January 2017

Annual Compliance Obligations for U.S. SEC-Registered Investment Advisers

Below is a summary of several of the annual compliance obligations imposed on investment advisers registered with the U.S. Securities and Exchange Commission (the "SEC"), and which are registered with the U.S. Commodity Futures Trading Commission ("CFTC"), or are exempt from registration, as commodity pool operators ("CPOs") or commodity trading advisors ("CTAs").

SEC Requirements Specific to Registered Investment Advisers

Funding the Investment Adviser's IARD Account

SEC-registered investment advisers and "exempt reporting advisers" ("ERAs") must fund their IARD accounts to pay all applicable registration renewal fees and notice filing fees before submitting their annual Form ADV amendment by March 31 (or March 30 during a leap year).[1]

Form ADV – Annual and Other Updates

Investment advisers who are registered with the SEC, including ERAs, must amend their Form ADV each year by filing an annual updating amendment within ninety (90) days after the end of their fiscal year. The annual amendment must update responses to all applicable items. As mentioned above, advisers should pre-fund their IARD account with an amount sufficient to cover the relevant IARD filing fees. In addition to annual updates, an adviser's Form ADV may need to be amended promptly if information the firm provided in response to certain Form ADV Items (e.g., Items 1, or 3) becomes inaccurate in any way, and information the manager provided in response to certain Items (e.g., Item 4) becomes materially inaccurate.

In addition to maintaining the accuracy of its Form ADV, a registered adviser must generally provide a "brochure" to each client before or at the time it enters into an advisory agreement with that client. A registered investment adviser each year must also generally (i) deliver, within one hundred twenty (120) days of the end of its fiscal year, to each client an updated brochure that includes a summary of any material changes in its business, or (ii) deliver to each client a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how a client may obtain the brochure.

Please note that in 2016 the SEC adopted significant amendments to Form ADV, which registered investment advisers must comply with on and after October 1, 2017.

Annual Privacy Notice

Regulation S-P generally requires an investment adviser to provide investors or clients who are natural persons with an annual notice of the manager's privacy policy, even if the manager has not changed its privacy policy. However, investment advisers that do not disclose non-public personal information ("NPI") to anyone (that is, other than in connection with servicing client / consumer accounts or where another exception under Regulation S-P applies) generally need not deliver annual privacy notices if the adviser has not changed its policies and procedures with respect to the disclosure of NPI since it delivered its most recent client privacy notice. An investment adviser's ability to avoid delivering annual notices will be based on the particular facts and circumstances applicable to its business and operations, including its practices regarding the disclosure of NPI.

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[1] The IARD account must also be funded before the registrant submits its filing on Form PF.

Identity Theft / "Red Flag" Rules

Regulation S-ID – containing the "red flags" rules -- requires SEC-registered investment advisers satisfying certain criteria to develop and implement a program to prevent identity theft. The term "red flag," as defined in Regulation S-ID, includes "a pattern, practice, or specific activity that indicates the possible existence of identity theft." The provisions of Regulation S-ID apply to the "covered accounts" of a "consumer" custodied by or for a "financial institution." "Consumers" are individuals; accordingly, an investment adviser without individual clients is not a "financial institution." However, Regulation S-ID also applies to an investment adviser that is a creditor of its clients (i.e., if the manager regularly extends credit to any of its clients, including institutional clients). If the investment adviser is a "financial institution" or a creditor, its "red flag" program must apply to "covered accounts," which are accounts that are either primarily for personal, family, or household purposes and through which multiple payments are made, or, alternatively, nonetheless involve a reasonably foreseeable risk of identity theft. A "covered account" includes an account that permits a client to make direct or indirect payments to third parties.

Regulation S-ID, where it applies, requires SEC-registered investment advisers to develop and implement a written program designed to prevent identity theft. To comply with the regulation, the red flags compliance program must include written policies and procedures designed to identify possible red flags relevant to the manager's business, and must function to detect red flags. Moreover, the investment manager must respond appropriately to red flags identified by or through its program, and update the program to reflect the investment adviser's red flag experiences.

As a practical matter, investment advisers who have the right (e.g., through a power of attorney) to transfer capital (e.g., from processing a redemption request) distributed to an investor who is a natural person to an account in the name of someone other than the investor must comply with the red flag rules.

