REGISTERED FIRMS:

ANNUAL COMPLIANCE OBLIGATIONS—WHAT YOU NEED TO KNOW

At the end of this month, the annual updating amendments for investment advisers' Form ADV will be due. The following are some of the 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.

This summary consists of the following segments: **(i)** List of Annual Compliance Deadlines; **(ii)** 2016 Enforcement Priorities In The Alternative Space; **(iii)** New Developments; and **(iv)** Continuing Compliance Areas.

See the 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 (collectively, "***Managers***"). This 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:

Form ADV	
State registered advisers pay IARD fee	November-December (of every year)
SEC registered advisers and ERAs pay IARD fee	Before submission of Form ADV annual amendment
Annual ADV updating amendment	March 30, 2016
Delivery of Brochure	April 29, 2016
Delivery of audited financial statements (for December 31, 2015 year-end)	April 29, 2016
Form PF	
Form PF filers pay IARD fee	Before submission of Form PF

Form PF for large liquidity fund advisers (for December 31, 2015 quarter end)	January 15, 2016
Form PF for large hedge fund advisers (for December 31, 2015 quarter end)	February 29, 2016
Form PF for smaller private fund advisers and large private equity fund advisers (for December 31, 2015 fiscal year-end)	April 29, 2016
Annual Securities Filings	
Form 13F (for 12/31/15 quarter-end)	February 16, 2016*
Form 13H annual filing	February 16, 2016
Schedule 13G annual amendment	February 16, 2016
Form D annual amendment	One year anniversary from last amendment filing.
CPO and CTA	
Affirm CPO exemption	February 29, 2016
Legal Entity Identifier (LEI) Renewal	One year anniversary from last renewal.
Registered Large CPO Form CPO-PQR December 31 quarter-end report	February 29, 2016
Registered CPOs filing Form PF in lieu of Form CPO-PQR December 31 quarter-end report	March 30, 2016
Registered Mid-Size and Small CPO Form CPO-PQR year-end report	March 30, 2016
Registered CTA Form PR (for December 31, 2015 year-end)	February 16, 2016
Bureau of Economic Analysis Filings	
Form BE-13 Surveys (BE-13A, BE-13B, BE-13C, BE-13D and BE-13E) Foreign Direct Investment Surveys	Due not later than 45 days after a triggering acquisition; quarterly and annual follow-on filing.
U.S. Treasury Filings	
TIC Form SLT	January 23, 2016 (for December 2015)

* Reflects an extended due date under Exchange Act Rule 0-3. If the due date of filing falls on a Saturday, Sunday or holiday, a report is considered timely filed if it is filed on the first business day following the due date.

TIC Form SHCA (Report data as of December 31 no later than the first Friday of March)	March 4, 2016
TIC B Forms	Monthly report (December 2015) – by January 15, 2016 Quarterly report (December 31, 2015) – by January 20, 2016
TIC Form D	Quarterly report (not later than 50 calendar days following the last day of the quarter being reported.)
Other Filings	
California Finance Lender License annual report (for December 31, 2015 year-end)	March 15, 2016
FATCA information reports filing for 2015 by participating FFIs	March 31, 2016
FBAR Form FinCEN Report 114 (for persons meeting the filing threshold in 2015 and those persons whose filing due date for reporting was previously extended by Notices 2014-1, 2013-1, 2012-2, 2012-1, 2011-2 and 2011-1)	June 30, 2016

◆ 2016 Enforcement Priorities In The Alternative Space

For 2016, the Office of Compliance Inspections and Examinations (OCIE) of the SEC has stated its top priorities are to promote compliance, prevent fraud and identify market risk through examination of investment advisers, investment companies, broker-dealers, municipal advisors, transfer agents, clearing agencies and other regulated entities. The SEC emphasized its use of "data analytics tools" to identify potentially illegal activity. As was the case last year and in accordance with the SEC's "broken windows" theory, Managers can expect that even minor rule violations will result in sanctions, following the rationale that minor violations left unchecked can lead to major violations. Preventing minor violations therefore has major compliance benefits.

