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VIA E-MAIL

To Our Investment Adviser Clients and Friends

Re: Recent Regulatory Developments

We have summarized below several recent regulatory developments of interest to investment advisers.

Amended Short Sale Rule - Regulation SHO

On February 26, 2010, the Securities and Exchange Commission (the “SEC”) amended its short sale rules in Regulation SHO (“SHO”),¹ to limit the prices at which a security may be sold short if its value declines by a certain amount. The SEC adopted the amendments to prevent short selling, including potentially manipulative or abusive short selling, from driving down the price of a security that has experienced a significant intraday price decline. SHO imposes a modified uptick rule, similar to the old uptick rule in Exchange Act Rule 10a-1, but only if the value of the security declines by ten percent from the previous day’s closing price. The compliance date for SHO is November 10, 2010. Below is a summary of key provisions of SHO that are relevant to investment advisers.

Under SHO, if the price of a “covered security” (defined as a security, other than an option, that is listed on NYSE, Amex or Nasdaq) declines by ten percent or more from the closing price on the listing market of the security on the preceding day, each trading center² must impose limits on the prices at which it will execute or display a quote for the security. During the remainder of that day and the next trading day, the trading center may not execute or display the quotation for an order for a short sale of a covered security unless the trade or order is at a price above (although no increment is specified) the then-current national best bid price for the security.

SHO does not apply to: (1) certain exempt short sales discussed below; (2) securities quoted on the OTC Bulletin Board or elsewhere in the OTC market; or (3) trades outside of

¹ Regulation SHO is in Rule 201 under the Securities Exchange Act of 1934 (the “Exchange Act”).

² A “trading center” is a national securities exchange or a national securities association that acts as a trading facility, an alternative trading system, an exchange market maker, an OTC market maker or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

regular trading hours. SHO does apply to trades executed on a foreign exchange if the trade is agreed to in the United States. For example, a U.S. investment adviser cannot place an order with a U.S. broker that routes the trade to that broker's foreign affiliate.

In addition to the foregoing exclusions, SHO provides that a broker may mark a short sale order as "short exempt" in certain circumstances. By marking an order as "short exempt" the broker may display or execute the order whether or not the price is below the national best bid price. A few of the situations in which a broker may mark a short sale order as "short exempt" are:

(1) *Delivery Delays*. The broker has a reasonable basis to believe that the short sale order is made by a person that owns the security and will deliver the security as soon as any restrictions on the delivery are removed.

(2) *Domestic and International Arbitrage Transactions*. The short sale is submitted to profit from the difference between its price and either (a) the price of a security that is convertible into securities of the same class as the securities sold if the seller is or will be entitled to convert the convertible security or (b) the price of the same security on a foreign exchange if the seller has placed an offer to buy the security on the foreign exchange.

(3) *Transactions at VWAP*. It is a short sale at the volume-weighted average price.

Brokers are currently evaluating how to revise their operational procedures to comply with SHO. Investment advisers that are concerned about the practical implications of SHO on their trading procedures should discuss the issue directly with their brokers.

Foreign Bank Account Reports - FBAR

Every U.S. person or entity that has a financial interest in, or signatory authority over, a financial account in a foreign country generally must file a Report of Foreign Bank and Financial Accounts ("FBAR") on Form TD F 90-22.1 if the accounts' aggregate value exceeds \$10,000 at any time during a calendar year. For example, the filing may be required by: (1) principals and employees of an investment adviser with signatory authority over a fund's foreign bank or brokerage accounts; or (2) an owner of fifty percent or more of a U.S. fund that has foreign bank accounts, even if that owner does not have signatory authority over the fund's bank or brokerage accounts.

