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2017-18 COMPLIANCE DEVELOPMENTS & CALENDAR FOR PRIVATE FUND ADVISERS

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Introduction

Despite an anticipated de-regulatory push, there are significant new regulatory concerns for investment advisers to address in connection with their annual review of their compliance manuals.

Developments

- **Changes to Form ADV.** The Securities and Exchange Commission (SEC) amended Part 1A of Form ADV effective as of October 1, 2017, to (i) codify the SEC staff's (the "Staff") guidance permitting "relying advisers" to use the filings of related "filing advisers" to become registered with the SEC; (ii) require additional reporting regarding separately managed accounts; and (iii) require additional information regarding the adviser, including use of social media and outsourced chief compliance officers.[1] All investment advisers filing a Form ADV as an amendment to a current filing or report will be required to use the new form after the effective date. Most of the new information will be required to be included in the new form in connection with the annual amendments relating to the 2017 fiscal year (due March 31, 2018, for most advisers) and for subsequent years. If an investment adviser files an unanticipated "other-than-annual" amendment to its Form ADV prior to its first annual amendment using the revised form, it may use zeros as placeholders and note in the "miscellaneous" section of Part 1A of Form ADV that they are placeholders.[2]

  As part of the adoption of the new form, the Staff provided guidance regarding what a "separately managed account" (SMA) is and what a "private fund" is for purposes of the amended Form ADV. Per the SEC guidance, a "fund of one" is generally not a private fund. Funds with one investor because either (i) only one investor remains after others have redeemed or (ii) funds that are open to subscriptions from other investors, but only one person has invested, are still deemed to be private funds.[3] Managers to entities that have single investors and are currently reported on Item 7B of Form ADV should consider either opening the funds of one up to other investors or moving them off of Item 7B and reporting them as SMAs.

- **ERISA.** On June 9, 2017, after years of proposals, comments and revisions, the Department of Labor's (DOL) new fiduciary rule became partially effective. The DOL's stated purpose in promulgating the rule was to expand the circumstances under which advisers to employee benefit plans subject to ERISA and individual retirement accounts (IRAs) could be considered ERISA "fiduciaries" to such plans and accounts. Of note, the fiduciary rule contains a general carve-out for plans and accounts represented by independent financial experts.

  On April 7, 2017, the DOL introduced a transition period, which is currently set to expire on January 1, 2018, during which fund managers and other financial institutions may satisfy a streamlined set of conditions known as the "impartial conduct standards" to comply with the rule, rather than having to comply with all of the conditions of the rule and its related exemptions. The "impartial conduct standards" generally require that fund managers and financial institutions give prudent advice that is in the best interests of retirement investors, charge no more than reasonable compensation therefor and not make misleading statements.

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[1] See the following for a comparison: https://www.sec.gov/rules/final/2016/ia-4509-form-adv-summary-of-changes.pdf.

[2] See guidance at https://www.sec.gov/divisions/investment/imannouncements/im-info-2017-06.pdf.

[3] See the ADV FAQ at http://www.sec.gov/divisions/investment/iard/iardfaq.shtml.

On August 31, 2017, the DOL published a proposed rule that would extend by 18 months the transition period for the fiduciary rule from January 1, 2018 to July 1, 2019. In the interim, many managers and other financial institutions are obtaining representations from their plan clients regarding the availability of the financial expert carve-out. This has led the same managers and institutions to seriously consider ceasing to do business with IRAs. In addition, some managers and other financial institutions are reviewing their communications with existing and potential clients with the aim of avoiding communications that could be viewed as investment recommendations under the new rule.

- **Books and Records Rule and Electronic Messaging.** Effective October 1, 2017, the SEC also amended its books and records rule to require registered investment advisers to retain the following irrespective of the number of recipients: (i) all supporting material for performance claims in any communications and (ii) any written communications with performance claims.[4]

  In addition, the Staff conducted a sweep in 2017 relating to the use of electronic messaging in which the Staff inquired into the monitoring, security, and recordkeeping practices and policies with respect to electronic messaging. Registered investment advisers and exempt reporting advisers should revise their recordkeeping policies and procedures to retain all performance claims and electronic messages that could constitute records.

