REGISTERED INVESTMENT ADVISERS:

ANNUAL COMPLIANCE OBLIGATIONS—WHAT YOU NEED TO KNOW

As the new year is upon us, there are some important annual compliance obligations Investment Advisers either registered with the Securities and Exchange Commission (the "SEC") or with a particular state ("Investment Adviser") and Commodity Pool Operators ("CPOs") or Commodity Trading Advisors ("CTAs") registered with the Commodity Futures Trading Commission (the "CFTC") should be aware of.

See upcoming deadlines below and in red throughout this document.

The following is a summary of the primary annual or periodic compliance-related obligations that may apply to Investment Advisers, CPOs and CTAs. The summary is not intended to be a comprehensive review of an Investment Adviser's securities, tax, partnership, corporate or other annual requirements, nor an exhaustive list of all of the obligations of an Investment Adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act") or applicable state law. Although many of the obligations set forth below apply only to SEC-registered Investment Advisers, state-registered Investment Advisers may be subject to similar and/or additional obligations depending on the state in which they are registered. State-registered Investment Advisers should contact us for additional information regarding their specific obligations under state law.

◆ **List of annual compliance deadlines in chronological order:**

State registered advisers pay IARD fee	November-December (of 2013)
Form 13F (for 12/31/13 quarter-end)	February 14, 2014
Form 13H annual filing	February 14, 2014
Schedule 13G annual amendment	February 14, 2014
Registered CTA Form PR (for December 31, 2012 year-end)	February 14, 2014
TIC Form SLT	Every 23rd calendar day of the month following the report as-of date
TIC Form SHCA	March 3, 2014
Affirm CPO exemption	March 3, 2014
Registered Large CPO Form CPO-PQR December 31 quarter-end report	March 3, 2014
Registered CPOs filing Form PF in lieu of Form CPO-PQR December 31 quarter-end report	March 31, 2014

Registered Mid-Size and Small CPO Form CPO-PQR year-end report	March 31, 2014
SEC registered advisers and ERAs pay IARD fee	Before submission of Form ADV annual amendment by March 31, 2014
Annual ADV update	March 31, 2014
Delivery of Brochure	April 30, 2014
Form PF filers pay IARD fee	Before submission of Form PF
Form PF (for advisers required to file within 120 days after December 31, 2013 fiscal year-end)	April 30, 2014
FBAR Form TD F 90-22.1 (for persons meeting the filing threshold in 2013)	June 30, 2014
FATCA registration	Must be completed by April 25, 2014
Form D annual amendment	One year anniversary from last amendment filing If the fund will be using 506(c) to generally solicit, the Form D must be amended to check the box that indicates the offering will be made under 506(c)

◆ What's New?

AIFMD

By July 22, 2013, each EU Member State, Iceland, Liechtenstein and Norway were required to transpose the Alternative Investment Fund Managers Directive (AIFMD) into national law by July 22, 2013. AIFMD established uniform requirements for Alternative Investment Funds (AIF) and managers to AIFs (AIFM) who wish to market in the EU.

The definition of AIF (Alternative Investment Fund) applies broadly and includes US and offshore hedge funds, private equity funds and other private funds. AIFMD applies to any US AIFM that markets[1] one or more AIFs (EU or non-EU) to investors in the EU or manages one or more EU AIFs.[2]

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[1] Marketing is defined by AIFMD broadly as "a direct or indirect offering or placement" by an AIFM of shares of an AIF, and may even include regular correspondence sent to existing investors that may be perceived as solicitation for additional funds. The available "reverse solicitations" or "passive marketing" exemption (those contacts not being at the initiative of

AIFMD does not apply to a US AIFM managing a non-EU AIF (such as a Cayman fund) where that non-EU AIF is not marketed to investors in the EU. Non-EU AIFs being marketed in the EU are not permitted to register for the AIFMD Passport, which grants permission to market in all EU Member States, until 2015. Between July 22, 2013 and 2015, non-EU AIFs and AIFMs must comply with the private placement regimes of each individual country.

It is important to note that AIFMD legislation is merely a framework and each country is independently responsible for integrating AIFMD into its laws and setting its own standards. Although AIFMD was supposed to be fully enacted by July 22, 2013, many countries did not meet the deadline and there is still considerable uncertainty concerning its private placement requirements and the final AIFMD provisions.

