REGISTERED FIRMS:

ANNUAL COMPLIANCE OBLIGATIONS—WHAT YOU NEED TO KNOW

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)** 2017 Enforcement Priorities In The Alternative Space; **(iii)** New Developments; and **(iv)** Continuing Compliance Areas.

Table of Contents

Page

See the deadlines identified 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.

◆ Table of Annual Compliance Deadlines:

Form ADV	
State registered advisers and ERAs 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 31, 2017
Delivery of Brochure	May 1, 2017*
Delivery of audited financial statements (for December 31, 2016 year-end)	May 1, 2017*
Form PF	
Form PF filers pay IARD fee	Before submission of Form PF
Form PF for large liquidity fund advisers (for December 31, 2016 quarter end)	January 16, 2017*
Form PF for large hedge fund advisers (for December 31, 2016 quarter end)	March 1, 2017
Form PF for smaller private fund advisers and large private equity fund advisers (for December 31, 2016 fiscal year-end)	May 1, 2017*

* 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.

Annual Securities Filings	
Form 13F (for 12/31/15 quarter-end)	February 14, 2017
Form 13H annual filing	February 14, 2017
Schedule 13G annual amendment	February 14, 2017
Form D annual amendment	One year anniversary from last amendment filing.
CPO and CTA	
Affirm CPO exemption	March 1, 2017
Legal Entity Identifier (LEI) Renewal	One year anniversary from last renewal.
Registered Large CPO Form CPO-PQR December 31 quarter-end report	March 1, 2017
Registered CPOs filing Form PF in lieu of Form CPO-PQR December 31 quarter-end report	March 31, 2017
Registered Mid-Size and Small CPO Form CPO-PQR year-end report	March 31, 2017
Registered CTA Form PR (for December 31, 2016 year-end)	February 14, 2017
Bureau of Economic Analysis Filings	
Form BE-13 Surveys (BE-13A, BE-13B, BE-13C, BE-13D and BE-13E) New 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, 2017 (for December 2016)
TIC Form SHCA (Report data as of December 31 no later than the first Friday of March)	March 3, 2017
TIC Form SHC (Report data as of December 31 no later than the first Friday of March)	March 3, 2017
TIC B Forms	Monthly report (December 2016) – by January 16, 2017 Quarterly report (December 31, 2016) – by January 20,

	2017
TIC Form D	Quarterly report (December 31, 2016) – by February 20, 2017)
Other Filings	
California Finance Lender License annual report (for December 31, 2016 year-end)	March 15, 2017
FATCA information reports filing for 2016 by participating FFIs	March 31, 2017
FBAR Form FinCEN Report 114 (for persons meeting the filing threshold in 2016 and those persons whose filing due date for reporting was previously extended by Notices 2015-1, 2014-1, 2013-1, 2012-2, 2012-1, 2011-2 and 2011-1)	April 15, 2017

◆ 2017 Enforcement Priorities In The Alternative Space

For 2017, the Office of Compliance Inspections and Examinations (OCIE) of the SEC has stated its top priorities are to promote compliance, prevent fraud, and monitor market risk. The SEC continued to emphasize the goal of using data analytics to identify industry practices and/or specific registrants with high risk profiles. The following are expected to be some of the priority examination and enforcement items of interest for Managers, largely echoing 2016 priorities:

Private Fund and Other Investment Advisers

- **Conflicts of Interest:** continued focus on disclosure of conflicts as well as actions that appear to benefit the adviser to the detriment of investors.

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

- **Compliance controls-- Recidivist Offenders**: continued focus on repeat offenders and those firms' with a track record of misconduct and disciplined employees.

- **Never-Before-Examined Investment Advisers and Investment Companies**: program is expanded; focused, risk-based examinations of newly registered advisers and advisers that have been registered for longer periods without examination.

- **Whistleblower**: targeting contract terms (employment and severance agreements) that appear to restrict contact with the SEC or require employee whistleblowers to waive monetary recoveries.

Other Market Participants

- **Robo-Advisers**: focus on advisers that provide electronic investment advice, primarily interact with clients online, and firms that use automation as a component of their services while offering access to financial professionals.

- **Money Market Funds**: emphasis on board oversight of funds' compliance with the amended SEC Money Market Reform rules that became effective in October 2016; review of compliance with stress testing and periodic reporting of fund policies and procedures.

