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July 29, 2019

VIA ELECTRONIC DELIVERY

Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Statement Announcing SEC Staff Roundtable on the Proxy Process (File No. 4-725)

Dear Ms. Countryman:

Advent Capital Management, LLC ("Advent")[1] appreciates the opportunity to provide comments to the Securities and Exchange Commission ("SEC" or "Commission") concerning its Public Statement Announcing SEC Staff Roundtable on the Proxy Process, dated July 30, 2018 (the "Roundtable").[2] The Commission said the Roundtable is intended to facilitate its review of whether existing rules governing the proxy process and shareholder engagement are achieving their objectives effectively in light of changes in the marketplace. The proxy voting and shareholder engagement process is of great interest to Advent given its role as investment adviser of both individual and institutional clients. These clients include Advent Convertible and Income Fund ("AVK"), which is registered with the Commission as a diversified, closed-end management investment company under the Investment Company Act of 1940, as amended.[3] I serve as Assistant Secretary for AVK, am part of its portfolio management team, and oversee Advent's proxy voting process.

Shareholder Proposals

Our firm was compelled to comment upon reading Commissioner Roisman's keynote remarks at the ICI Mutual Funds and Investment Management Conference on March 18, 2019.[4] Among other things, Commissioner Roisman expresses an interest in thresholds for submission and

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[1] Advent is a registered investment adviser dedicated to providing its clients with superior investment performance. Advent offers long-only and alternative strategies investing in convertible, high yield and equity securities through separately managed accounts, registered investment companies, private funds and other products. Since inception in 1995, Advent has grown into a $9 billion diversified investment management firm with the ability to capture opportunities globally.

[2] See https://www.sec.gov/news/public-statement/statement-announcing-sec-staff-roundtable-proxy-process (last visited July 19, 2019).

[3] See https://www.guggenheiminvestments.com/cef/fund/avk (last visited July 19, 2019).

[4] See https://www.sec.gov/news/speech/speech-roisman-031819 (last visited July 19, 2019).

resubmission of shareholder proposals. He stated that it "is important to achieve a balance here so that we allow for robust shareholder engagement without providing a mechanism for certain shareholders with idiosyncratic views to use the shareholder proposal system in a way that does not benefit the interests of the majority of long-term shareholders." We support this view.

In Staff Legal Bulletin No. 14, the Division of Corporate Finance published guidance regarding Rule 14a-8 ("Rule 14a-8" or the "Rule") under the Securities Exchange Act of 1934, as amended.[5] The Division stated that the Rule "provides an opportunity for a shareholder owning a relatively small amount of a company's securities to have his or her proposal placed alongside management's proposals in that company's proxy materials for presentation to a vote at an annual or special meeting of shareholders. It has become increasingly popular because it provides an avenue for communication between shareholders and companies, as well as among shareholders themselves." Some observers may presume that large and sophisticated institutional investors have direct avenues to engage with the management of a public company or registered fund. They may be surprised to learn, however, that taking a page from a well-worn playbook, some of these institutional investors misuse the Rule 14a-8 process, which is meant to benefit the small investor.

We write to bring the Commission's attention to the fact that certain large activist institutional hedge fund investors pursuing an abusive discount arbitrage strategy ("arbitrage activists") use Rule 14a-8 to initiate or threaten proxy contests and other measures (such as changes in the board of directors or investment adviser) to coerce, or attempt to coerce, closed-end funds into conducting a large and unnecessary liquidity event for the short-term enrichment of the activists at the expense of the fund's retail, long-term, Main Street shareholders.[6] The liquidity event could take the form of a large tender offer, which could significantly drain the fund's assets and increase its expense ratio, an outright liquidation of the closed-end fund, or the conversion of the closed-end fund into an open-end fund. In other circumstances, the activist seeks termination of the closed-end fund's advisory contract as a means to achieve its aims, often without any regard for the chaos that would ensue for retail, long-term, Main Street shareholders without careful and thoughtful planning. All of these actions could permanently damage or destroy the closed-end fund.[7]

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[5] See https://www.sec.gov/interps/legal/cfslb14.htm (last visited July 19, 2019).

