# 2016-17 COMPLIANCE DEVELOPMENTS & CALENDAR FOR PRIVATE FUND ADVISERS


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## Introduction

Registered investment advisers (RIAs) are required to review their policies and procedures on at least an annual basis. Below is a guide to recent enforcement actions and other material developments in 2015 and 2016. While some of the regulatory focus areas are likely to change in President-elect Trump's administration, it is difficult to discern what those changes would be.[1]

## Developments

In 2016, the Securities and Exchange Commission (SEC) adopted an order to increase the qualified client threshold effective August 15, 2016, and adopted amendments to Form ADV and its recordkeeping rules with a compliance date of October 2017. Beyond these rule changes, the Securities and Exchange Commission (SEC) proposed a new rule for business continuity plans that could establish current best practices on this topic. The SEC continues to actively pursue enforcement actions against investment advisers to private funds. Other regulatory agencies, such as the Federal Trade Commission (FTC) and the Department of Justice (DOJ), have also increased their focus on private funds and their advisers.

In reviewing their compliance manuals and disclosures for developments in 2016-17, investment advisers should consider adopting or revising policies relating to the following:

- **Codes of Ethics Requirements.** The SEC has recently begun bringing actions under the code of ethics rule even in the absence of insider trading violations of the investment adviser. For example, it pursued actions against investment advisers under the code of ethics requirement for:
  - failing to subject a consultant who provided the investment adviser with investment recommendations to the adviser's code of ethics[2]
  - permitting the ordinary employees of a political intelligence investment adviser firm that regularly received confidential information to themselves assess whether the information passed onto clients was material nonpublic information (MNPI) instead of providing information to its chief compliance officer (CCO) to assess whether it possessed MNPI[3]
  - excessively crossing "walls" that made informational barriers ineffective.[4]

  Investment advisers should also review developments in insider trading and market manipulation enforcement when assessing their code of ethics controls. First, as evidenced by its action in 2016 against a manager who received information from a government employee, the SEC is continuing to focus on cases involving government employees in sensitive positions. Investment advisers should review their policies to ensure that they address the potential receipt of information from government sources.[5] Second, the SEC brought and settled an action against a trader at an

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[1] See our 2016 postelection report "Preparing for a Trump Presidency" available at https://www.akingump.com/images/content/5/3/v2/53023/Postelection-Report-2016-Trump-Presidency.pdf for a description of potential priorities of President-elect Trump's administration.

[2] See Release IA-4401 (May 27, 2016) available at https://www.sec.gov/litigation/admin/2016/ia-4401.pdf.

[3] See Release IA-4279 (Nov. 24, 2015) available at https://www.sec.gov/litigation/admin/2015/34-76512.pdf.

[4] See Release IA-4221 (Oct. 8, 2015) available at http://www.sec.gov/litigation/admin/2015/34-76109.pdf.

[5] See Press Release 2016-119 (Jun. 15, 2016) available at https://www.sec.gov/news/pressrelease/2016-119.html.

investment bank who made material representations regarding the market for the securities he was purchasing or selling.[6] While many of the concerns relate specifically to broker-dealers, investment advisers may wish to address potential misstatements in their codes of ethics.

- **Broker-Dealer Activity.** The SEC expanded its enforcement focus on unregistered broker-dealer activity in 2016 by targeting transaction-based compensation and persons who recommend securities and receive compensation from issuers without disclosing it.[7]

  The SEC brought and settled an enforcement action against a private fund manager for what it viewed as brokerage services on behalf of its portfolio companies.[8] In particular, the SEC emphasized that the investment adviser performed the following services for its portfolio company and was compensated with transaction-based compensation:[9]

  - solicitation of deals
  - identification of buyers or sellers
  - arrangement of financing
  - execution of transactions.

  Private equity fund managers should review the services they provide to their fund portfolio companies, along with the types of compensation received to avoid broker-dealer issues. For additional information regarding this enforcement action, see our alert available at https://www.akingump.com/en/news-insights/sec-targets-broker-dealer-implications-of-transaction-based-deal.html.

  The SEC approved a new category of broker-dealer registration with the Financial Industry Regulatory Authority, Inc. (FINRA) for "capital acquisition brokers," which will be subject to a lighter level of regulation and oversight. Capital acquisition brokers are engaged in:

  - advising an issuer, such as a private fund, concerning its securities offerings or other capital-raising activities, including through acting as a finder or placement agent
  - advising a company regarding the purchase or sale of a business or assets

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[6] See Release IA-4487 (Aug. 16, 2016) available at https://www.sec.gov/litigation/admin/2016/34-78585.pdf.

[7] See Press Release 2016-65 (Apr. 11, 2016) available at https://www.sec.gov/news/pressrelease/2016-65.html. The United States District Court for the Eastern District of Texas conditionally granted a motion to dismiss, but the SEC has filed an amended complaint that has not yet been adjudicated.

[8] See Release 34-77959 (Jun. 1, 2016) available at https://www.sec.gov/litigation/admin/2016/34-77959.pdf.

[9] The enforcement action did not expressly address whether the compensation was subject to offset against the management fee paid by the fund client, but it did state that the adviser had received approximately $1.9 million in transaction-based compensation in connection with providing the brokerage services and that the transaction and brokerage fees were expressly permitted in the fund documents. A senior member of the SEC staff has previously stated, "to the extent the advisory fee is wholly reduced or offset by the amount of the transaction fee, one might view the [transaction] fee as another way to pay the advisory fee, which, in my view, in itself would not appear to raise broker-dealer registration concerns." See David W. Blass, Chief Counsel, Division of Trading and Markets, "A Few Observations in the Private Fund Space," Address at the Trading and Markets Subcommittee Meeting of the American Bar Association (Apr. 5, 2013) available at http://www.sec.gov/news/speech/2013/spch040513dwg.htm.

- assisting in the preparation of offering materials
- providing fairness opinions and valuation services
- acting as a placement agent or finder
- effecting securities transactions solely in connection with the transfer of ownership and control of a privately held company.

The addition of this new broker-dealer regime may cause the SEC to focus on the activities of internal marketing personnel of private fund managers. For further information regarding the regulation of capital acquisition broker-dealers, see the SEC order approving the new FINRA rules available at https://www.sec.gov/rules/sro/finra/2016/34-78617.pdf.

- **ADV Amendments and Recordkeeping Rule.** On August 25, 2016, the SEC amended (i) Form ADV to collect additional information regarding separately managed accounts and to accommodate umbrella registration,[10] and (ii) its recordkeeping rule to require all communications with performance claims to be retained. While the compliance date is delayed until October 1, 2017, investment advisers may consider revising their record retention policies earlier. In addition, investment advisers may wish to review the comparison versions of the Form ADV Part 1A available at https://www.sec.gov/rules/final/2016/ia-4509-form-adv-summary-of-changes.pdf and the Form ADV General Instructions, Instructions to Part 1A and Glossary available at http://apps.akingump.com/compliancecalendar2016. Investment advisers may wish to address any practices that may prompt undesirable disclosure once the compliance date occurs.
- **Qualified Client Revision.** Effective on August 15, 2016, the SEC adjusted the net worth threshold for a registered investment adviser to charge performance-based compensation to its advisory clients or investors in 3(c)(1) private funds from $2 million to $2.1 million (not including the client's or investor's primary residence and related debt).[11] For further detail and information regarding grandfathering, see our previous alert available at https://www.akingump.com/en/news-insights/sec-orders-increase-in-qualified-client-threshold.html.
- **Distribution of Unverified Performance.** The SEC brought and settled actions against 13 investment advisers that repeated the false performance claims of another investment adviser without verification.[12] The SEC's actions claimed that the investment advisers had violated the advertising rule through negligently distributing advertisements that contained misrepresentations and the books and records rule by not keeping records to form the basis for, or demonstrate the calculation of, the performance or rate of return that it circulated. These actions show that the SEC will now aggressively pursue an investment adviser for performance information that it circulates, but did not create. Investment advisers should consider whether they have adequate backup for statements of third parties before including them in advertisements.