In our letter of June 19, 2009, we suggested that an interest in an offshore hedge fund might constitute a financial interest in a foreign account, so that a U.S. investor in an offshore fund might be required to file even if that investor does not have signatory authority over the fund's bank or brokerage accounts. The IRS announced on February 26, 2010, in Notice 2010-23, that it will not require FBAR filings with respect to interests in foreign investment funds (other than mutual funds), such as hedge funds and private equity funds,

for 2009 and prior calendar years. A bureau of the Department of Treasury also recently proposed regulations providing that foreign financial accounts include interests in “pooled funds” but exclude interests in hedge funds, venture funds, private equity funds and similar investment funds, subject to further review. Accordingly, with respect to the FBAR return for 2009 due June 30, 2010, an investor in an offshore hedge or private equity fund does not need to treat that hedge fund as a financial account, and if the proposed regulations are adopted in their proposed form also will not need to file for subsequent years.

Notice 2010-23 also provides that persons with signature authority over, but no financial interest in, a foreign financial account have until June 30, 2011, to report those accounts for 2010 and prior years. Accordingly, principals and employees of an investment adviser with signatory authority only over a fund’s foreign bank or brokerage accounts have until June 30, 2011, to report with respect to those accounts. No report is required for offshore funds that have only U.S. bank and brokerage accounts.

The IRS had previously expanded the definition of U.S. person to include non-U.S. persons doing business in the U.S. The IRS recently changed this position, however, and its Announcement 2010-16 states that persons other than U.S. citizens, U.S. residents, domestic corporations, domestic partnerships and domestic estates and trusts are not required to file FBARs for 2009 and prior years.

You should consult with us or your accountants on your need to file Form TD F 90-22.1.

New ERISA Reporting Requirements

A plan subject to the Employee Retirement Income Security Act of 1974 (“ERISA”) must file an annual return to report financial and operational information. Recent changes to Department of Labor regulations generally require that an annual return for any period beginning in or after 2009 disclose the direct and indirect compensation paid during the period to the ERISA plan’s service providers, including investment advisers to private investment funds (such as hedge funds) in which the ERISA plan invests. The requirement applies regardless of the level of ERISA plan’s investments in those funds. For example, many funds are not deemed to hold ERISA “plan assets” because the level of investments of ERISA plans and other “benefit plan investors” is below twenty-five percent. Compensation to the managers to those funds still must be disclosed on the annual reports of ERISA plans invested in those funds. Compensation of managers of funds that do not hold “plan assets” because the fund is a “venture capital operating company,” “real estate operating company” or other “operating company” generally is exempt from the reporting requirements. Reportable compensation includes not only the ERISA plan’s share of fees that the fund pays to the manager, but also the ERISA plan’s pro rata share of some of the compensation, such as soft dollars, that the manager receives from a third party.

Under an alternative reporting option allowed by the regulations, an ERISA plan need not report the amount of compensation paid to a provider if the annual return identifies

the provider, and the plan receives written disclosures of (1) the existence of the compensation, (2) the services for which the compensation is paid, (3) the amount (or estimate) of the compensation or the formula used to calculate the compensation amount and (4) the identity of the parties paying and receiving the compensation. If an offering memorandum, Form ADV or similar document likely contains this information, it may serve as the required disclosure, but only if the investment adviser informs the ERISA plan that the document is intended to satisfy the alternative reporting option. Investment advisers may so inform the ERISA plan in the document that contains the required information, or in a separate document that includes references to pages or sections of the document that contain the required information. To take advantage of the alternative reporting option, an investment adviser should revise its funds' offering documents and Form ADV specifically to inform any ERISA plan investor that the document contains the required information or prepare a separate document that makes the necessary disclosures.

The Jobs Act

On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment Act (the "HIRE Act"), which contains many provisions previously included in the proposed Foreign Tax Compliance Act of 2009 ("FATCA"), designed to reduce offshore tax evasion. Below is a brief summary of some of the FATCA provisions in the HIRE Act that are relevant to investment advisers.