[6] See Comment Letter of Advent Capital Management, LLC (May 1, 2019), available at https://www.sec.gov/comments/s7-27-18/s72718-5438511-184768.pdf; Comment Letter of the Independent Trustees of Advent Convertible and Income Fund (May 2, 2019), available at https://www.sec.gov/comments/s7-27-18/s72718-5439488-184792.pdf; Comment Letter of Skadden, Arps, Slate, Meagher & Flom LLP (May 2, 2019), available at https://www.sec.gov/comments/s7-27-18/s72718-5444941-184862.pdf; BlackRock New York Municipal Bond Trust, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, Definitive Additional Materials (May 24, 2019), available at https://www.sec.gov/Archives/edgar/data/1167470/000119312519157168/d746021ddef14a.htm (last visited July 19, 2019).

[7] The board of trustees of the Franklin Limited Duration Income Trust was quite explicit in describing the coercive and harmful effect the activist discount arbitrage strategy can have on a closed-end fund: "Saba has a clear goal for a one-time gain leaving . . . behind a diminished fund, which is clearly not aligned with the interests of long-term shareholders. Saba has suggested an unlimited tender offer, which could cause a forced fire sale of the Fund's strategic assets, limit future income earnings, and increase its expense ratio. This would also likely make it impossible to continue operating as a closed-end fund, especially with reduced or no leverage. Additionally, Saba wants the Fund to either be open-ended or liquidated, if more than 50% of the Fund's shares are tendered. This plan makes Saba's proposed tender offer a complete waste of [the] Fund's

Footnote continued on next page

Closed-end funds are often attractive to investors that seek regular income in retirement or to support pension payments because they have an enhanced ability to make distributions to shareholders. Typically, closed-end funds pay predictable distributions on a monthly or quarterly basis, while open-end mutual funds and exchange-traded funds (ETFs) do not.[12] These distributions can be disrupted or eliminated through successful activist pressure under the guise of a Rule 14a-8 proxy proposal. Contrary to the interests of long-term investors, activist investors seek a short-term profit from a forced liquidity event. If they cannot compel a fund to conduct such an event, they will seek to take over the independent fund board and institute such an event themselves on terms most favorable to the activists and without regard for the long-term investment preferences of the majority of shareholders. As a result of activist demands, some closed-end funds may be forced to abandon successful long-term strategies and ongoing operations or to terminate altogether. Non-participating shareholders are "dragged along" in the process and bear any resulting legal fees, transaction costs and other expenditures of the closed-end fund in defending against this coercive activity and in eventually implementing a large and unnecessary tender offer, converting into an open-end fund, or liquidating. The retail, long-term, Main Street shareholders who decline to participate in the liquidity event[13] will experience additional harm because the partially collapsed closed-end fund will exhibit a much higher expense ratio, due to negative economies-of-scale from its fixed expense base, and lower trading liquidity of the shares on exchanges.

Closed-end funds that conduct tender offers also realize capital gains sooner than they otherwise would. The resulting capital gains taxes are allocated to remaining shareholders, which can force them to make cash tax payments they likely never intended when they first bought shares in the fund. The retail, long-term, Main Street shareholders who decide to participate in the tender (perhaps because they fear the trading price will decline, performance will lag or expenses will increase after the tender) are exposed to the difficult and highly undesirable situation of realizing capital gains taxes on what could be a low-cost-basis investment, and may be forced to reinvest in the fund or some other investment at a higher cost and have their holding periods reset back to short-term ordinary income rates.

Our support for the views of Commissioner Roisman further stems from practical experience in helping our closed-end fund clients navigate proxy contests initiated by arbitrage activists in reliance on Rule 14a-8. For example, the Advent/Claymore Enhanced Growth & Income Fund

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resources and, ultimately, would end the Fund's existence as a closed-end fund." See Franklin Limited Duration Income Trust, Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934, Definitive Additional Materials (Oct. 6, 2016), available at https://www.sec.gov/Archives/edgar/data/1233087/000168035916000024/flditdefa14a10062016.htm (last visited July 19, 2019).