- **Multi-Branch advisers**: focus on design and implementation of compliance programs, and oversight of advisory services provided at branch offices.

- **Broker-Dealers**:

    - ***Payment for Order Flow***: market maker compliance with duty of best execution in routing customer orders.

    - **Wrap Fee Programs**: focus on acting in accordance with their fiduciary duties and meeting contractual obligations with an emphasis on—wrap account suitability, effectiveness of disclosures, conflicts of interest, and best execution.

    - **FINRA**: enhanced oversight of the quality of FINRA examinations of individual broker-dealers.

    - ***Anti-Money Laundering***: tailoring of programs to the specific risk firms' face and the adapting programs to current money laundering and terrorist financing risks; compliance with Suspicious Activity Report (SAR) procedures.

    - ***Share Class Selection***: review of registered representatives for conflicts of interest and factors that may affect recommendations in favor of share classes with higher load or distribution fees.

    - ***Retirement Accounts***: recommendations and sales of variable insurance, sales and management of target date funds, and controls surrounding cross-transactions with a focus on fixed income securities.

    - ***Recommendations***: suitability of recommendations to purchase ETFs with niche strategies.

- **Public Pension Advisers**: emphasis on the management of conflicts of interest and fulfilling fiduciary duties in addition to pay-to-play, undisclosed gifts, and entertainment provided to pension representatives.

- **Mutual Funds and ETFs**: Compliance with Securities Act of 1934 and the Advisers Act, review of unit creation, the redemption process, sale practices and disclosures.

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

The SEC 2017 Examination Priorities can be found ***here***.

◆ New Developments

CALIFORNIA STATE REGULATION

California—New Private Fund Fee Disclosure Requirement

Effective January 1, 2017, California's new law (Assembly Bill 2833) mandates unprecedented transparency of California public investment funds' investments in hedge funds, private equity funds, venture funds, and absolute return funds (Funds). It requires California state, county and city public pensions funds to obtain from Funds, and disclose to the public at least annually, substantial information related to fees and expenses the public pensions pay to Funds. The new law, enacted in parallel with a wave of regulatory actions targeted at fee and expense disclosure violations by private funds, may propel similar laws in other states as well.

The Pillsbury Client Alert, *New Law Mandates Disclosure of Alternative Fund Fees by California Public Pensions* contains detailed about the disclosure items, and can be found ***here***.

Fund managers should consult counsel about the interpretation of ambiguities in the new law, specific disclosure requirements and strategy related to negotiating fee discounts in light of the new public disclosure requirement.

WHISTLEBLOWER ENFORCEMENT

The SEC has continued its crackdown on employer whistleblower restrictions. The SEC's focus has been on contract terms that appear to restrict contact with the SEC or require employee whistleblowers to waive monetary recoveries. Express disclosure of these rights in severance agreements is now required by the SEC. The fact that the contract did not thwart any whistleblowers is not an adequate defense. The SEC has also taken issue with provisions that purport to waive recovery of monetary awards for SEC whistleblowers because it removes the financial incentives that are intended to encourage communication with the SEC.

Fund managers and other employers should carefully review their current agreements and their compliance policies and procedures addressing whistleblower protections. Appropriate amendments may need to be made in new hire agreements. Current employees with more restrictive agreements should be updated in training sessions that those restrictions are now lifted. In addition, employers should consider whether, in certain circumstances, they should notify departed employees who are signatories to more restrictive agreements. Additional detail and recommendations can be found in our Client Alert ***here*****.**

AMENDMENTS TO FORM ADV

On August 25, 2016, the SEC issued a Final Rule which adopted amendments (largely as proposed on May 20, 2015) to Form ADV, including amendments to current record keeping rules. Advisers are required to comply with the amendments on October 1, 2017.

Key provisions:

- Requires an increase in disclosure of information regarding (including RAUM, type of assets held and use of derivatives and borrowings) separately managed accounts (SMAs).
- Establishes "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 entities).
- Requires amendments to current record keeping rules by requiring advisers to maintain performance calculation records and communications related to them.

ERISA FIDUCIARY DUTY RULE—DELAYED

On April 6, 2016, the U.S. Department of Labor ("DOL") issued its long-awaited final rule (the "Fiduciary Rule") on who is a "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"). The Fiduciary Rule and related guidance would expand the types of advice and services that are considered "fiduciary" in nature, and would expand the types of plans and accounts to which fiduciary duties apply to include individual retirement accounts, individual retirement annuities and health savings accounts.