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[10] The SEC did not expand the scope of the "relying adviser" registration beyond previous staff guidance in the revised Form ADV. First, the SEC declined to permit registered investment advisers with a principal office and place of business outside the United States of America to act as the "filing adviser" for the umbrella registration. Second, the SEC did not permit exempt reporting advisers to use the new "relying adviser" schedules to file an aggregated report with their affiliates.

[11] Rule 205-3 excludes the value of the primary residence as an asset and debt secured by the primary residence as a liability, except to the extent (1) that the value of the debt would exceed the value of the residence and (2) of any increase in debt secured by the person's primary residence occurring within 60 days prior to entering into the advisory contract or investing in the 3(c)(1) private fund on the liability side of the net-worth calculation, unless the increase was a result of the acquisition of the primary residence.

[12] See Press release 2016-167 (Aug. 25, 2016) available at http://www.sec.gov/news/pressrelease/2016-167.html.

- **Business Continuity Plans.** The SEC proposed a new Rule 206(4)-4 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), in June 2016 that would require registered investment advisers to establish business continuity plans and transition plans satisfying certain criteria. Pursuant to SEC guidance in connection with the investment adviser compliance rule, registered investment advisers are already required to adopt business continuity plans. Therefore, the SEC could use the proposed business continuity plans rule to interpret what the required elements are for business continuity plans. For a checklist of elements of the proposed business continuity plans, as well as the transition plan requirements described in the release (which may be substantially changed before final adoption), see http://apps.akingump.com/compliancecalendar2016.
- **Supervisory Controls Relating to Supervised Persons with Disciplinary History.** On September 12, 2016, the SEC's Office of Compliance Inspections and Examinations announced[13] that it is undertaking an initiative to examine the practices and programs of registered investment advisers that employ individuals with a history of disciplinary events ("Disciplined Individuals").[14] In particular, the examinations will focus on the relevant investment adviser's:
  - policies and procedures for hiring, ongoing reporting obligations, complaints and oversight of Disciplined Individuals
  - disclosures in their Form ADV regarding Disciplined Individuals and whether the disclosures are accurate, adequate and effective
  - conflicts of interest involving Disciplined Individuals, especially with respect to special financial arrangements
  - marketing or advertising related to Disciplined Individuals.

  Investment advisers employing Disciplined Individuals should review their supervisory practices with respect to those employees. In addition, investment advisers should consider whether they have implemented adequate screening procedures in their hiring processes.
- **Allocations of Expenses and Fees.** The SEC continues to target allocations of expenses between clients and the investment adviser at both the fund and portfolio-company level. For example, the SEC brought and settled enforcement actions against investment advisers for, among other things, (i) expensing a portion of a luxury suite at an arena without retaining adequate records to demonstrate the division between personal and business uses, (ii) making political and charitable contributions with fund assets, (iii) expensing liability insurance to fund clients, when some risks covered by the insurance did not relate to the fund clients,[15] (iv) expensing the salary of one of the investment adviser's employees to a portfolio company while he was serving as a temporary employee of the portfolio company,[16] and (v) causing its fund clients to sponsor a separate investment adviser and to pay the newly formed adviser's expenses.[17] The SEC has also targeted the method of allocation of fee income and

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[13] National Exam Program Risk Alert, Volume V, Issue 3 (Sept. 12, 2016) available at https://www.sec.gov/ocie/announcement/ocie-2016-risk-alert-supervision-registered-investment-advisers.pdf.

[14] The SEC will draw upon its own databases, as well as "external sources."

[15] See Release IA-4529 (Sept. 14, 2016) available at https://www.sec.gov/litigation/admin/2016/ia-4529.pdf.

[16] For further information regarding this enforcement action, see https://www.akingump.com/en/news-insights/sec-targets-broker-dealer-implications-of-transaction-based-deal.html.

[17] See Release IA-4529 (Sept. 14, 2016) available at https://www.sec.gov/litigation/admin/2016/ia-4529.pdf.

related management fee offsets.[18] Finally, the SEC targeted an investment adviser that received preferential terms from its service providers as compared to its clients.[19] The SEC treats expense allocation and fee calculation issues as a policy failure,[20] and, therefore, we recommend that investment advisers have expense allocation policies that address how expenses and fees are allocated and that those policies are disclosed to investors.

- **Allocation of Investments to Appropriate Clients.** The SEC brought and settled an enforcement action[21] against an investment adviser that overallocated initial public offerings to a fund client that specialized in illiquid and distressed investments instead of its larger multistrategy fund. While the SEC's concern may be attributable to the larger size of the investment adviser's principal's ownership in the illiquid fund, this action demonstrates that the SEC will scrutinize the relative allocation of investments in light of the client's strategy.
- **Investor Relationships.** The SEC has also brought enforcement actions relating to the failure to disclose the disparate treatment of limited partners in 2016. For example, it has targeted investment advisers that waived capital calls for affiliated investors[22] and permitted redemptions by related-party investors while retaining restrictions on third-party investors.[23] Investors may increasingly complain to the SEC in addition to seeking redress through state courts.
- **Cybersecurity.** The SEC continues to focus on cybersecurity and conducted a new round of examinations in 2016. The new examinations focused on traditional concerns outlined in the National Institute of Standards and Technology's protocol,[24] but the SEC staff also extended its review to:
  - senior management/board of directors involvement in cybersecurity
  - cybersecurity training
  - access controls and network segmentation (and related documentation of walls and violations of access rights) testing
  - remote access methods, including whether multifactor access is used and whether login failures are logged
  - remote devices, including encryption

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[18] For further information regarding this enforcement action, see https://www.akingump.com/en/news-insights/sec-targets-broker-dealer-implications-of-transaction-based-deal.html.

[19] See Release 34-77959 (Jun. 1, 2016) available at https://www.sec.gov/litigation/admin/2016/34-77959.pdf.

[20] See Release IA-4441 (Jun. 28, 2016) available at https://www.sec.gov/litigation/admin/2016/34-78189.pdf.

[21] See Release IA-4413 (Jun. 2, 2016) available at https://www.sec.gov/litigation/admin/ia-4413.pdf.

[22] For further information regarding this enforcement action, see https://www.akingump.com/en/news-insights/sec-targets-broker-dealer-implications-of-transaction-based-deal.html

[23] See Lit. Release 23597 (Jul. 18, 2016) available at https://www.sec.gov/litigation/litreleases/2016/lr23597.htm.

[24] The National Institute of Standards and Technology "Framework for Improving Critical Infrastructure Cybersecurity" requires adherents to the protocol to identify risks, protect infrastructure, detect threats, respond to those threats and recover. Likewise, previous examinations have focused on policies and procedures, technology to protect personal information, detection of intrusions and improvements following intrusions.

- vendor management practices, including diligence and monitoring practices and how diligence is conducted
- firm policies regarding penetration testing and findings and vulnerability scans.