Custody / Annual Audit / Surprise Audit

Investment managers who have, or are deemed to have, custody of client assets must comply with Rule 206(4)-2 of the Investment Advisers Act of 1940 (the "Advisers Act"). Advisers may comply with the rule through being subject to an annual "surprise audit," or they may avoid this requirement by retaining a Public Company Accounting Oversight Board-registered independent auditor to provide (a) audited financial statements of their client accounts (i.e., of the fund(s) managed by the adviser), prepared in accordance with U.S. generally accepted accounting principles, (b) to the fund(s)' investors within one hundred twenty (120) days (one hundred eighty (180) days in the case of funds-of-funds) of the end of the funds' fiscal year.

"Pay-to-Play"

Investment managers should review their pay-to-play policies and procedures, and any political contributions or other triggering activity by the firm's staff that could require the firm, or individual employees, to register as lobbyists. Investment managers should include in their pay-to-play review any contributions (including conduct that could result in a deemed contribution) that could trigger state-specific laws which have similar or additional requirements than those imposed under the SEC's regulations.

Annual Assessment of Compliance Program

An SEC-registered investment adviser is required to conduct a review at least annually to assess the effectiveness of its compliance program in detecting and preventing violations of the securities laws. The review should be documented by the manager's compliance staff, and should take into account the adviser's specific business model and staffing. In addition, the review should cover (a) violations by the manager's staff of firm policies during the period under review; (b) the firm's code of ethics, including compliance by the firm's staff with its personal trading policy; (c) the manager's marketing policies and practices; (d) its valuation policies

and procedures; (e) any limitations imposed on "benefit plan investors" under the firm's policies; (f) the manager's business continuity / disaster preparedness testing conducted in the period under review; and (g) the firm's social media policies and procedures. The review should also include those areas which the SEC has prioritized for examination in 2017 (several of which are listed below).

Form PF

Investment advisers to one or more private funds with aggregate assets under management ("AUM") of at least $150 million are obligated to file Form PF with the SEC. A manager may, in addition, have an obligation to file Form PF quarterly, depending on the nature of the funds managed by the adviser and its aggregate AUM. For example, "large liquidity fund advisers"[2] must file their Form PF within fifteen (15) days of each fiscal quarter-end, "large hedge fund advisers"[3] must file Form PF within sixty (60) days of each fiscal quarter-end, and all other filers must file Form PF with the SEC within one hundred twenty (120) days of each fiscal year-end.[4]

Cybersecurity / NPI Risk Assessment

Given the SEC's many statements on the importance of investment managers protecting investor NPI, registrants should undertake a cybersecurity / privacy risk assessment at least annually, and should address any gaps or weaknesses in its policies, procedures, and systems identified through that assessment.[5] The risk assessment should be conducted separately from the annual compliance program review referenced above.

SEC Enforcement Priorities

Through press releases and regular industry presentations by senior staff, the SEC has identified the following general areas as subject to particular focus by its Enforcement Division in 2017:

- Conflicts of interest
- Fees and allocations of expenses
- Trade allocations
- Best execution
- Safeguarding client information / privacy compliance / cybersecurity
- Business continuity and disaster recovery planning and preparations
- Selective disclosures to investors

[2] "Large liquidity fund advisers" are investment managers with at least $1 billion in aggregate AUM attributable to liquidity funds and registered money market funds.
[3] "Large hedge fund advisers" are investment managers with at least $1.5 billion in aggregate AUM attributable to hedge funds.
[4] Including, for example, "smaller private fund advisers" and "large private equity fund advisers," which are advisers with at least $2 billion in aggregate AUM attributable to private equity funds. All investment managers with at least $150 million in AUM that are not considered "large hedge fund advisers," "large liquidity fund advisers," or "large private equity fund advisers" are considered "smaller private fund advisers."
[5] In September 2015, the SEC successfully concluded its first enforcement action alleging violations of Regulation S-P due to an investment manager's failure to develop and implement adequate cybersecurity policies and procedures. In the Matter of R.T. Jones Capital Equities Management, Inc., SEC Release No. 4204, File No. 3-16827 (Sep. 22, 2015).