Withholding Provisions. The HIRE Act requires any person making a "withholdable payment" to a "foreign financial institution" to withhold thirty percent of the payment unless the foreign financial institution agrees to comply with certain disclosure and due diligence requirements regarding accounts held by "specified United States persons" or "United States owned foreign entities." A withholdable payment is defined to include most U.S. source payments that are currently subject to withholding, including U.S. source dividends, interest or royalties, but also includes gross proceeds from the sale of U.S. stock or debt, which currently generally are not subject to withholding. A foreign financial institution generally is a foreign entity that accepts deposits in the ordinary course of a banking or similar business or is engaged in the business of holding financial assets for the accounts of others, but also includes entities engaged in investing securities or commodities, so includes hedge funds, venture funds and private equity funds. Thus, an offshore hedge fund will need to comply with the disclosure and due diligence requirements for certain U.S. account holders to avoid withholding on payments to it.

A "specified United States person" generally is defined as any United States person other than tax-exempt organizations, publicly traded corporations, federal, state or local agencies, banks, real estate investment trusts, regulated investment companies, common trust funds or tax-exempt trusts. A United States owned foreign entity is generally a foreign entity of which specified United States persons own 10% or more. Since most U.S. investors in offshore hedge funds are tax-exempt, most offshore funds apparently will not need to disclose much information.

To avoid the thirty percent withholding tax, a foreign financial institution generally must enter into an agreement with the IRS requiring it to: (1) make annual disclosures to the IRS about its direct and indirect U.S. account holders and their related accounts (including balances, deposits and withdrawals); (2) undertake due diligence to determine direct and indirect U.S. beneficial owners; (3) seek a waiver from each account holder of any non-U.S. law that would prevent reporting the required information and, if such a waiver is not obtained, close the account within a reasonable period of time; and (4) withhold thirty percent of any distributions to account holders who do not supply required information.

The HIRE Act also requires withholding on payments made to a non-U.S. entity that is not a foreign financial institution unless it certifies that it has no substantial U.S. owners (generally a U.S. person who owns directly or indirectly more than ten percent of the entity by vote or value) or provides the name, address and taxpayer identification number of each of those owners. Thus, for example, a U.S. hedge fund that has a non-U.S. entity investor (that is not a financial institution) will need to withhold on distributions to such investor (including on proceeds from sales not currently subject to withholding) unless the investor provides the required information.

These new withholding requirements are generally effective for payments made after 2012 so hedge funds will need to amend their fund agreements and subscription documents before then to comply with these rules. These rules may make offshore master fund structures less desirable, because an offshore master fund would need to provide this information with respect to all of the U.S. owners in a U.S. feeder fund.

Foreign Asset Disclosure Rules. The HIRE Act requires U.S. individuals owning foreign financial assets with an aggregate value of \$50,000 or more to list and disclose the value of all foreign financial assets on the taxpayer's annual income tax return, beginning with calendar year 2011. This requirement apparently is in addition to currently required FBAR filings described above.

PFIC Reporting. The HIRE Act requires any U.S. shareholder in a passive foreign investment company ("PFIC") to file an annual information report, beginning this year. Under prior law, a U.S. person who held stock in a PFIC generally had to make a filing only with respect to certain elections or when a distribution was received or the stock disposed. Offshore hedge funds almost always qualify as PFICs, so this requirement will now apply to all U.S. shareholders in offshore hedge funds (apparently even U.S. tax-exempt investors).

Dividend Equivalent Payments. With respect to payments made on or after September 13, 2010, the HIRE Act requires that "dividend equivalent payments" be treated as dividends and subject to U.S. withholding, absent different treatment under a treaty or other exemption. A dividend equivalent is generally any substitute dividend payment made under a derivative contract such as a swap. The HIRE Act contains a transition period during which, initially, payments made only under certain specified swaps will be covered. After March 18, 2012, however, all swaps will be covered unless the IRS issues a rule determining that that type of swap does not have the potential for tax avoidance.

Communications among Investment Advisers

A number of regulatory investigations into improper communications or collusion among investment advisers have been reported, including the SEC's ongoing Galleon-related and other insider trading investigations, investigations into possible collusion among investment advisers shorting the Euro, and the long-running Justice Department investigation (and related class action) into collusion among private equity fund managers. Investment advisers should be cognizant of a number of issues when communicating with other advisers (in addition to insider trading issues). For example, investment advisers that act in concert could be deemed to form a "group" for purposes Exchange Act sections 13 and 16. The "group" is considered to beneficially own all of the equity securities of each member of the group, which could lead to reporting obligations for the investment advisers under Exchange Act section 13 (on Schedule 13D or 13G) or reporting obligations or short-swing profit disgorgement under Exchange Act section 16. Agreements among investment advisers (even if not express or written) also could implicate market manipulation and antitrust laws.