- **Cybersecurity.** The SEC and other regulators continue to focus on cybersecurity risks, policies and protections. In August, the Staff published its observations from examinations of registered investment advisers, broker-dealers and investment companies regarding their governance and risk assessment (including penetration testing), access rights and controls, data loss prevention (including the use of tools for detecting access), vendor management (including periodic reassessments), training and incident response planning (including for cyber-related business continuity, denial of service and intrusion).[5] While the Staff observed that cybersecurity preparedness had improved since it previously evaluated cybersecurity practices, it still noted that many policies and procedures were vague and were not tailored to the particular business. The Staff also criticized policies that required frequent reviews of customer protection measures or supplemental security measures that were performed only annually or less frequently and policies that conflicted with other portions of the compliance manual. As with the Staff's alert earlier in 2017 relating to the WannaCry ransomware,[6] the Staff reminded registrants to continually monitor for availability of software patches, the absence of which could leave their systems vulnerable.

  In addition, the Staff provided guidance regarding policies and procedures that it observed at firms with “robust controls,” including:

  - maintenance of an inventory of data, information and vendors

  - detailed cybersecurity-related instructions, including information regarding evaluation of penetration tests and effectiveness of security solutions, security monitoring and system auditing, access rights (such as tracking access) and reporting guidelines

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[4] For further discussion see https://www.sec.gov/rules/final/2016/ia-4509.pdf.

[5] For the full results, see https://www.sec.gov/files/observations-from-cybersecurity-examinations.pdf.

[6] For further discussion, see https://www.sec.gov/files/risk-alert-cybersecurity-ransomware-alert.pdf.

- maintenance of prescriptive schedules and processes for testing data integrity and vulnerabilities, including patch management policies and beta testing thereof
- established and enforced controls to access data and systems, including acceptable use of firm's equipment and networks, enforced restrictions and controls for mobile devices, such as passwords and software that encrypts communications, logs of activity from third-party vendors and immediate termination of rights of terminated employees
- mandatory employee training.

The Staff noted that policies are more effective when they are vetted and approved by senior management.

In addition, the SEC announced that it is creating a cyber unit to focus on cyber-related misconduct, such as false information spread through electronic and social media, hacking to obtain material nonpublic information (MNPI), cyber-related threats to trading platforms, and violations involving distributed ledger technology and initial coin offerings.[7] Finally, the New York Department of Financial Services also adopted final cybersecurity rules that are applicable to any person registered under New York banking law, insurance law or financial services law.[8]

In Europe, the EU General Data Protection Regulation (GDPR) will become effective in May 2018. The GDPR will apply to organizations inside and outside the European Union if the persons process personal data of EU residents. The GDPR includes mandatory data breach notification requirements, "privacy by design," appointment of a data protection officer, and rights to personal data deletion or "erasure,"[9] with severe penalties for noncompliance of up to €20 million or 4 percent of worldwide turnover (whichever is higher).

- **Trading Policies.** The SEC may be emboldened by the Department of Justice's appellate victory over Matthew Martoma[10] and continue the prosecution of fund managers for trading-related issues. Recent SEC enforcement actions have continued to focus on the inadequacy of policies and procedures when illegal trading has occurred in a firm. In particular, the SEC targeted inadequacies in policies or in their enforcement that failed to:
  - obtain acknowledgement from "research providers" that the investment adviser did not wish to obtain MNPI
  - update diligence on a research provider and its policies on an annual basis
  - record material nonpublic information in research notes

[7] See https://www.sec.gov/news/press-release/2017-176.

[8] Most fund managers are either exempt from registration as investment advisers or are "notice registered" in New York and therefore are likely not covered by the rule.

[9] A right to erasure is the right to request that a company delete or remove personal data if there is no compelling reason for its continued possession.

