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INVESTMENT FUNDS SPECIAL REPORT

ANNUAL COMPLIANCE OBLIGATIONS OF INVESTMENT MANAGERS AFTER DODD-FRANK

October 13, 2012

As is evident in the compliance calendar for fund managers included with this alert (available here), the compliance burden for investment managers to private funds has increased substantially in the more than two years since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010 (the "Dodd-Frank Act"). Many private fund managers are now registered with the Securities and Exchange Commission (SEC). In addition to implementing compliance programs, fund managers must disclose information relating to each of their funds in (i) a standardized question and answer format (i.e., Form ADV Part 1), (ii) a narrative brochure that describes the risks of the funds and potential conflicts of interest (i.e., Form ADV Part 2), and (iii) a lengthy and confidential report of the systemic risk posed by the funds that the manager manages (i.e., Form PF). Even investment advisers that are exempt from registration under new exemptions from registration added by the Dodd-Frank Act are required to publicly disclose limited information in a filing with the SEC. Also, the SEC staff is beginning the process of examining the newly registered advisers and other advisers over the next year and a half to two years, and all registered investment advisers should review their policies to prepare for these exams.

At the end of the year, the Commodity Futures Trading Commission (CFTC) will also begin to regulate managers to private funds that trade in more than a *de minimis* amount of futures and, for the first time, swaps (other than security-based swaps) and require its own form to collect information on systemic risk. The compliance obligations under the Dodd-Frank Act relating to persons that enter into swaps, such as reporting of swaps and mandatory clearing, will also begin to be phased in over the coming 12-month period, although much of the burden will be borne by swap dealers (SDs) and major swap participants (MSPs) if they are counterparties.

Other regulators, such as the Department of the Treasury, have also added to the compliance burden through its myriad Treasury International Capital (TIC) forms and additional tax-related reporting regimes mandated by legislation. In light of these changes, we wish to take this opportunity to remind our clients and friends of the major compliance obligations of fund managers in this rapidly changing regulatory environment.

Investment Adviser Compliance Requirements and Best Practices

Form ADV

SEC-registered investment advisers are required to amend Part 1A of Form ADV electronically through the Investment Adviser Registration Depository (IARD) system within 90 days after their fiscal year end.[1] In addition, registered investment advisers must amend their narrative brochures prepared in accordance with Part

[1] In addition, a registered investment adviser must update its Form ADV promptly if certain information becomes inaccurate or the Form ADV is materially inaccurate.

2A of Form ADV (the “Brochure”) and brochure supplements (the “Supplement”) prepared in accordance with Part 2B of Form ADV through IARD if there are any material changes to the information disclosed therein. The Brochure requires registered investment advisers to explain their business and practices and the risks and conflicts of interest they pose in “plain English.” The Supplement describes, among other things, the background and disciplinary history of the supervised persons who formulate investment advice or have discretionary authority. The Supplement is not filed through the IARD.

SEC-registered investment advisers must deliver their Brochure or a summary of material changes accompanied by an offer to deliver the complete Brochure to their existing clients[2] within 120 days following the end of the fiscal year unless there have not been any material changes to the Brochure versus the previous version that was delivered. If any change to disciplinary information occurred, a registered investment adviser must promptly deliver either an amended Brochure and the relevant Supplements or a summary of the material facts regarding the disciplinary event. Registered investment advisers must deliver a copy of their Brochures and Supplements to new clients before or at the time that they enter into an agreement.

Investment advisers that are exempt from registration as investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”) because they advise only private funds and have less than $150 million in regulatory assets under management (AUM) in the United States[3] or because their advice solely relates to venture capital funds (such advisers, “Exempt Reporting Advisers”) also must amend their Part 1A of Form ADV electronically through the Investment Adviser Registration Depository (IARD) system within 90 days after their fiscal year end. Exempt Reporting Advisers are not, however, required to complete the entire Part 1A nor a Brochure or Supplement.

Investment advisers that are exempt from registration under the Advisers Act may still be required to register with the securities administrator of the relevant state or states. Many state securities administrators require registered investment advisers to file Form ADV Parts 1A, 1B, the Brochure and the Supplement through the IARD. In addition, several states have adopted an exemption for exempt reporting advisers that separately requires the filing of Part 1A of Form ADV.

Form PF

Registered investment advisers with more than $150 million in regulatory AUM attributable to private funds are required to confidentially report information concerning the private funds they advise on Form PF. Form PF collects a variety of qualitative and quantitative information concerning private funds, which the SEC and the CFTC share with the other members of the Financial Stability Oversight Council (FSOC) in part to determine if regulation as a non-bank financial company is appropriate. In the case of large private fund managers, the required information will, depending on the type of fund they advise, include detailed and extensive quantitative data concerning such matters as fund size and performance, asset and liability composition, liquidity, borrowings and other forms of leverage, use of derivatives, specific counterparty exposures, various risk metrics and controlled portfolio companies. Form PF is 42 pages, not all of which will be applicable to all private fund

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[2] In the adopting release for the Brochure and the Supplement, the SEC noted the decision by the Court of Appeals for the D.C. Circuit in *Goldstein v. SEC* with respect to hedge funds, which clarifies that the “client” of an investment adviser to a hedge fund is the fund itself and not an investor in the fund. Thus, fund advisers are not required to deliver the Brochure to prospective fund investors. We note, however, that as a matter of best practice, many fund advisers choose to so deliver in order to satisfy their duties as a fiduciary. See Note 192 to Amendments to Form ADV, Advisers Act Release 3060, 75 Fed. Reg. 49234 (Aug. 12, 2010).