[12] Distribution average across the universe is 7.0% as of January, 2019, substantially higher than many other fixed-income alternatives. Source: CEFInsight.

[13] There are many reasons why a long-term shareholder may not want to participate in a liquidity event. As a long-term holder, s/he may like the fund, its strategy and the income it produces. S/he may not want to realize a taxable disposition of his/her investment at that particular time. Divesting the fund may be inconsistent with his/her overall investment strategy and allocations. S/he may not like the prospect of reinvesting the proceeds in a higher cost or lower yielding investment.

("LCM"), which was a predecessor to AVK[14], was subject to pressure from three arbitrage activists seeking to change or influence the management or control of the fund, as evidenced in Schedule 13D filings on July 30, 2015, January 20, 2016, and April 26, 2016.[15] During a nine-month period, each of these activists had ample opportunity through their discussions with fund management to raise concerns about investment performance, strategy, risks, shareholder expenses, corporate governance or other topics relevant to the fund's retail, long-term, Main Street shareholders. None of this occurred. In a maneuver that appeared to be coordinated with the two other activists, one firm submitted a shareholder proposal to declassify the fund's Board of Trustees under Rule 14a-8 on April 27, 2016.[16] The shareholder never discussed the proposal with fund management prior to the filing or in any material degree afterwards. This proposal had nothing to do with sincere views on good corporate governance. Instead, based on conversations with these activists and a review of their past tactics with similarly situated funds, it was understood that this was a shot across the bow intended to demonstrate that if the fund failed to capitulate to their demands for a liquidity event, they would seek to take over the independent fund board and implement a liquidity event. Declassifying the board would accelerate that process. Advent and the fund's board determined that it was in the best interest of fund shareholders to conduct a liquidity event on negotiated terms, instead of incurring the significant expense of a proxy contest and incurring the risk of the activists prevailing in that contest and implementing a liquidity event on terms that would be more disruptive to long-term shareholders. As a result, the proposal was withdrawn only after LCM agreed to enter into standstill agreements with two activists under which the fund would conduct a tender offer (providing a one-time liquidity event benefiting the activists and other participating shareholders) and the activists would (in summary) tender all of their shares, vote with fund management on future proxy proposals and agree not to seek to control or influence management, the Board of Trustees or policies of the fund for a period of several years. Pressure from a third activist on LCM's sister funds, AVK and AGC, led to a simultaneous standstill with similar terms to those above.[17]

While avoiding the greater costs of a prolonged proxy contest, the legal fees incurred by the three funds were nonetheless substantial. Legal fees in fiscal 2016 and 2017, rose to a combined $1,122,455, more than double the combined $458,732 in fiscal 2014 and 2015 when there was no activist activity until the end of fiscal 2015. With the tender, LCM's equity also dropped

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[14] LCM and its sister fund, Advent Claymore Convertible Securities Income Fund II ("AGC"), merged with and into AVK on August 27, 2018. See Advent Claymore Convertible Securities and Income Fund II, Advent/Claymore Enhanced Growth & Income Fund & Advent Claymore Convertible Securities and Income Fund, Definitive Joint Proxy Statement/Prospectus dated May 29, 2018, filed May 30, 2018 (File No. 333-224258), available at https://www.sec.gov/Archives/edgar/data/1219120/000089180418000253/gug74131-497.htm (last visited May 1, 2019).

[15] See https://www.sec.gov/Archives/edgar/data/1278460/000150430415000092/third.txt; https://www.sec.gov/Archives/edgar/data/1278460/000092189516003122/sc13d06290060_02012016.htm; and https://www.sec.gov/Archives/edgar/data/1278460/000090266416006846/p16-1161sc13d.htm.

[16] See https://www.sec.gov/Archives/edgar/data/1278460/000092189516004267/sc13da106290060_04282016.htm.