- Firm procedures and supervision of personnel
- Principal trades and "agency cross" trades
- Insider trading
- Valuation of portfolio securities
- Disclosures relating to fund and account performance, assets under management, and the investment manager's (and key staff's) backgrounds
- Failing to disclose changes in investment strategy
- Failing to register as a broker-dealer
- Custody Rule violations
- Foreign Corrupt Practices Act violations

State Investment Adviser Requirements

Some states require that SEC-registered investment advisers and ERAs submit notice filings to the local regulator. For example, ERAs who have their principal place of business in Connecticut can file a duplicate Form ADV Part 1A with the State of Connecticut. The same approach is permitted in Minnesota. In each such case, the duplicate filing is submitted through the IARD system and is done annually.

Advisers who are not registered with the SEC and have their principal office and place of business in a U.S. state should review their registration status under state law. For example, an adviser generally needs to register with the State of New York if it has six or more clients in New York (and if an adviser is registered with the SEC, it should submit a notice filing through the IARD system if it has six or more clients in New York).

Fund Ownership-Related Filings

Form 13F

An "institutional investment manager" must file Form 13F with the SEC if it exercises investment discretion with respect to $100 million or more in securities subject to Section 13(f) of the Securities Exchange Act of 1934 (the "Exchange Act"). Section 13(f) securities are not limited to equity securities, but include exchange-traded securities, shares of closed-end investment companies, and certain convertible debt securities. The obligation to file Form 13F applies to managers regardless of whether they are registered with the SEC or a state securities authority. An adviser's initial filing must occur within forty-five (45) days after the end of the calendar year in which the manager reaches the $100 million filing threshold, and within forty-five (45) days of the end of each calendar quarter thereafter, as long as the manager continues to satisfy the $100 million filing threshold.

Form 13H

Rule 13h-1 under the Exchange Act requires "large traders" to register with the SEC and to make certain disclosures on Form 13H thereafter. The term "large trader" is defined as a person that (a) exercises investment discretion over one or more accounts and (b) effects transactions of NMS securities for or on behalf of those accounts (c) in an aggregate amount of at least $20 million in a day, or $200 million in a month. The "large

trader's" initial filing must be made within ten (10) days from the date on which it crosses the applicable reporting threshold. In addition, a "large trader" is required to make an annual filing on Form 13H within forty-five (45) days after the end of the calendar year, and submit any amendments to its most recent 13H filing on record promptly after the end of any calendar quarter in which the information included on the form becomes materially inaccurate.

Schedules 13G / 13D

If an investment manager during the calendar year has reported on Schedule 13G filed with the SEC that a client (or clients) or account (or accounts), separately or in the aggregate, are beneficial owners of five percent (5%) or more of a class of a U.S.-registered voting equity security, then the manager is required to update the filing annually within forty-five (45) days of the end of the calendar year. The filing is not required if there has been no change to any of the information reported in the previous filing (other than the account-holder's percentage ownership due solely to a change in the number of outstanding shares). An adviser reporting on Schedule 13D – which is used where the manager does not qualify to file on Schedule 13G -- is required to amend its filings "promptly" upon the occurrence of any "material changes" in the information previously reported on the form.

Section 16

Under Section 16 of the Exchange Act, an investment manager to a fund or account which is the beneficial owner of ten percent (10%) or more of a class of a U.S.-registered voting equity security must monitor its control to determine whether it is subject to any reporting obligations, or potential "short-swing" profit liability or other restrictions. If a fund or account exceeds that ownership threshold, then the manager, on behalf of the fund or account, must file a Form 3 with the SEC to report the ownership information. Changes to that ownership information must be reported on Form 4, and the manager must file a Form 5 within forty-five (45) days of the end of the issuer's calendar year to report any changes in information not previously reported on Form 4, among other circumstances.