The SEC also took action against Morgan Stanley Smith Barney, holding it strictly liable for allegedly inadequate data protection policies and procedures after an employee was able to circumvent those procedures and a hacker subsequently was able to capture the improperly obtained data.[25] Investment advisers and others should conduct testing of their data protections.[26]

The National Futures Association's (NFA) cybersecurity interpretation became effective on March 1, 2016. Each NFA member must adopt and enforce written policies and procedures to secure its electronic systems from unauthorized access. While each firm has flexibility in developing procedures tailored to meet its needs, the information systems security program should consist of (1) a security and risk analysis, which includes (a) maintaining an inventory of critical information technology software and hardware with network connectivity, data transmission or data storage capacity; (b) identifying significant internal and external threats and vulnerabilities to at-risk data, including customer and counterparty personally identifying information, corporate records and financial information; and (c) assessing vulnerabilities and threats to electronic infrastructure internally or from third-party service providers or software, including any systems used for transactions relating to customer funds, capital compliance, risk management and trading; (2) safeguards to be deployed against identified and potential system threats and vulnerabilities; (3) an incident response plan that provides a framework for managing detected security events, analyzing their potential impact, and taking appropriate measures to contain and mitigate breaches; (4) procedures to restore compromised systems and data, communicate with appropriate stakeholders and regulatory authorities, and incorporate lessons learned into the security program; and (5) a training program on information security for all appropriate personnel, which should be conducted upon hiring and periodically during employment. The written program must be approved, in writing, by an executive-level official of the firm. The firm must review the program's effectiveness at least annually and make adjustments as appropriate. Senior management should also provide periodic reports to a governing board, body, committee or delegate for monitoring information security risks. All records relating to the firm's adoption and implementation of the program must be maintained.[27]

Finally, on September 13, 2016, the New York State Department of Financial Services proposed its own set of cybersecurity regulations (the "NYDFS Proposal") that would be applicable to any person required to be registered under New York banking law, insurance law or financial services law.[28] In addition to the requirements of the SEC and the NFA, the NYDFS Proposal would require encryption of nonpublic information "at

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[25] For further information on this enforcement action, see our June 16 blog available at https://www.akingump.com/en/experience/practices/corporate/ag-deal-diary/morgan-stanley-fined-1-million-by-sec-for-cybersecurity.html.

[26] For further information regarding potential tests and the schedule of potential tests, see the Commodity Futures Trading Commission's (CFTC) recently adopted safeguards rule for derivatives clearing organizations and exchanges available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-22413a.pdf and http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-22174a.pdf. Note that these requirements will apply to the largest and most sophisticated market participants and have not yet been extended even as a proposal to other market participants.

[27] For further information, see the NFA's Interpretative notice 9070 - NFA Compliance Rules 2-9, 2-36 and 2-49: Information Systems Security Programs available at http://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=9070&Section=9%20.

[28] The NYDFS Proposal is available at http://www.dfs.ny.gov/legal/regulations/proposed/rp500t.pdf.

rest," multifactor authentication, notification of the superintendent of certain breaches and an annual certification of compliance with the NYDFS Proposal.

- **Gatekeepers.** The SEC has also increasingly focused on gatekeeper roles, whether inside the firm, such as the CCO,[29] or outside the firm, such as outsourced CCOs, compliance service providers and administrators. The SEC staff published its observances from its examination of registered investment advisers in which it expressed concerns regarding whether outside compliance providers are adequately empowered and integrated and whether they have tailored the procedures to fit the investment adviser's business.[30] Also in 2016, the SEC brought its first case against a fund administrator for "causing" its registered investment adviser client's violations of the Investment Advisers Act of 1940 through incorrect series accounting and failing to disclose the effect of certain agreements.[31] Investment advisers should review their vendors as part of their annual assessments and prior to retaining any new vendors, keeping in mind that the SEC will devote additional attention to vendors that it perceives to be gatekeepers.
- **CFTC Compliance Requirements for 2016.**[32]
  - The CFTC proposed (and reproposed) rules that would require certain persons that use algorithmic trading and trade at least 20,000 contracts on average per day[33] to adopt risk control measures, written policies, and testing and file certifications regarding its compliance with the proposed regulation. While the rule has not yet been adopted, persons who use algorithmic trading should consider whether to incorporate some of the suggested controls prior to the rule being adopted. For more information regarding the proposal, see https://www.akingump.com/en/news-insights/cftc-proposes-significant-new-regulations-for-algorithmic.html, and the reproposal available at http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister110416.pdf.
  - Starting with filings relating to the third quarter of 2016, registered commodity pool operators and commodity trading advisers will be subject to a penalty of $200 for each business day for which they are late with their Forms CPO-PQR or CTA-PR, respectively. In addition, commencing with CPO-PQRs filed for the period ending December 31, 2016, CPOs must aggregate all "Parallel Managed Accounts" to the pool with the largest AUM to which the Parallel Managed Account relates.

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[29] See Speech by Andrew Ceresney at the 2015 NSCP National Conference (Nov. 4, 2015) for the SEC staff's perspective of recent enforcement actions against CCOs available at http://www.sec.gov/news/speech/keynote-address-2015-national-society-compliance-prof-cereseney.html.

[30] FN21 National Exam Program Risk Alert, Volume V, Issue 1, "Examinations of Advisers and Funds that Outsource Their Chief Compliance Officers" (Nov. 9, 2015). https://www.sec.gov/ocie/announcement/ocie-2015-risk-alert-cco-outsourcing.pdf.

[31] See Release IA-4428 (Jun 16, 2016) available at https://www.sec.gov/litigation/admin/2016/ia-4428.pdf.

[32] See also the summary of the NFA's cybersecurity requirements above.

[33] The 20,000-per-day threshold would be computed over the prior six-month period.

**Addressing Whistleblower Rules.** The SEC continued to focus on potential obstacles to whistleblowers in 2016. In August 2016, the SEC brought and settled two enforcement actions[34] against issuers that required departing employees to waive the ability to pursue a whistleblower award in separation agreements.

In October 2016, the SEC's Office of Compliance Inspections and Examinations announced[35] that it would focus on examining compliance manuals, codes of ethics, employment agreements and severance agreements for any provisions that:

- require an employee to represent that he or she has not assisted in any investigation
- prohibit any disclosures of confidential information, unless the prohibition is subject to an exception for voluntary communications with the SEC (the "SEC Disclosure Carve-Out")
- require any employee to notify or obtain consent prior to disclosing confidential information, unless the requirement is subject to the SEC Disclosure Carve-Out
- purport to permit disclosures only as permitted by law, unless the limitation on disclosure is subject to the SEC Disclosure Carve-Out.

Investment advisers should review their template employment and separation agreements to ensure that they do not contain similar restrictions.

- **Review of Fund Adviser Employment Contract Terms.** The National Labor Relations Board (NLRB) filed a complaint against an investment adviser to private funds in 2016 targeting the terms of its employment agreements. In particular, the NLRB is challenging the following terms of employment in the complaint:
  - confidentiality provisions relating to the terms of the employment
  - nondisparagement restrictions
  - provisions prohibiting employees from communicating with the press regarding work-related matters
  - arbitration provisions restricting class actions.

  Fund managers should review their existing policies, contractual provisions and disciplinary protocols to ensure that they are defensible and do not create undue risk under the National Labor Relations Act. For additional information regarding this complaint, see our Special Report available at https://www.akingump.com/en/news-insights/special-report-the-nlrb-s-complaint-against-bridgewater-and-what.html.
- **AML Rule Regarding Beneficial Ownership**. FinCEN issued a final rule[36] in May 2016 under the Bank Secrecy Act (BSA), requiring certain entities within the BSA definition of "financial institution" (FI) to identify and verify the identity of the beneficial owners of certain of their legal entity

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[34] See Release 34-78528 (Aug. 10, 2016) available at https://www.sec.gov/litigation/admin/2016/34-78528.pdf and Release 34-78590 (Aug. 16, 2016) available at https://www.sec.gov/litigation/admin/2016/34-78590.pdf.

[35] National Exam Program Risk Alert, Volume VI, Issue 1 (Oct. 24, 2016) available at https://www.sec.gov/ocie/announcement/ocie-2016-risk-alert-examining-whistleblower-rule-compliance.pdf.