The following are expected to be some of the priority examination and enforcement items of interest for our Manager clients:

Private Fund Advisers

- **Side-by-side management** of performance-based and asset-based fee accounts: controls and disclosure related to fees and expenses; trading activities – including execution, allocation of trades and investment opportunities.

- **Cybersecurity:** testing and assessments of firms' implementation of procedures and controls.

- **High frequency trading**: excessive or inappropriate trading.

- **Liquidity controls**: potentially illiquid fixed income securities – focus on controls over market risk management, valuation, liquidity management, trading activities.

- **Marketing / Advertisements**: new, complex, and high risk products, including potential breaches of fiduciary obligations.

- **Compliance controls**: focus on repeat offenders and those with disciplined employees.

Other Market Participants

- **Never-Before-Examined Investment Advisers and Investment Companies:** focused, risk-based examinations will continue.

- **Broker-Dealers**:

    - ***Marketing / Advertisements***: new, complex, and high risk products and related sales practices, including potential suitability issues.

    - ***Fee selection / Reverse Churning***: multiple fee arrangements – recommendations of account types, including suitability, fees charged, services provided, and disclosures.

    - ***Market Manipulation***: pump and dump; OTC quotes; excessive trading.

    - ***Cybersecurity***: testing and assessments of firms' implementation of procedures and controls.

- ***Anti-Money Laundering***: missed SARs filings; adequacy of independent testing; terrorist financing risks.
- Registered representatives in ***branch offices***: focus on inappropriate trading.
- ***Retirement Accounts***: suitability, conflicts of interest, supervision and compliance controls, and marketing and disclosure practices.

- **Public Pension Advisers**: pay to play, gifts and entertainment.
- **Mutual Funds and ETFs**: liquidity controls – potentially illiquid fixed income securities.
- **Immigrant Investor Program**: Regulation D and other private placement compliance.

As noted in prior alerts, expect continued interagency coordinated investigations among the SEC, CFTC and other agencies.

The Investment Fund Law Blog article on the 2016 Examination Priorities can be found here.

◆ New Developments

REGULATION CROWDFUNDING

The SEC voted to adopt final rules implementing Title III of the Jumpstart Our Business Startups Act (JOBS Act) on October 30, 2015. "Regulation Crowdfunding" is the term used to refer to these final rules that further implement Section 4(a)(6) of the Securities Act of 1933. Regulation Crowdfunding is expected to become effective in May 2016, allowing smaller, non-public U.S. companies to raise up to $1 million in any 12-month period by selling securities over the Internet (including via apps and other technologies) to individual investors who are not required to meet any sophistication or wealth standards. Any such offerings must be conducted through a broker or portal and are subject to investment limits. All companies will be able to use Regulation Crowdfunding except (i) non-U.S. companies (ii) public reporting companies, (iii) blank check companies and companies the business plan of which is to acquire or merge with an unidentified target or targets, (iv) investment companies and companies that are excluded from the definition of investment company under Section 3(b) or Section 3(c) of the Investment Company Act of 1940, (v) companies that fall under disqualifying provisions, including among others, bad actors and (vi) companies that have failed to file the annual report required by Regulation Crowdfunding for the past two years.

The Pillsbury Client Alert, *SEC Finally Adopts "Regulation Crowdfunding"* can be found here.

THE "FAST" ACT

President Obama signed into law the Fixing America's Surface Transportation Act ("FAST" Act). Although the legislation is primarily focused on highway, transportation and safety issues, there are ***amendments to securities and financial services laws***.

Exception to Annual Notice Requirement

Section 75001 of the FAST ACT amends Section 503 of the Gramm-Leach-Bliley Act (GLBA) to provide an exception to the annual privacy notice requirement for a financial institution meeting certain

conditions. Specifically, a financial institution is not required to provide customers with an annual privacy notice when:

(1) The financial institution provides nonpublic personal information only to non-affiliated third parties where the providing of such information is fully disclosed and the non-affiliated third party is subject to confidentiality requirements; and

(2) The financial institution has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent GLBA disclosure.

Safe Harbor for Private Resales of Securities

The FAST Act also created a new non-exclusive safe harbor for private resales of securities. New Section 4(a)(7), which provides an exemption from registration for private resales of restricted or control securities, codifies the exemption commonly referred to as "Section 4(a)(1½)." The scope of the exemption is limited.

