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VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

This is our annual letter briefly reviewing various issues that our investment adviser clients should consider over the next few weeks.

Federally Registered Investment Advisers

1. **Annual Updating Amendment to Form ADV**. If your firm is an SEC-registered adviser, it must amend its Form ADV each year on the IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2016, the deadline is March 31, 2017. This annual amendment must update your firm's responses to all items of Parts 1 and 2 of Form ADV.

When you amend Part 1, the IARD will prompt you to indicate the type of amendment. You should select "annual updating amendment," and indicate that the amendment is for 2016. Unlike Part 1, Part 2A is not an online form. Instead, you must upload Part 2A on the IARD as a separate document in text-searchable PDF format. The IARD will not accept any other format, including a PDF file containing a scanned copy of a paper document. An SEC-registered investment adviser is not required to file Part 2B or any amendments to it, but is required to keep its updated Part 2B in its records.

The IARD filing fees for an SEC-registered adviser for an annual updating amendment are (a) $40 if the adviser's regulatory assets under management ("RAUM") are below $25,000,000, (b) $150 if the adviser's RAUM is between $25,000,000 and $100,000,000 and (c) $225 if the adviser's RAUM is over $100,000,000. Your firm's RAUM is its assets under management that it reports in Part 1A, Item 5.F of Form ADV. You must fund your IARD account with the appropriate amount before you submit the amendment. Information about funding your firm's IARD account is at http://www.iard.com/accounting.asp.

The SEC recently adopted amendments to Form ADV that become effective on October 1, 2017, so most investment advisers that have a December 31 fiscal year will not have to complete the updated Form ADV until filing their annual Form ADV update during the first quarter of 2018. Some of the material requirements of the amendments are described in more detail in our letter dated October 21, 2016, which is available at our Insights page at http://www.sflaw.com/blog-post/sec-amendments-form-adv/.

2. **Other Amendments to Form ADV**. In addition to the annual updating amendment, an SEC-registered adviser must amend Part 1A of its Form ADV promptly during the year if (a) any information in Item 1, 3, 9 or 11 of Part 1A becomes inaccurate in any way or (b) any information in Item 4, 8 or 10 (including Schedules A and B) of Part 1A becomes materially inaccurate. Part 2 must be amended promptly whenever any information in it becomes materially inaccurate. If you file an amendment on or after October 1, 2017, you must file using the amended Form ADV that the SEC recently adopted. See Item 1 immediately above.

3. **Requirements to Deliver Part 2 to Clients**. An SEC-registered adviser whose Part 2A has materially changed since the last annual updating amendment must deliver to clients annually within 120 days after the adviser's fiscal year end either (a) an amended Part 2A, including a material changes summary, or (b) a separate material changes summary that also offers to provide a copy of Part 2A. For an adviser whose fiscal year ended December 31, 2016, the deadline is April 30, 2017. Clients that previously received Part 2B need not be provided with an updated copy of Part 2B unless the disciplinary information disclosed in it has changed materially.

For advisers to private funds, the Part 2 delivery obligation applies to the funds and not to investors in the funds. A private fund is a fund that would be an investment company under the Investment Company Act of 1940 (the "ICA"), but for ICA section 3(c)(1) or 3(c)(7). Most hedge funds, private equity funds and venture capital funds are private funds. To reduce the likelihood of possible claims under the anti-fraud provisions of federal and state securities laws, however, a private fund adviser should consider furnishing Part 2 to each fund investor.

4. **Switching to State Registration**. If your firm's RAUM reported on its annual updating amendment is below $90,000,000, it will likely be required to withdraw its SEC investment adviser registration by June 30, 2017. In that case, unless it qualifies for an exemption from state registration, it should file an application for state registration as soon as possible to ensure that it is registered by June 30.

In determining the amount of your firm's RAUM, include the securities portfolios for which your firm provides continuous and regular supervisory or management services as of the date you file the Form ADV. The value of your firm's RAUM should be based on the current market value of such assets as of a date within 90 days before the date you file the Form ADV. You should determine market value using the same method you use to report account values to clients or to calculate fees for investment advisory services.

5. **Switching to the SEC Exempt Reporting Adviser Exemption**. An investment adviser with RAUM under $150,000,000 that advises only private funds is exempt from SEC registration as an exempt reporting adviser. (California has a similar registration exemption that is discussed on page 5). See Item 4 immediately above for a discussion of how to calculate RAUM.