[36] 81 Fed. Reg. 91, 29398 (May 2016) (available at https://www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-10567.pdf).

customers as part of their anti-money laundering (AML) customer identification program (CIP). Beneficial owners are defined under an ownership prong and a control prong. The ownership prong covers those who, directly or indirectly, own 25 percent or more of the equity interests of the FI's legal entity customer. The control prong relates to significant responsibility to control, manage or direct the legal entity customer. Beneficial ownership identification and verification requirements extend to all individuals who meet the ownership prong and one individual who meets the control prong. The new rule became effective on July 11, 2016, but covered FIs have until May 11, 2018, to comply. Although the new rule does not apply to RIAs, it reflects a trend toward greater government scrutiny of financial transactions and is relevant to RIAs as an AML best practice. In addition, covered FIs with which RIAs deal may demand that their partners implement beneficial ownership identification and verification procedures as well. Furthermore, if FinCEN's proposed 2015 rule to include RIAs in the BSA definition of financial institution becomes final, RIAs would be required to implement certain AML controls.[37]

- **Revised FBAR Filing Deadline.** U.S. persons are generally required to make an electronic filing on a FinCEN Form 114 with the Department of the Treasury in any year (also known as "Foreign Bank Account Report" or FBAR) with respect to the financial interests in, or signatory authority over, any foreign financial accounts held by such U.S. persons during the previous calendar year if the aggregate value of the relevant accounts exceeded $10,000 at any time during such calendar year. A foreign financial account that satisfies these requirements is required to be reported irrespective of whether such account generates any taxable income. Complex attribution rules apply. Penalties may also apply in case of failure to timely file any FinCEN Form 114.

  Until recently, the FBAR filing deadline did not coincide with the filing deadline for a U.S. person's "regular" tax return filing obligations and generally did not permit any filing extensions. However, pursuant to a legislative change effective for taxable years beginning on or after January 1, 2017 (i.e., for FBAR reporting with respect to the 2016 calendar year and going forward), the FBAR filing deadline will be the same as the general deadline that applies for filing individual U.S. income tax returns (i.e., April 15). A six-month extension should be available upon a timely request, making October 15 of the relevant year the final filing deadline). The 2016 FBAR filing deadline (with respect to calendar year 2015) remains unchanged (i.e., June 30, 2016, assuming no extension applies).

  For FBAR purposes, a U.S. person is any citizen or resident of the United States, or an entity created, organized or formed under the laws of the United States, any State, the District of Columbia, the Territories and Insular Possessions of the United States or the Indian Tribes. A reportable financial account generally includes bank accounts, securities accounts and certain other financial accounts.

- **CRS Into Effect in Early Adopter Jurisdictions.** Many jurisdictions have agreed to implement the Organization for Economic Cooperation and Development's (OECD) Common Reporting Standards (CRS) regime, which imposes a variety of diligence and reporting requirements on "financial institutions," which includes many master funds, offshore feeders and other investment vehicles commonly utilized by investment funds. These financial institutions are required to annually report certain investor information to their local governments, who will then transmit the relevant information to the governments of other participating jurisdictions on an automatic basis.

  Although the CRS will be phased in over the next few years, certain jurisdictions are part of an "Early Adopters Group," including the Cayman Islands, Bermuda and the British Virgin Islands, which have agreed to apply the CRS diligence procedures to all new investors as of January 1, 2016. CRS due diligence procedures with respect to existing investors of investment funds located in Early Adopter Group jurisdictions may, very

[37] As drafted, the FinCEN proposed rule would not require RIAs to institute a CIP, but this could change in the future.

generally, be required to be completed as early as December 31, 2016. A relaxed time schedule may apply for completing due diligence with respect to certain specific investor categories. The first reporting deadline for the Early Adopters Group is expected to be in 2017.

The CRS does not replace existing automatic exchange of information regimes, such as the regimes introduced under the U.S. Foreign Account Tax Compliance Act (FATCA) or the intergovernmental agreements between the United Kingdom and its Crown Dependencies and Overseas Territories (UK CDOT). However, the United Kingdom is generally expected to phase out the UK CDOT regime as of 2017.

- **Country-by-Country Reporting Adopted in the United States.** As part of a wider trend toward global tax transparency, the OECD's Base Erosion and Profit Shifting (BEPS) initiative introduced modified transfer pricing documentation requirements and also country-by-country (CbC) reporting obligations for certain multinational groups ("MNE Groups"). Effective for tax years beginning on or after January 1, 2016, the CbC regime generally requires that an MNE Group provide the relevant local tax authority with detailed tax and financial information to permit reliable risk assessments and examinations of the group and its transfer pricing strategies. The relevant tax authorities are expected to automatically exchange this information with the tax authorities in other jurisdictions participating in the CbC regime.

  An MNE Group very generally refers to entities in two or more jurisdictions that are (or would be, if publicly traded) required to consolidate accounts under applicable accounting principles and have combined annual revenues of at least €750 million, or $850 million. Although there is no general exemption for investment funds and their managers, the generally accepted accounting principles rules oftentimes do not require that portfolio companies be consolidated with an investment fund owning a significant equity interest therein. On the other hand, exceptions may apply, and specific structures may be more likely to give rise to CbC Reporting (such as funds-of-one and investment funds with concentrated equity ownership, taking into account redemptions or withdrawals). Investor-level MNE Groups may also arise, for example, in the case of family office and sovereign investors. Accordingly, whether an MNE Group is present and the requisite revenue threshold is reached should be determined on a case-by-case basis.

  If CbC reporting applies, then it is the "ultimate parent entity" that is generally required to file an annual CbC report with the tax authorities of its tax jurisdiction of residence. However, participating jurisdictions may also require "secondary reporting" by local subsidiaries of an MNE Group if the relevant parent entity is located in a jurisdiction that does not require CbC reporting or does not effectively participate in the automatic exchange of information. Thus, investment funds and their managers should monitor how each participating jurisdiction implements the OECD's initiative into local legislation.

  On June 29, 2016, final Treasury regulations were also adopted in the United States requiring that a U.S. ultimate parent entity of a U.S. MNE Group with annual revenue of at least $850 million file a CbC Report on IRS Form 8975 on an annual basis, effective for tax years beginning on or after June 30, 2016. U.S. MNE Groups keeping their books on a calendar-year basis may therefore be part of a "gap year" for purposes of CbC reporting (i.e., these groups should not be required to file their first CbC report until 2018, with respect to the 2017 taxable year). Depending on the local legislation, that may be applicable to the subsidiaries of such U.S. MNE Groups that are located in jurisdictions that have already implemented CbC reporting; however, U.S. MNE Groups may be required to file CbC reports directly with the tax authorities of such other jurisdictions in 2017. For this purpose, the OECD has released implementation guidance encouraging countries to accept voluntary reports from U.S. MNE Groups as a way to avoid imposing local reporting on these groups because they cannot meet the January 1, 2016, effective date set by the OECD even though the United States has the necessary laws in place and will meet the 2018 deadline for automatic exchange of CbC information.

Although it is reasonable to expect further guidance, the Internal Revenue Service (IRS) has indicated that the current decision not to provide more detailed and explicit guidance in the final CbC reporting regulations was based on a desire to give flexibility to taxpayers and avoid the risk that unintended inconsistencies with OECD standards would expose U.S. multinationals to local filing. Note, however, that failure to comply with the CbC reporting regime as it applies in the United States may result in significant penalties.