The Pillsbury Client Alert, *FAST Act's Hidden Securities Law Benefits* can be found here.

CYBERSECURITY

The OCIE first began to focus on cybersecurity in 2014 with its first round of cybersecurity examinations. Since 2014 the OCIE issued its second and third cybersecurity risk alerts in February 2015 and September 2015 respectively.

The February 2015 risk alert, *Cybersecurity Examination Sweep Summary*,[1] provided a summary of the OCIE's examination observations of the broker-dealers and investment advisers that were examined pursuant to the Cybersecurity Initiative.

The September 2015 risk alert, *OCIE's 2015 Cybersecurity Examination Initiative*,[2] conducted information gathering on cybersecurity controls and tested those controls to assess implementation. The additional areas of focus for the OCIE's second round of cybersecurity examinations included (i) governance and risk assessment, (ii) access rights and controls, (iii) data loss prevention, (iv) vendor management, (v) training, and (vi) incident response. The alert also included an appendix with a sample OCIE document request.

The Investment Fund Law Blog articles can be found here and here.

BANK INVESTORS – VOLCKER RULE

As previously reported, final regulations of the Volcker Rule, adopted as part of the Dodd-Frank Act, were issued at the end of 2013 and banks have been taking steps to assure that they comply. The Volcker Rule prohibits banks from engaging in proprietary trading and from owning or sponsoring certain hedge funds and other private funds. Banks and Managers have already been taking steps to ensure that they comply with the Rule.

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[1] The February 2015 Risk Alert and the appendices with the types of broker-dealers and investment advisers examined can be found here.

[2] The September 2015 Risk Alert and a sample list of information that may be requested during an examination can be found here.

The current deadline with respect to **investments or relationships that were in place as of December 31, 2013** is **July 21, 2016**. However, the Federal Reserve Board is expected to grant an extension again this year (identical to that grated last year) giving all banking entities until **July 21, 2017** to conform any investments in, or relationships with, hedge funds and private equity funds to the requirements of the Volcker Rule. Note that, although the extension is expected, **it has not yet been enacted**.

The Investment Fund Law Blog article can be found here.

U.S. MANAGERS MARKETING IN THE EUROPEAN ECONOMIC AREA – AIFMD

This year saw some answers being provided, and some questions remaining unanswered, from those issues noted in last year's roundup.

First, the use of "reverse solicitation" as a means of side-stepping the requirements of the Alternative Investment Fund Managers Directive (AIFMD) remains an uncertain approach. The hoped-for developments have not materialized and so the risks associated with relying on "reverse solicitation" are still substantial. In keeping with the general theme of over-compliance that many fund managers have adopted in order to avoid falling foul of the regulators, U.S. managers would be best advised to pursue marketing via the national private placement regimes (NPPR), notwithstanding initial and ongoing compliance obligations that arise as a result.

Second, on July 30, 2015 the European Securities and Markets Authority (ESMA) published its advice regarding the extension of the marketing passport to non-EU alternative investment managers (AIFM) and alternative investment funds (AIF). At present, only EU AIFMs and AIFs can access the passport, which allows marketing to occur across the European Economic Area having registered in one country, rather than marketing in each jurisdiction under the NPPRs, the requirements of which can vary from jurisdiction to jurisdiction.

ESMA undertook information gathering and studies on the laws and regulatory regimes of certain countries and, by reference to specified criteria, determined whether those countries posed obstacles to extending the passport. The assessments focused on investor protection, market disruption, competition and monitoring systemic risk.

While ESMA concluded that each of Guernsey, Jersey and Switzerland presented no obstacles, and the passport extended to those AIFMs and AIFs in those jurisdictions, no decision was issued in relation to the U.S., Hong Kong and Singapore. With respect to the U.S., chief among the obstacles identified by ESMA are the absence of remuneration rules for U.S. investment managers and the "unlevel playing field" of the restrictions on EU funds to access U.S. retail investors. Currently, in order for the passport to be extended to the U.S. substantive changes would need to be made to U.S. federal securities laws and regulations regarding the marketing of private funds in the U.S. While the SEC does focus on inadequate disclosures of fees, costs and expenses, it is highly unlikely that the legislative changes necessary to satisfy ESMA will be forthcoming in the near future.