[3] An adviser with a principal office and place of business outside of the United States that has a place of business in the United States is only required to include assets managed from a place of business in the United States. Investment advisers that have no place of business in the United States and do not have any managed account clients that are United States persons are able to use the private fund adviser exemption regardless of the number of United States investors in any private fund client or the assets attributable to those investors.

advisers. The SEC is permitted to share the information it collects with the FSOC, but the SEC may not be compelled to disclose any report or information in Form PF to the public.

Registered investment advisers are required to file Form PF at different times depending on the type of private fund that the adviser advises, with earlier compliance for managers with more than $5 billon of regulatory AUM attributable to hedge funds, liquidity funds or private equity funds, determined separately by class. Form PF is generally due within 120 days after the end of the adviser's fiscal year. However, the filing deadlines vary for "large hedge fund advisers" (as defined in the compliance calendar) and large liquidity fund advisers, with large hedge fund advisers being required to file Form PF 60 days after the end of the fiscal quarter. The category of fund that a particular private fund falls into determines the information it reports and when it has to report. We recommend that investment advisers carefully review the definitions of "hedge fund" and "private equity fund" and the SEC staff's guidance (see below), as they do not necessarily correspond to the commonly used definitions.

Form PF is a very detailed and comprehensive form. The SEC staff has, however, provided guidance regarding Form PF through its frequently asked questions responses (available here). Registered investment advisers, especially large hedge fund advisers, should consider how to approach Form PF, including what assumptions will have to be made in formulating the report and noted in response to Question 4 of Form PF and whether a repeatable technological solution or a manual process makes the most sense for the adviser. There are a number of service providers that provide assistance in the preparation of Form PF, including accountants and administrators. Advisers should, however, ensure that they understand the assumptions any software uses in calculating the Form PF responses and that any services provided by an accountant relating to Form PF do not impact the accountant's independence if it is preparing audited financial statements or conducting a surprise examination for compliance with the custody rule as discussed below.

Given the complexity of the form, we recommend that registered investment advisers that have not yet filed begin to prepare for next year's filing of Form PF as soon as possible.

Annual Compliance Review

SEC-registered investment advisers are required to perform a risk assessment review and to update compliance policies and procedures on at least an annual basis for changes to operations, regulations or the relative risks their various trading strategies present. Written evidence of the results of the annual review should be reviewed by the firm's chief compliance officer together with senior management of the firm and any counsel retained.

Custody Rule

Registered investment advisers that have "custody" over client funds and securities must either (i) cause the qualified custodian to deliver quarterly statements and contract with an independent auditor to inspect its securities positions at a time chosen by the independent auditor or (ii) for clients that are limited partnerships, limited liability companies or other pooled investment vehicles, provide financial statements to investors that are audited by independent accountants that are registered with, and subject to inspection by, the Public Company Accounting Oversight Board. In addition, registered investment advisers with custody must maintain client funds and securities with a "qualified custodian," such as a bank or registered broker-dealer or futures commission merchant, in a separate account for each client under that client's name or in accounts that only contain client money under the adviser's name as agent or trustee unless a limited exception applies.[4] Finally, registered

[4] If client securities are uncertificated securities that were acquired from the issuer in a private transaction or a chain of private transactions and are transferable only with the consent of the issuer, the securities are not required to be maintained with a qualified custodian. This exception does not apply to limited partnerships, limited liability companies or other pooled investment vehicles that do not provide audited financial statements.

investment advisers that use related persons to hold client funds or securities as a qualified custodian must obtain an internal control report prepared by an independent public accountant. Registered investment advisers should also review their custody policies to confirm adequate controls have been enacted to prevent the theft of client funds and securities.

Code of Ethics and Personal Trading

SEC-registered investment advisers are required to adopt a code of ethics that establishes a standard of conduct in accordance with the adviser's fiduciary duties and requires that supervised persons comply with the federal securities laws, including restrictions on insider trading. Pursuant to an adviser's code of ethics, certain supervised persons are required to submit a report of current securities holdings to the adviser's chief compliance officer or other persons designated in the adviser's code of ethics upon becoming an access person and at least once during each 12-month period thereafter, as well as submit transaction reports on a quarterly basis. Codes of ethics also require certain supervised persons to preclear their personal transactions (at least, IPOs, private placements and other limited placements). Many codes require an annual attestation of acknowledgement of receipt and continued compliance with the code.

Given the SEC's continuing focus on insider trading, we recommend that all advisers review their codes to determine whether procedures designed to detect and prevent insider trading are adequate and offer additional training to appropriate staff members regarding their compliance obligations. In addition, investment advisers should consider revising their codes of ethics to address the potential direct or indirect receipt of material non-public information from expert networks and the additional potential insider trading concerns that could arise when dealing with members of Congress, their staffs and the staffs of administrative agencies after the enactment of the Stop Trading on Congressional Knowledge Act (STOCK Act).