The Fiduciary Rule, together with the prohibited transaction rules of ERISA and the Internal Revenue Code, generally prohibit fiduciary advisors from receiving compensation that varies depending on the particular investments made or recommended by the advisor (the DOL views such compensation arrangements as potential conflicts of interest). However, the DOL issued a new "Best Interest Contract Exemption" and modified other existing exemptions to provide a way to continue using such compensation arrangements if the advisor can demonstrate the arrangement is in the best interest of the plan or account holder. These exemptions impose significant disclosure and record-keeping requirements on the advisor.

The Fiduciary Rule and related exemptions were scheduled to go into effect on April 10, 2017, with a delayed effective date of January 1, 2018 for some of the new exemption requirements. However, on February 3, 2017, President Trump issued a Presidential Memorandum to the Secretary of Labor directing the DOL to re-examine the Fiduciary Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. The DOL is supposed to consider whether the anticipated applicability of the Fiduciary Rule (1) has harmed or is likely to harm investors due to reduced access to retirement savings offerings, retirement product structures, retirement savings information or related financial advice, or (2) has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees. The DOL is also supposed to consider whether the Fiduciary Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to again access to retirement services.

In response to the Presidential Memorandum, the DOL has sent a proposal to the Office of Management and Budget ("OMB") to delay the Fiduciary Rule. Details of the OMB proposal are not yet public, but most observers expect the Fiduciary Rule to be delayed for at least 180 days. During that time, the DOL will perform the analysis requested by the Presidential Memorandum and presumably will invite comments from the affected parties. At the end of the period, the DOL may further delay the Fiduciary Rule, and/or propose rescinding or revising the Fiduciary Rule.

The full text of the rule can be found ***here*** and the full text of the Presidential Memorandum can be found ***here*****.**

CFTC REGULATORY UPDATES

In 2016, the Commodity Futures Trading Commission (the "CFTC") took a number of regulatory steps affecting funds. Three particularly significant actions are described below. However, the results of the presidential election have created uncertainty as to the timing of the implementation of these rules and whether they may be implemented in their current forms at all. Of particular importance is the resignation of the former CFTC Chairman Timothy G. Massad, effective on January 20, 2017, and his potential temporary or long-term replacement by CFTC Commissioner J. Christopher Giancarlo. Commissioner Giancarlo has been an outspoken critic of some of the features of the Aggregation Rules, Position Limits and Regulation Automated Trading (described below). In addition, in recent public remarks, he referred to the March 1, 2017 compliance date for variation margin for uncleared swaps (also described below) as "unrealistic" and posing "a massive challenge for market participants."

Variation Margin for Uncleared Swaps Is Set to Go Live March 1, 2017

Under separate sets of regulations finalized by U.S. bank regulators (the "Prudential Regulators") and the CFTC in late 2015 and early 2016 pursuant to requirements imposed by the Dodd-Frank Act, swap dealers will be required to post and collect variation margin with respect to uncleared swaps and security-based swaps entered into on or after March 1, 2017 with Financial End Users ("FEUs").

FEUs, a regulatory category specific to margin rules, includes private funds, commodity pools, commodity pool operators, commodity trading advisors and futures commission merchants ("FCMs"); registered investment companies, business development companies, employee benefit plans, investment advisers, broker-dealers, insurance companies; certain banking and lending entities; and foreign persons that would be any of the above if organized under US law.

While the margin rules of the Prudential Regulators and the CFTC are substantially similar, there are some differences:

Bank Regulators. Swap dealers that are subject to the jurisdiction of the Prudential Regulators must comply with the margin rules in connection with all types of swaps, including security-based swaps (e.g., total return swaps or credit default swaps on single names or narrow-based securities indices) and other swaps (e.g., interest rate swaps, commodity swaps and total return swaps and credit default swaps on broad-based securities indices).

Non-Bank Regulators. In contrast, swap dealers that are not subject to the jurisdiction of the Prudential Regulators need only comply with respect to the CFTC's rules relating to swaps, as the SEC's proposed rules relating to margin for uncleared security-based swaps has not yet been finalized. Moreover, some swap dealers may be subject to substantially similar rules of non-U.S. jurisdictions which will also be going into effect on March 1.