Each of the Cayman Islands, the BVI, the Bahamas, Bermuda and the U.S. Virgin Islands, among others, are on the slate to be assessed by ESMA. However, there is no running order and no time frame for the assessments. Perhaps this time next year we'll have something to report on the passport.

SWISS COLLECTIVE INVESTMENT SCHEMES ACT - 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). CISA applies to any "distribution"[3] of a Collective Investment Scheme ("CIS" or fund) 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).

What is not "distribution" (as listed in CISA) is not subject to CISA. Among the exceptions, a concept similar to AIFMD's "reverse solicitation" is available where the provision of information and the purchase of a fund's shares is "at the instigation of or at the own initiative of an investor." This exception is framed narrowly and is also expected to be interpreted narrowly. Transactions with any prospect a manager has been in touch with or who has been on a Swiss distribution list is unlikely to qualify as reverse inquiry.

Marketing and sale to *regulated* "qualified investors" (Swiss-regulated financial entities, such as banks, securities dealers, fund managers and insurance companies) is likely also not "distribution." If a Swiss bank (or similar regulated financial entity) introduces a U.S. manager's fund to its discretionary management clients who may then invest in the fund, directly or indirectly, this is unlikely to amount to distribution. However, if the U.S. manager has direct contact with (including sending fund-related documents or materials to the investors), this is likely to amount to "distribution."

Marketing and sales to *unregulated* "qualified investors" (pension plan, corporate, family office, family trust and high-net-worth individuals) will fall under the definition of "distribution" and require compliance with CISA. To comply, the fund must appoint a Swiss representative and a Swiss paying agent each registered with FINMA, and the fund's investment manager must enter into a distribution agreement with the appointed Swiss representative and comply with annual compliance confirmations and other requirements.

To avoid the full application of CISA, the fund manager should not have a Swiss place of business or employees based in Switzerland. Any offering document provided to Swiss investors should include a disclaimer stating that the fund is only distributed to qualified investors, and such persons must declare in writing that they meet the financial requirement and affirmatively "opt in" to being classified as "qualified investors."

A fund manager may not distribute a CIS to non-qualified (retail) investors without registering the fund with FINMA – an onerous process.

FATCA

Foreign Account Tax Compliance Act (FATCA), consisting 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. The provisions of FATCA are in many cases modified as a result of intergovernmental agreements ("IGAs") implementing FATCA in various non-U.S.

[3] **"Distribution"** is very broadly defined as 'offering' or 'advertising' funds, which are defined to include 'any type of activity whose object is the purchase' of shares or other interests in a fund. Offering or advertising by whatever means is covered — in writing, emails, calls, Internet/websites, offering memoranda, subscription documents, brochures, presentations, etc.

jurisdictions. FFIs that fail to comply with FATCA may be subject to a 30% withholding tax on certain U.S. source payments (as specially defined for FATCA purposes).

Most non-U.S. funds will generally be FFIs and accordingly are required to register with the IRS and obtain a GIIN to avoid FATCA withholding. U.S. funds generally are not required to register with the IRS but will be required to comply with the withholding and due diligence procedures required by FATCA.

Generally FFIs must register on the IRS online FATCA portal and obtain a GIIN to avoid withholding, unless another exception applies. FATCA withholding started July 1, 2014 subject to some exceptions but is now required in all cases. Rules regarding additional classes of payments subject to withholding, and transitional rules relating to particular situations, will be phased in at later dates. The IRS had announced that calendar years 2014 and 2015 were transitional periods, during which the IRS would take into account good faith efforts to comply with FATCA. The IRS has made no such announcement with respect to calendar year 2016.

The deadline for participating FFIs and Model 2 FFIs to file FATCA information reports with the IRS is **March 31, 2016** (with respect to the 2015 calendar year). FFIs in Model 1 IGA jurisdictions will have until **September 30, 2016** to file their first FATCA information reports for 2015 with their home jurisdiction. See http://www.irs.gov/Businesses/Corporations/Summary-of-FATCA-Timelines for a more detailed timeline.