- **Addressing Compliance with Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR Act") Premerger Notification Requirements.** Unless exempted, and where certain size tests are met, the HSR Act requires persons acquiring voting securities to file notification with the FTC and DOJ, and observe a mandatory waiting period before consummating the acquisition. The minimum transaction size threshold—which is adjusted annually in February—is currently $78.2 million. For transactions meeting the size test, funds often rely on the so-called "passive investment exemption" in not making an HSR filing. This exemption applies to acquisitions where (a) the acquiring person will hold 10 percent or less of the target's outstanding voting securities (15 percent for "institutional investors"), and (b) the acquisition is made "solely for the purpose of investment."[38] This is a limited exemption and applies only where the acquiring party has "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer."[39]
- **Key HSR Enforcement Actions Involving Passive Investment Exemption.** The FTC and DOJ have very actively enforced the HSR Act over the past year, particularly against so-called "activist investors" who have allegedly improperly relied on the passive investment exemption. In July 2016, ValueAct-affiliated entities paid a record civil penalty of $11 million in settling HSR charges brought by the DOJ.[40] The DOJ alleged that ValueAct funds acquired voting securities in Halliburton and Baker Hughes with the intent to influence and participate in the companies' decision making in both their independent operations and their then-pending merger. In August 2015, the FTC (through DOJ) sued Third Point, LLC for improperly relying on the passive investment exemption when affiliated funds acquired stock of Yahoo and engaged in conduct inconsistent with the passive investment exemption. In both cases, the settlement imposed a requirement to institute an HSR compliance program overseen by an internal HSR compliance officer. Additionally, the judgment against ValueAct imposes an "access and inspection" obligation under which, upon reasonable notice, the DOJ is permitted to access ValueAct's records and documents and to interview ValueAct's directors, officers, employees or agents to determine compliance with the Final Judgment.
- **Increase in Maximum Civil Penalties for HSR Violations.** As of August 1, 2016, the maximum daily civil penalty for HSR violations increased by 150 percent, from $16,000 per day to $40,000 per day. A separate violation is deemed to occur each day the acquiring person continues to hold voting securities without having received required HSR clearance. The dramatic increase in potential HSR civil penalties simply underscores the importance for every investment fund family to have proper HSR compliance policies and procedures in place.

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[38] See §§ 802.9 and 802.64

[39] See § 801.1(i)(1)

[40] In another "investment-only" case filed in September 2015, Leucadia National Corporation settled FTC charges that it violated the HSR Act for failure to file and observe the mandatory waiting period for the acquisition of voting securities in KCG Holdings, Inc. Leucadia paid civil penalties of $240,000.

## Compliance Calendar

Following is a list of common fixed compliance dates for U.S. laws and regulations applicable to investment managers to private investment funds for the period from October 2016 to September 2017. Following the compliance calendar is a list of floating compliance dates, a list of form filing dates that are triggered by the trading or other activity of fund clients, a list of forms that will be required in future years and a list of defined terms used in the compliance calendar. Note that certain of the due dates for forms are set through the person's (the manager or the fund, as relevant) fiscal year or fiscal quarter. The calendar assumes that the manager's fiscal year is a calendar year, but obligations that are linked to the fiscal year or quarter are highlighted with an asterisk (✶).

We have also omitted the filing requirements for (i) liquidity fund advisers in Form PF; (ii) tax returns generally; and (iii) filings that generally apply to public companies under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that may be tangentially applicable to funds. Finally, we have assumed that all RIAs registered with the SEC will use the audited financial statement exception for custody rule compliance and therefore have omitted requirements for surprise verification and quarterly statement delivery.

## October 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | . | | **1** |
| **2** | **3**<br>Amendment to Form 13H due promptly[41] if any changes to information for Form 13H Filers | **4** | **5** | **6** | **7** | **8** |
| **9** | **10**<br>**Columbus Day** | **11** | **12** | **13** | **14** | **15** |
| **16** | **17**<br>A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **18** | **19** | **20**<br>(A) TIC Form BQ-1 for TIC BQ-1 Filers<br>(B) TIC Form BQ-2 for TIC BQ-2 Filers<br>(C) TIC Form BQ-3 for TIC BQ-3 Filers | **21** | **22** |
| **23** | **24**<br>TIC Form SLT due date for TIC SLT Filers | **25** | **26** | **27** | **28** | **29** |
| **30**<br>(A) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs*<br>(B) Due date for quarterly transaction reports from access persons of RIAs, unless exception or alternate reporting method is used | **31**<br>(A) Due date for Form BE-577 for all BE-577 Filers*<br>(B) Due date for Form BE-605 for all BE-605 Filers* | | | | | |

[41] The Form 13H amendment is due promptly if there are any changes. Some have interpreted "promptly" as up to 10 days under certain other filing regimes, but neither the SEC nor its staff has provided guidance on the definition of "promptly" for Form 13H.

## November 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | **1** | **2** | **3** | **4** | **5** |
| **6** | **7** | **8** | **9** | **10** | **11**<br>**Veteran's Day** | **12** |
| **13** | **14**<br><u>Other Filings</u><br>(A) Form 13F due for Form 13F Filers<br>(B) Form CTA-PR due for all registered CTA Filers<br>(C) Form BE-185 due for BE-185 Filers* | **15**<br><u>TIC Filings</u><br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** | **17** . | **18** | **19** |
| **20** | **21**<br>TIC D report submission due date for TIC D Filers | **22** | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24**<br>**Thanksgiving Day** | **25** | **26** |
| **27** | **28** | **29**<br>(A) Form PF due date for Large Hedge Fund Advisers *<br>(B) NFA Form CPO-PQR for all but Large CPOs<br>(C) CFTC Form CPO-PQR due date for Large CPOs* | **30** | | | |

## December 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | **1** | **2** | **3** |
| **4** | **5** | **6** | **7** | **8** | **9** | **10** |
| **11** | **12** | **13** | **14** | **15**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** | **17** |
| **18** | **19** | **20** | **21** | **22** | **23**<br>Form SLT due date for TIC SLT Filers | **24** |
| **25**<br>**Christmas Day** | **26**<br>**Christmas Day Observed** | **27**<br>If adviser is an RIA, ensure that independent public auditor that is registered with, and subject to inspection by, the PCAOB is engaged for next year for audited financial statements and satisfies independence tests. | **28** | **29** | **30** | **31**<br>Investment funds located in "early adopter" jurisdictions participating in the CRS (including the Cayman Islands) must generally complete their due diligence efforts with respect to their pre-existing **individual** investors by December 31 |

## January 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| **1**<br>**New Year's Day**<br>Effective date for CRS regime in jurisdictions other than "early adopter" jurisdictions | **2**<br>**New Year's Day Observed** | **3**<br>Amendment to Form 13H due promptly if any changes to information for Form 13H Filers[42] | **4** | **5** | **6** | **7** |
| **8** | **9** | **10** | **11** | **12** | **13** | **14** |
| **15** | **16**<br>**Martin Luther King, Jr. Day** | **17**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **18** | **19** | **20**<br>(A) TIC Form BQ-1 for TIC BQ-1 Filers<br>(B) TIC Form BQ-2 for TIC BQ-2 Filers<br>(C) TIC Form BQ-3 for TIC BQ-3 Filers | **21** |
| **22** | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24** | **25** | **26** | **27** | **28** |
| **29** | **30**<br>(A) Due date for quarterly transaction reports from access persons of an RIA, unless exception or alternate reporting method is used<br>(B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPO* | **31** | | | | |

[42] According to Response 2.5 to the SEC's "Frequently Asked Questions Concerning Large Trader Reporting," Form 13H Filers may file an amendment and an annual amendment together if any changes occurred during the fourth quarter to the information contained in Form 13H.