Physically Settled vs. Cash-Settled Swaps. Under both the Prudential and CFTC regulations, margin need not be posted or collected with respect to physically-settled foreign exchange swaps or foreign exchange forwards. However, cash-settled currency swaps, cross-currency swaps and non-deliverable foreign exchange forwards and foreign exchange options are subject to the margin rules. This is not the case in all non-U.S. jurisdictions. Even in the U.S., banking safety and soundness standards have indicated that certain banks subject to Federal Reserve jurisdiction should collect and post margin on currency forwards and other physically-settled foreign exchange transactions entered into with financial institutions and systemically important non-financial entities.

Recommendations. Funds and other FEUs should take prompt steps to prepare for the impending launch of these margin rules. To confirm the regulatory margin status of the swap dealer under relevant jurisdictions and the fund's status, the parties can exchange the Regulatory Margin Self-Disclosure Letter published by ISDA. In addition, a FEU will need to amend its collateral documentation with each of its swap dealer counterparties to comply with the new variation margin requirements. This can be accomplished either by means of the 2016 Variation Margin Protocol, also published by ISDA, or by negotiating new Credit Support Annex ("CSAs") on a bilateral basis.

Final Aggregation Rules and Reproposed Position Limits

On December 5, 2016, the CFTC approved a final rule amending the requirements to aggregate positions in futures and options on futures (the "Aggregation Rules") that are subject to a set of speculative position limits established by the CFTC. These position limits currently apply to nine agricultural futures contracts, but on December 5, the CFTC also reproposed rules (the "Reproposed Position Limits") that would establish position limits on 25 core physical futures contracts (including, among others, certain energy and metals contracts) and "economically equivalent" futures, options on futures and swaps). If the Reproposed Position Limits are adopted, the Aggregation Rules will automatically apply to the new contracts subject to the position limits. The amendments to the Aggregation Rules were scheduled to become effective on February 14, 2017. However, on February 6, 2017 the CFTC issued temporary relief from the notice filing requirement in the form of a time-limited no-action letter stating, from February 14, 2017 to August 14, 2017, it would not recommend an enforcement action for failure to file a notice when relying on certain aggregation exemptions from federal position limit levels. The Division of Market Oversight also announced an online portal that provides the form and manner for filing aggregation exemption notices. The Reproposed Position Limits rule includes a 60-day public comment period that will expire on February 28, 2017.

As amended, the Aggregation Rules generally require, subject to certain exemptions, a market participant to aggregate all positions in which it directly or indirectly controls trading or holds a 10 percent or greater ownership or equity interest. In addition, it must include in its aggregation all positions it holds, or the trading of which it controls, in more than one account or pool where those accounts or pools have substantially identical trading strategies. The amendments to the Aggregation Rules retained existing exemptions for:

(i) eligible entities that delegate control of a client account to an independent account controller;

(ii) futures commission merchants who hold discretionary accounts or manage customer trading programs; and

(iii) limited partners, limited members, shareholders, or other similar pool participants.

The amendments also expanded the Aggregation Rules to include new exemptions for: (a) market participants, such as parent companies, that hold at least a 10 percent interest in an owned entity, where the parent and owned entity do not have knowledge of the trading decisions of the other; trade pursuant to separately developed and independent trading systems; have and enforce written procedures to preclude each other from having knowledge of, gaining access to, or receiving data about the trades of the other; do not share employees that control trading decisions; and do not have risk management systems that permit the sharing of its trades or trading strategy with employees that control trading; (b) underwriting and broker-dealer activities; and (c) situations where information sharing would violate law, as supported by a written memorandum of law.

The amendments also impose new notice filing requirements with respect to most of these exemptions but permit filing within five business days after the market participant is aware, or should be aware, that the notice has not been timely filed. Although the rules become effective on February 14, 2017, on February 6, 2017 the CFTC issued temporary relief from the notice filing requirement in the form of a time-limited no-action letter stating, from February 14, 2017 to August 14, 2017, it would not recommend an enforcement action for failure to file a notice when relying on certain aggregation exemptions from federal position limit levels. The Division of Market Oversight also announced an online portal that provides the form and manner for filing aggregation exemption notices.