Exempt reporting advisers are required to file Part 1A of Form ADV on the IARD and disclose organizational and operational information, but do not need to include all of the information that SEC-registered investment advisers are required to include. Such Part 1A must

be amended as described under "Exempt Reporting Advisers," Item 1, below. An exempt reporting adviser is not required to prepare and deliver to investors Part 2 of Form ADV. A registered adviser that is switching to exempt reporting adviser status must first withdraw its registration by filing Form ADV-W on the IARD before filing its first Part 1A as an exempt reporting adviser.

An investment adviser that is exempt from registering with the SEC as an investment adviser because it is an exempt reporting adviser may also be required to register as an exempt reporting adviser or investment adviser in each state where it has an office.

6. **State Notice Filings**. An SEC-registered adviser may be required to make notice filings and pay fees in each state in which it has clients or a place of business. Some states require an SEC-registered adviser making notice filings to file its Form ADV Part 2 and other documents. An SEC-registered adviser that has previously made state notice filings should have received an electronic package from FINRA last fall with instructions for renewing those notice filings and paying the required 2017 renewal fees through the IARD system. These fees are in addition to the IARD filing fees mentioned above in Item 1 on page 1.

7. **Investment Adviser Representatives**. An SEC-registered adviser may be required to register each of its investment adviser representatives in each state in which the representative has clients or a place of business. You should ascertain whether any of your firm's personnel should be registered as an investment adviser representative in one or more states, and, if so, register those persons or renew their registrations in the appropriate states.

8. **Code of Ethics; Annual Review of Policies and Procedures**. An SEC-registered adviser must provide a copy of its code of ethics to any client or prospective client on request. An SEC-registered adviser also must review its compliance policies and procedures annually, document the review and require employees to certify quarterly or annually that they have complied with the policies and procedures. If the SEC examines your firm, the staff will request these documents. Even if your firm is not SEC-registered, your policies and procedures may require an annual review.

In general, the annual review should consider any compliance matters that arose last year, any changes in your firm's business activities and any changes in the Investment Advisers Act of 1940, as amended (the "Advisers Act") or the rules under it that require revisions to your firm's policies and procedures. The annual review must also consider the adequacy of your firm's code of ethics, document that review and assess the effectiveness of the code's implementation. An SEC-registered adviser also should determine whether it should provide ethics training to its employees or enhancements to its code in light of its current practices. You should also make sure that your policies and procedures are adequately tailored to your business and that your firm is following them. If you have not already done so, you should consult us before you review your firm's compliance policies and procedures. Among other things, the annual review should also cover the following:

(a) **Business Continuity/Disaster Recovery Plans**. An SEC-registered adviser should review and test its business continuity/disaster recovery plans at least annually.

In 2016, the SEC proposed rules that would require SEC-registered investment advisers to establish business continuity and transition plans. Existing rules require advisers to adopt written compliance policies, which the SEC has interpreted to require policies that address business continuity planning, such as in the event of a natural disaster or the death of key personnel. There has been no formal detailed guidance on those policies, however, and advisers have adopted plans that vary widely in scope. The proposed rules, if adopted, would provide guidance on what the SEC expects these plans to contain. An important but challenging aspect of the proposed rules for an adviser with one or a few principals would be developing a plan for winding down or transitioning the business to others if those principals are unable to continue. The SEC likely would give advisers time to develop and implement plans that satisfy any final rules, but given the sensitivities and complexities of succession planning, advisers without a continuity and transition plan should start thinking about it now. More information is available at our Insights page at http://www.sflaw.com/blog-post/proposed-sec-rules-regarding-continuity-succession-planning/.

(b) **Execution Services**. An SEC-registered adviser should evaluate at least annually the execution services it receives from brokers it uses to execute client trades. Advisers should make sure that all trade errors are properly addressed pursuant to their trade error policies.

9. **Custody**. An SEC-registered adviser that has or is deemed to have custody of client funds or securities must comply with the Advisers Act's custody rule, including maintaining client funds and securities with a qualified custodian, having a reasonable basis to believe that such custodian sends account statements to clients at least quarterly and undergoing an annual surprise examination by an independent public accountant registered with, and subject to inspection by, the PCAOB. An SEC-registered adviser that manages a private fund is not required to have the qualified custodian deliver quarterly account statements to investors, or submit to surprise examinations, if the investment adviser sends the fund's annual audited financial statements to each investor within 120 days (or, for a fund of funds, 180 days) after the end of the fund's fiscal year. The financial statements must be prepared in accordance with GAAP and must be audited by an independent public accountant registered with, and subject to inspection by, the PCAOB.