Pay to Play

Advisers Act Rule 206(4)-5 (the "Pay to Play Rule") prohibits registered investment advisers, Exempt Reporting Advisers and foreign private advisers[5] from receiving compensation for providing advice to a "government entity"[6] within two years of any "covered associate"[7] having made a contribution to an applicable "official"[8] or having coordinated contributions through political action committees or state or local political parties, subject to a limited *de minimis* threshold. The rule also looks to contributions by covered associates within the last two years, even if they were not employed by the subject adviser at the time of the contribution.[9] Fund managers' policies should require the monitoring and pre-approval of political contributions.

In addition, registered investment advisers, Exempt Reporting Advisers and foreign private advisers will be prohibited from using third-party solicitors unless they are (i) registered municipal advisors or registered investment advisers that have not made a disqualifying contribution and are subject to the Pay to Play Rule or a similar rule or (ii) broker-dealers and are subject to a similar FINRA rule. The compliance date for this

[5] A foreign private adviser is an investment adviser that is exempt from registration because it (i) has no place of business in the United States, (ii) has less than $25 million in AUM related to clients or investors located in the United States, (iii) has fewer than 15 clients and investors in private funds in the United States and (iv) does not hold itself out generally to the public in the United States as an investment adviser.

[6] "Government entity" includes (a) an agency of a state or subdivision of a state, (b) a plan or pool sponsored or established by a state or political subdivision thereof or (c) an official of any of the above, acting in his or her official capacity.

[7] "Covered associates" include the subject advisers' general partners, managing members, executive officers, any employee that solicits from a government entity for the adviser and any persons who supervise such persons or any PAC controlled by the adviser or other covered associates.

[8] "Official" means any person who was, at the time of the contribution, an incumbent or candidate for elective office of a government entity, if the office is (1) directly or indirectly responsible for the hiring of an investment advisor, (2) can influence the selection of an investment advisor, or (3) appoints a person described in (1) or (2).

[9] Any contributions made on or after March 14, 2011 could disqualify an adviser from receiving compensation.

requirement was recently postponed until nine months after the compliance date of a final rule adopted by the Commission requiring municipal advisors to register with the SEC.

Proxy Voting Policy

SEC-registered investment advisers are required to adopt written proxy voting policies designed to ensure that securities are voted in accordance with the best interests of their clients and that material conflicts of interest are adequately addressed before exercising voting authority over their clients' securities. Registered investment advisers are required to disclose to each client how they may obtain a list of the investment adviser's votes with respect to the client's securities. Advisers are additionally required to describe the proxy voting policies and provide the policies upon request to their clients. We suggest that SEC-registered investment advisers review their proxy voting policies to ensure that they are adequate and reflect their actual practice with respect to the voting of client securities on an annual basis.

Privacy Policies and Notices

Annual Update Requirement. Investment advisers, commodity pool operators (CPOs) and commodity trading advisors (CTAs), whether registered or not, are subject to the SEC, Commodity Futures Trading Commission (CFTC) and/or Federal Trade Commission (FTC) regulations, as appropriate, governing the privacy of certain confidential information (the "Privacy Rules"). Under the Privacy Rules, covered persons are required to deliver a privacy notice, along with fund subscription materials, to each new customer and update the policy notice as necessary. Additionally, the Privacy Rules require a privacy notice to be distributed at least once during each 12-month period.

Fund managers should also regularly review their policies regarding the safeguarding of confidential information received from clients and for the destruction of credit report information once the advisor is no longer required to retain it. Advisers are encouraged to review related procedures to ensure that private information is adequately protected as disclosed in the privacy notice and as required under the Privacy Rules or applicable state law.

Affiliate Marketing. Regulation S-AM, subject to certain exceptions, prohibits SEC-registered investment advisers, registered investment companies, broker-dealers and transfer agents from using credit report information regarding individuals received from affiliates for marketing solicitation purposes unless the use of information is clearly and conspicuously disclosed and the relevant individual is provided an opportunity to opt out. The relevant opt-out may be combined with the privacy notice delivered in compliance with the Privacy Rules, including through the Model Form.

Other Required Policies

In addition to the above policies, registered investment advisers are required to have policies and procedures regarding among others, (i) the portfolio management process (including trade allocation and portfolio investment policies), (ii) trading practices (including best execution and soft dollar policies), (iii) proprietary trading of the registered investment adviser, (iv) safeguarding of client assets, (v) the accurate creation of required records and their maintenance in a manner to secure them from alteration or untimely destruction, (vi) the marketing of the fund or advisory services in accordance with the cash solicitation rule (if the targeted person may invest through a managed account) and the advertising rule and (vii) business continuity plans. Advisers also should periodically test their policies and procedures to ensure they are effective and monitor them to ensure no violations have occurred.

