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**VIA E-MAIL**

To Our Investment Adviser Clients and Other Friends

**Re: Reminders About FATCA Requirements and New Cross-Border Claim Reporting**

**A. FATCA Requirements**

Several important deadlines under the U.S. Foreign Account Tax Compliance Act (“**FATCA**”) are approaching. Advisers to all investment funds, both U.S. and non-U.S., should be aware of the deadlines that apply to their funds. U.S. funds have a new potential withholding obligation and funds formed outside the U.S. (“**foreign funds**”) that do not comply with FATCA may face withholding on gross proceeds payable to these funds from U.S. accounts or withholding agents and other consequences.

Foreign Funds in Jurisdictions That Have a Model 1 IGA with the IRS May Have a Compliance Advantage. The compliance requirements for a foreign fund differ depending on whether it is organized under the laws of a jurisdiction that enters into an “intergovernmental agreement” (“**IGA**”) with the U.S. government. IGAs are either (i) Model 1 agreements, by which the foreign jurisdiction agrees to gather FATCA-type information from its local funds and report that information to the IRS, or (ii) Model 2 agreements, by which the foreign government agrees that foreign funds in that jurisdiction will report information about their underlying owners directly to the IRS, subject to the applicable Model 2 IGA. So far, the Cayman Islands and 19 other countries have entered into Model 1 IGAs with the U.S. government. Bermuda and three other countries have entered into Model 2 IGAs with the U.S. government. Many other IGAs are expected to be completed over the next few months, including the British Virgin Islands.

A foreign fund in a jurisdiction that does not have a Model 1 IGA must register with the IRS and enter into an agreement with the IRS to comply with FATCA, unless an exemption or an alternative compliance status applies. The agreement obligates the foreign fund to conduct specific due diligence on its owners and report information to the IRS, adopt policies and procedures, report ownership by specified U.S. investors and recalcitrant investors, withhold from recalcitrant investors (such as other foreign funds that do not comply with FATCA), and periodically certify that the foreign fund has fully complied with FATCA and the agreement and that it does not help its account holders avoid FATCA reporting. If the foreign fund is in a Model 2 jurisdiction, the IRS agreement and reporting requirements will be subject to the Model

2 IGA entered into between that jurisdiction and the U.S. government.

A foreign fund in a Model 1 jurisdiction will not be required to enter into an agreement with the IRS. Such a foreign fund must register with the IRS and will have significant obligations under the local requirements adopted in that jurisdiction, which must include at least the requirements of the IGA, unless an exemption or an alternative to registration applies. Many of the Model 1 countries, including the Cayman Islands, have not yet adopted implementing legislation, so the nature and extent of those obligations is still unknown.

When Should a Foreign Fund Register with the IRS Under FATCA? The first decision a foreign fund must consider is when to register with the IRS. The registration form is fairly short and can be filed on-line. Information on the registration process is available at <http://www.irs.gov/Businesses/Corporations/FATCA-Registration>. Before registering, however, a foreign fund must authorize a “responsible officer” to sign the fund’s FATCA registration with the IRS, as discussed further below.

When a foreign fund registers with the IRS, it will receive its “global intermediary identification number” or “GIIN.” Withholding by U.S. withholding agents, such as brokers and other counterparties, starts July 1, 2014. The IRS will publish the first list of registered foreign financial institutions with GIIN numbers on June 2, 2014. If a foreign fund wants to be on that list it must submit its FATCA application by April 25, 2014. The June list will be the only list published before FATCA withholding starts on July 1, 2014.

A foreign fund that is not organized and operating in a Model 1 jurisdiction (for example, Bermuda is not a Model 1 jurisdiction) must register with the IRS by April 25, 2014.

A foreign fund in a Model 1 jurisdiction, such as the Cayman Islands, is not required to register until the end of 2014. However, it should register by April 25, 2014, if it wants to be on the June 2 GIIN list. A foreign fund that waits will provide a withholding agent a Form W-8BEN-E showing that it is a “reporting Model 1” foreign fund. Before a Model 1 foreign fund decides to wait to register, however, it should ask each of its counterparties whether a W-8BEN-E certification of “reporting Model 1” status is sufficient for that counterparty not to withhold. When the foreign fund subsequently registers, it will then report its status as a “registered deemed-compliant” foreign fund and provide a new Form W-8BEN-E to each counterparty.

Appointment of a “Responsible Officer”. Before it registers with the IRS, a foreign fund must decide who will serve as its responsible officer, or RO. The RO will be named in and will sign the registration application. The RO must be an individual who is authorized to sign the registration on the fund’s behalf; the RO cannot be an entity. For example, the RO may be an outside service provider or an individual employed by the investment manager. If a U.S. person is the RO, he or she will need to become an officer of the foreign fund and accept additional reporting requirements, such as reporting on a Form 5471 U.S. shareholders who hold more than ten percent of the foreign fund.