[17] The standstill agreements were summarized in press releases that AVK, AGC and LCM published on May 1, 2017. See https://www.sec.gov/Archives/edgar/data/1219120/000089180417000351/gug71209avk-toc.htm; https://www.sec.gov/Archives/edgar/data/1391461/000089180417000350/gug71209agc-toc.htm; and https://www.sec.gov/Archives/edgar/data/1278460/000089180417000352/gug71209lcm-toc.htm.

from $125 million entering fiscal 2017 to $87 million exiting fiscal 2017, leaving the fund with a higher expense ratio due to negative economies-of-scale from its fixed expense base.

Activist investor attacks against closed-end funds increased in 2019 with inflows into key managers.[18] Activist managers are abusing the Rule 14a-8 process to unduly influence the boards of closed-end funds.[19] From our perspective, there is no question that the proxy process as used by arbitrage activists against closed-end funds is a textbook example of what Commissioner Roisman described in his Roundtable comments as "those who exploit the process to further their personal agenda".[20]

The lack of success of most shareholder-originated proposals is well-documented with an average support rate of only 33% in 2018.[21] This figure would likely be even lower had the Commission not adopted a robust exclusion process, without which many more questionable, unwieldly, or even barred proposals would have been presented to shareholders, raising costs for the targeted companies.

In this context, Advent supports recommendations made by the U.S. Department of the Treasury ("Treasury") in its report entitled "A Financial System That Creates Economic Opportunities," which was published in November, 2017.[22] Treasury recommends that the $2,000 holding requirement under Rule 14a-8 be substantially revised by the Commission. Treasury also recommends that the SEC resubmission thresholds for repeat proposals be substantially revised from the current thresholds of 3%, 6%, and 10% to promote accountability, better manage costs, and reduce unnecessary burden. From Advent's standpoint, a holding requirement of $3,000 and a holding period minimum of two years would both enhance access for small shareholders (relative to when the limits were last revised in 1998) and better align the interests of proponents to the majority of long-term shareholders ideal promulgated by Commissioner Roisman. Advent also believes the 3% 6% and 10% thresholds for exclusion of past failed proposals from repeating are far too low. Limits in the range of 10% to 25% are reasonable to prevent unnecessary expense for companies and to create a reasonable standard for proponents in convincing fellow shareholders that circumstances have changed to merit adopting a past failed proposal.

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[18] See Thomas A. DeCapo and Kenneth E. Burdon, Activists Take Another $290 Million Bite Out of Vulnerable Closed-End Fund Asset Class (June 19, 2019), https://www.skadden.com/insights/publications/2019/06/activists-take-another-$290-million-bite (last visited July 19, 2019).

[19] See e.g., https://www.sec.gov/Archives/edgar/data/1487610/000106299319001209/sched13da.htm; https://www.sec.gov/Archives/edgar/data/1487610/000106299319001529/sc13da.htm; and https://www.sec.gov/Archives/edgar/data/1487610/000106299319001682/sched13da-nhs.htm.

[20] https://www.sec.gov/news/public-statement/statement-roisman-111518.

[21] https://corpgov.law.harvard.edu/2018/08/02/shareholder-proposal-developments-during-the-2018-proxy-season/.

[22] See https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf (pages 31 to 32).

Proxy Advisory Firms (PAFs)

Commissioner Roisman also discussed the relationship between asset managers and proxy advisory firms ("PAFs"), should they utilize them, raising questions about conflicts and process.

Advent has never used a PAF, either in a consulting role in its capacity as adviser for AVK or the voting recommendations of a PAF in its capacity as an adviser to individual and institutional clients. As a small investment manager, Advent's resources are limited, and it avoids the costs of a PAF in favor of the focused attention of in-house personnel. In the case of a proxy contest, Advent would be hard-pressed to produce in a limited timeframe (often 2-3 weeks between proxy submission and the PAF's own deadline) the materials that are standard in lobbying a PAF, which often include follow-up questions.[23] Also, there is often little time to react to a PAF recommendation should it result from factual error. In AVK's case, it would no doubt require some diversion of Advent portfolio management resources and time. Arbitrage activists in closed-end funds are experts at proxy contests and use a standard playbook to engage PAFs. This gives arbitrage activists an unfair advantage with small closed-end fund complexes (as in the case of AVK, AGC and LCM) where the advisor does not have a large legal and lobbying staff.