Offering-Related Obligations

Rules 506(c) and 506(d)

Under Rule 506(c), a private fund may engage in a general solicitation and utilize general advertising when making a securities offering, so long as the fund sells its securities only to "accredited investors," as defined in Regulation D under the Securities Act of 1933. The rule, and interpretive statements by the SEC since its enactment, make clear that investment managers to funds engaged in a general solicitation are required to take reasonable actions to verify that each investor is "accredited" under Regulation D. Importantly, the investment manager may no longer rely simply upon the written representation(s) from the investor that the investor is accredited (although reasonable reliance remains permitted for private placements conducted in compliance with Rule 506(b), which do not involve a general solicitation). It is not clear how the investment manager is expected to demonstrate that it has acted "reasonably" under the circumstances – guidance from the SEC indicates only that there are certain non-exclusive methods that a manager may utilize to determine the investor's accredited status, including by reviewing the investor's federal tax returns, and obtaining confirmation of the investor's status from a satisfactory third-party (e.g., broker-dealer or registered CPA) who has conducted business with the investor. On the other hand, it is clear that the burden to demonstrate that the investment manager has acted reasonably falls on the adviser, which should retain documents establishing what it relied on and why that reliance was reasonable. Investment advisers should also note that the adoption of Rule 506(c) did not result in modifications to, or the repealing of, the existing components of Rule 506, relating to private

placement exemptions; hence the latter exemptions remain available to advisers of private funds who do not seek to raise capital through a general solicitation.[6]

Rule 506(d) – "Bad Actor" Disqualification

Under Rule 506(d) of Regulation D, a "covered person" who commits a "bad act" on or after September 23, 2013, disqualifies the offering from being able to rely on the Rule 506 private placement exemptions.[7] Examples of "bad acts" that could cause such disqualification include certain categories of criminal convictions, the entry of certain SEC orders, and suspensions or expulsions from membership in FINRA. The SEC may waive the disqualification of the offering, but is anticipated to do so only where the investment adviser to the fund engaged in the private placement is able to demonstrate that it did not know, and should not have reasonably known (i.e., through the exercise of prudence), of the disqualifying event. In other words, investment managers to funds engaged in a private placement should be prepared to produce documentation demonstrating that they made reasonable efforts to identify "bad acts" committed by "covered persons." This documentation may take the form of a questionnaire, for example. In any case, investment advisers to private funds engaged in an ongoing offering intended to comply with Rule 506 should ensure that they periodically update the information collected from "covered persons."

Blue Sky / Form D Filings

Investment managers should review the "blue sky" (i.e., state law) and Form D filings made by the funds which they manage. "Blue sky" filings may have to be renewed or revised, and / or an additional submissions may have to be made. A Form D filed with the SEC in relation to continuous offerings by funds managed by an investment adviser must be amended on an annual basis. Investment managers should note that Form D was amended with the enactment of Rule 506(c) (see above): funds engaged in a general solicitation must check the box indicating that the offering is being made pursuant to Rule 506(c).

New Issues: Rules 5130 and 5131

Under FINRA Rule 5130, member firms (e.g., brokers and dealers) are prohibited from selling new issues (i.e., shares issued in an initial public offering, or "IPO") to any account in which a "restricted person" has a beneficial interest.[8] To comply with this requirement, brokers generally ask their investment manager clients (that is, on behalf of the funds advised by those managers) to represent that the funds are eligible to receive securities issued in an IPO. Before responding to the broker, the adviser should (a) obtain from each investor an updated representation that the investor's status has not changed since the certification made by that investor when initially subscribing for interests in the fund, and (b) confirm that the aggregate ownership of the fund by "restricted persons" does not exceed more than ten percent (10%) of the beneficial interests issued by the fund.

In addition, under FINRA Rule 5131, member firms are prohibited from allocating new issues to any account (e.g., an account in the name of a fund managed by the adviser) in which a beneficial interest in excess of

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[6] Note that the "de minimis" exemption for CPOs under CFTC Rule 4.13(a)(3) (and the "registration lite" regime available to registered CPOs) require that the securities to be issued by the pool (i.e., the fund managed by the investment adviser) may not be offered and sold through marketing to the public in the U.S. In other words, there are non-uniform standards applicable to marketing private fund interests under Rule 506(c) and the existing CFTC registration exemptions.

[7] "Covered persons" include, among others: (a) the issuer, including its predecessors and any affiliated issuers; (b) directors and officers participating in the securities offering, and general partners and managing members of the issuer; (c) promoters connected with the issuer at the time of sale; (d) persons that have been or will be paid (directly or indirectly) for soliciting investors; (e) investment managers of issuers that are pooled investment funds; and (f) general partners and managing members of such investment managers.