[10] See https://www.akingump.com/en/news-insights/u-s-v-martoma-2nd-circuit-reconsiders-the-personal.html for more information.

- pay attention to red flags regarding the research provider, such as the research provider's chief investment officer also serving as its chief compliance officer and emails that referenced potentially MNPI[11]
- enforce its policy requiring written preapproval of all employee personal securities trades
- stop personal trading ahead of the publication of research
- establish and maintain information barriers around the research department.[12]

- **Custody Guidance.** The SEC considers investment advisers to have custody if they have possession of funds or securities or the ability to obtain possession of them. Many investment advisers to managed accounts[13] previously believed that the ability to only trade securities within accounts or potentially move funds or securities between accounts in the client's name would not result in the investment adviser being deemed to have "custody," and having to comply with the custody rule.

  In 2017, the Staff clarified the scope of the "custody" definition and provided relief from having to comply with the requirements of the custody rule. Per the Staff's guidance, an investment adviser with trading authority must comply with the custody rule, unless it has limited its authority over the custodial account and such limitations are acknowledged by the custodian.[14] Investment advisers may also be permitted to transfer cash and securities between accounts at the same broker or at different brokers without having deemed custody so long as they comply with Staff requirements, including written authorization by the clients.[15] Finally, third-party payments may be permitted so long as the client has entered into a specific letter of authorization that complies with Staff guidance.[16]

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[11] See Release IA-4749 (Aug. 21. 2017) https://www.sec.gov/litigation/admin/2017/ia-4749.pdf.

[12] See Release 34-81025 (Jun. 26, 2017) available at https://www.sec.gov/litigation/admin/2017/34-81025.pdf.

[13] The following guidance is irrelevant to a manager to a fund with a related-person general partner or a general power of attorney, since such a fund manager already has custody.

[14] Custodial agreements between the custodian and the client that (x) permit an investment adviser the right to receive money, securities and property of every kind and dispose of same; (y) allow the custodian to act in reliance on the adviser's instructions without direction from the client; or (z) authorize the adviser to instruct the custodian to disburse cash for any purpose may confer custody. Custodial agreements between the custodian and the client may, however, permit the custodian to disburse cash from the account on the adviser's instructions if the custodian, in good faith, believes that the instructions are given only in connection with securities trading activity or payment of fees owed to adviser without the investment adviser being deemed to have custody. Other disbursements must be approved by client. Note that, if fees may be withdrawn, limited custody obligations (i.e., those other than surprise audit) still apply. IM Guidance No. 2017-01 (Feb. 2017) available at https://www.sec.gov/investment/im-guidance-2017-01.pdf.

[15] The client may permit the adviser to transfer assets between accounts of the client at the custodian if the client has authorized the adviser in writing to make such transfers, and a copy of that authorization is provided to the sending qualified custodians that specifies the client accounts maintained with the qualified custodians (i.e., a written notice signed by the client, stating in particularity the name, account numbers of the sending and receiving accounts, ABA routing numbers or names of the receiving custodian). Custodial agreements between the custodian and the client may permit the adviser to transfer assets between accounts of the client at

In 2017, the SEC began to use the custody rule as a means to turn accounting issues into enforcement actions. For example, the SEC brought and settled an enforcement action against an investment adviser that used assumptions in its discounted cash flow valuation of a loan that the SEC believed were unreasonable due to the likely impairment of the borrower's ability to pay. The SEC then used the fact that the financial statements would not comply with GAAP if the loan were incorrectly valued to claim that the investment adviser violated the custody rule.[17] The SEC also brought an enforcement action against an investment adviser that charged unauthorized expenses to its clients and whose audited financial statements failed to disclose the related-party payments and therefore did not comply with GAAP.[18] Finally, the SEC has brought and settled an enforcement action against an investment adviser for, among other things, using an auditor that was registered, but not inspected by the PCAOB.[19]