Hypothetically, a small closed-end fund could divert shareholder assets and engage a PAF in a costly "consulting" arrangement. This would give the closed-end fund access to secretive criteria the PAF uses to judge the merits of a company's corporate governance. These criteria, which remain nonpublic consistent with the financial interests of the PAF, apparently play a primary role in whether a PAF recommends that shareholders vote with or against management (or for or against a shareholder proposal) in matters that might seem unrelated to actual corporate governance, such as in the case of arbitrage activists seeking to liquidate a closed-end fund through a proxy contest under Rule 14a-8.

The assessment criteria that PAFs use for closed-end fund proxy contests is private, hidden from public view, and made known only to those who enter into expensive consulting agreements with PAFs which insist on strict nondisclosure clauses. It is our understanding, however, based on a review of presentations submitted as solicitation materials in proxy contests, that a fund's comparative investment performance against a peer group is quite important. This may be valid criteria for operating companies, but in the case of closed-end funds that utilize a multi-asset class, multi-strategy investment approach, this "litmus test" presents a significant risk of misinterpretation. Comparing performance for closed-end funds that invest in convertible bonds, like AVK, is difficult. First, some convertible bonds trade at or near par value, like most non-convertible fixed income securities, whereas other convertible bonds trade far above par value (sometimes 150% or more) in response to volatility in the underlying common stock into which the bonds are convertible. Second, closed-end funds that invest in convertible securities are not

[23] See e.g., https://www.sec.gov/Archives/edgar/data/1396167/000168035918000341/dexdefa14a07182018.htm; https://www.sec.gov/Archives/edgar/data/1396167/000168035918000345/dexdefa14a07232018.htm.

alike. Some invest exclusively in convertible securities; certain others also invest in common stocks; still others (like AVK) invest in a combination of convertibles, stocks and high yield bonds. Many of these funds have investment strategies that mandate minimum exposure to one or more asset classes. These differences in the types of convertible bonds and the inclusion of other asset classes can make identifying peer funds extremely difficult. It can also make comparing the performance of "convertible" closed-end funds (which may be dissimilar in asset composition and investment objective) difficult.

For AVK to curry favor with a PAF voting criteria in a prospective proxy contest would require some level of knowledge of its peer group and manipulation of its security selection in reaction. AVK does not know what a PAF would use as its peer group and does not think its shareholders are served by AVK watching other funds and changing its asset allocations or security picks in relation.

Given the outsized effect that PAF recommendations have on the outcome of proxy contests, the Commission should consider rulemaking that has the benefit of reducing opacity of the proxy advisory process and the potential for financial conflicts of interest. We recommend that the Commission consider the following ideas.

1. Curtail Ranking Of Companies Or Funds In Peer Groups. The potential for misleading statistics is extreme, and a PAF should not be able to use its own peer group in secret, because an issuer cannot comment on the appropriateness of the peer group. For closed-end funds, PAF peer group rankings should be prohibited unless the funds themselves compare their own performance to an identical benchmark (e.g., the Thomson Reuters Global Focus Convertible Index, U.S. Dollar-hedged).

2. Require PAFs To Publicly Disclose Their Criteria. There have been enough complaints about PAFs benefitting financially from keeping their criteria secret, and the appearance of conflict and corruption is enough to demand reform. As in the case of our first recommendation, the publication of ranking criteria has major benefits of transparency, fairness for all manner of issuer size, and benefits for the underlying investors to understand where and how their money is being voted.

3. Impose a Rebuttal Requirement. Proxy contests are rare at a single issuer, which limits the context even for an experienced PAF to provide its insight. In these cases, a longer timeframe for issuers to contend with a PAF recommendation and make note of potential mistakes is very important to turn the PAF recommendation potentially and to engage in its own underlying shareholders, which is so often cited as a reason at the Commission for promoting proxy engagement capability.

4. Require More Disclosure of PAF Use by Investment Managers. It may be much to ask the Commission to regulate PAFs directly, but the idea of forcing investment managers to

be more thoughtful in their use of PAFs has merit given their responsibilities to their closed-end fund clients. The Commission should require investment advisers of closed-end funds to disclose their use of PAFs and to update proxy voting policies for situations where issuers rebut a PAF recommendation on the basis of factual error or inappropriate peer groups.