[8] The term "restricted person" includes, among others, most categories of "associated persons" of a FINRA member-firm, and most owners and affiliates of a broker or dealer.

twenty-five percent (25%) is held by a "covered person" (or "covered persons" in aggregate).[9] To comply with this requirement, brokers generally request that their investment advisory clients represent that the aggregate beneficial interest of "covered persons" in the fund does not exceed the twenty-five percent (25%) threshold; if such interest exceeds that threshold, the investment manager / fund will not be permitted to receive allocations of new shares in the IPO. As with its efforts to comply with broker certification requests made under Rule 5130, the adviser should (a) obtain from each investor an updated representation regarding any changes in the person's status as a "covered person" (i.e., since the certification made by that investor when initially subscribing for interests in the fund), and (b) confirm that the aggregate ownership by "covered persons" of interests issued by the fund does not exceed twenty-five percent (25%) of the total beneficial ownership interests of the fund.

Anti-Money Laundering

An SEC-registered investment manager is expected to have adopted reasonable written policies and procedures intended to comply with the economic sanctions programs administered by the U.S. Treasury's Office of Foreign Assets Control. A manager should review that program no less than annually to confirm that it continues to be reasonably designed, taking into account the manager's business, investor base and office locations.

Electronic Delivery of Schedule K-1s

An investment manager seeking to rationalize the processes by which tax-reporting information is communicated to investors in the funds it manages may deliver Schedule K-1 electronically to investors in partnerships and LLCs that are taxed as partnerships. Electronic distribution of these forms may lessen the amount of time and expense associated with managing this annual process. Affected partners and LLC members must consent in advance to receive Schedule K-1 electronically.

FATCA

The U.S. Foreign Account Tax Compliance Act ("FATCA") is intended to bolster the U.S. government's policy of taxing financial assets and related income in the name of U.S. taxpayers and custodied with financial institutions outside the U.S. FATCA imposes potentially substantial information-reporting requirements on foreign financial institutions ("FFIs"), and withholding, documentation, and reporting requirements with respect to certain payments made to certain foreign entities. In particular, FFIs are required to register or, depending on the circumstances, enter into an agreement with the Internal Revenue Service ("IRS") under which the FFI would be obligated to report information about client relationships with U.S. persons (including, for example, non-U.S. legal entities with U.S. owners).

Investment funds organized outside of the U.S. are generally considered FFIs under the FATCA regulations. To comply with FATCA, FFIs are expected to perform certain due diligence and information-gathering responsibilities, and report certain information to the IRS. For example, an offshore feeder fund organized in the Cayman Islands, or its authorized contractual partner (e.g., a bank or broker), must identify and report all investors in that fund with U.S. tax status. If the FFI is not able or willing to collect or report the required information, then the entity is obligated to report that conclusion to the IRS and withhold thirty percent (30%) of any distributions by the FFI to the affected investor.

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[9] A "covered person" includes, among others, (a) an executive officer or director of a public company or a non-public company that is an investment banking client of the broker, or (ii) a person "materially supported" by such person.

Offering Materials

As part of its efforts to comply with the anti-fraud provisions of the federal securities laws (including, specifically, the anti-fraud rule under the Advisers Act), an investment adviser should periodically review offering documentation for the funds it manages to confirm that the documents remain consistent with its practices and the fund's other offering materials, and to identify any needed updates.[10] Ultimately, the investment manager should focus on satisfying its obligation to disclose all material information regarding the issuer that a reasonable investor would require to make an informed decision regarding whether to invest in the fund. It is a common practice for investment managers to review the offering materials for funds they manage as part of year-end and new-year planning.

Requirements Specific to CPOs and CTAs (Registered and Exempt)

Affirmation of CPO Exemption / Exclusions

A pool operator claiming exemption or exclusion from the requirement that it register as a CPO with the CFTC must affirmatively claim the exemption or exclusion through a filing with the National Futures Association ("NFA"). The exemption or exclusion claims must then be annually updated ("affirmed") thereafter.