Exempt Reporting Advisers

1. **Annual Updating Amendment to Form ADV**. If your firm is an SEC or California exempt reporting adviser, it must file an annual updating amendment to its Form ADV each year on the IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2016, the deadline is March 31, 2017. When you submit your firm's annual updating amendment, you must update the responses to all required items of Part 1A, including corresponding sections of Schedules A, B, C and D. The IARD fee for an annual updating amendment by an SEC exempt reporting adviser is $150. The IARD fee for an annual updating amendment by a state exempt reporting adviser is waived for 2017.

2. **Other Amendments**. In addition to the annual updating amendment, an exempt reporting adviser must amend its Form ADV promptly during the year if information in Item 1, 3, or 11 becomes inaccurate in any way or information in Item 10 becomes materially inaccurate.

3. **California Exempt Private Fund Adviser Requirements**. A private fund adviser that relies on the California exemption must continue to meet the following requirements in addition to updating its Form ADV:

- It must pay the application and renewal fees required of a California-registered adviser.
- Neither the adviser nor any of its advisory affiliates may have committed any disqualifying act, or have done any of the acts or satisfied any of the circumstances providing grounds for the California Department of Business Oversight (the "DBO") to deny, suspend or revoke its or their investment adviser certificates. Disqualifying acts are set forth in Rule 262 of Regulation A under the Securities Act of 1933, as amended (the "1933 Act"), and generally are acts that would result in a disciplinary action that must be disclosed on Form ADV.

A private fund adviser that advises a "retail buyer fund" must meet the additional requirements listed below. A retail buyer fund is a private fund that is not a venture capital company and that is excluded from the definition of "investment company" under ICA section 3(c)(1) or 3(c)(5). A fund that is excluded under ICA section 3(c)(7) is not a retail buyer fund.

- Each investor in a retail buyer fund must either (a) be an accredited investor or a manager, director, officer or employee of the adviser, or (b) obtain the interests in the fund through a divorce settlement, gift, inheritance or other transfer that is not a sale.
- At or before the time an investor invests in a retail buyer fund, the adviser must disclose in writing to such investor information about the services the adviser will provide and the duties, if any, it owes to the fund and such investor.
- The adviser must provide the fund's annual audited financial statements to each investor within 120 days after the end of each fiscal year (or 180 days for a fund of funds). The auditor must be a member of, and inspected by, the PCAOB.
- The adviser must comply with the Advisers Act performance fee rule.

4. **Switching to SEC or California Registration**. If your firm is relying on an exempt reporting adviser exemption, it must register with the SEC or the DBO (depending on its RAUM) before accepting any client that is not a private fund. If your firm reports on its Form ADV annual updating amendment that its RAUM is $150,000,000 or more and it has complied with all reporting requirements applicable to an exempt reporting adviser, it must file an application to register as an investment adviser with the SEC within 90 days after filing that annual updating amendment. If your firm has not complied with all SEC reporting requirements applicable to an exempt reporting adviser, this 90-day transition period is not available. If your firm does not qualify for another exemption, its application for registration must be approved by

the SEC before its RAUM reaches $150,000,000. See Item 4 on page 2 for a discussion of how to calculate RAUM.

Investment Advisers Certificated by California Department of Business Oversight

1. **Annual Updating Amendment of Form ADV**. If your firm is a California-registered adviser, it must amend its Form ADV each year on the IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2016, the deadline is March 31, 2017. The firm must update all of Parts 1, 2A and 2B.

When you amend Part 1, the IARD system will prompt you to indicate the type of amendment. You should select "annual updating amendment" and indicate that the amendment is for 2016. Unlike Part 1, Parts 2A and 2B are not online forms. Instead, you must upload them to the IARD as separate documents in text-searchable PDF format. The IARD will not accept any other format, including a PDF file containing a scanned copy of a paper document.

For 2017 renewals, the IARD has waived its annual $100 system processing fee for investment advisers and reduced its $45 system processing fee for investment adviser representatives to $10.