## February 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | **1** | **2** | **3** | **4** |
| **5** | **6** | **7** | **8** | **9** | **10** | **11** |
| **12** | **13** | **14**<br>(A) Due date for amendments to Schedule 13G if any changes have occurred<br>(B) Due date for Form 13F<br>(C) Due date for Form 5 (unlikely applicable)<br>(D) Due date for annual amendment to Form 13H<br>(E) Form CTA-PR due for all registered CTAs<br>(F) Due date for Form BE-577 for BE-577 Filers*<br>(G) Due date for Form BE-605 for all BE-605 Filers* | **15**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** | **17** | **18** |
| **19** | **20**<br>**Presidents' Day** | **21**<br>TIC D report submission due date for TIC D Filers | **22** | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24** | **25** |
| **26** | **27** | **28** | | | | |

## March 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | **1**<br>(A) Form PF due date for Large Hedge Fund Advisers* (but may file for only hedge funds and file for other funds by amendment 120 days after the fiscal year)<br>(B) CFTC Form CPO-PQR (all schedules) due date for all Large CPOs<br>(C) deadline to reaffirm exemptions under 4.13(a)(3) and 4.14(a)(8) | **2** | **3**<br>(A) TIC Form SHC due date for TIC SHC Filers (even if not invited to file by the FRBNY). | **4** |
| **5** | **6** | **7** | **8** | **9** | **10** | **11** |
| **12** | **13** | **14** | **15**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** | **17** | **18** |
| **19** | **20** | **21** | **22** | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24** | **25** |
| **26** | **27** | **28** | **29** | **30** | **31**<br>(A) Form ADV annual updates due date for RIAs and ERAs*<br>(B) CFTC Form CPO-PQR Schedule A due date for all registered CPOs other than Large CPOs<br>(C) CFTC Form CPO-PQR Schedule B* due date for Mid-Sized CPOs according to the CFTC<br>(D) NFA Form CPO-PQR for all other NFA members (other than Large CPOs)<br>(E) 4.7 Exempt CPOs must electronically file audited annual reports, including statements of financial condition, statements of operations and appropriate footnotes, for their pools with the NFA and distribute them to their investors*<br>(F) Form BE-185 due for BE-185 Filers | | |

## April 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | | | **1** |
| **2** | **3**<br>Amendment to Form 13H due promptly if any changes to information for Form 13H Filers | **4** | **5** | **6** | **7** | **8** |
| **9** | **10** | **11** | **12** | **13** | **14** | **15**<br>FinCEN Form 114 must be filed by FBAR Filers by April 15 following the year being reported |
| **16** | **17**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **18** | **19** | **20**<br>(A) TIC Form BQ-1 for TIC BQ-1 Filers<br>(B) TIC Form BQ-2 for TIC BQ-2 Filers<br>(C) TIC Form BQ-3 for TIC BQ-3 Filers | **21** | **22** |
| **23** | **24**<br>Form SLT due date for TIC SLT Filers | **25** | **26** | **27** | **28**<br>(A) Required delivery date for RIAs for brochure or the summary of material changes if a material change has been made since the last annual updating amendment* | **29** |
| **30**<br>(A) Delivery Date for ADV Part 2A brochure<br>(B) Required date for RIAs who are not registered CPOs of funds to have delivered annual audited financial statements (other than funds of funds)*[43]<br>(C) Due date for quarterly transaction reports from access persons of RIAs, unless exception applies or alternate reporting method is used<br>(D) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs*<br>(E) Cayman financial investment funds required to submit CRS report for the 2016 year must notify TIA on or before April 30, 2016 | | | | | | |

[43] If annual audited financial statements are not prepared and distributed to investors, or if the client is not a limited partnership, limited liability company or other pooled investment vehicle, an RIA with custody over the client's account must (A) arrange for a surprise inspection by an independent public accountant, (B) take reasonable steps at least each quarter to ensure that statements are delivered and (C) notify clients/investors of the opening of new accounts.

## May 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | **1**<br>(A) Form PF due date for all RIAs with more than $150 million in AUM attributable to private funds (including Large Private Equity Fund Advisers)*<br>(B) Due date for Form BE-577 for all BE-577 Filers*<br>(C) Due date for Form BE-605 for all BE-605 Filers* | **2** | **3** | **4** | **5** | **6** |
| **7** | **8** | **9** | **10** | **11** | **12** | **13** |
| **14**<br>. | **15**<br>(A) Form 13F due for Form 13F Filers<br>(B) Form CTA-PR due for all registered CTAs<br>(C) TIC Form S due for TIC S Filers<br>(D) TIC Form BC due for TIC BC Filers<br>(E) TIC Form BL-1 due for TIC BL-1 Filers<br>(F) TIC Form BL-2 due for TIC BL-2 Filers<br>(G) Form BE-185 due for BE-185 Filers* | **16** | **17** | **18** | **19**<br>. | **20** |
| **21** | **22**<br>TIC D report submission due date for TIC D Filers | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24** | **25** | **26** | **27** |
| **28** | **29**<br>**Memorial Day** | **30**<br>(A) Form PF due date for Large Hedge Fund Advisers*<br>(B) NFA Form CPO-PQR for all but Large CPOs<br>(C) CFTC Form CPO-PQR due date for Large CPOs | **31**<br>(A) Due date for Form BE-15 for all BE-15 Filers<br>(B) Due date for Form BE-11 for all BE-11 Filers<br>(C) It is currently expected that Cayman investment funds must complete their first CRS report[44] and file with Cayman TIA | | | |

[44] The first CRS report would be with respect to the 2016 tax year.

## June 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | **1** | **2** | **3** |
| **4** | **5** | **6** | **7** | **8** | **9** | **10** |
| **11** | **12** | **13** | **14** | **15**<br>A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** | **17** |
| **18** | **19** | **20** | **21** | **22** | **23**<br>TIC Form SLT due date for TIC SLT Filers | **24** |
| **25** | **26** | **27** | **28** | **29**<br>(A) Required date for RIAs to have delivered audited financial statements to fund of funds clients*<br>(B) Required date for 4.7 Exempt CPOs to fund of funds that have filed for an extension to electronically file and distribute audited annual reports to their investors* | **30** | |

## July 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | | | **1** |
| **2** | **3**<br>Amendment to Form 13H due promptly if any changes to information for Form 13H Filers | **4**<br>**Independence Day** | **5** | **6** | **7** | **8** |
| **9** | **10** | **11** | **12** | **13** | **14** | **15** |
| **16** | **17**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **18** | **19** | **20**<br>(A) TIC Form BQ-1 for TIC BQ-1 Filers<br>(B) TIC Form BQ-2 for TIC BQ-2 Filers<br>(C) TIC Form BQ-3 for TIC BQ-3 Filers | **21** | **22** |
| **23** | **24**<br>TIC Form SLT due date for TIC SLT Filers | **25** | **26** | **27** | **28** | **29** |
| **30**<br>(A) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs<br>(B) Due date for quarterly transaction reports from access persons, unless exception applies or alternate reporting is used | **31**<br>(A) Due date for Form BE-577 for all BE-577 Filers*<br>(B) Due date for Form BE-605 for all BE-605 Filers | | | | | |

## August 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | **1** | **2** | **3** | **4** | **5** |
| **6** | **7** | **8** | **9** | **10** | **11** | **12** |
| **13** | **14**<br>(A) Form 13F due for Form 13F Filers<br>(B) Form CTA-PR due for all registered CTAs | **15**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers<br>(E) Form BE-185 due for BE-185 Filers* | **16** | **17** | **18** | **19** |
| **20** | **21**<br>TIC D report submission due date for TIC D Filers | **22** | **23**<br>Form SLT due date for TIC SLT Filers | **24** | **25** | **26** |
| **27** | **28** | **29**<br>(A) Form PF due date for Large Hedge Fund Advisers*<br>(B) NFA Form CPO-PQR for all but Large CPOs<br>(C) CFTC Form CPO-PQR due date for Large CPOs | **30** | **31**<br>Form SHLA due date (if requested) | | |