Investment managers relying on an exemption or exclusion from CPO registration under CFTC Regulations 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), 4.13(a)(5), or an exemption from CTA registration under 4.14(a)(8), and who filed a notice with the NFA to claim the exemption or exclusion, must affirm the exemption or exclusion annually within sixty (60) days after the end of the calendar year.11 Failing to affirm the exemption or exclusion results in the exemption or exclusion being withdrawn at the end of the affirmation period. Accordingly, investment managers seeking to maintain their 2016 exemption or exclusion from CPO registration must affirm their exemption or exclusion by filing the required notice no later than March 1, 2017. If a registered CPO or CTA fails to affirm an exemption or exclusion that it relies upon, the entity will become subject to the CFTC's Part 4 Requirements even if the entity remains eligible for such exemption or exclusion.

Form CTA-PR

CFTC-registered CTAs and members of the NFA are required to file quarterly a Form PR with the NFA. Through filing a Form PR, a CTA reports general information about its business, its trading program(s), pool assets, and the identity of the CPO(s) operating the pool(s). Each Form PR must be filed no later than forty-five (45) days after the quarters ending in March, June and September, and within forty-five (45) days of the calendar year-end. Please note that filing a Form PR with the NFA does not relieve the manager of the requirement to file a Form PF with the SEC.

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[10] In particular, the investment adviser should review the fund's offering documents to ensure that they continue to include, among other things, accurate descriptions of the investment manager's objectives and strategies, valuation practices, redemption / withdrawal policies, and the fund's service providers, and that the description of the risk factors associated with an investment in the particular fund continues to be accurate.

[11] This includes the "de minimis" exemption under Section 4.13(a)(3). That exemption permits the pool to avoid registration with the CFTC where either (a) the aggregate initial margin and premiums required to establish the pool's commodity interest positions do not exceed five percent (5%) of the pool's liquidation value, or (b) the aggregate notional value of the pool's commodity interest positions do not exceed one hundred percent (100%) of the pool's liquidation value. Determining whether an instrument is a commodity interest may involve a complex analysis, and investment managers should proceed cautiously, and with appropriate documentary support, in considering whether the pools they manage satisfy the "de minimis" exemption.

Form CPO-PQR

All registered CPOs are required to file Form CPO-PQR. The form generally requires CPOs to make substantial disclosures. However, the extent to which the form and its schedules must be prepared and filed by the CPO depends on a number of factors, including, among other things, whether the investment adviser is registered with the SEC, and the size of the pool's AUM. For example, investment managers who are also registered with the SEC and who file Sections 1 and 2 of Form PF with the SEC are required only to file Schedule A of Form CPO-PQR. In addition, the following are the current AUM thresholds applicable to registered CPOs:

- CPOs with less than $150 million in pool AUM must file only Form CPO-PQR Schedule A on an annual basis within ninety (90) days of the calendar year-end;

- CPOs with between $150 million and $1.5 billion pool AUM must file Form CPO-PQR Schedules A and B on an annual basis within ninety (90) days of the calendar year-end; and

- CPOs with at least $1.5 billion in pool AUM must file Form CPO-PQR Schedules A, B and C on a quarterly basis within sixty (60) days of each calendar quarter-end.

Investment advisers should carefully consider their business circumstances when reviewing the filing requirements of Form CPO-PQR. In addition, managers should be aware that, for filings after January 1, 2017, any filing on Form CPO-PQR will require aggregation of funds (pools) managed by the adviser and any parallel managed accounts. Moreover, in 2016, the NFA implemented a rule imposing a late filing fee for each report filed after its due date.

NFA Bylaw 1101

A registered CPO and CTA should regularly check that its investors / clients, as well as any relevant counterparties, are NFA members. Similarly, registered and unregistered CPOs and CTAs should check that investors in their funds have reaffirmed their NFA notice filings each year.

NFA Registration

A registered CPO and CTA must update its NFA registration information through the NFA's Online Registration System and pay annual NFA dues on or before the anniversary of the firm's registration date.

Questionnaire

A registered CPO and CTA must complete the NFA's "self-examination questionnaire" annually.