CISA

Any fund manager that has or expects to have investors in Switzerland, should be aware of the following Swiss developments. Switzerland has adopted its own set of regulations under the Swiss Collective Investment Schemes Act (CISA) and the accompanying Collective Investment Schemes Ordinance (CISO). CISA applies to any "distribution" of a Collective Investment Scheme (CIS) to Swiss investors. As with AIFMD, there is still a good deal of uncertainty about the interpretation of the new rules and more information is expected in the future from the Swiss Financial Market Supervisory Authority (FINMA).

A fund manager can only distribute a CIS to Qualified Investors in Switzerland. To avoid the full application of CISA, the fund manager should not have a Swiss place of business or employees based in Switzerland. The PPM provided to Swiss investors should include a disclaimer that states, in respect of Swiss investors, that the CIS is only distributed to Qualified Investors. "High net worth" Swiss natural persons must declare in writing that they meet the financial requirement and affirmatively "opt in" to being classified as Qualified Investors.

A non-Swiss CIS and non-Swiss fund manager has until March 1, 2015 to fully comply with the requirements for non-Swiss CIS to be distributed to Qualified Investors. To comply, a non-Swiss CIS must appoint a Swiss Registered Representative and a Swiss Paying Agent (a Swiss bank). The Representative is essentially a go-between for the fund and the investors and is responsible for ensuring the fund complies with the necessary Swiss laws. The Representative and Paying Agent must each be registered with FINMA. Non-Swiss CIS and non-Swiss managers do not need to register with FINMA.

If you are uncertain whether these new Swiss requirements apply to you, please contact us immediately.

New Rules 506(c) and 506(d)

Rule 506(c) -- General Solicitation

New Rule 506(c) permits a private fund to use general solicitation and general advertising when making a securities offering, provided the fund only sells to accredited investors. Funds must take affirmative and reasonable steps to verify that each investor is accredited under the Rule 501 definition and may not simply rely upon representations from the investor as is permissible under Rule 506(b).

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the fund manager) should therefore be utilized cautiously at least until guidance is published or market practice is developed.

[2] Any US manager with a EU co-manager or submanager may be subject to additional AIFMD implications.

Verification

The burden now shifts to private fund managers to determine "reasonableness" when making a determination of an investor's accredited status. The non-exclusive, non-required verification methods published by the SEC include: (i) reviewing federal tax forms, (ii) confirming net worth through documentation, or (iii) obtaining written confirmation from a registered broker-dealer, registered investment adviser, licensed attorney in good standing, or registered CPA.

Effect on Current Rule 506 Exemptions

Rule 506(c) does not modify or repeal any of the current Rule 506 exemptions, and issuers may still rely on those exemptions as written. Therefore, private fund managers that do not see the value in advertising to or soliciting the public, or find the conditions of the new rule too onerous, may continue under the current private offering regime.

CFTC Limitations and Harmonization

There is a limitation on utilizing new Rule 506(c) for private funds which rely on the CFTC Rule 4.13(a)(3) *de minimus* exemption from CFTC registration or "registration lite" under CFTC Rule 4.7. Both of these exemptions from full CFTC registration require that the fund securities must be offered and sold without any marketing to the public in the United States. Therefore, until the CFTC acts to amend these exemptive rules on which many private fund managers rely, none of these private funds will be able to use the general solicitation provisions of new Rule 506(c). The Managed Funds Association submitted an outline of proposed rule amendments to the CFTC that would harmonize the CFTC rules with the SEC's JOBS Act rules, but it is uncertain when the CFTC will act on this matter.

Rule 506(d) – Bad Actor Disqualification

New Rule 506(d) prohibits private funds from relying on <u>any</u> Rule 506 exemption if any of the private fund's "Covered Persons" (defined below) is disqualified as a result of committing a "Bad Act" as defined in the Rule. The Bad Acts that could result in 506 exemptions being unavailable to a private fund are not limited to acts that the private fund can control or prevent. The SEC will only waive disqualification if the private fund did not know, and should not have reasonably known, of the disqualifying event. Private funds that rely on Rule 506 should have documented evidence that they made reasonable efforts to know of the past Bad Acts committed by their Covered Persons, typically through a questionnaire. If a Rule 506 offering is ongoing, the private fund must update the inquiry periodically and should include a requirement in the questionnaire that the Covered Person inform the issuer if any Bad Acts occur.