Commodity Pool Operators/Commodity Trading Advisors

Due to the Dodd-Frank Act's revision to the definition of the term "commodity pool" as used in the Commodity Exchange Act and the CFTC's rescission of a frequently used exemption from registration as a CPO for commodity pools with only qualified purchasers and certain other specified persons as investors (the "4.13(a)(4) Exemption"), many more managers will be required to register with the CFTC as CPOs and CTAs than previously. Given that the grandfathering will expire for the 4.13(a)(4) Exemption as of the end of the year, fund managers that trade in more than a *de minimis* amount of swaps and futures must be registered with the CFTC by January 1, 2013.

The registration process will apply not just to the fund manager that will act as a CPO and CTA but also their principals and associated persons of the firm (i.e., those persons who solicit others to invest in the fund and who directly or indirectly supervise them). Registered CPOs and CTAs that wish to carry on swaps activities must register as a swaps firm with the NFA and must also have at least one principal that is registered as a swaps associated person. The registration process requires associated persons to be fingerprinted and take a proficiency exam, the Series 3 exam for most applicants, and requires other principals to also be fingerprinted. The NFA, however, has exempted associated persons of CPOs and CTAs that are limited only to swaps activities from the exam requirement and will permit a member to request a waiver of the Series 3 examination for associated persons of CPOs/CTAs of firms whose activities relate to swaps and only a *de minimis* investment in futures but is required to register with the CFTC only because of the inclusion of swaps in the registration calculation.

Update of National Futures Association Registration Information

Registered CPOs or CTAs must update their National Futures Association (NFA) registration information via NFA's online registration system and pay annual NFA dues on or before the anniversary date that the CPO's or CTA's registration became effective. Failure to complete the update within 30 days following the date established by the NFA is deemed a request for withdrawal from registration that will become effective on the 30th day after the failure to complete the update.

Complete NFA Self-Examination Questionnaire

Registered CPOs and CTAs (including those who take advantage of disclosure reporting and record-keeping exemptions under CFTC Regulation 4.7) are required to complete and retain the NFA's "self-examination questionnaire" on an annual basis.

Delivery of Annual Reports

Registered CPOs (including CPOs exempt under CFTC Regulation 4.7) are required to file affirmed annual reports for their pools with the NFA. Annual reports are due electronically through NFA's EasyFile system within 90 days after the pool's fiscal year-end. Certified annual reports must also be distributed to the pool's participants within the above-stated deadline. If a CPO cannot obtain necessary information to prepare the reports, a CPO for a fund of funds may file a notice with the NFA to delay the filing of the annual reports for an additional 90 days, and the notice will continue to be effective until the CPO files a certificate that it is no longer a fund of funds.

Quarterly Reports of NAV

Registered CPOs that are exempt under CFTC Regulation 4.7 are required to prepare a report regarding the commodity pool's net asset value on a quarterly basis and distribute it to participants in the pool within 30 calendar days after the end of the reporting period. The report is required to present the NAV as of the end of the period, the change in the NAV and the value of the pool participant's interest or a computation of the per unit NAV as of the end of the reporting period.

Form CPO-PQR

All registered CPOs will be required to file a Form CPO-PQR through the NFA, but the information required and timing for submission of the form will vary depending on the aggregate AUM of the CPO. A "Large CPO," *i.e*., a CPO with aggregate AUM of $1.5 billion or more at the close of business during the previous quarter, must file a Form CPO-PQR within 60 days after each calendar quarter during which it satisfied the Large CPO threshold. All other CPOs must file the appropriate parts of Form CPO-PQR within 90 days after the end of the calendar year.

The information required by the form varies with the type of filer. All CPOs are required to file Schedule A. Large CPOs and CPOs with more than $150 million in AUM but less than $1.5 billion in AUM ("Mid-Sized CPOs") are required to file a separate Schedule B with respect to each pool operated during the relevant period. Large CPOs must file Part 1 of Schedule C and Large CPOs that operate commodity pools with an NAV of $500 million or more as of the close of business of the relevant period must complete Part 2 of Schedule C. Much of the information is duplicative of Form PF; registered CPOs to private funds that file Form PF are not required to file schedules B or C of Form CPO-PQR for the pools reported on Form PF.

The requirement to file the form generally became effective on July 2, 2012, but the compliance requirement is subject to a phase-in. CPOs with more than $5 billion in gross aggregated assets under their control attributable to commodity pools as of the last day of the fiscal quarter most recently completed prior to September 15, 2012, must file a Form CPO-PQR for the calendar quarter ending on or after September 15, 2012. All other CPOs must file a report relating to the period ending on or after December 15, 2012.

Form CTA-PR

All CTAs registered or required to register with the CFTC are required to complete Form CTA-PR within 45 days after the end of the fiscal year, beginning with the first fiscal year ending after December 15, 2012. Entities registered as both CPOs and CTAs are required to complete Schedule A of Form CTA-PR in addition to completing the applicable schedules of Form CPO-PQR (and Form PF, if applicable).

Preparation for the Dodd-Frank Swaps Trading Regime

Persons entering into swaps will be required to (i) ensure that the swap is reported to a swap data repository or the CFTC, as appropriate, (ii) keep records regarding the transaction and (iii) submit swap contracts for clearing. The compliance date for each requirement will phase in over the next year in whole or in part.