The RO for a foreign fund that is not in a Model 1 jurisdiction will have significant substantive duties, including certifying to the IRS that the foreign fund is complying with

FATCA. For a foreign fund in a Model 1 jurisdiction, however, the RO's duties (other than signing the IRS registration for the fund) currently are less clear, because the Model 1 IGA does not refer to an RO. The Cayman Islands Ministry of Financial Services, Commerce & environment announced on March 12, 2014, that the Cayman Islands implementing legislation will not include the concept of an RO. In other words, the RO of a Cayman fund will not be required by law to be responsible for the fund's FATCA Cayman reporting and compliance, but if the RO does not take on that responsibility the Fund must determine who will monitor reporting and compliance. We expect some advisers to foreign funds initially to outsource the RO position, at least until compliance obligations under FATCA becomes more clear.

A corporate foreign fund's directors may ask the fund's RO to accept the responsibility of completing the foreign fund's certification of its FATCA status on Form W-8BEN-E, which is signed under penalty of perjury. A foreign fund has previously been required to deliver a Form W-8BEN to its counterparties, which also is signed under penalty. In the past corporate directors have signed this form routinely.

Expanded Affiliated Group and Other Registration Questions. A foreign fund must determine before it registers whether it owns and controls more than fifty percent of another foreign fund or other foreign financial institution, and whether any other foreign fund or other foreign financial institution owns and controls more than fifty percent of it. In either case it may be deemed a part of an "expanded affiliated group". For example, an offshore feeder fund could own and control more than fifty percent of an offshore master fund. One member of an expanded affiliated group can register as the lead entity and assume FATCA registration responsibility for the entire group. In addition, before registering, a foreign fund should review whether it can take advantage of any deemed-compliant category under FATCA that does not require registration, such as being an owner-documented foreign fund.

Adoption of Policies and Procedures. A foreign fund in a jurisdictions that does not have a Model 1 IGA with the U.S. government must enter into an agreement with the U.S. government when it registers. In that agreement, the fund must agree to adopt FATCA compliance policies and procedures. A foreign fund in a Model 1 jurisdiction is not required by agreement to have formal FATCA policies and procedures, but we recommend that such funds consider adopting them to formalize the fund's FATCA compliance. Please contact us for help in preparing FATCA policies and procedures if you do not already have them.

All Foreign Funds Must Start to Implement FATCA Due Diligence Procedures for New Investors and Review Offering and Subscription Documentation. Foreign funds will be subject to new due diligence standards with respect to all investors who first invest on or after July 1, 2014. Due diligence on investors who invest before July 1, 2014, is governed by the later deadlines described below, even if they subsequently add to their investment in the fund. Form W-9 for U.S. persons was revised last year to add a space for an exemption from FATCA reporting code, if one applies to the investor. The IRS is currently revising Forms W-8 for non-U.S. persons to add FATCA compliance certifications. The most recent proposed W-8 series of forms is available on the IRS's website at <http://www.irs.gov/Businesses/Corporations/Information-for-Foreign-Financial-Institutions>.

A foreign fund must require new investors to submit the new applicable Form W-8 or Form W-9 and assure that the fund's subscription documents reference the new requirements and obligations for investors. A foreign fund must cross-check investor documents and self-certifications against other information the foreign fund may hold to satisfy anti-money laundering or "know your customer" requirements. Certain discrepancies must lead to further inquiries. Investments from other foreign funds or entities must also be checked for FATCA compliance, by cross-checking the investor's Form W-8BEN-E against other available information such as anti-money laundering information and the GIIN database.

Although we expect most foreign funds to rely on their administrators to conduct the due diligence, investment advisers to smaller funds may decide that the adviser's personnel will review investor documentation for FATCA compliance. For example, if a foreign fund's investors are all tax exempt investors or entities that are themselves required to register with the IRS under FATCA, the due diligence will be less burdensome than a foreign fund with investors who are foreign individuals, multinational trusts or other entities. Please contact us if you need more information about the initial due diligence standards.

FATCA Due Diligence for Existing Investors in Foreign Funds Has Later Deadlines. By June 30, 2015, a Cayman foreign fund must conduct due diligence on each individual investor who purchased an interest before July 1, 2014, and whose account exceeds \$1,000,000. The fund must review certain lower value accounts by June 30, 2016, or earlier if the account goes over \$1,000,000 before that date. A Cayman foreign fund must conduct due diligence by June 30, 2016, on preexisting entity investors having accounts over \$250,000. Lower value entity accounts need to be reviewed only after they exceed \$250,000 on the last day of any fiscal year starting December 31, 2015. The timetable may differ for other foreign funds, depending on whether they are in a jurisdiction with a different IGA or they are party to an IRS agreement. Please contact us if you need more information about the deadlines and due diligence standards that apply to the various categories of existing investors.