Advisers should be prepared to disclose information about themselves and their control persons to the private funds they advise. While only Bad Acts that occur after September 23, 2013 will disqualify a private fund from relying on 506, the past Bad Acts of Covered Persons must be disclosed to all potential investors a reasonable time prior to a sale.

Please contact us if you are uncertain about whether certain past behaviors constitute a "Bad Act" and from whom questionnaire should be obtained.

Identity Theft "Red Flag" Rules

The SEC and CFTC issued joint rules that went into effect on November 20, 2013, which require special policies and procedures be implemented to prevent identity theft. Investment advisers who have the right (through a power of attorney or other agreement) to direct monies distributed to clients who are natural persons to accounts other than those of the client, must comply with the Red Flag Rules. Advisers should review the power of attorneys they hold with individual clients to see if they are permitted to direct redemption funds or other monies at the instruction of the client to an account held by a third party. The Red Flag Rules provide specific guidelines for preparing a policy and the procedures that the adviser and its staff must follow to comply.

Dodd-Frank Protocols

The International Swaps and Derivatives Association's Dodd-Frank Documentation Initiative ("Documentation Initiative") is designed to assist with compliance with the Dodd-Frank Act. By providing standardized amendments ("protocols") to update swap documentation, the Documentation Initiative minimizes the need for bilateral negotiations and trading disruptions. Two such protocols had compliance dates in 2013 and to indicate compliance with these two protocols, market participants should complete the questionnaire for each protocol, submit an adherence letter and pay a fee of $500 per protocol, using the ISDA Amend system.

Medicare Tax

Beginning in 2013, for each taxable year, individuals, trusts and estates are subject to a 3.8% Medicare tax on "net investment income," or undistributed "net investment income" for estates and trusts. For individuals, the tax applies to the lesser of (i) their "net investment income", or (ii) the amount of the individual's adjusted gross income in excess of a specified threshold. For trusts and estates, the tax applies if the entity has undistributed "net investment income" in excess of the threshold amount. Fund managers should be aware that net income and gains attributable to private fund investments is likely to be considered part of an investor's "net investment income".

Electronic Delivery of Schedule K-1s

The IRS now permits partnerships and limited liability companies that are taxed as partnerships, to deliver Schedule K-1 to partners/investors solely by electronic means. The partnership or limited liability company must obtain affirmative consent from the partners/investors, and such consent form should be provided to the partners/members in the same electronic format the K-1 will be provided by.

Swaps Regulation

There were significant changes to the rules and regulations governing swaps in 2013. If you engage in swaps, please contact us for current guidance in this area.

◆ Continuing Compliance Areas

Fund IARD Account

An Investment Adviser must ensure that its IARD account is adequately funded to cover payment of all applicable adviser registration renewal fees and notice filing fees. SEC-registered advisers and Exempt Reporting Advisers (ERAs) must pay their annual IARD fees before submitting their annual Form ADV

amendment **by March 31**. The annual IARD fee of an SEC-registered adviser is based on the adviser's AUM. The annual fee of an ERA is $150. SEC-registered advisers pay their state notice filing fees and state investment adviser representative fees during the IARD's renewal program in November – December of each year. State-registered advisers also pay their annual fees during the IARD's renewal program in November – December of each year.

For Form PF filers, your IARD account must also be funded with the annual ($150) or quarterly ($150) fees before submitting Form PF.

Form ADV Updates and Distribution

Annual Updates. An Investment Adviser must file an annual amendment to Form ADV Part 1 and Form ADV Part 2 within 90 days of the end of its fiscal year. Part 1 and Part 2A of the Form ADV must be filed with the SEC through the electronic IARD system. Accordingly, if you are a SEC-registered adviser whose fiscal year ends on or after December 31, 2013, you must file Part 1A and the Part 2A Brochure as part of your annual updating **amendment by March 31, 2014**. If you are a state-registered adviser whose fiscal year ends on or after December 31, 2013, you must also file Part 1A, Part 1B, the Part 2A Brochure and the 2B Brochure Supplement as part of your annual updating amendment by March 31, 2014. The current Form ADV Part 1 now contains a uniform method of calculating AUM, and eliminates adviser discretion in including or excluding certain assets from the AUM calculation.

Brochure Rule. On an annual basis, an Investment Adviser must provide its clients with a copy of its updated Form ADV Part 2A, or provide a summary of material changes and offer to provide an updated Form ADV Part 2A. An adviser could meet its delivery obligation to a hedge fund client by delivering its brochure to a legal representative of the fund, such as the fund's general partner. Delivery is required within 120 days of the end of the adviser's fiscal year, or **by April 30, 2014**.