Regulation Automated Trading - Supplemental

On November 4, 2016, the CFTC approved a supplemental proposal (the “Supplemental Proposal”) to proposed Regulation Automated Trading (“RegAT”). As originally proposed on December 17, 2015 (the “Original Proposal”), RegAT sought to update its rules on futures trading by focusing on algorithmic order origination or routing by market participants, and electronic trade execution by designated contract markets (“DCMs”). The regulation was motivated in part by a concern that automated trading was being used extensively by proprietary traders who are responsible for significant volume and liquidity in key futures products but not registered with the CFTC.

RegAT would regulate the activities of “AT Persons:”

- traditionally CFTC-regulated entities that engage in algorithmic trading on or subject to the rules of a DCM: FCMs, floor brokers, swap dealers, major swap participants, CPOs, CTAs and introducing brokers
- “Floor Traders:” (a new regulatory category) persons not otherwise registered with the CFTC and who engage in proprietary, algorithmic trading through direct electronic access on a DCM.

While the Original Proposal would have included all such persons, regardless of the extent of their trading activity, the Supplemental Proposal would limit applicability by a volume-based quantitative test.

RegAT requirements (if approved as proposed):

- pre-trade risk controls over algorithmic trading of AT Persons;

- the registration of Floor Brokers with the CFTC and membership with the NFA or other futures association;

- certain annual reports (as proposed in the Original Proposal) or annual certifications (as proposed in the Supplemental Proposal) to be made by AT Persons to the DCMs;

- the preservation by AT Persons of algorithmic trading source code to be made available for inspection to the CFTC (as proposed in the Original Proposal) but the Supplemental Proposal added confidentiality restrictions;

- certain provisions intended to provide greater transparency around a DCMs' electronic trade matching platforms and promote the use of self-trade prevention tools; and

- certain requirements for the development, testing and compliance with algorithmic trading systems.

The 60-day comment period expired on January 24, 2017.

ANTI-MONEY LAUNDERING

On May 11, 2016, FinCEN issued its Final Rule on Customer Due Diligence Requirements ("**CDD**") for "covered financial institutions" ("**Final Rule**"). Private investment funds are only subject to the "control prong" of the Final Rule as discussed below.

Financial institutions, defined by the Bank Secrecy Act, 31 U.S.C. § 5311, et seq. (BSA), includes numerous categories, including insured banks, private bankers, credit unions, brokers or dealers registered with the SEC, investment banker or investment company, operator of credit card systems, insurance companies, and travel agencies. Notably, investment advisors are not presently included in the definition of "financial institution." Last year, we discussed the Treasury's Financial Crimes Enforcement Network's ("**FinCEN**") proposed amendments that would include SEC registered investment advisers in the definition of "financial institutions" and would require them to establish anti-money laundering ("**AML**") programs. That rule, however, has not been finalized.

The Final Rule defines "covered financial institutions" as a subset of the BSA definition of financial institutions, and refers specifically to banks; brokers or dealers in securities; mutual funds; and futures commission merchants and introducing brokers in commodities. The Final Rule focuses on transparency with respect to beneficial ownership of legal entities. Thus, the Final Rule requires these covered financial institutions to (A) establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers; and (B) make explicit that AML programs require customer risk assessment and certain ongoing monitoring and, where appropriate, updates to beneficial ownership information. The minimum standard expected for CDD are (i) customer identification and verification; (ii) beneficial ownership identification and verification; (iii) an understanding of the nature and purpose of customer relationships to develop a customer risk profile; and (iv) ongoing monitoring and reporting of suspicious transactions and, on a risk-basis, maintain and update customer information.

With respect to beneficial owners of legal entities, the Final Rule clarifies that a "beneficial owner" includes (i) individuals owning 25% or more of the equity interests of the legal entity customer and (ii) a single individual with "significant responsibility to control, manage, or direct" a legal entity customer. A legal entity customer means a corporation, limited liability company, or other entity created by filing a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction, that opens an account.

Under the "control prong", pooled investment vehicles whose operators or advisers are not excluded from the beneficial ownership and verification requirements (such as hedge funds and private equity funds) are solely required to collect beneficial ownership information regarding a single individual with "significant responsibility to control, manage, or direct a legal entity customer" and this includes an executive officer, senior manager or any individual who regularly performs similar functions.