As indicated in the compliance calendar, the compliance date for reporting and record keeping obligations for most private funds will occur on April 10, 2013. The compliance date for swaps execution facilities (SEFs), designated contracts markets (DCMs), derivatives clearing organizations (DCOs), SDs and MSPs will occur prior to that date. When the reporting requirement phases in for funds and other market participants, commodity pools that enter into swaps through SEFs or DCMs (and cleared through DCOs), or with SDs or MSPs as counterparties, will not be required to report the swaps because the SEFs, DCMs, DCOs, SDs and/or MSPs will be required to report the swap and would satisfy the reporting obligations. Private funds and commodity pools entering into bilateral swaps with counterparties other than SDs or MSPs will, however, need to be prepared to report swaps within the required timeframe.[10]

[10] The terms used in this report refer to Title VII Instruments subject to the jurisdiction of the CFTC. Similar terms, such as "security-based swap dealer," "major security-based swap participant," "security-based swap data repository" and "clearing agency" (instead of DCO) are used for analogous concepts with respect to Title VII Instruments subject to the SEC's jurisdiction. The CFTC terms are used in this alert because the SEC's security-based swaps regime is not as clearly developed yet.

Recordkeeping

All parties to swaps will be required to keep appropriate records. Specifically, persons that enter into swaps that are not SDs or MSPs are required to "keep full, complete, and systematic records together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty . . . throughout the life of the swap and for a period of at least five years following the final termination of the swap.[11] Parties to swaps that are not SDs or MSPs may keep records in electronic or paper form so long as the records are retrievable within five business days.

While the recordkeeping rule summarized above will phase in with the reporting rule, another rule applies for earlier swaps, which requires swap parties to keep records of the minimum primary economic terms of the swap specified in the reporting rules and, if in possession of the party on or after April 25, 2011, a copy of the relevant swap confirmation, master agreement and any credit support or similar agreement.

Clearing

Pool operators also will need to determine, based on their pools' history of trading swaps, when their pools or other private funds will have to comply with a clearing mandate. Private fund commodity pools that execute 200 or more swaps per month on average will be "active funds" that are included as a "Category 1 Entity" along with MSPs and SDs and will be subject to an earlier clearing schedule. Other private funds, commodity pools and banking entities will be "Category 2 Entities." The CFTC recently adopted a phase-in schedule for compliance with the clearing mandate of the Dodd-Frank Act that will require parties to swaps to submit swaps for clearing between 90 and 180 days after the publication of the clearing requirement in the Federal Register, depending on whether both counterparties are Category 1 Entities.

The CFTC has proposed a clearing determination for certain classes of index credit default swaps and interest rate swaps but has not yet published any final clearing determinations for any instruments. The CFTC has also proposed an exception to the clearing requirement for swaps between an entity and a direct or indirect majority owner or subsidiary or between counterparties under common control so long as the swap and the swap counterparties satisfy certain conditions.

Documentation

The compliance dates for several CFTC regulations that will require specific terms and detail in swaps agreements will occur early in 2013. The recently adopted documentation requirements for swaps transactions between SDs and MSPs and active funds will begin to apply on January 1, 2013. The documentation obligations will begin to apply to swap transactions between SDs or MSPs and commodity pools or other private funds on April 1, 2013 and to swap transactions between SDs or MSPs. Also, several compliance obligations applicable to SDs and MSPs will become effective on January 1, 2013 that also will impact documentation for any swap transactions with SDs and MSPs. Furthermore, funds should begin entering into clearing arrangements with SDs and futures commission merchants to prepare for clearing.

Compliance Obligations of Registered CPOs and CTAs

Registered CPOs and CTAs are required to comply with CFTC regulations and NFA bylaws and rules. While persons who receive reporting, disclosure and recordkeeping relief under CFTC Regulation 4.7 are able to escape the most onerous requirements of CFTC and NFA regulation, they are still subject to remaining requirements, such as the CFTCs and NFAs advertising rules. Newly registering CPOs and CTAs should update their policies and procedures to address these requirements.

[11] CFTC Regulation 45.2(b) and (c).

Restricted New Issues

Under the Financial Industry Regulatory Authority, Inc's (FINRA) Rule 5130, a member of FINRA is prohibited from allocating a new issue[12] to any account unless the member receives a representation from its account holder within the previous 12 months that it is not a "restricted person," which generally consists of industry insiders, or that restricted persons do not have more than a *de minimis* ownership interest in that account. In addition, FINRA Rule 5131 prohibits a FINRA member from allocating new issues to any (i) executive officer or director of a public company or of a nonpublic company of a specified size (the "Subject Company"), (ii) persons that receive material support from the above persons or (iii) entity that is more than 25 percent-owned by persons in (i) and (ii) if the FINRA member provides, has recently provided or proposes to provide, investment banking services to the Subject Company.