Ongoing Updates. Investment Advisers must amend Part 1 of their Form ADV promptly during the year if certain information becomes inaccurate. The brochure and supplement must also be updated promptly during the year if any information becomes materially inaccurate unless the material inaccuracies result solely from changes in the amount of client assets managed or changes to the fee schedule.

State Notice Filings/Investment Adviser Representatives

An Investment Adviser should review its advisory activities in the various states in which it conducts business and confirm that all applicable notice filings are made and fees are paid through IARD. In addition, an Investment Adviser should confirm whether any of its personnel need to be registered as "investment adviser representatives" in any state and, if so, register such persons or renew their registrations with the applicable states.

SEC Presence Exams

In October 2012, the SEC's Office of Compliance Inspections and Examinations ("OCIE") announced a new initiative to conduct focused, risk-based examinations ("Presence Exams") of investment advisers to private funds that recently registered with the SEC. We have previously posted an *article* on the Presence Exams at our Investment Fund Law Blog - *http://www.investmentfundlawblog.com/*.

Enforcement Priorities in the Alternative Space

In his speech on December 18, 2012, Mr. Bruce Karpati, Chief of the SEC Enforcement Division's Asset Management Unit ("AMU"), discussed the risks to hedge fund investors and the need for vigilant enforcement oversight. He emphasized that AMU will look at the issues it investigates through the lens of fiduciary duty and discussed the types of misconduct by hedge fund managers in violation of their fiduciary duties to their clients.

Of the number of actions against hedge fund managers, a majority of them involved ***conflicts of interest, valuation, performance, and compliance and controls*** (such as fraudulent or weak valuation practices, related-party and other self-serving transactions, preferential rights given to investors through side letters, lack of independent governance, and misrepresentations about "skin in the game" or managers' alignment of interests with investors). The AMU has developed risk-based investigative approaches utilizing data analysis and appropriate risk criteria to identify those that may be engaged in fraudulent conduct.

Form PF

The **deadline** for advisers required to file Form PF within 120 days after the December 31, 2013 fiscal year end is **April 30, 2014**. See more detailed information about Form PF below.

CFTC Rules—CPO and CTA Registrations, Exemptions and Filings

Deadline to affirm your CPO exemption for calendar year 2013: March 3, 2014

In a February 9, 2012 Final Rule, the CFTC rescinded Section 4.13(a)(4), which provided private pools with an exemption from registration as a commodity pool operator ("CPO") with the CFTC. Investment Advisers operating 3(c)(7) private funds are no longer able to claim exemption from CPO registration for funds offered only to institutional qualified eligible purchasers ("QEP") and natural persons that meet QEP requirements that hold more than a *de minimis* amount of commodity interests. The exemption under Section 4.13(a)(3) was retained, which provides exemption from CPO registration in cases where the pool trades minimal amounts of futures and covered swap positions such that at all times either (a) the aggregate initial margin and premiums required to establish the fund's commodity interest positions may not exceed 5% of the fund's liquidation value or (b) the aggregate notional value of the fund's commodity interest positions may not exceed 100% of the fund's liquidation value (*de minimis* exemption)."

Annual Affirmation. The annual affirmation process started on December 3, 2013. Advisers who relied on an exemption or exclusion from CPO registration under CFTC Regulation 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 filed a notice with the NFA must affirm the exemption or exclusion annually within 60 days after the end of the calendar year. Failure to affirm the exemption or exclusion will result in the exemption or exclusion being withdrawn at the end of the affirmation period. Accordingly, those who filed a notice of exemption or exclusion in 2013 have **until March 3, 2014 to affirm the exemption or exclusion or face losing their exemption or exclusion**. Those who filed a notice of exemption or exclusion during the affirmation period of December 3, 2013 to March 3, 2014 will not need to affirm until the 2014 calendar year end. To obtain information about the annual affirmation process and filing, please visit the *NFA website*.

Note that, in assessing whether your activities keep you within the *de minimis* exemption, the following instruments generally fall under the definition of "**commodity interests**:"

- **Futures and Commodities.** (Other than futures on single securities—see below.)
- **Swaps and Other Commodity Interests.** As a general rule, any instruments based on interest rates, monetary rates or yields are swaps subject to CFTC regulation.[1]
- **Mixed Swaps and Security-Based Swap Agreements.** Security-based swap agreements include, for example, swaps on a broad-based security index. Mixed swaps include, for example, swaps on a single security where the counterparties embed interest-rate optionality or a non-security component.

