

SEC Expands Manager-of-Managers Relief to Affiliated Sub-Advisers

October 04, 2019

Carillon Order

On May 29, 2019, the SEC granted an exemptive order to Carillon Series Trust and Carillon Tower Advisers Inc. (a Raymond James affiliate) to hire and replace *affiliated* and unaffiliated sub-advisers without shareholder approval. The Carillon order also granted relief from certain disclosure requirements (such as the specific advisory fees paid to a sub-adviser).

The Carillon order is notable because the SEC has been issuing similar so-called manager-of-managers (MoM) orders since 1995, but previously the SEC allowed managers to hire and replace only wholly owned sub-advisers and unaffiliated sub-advisers without shareholder approval.

In the SEC's notice of the Carillon application, the SEC noted that it had not previously issued MoM orders with respect to non-wholly owned affiliated sub-advisers due to "concerns relating to conflicts of interest" with respect to hiring and terminating such affiliated sub-advisers. The SEC stated that it was "persuaded" to extend relief to affiliated sub-advisers based in part on the conditions of the relief, including "enhanced oversight" by the fund board. Among other things, under the Carillon order, the fund board is required to find that the sub-adviser change or continuation is in the "best interests" of the fund and does not involve a conflict of interest from which certain affiliates derive "an inappropriate advantage."

The SEC's new willingness to allow managers to hire and replace affiliated sub-advisers without shareholder approval may be particularly helpful, including for MoM funds that support variable insurance products, in view of:

- The rising costs of shareholder proxies.

- The consolidation of investment management firms (which may result in more managers with multiple affiliated entities).
- The increased use of multi-manager funds.

Managers Seeking Similar Relief

Fund managers seeking relief similar to the Carillon order will need to decide whether to (1) obtain their own exemptive order or (2) obtain or rely on no-action relief.

SEC Orders: Generally, firms seeking relief similar to the Carillon order would need to obtain their own order. Obtaining a unique order may be appropriate if an adviser has additional or different facts or seeks relief different from that provided to Carillon.

No-Action Relief: On July 9, 2019, the SEC staff issued no-action relief to BNY Mellon Family of Funds and others to allow BNY Mellon to rely on the Carillon order. Accordingly, fund managers with similar facts may consider whether they can rely on the BNY Mellon no-action letter, or perhaps seek their own no-action relief to rely on the Carillon order.

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