- **Expense Allocation.** Investment advisers continue to be under scrutiny for charging clients for operational expenses of the investment adviser, unless the language of the governing documents clearly permits those charges. In one recently settled enforcement action, the SEC focused on the relevant investment adviser's inadequate and vague policies regarding allocation of expenses. The SEC favorably noted that the investment adviser recently amended its policies to (i) establish multiple layers of review for expense allocations and (ii) adopt escalation procedures to the compliance department if a difference arose regarding the allocation of expenses. It also noted an increased oversight of expenses charged by investment personnel.[20]

- **Valuation.** As in previous years, the SEC continues to focus on valuation issues. First, the SEC brought and settled an enforcement action against an investment adviser that continued to use the values of a third-party valuation service that did not comply with GAAP when the prices received for securities that were sold were significantly less than those provided by the valuation service.[21] Finally, as referenced in the custody section, the SEC brought and settled an enforcement case against an investment adviser that used unreasonable assumptions for valuations of securities.[22]

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the same custodian or affiliated custodians that have access to sending and receiving account numbers and client name. Staff Responses to Questions About the Custody Rule, Question II.4 (Modified Feb. 21, 2017) available at https://www.sec.gov/divisions/investment/custody_faq_030510.htm#II.4 and IM Guidance Update No. 2017-01 (Feb. 2017) available at https://www.sec.gov/investment/im-guidance-2017-01.pdf.

[16] A letter of instruction established by a client with a qualified custodian to permit the adviser to transfer money either on a regular schedule or from time to time between the custodial account of the client and third-party accounts if the client has authorized the custodian in writing to make such transfers and specifies the third-party accounts (i.e., a written notice signed by the client, stating in particularity the third party's name and either the third party's address or account numbers at the receiving custodian), the qualified custodian verifies the signature of the client, the client has the ability to terminate or change the instruction to its qualified custodian, the adviser has no authority to change the identity of the third party, the third party is not affiliated with the adviser and has documented that fact and the qualified custodian sends the client a notice confirming the notice and an annual notice reconfirming the instruction. SEC No-Action Letter to the Investment Adviser Association (pub. avail. Feb. 21, 2017) available at https://www.sec.gov/divisions/investment/noaction/2017/investment-adviser-association-022117-206-4.htm.

[17] See Release IA-4731 (Jul. 19, 2017) available at https://www.sec.gov/litigation/admin/2017/34-81173.pdf.

[18] See Release IA-4766 (Sept. 11, 2017) available at https://www.sec.gov/litigation/admin/2017/ia-4766.pdf.

[19] See Release IA-4734. https://www.sec.gov/litigation/admin/2017/ia-4734.pdf.

[20] See Release IA-4746 (Aug. 16, 2017) available at https://www.sec.gov/litigation/admin/2017/ia-4746.pdf.

[21] See Release IA-4672 (Mar. 29, 2017) available at https://www.sec.gov/litigation/admin/2017/ia-4672.pdf.

[22] See IA-4731 (Jul. 19, 2017) available at https://www.sec.gov/litigation/admin/2017/34-81173.pdf.

- **Pay-to-Play Rule.** The SEC's pay-to-play rule prohibits an investment adviser from receiving compensation from a government entity for two years if the investment adviser or its "covered associate" makes a contribution to an official of a government entity (with direct or indirect authority to hire the investment adviser) or hires a third party to solicit a government entity, unless the third party is regulated and subject to a similar rule. The SEC staff previously provided relief from the requirement that third-party solicitor be subject to a similar rule, but that relief will expire on August 20, 2017, for all broker-dealers other than capital acquisition brokers.[23] Effective on September 29, 2017, the Financial Industry Regulatory Authority, Inc. (FINRA) clarified that its pay-to-play rules also apply to capital acquisition brokers, and, therefore, all eligible third-party solicitors are now subject to pay-to-play restrictions.