Instruments that are generally **not "commodity interests"** and do not fall under CFTC regulation:

- **Security-based swaps:** swaps on a single security; credit default swaps based on a single reference obligation; futures on a single security or a single loan; and swaps on narrow-based securities indices (those with nine or fewer component securities and subject to certain weighting requirements).[2]

Form CTA-PR

Deadline for filing Form CTA–PR for December 31, 2013 year end: February 14, 2014

CFTC Regulation 4.27 requires that all CTC-registered CTAs and members of the NFA file a Form PR by February 14, 2014.

Form PR requires each CTA to report on a quarterly basis general information about the CTA, its trading programs, any pool assets and the identity of the CPOs operating the pools. Form PR must be filed within 45 days after the quarters ended March, June and September and within 45 days of the calendar year end. Form PR filing does not eliminate the requirement to file a Form PF. SEC-registered investment advisers may also be required to file their initial Form PF filings by April 30, 2014.

The Form PR report for the year ended December 31, 2013 will be due by February 14, 2014 and must be filed electronically using NFA's EasyFile System accessed at: http://www.nfa.futures.org/NFA-electronic-filings/easyFile-CTA-filers.HTML. The CTA's security manager must first set up security settings in order to access the EasyFile System.

Form CPO-PQR

The following are the filing requirements for registered CPOs:

- Small CPOs (less than $150 million pool AUM) must file Form CPO-PQR Schedule A on an annual basis within 90 days of the calendar year-end.
- Mid-size CPOs ($150 million to $1.5 billion pool AUM) must file Form CPO-PQR Schedules A and B on an annual basis within 90 days of the calendar year-end.
- Large CPOs (at least $1.5 billion pool AUM) must file Form CPO-PQR Schedules A, B and C on a quarterly basis within 60 days of each calendar quarter-end.

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[1] However, if the "yield" is calculated based on the price or changes in price of a debt security, loan, or narrow-based security index, it would generally be considered a security-based swap subject to the jurisdiction of the SEC.

[2] This definition is detailed and complicated; please contact us if the swap you are trading involves a basket.

CPOs that file Form PF and include information on all relevant pools in Form PF need only file Schedule A.

Annual Assessment of Compliance Program.

At least annually, an Investment Adviser must review its compliance policies and procedures to assess their effectiveness in preventing fraud and other violations. The review should be conducted with special focus on the Investment Adviser's specific business model and operating environment and any changes to it during the reviewed year, and all the actual and potential conflicts of interest that might result from that business model and those changes. The annual assessment process should be documented and those document(s) should be presented to the Investment Adviser's chief executive officer or executive committee, as applicable, and maintained in the Investment Adviser's files. At a minimum, the annual assessment process should entail a detailed review of:

- Conflicts of Interest – for example, valuation practices, accuracy of marketing documents and performance disclosures, favorable terms/side letters, personal trading, allocation practices, undisclosed compensation arrangements, soft dollars, best execution, and affiliated transactions;
- Valuation practices and procedures – with special focus on Tier 2 and 3 positions;
- Internal Violations – any violations of policies and procedures that arose during the year;
- Changes – changes in the Investment Adviser's business activities and in applicable law;
- Code of Ethics, – including an assessment of the effectiveness of its implementation and determination of whether it should be enhanced in light of the Investment Adviser's current business practices;
- Trading/Investment Restrictions;
- Personal Trading Policy – SEC-registered advisers are required to include personal trading policies and procedures in their Code of Ethics regarding the personal trading of persons who can access specific information concerning the SEC-registered adviser's business. The personal trading policy must, among other things, require each reporting person to provide (i) a report of their holdings at least once every 12-month period on a date set by the adviser, and (ii) reports of transactions within 30 following the end of each calendar quarter;
- Side Letters and other special/favorable terms policies and procedures;
- Subscription Applications – test for accurate completion and investor eligibility in light of changes to accredited investor and qualified client standards;
- ERISA – test calculations related to ownership percentages of benefit plans and entity investors that are plan assets funds;
- Marketing Documents and Performance Presentations – test accuracy of disclaimers and footnotes and adequacy of records;
- Business Continuity/Disaster Recovery plan – which should be "stress tested" and adjusted as necessary;
- Social Media policies and procedures – which the SEC recommends all Investment Advisers adopt as part of their compliance policies and procedures;
- Whistleblower policies and procedures – which should promote employee reporting of violations; and
- Any other area specific to the Investment Adviser.