Both new issues rules permit the relevant broker-dealer to allocate a new issue to an account so long as the account has certified within the previous 12 months that it is not restricted under the appropriate rules. In order for funds to comply with the annual representation requirements in good faith, fund advisers should reconfirm, on an annual basis, that the "restricted person" status of investors in its affiliated funds has not changed since the certification was originally made in the subscription documents. This annual certification may be obtained through "negative consent" letters after obtaining the initial representation.

U.S. Securities Filings

Listed below are regulatory filings that your firm may be required to file in the United States. You should also review similar types of filing requirements in all foreign jurisdictions in which you have business operations or conduct investment activities.

Form D

Issuers that offer and sell interests in hedge funds, private equity funds or other pooled investment vehicles to United State investors are required to file a Form D with the SEC and amend their Form D filings on the anniversary of their last filing, if the offering is continuing. All Form Ds and Form D amendments must be filed using the SEC's electronic filing system.

General partners or managing members of funds should consider whether there are any state "blue sky" filing obligations in connection with the offering or sale of interests in the funds. The applicable state laws of most jurisdictions require blue sky filings for the sale of fund interests. The deadline for such filings is generally 15 days after the date of the first sale of interests in any particular jurisdiction (with a few limited exceptions, such as Idaho, that may require presale filings). State blue sky filings consist of a Form D and some combination of a Form U-2 and payment of a filing fee. Please note that several jurisdictions either have no blue sky filing requirements or deem the electronically filed Form D to satisfy state filing requirements, while others have exemptions from blue sky filing requirements for certain categories of investors, such as institutional accredited investors or limited offerings.

Schedules 13D and 13G

If a fund or its adviser exercises investment discretion or voting power over more than 5 percent of any class of outstanding equity securities of a U.S. publicly traded issuer, the adviser and possibly the funds it advises may be required to prepare and file a Schedule 13D or 13G with the SEC. If you have reached the 5 percent threshold, please contact us to assist you in determining your filing obligations. Generally, 13Gs are filed by passive

[12] "New issues" are defined to include many securities sold as an initial public offering.

investors, and 13Ds are filed when the investor may be, or becomes, active in trying to influence management or control of the issuer. Schedule 13Gs are initially filed, depending on the registration status of the filing person, either 10 days after acquiring securities resulting in beneficial ownership of more than 5 percent, or 45 days after the end of the fiscal year, and Schedule 13Ds are filed within 10 days after an acquisition that results in ownership of more than 5 percent of the outstanding securities of a public issuer.

Rule 13d-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), provides that a Schedule 13D must be amended promptly after any material change occurs in the facts set forth in the previously filed schedule (such as, among other things, a 1 percent or more change in ownership or a change in investment intent). Rule 13d-2 also provides that a person filing a Schedule 13G must amend the schedule within 45 days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the previously reported information, and within a specified period after the Schedule 13G filer increases its beneficial ownership above 10 percent or increases or decreases its ownership percentage by 5 percent thereafter. With respect to Schedule 13G, an amendment need not be filed if no change has occurred, or if the only difference is caused by a change in the aggregate number of securities outstanding.

Section 16

Investment advisers and clients of registered investment advisers may be subject to Section 16 of the Exchange Act and may be required to file reports on Forms 3, 4 or 5 if the adviser or the client holds beneficial ownership of more than 10 percent of any class of equity securities of a U.S. publicly traded issuer, or is an officer or director thereof, including as a "director by deputization." Numerous exemptions may apply to transactions and reporting persons. Non-exempt purchases and sales within six months may result in the disgorgement of profits. Please contact us for assistance in determining whether you and/or your firm have such a filing obligation.

Schedule 13F

If an investment adviser has investment discretion over $100 million or more (by fair market value) of equity securities that are listed on the official list of 13F securities published by the SEC (available here) as of the last day of any calendar month during 2012, then the adviser is required to file four quarterly reports showing all long positions in such 13F securities as of December 31, 2012, and as of the close of the first three quarters of 2013. In determining whether your firm had discretion over $100 million or more of 13F securities, the firm should aggregate each fund and other securities portfolios and accounts over which it exercises investment discretion, excluding securities issued by a person that the firm "controls." The report must be filed within 45 days after the relevant reporting date.

Form 13H

Persons whose transactions in NMS securities—together with transactions of persons subject to their control—equal or exceed (i) two million shares or shares with a fair market value of $20 million during any calendar day or (ii) 20 million shares or shares with a fair market value of $200 million during any calendar month (a "Large Trader") are required to electronically file a Form 13H promptly with the SEC after crossing the above thresholds. Large traders are also required to update the Form 13H annually and, if the information contained in the form has changed, quarterly. Form 13H provides minimal information relating to the Large Trader and its broker-dealers.

After the initial filing of the Form 13H, the SEC provides the Large Trader with a unique large trader identification number (LTID). The Large Trader is required to then notify its broker-dealers of the accounts that it directly or indirectly controls and provide its LTID. Each broker-dealer must associate the relevant accounts with the LTID and make specified information available to the SEC staff upon request.

Hart-Scott-Rodino Filings

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), subject to several exceptions, requires parties to transactions (including the purchase of publicly traded securities) that meet certain thresholds to file premerger notification forms with the FTC and the Department of Justice Antitrust Division. If a fund you manage is contemplating making an acquisition that would result in the ownership of voting securities or assets valued at more than $68.2 million using the HSR Act's valuation mechanics, you should contact us to discuss your filing obligations or the exemptions that may be applicable prior to making the proposed acquisition.