- **Advertising Common Violations.** The Office of Compliance Inspections and Examinations provided a list of common violations that it noted in connection with the examinations that it has conducted. The list of observed issues does not dramatically change previous guidance, but summarizes the no-action guidance previously provided and reiterates that the Staff continues to look to the previous guidance.[24]

- **Increase in Examinations.** SEC Chairman Jay Clayton testified to Congress that the SEC's Office of Compliance Inspections and Examinations is "on track" to increase examinations approximately 30 percent in the SEC's fiscal year 2017 as compared to 2016.[25] We have observed several recent examinations in which the Staff has focused on, among other things, insider trading policies, conflicts of interest, allocation of expenses and potential principal cross trades. In addition, the SEC has continued to bring enforcement actions using aggressive theories as described above.

- **Offerings of Interests under the Securities Act of 1933.** The SEC sustained a disciplinary finding by FINRA in 2017 against a broker-dealer who participated in a Regulation D private placement under Rule 506(b)[26] under the Securities Act of 1933 in which the issuer violated the prohibition against "general solicitation" by publishing an article in a local newspaper and posting the article on the fund sponsor's website. The SEC found that the fact that the article was targeted at finding investments instead of investors did not preclude the newspaper articles from constituting a prohibited offer under the Securities Act of 1933. It also held that the fact that all investors that finally invested in the fund after the article was published had a pre-existing relationship with the broker-dealer does not mean that general solicitation had not occurred.[27]

  The SEC also brought and settled an enforcement action against a research report provider that published research reports with respect to certain public securities The SEC alleged, among other things, that the research provider failed to fully disclose its conflict of interest. The SEC acknowledged in its enforcement that the research provider disclosed the fact that it was compensated, but found that disclosure was inadequate because the research provider failed to disclose the amount of that compensation.

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[23] https://www.sec.gov/divisions/investment/pay-to-play-faq.htm#1.5.

[24] National Exam Program Risk Alert, Vol. VI, Iss. 6 (Sept. 14, 2017) available at https://www.sec.gov/ocie/announcement/risk-alert-advertising.

[25] https://www.sec.gov/news/testimony/testimony-clayton-2017-09-26.

[26] The offering at issue pre-dated the ability to conduct a private placement with general solicitation under Rule 506(c) under the Securities Act.

[27] See Release 34-80340 (Mar. 29, 2017) available at https://www.sec.gov/litigation/opinions/2017/34-80340.pdf.

- **Section 13(d) Filings.** The SEC brought and settled an enforcement action against a fund manager that failed to transition from a Schedule 13G to a Schedule 13D when it collaborated with another fund to advocate for an issuer to sell itself or when it agreed with the issuer to join the board of directors. It also brought actions against the investment adviser and other group members for developing plans for the issuer without discussing those plans in its 13D amendments.[28]

- **Crypto Currency Developments.** The SEC published an investigative report relating to an offering of a "decentralized autonomous organization" (DAO) token to investors in 2017 that addressed whether the token could be a security and whether the offering and sale of the DAO token would be subject to U.S. securities laws.[29] The SEC found that a DAO or other token could be a security if it is an "investment contract" in which the profitability of the token relates to the efforts of others. This report means that, before a fund invests in or offers cryptocurrency, the cryptocurrency must be thoroughly diligence to determine whether it is a security. Certain instruments, such as bitcoin, are more clearly commodities;[30] other tokens carry more risk.

  Investment advisers also have challenges in determining how to custody a blockchain token, since blockchain technology is designed to remove intermediaries, while custody safeguards rely on those intermediaries. While at least one entity has begun to act as a custodian in this area, custody questions continue to present challenges for investment advisers.

- **Commodity Futures Trading Commission and National Futures Association Changes.** The Commodity Futures Trading Commission (CFTC) proposed and adopted changes to its recordkeeping rules effective in August 2017 to permit commodity pool operators (CPOs) and commodity trading advisors (CTAs), among others, more flexibility in how they maintain their books and records. CPOs and CTAs are no longer required to keep records in their original file format or to maintain them in a "write once read many" format, among other changes.[31]

  While post-Dodd-Frank position limits that incorporate certain swaps into the federal speculative position limits have not yet been adopted, the CFTC adopted aggregation requirements for computing compliance with federal speculative limits, which are currently effective. Persons trading commodity interests that are subject to speculative position limits should consider whether they are subject to these position limits and file the appropriate notice with the CFTC.[32] The CFTC staff, however, provided useful guidance that, until August 12, 2019, [33] a trader is not required to file a notice until five days after a request to do so from an exchange or the CFTC.