Anti-Money Laundering

After several years and withdrawn proposals, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") published a proposed rule in September 2015 that would extend to SEC registered investment advisers the requirement to establish anti-money laundering ("**AML**") programs and report suspicious activity to FinCEN under the Bank Secrecy Act (the "**BSA**"). Although investment advisers have not been covered by the BSA's definition of "financial institutions" many, if not most, have had voluntary AML programs. Under the proposed rule, investment advisers would become "financial institutions," which would require them to comply with the BSA's reporting and recordkeeping requirements applicable to financial institutions. Stay tuned for further information.

PROPOSED AMENDMENTS TO FORM ADV

The SEC's proposed amendments to Form ADV including proposed amendments to current record keeping rules found *here.*

Key provisions:

- Would require information (including RAUM, type of assets held and use of derivatives and borrowings) on separately managed accounts (SMAs).
- Would establish "umbrella registration" on Form ADV for multiple private fund advisers operating a single advisory business.
- Technical/clarifying amendments to Form ADV, Part 1A, including additional information on outsourced CCOs (whether or not they are compensated or employed by outside services).

- Would require amendments to current record keeping rules by requiring advisers to maintain performance calculation records and communications related to them.

◆ Continuing Compliance Areas

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 SEC has stated among its examination and enforcement priorities cracking down on superficial annual compliance reviews. The review should be conducted with special focus on the Investment Adviser's specific business model and operating environment, 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. In addition, the SEC will test whether the annual review has really taken into consideration all the regulatory changes and what has happened in the industry. 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 all topics applicable to a Manager mentioned above under "*2016 Examination and Enforcement Priorities in the Alternative Space*."

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 or annual ERA report **by March 30, 2016**. The annual IARD fee of an SEC-registered adviser is based on the adviser's AUM. The current applicable fees for SEC-registered advisers are: $40 for advisers with AUM below $25 million; $150 for advisers with AUM of $25 million but less than $100 million; and $225 for advisers with AUM of $100 million or more. 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, including an ERA, must file an annual amendment to Form ADV within 90 days of the end of its fiscal year. Part 1 and Part 2 of Form ADV must be filed with the SEC through the electronic IARD system. Accordingly, if you are an SEC-registered adviser whose fiscal year ended on December 31, 2015, you must file Part 1A and the Part 2A Brochure as part of your annual updating **amendment by March 30, 2016**. If you are a state-registered adviser whose fiscal year ended on December 31, 2015, you must also file Part 1A, Part 1B, the Part 2A Brochure and the Part 2B Brochure Supplement as part of your annual updating amendment by March 30, 2016. ERAs with a December 31, 2015 fiscal year-end must also file their annual report on short Form ADV Part 1 by March 30, 2016. The current Form ADV Part 1 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 29, 2016**.

Ongoing Updates. Investment Advisers, including ERAs, 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.

No Longer Eligible as an ERA. An investment adviser who no longer qualifies as an ERA must submit a final report on Form ADV as an ERA and apply for registration with the SEC or the relevant state securities agency within 90 days after the filing of its annual amendment report.

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.

Form PF

The **deadline** for advisers required to file Form PF within 120 days after the December 31, 2015 fiscal year end is **April 29, 2016**. 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 2015: February 29, 2016

Annual Affirmation. 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 of the calendar year-end. 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 2015 have **until February 29, 2016 to affirm the exemption or exclusion or face losing their exemption or exclusion**. 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,[4] the following instruments generally fall under the definition of "**commodity interests**" as defined by the Commodity Exchange Act of 1936 (CEA): (i) commodities for future delivery, securities futures products or swaps, (ii) agreements, contracts, or transactions in foreign currency interests, (iii) commodity options, and (iv) certain authorized leverage transactions.

Legal Entity Identifiers (LEIs)

Deadline to renew your LEI for calendar year 2016: Annually based on the date of creation of the LEI

LEIs are required for all swap market participants. The CFTC's regulation provides that each counterparty to any swap subject to CFTC jurisdiction must be identified in all recordkeeping and all swap data reporting by means of a single LEI. To register for your LEI or renew your LEI please use the Global Markets Entity Identifier (GMEI) utility *here*.