Anti-Money Laundering Policy

You should maintain and strictly adhere to written anti-money laundering policies and procedures and update those policies and procedures periodically for new money laundering threats. Additionally, you should review compliance programs to ensure compliance with the economic sanctions programs administered by the Treasury Department's Office of Foreign Assets Control (OFAC). Maintaining an effective anti-money laundering program may be considered as a positive factor in mitigating penalties if a violation of OFAC sanctions were to occur.

State-Registered Agent and Address

Most states require an amendment to the formation documents on file with the state if an entity changes address or registered agent. If you have recently moved and did not amend your entity's certificate of limited partnership, articles of incorporation, articles of formation or other documents on file with the state, you should ensure that your address is current with state regulatory agencies and, if necessary, file appropriate amendments.

State Notice Filings

Review your current advisory activities in the various states and confirm that all applicable state notice filings are made on IARD. Register or renew registrations in the applicable states of any of your professionals who qualify as "investment adviser representatives." You should confirm that your IARD electronic account is adequately funded to cover expenses associated with annual registration renewals (for both the SEC and any states).

Private Placement Memorandum Updates

Review and update, as necessary, your private placement memorandum (or other offering documents used in the offering of interests in your fund) to reflect changes to various regulations or changes in the business or operations of the fund, including, for example, changes in investment objective or strategy, brokerage practices, key personnel, risk factors, conflicts of interest or other material provisions.

Subscription Documents Updates

The Jumpstart Our Business Startups Act (the "JOBS Act") requires the SEC to amend Regulation D under the Securities Act of 1933 to permit issuers, including private funds, to engage in general solicitation relating to the offering of securities. The SEC has proposed but has not yet adopted rules that would permit general solicitation so long as: (i) all purchasers are accredited investors; (ii) the issuer takes reasonable steps to verify the accredited investor status of all purchasers; and (iii) the conditions of Regulation D other than the general solicitation restriction are satisfied. According to the proposed rules, what would constitute reasonable steps would vary depending on the terms of the offering. For example, if an issuer requires a large minimum investment that only large net worth investors would be reasonably expected to satisfy, it may be reasonable for an issuer to take no steps to verify a prospective purchaser's accredited investor status other than to confirm that the prospective purchaser's cash investment was not financed, unless other facts indicate that the prospective purchaser is not an accredited investor. Depending on the approach of the final general solicitation rules under the JOBS Act, advisers will likely need to include additional questions or requests for information to verify the accredited investor status.

Fund subscription documents have been revised significantly due to changes in rules related to the Dodd-Frank Act, the rescission of Regulation 4.13(a)(4) and the adoption of FINRA Rule 5131. Among other things, subscription documents should reflect (i) the changes to the "qualified client" standard for 3(c)(1) funds to exclude the value of the primary residence,[13] (ii) similar changes to the "accredited investor" standard, (iii) the addition of "qualified eligible person" questions for clients that formerly were able to rely on the exemption under CFTC Regulation 4.13(a)(4) but plan to rely on the reporting, disclosure and recordkeeping relief of CFTC Regulation 4.7 after January 1, 2013, (iv) questions categorizing investors for Form PF reporting, (v) questions soliciting information on persons covered by FINRA Rule 5131 and (vi) representations and covenants relating to FATCA (see below).

FBAR Reporting

In general, any U.S. person having a financial interest in, or signatory or other authority over, a bank, securities or other type of financial account in a foreign country must file a Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), reporting such relationship by June 30 of the year following the year in which the relationship exists. Failure to file this form when required can result in significant penalties. In February 2011, the Treasury Department published final regulations relating to the FBAR filing requirement.

In 2009, representatives of the Internal Revenue Service (IRS) informally stated that U.S. investors in offshore investment companies, whether registered or unregistered, and U.S. persons with signatory authority over such investments, must file an FBAR. The final regulations, at least for now, provide a narrower rule under which only offshore investment funds that are "mutual funds or similar pooled funds" that issue shares to the general public and have a regular net asset value determination and regular redemptions (in general, open-end mutual funds) are subject to the filing requirement. The final regulations reserve on filing requirements applicable to foreign investment funds that do not have these characteristics. Thus, U.S. investors with an interest in, and U.S. persons with signatory authority over, offshore investment funds that do not have the characteristics noted above do not need to file an FBAR under these final regulations, although future guidance could impose a filing requirement in respect of such funds.