Offering Materials

As a general securities law disclosure matter, and for purposes of U.S. federal and state anti-fraud laws, including Rule 206(4)-8 under the Advisers Act, an Investment Adviser must continually ensure that each of its fund offering documents is kept up to date, is consistent with its other fund offering documents and contains all material disclosures that may be required in order for the fund investor to be able to make an informed investment decision.

Full and accurate disclosure is particularly important in light of Sergeants Benevolent Assn. Annuity Fund v. Renck, 2005 NY Slip op. 04460, a June 2, 2005 New York Appellate Court decision, where the court held that officers of an investment adviser could be personally liable for the losses suffered by a fund that they advised if they breached their implied fiduciary duties to the fund. The fiduciary nature of an investment advisory relationship and the standard for fiduciaries under the Advisers Act includes an affirmative duty of utmost good faith, and of full and fair disclosure of all material facts, and an affirmative obligation to use reasonable care to avoid misleading clients.

Accordingly, it may be an appropriate time for an Investment Adviser to review its offering materials and confirm whether or not any updates or amendments are necessary. In particular, an Investment Adviser should take into account the impact of recent market conditions on its funds and review its funds' current investment objectives and strategies, valuation practices, performance statistics, redemption or withdrawal policies, risk factors (including disclosures regarding market volatility and counterparty risk), personnel, service providers and any relevant legal or regulatory developments.

Annual Privacy Notice

Under SEC Regulation S-P, an Investment Adviser must provide its fund investors or clients who are natural persons notice of the Investment Adviser's privacy policy on an annual basis, even if there are no changes to the privacy policy.

New Issues

Investment Advisers should address FINRA Rule 5130 and Rule 5131. Rule 5131 prohibits quid pro quo and "spinning" allocations of new issues of securities and addresses book-building, new issue pricing, penalty bids, trading, and waivers of lock-up agreements by member firms and associated persons. An Investment Adviser that acquires "new issue" IPOs for a fund or separately managed client account must obtain written representations every 12 months from the fund or the account's beneficial owner confirming their continued eligibility to participate in new issues. This annual representation may be obtained through "negative consent" letters.

Custody; Annual Audit or Surprise Audit

Private fund Investment Advisers should have their funds audited by a PCAOB registered independent account and provide audited financial statements of their fund(s), prepared in accordance with U.S. generally accepted accounting principles, to the fund(s)' investors within 120 days of the end of the funds' fiscal year. Investment Advisers that do not have their private funds audited should determine whether they are deemed to have custody of those funds' assets and therefore are subject to an annual surprise audit and other requirements.

Anti-Money Laundering

An Investment Adviser is subject to the economic sanctions programs administered by OFAC and should have an anti-money laundering program in place. An Investment Adviser should review its anti-money laundering program on an annual basis to determine whether the program is reasonably designed to ensure compliance with applicable law given the business, customer base and geographic footprint of the Investment Adviser.

"Pay-to-Play." Investment Advisers should review any political contributions or other activity by the Investment Advisers' personnel that may trigger lobbyist registration, as well as their related policies and procedures. The Rules cover a multitude of topics, including the prohibition of soliciting or coordinating campaign contributions from others for elected officials in a position to influence the selection of the adviser.

With regard to California, generally employees of "external managers" fall under the definition of "placement agent" requiring lobbyist registration. There are exceptions. Specifically, employees who spend at least 1/3 of their time during a calendar year managing assets do not fall under the "placement agent" definition.

Please contact us if you have politically active personnel in your organization.

Liability Insurance

Due to an environment of increasing investor lawsuits and regulatory scrutiny of fund managers, an Investment Adviser may want to consider obtaining management liability insurance or review the adequacy of any existing coverage, as applicable.

◆ Securities and Other Forms Filings

Form 13F

Deadline for filing Form 13F for the December 31 quarter: February 14, 2014

An "institutional investment manager," whether or not an (SEC or state-registered) Investment Adviser, must file a *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 Exchange Act (e.g., exchange-traded securities, shares of closed-end investment companies and certain convertible debt securities). The first filing must occur within 45 days after the end of the calendar year in which the Investment Adviser reaches the $100 million filing threshold and within 45 days of the end of each calendar quarter thereafter, as long as the Investment Adviser meets the $100 million filing threshold.