An adviser that selectively shares information about its client investment and trading activities may also be seen as breaching its fiduciary duty (or privacy and other obligations) to its clients, especially if the party receiving the information is in a position to disadvantage the adviser's clients by using this information. For example, to trade ahead of the adviser's clients. An adviser should consider whether a party receiving such information should be subject to the adviser's policies and procedures regarding employee securities transactions.

New Model Privacy Notice

Federal law requires investment advisers (whether or not registered with the SEC or a state), hedge funds and other "financial institutions" to notify consumers of their policies to protect personal financial information of consumers. When the SEC, the Federal Trade Commission (the "FTC") and the Commodity Futures Trading Commission (the "CFTC") adopted their initial privacy notice regulations in 2000, they included short, sample wording for these privacy notices, but the agencies warned that the sample wording might not be sufficient to describe more complicated privacy practices, such as sharing personal financial information with a service provider when it is not necessary to provide the advisory services that clients have requested. In some circumstances, the business must offer consumers the right to opt out of having their information shared with another business. Many registered investment advisers incorporate their privacy notices into their Form ADV, Schedules F, using the sample clauses that were in the original privacy rules. Some investment advisers that are not registered and some hedge funds have incorporated their privacy notices into different documents, such as their offering circulars.

Over the decade since the initial privacy notice rules were adopted, the agencies have been studying the effectiveness, readability and comparability of varying privacy notices. On November 16, 2009, eight agencies, including the SEC, the FTC and the CFTC, adopted two Model Privacy Forms, one with and one without an opt-out right. The agencies will be

removing the old sample wording from their regulations. The Model Privacy Form without an opt-out is attached to this letter. The rules do not require an investment adviser or hedge fund to use the Model Privacy Form, but if it is used and it accurately describes the investment adviser's or the hedge fund's privacy practices, the notice will comply with (that is, it will have a "safe harbor" under) the privacy notification rules.

If an investment adviser or hedge fund uses the new Model Privacy Form, it may not change the layout or format of the notice. An investment adviser or hedge fund may change the font (as long as it is at least ten-point type and easily readable) and may add a logo and certain information on state and other privacy matters. The notice must be on two sheets of paper or both sides of one sheet of paper. The notice may be delivered with other documents, such as an offering circular, an annual letter or tax information, or it may be incorporated into another document (such as an offering circular) if it is conspicuous. When an investment adviser or hedge fund prepares the form, the investment adviser or hedge fund must complete the form accurately, correctly replacing all red or bracketed items and checking all appropriate boxes.

Because the Model Privacy Form must stand alone on a page, a notice that is on Schedule F of Part II of Form ADV will not satisfy the safe harbor. In considering whether to use the Model Privacy Form, an investment adviser that has previously included its privacy notice in Schedule F and sent it annually to clients should ensure that the new standalone notice is delivered at all required times. The notice may be delivered with other disclosure, such as an offering circular, an annual letter or annual tax information.

If an investment adviser or hedge fund decides not to use the Model Privacy Form, it may keep its notice within another document, such as Schedule F of Part II of Form ADV or an annual letter to clients. The federal agencies acknowledged that some financial institutions may find that the prior sample notice clauses sufficiently describe their privacy practices. An investment adviser or hedge fund that does not use the new Model Privacy Form should carefully consider whether to expand its current notice to describe the personal information it shares with affiliated entities and service providers, even if consumers may not opt out of information sharing.

Finally, the agencies state that they are developing an on line "form builder" to facilitate using a Model Privacy Form. When the form builder is available, it may facilitate preparing a notice that is within the safe harbor. The safe harbor will apply only if the information in the privacy notice accurately describes the investment adviser's or hedge fund's privacy practices, whether or not the privacy notice is created using a government-supplied form builder.