Annual Reports

Each CPO must distribute an "Annual Report," certified by an independent public accountant, to each participant in each pool it operates within ninety (90) days of the pool's fiscal year-end. A CPO is also required to file this report electronically with the NFA.

Other CPO / CTA Requirements

In addition to the obligations referenced above, a registered CPO and CTA at least annually must test its disaster recovery plan(s), deliver its privacy policy / notice to investors, provide ethics training to relevant staff, and update pool and / or account disclosure documents (where necessary).

Miscellaneous Other Considerations

FBAR Reporting

A U.S.-based investment adviser to a private fund organized outside of the U.S. (e.g., a hedge fund or private equity fund) which has title to a foreign bank account, foreign prime brokerage account, or other foreign financial account, may have to file a Report of Foreign Bank and Financial Accounts ("FBAR") with the U.S. Treasury with respect to each of the accounts over which it has signature authority. In general, a U.S. person is required to file an FBAR if he has a financial interest in or signature authority over a foreign bank, securities or other financial account in another country if the aggregate value of the foreign financial account(s) exceeds $10,000 at any time during the calendar year. Financial accounts of mutual funds or similar pooled entities that issue shares to the general public regularly and that have a regular net asset value determination and regular redemptions are included in the scope of the FBAR filing requirement. The FBAR is a calendar-year report, which means that it must be filed on or before June 30 of the year following the calendar year for which the report is made. The IRS has taken the position that extensions of time to file an FBAR will generally not be granted. The failure to timely file a complete FBAR may result in the imposition of significant penalties.

U.S. Treasury International Capital System ("TIC") Forms

The U.S. Treasury, directly or through the Federal Reserve Bank of New York ("FRBNY") as its agent, collects certain information from U.S. investment managers. Selected U.S. Treasury forms and their potential relevance to U.S. investment managers are summarized below.

- TIC Form SLT -- Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents: This form is required to be filed by, among others, investment managers which have investment discretion over funds with consolidated reportable holdings and issuances with a fair market value of at least $1 billion as of the last day of any month during the reporting year. An investment adviser does not have to be registered with the SEC to be required to file Form SLT. The form must be filed no later than the 23rd calendar day of the month following the record date.

- TIC Form SHC -- Report of U.S. Ownership of Foreign Securities: Form SHC is in the form of a survey conducted every five years by the U.S. Treasury. In general, the survey requests that "end-investors" (which includes investment managers on behalf of the private or registered funds which they manage), among others, report their ownership of (or control over) foreign securities, which includes certain money market instruments. Form SHC must be prepared and filed by investment managers who satisfy the holdings requirements and who are notified by the FRBNY that the filing is required.

- TIC Form SHCA -- Annual Report of U.S. Ownership of Foreign Securities: Only investment managers who are notified by the FRBNY that they must complete and file the form are required to do so; the FRBNY identifies the "end-investors" who must submit the form based on Form SHC survey data.

BEA Filings

The Bureau of Economic Analysis ("BEA") of the U.S. Department of Commerce requires that an investment manager potentially complete multiple surveys, depending on the firm's business and strategies (e.g., BEA Form BE-13 is used to report new direct investments by foreign entities into the United States). These forms, particularly as they relate to investment advisers to private funds, were subject to amendment under a final BEA rule published in October 2016. The filing deadlines vary based on the form. Most of these forms apply to U.S. "reporters," rather than specifically to investment advisers (or to other types of businesses), and their

applicability generally does not depend on whether an investment manager is registered with the SEC. The information collected through the surveys is held in confidence by the BEA, and is not published. The forms are available through the BEA's website, and may be filed through the agency's electronic filing system.

AIFMD

The Alternative Investment Fund Managers Directive ("AIFMD") was adopted by the European Parliament in 2010 and by the Council of the European Union ("EU") in 2011. The AIFMD establishes uniform requirements applicable to alternative investment funds ("AIF") and to managers of AIFs ("AIFMs") who seek to market those vehicles in any EU member state or certain other jurisdictions where the directive has effect (each, a "Relevant Jurisdiction"). The definition of an "alternative investment fund" in the AIFMD is broad and includes private funds (including private equity funds) organized in the U.S. and other jurisdictions outside of the EU. More specifically, the AIFMD applies to U.S-based investment managers who market private funds organized in an offshore jurisdiction to an investor in a Relevant Jurisdiction.[12]

Unless an exemption applies, the AIFMD requires that the AIFM be authorized by the regulator before it commences operations in a Relevant Jurisdiction. In addition, the directive imposes numerous requirements on how an AIFM conducts its business and how its AIFs are marketed. The AIFMD also requires that an AIFM satisfy certain periodic reporting requirements (including, among others, regarding the fund's income and expenditures, compensation of the manager's staff, the extent of any carried interest, etc.) to investors and to securities regulators.