Form 13H

Deadline for filing an annual Form 13H: February 14, 2014

Rule 13h-1 under the Exchange Act requires "Large Traders" to identify themselves to the SEC and make certain disclosures to the SEC on *Form 13H*. "Large Traders" are defined as persons that exercise investment discretion over one or more accounts and effect transactions of NMS securities for or on behalf of such accounts in an aggregate amount of at least $20 million in a day or $200 million in a month. In addition to an initial filing, which must be filed within 10 days from the transaction date, all

Large Traders must submit an annual filing on Form 13H within 45 days after the end of the calendar year and submit any amendments promptly after the end of any calendar quarter where information in the form becomes materially inaccurate.

Form PF

Deadline for filing Form PF (for advisers who are not large liquidity or large hedge fund advisers): April 30, 2014

The Advisers Act requires Investment Advisers that advise one or more private funds and have at least $150 million in private fund AUM to file the Form PF with the SEC. CEA Rules require CPOs and commodity trading advisors registered with the CFTC to satisfy specific filing requirements with respect to private funds by filing the Form PF with the SEC in certain circumstances. The *Form PF* has quarterly and annual filing requirements based on a number of factors, including amounts and types of assets, as follows:

- Large liquidity fund advisers[3] must file the Form PF within 15days of each fiscal quarter end.
- Large hedge fund advisers[4] must file the Form PF within 60 days of each fiscal quarter end.
- All other filers[5] must file the Form PF within 120 days of each fiscal year end.

For additional information about Form PF, see the SEC's *Frequently Asked Questions on Form PF*.

Schedules 13G or 13D

Deadline for filing annual amendment to Schedule 13G: February 14, 3014

An Investment Adviser whose client or proprietary accounts, separately or in the aggregate, are beneficial owners of 5% or more of a registered voting equity security, and who have reported these positions on Schedule 13G, must update these filings annually within 45 days of the end of the calendar year, unless there is no change to any of the information reported in the previous filing (other than the holder's percentage ownership due solely to a change in the number of outstanding shares). An Investment Adviser reporting on Schedule 13D is required to amend its filings "promptly" upon the occurrence of any "material changes."

Section 16 Filings

In addition, an Investment Adviser whose client or proprietary accounts are beneficial owners of 10% or more of a registered voting equity security must determine whether it is subject to any reporting obligations, or potential "short-swing" profit liability or other restrictions, under Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Individuals or entities that beneficially own ten percent of any class of equity securities registered under Section 12 of the

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3 Large hedge fund advisers are advisers with at least $1.5 billion under management attributable to hedge funds.

4 Large liquidity fund advisers are advisers with at least $1 billion in combined AUM attributable to liquidity funds and registered money market funds.

5 This group includes smaller private fund advisers and large private equity fund advisers, which are advisers with at least $2 billion in AUM attributable to private equity funds. All advisers 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.

Exchange Act, and officers or directors of the issuers of these securities, may be required to file Forms 3, 4, and 5 regarding their ownership of and transactions in these securities.

FBAR Reporting

Deadline for receipt by Treasury Department of FBAR *Form TD F 90-22.1* for 2013 calendar year: June 30, 2014

A U.S. person is required to file a Report of Foreign Bank and Financial Accounts ("FBAR") if he has a financial interest in or signature authority over a foreign bank, securities or other financial account (e.g., a prime brokerage account) in another country if the aggregate value of the foreign financial accounts exceeds $10,000 at any time during the calendar year. Failure to file this form when required can result in significant penalties. Financial accounts that may be subject to FBAR reporting include accounts of a mutual fund or similar pooled fund that issues shares available to the general public and that has a regular net asset value determination and regular redemptions. Private offshore funds, such as hedge funds and private equity funds, are *not* deemed to be foreign financial accounts, and therefore investment advisers are not required to file an FBAR with respect to these funds. However, if these private funds have either a foreign bank account, foreign prime brokerage account, or other foreign financial account, and the adviser has signature authority over those accounts, then the adviser may have to file an FBAR with respect to those accounts.

FBAR can now be filed electronically via FinCEN's *BSA E-Filing system*. For additional information on filing FBAR, see the IRS' *FAQs Regarding FBAR – Filing Requirements*.