## September 2017

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|---|---|---|---|---|---|---|
| | | | | | **1** | **2** |
| **3** | **4**<br>**Labor Day** | **5** | **6** | **7** | **8** | **9** |
| **10** | **11** | **12** | **13** | **14** | **15**<br>(A) TIC Form S due for TIC S Filers<br>(B) TIC Form BC due for TIC BC Filers<br>(C) TIC Form BL-1 due for TIC BL-1 Filers<br>(D) TIC Form BL-2 due for TIC BL-2 Filers | **16** |
| **17** | **18** | **19** | **20** | **21** | **22** | **23** |
| **24** | **25**<br>TIC Form SLT due date for TIC SLT Filers | **26** | **27** | **28** | **29** | **30** |

## List of Floating Compliance Dates

| Requirement | Timing |
|---|---|
| Review the adequacy of the policies and procedures and the effectiveness of their implementation (including, but not limited to, Regulation S-ID) and make a written record of the review and any actions taken as a result | No less frequently than annually. |
| Annual Amendment to Form D | Annually on or before the first anniversary of the last filed Form D or amendment. |
| Annual holdings requirement from "access persons" of RIA | Once every 12-month period. |
| Request new "covered associates" to report prior political contributions | Prior to hiring. |
| Retain PCAOB registered and inspected independent auditor to prepare internal control report within six months and once per calendar year | If related person serves as qualified custodian for an RIA. |
| Distribution of annual privacy notice | RIAs must distribute a clear and conspicuous notice to customers, not less frequently than annually, that accurately reflects the RIA's policies and practices. RIAs may determine when they will distribute the notice, but must apply to the customer on a consistent basis. An exception applies to these annual delivery obligations if the RIA does not share nonpublic personal information (other than to certain necessary service providers) and has not changed its policies or practices since the privacy notice was previously distributed to customers. Similar requirements apply to registered CPOs and CTAs under Part 160 of the CFTC's regulations and to exempt investment advisers under the FTC's regulations. |
| New issue certification under FINRA Rules 5130 and 5131 | A person wishing to receive an allocation of an initial public offering that is a "new issue," as defined under FINRA rules, from a broker-dealer must be able to represent to the broker-dealer that it is not (i) a "restricted person," consisting of financial industry insiders; (ii) a "covered person," consisting of persons that are executive officers or directors of public companies or covered nonpublic companies that are, or may be, investment banking clients of the "broker-dealer"; or (iii) an entity with direct or indirect ownership by persons described in (i) or (ii) above the limits described in the FINRA rules. A fund manager must receive a certification at least every 12 months from the relevant fund's investors that they do not fall into the above restricted categories. The certification may be by "negative consent." |
| NFA Self-Examination Checklist | NFA members must complete a self-examination checklist at least once per year and retain it in their records. |
| NFA Annual Update of Registration Information and Payment of Dues | NFA members must update their 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. |

| Requirement | Timing |
|---|---|
| Follow-Up Confirmation of Bad-Actor Status | Staff interpretations require that issuers conducting long-term offerings periodically confirm that persons that could cause a “bad-actor” disqualification have not committed a bad act. This confirmation may be by “negative consent” or, depending on the potential bad actor, by database searches. |
| Initial filing of partial Form ADV Part 1A for ERAs | Sixty days after relying on the exemption for private fund advisers in Section 203(m) or venture capital advisers in Section 203(l) of the Advisers Act. |
| Transition from ERA to RIA status | Mid-sized fund advisers generally must apply for registration within 90 days after filing first annual ERA update showing fund RAUM in excess of $150 million, but must be fully registered prior to accepting any client that is not a private fund. Venture capital advisers must be registered prior to accepting any client that is not a venture capital fund. |
| State Blue Sky Filings | Within 15 days of sale, depending on requirements of state of residence of investor. |

## List of Forms Without Fixed Filing Dates

| Filings Not Included on Calendar or Above List | Timing |
|---|---|
| **Exchange Act Forms** | |
| Form 3 | Either (i) within 10 days after a person becomes (a) a 10 percent beneficial owner of a class of voting equity securities that is registered under Section 12 of the Exchange Act or (b) a director or executive officer of the issuer of such securities, or (ii) in the case of an issuer that is registering securities for the first time under the Exchange Act, no later than the effectiveness of the registration statement under the Exchange Act. |
| Form 4 | By the end of the second business day following a reportable transaction. |
| Initial Schedule 13D | Within 10 days after a direct or indirect acquisition of a voting equity security of a class that is registered under the Exchange Act that results in the beneficial ownership of more than 5 percent of the class. Note that a Schedule 13D or 13G may be required, depending on the facts and circumstances surrounding the investment. See Regulation 13D-G. |
| Schedule 13D Amendment | Promptly[45] after a material change. |
| Initial Schedule 13G | Varies, depending on type of filer, from 45 days after calendar year to 10 days after date of acquisition. |
| Interim Schedule 13G Amendment | Depending on type of filer, amendment is required either 10 days following the end of the month or promptly after a reporting person's beneficial ownership exceeds 10 percent, and subsequently for any increase or decrease in beneficial ownership by 5 percent. |
| Initial Form 13H | Promptly after being a Form 13H Filer. |
| Form BE-13 | Within 45 days of establishment of position or increase in investment to $3 million. |
| **Securities Act Forms** | |
| Initial Form D | Within 15 days after sale to SEC and many states. |
| Form 144 | Filed with the SEC on the trade date if selling as an affiliate under Rule 144 under the Securities Act. |
| **HSR Act** | |
| HSR Filings | Prior to purchasing securities in excess of filing threshold. |

[45] The materiality of the change dictates the required promptness of the amendment.

## List of Forms and Obligations in Future Years

| Form or Obligation | Due | Description |
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| Revised Form ADV 1A | Amendments after October 1, 2017 | The Uniform Application for Investment Adviser Registration will be amended to, among other things, collect additional information regarding separately managed accounts, and umbrella registration will apply for any amendments after October 1, 2017. |
| CRS Due Diligence Date | December 31, 2017 | Investment funds that are located in jurisdictions participating in the CRS other than "early adopter" jurisdictions must generally complete their due diligence efforts with respect to pre-existing **individual** investors by December 31, 2017. |
| TIC SHC | March 2022 | Report of U.S. Ownership of Foreign Securities (as of December 31, 2016). |
| TIC SHL | August 2019 | Foreign Residents' Holdings of U.S. Securities (as of June 2019). |
| BE-10 | May 2020 | Benchmark Survey of U.S. Direct Investment Abroad. |
| BE-12 | May 2018 | Benchmark Survey of Foreign Direct Investment in the United States. |
| BE-180 | October 2020 | Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons. |

## List of Defined Terms

"***4.7 Exempt CPO***" means a registered CPO that has filed for reporting disclosure and recordkeeping relief under Regulation 4.7.

"***4.13 Exempt CPO***" means any person who claims an exemption from registration under CFTC Regulation 4.13 and has made the appropriate notice filing with the NFA.

"***BE-11 Filer***" means any person contacted by the Bureau of Economic Analysis (BEA) and informed that it is required to file an "Annual Survey of U.S. Direct Investment Abroad (Form BE-11)."

"***BE-13 Filer***" means a U.S. person that (i) has a non-U.S. person acquire a more than 10 percent interest or (ii) such foreign person makes a new investment, in each case, resulting in a value of $3 million.

"***BE-15 Filer***" means any person contacted by the BEA and informed that it is required to file an "Annual Survey of Foreign Direct Investment in the United States (Form BE-15)."

"***BE-180 Filer***" means a U.S. person that sold or "purchased" more than $3 million in financial services to or from a non-U.S. person.

"***BE-185 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons."

"***BE-577 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of U.S. Direct Investment Abroad (Form BE-577)."

"***BE-605 Filer***" means any person contacted by the BEA and informed that it is required to file a "Quarterly Survey of Foreign Direct Investment in the United States (Form BE-605)."

"***Cayman TIA***" means the Cayman Islands tax information agency, including any successor agency.