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[28] See Release 34-80038 (Feb. 14, 2017) available at https://www.sec.gov/litigation/admin/2017/34-80038.pdf.

[29] See Release 34-81207 (Jul. 25, 2017) available at https://www.sec.gov/litigation/investreport/34-81207.pdf.

[30] See In the Matter of Coinflip, Inc. et al. available at http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliprorder09172015.pdf.

[31] See 82 Fed. Reg. 24479 (May 30, 2017) available at http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2017-11014a.pdf.

[32] See https://www.akingump.com/en/news-insights/cftc-adopts-amendments-to-position-limit-aggregation-exemption.html for information.

[33] See CFTC Letter 17-37 (Aug. 10, 2017) available at http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/17-37.pdf.

Finally, the National Futures Association (NFA) amended its rules to require CTAs to add two ratios to their Forms CTA-PR: current assets over current liabilities and total revenue over total expenses for any filings on or after June 30, 2017.[34]

- **BE-12 Filings.** The Bureau of Economic Analysis's benchmark report on foreign direct investment in the United States for 2017 will be due in 2018. Because it will be a benchmark report, all domestic entities directly owned by foreign persons must file a Form BE-12 by May 31, 2018, whether or not they have received an invitation from the BEA. As per other BEA filings, we believe that no filing need be made if the foreign persons do not own any investments in an operating company. In addition, the filings are not required, unless certain value thresholds are exceeded.[35]

- **Tax Audits of Investment Funds.** The new U.S. partnership audit regime adopted under the Bipartisan Budget Act of November 2, 2015 ("BBA"), is scheduled to enter into effect for audits of U.S. federal information returns (IRS Form 1065) filed for partnership taxable years beginning after December 31, 2017 (unless in the unlikely event that an investment fund opts in earlier). The BBA regime represents a significant overhaul of the audit regime applicable to U.S. and certain non-U.S. investment fund vehicles that are taxed as partnerships for U.S. federal income tax purposes. While under the existing audit rules, adjustments are generally made in fund-level audit proceedings, such adjustments flow through to the investors, and any associated tax is also assessed by the Internal Revenue Service (IRS) at the investor level. Under the new regime, adjustments are permitted to be made, and tax is permitted to be assessed and collected by the IRS at the fund level.

  The BBA audit regime is complex and some aspects of its implementation are uncertain. Additional guidance will be forthcoming before implementation.[36]

- **MiFID II.** The Markets in Financial Instruments Directive (MiFID) is the framework of European Union (EU) legislation governing the organization and business operations of investment firms that provide investment services to clients relating to financial instruments (including shares, bonds, fund interests and derivatives), and the trading of financial instruments. MiFID has been in force from 2007, but is being revised to improve the operation of financial markets in light of the financial crisis and to bolster investor protection. The changes are currently set to take effect on January 3, 2018, with the new legislation being known as MiFID II (consisting of revised MiFID and a new Markets in Financial Instruments Regulation (MiFIR)). Some of the key provisions under MiFID II include more extensive trade transparency requirements, new position limits and reporting requirements in relation to commodity derivatives; restrictions on trading EU-listed instruments outside the EU; more restrictive requirements on conflicts of interest, including inducements (notably in relation to investment research); enhanced best execution and client disclosure requirements, and a legislative framework for a "passport" potentially facilitating non-EU firms' access to EU markets at a later date.

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[34] For further information, please see https://www.nfa.futures.org/news/PDF/CFTC/CR-2-46_InterpNotc9071_082016.pdf.

[35] Final instructions for this form have not been released.

[36] A summary of the highlights of this new regime can be accessed at https://www.akingump.com/en/news-insights/comprehensive-overhaul-of-partnership-audit-regime.html.