U.S. Funds are FATCA Withholding Agents and Must Obtain New Forms W-9 and W-8. Even though FATCA is primarily aimed at foreign entities, U.S. funds are withholding agents and will need to obtain the relevant information from their investors. Starting July 1, 2014, all U.S. financial institutions, including hedge funds and private equity funds, must start to withhold on payments to investors that are foreign financial institutions, unless the U.S. fund has evidence (such as a properly completed and current applicable Form W-8 or Form 9 and a GIIN number as appropriate), regardless of the value of the account and whether the account is new or existing. New IRS regulations govern the expiration of these forms that a U.S. fund may have obtained from existing investors, so all funds should check these new requirements. Please contact us or your tax adviser if you advise a U.S. fund in which any foreign entity invests.

Summary. FATCA is complex and this letter does not cover all the types of entities that are subject to it or the types of accounts as to which FATCA might require reporting and withholding. This letter only covers initial implementation issues for investment funds.

**B. Treasury Reports of Cross-Border Claims and Liabilities (“Form B”)**

In an effort to improve international financial reports, the U.S. Department of the Treasury recently expanded its reporting requirements to include data on international portfolio capital from hedge funds and investment advisers. Effective December 31, 2013, investment advisers must disclose certain cross-border liabilities and claims (described below) on quarterly or monthly Form B reports.

A U.S. investment adviser generally should file one or more Form B reports on behalf of itself or its U.S. fund, if its reportable claims or liabilities that are not held by a U.S.-resident custodian or U.S.-resident sub-custodian meet at least either of these thresholds: (a) \$50,000,000 of claims or liabilities internationally, or (b) \$25,000,000 of claims or liabilities in any one non-U.S. country. Each Form B report is based on a different category of claim or liability, and for purposes of calculating these threshold amounts, claims and liabilities should be tallied separately.

An investment adviser does not need to file Form B reports if it uses a U.S.-resident custodian to hold cross-border claims or liabilities. A U.S.-resident custodian is a bank or other organization that is either located in the U.S. (including a foreign bank’s U.S. branch or affiliate) or is incorporated in the U.S. (whether or not it has a U.S. location) and that has custody of investor assets. A reportable cross-border claim or liability is one that is owed by a U.S.-resident entity (such as a U.S. hedge fund) to a non-U.S.-resident entity or *vice versa*. A non-U.S.-resident counterparty to a cross-border transaction may include a foreign corporation or person, a foreign bank, a U.S. bank’s foreign branch located in a non-U.S. country, or a treasury department of a foreign government.

Reportable “claims” may include accrued fees due to a U.S. investment adviser from an offshore fund, deposit balances or certificates of deposit due from a non-U.S. bank, brokerage balances with non-U.S. brokers, loans and loan participations of any maturity to non-U.S. residents, resale agreements and similar financing agreements with non-U.S. residents, short-term securities (with a maturity of one year or less) issued by non-U.S. residents, and similar money market instruments (with a maturity of one year or less) and accrued interest receivable from non-U.S. residents.

Reportable “liabilities” may include fees payable by a U.S. investment adviser to a non-U.S. service provider, unpaid withdrawal proceeds due to a non-U.S. investor from a U.S. fund, a U.S. fund’s margin debit balance or credit balance with a non-U.S. bank or broker, non-negotiable deposits of any maturity (including non-negotiable certificates of deposit) issued by a non-U.S. resident, loans of any maturity owed to a non-U.S. resident, short-term non-negotiable securities (with a maturity of one year or less) issued to a non-U.S. resident, and similar repurchase agreements and accrued interests payable to non-U.S. residents. A reportable liability does not include long-term securities (such as feeder fund interests and securities with no contractual maturity), negotiable short term securities, negotiable certificates of deposit or derivatives.

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. Failure to report can result in civil penalties and willful failure to report can result in criminal prosecution. Please contact us if you believe you may have reportable claims or liabilities that exceed the thresholds stated above that are not held by a U.S.-resident custodian.

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This letter only generally summarizes the initial FATCA action items and Treasury International Capital Form B reports, and is not intended as specific or complete advice. For further assistance, including how these requirements affect certain structures and whether exemptions might apply to specific situations, please contact Doug Hammer, John Broadhurst, Geoff Haynes, Chris Rupright, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant, Ellyn Roberts, Anthony Caldwell, David Suozzi or Kathryn Miller.

**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.