providers have sought to broaden the scope of services they can offer their customers. Indeed, FINRA’s metrics show that the number of registered representatives who are dually-registered has grown every year of the last decade, and now nearly equals the number of individuals solely registered as broker-dealers and far surpasses the number solely registered as RIAs.¹ This rapid growth has not gone without notice, however, as dual registrants face a concomitant increase in regulatory scrutiny from both FINRA and the SEC. Both regulators have repeatedly expressed their concern that the dual

registration model creates a heightened risk for customer confusion, conflicts of interest, and other regulatory issues.²

This article details regulatory developments directly affecting dual registrants. We first discuss a potentially transformative proposed FINRA rule regarding how broker-dealers supervise the investment advisory activities of registered representatives who are associated with a third-party RIA. We then detail regulator priorities that directly impact dual registrants: wrap fee programs, conflicts of interest, and best execution. Finally, the article details two areas of regulatory focus — share class selection and digital investment advice — that are increasingly emerging as critical issues. Although these topics affect all industry members, they are of particular importance to dual registrants who face scrutiny from both FINRA and the SEC.

¹ 2018 FINRA Industry Snapshot, *available at* http://www.finra.org/sites/default/files/2018_finra_industry_snapshot.pdf.

* *CHERYL L. HAAS is a partner at McGuireWoods LLP in Atlanta. ALEXANDER M. MADRID is an associate at the same firm in the Pittsburgh office. Their e-mail addresses are chaas@mcguirewoods.com and amadrid@mcguirewoods.com.*

² *See, e.g.,* Kenneth Corbin, “Double trouble? SEC Ups Scrutiny of Dual Registrants”, *available at* <https://www.financial-planning.com/news/double-trouble-sec-ups-scrutiny-of-dual-registrants> (published Feb. 19, 2019).

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