The President has signed the Tax Cuts and Reform Bill, which among other things changes the treatment of the “carried interest” allocable to most hedge fund managers (typically 20%). It provides that long term capital gain treatment within the manager's carried interest generally will only be available with respect to gains from assets held for at least three years. Depending on the applicable fund’s tax circumstances and so long as any action is consistent with that fund’s investment strategy and the manager’s fiduciary duty obligations, a fund manager may want to consider having its fund sell positions, distribute securities in kind or convert some of the manager’s general partner interest in its fund to a limited partner interest before the end of 2017. Managers should also consider whether to change what type of entity the management company is for tax purposes (i.e. partnerships, C corporations or S corporations), and whether it should be charging the carried interest as a profits allocation or as a straightforward fee.

Managers should consult us or their accountants or other tax advisors to determine if these or any other actions might be advisable before the year-end or early in 2018.

If you have any questions, please contact one of the attorneys in the Investment Funds & Advisers Group at Shartsis Friese LLP: John Broadhurst, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant or David Suozzi.

Previous letters to our investment advisory clients and friends and discussions of other topics relevant to private fund managers, investment advisers and private investment funds can be found at our insights page: www.sflaw.com/blog/investment-funds-advisers-insights.

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