Fund Differences and Voting Necessity

Commissioner Roisman's Roundtable speech also discussed the unintended consequences of centralized proxy voting within an asset manager complex and the importance of considering a specific fund's investment objectives.

In my capacity as proxy voter, I can speak to the differing interests created by different funds in an asset manager complex. Advent votes proxies for, among other clients, a closed-end fund, an open-end fund, and hedge funds. These three types of investors use convertible bonds in different ways and for different objectives. For example, one may purchase a convertible under a buy-and-hold strategy, another may purchase the same bond in expectation of a corporate event (such as a merger or spin-off), and a third may short sell the same bond and simultaneously purchase the underlying common shares as an equity hedge. In these three cases, the investment objectives and time horizons differ greatly. Although the power of Advent's platform is fueled in part from the cross-pollination of ideas from investment professionals participating in different aspects of the capital markets and in different parts of an issuer's capital structure, sometimes holdings of the same security by different clients can result in different judgments by the manager as it votes each client's holdings in a common proxy contest.
Advent's proxy voting procedures[24] state that securities will be voted in the best interest of individual clients, and I believe there is similar language in the proxy voting procedures of most other institutional asset managers. However, having once worked as an analyst at a much larger investment manager where proxy voting was centralized in an entirely different department and in a different building, this siloing of the voting function (at what is sometimes the largest holder of a public company stock) has the potential to dilute or prevent careful consideration of differing investment objectives across clients, particularly if there is inadequate communication between the proxy department and the investment team.

Therefore, Advent recommends that the Commission encourage investment managers to consider closed-end fund objectives formally and more carefully during the implementation of the managers' proxy voting procedures. This is especially important in situations where a PAF may be applying a generic set of criteria to recommend a vote that may not match a particular fund's objectives. Because it is difficult to render and enforce customization of recommendations at the PAF level, it makes sense to put the burden of customization on the entities closer to the ultimate investor, the investment manager.

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[24] See https://www.sec.gov/Archives/edgar/data/1219120/000089180419000003/ex99c.htm.

Incidentally, any guidance the Commission decides to offer on the issue of the necessity of voting proxies should consider or consult an important constituency; specifically, the CFA Institute, which offers a test-based designation for Chartered Financial Analysts. This designation, if attained and maintained by a CFA member, requires adherence to a Standards of Practice Handbook which among states in the Proxy Voting Policies section that "[a]n investment manager who fails to vote, casts a vote without considering the impact of the question, or votes blindly with management on non-routine governance issues (e.g., a change in company capitalization) may violate this standard."[25] Although the next paragraph gives an exception should a cost-benefit analysis be done[26], the core fiduciary concept involved highlights the importance of the Commission taking care to maximize the impact and clarity of its guidance by working with the CFA Institute and other non-profit organizations to present a consistent message to practitioners.

Advent appreciates the Commission, through the Roundtable and the special efforts of Commissioner Roisman, tackling the complex topic of proxy voting reform, and taking time to understand the varied and intricate issues involved, particularly given that Rule 14a-8 applies to many different issuers, from operating companies to closed-end funds. We hope our observations and recommendations will facilitate the Commission's review of whether existing rules governing the proxy process and shareholder engagement are achieving their objectives effectively in light of changes in the marketplace.

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Advent would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,

Tony Huang
Director

[25] See the CFA Institute Standards of Practice Handbook (2014), page 85, available at https://www.cfainstitute.org/-/media/documents/code/code-ethics-standards/standards-practice-handbook-11th-ed-eff-July-2014-corr-sept-2014.ashx (last visited July 19, 2019).

[26] "A cost–benefit analysis may show that voting all proxies may not benefit the client, so voting proxies may not be necessary in all instances. Members and candidates should disclose to clients their proxy voting policies." Id.

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson Jr., Commissioner
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Herren Lee, Commissioner
Dalia Blass, Director, Division of Investment Management