Compliance Calendar

Following is a list of common fixed compliance dates of U.S. laws and regulations applicable to investment managers to private investment funds for the period from September 2017 to October 2018. Following the compliance calendar is a list of floating compliance dates, a list of form filing dates that are triggered 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 omitted the filing requirements for (i) liquidity fund advisers in Form PF; (ii) tax returns generally; and (ii) 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.

September 2017

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

October 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	**2** Amendment to Form 13H due promptly[37] if any changes to information for Form 13H Filers	**3**	**4**	**5**	**6**	**7**
8	**9** **Columbus Day**	**10**	**11**	**12**	**13**	**14**
15	**16** A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**17**	**18**	**19**	**20** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers	**21**
22	**23** TIC Form SLT due date for TIC SLT Filers	**24**	**25**	**26**	**27**	**28**
29	**30** (A) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs* (B) Due date for quarterly transaction reports from access persons of RIAs, unless exception or alternate reporting method is used (C) Due date for Form BE-577 for all BE-577 Filers* (D) Due date for Form BE-605 for all BE-605 Filers*	**31**				

[37] 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 2017

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

December 2017

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	**2**
3	**4**	**5**	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	**14**	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**
17	**18**	**19**	**20**	**21**	**22**	**23**
24	**25** **Christmas Day**	**26** Form SLT due date for TIC SLT Filers	**27** 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 Cayman and other investment funds located in "early adopter" jurisdictions participating in CRS must generally have completed their due diligence efforts with respect to all pre-existing investors Investment funds located in non-early adopter jurisdictions participating in CRS must generally have completed their due diligence efforts with respect to all pre-existing, high-value individual investors						

January 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 **New Year's Day** Effective date for partnership tax audits under the new regime enacted by the BBA	**2** Amendment to Form 13H due promptly if any changes to information for Form 13H Filers[38]	**3**	**4**	**5**	**6**
7	**8**	**9**	**10**	**11**	**12**	**13**
14	**15** **Martin Luther King, Jr. Day**	**16** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**17**	**18**	**19**	**20**
21	**22** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers	**23** TIC Form SLT due date for TIC SLT Filers	**24**	**25**	**26**	**27**
28	**29**	**30** (A) Due date for quarterly transaction reports from access persons of an RIA, unless exception or alternate reporting method is used (B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPO*	**31**			

[38] 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 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	**2**	**3**
4	**5**	**6**	**7**	**8**	**9**	**10**
11	**12**	**13**	**14** (A) Due date for amendments to Schedule 13G if any changes have occurred (B) Form 13F due for Form 13F filers (C) Due date for Form 5 (likely inapplicable) (D) Due date for annual amendment to Form 13H[39] (E) Form CTA-PR due for all registered CTAs (F) Due date for Form BE-577 for BE-577 Filers* (G) Due date for Form BE-605 for all BE-605 Filers*	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**
18	**19** **Presidents' Day**	**20** TIC D report submission due date for TIC D Filers	**21**	**22**	**23** TIC Form SLT due date for TIC SLT Filers	**24**
25	**26**	**27**	**28**			

[39] Not required if quarterly amendment was filed for the fourth quarter.

March 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 (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) (B) CFTC Form CPO-PQR (all schedules) due date for all Large CPOs (C) Deadline to reaffirm exemptions under 4.13(a)(3) and 4.14(a)(8)	**2** TIC Form SHCA due date (if requested)	**3**
4	**5**	**6**	**7**	**8**	**9**	**10**
11	**12**	**13**	**14**	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**	**17**
18	**19**	**20**	**21**	**22**	**23** TIC Form SLT due date for TIC SLT Filers	**24**
25	**26**	**27**	**28**	**29**	**30** **31** Form ADV annual updates due date for RIAs and ERAs*	