Form CTA-PR

Deadline for filing Form CTA–PR for December 31, 2015 year end: February 16, 2016

CFTC Regulation 4.27 requires that all CFTC-registered CTAs and members of the NFA file a Form PR by February 16, 2016.

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.

The Form PR report for the year ended December 31, 2015 will be due by February 16, 2016 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.

[4] The *de minimis* exemption under Section 4.13(a)(3) 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.

- 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.

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

Bureau of Economic Analysis (BEA) Forms

The BEA of the U.S. Department of Commerce has a series of surveys that it uses to collect economic data:

- **Form BE-180**

Form BE-180 is a mandatory survey of U.S. financial services providers and foreign persons from the BEA that occurs every five years and collects data on cross-border trade and financial services transactions of U.S. financial services providers, including investment advisers and other asset managers, broker-dealers and banks. The next BE-180 will be conducted in 2020 and will cover fiscal year 2019 transactions.

The Investment Fund Law Blog article on Form BE-180 can be found here.

- **Form BE-10**

Form BE-10 is a mandatory survey to obtain economic data on the operations of U.S. parent companies and their foreign affiliates. The BE-10 survey is conducted every five years pursuant to the International Investment and Trade in Services Survey Act, and the next BE-10 will be conducted in 2020 and will cover fiscal year 2019 transactions.

The Investment Fund Law Blog article on Form BE-10 can be found here.

- **Form BE-13**

Form BE-13 is a mandatory survey of new foreign direct investment in the United States. A U.S. entity is required to report if (1) a relationship of foreign direct investment in the United States is created or (2) an existing U.S. affiliate of a foreign parent establishes a new U.S. legal entity, expands its U.S. operations or acquires a U.S. business enterprise. Form BE-13 is due no later than 45 days after an acquisition is completed, a new entity is established or expansion has begun.

Information regarding Form BE-13 can be found here and information regarding which version of Form BE-13 to file can be found here.

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.

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, counterparty risk and conflicts of interest), personnel, allocation policies, conflicts policies and procedures, service providers and any relevant legal or regulatory developments.

Annual Privacy Notice

Under certain federal and state privacy laws, you may be required to provide to your fund investors or clients who are natural persons notice of your privacy policy on an annual basis, even if there are no changes to the privacy policy. Note that the new exemptions discussed in the "FAST ACT" section below may apply.

New Issues

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 accountant 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.

All investment advisers licensed or required to be licensed in California must comply with California's custody rule 10 C.C.R. Section 260.237. For explanation of the requirements and more details about the California Custody Rule, please read the article that we have previously posted on our Investment Fund Law Blog here.

"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.

California Finance Lenders License

A California Finance Lenders licensee is required to file an annual report **by March 15th of each year**, whether or not business has been conducted with the issued license. Failure to file the annual report will result in the summary revocation of the license. A new license application can be filed after one (1) year from the date of revocation.

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.

Rules 506(c) and 506(d)

Rule 506(c) – General Solicitation

Any fund that uses general solicitation or general advertising in connection with a Rule 506(c) private placement is required to take reasonable steps to verify that the purchasers of the securities are accredited investors. Fund managers that are using or planning to use general solicitation or general advertising in connection with a Rule 506 private placement should establish, review and periodically update methods for verifying that purchasers of securities sold in a generally advertised or solicited offering are accredited investors. Rule 506(c) contains a non-exclusive list of non-mandatory methods for verifying the status of a natural person purchaser as an accredited investor. A fund will be deemed to have met the requisite standard for verification if it uses one of the enumerated verification methods, so long as the fund does not have knowledge that the purchaser is not an accredited investor. Although there is no corresponding list of verification methods for entity purchasers, documentary evidence (such as financial statements, brokerage account statements or tax returns) or attestations from accountants, bankers or similar service providers are examples of methods used by some funds to verify accredited investor status for entity investors. Other methods also may constitute reasonable steps, depending on the facts and circumstances. Files containing information about methods used to verify status (and any documents obtained in connection with accredited investor status due diligence) should be retained in accordance with the fund manager's document retention policy and applicable securities laws.