FATCA

Foreign Account Tax Compliance Act (FATCA), comprising of sections 1471 through 1474 (Chapter 4) of the Internal Revenue Code, was enacted in March 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act. FATCA imposes 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 July 2011, the IRS released a notice that provided and described the timeline for FFIs and withholding agents to implement the various FATCA requirements. The Treasury Department has released models for bilateral agreements (Model 1 Agreement and Model 2 Agreement) with other jurisdictions under which FFIs would satisfy their Chapter 4 requirements and has entered into a number of intergovernmental agreements based on the model agreements. In October 2012, the IRS released Announcement 2012-42 which outlines new timelines for FFIs and withholding agents to complete due diligence and other requirements. On January 17, 2013, the Treasury Department and the IRS published final regulations which went into effect on January 28, 2013. The final regulations provided for a phased implementation of the FATCA requirements beginning on January 1, 2014 through 2017. *Notice 2013-43* was issued by the IRS which provided revised timelines for the implementation of FATCA. Financial institutions must register on the *FATCA registration website* and finalize their registration by April 25, 2014 to ensure inclusion in the June 2, 2014 IRS FFI List (note that information submitted to the registration website prior to January 1, 2014, even if submitted as final, will not be treated as a final submission).

Treasury International Capital System ("TIC") Forms:

- *TIC Form SLT*—Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents. Form SLT is required to be submitted by entities with consolidated reportable holdings and issuances with a fair market value of at least $1 billion as of the last day of any month. Form SLT must be filed no

later than the 23rd calendar day of the month following the report as-of date. Form SLT applies to all U.S.-resident custodians (including U.S.-resident banks), U.S.-resident issuers (such as a U.S. fund) and U.S.-resident end-investors (such as a U.S. investment adviser, whether or not registered).

- *TIC Form SHC*—Report of U.S. Ownership of Foreign Securities**.** Form SHC is a mandatory survey of the ownership of foreign securities, including selected money market instruments, by U.S. residents as of December 31, 2011 and is conducted every 5 years. The form was last required to be submitted by fund managers and other entities required to do so no later than March 2, 2012. Form SHC is mandatory for all U.S.-resident custodians and end-investors that (1) have holdings in foreign securities that meet the reporting thresholds or (2) are notified by the Federal Reserve Bank of New York ("FRBNY"), as fiscal agent for the U.S. Treasury Department, that they are required to submit the Form SHC. For purposes of this form, "U.S. resident" is defined as any individual, corporation or other entity incorporated or legally established in the United States, including branches, subsidiaries and affiliates of foreign entities located in the United States.

  U.S.-resident custodians must report both foreign portfolio securities held in safekeeping for other U.S. residents and invested for their own portfolios. U.S.-resident end-investors must report all foreign securities invested for their own portfolios or for the portfolios of U.S.-resident clients. End-investors are entities such as (but not limited to): financial and non-financial organizations; managers of private and public pension funds; managers/sponsors of mutual funds, hedge funds, private equity companies, and other pooled funds and private investment vehicles; insurance companies; foundations; universities; trusts and estates; and funds and similar entities that own shares or units of, or other portfolio equity interests in, a foreign related or non-related entity.

- *TIC Form SHCA*—Annual Report of U.S. Ownership of Foreign Securities. Form SHCA is the annual report that must be filed only by entities that were notified by the FRBNY. Those required to report on Form SHCA were determined based on the level of U.S. holdings of foreign securities reported on the December 2011 Form SHC and the June 2012 Form SLT. Form SHCA must be filed with the FRBNY by March 3, 2014.

Blue Sky Filings/Form D

Many state securities "blue sky" filings expire on a periodic basis and must be renewed. Accordingly, now may be a good time for an Investment Adviser to review the blue-sky filings for its fund(s) to determine whether any updated filings or additional filings are necessary.

All Form D filings for continuous offerings need to be amended with the SEC on an annual basis.

With the adoption of the new Rule 506(c), the Form D has been revised. The current check box for Rule 506 under Item 6 has been changed to Rule 506(b) and a new check box for Rule 506(c) has been added.

Annual State Corporate/LLC/LP Filings and Taxes

Investment advisors and private funds are required to make annual filings and tax payments in the state of formation, as well as states in which the entities are qualified to do business. There may be corporate filing and/or tax requirements in foreign jurisdictions where the fund is formed or qualified.

If you have any questions regarding the summary above or would like us to assist you in meeting any of these requirements, please feel free to contact us.

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