INSIDER TRADING UPDATE

On December 6, 2016 the Supreme Court in Salman v. United States, 2016 WL 7078448 (U.S. Dec. 6, 2016) unanimously held that people who trade on inside information can be civilly and criminally liable even if the insider did not receive a concrete financial benefit for the tip, as long as the trader and the insider are friends or family. In *Salman*, the Court upheld the criminal conviction and 36-month sentence of the tippee, Bassam Salman, who had been convicted of trading on inside information he received from a family member. The Court affirmed the conviction even though the insider himself did not make money from the tips, which he passed along to his brother, who in turn passed them to Bassam Salman.

The Pillsbury Client Alert, *Supreme Court – Don't Give Inside Information to Friends or Family* can be found ***here*.**

SEC REVISED QUALIFIED CLIENT THRESHOLD

3(c)(1) funds should update their offering documents to reflect that the new requirement for "qualified clients" is $2.1 million net worth. The SEC issued an order on June 14, 2016 raising the net worth threshold for "qualified clients" in Rule 205-3 under the Advisers Act. Effective August 15, 2016, the dollar amount of the net worth test increased from $2 million to $2.1 million. The dollar threshold of the assets-under-management test has not changed and remains at $1 million. Only new client relationships entered and new investors admitted in private funds after August 15, 2016 are affected; new contributions by pre-August 15 investors are grandfathered.

TREASURY FORM TIC-SHC

On December 5, 2016, a *Notice of reporting requirements* was filed in the Federal Register by the Department of Treasury informing the public of the Treasury's quinquennial mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2016. All U.S. persons who meet the reporting requirements must respond to, and comply with, this survey on *Form TIC-SHC* by **March 3, 2017**.

Who Must Report?

i. U.S. persons who manage, as custodians, the safekeeping of foreign securities for themselves and other U.S. persons (including affiliates in the U.S. of foreign entities). These U.S. persons must report on this survey if the total fair value of the foreign securities whose safekeeping they manage on behalf of U.S. persons—aggregated over all accounts and for all U.S. branches and affiliates of their firm—is $200 million or more as of the close of business on December 31, 2016.
ii. U.S. persons who own foreign securities for their own portfolios and/or who invest in foreign securities on behalf of others (referred to as ''end-investors''), such as investment managers/fund sponsors (including affiliates in the U.S. of foreign entities). These U.S. Persons must report on this survey if the total fair value of these foreign securities—aggregated over all accounts and for all U.S. branches and affiliates of their firm—is $200 million or more as of the close of business on December 31, 2016.
iii. U.S. persons who are notified by letter from the Federal Reserve Bank of New York. These U.S. persons must file Schedule 1, even if the recipient of the letter is under the reporting threshold of $200 million and need only report ''exempt'' on Schedule 1. These U.S. persons who meet the reporting threshold must also file Schedule 2 and/or Schedule 3.

What To Report?

Information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How To Report?

Completed reports on *Form TIC-SHC* can be submitted electronically or mailed to the Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or email: *SHC.help@ny.frb.org*. Inquiries can also be made to Dwight Wolkow at (202) 622–1276, email: *comments2TIC@do.treas.gov*

Additional information including technical information for electronic submission can be obtained from the Form SHC Instructions available ***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.

The deadline with respect to **investments or relationships that were in place as of December 31, 2013** was July 21, 2016. However, the Federal Reserve Board has formally granted an extension again this year (identical to that granted 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.

The Investment Fund Law Blog article can be found ***here***.

BREXIT: POTENTIAL IMPACT ON UK INVESTMENT MANAGERS

The U.K. government's road to giving notice under Article 50 of the Treaty of Lisbon to leave the European Union has not been a smooth one. Having intended to rely on executive powers, the authority of the U.K. government to bypass parliament altogether was successfully challenged in the courts. Consequently the U.K. government hastily drafted a short Bill for consideration by parliament. To Prime Minister May's relief, the House of Commons voted by 498 to 114 in favour of the European Union Bill. The Bill has moved to the Committee phase and we can expect the hundreds of tabled amendments to be discarded, debated and included, as appropriate, over the coming weeks. Prime Minister May's intention remains to invoke Article 50 of the Treaty of Lisbon to formally begin the process to leave the European Union by the end of March 2017.