Rule 506(d) – Reaffirmation of Bad Actor Disqualification

Fund managers should ensure that representations previously provided by "covered persons" pursuant to Rule 506(d)[5] are reaffirmed as part of the factual inquiry establishing reasonable care to determine whether a disqualification exists. Private funds that rely on the Rule 506 private offering exemption 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 (such as in the subscription documents). 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.

[5] Rule 506(d) prohibits private funds from relying on any Rule 506 private placement exemption if any of the private fund's "covered persons" (as defined in the Rule) is disqualified as a result of committing a "Bad Act" (as defined in the Rule).

◆ Securities and Other Forms Filings

Form 13F

Deadline for filing Form 13F for the December 31 quarter: February 16, 2016

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 16, 2016

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 29, 2016

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 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 Form PF with the SEC in certain circumstances. *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[6] must file Form PF within 15 days of each fiscal quarter-end.
- Large hedge fund advisers[7] must file Form PF within 60 days of each fiscal quarter-end.
- All other filers[8] must file Form PF within 120 days of each fiscal year-end.

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

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

[8] 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.

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 16, 2016

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 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 *FinCEN Report 114*: June 30, 2016

A U.S. person is required to file a Report of Foreign Bank and Financial Accounts ("FBAR") if he or she 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 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 *FinCEN Report 114* supersedes the previous years' form TD F 90-22.1 and is filed only electronically via FinCEN's *BSA E-Filing system*. For additional information on filing FBAR, see the Treasury Department's *FBAR E-filing FAQs*. Current FBAR Guidance and other FBAR information are available in the *IRS website*.

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 of each year and is conducted every 5 years. Note, the next survey is due in 2017.
- *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 are determined based upon the data submitted during the previous Benchmark survey and TIC SLT report as of December of the preceding year. Form SHCA must be filed with the FRBNY no later than the first Friday of March.

- *TIC B Forms* – Private funds and investment advisers may be required to file TIC B Forms as a result of recent amendments made by the U.S. Department of Treasury. TIC B Forms require a fund manager or investment adviser to report certain information concerning "claims" and "liabilities" of the reporting institution to or from foreign residents. Filing obligations may arise for private funds that provide credit to foreign entities, invest directly in foreign debt instruments, directly hold foreign short-term securities, or have a foreign credit facility. There are a number of different TIC B Form reports and generally advisers or managers with total claims or liabilities under $50 million in all geographical regions, or $25 million in an individual country, are exempt from filing. The Federal Reserve Bank of New York requires investment advisers who have reportable claims or liabilities to report this information on certain monthly and quarterly reports. Reportable claims and liabilities to be reported monthly (Forms BC, BL-1 and BL-2) are due no later than the 15th calendar day following the last day of the month. Reportable claims and liabilities to be reported quarterly (Forms BQ-1, BQ-2 and BQ-3) are due no later than the 20th calendar day following a quarter end. Detailed filing requirements and descriptions of each B Form can be found ***here***.

- *TIC Form D* – TIC Form D is a quarterly report used to cover holdings and transactions in derivatives contracts undertaken between foreign resident counterparties and major U.S.-resident participants in derivatives markets. TIC Form D must be submitted if the exemption level is exceeded which occurs when: (1) the total notional value of derivatives holdings for the reporter's own account and the account of the reporter's customers exceeds $400 billion as of the reporting date or (2) the total value of net settlements during a quarter exceeds $400 million. Once either exemption level has been exceeded, the reporter should submit the TIC Form D for that calendar quarter, for the remaining quarters in the same calendar year, and for each quarter of the following calendar year. Detailed filing requirements for TIC Form D can be found ***here***.

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.

As noted in last year's annual client alert, the Form D was revised with the adoption of Rule 506(c) and the prior check box for Rule 506 under Item 6 was changed to Rule 506(b) and a new check box for Rule 506(c) was 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.

Ildiko Duckor (Bio)

André W. Brewster (Bio)

Sam Pearse (Bio)

Semma G. Arzapalo (Bio)

Kimberly Mann (Bio)

Dulce D. Brand (Bio)

David E. Lillevand (Bio)

Corey Harris (Bio)