Reporting As To "Specified Foreign Financial Assets"

The Hiring Incentives to Restore Employment (HIRE) Act of 2010 requires an individual (which may include an individual who is a not a U.S. investor but files a U.S. federal income tax return) to attach to his or her U.S. federal income tax return for a taxable year a disclosure statement reporting certain information in respect of each "specified foreign financial asset" that he or she owns (directly or through certain U.S. entities) if the aggregate

[13]The amendments to the qualified client standard (i) codified the previously adopted increases to the threshold for clients or investors that may be charged performance-based compensation to $2 million in net worth or $1 million in assets under management, (ii) conformed the $2 million in net worth standard with the accredited investor standard by excluding the value of an investor's primary residence and related debt (except to the extent that the debt exceeds the value of the primary residence or was increased in the 60 days prior to the investment) and (iii) provided certain grandfathering provisions for newly registering investment advisers.

value of all such assets owned by such individual exceeds $50,000. "Specified foreign financial assets" include equity interests in a non-U.S. investment fund. This statement will be made on new IRS Form 8938 (Statement of Specified Foreign Financial Assets), which was released by the IRS in November 2011, and is currently required to be filed only by individuals (although future reporting may be required by domestic entities that are formed or availed of for the purposes of holding, directly or indirectly, specified foreign financial assets).

Foreign Account Tax Compliance Act

The HIRE Act also enacted the Foreign Account Tax Compliance Act or "FATCA," which imposes a withholding tax of 30% on (i) U.S.-source interest, dividends and certain other types of income and (ii) the gross proceeds from the sale or disposition of assets which produce such types of income, which are received by a foreign financial institution, unless such foreign financial institution enters into an agreement with the IRS to obtain certain information as to the identity of the direct and indirect owners of accounts in such institution. In addition, a withholding tax may be imposed on payments to certain non-financial foreign entities which do not obtain and provide information as to their direct and indirect owners. Although these provisions will become effective by statute after December 31, 2012, withholding on U.S.-source interest, dividends and certain other types of income will not apply until after December 31, 2013 and withholding on gross proceeds will not apply until after December 31, 2014. In addition, the Department of the Treasury recently released proposed regulations which, if enacted as final, would be used by the IRS in implementing the FATCA provisions and contain a number of phased-in dates for compliance with their various provisions. It is uncertain when and in what form final regulations regarding FATCA will be promulgated.

At this time, IRS guidance is incomplete as to the types of accounts and institutions to which these rules would apply, and as to the form and content of the information which would be required to be obtained in order to avoid the withholding tax. Accordingly, there are substantial uncertainties as to the effect that these rules will have on the private investment funds and their investors. Non-U.S. private investment funds are likely to be classified as foreign financial institutions and required to comply with the FATCA provisions, including entering into an agreement with the IRS, to avoid the withholding tax. U.S. private investment funds are similarly likely to be required to act as withholding agents with respect to non-U.S. investors in such funds who are not FATCA compliant.

TIC Forms

The treasury international capital (TIC) forms collect information on the interaction between United States market participants and foreign residents and related changes in the "balance of payments." TIC forms commonly filed by fund managers include the following:

Form SLT

Form SLT monitors the balance of payments relating to foreign long-term securities purchased by United States resident entities and long-term securities[14] issued by United States entities to foreign persons. Advisers are required to file one consolidated report relating to the holdings and issuances of all United States fund issuers that they manage that (i) own securities of non-United States issuers or (ii) have issued securities to foreign persons. Investment advisers must use the consolidated amount of long-term securities, as measured across its United States fund clients for determining, first, whether they satisfy the $1 billion exemption from reporting and, second, which amounts are to be reported in the form.

[14] Long-term securities include debt securities with an original maturity of one year or more. Long-term securities also include equities.

Akin Gump Strauss Hauer & Feld LLP

Form S

Form S gathers monthly information from United States residents regarding the purchases and sales of long-term securities. Form S is subject to a filing threshold of $50 million, but if transactions exceed the threshold in any month, reporting is required for the remainder of the calendar year.

Form C (Form CQ-1 and CQ-2)

Form C gathers quarterly information from United States entities (other than banking entities and broker-dealers) with unaffiliated foreign entities relating to positions in short-term securities and non-securities. Form C is subject to a reporting threshold of reportable financial liabilities to unaffiliated foreign residents or reportable financial claims to unaffiliated foreign residents of $50 million, determined separately.

Form D

Form D gathers quarterly information regarding major United States resident participants in financial derivatives contracts with foreign residents. The form is subject to a filing threshold of notional value of worldwide holdings of derivatives if the reporter's own account exceeds $400 billion or the grand total of net settlements exceeds $400 million.

Form SHLA

Form SHLA gathers position-level information regarding United States issuers of securities held by foreign residents but not through custodians. Form SHL is required to be filed once every five years, with the next due date of 2014. Issuers may be required to file Form SHLA in the intervening years at the specific request of the Federal Reserve Bank of New York (FRBNY).

Form SHCA

Form SHC gathers position-level information from United States resident investors holding securities once every five years, with the next due date of 2017. Investors may, however, be required to file Form SHCA in the intervening years at the specific request of the FRBNY.

Protecting Intellectual Property Rights

Fund managers should be sure to regularly monitor the usage of any of their or their funds' registered copyrights, trademarks or patents. An intellectual property owner that does not regulate use of its registered mark takes a risk that the mark will be considered to have shifted to the public domain, where anyone is free to make use of it. We recommend that our clients search the use of their trademarks at least annually to preserve their rights in their trademarks and to prevent confusion with potential investors.

CONTACT INFORMATION

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