"***CRS***" means the "Common Reporting Standard," a multilateral system of automatic exchange of information introduced by the Organization for Economic Co-operation and Development (OECD) and that imposes a variety of diligence and reporting requirements on financial institutions located in participating jurisdictions.

"***ERA"*** or ***"Exempt Reporting Adviser***" means an investment adviser that qualifies for exemption from registration as an investment adviser with the SEC under either (i) Section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, as defined in Rule 203(l)-1 under the Advisers Act, or (ii) Rule 203m-1 under the Advisers Act because it is an adviser solely to private funds and has regulatory AUM in the United States of less than $150 million.

"***FBAR Filer***" means any U.S. person having certain financial interests in, or signatory or other authority over, a bank, securities or other type of financial account in a foreign country and that must electronically file a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

"***Form 13F Filer***" means any entity with investment discretion over at least $100 million in Section 13(f) securities (set forth on list) on the last trading day of any month in the prior year.

"***Form 13H Filer***" means any person with investment discretion over accounts with transactions of (i) 2 million shares, or $20 million in fair market value in NMS securities; or (ii) 20 million shares, or $200 million in fair market value in NMS securities.

"***FRBNY***" means the Federal Reserve Bank of New York and its staff.

"***Hedge Fund***" means any private fund that (i) has a performance fee or allocation, calculated by taking into account unrealized gains (other than unrealized gains taken into account for only the purpose of reducing fees or allocations to reflect unrealized losses), that is paid to an investment adviser (or its related person); (ii) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (iii) may sell securities or other assets short, other than short-selling, that hedge currency exposure or manage duration of investments. Vehicles established for the purpose of issuing asset-backed securities are explicitly excluded from the above definition, but commodity pools are included if they are also private funds.

"***Large CPOs***" means any registered CPO that had at least $1.5 billion in aggregated pool AUM as of the close of business on any day during the calendar quarter.

"***Large Hedge Fund Advisers***" means RIAs that have $1.5 billion[46] or more in regulatory AUM attributable to hedge funds (including private fund commodity pools) as of the end of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter.

"***Large Private Equity Fund Advisers***" means RIAs that have $2 billion or more in regulatory AUM attributable to private equity funds as of the last day of the most recent fiscal year.

"***Liquidity Fund***" means any private fund that seeks to generate income by investing in a portfolio of short-term obligations to maintain a stable net asset value per unit or minimize volatility.

"***MSP***" means a major swap participant that is registered with the CFTC.

"***Mid-Sized CPOs***" means any registered CPO that had at least $150 million in aggregated pool AUM as of the close of business on any day during the calendar year.

"***Private Equity Fund***" means any fund that does not provide redemption rights in the ordinary course and is not a hedge fund, liquidity fund, venture capital fund, real estate fund or securitized asset fund.

"***SD***" means a swap dealer that is registered with the CFTC.

"***TIC BC Filers***" means any U.S. resident financial institution that has either $25 million or more in U.S. dollar-denominated claims against persons in any one foreign country or $50 million in total claims against all foreign residents. The FRBNY has provided guidance that the claims reportable on Form BC for investment managers to private funds are the claims of the investment managers themselves. The claims may include, among others, loans and loan participations, foreign brokerage accounts and short-term securities.

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[46] The monetary value of the above thresholds must be calculated in accordance with the aggregation rules in Form PF. Under those rules, (1) assets attributable to funds with a similar strategy, (2) assets managed by related persons that are not separately operated, (3) any parallel managed accounts (unless greater in value than the relevant fund assets individually or in the aggregate) and (4) private funds in a master-feeder arrangement must be combined with the fund assets being determined. Investments in other private funds, however, may be excluded. For further information relating to aggregation, see Form PF Frequently Asked Questions (available at https://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml).

"***TIC BL-1 Filers***" means any U.S. resident financial institution (including, but not limited to, private equity funds, hedge funds, investment advisers, broker-dealers and banks) that has either $25 million or more in U.S. dollar-denominated liabilities to persons in any one foreign country or $50 million in total liabilities to all foreign residents. The FRBNY has provided guidance that the liabilities reportable on Form BL-1 for investment managers to private funds are the liabilities of the investment managers themselves. Liabilities may include loans and loan participations from a foreign resident person and issuance of short-term securities.

"***TIC BL-2 Filers***" means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either $25 million or more in U.S. dollar-denominated liabilities to persons in any one foreign country or $50 million in total liabilities to all foreign residents. Liabilities may include (i) short-term securities and negotiable certificates of deposit, which are liabilities of U.S. resident customers to a foreign resident and are held by the reporting person as custodian; (ii) liabilities of U.S. residents to foreign managed offices of the reporting person; (iii) liabilities to U.S. residents pursuant to loans serviced by the reporting person; and (iv) short-term negotiable securities issued by the reporter directly into a foreign market. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a "managed foreign office" of the manager.

"***TIC BQ-1 Filers***" means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either $25 million or more in U.S. dollar-denominated claims against persons in any one foreign country or $50 million in total claims against all foreign residents. Claims may include (i) short-term securities and negotiable certificates of deposit, which are liabilities of foreign residents to U.S. residents and are held by the reporting person as custodian; (ii) claims of U.S. residents against managed foreign offices of the reporting person; (iii) claims of U.S. residents against foreign offices of the reporting person due to sweep accounts; and (iv) brokerage balances of U.S. residents placed abroad through the reporting person. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a "managed foreign office" of the manager.

"***TIC BQ-2 Filers***" means any U.S. resident financial institution with direct claims or liabilities or customer accounts with claims or liabilities (including, but not limited to, investment advisers, broker-dealers and banks) that has either $25 million or more in foreign currency-denominated claims or liabilities to persons in any one foreign country or $50 million in total claims or liabilities against all foreign residents. Claims and liabilities are as defined above and include those for the investment manager itself and for its client funds.

"***TIC BQ-3 Filers***" means any U.S. resident financial institution with $4 billion in amounts reported on Forms BC, BL-1 and BQ-2.

"***TIC D Filers***" means all entities resident in the United States that have derivative contracts that exceed the following exemption levels: (i) the total notional value of worldwide holdings of derivatives (including contracts with U.S. and foreign residents, measured on a consolidated worldwide basis) for the reporter's own account exceeds $400 billion; or (ii) the amount reported by a TIC D reporter for grand net total settlements (as defined in the form) exceeds $400 million (either a positive or negative value).

"***TIC S Filers***" means U.S. entities who, during the reporting month, (i) conduct transactions in U.S. long-term securities directly from or to foreign residents; and/or (ii) conduct transactions in foreign long-term securities directly from or to foreign residents or have foreign-resident agents conduct transactions in these securities on their own behalf or on behalf of customers, if the total reportable transactions in purchases or sales of long-term securities amount to $350 million or more during the respective month.[47] If a reporting person's repayable transactions exceed the $350 million threshold for any month, it must report for the remainder of the year.

"***TIC SHC Filer***" means any U.S. resident end-investor or custodian with holdings of foreign portfolio securities above the reporting threshold of $200 million U.S. dollars.

"***TIC SLT Filer***" means any person, when consolidated with any U.S. parts of its organization and any U.S. persons that it advises, that has $1 billion in (i) foreign long-term securities (including equity securities) that it owns, (ii) foreign long-term securities that it holds for others and (iii) long-term securities that it has issued to other persons.

[47] U.S. resident entities should consolidate all of their subsidiaries, except for foreign-resident offices and subsidiaries, in accordance with U.S. GAAP. If the level of transactions meets or exceeds the exemption level in any month, reporting is required for the remainder of the calendar year, regardless of the level of transactions in subsequent months, and for both purchases and sales even if only one meets or exceeds the exemption level. For further information, see Instructions for the Monthly TIC Form S (available at https://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-s.aspx).

## Contact Information

If you have any questions regarding this alert, please contact the Akin Gump lawyer with whom you usually work or


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