April 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	**2** (A) CFTC Form CPO-PQR Schedule A due date for all registered CPOs other than Large CPOs (B) NFA Form CPO-PQR for all other NFA members (other than Large CPOs) (C) Form BE-185 due for BE-185 Filers (D) Amendment to Form 13H due promptly if any changes to information for Form 13H Filers (E) CFTC Form CPO-PQR Schedule B* due date for Mid-Sized CPOs according to the CFTC (F) 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*	**3**	**4**	**5**	**6**	**7**
8	**9**	**10**	**11**	**12**	**13**	**14**
15	**16** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**17** FinCEN Form 114 must be filed by FBAR Filers by April 17 following the year being reported	**18**	**19**	**20** (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers	**21**
22	**23** Form SLT due date for TIC SLT Filers	**24**	**25**	**26**	**27**	**28**
29	**30** (A) Delivery Date for ADV Part 2A brochure* (B) Required date for RIAs who are not registered CPOs of funds to have delivered annual audited financial statements (other than funds of funds)*[40] (C) Due date for quarterly transaction reports from access persons of RIA, unless exception applies or alternate reporting method is used (D) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs* (E) Due date for Cayman TIA notification by Cayman investment funds required to submit CRS report for the first time in respect of calendar year 2017. (F) Due date for Form BE-577 for all BE-577 Filers* (G) Due date for Form BE-605 for all BE-605 Filers* (H) Form PF due date for all RIAs with more than $150 million in AUM attributable to private funds (including Large Private Equity Fund Advisers)*					

[40] 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 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13 .	14	15 (A) Form 13F due for Form 13F Filers. (B) Form BE-185 due for BE-185 Filers* (C) TIC Form S due for TIC S Filers (D) TIC Form BC due for TIC BC Filers (E) TIC Form BL-1 due for TIC BL-1 Filers (F) TIC Form BL-2 due for TIC BL-2 Filers (G) Form CTA-PR due for all registered CTAs	16	17	18 .	19
20	21 TIC D report submission due date for TIC D Filers	22	23 TIC Form SLT due date for TIC SLT Filers	24	25	26
27	28 **Memorial Day**	29	30 (A) Form PF due date for Large Hedge Fund Advisers* (B) NFA Form CPO-PQR for all but Large CPOs (C) CFTC Form CPO-PQR due date for Large CPOs	31 (A) Due date for Form BE-12 for all BE-12 Filers (if not e-filing) (subject to certain extensions) (B) Due date for Form BE-11 for all BE-11 Filers (C) Cayman investment funds must complete their CRS report and file with Cayman TIA with respect to the immediately preceding calendar year (D) Cayman investment funds required to report must complete their FATCA report and file with Cayman TIA with respect to the immediately preceding calendar year.		

June 2018

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	**2**
3	**4**	**5**	**6**	**7**	**8**	**9**
10	**11**	**12**	**13**	**14**	**15** (A) TIC Form S due for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers	**16**
17	**18**	**19**	**20**	**21**	**22**	**23**
24	**25** TIC Form SLT due date for TIC SLT Filers	**26**	**27**	**28**	**29** (A) Required date for RIAs to have delivered audited financial statements to fund of funds clients* (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 2018

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

August 2018

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

September 2018

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

October 2018

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

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 they 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	Midsized fund advisers generally must apply for registration within 90 days after filing the 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[41] 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 the 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.

[41] 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
CRS Due Diligence Date	December 31, 2018	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 all pre-existing investors by December 31, 2018.
TIC SHC	March 2022	Report of U.S. Ownership of Foreign Securities (as of December 31, 2021).
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-15	May 2019-2022	Annual Survey of Foreign Direct Investment in the United States (filed in years other than BE-12 benchmark years).
BE-180	October 2020	Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons.

"***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.

"***BBA***" means the U.S. partnership audit regime enacted under the Bipartisan Budget Act of 2015.

"***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-12 Filer***" means any U.S. person (other than private funds) whose voting securities are more than 10 percent owned by a foreign person at the end of the calendar year.

"***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-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[42] 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 loans and loan participations, foreign brokerage accounts and short-term securities.

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[42] 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.[43] 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 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

[43] 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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