The U.K. is the second largest asset management centre in the world, managing a reported £5.5tn of assets. According to the Total Tax report commissioned by the City of London, the financial services sector contributed £71.4bn of tax revenue in the year to March 2016, amounting to 11.5% of the U.K. Government's total tax receipts. Approximately 1.1m employees are engaged in the financial services sector. Clearly there is a very clear interest for the U.K. to preserve its access to European investors and for European Managers to be able to continue to access the U.K.'s investor pool and talent.

There are a multitude of possible outcomes of the Brexit negotiations and we could endlessly debate them. What would seem to be certain is that the U.K. will be taking great interest in the above mentioned third country passport extension if the EU does not grant it access to the Single Market on terms that are acceptable to the U.K. On the one hand, that may not appear problematic on the basis that the U.K.'s regime is AIFMD compliant and therefore equivalent. However, anti-EU campaigners may successfully lobby the U.K. Government to trim what is viewed, correctly or otherwise, as overbearing EU legislation and unnecessary red tape. The cost of doing so may be to weaken the argument of equivalency. Furthermore, as we can see, ESMA moves to the beat of its own drum.

Those U.K. Managers with bases in Dublin or Luxembourg for the purposes of their mutual fund offerings (UCITS) should be able to still sell those funds into the EU without issue. There have been suggestions that the EC could impose tougher rules on those funds domiciled in Dublin or Luxembourg but run by U.K. managers—however, this issue that remains unsettled.

In the meantime Managers are taking steps to move some staff and establish fund ranges outside of the U.K. in anticipation of an unsatisfactory outcome to Brexit discussions.

◆ Continuing Compliance Areas

Cybersecurity

Cybersecurity remains a focus of concern for the SEC. 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 <u>and</u> 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.

At a minimum, cyber security compliance and controls should entail testing and assessment of the implementation of procedures and controls of a Manager as above under "*2017 Examination and Enforcement Priorities in the Alternative Space*."

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 "*2017 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 31, 2017**. 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

[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*.

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, 2016, you must file Part 1A and the Part 2A Brochure as part of your annual updating **amendment by March 31, 2017**. If you are a state-registered adviser whose fiscal year ended on December 31, 2016, 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 31, 2017. ERAs with a December 31, 2016 fiscal year-end must also file their annual report on short Form ADV Part 1 by March 31, 2017. 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 May 1, 2017**.

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, 2016 fiscal year end is **May 1, 2017**. 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 2016: March 1, 2017

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 by the end 2016 have **until March 1, 2017 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,[3] 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 2017: 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, 2016 year end: February 14, 2017

CFTC Regulation 4.27 requires that all CFTC-registered CTAs and members of the NFA file a Form PR by February 14, 2017.

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, 2016 will be due by February 14, 2017 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.

---

[3] 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.

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.

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

BEA Summary of all Forms is available ***here***:

On October 20, 2016,the BEA of the U.S. Department of Commerce published the final rule to amend the foreign direct investment reporting requirements for specific U.S. based private investment funds—those private funds with characteristics of "portfolio investment" rather than "direct investment". Additionally, Form BE-13 has been revised to combine Form BE-13A and Form BE-13C and the effective date was November 21, 2016.

Under the amended rule, private investment funds will not have to report investments made by a foreign entity or person unless the foreign entity or person owns more than 10% of the voting interests in an operating company indirectly via the private investment fund. The revised BEA rule is implemented through private investment funds that file the following forms: Form BE-605 Quarterly Survey of Foreign Direct Investment in the United States; Form BE-15, Annual Survey of Foreign Direct Investment in the United States; Form BE-13, Survey of New Foreign Direct Investment in the United States; *Form BE-12, Benchmark Survey of Foreign Direct Investment in the United States* will also be impacted and will be addressed in a separate proposed rule in 2017.

The BEA also amended the regulations and survey forms for the BEA Survey BE-13. The BEA will combine Form BE-13A, Report for Acquisition of a U.S. Business Enterprise That Remains a Separate Entity and Form BE-13-C, Report for Acquisition of a U.S. Business Enterprise That is Merged With an Existing U.S. Affiliate, into one form and discontinue the use of Form BE-13C.

The revised version of Form BE-13A is a report for U.S. business enterprises when (i) a foreign entity acquires a voting interest (directly or indirectly through an existing U.S. affiliate) in a U.S. business enterprise, (ii) the total cost of the acquisition is greater than $3 million, and (iii) by the acquisition, the foreign entity now owns at least 10 percent of the voting interest (directly or indirectly through an existing U.S. affiliate) in the acquired U.S. business enterprise.