There are several exemptions from the application of the AIFMD to a non-EU-based AIFM (e.g., a U.S.-based AIFM). Perhaps most important for U.S.-based investment advisers is that the directive does not apply to an AIF that is not "marketed" to investors in a Relevant Jurisdiction. Under the directive, "marketing" is defined as "a direct or indirect offering or placement" by an AIFM of shares of an AIF; in other words, the definition is based on the actual offering or placement, and not on the nature or number of communications which precede the "offering or placement." Moreover, Recital 70 of the AIFMD states that the directive is not intended to "affect the current situation, whereby a professional investor established in [a Relevant Jurisdiction] may invest in AIFs on its own initiative." U.S.-based AIFMs would therefore seem to be permitted to rely on "reverse solicitations" or "passive marketing" (i.e., generally, where contacts seeking information about the manager's services are initiated by the prospective investor or its agent, and not by the manager) when communicating with investors in a Relevant Jurisdiction regarding the AIF.

Nonetheless, U.S-based investment advisers should approach whether to rely on these exemptions cautiously. First, there has been relatively little substantive comment by the EU and the member state regulators suggesting or identifying the acceptable elements of a "reverse solicitation" or "passive marketing" arrangement. Moreover, there is no uniform guidance across EU member states regarding the practices by which market-participants are structuring these arrangements to successfully claim, in a given instance, that a "reverse solicitation" or "passive marketing" did not involve "marketing" as defined in the AIFMD.

Second, the AIFMD requires that non-EU-based AIFs and AIFMs comply with the private placement regimes of each individual country subject to the directive. In other words, the AIFMD legislation is merely a framework and each Relevant Jurisdiction is independently responsible for integrating the AIFMD's provisions into its laws and setting its own standards to be applied to private placements. Additionally, several Relevant Jurisdictions have yet to revise their respective private placement regimes. Taking these factors into account, there is significant uncertainty regarding private placement requirements in many, if not all, jurisdictions subject to the AIFMD. Accordingly, before speaking with or responding to a prospective investor in a jurisdiction subject to the AIFMD, investment managers should not rely exclusively on the "reverse solicitation" and "passive marketing" exemption from the definition of "marketing," but should carefully review the private

[12] The AIFMD also applies to U.S.-based investment advisers who manage one or more EU-based AIFs.

placement legislation of that jurisdiction to determine the scope and nature of any obligations to which the manager and the relevant AIF could be subject.[13]

Side Letters

An investment adviser may have ongoing reporting or compliance requirements under a side letter with one or more investors. No less than annually, the manager should review any side letter with an investor (including any side letter to which a fund is a party) to identify and comply with any such requirements.

Annual State Corporate / LLC / LP Filings and Taxes

An investment adviser or private fund organized in a U.S. state may be required to make annual or other filings and tax payments in the state in which the entity was formed, and in states or non-U.S. jurisdictions in which the entity is qualified to do business. The manager's staff should review these requirements to determine any applicable deadline(s) and filing requirements, including any payment or assessment obligations owed by the adviser or the fund(s) which it manages.

Liability Insurance

An investment adviser that has obtained management liability insurance (e.g., director / officer or errors / omission coverage) should consider reviewing the adequacy of its existing policy(ies) in view of any changes in its business or operating environment during 2016. The same principle and caution applies to any other insurance policy (e.g., a cybersecurity policy) that an investment manager purchased in 2016.

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[13] For a detailed discussion regarding the AIFMD as it applies to SEC-registered investment advisers, please see Bentley Anderson, "An Overview of the AIFMD for U.S. Investment Managers," 17 Bus. L. International 41 (Jan 2016).