Massachusetts Law Protecting "Personal Information"

Massachusetts has adopted a new law, effective March 1, 2010, that imposes requirements on investment advisers that have "personal information" about a Massachusetts resident (the "Massachusetts Law"). "Personal information" means a

person's first name (or first initial) and last name in combination with the person's social security number, driver's license number (or other state-issued identification number) or financial account number (including brokerage account, bank account, password, etc.). Accordingly, any investment adviser with a Massachusetts client or hedge fund investor likely will be subject to the Massachusetts Law. The Massachusetts Law requires an investment adviser that possesses "personal information" to develop, implement and maintain a "comprehensive information security program" (typically referred to as a "WISP" or "CISP") that is written and reasonably consistent with industry standards. The provisions of the Massachusetts Law generally requiring encryption of all information stored on laptops or other portable devices and the encryption of all transmitted records and files containing personal information that will travel across public networks or will be transmitted wirelessly, have received the most attention in commentary regarding the Massachusetts Law.

We understand that many investment advisers are reviewing the Massachusetts Law (and their entire data security program) with their IT professional to determine whether they have adopted the necessary policies, procedures and technology. Because the regulations are technical, we encourage you to engage an IT professional familiar with investment advisers and the Massachusetts Law. Of course, we would be pleased to discuss these issues with you at your convenience and, if necessary, assist you in retaining an IT professional.

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This letter only generally summarizes these regulatory developments and is not intended as specific or complete advice. Please contact Doug Hammer, John Broadhurst, Geoff Haynes, Chris Rupright, Carolyn Reiser, Neil Koren, Jim Frolik, Joan Grant, Ellyn Roberts, Anthony Caldwell, Christina Mickelson, David Hong or Kim Letter with any questions.

SHARTSIS FRIESE LLP

CIRCULAR 230 DISCLOSURE: This letter was not written to be used, and it cannot be used, to avoid imposition of penalties under the Internal Revenue Code.

FACTS

WHAT DOES [NAME OF FINANCIAL INSTITUTION] DO WITH YOUR PERSONAL INFORMATION?

Why?

Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.

What?

The types of personal information we collect and share depend on the product or service you have with us. This information can include:

- Social Security number and [income]
- [account balances] and [payment history]
- [credit history] and [credit scores]

When you are *no longer* our customer, we continue to share your information as described in this notice.

How?

All financial companies need to share **customers'** personal information to run their everyday business. In the section below, we list the reasons financial companies can share their **customers'** personal information; the reasons [name of financial institution] chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does [name of financial institution] share?	Can you limit this sharing?
For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus		
For our marketing purposes— to offer our products and services to you		
For joint marketing with other financial companies		
For our affiliates' everyday business purposes— information about your transactions and experiences		
For our affiliates' everyday business purposes— information about your creditworthiness		
For our affiliates to market to you		
For nonaffiliates to market to you		

Questions?

Call [phone number] or go to [website]

Who we are

Who is providing this notice?

[insert]

What we do

How does [name of financial institution] protect my personal information?

To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.

[insert]

How does [name of financial institution] collect my personal information?

We collect your personal information, for example, when you

- [open an account] or [deposit money]
- [pay your bills] or [apply for a loan]
- [use your credit or debit card]

[We also collect your personal information from other companies.] **OR**
[We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.]

Why can't I limit all sharing?

Federal law gives you the right to limit only

- sharing for affiliates' everyday business purposes—information about your creditworthiness
- affiliates from using your information to market to you
- sharing for nonaffiliates to market to you

State laws and individual companies may give you additional rights to limit sharing. [See below for more on your rights under state law.]

Definitions

Affiliates

Companies related by common ownership or control. They can be financial and nonfinancial companies.

- [affiliate information]

Nonaffiliates

Companies not related by common ownership or control. They can be financial and nonfinancial companies.

- [nonaffiliate information]

Joint marketing

A formal agreement between nonaffiliated financial companies that together market financial products or services to you.

- [joint marketing information]

Other important information

[insert other important information]