- **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-12**

The *BE-12 benchmark survey* is a comprehensive set of annual data on foreign direct investment in the United States which is collected once every 5 years in place of the BE-15 annual survey. A response is required for entities subject to Form BE-12 even where the entity has not been contacted by the BEA.

- Form BE–12A. Filed for a majority-owned U.S. affiliate with total assets, sales or gross operating revenues, or net income of more than $300 million (positive or negative).

- Form BE–12B. Filed for U.S. affiliates that meet the following criteria:

  - A majority-owned U.S. affiliate that has total assets, sales or gross operating revenues, or net income between $60 million (positive or negative) and $300 million (positive or negative).

  - A minority-owned U.S. affiliate that has total assets, sales or gross operating revenues, or net income of more than $60 million (positive or negative).

- Form BE–12C. Filed for a U.S. affiliate that has total assets, sales or gross operating revenues, or net income of $60 million or less (positive or negative). Only selected data items on this form are filed for a U.S. affiliate that has total assets, sales or gross operating revenues, or net income of less than $20 million (positive or negative). The revised BEA rule will be issued in 2017.

- **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.

U.S. Managers Marketing In The European Economic Area – AIFMD

Much of 2016's focus regarding the Alternative Investment Fund Managers Directive ("AIFMD") concerned the European Securities and Markets Authority ("ESMA") publishing advice regarding the extension of the EU-wide 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 national private placement regimes of each country, the requirements of which can vary from jurisdiction to jurisdiction.

ESMA is required to provide an opinion to the European Commission ("EC") on whether non-EU countries should be able to participate in the passport. ESMA evaluates the laws and regulatory regimes of "third countries" (i.e. non-EU countries) by reference to specified criteria. Following that evaluation ESMA determines whether those countries pose obstacles to extending the passport. The assessments focused on investor protection, market disruption, competition and monitoring systemic risk.

ESMA's first advice was published on July 30, 2015, in which ESMA concluded that of the six countries it had evaluated each of Guernsey, Jersey and Switzerland (subject to conditions) presented no obstacles, and the passport extended to those AIFMs and AIFs in those jurisdictions. No final decision was issued in relation to the U.S., Hong Kong and Singapore but the recommendation was not extended to those jurisdictions.

ESMA's second advice was published on July 18, 2016 following its evaluation (or re-evaluation) of Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland and the U.S. Each of Canada and Japan received positive recommendations that the passport be extended to them.

With respect to the U.S., ESMA advised that the "un-level playing field" remained in place in that there was not sufficient equivalency of access in that the "market access conditions which would apply to U.S. funds in the EU under an AIFMD passport would be different from, and potentially less onerous than, the market access conditions applicable to EU funds in the U.S. and marketed by managers involving a public offering". 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.

Regarding the Cayman Islands and Bermuda, ESMA cannot give definitive advice with respect to the criteria on investor protection and effectiveness of enforcement since both countries are in the process of implementing new regulatory regimes and the assessment will need to take into account the final rules in place.

Each of the BVI, the Bahamas, 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.

The EU has not yet confirmed that it will permit third countries to access the AIFMD passport regime.

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. 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 deadline for participating FFIs and Model 2 FFIs to file FATCA information reports with the IRS is **March 31, 2017** (with respect to the 2016 calendar year). FFIs in Model 1 IGA jurisdictions will have until **September 30, 2017** to file their first FATCA information reports for 2016 with their home jurisdiction. See IRS Summary of FATCA Timelines ***here*** for a more detailed timeline.

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"[4] 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

[4] **"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.

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.

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.

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.

◆ Securities and Other Forms Filings

Form 13F

Deadline for filing Form 13F for the December 31 quarter: February 14, 2017

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, 2017

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): May 1, 2017

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

[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).

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.

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, 2017

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*: April 15, 2017

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

---

[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.

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 no later than March 3, 2017. The Investment Fund Law Blog alert can be found ***here***.
- *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.

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)

Daniel N. Budofsky (Bio)

Natasha Hanson-Allen(Bio)

Kimberly Mann (Bio)

David E. Lillevand (Bio)

Semma G. Arzapalo (Bio)

Corey Harris (Bio)