The SEC recently adopted amendments to Form ADV that become effective on October 1, 2017, so investment advisers that have a December 31 fiscal year will not have to complete the updated Form ADV until filing their annual Form ADV update during the first quarter of 2018. Some of the material requirements of the amendments are described in more detail in our letter dated October 21, 2016, which is available at our Insights page at http://www.sflaw.com/blog-post/sec-amendments-form-adv/.

2. **California Annual Fees**. A California-registered adviser must pay a $125 annual fee before December 15 of each year. This fee differs from the IARD fees mentioned in Item 1 above and has not been waived. You should have received an electronic package from FINRA in late 2016 with instructions on the procedures for paying this fee through the IARD system. If you did not receive that package or otherwise did not pay the annual fee for 2017, please contact us. An adviser that failed to pay the fee in December should have received a notice from FINRA and now has a "Failure to Renew" registration status on the SEC's Investment Adviser Public Disclosure website. Such an adviser that continues to fail to pay the fee could have its investment adviser certificate summarily revoked.

3. **Other Amendments to Form ADV**. A California-registered adviser must also amend Part 1 of its Form ADV promptly during the year to reflect any change in the information reported (other than financial information) and must promptly amend Parts 2A and 2B through the IARD whenever a material change occurs. See Item 1 on page 6 for a discussion of upcoming changes to Form ADV.

4. **Part 2 Client Delivery Requirements**. The DBO encourages all California-registered advisers to deliver Part 2 to clients on the same schedule that applies to SEC-registered advisers, which is summarized in item 3 on page 2.

5. **Switching to SEC Registration**. If your firm's RAUM is $100,000,000 or more, you should contact us to discuss whether you must register with the SEC as an investment adviser. See Item 4 on page 2 for a discussion of how to calculate RAUM.

6. **Switching to the California Private Fund Adviser Exemption**. If your firm's RAUM is below $150,000,000 and it advises only private funds, it may be eligible for the California private fund adviser exemption, which is similar to the SEC exempt reporting adviser exemption summarized in item 5 on pages 2-3. See Item 4 on page 2 for a discussion of how to calculate RAUM. See Item 3 on page 5 for a discussion of the requirements for this exemption.

7. **Investment Adviser Representatives**. A California-registered adviser must report its investment adviser representatives electronically on Form U4, and must report a terminated investment adviser representative on Form U5 within 30 days after his or her termination.

8. **Balance Sheet and Income Statement, Minimum Financial Requirements Computation and Verification**. A California-registered adviser that has investment discretion over client assets or that receives fees for advisory services 6 months or more in advance must (a) maintain in its records a written monthly calculation indicating that it satisfies California's minimum financial requirements (generally a minimum net worth of $12,000 for an adviser that does not have custody of client assets) and (b) file with the DBO an annual balance sheet and income statement prepared in accordance with generally accepted accounting principles, together with a schedule showing that the adviser satisfies the minimum financial requirements. These financial statements must be audited unless during the period covered by the report, the adviser has not held or accepted custody of funds or securities for any client or owed money or securities to any client, and has taken only limited powers of attorney to execute transactions on behalf of clients.

The financial statements and accompanying schedules should be filed as of the same date for each calendar year, except that the first report must be as of a date within twelve months after the adviser's certificate became effective. You should submit the financial information with the verification form required by the DBO within 90 days after the date as of which the financial information is provided. The verification and minimum financial requirements forms are attached to this letter. Your firm's accountants may be able to assist you as needed in preparing the statement of financial condition and income statement.

9. **Custody**.

(a) A California-registered adviser that holds, directly or indirectly, client assets or has the authority to obtain them must:

(b) Indicate that it has custody of client assets in its Form ADV;

(c) Maintain such assets with a "qualified custodian" in a separate account for each client;

(d) If advising a private fund:

(1) Send a statement to every investor at least quarterly that shows (i) the total amount of all additions to and withdrawals from the fund, (ii) the opening and closing value of the fund for the reporting period, (iii) a list of all of the fund's securities positions on the closing date of the reporting period that are required to be disclosed under GAAP for non-registered investment partnerships, and (iv) a list of all redemptions and withdrawals by the investor and the value of the investor's interest in the fund; and

(2) Either (i) have the Fund's financial statements audited annually by a certified public accountant registered with and subject to regular inspection by the PCAOB and distribute the audited financials to investors within 120 days after the fund's fiscal year end or (ii) enter into an agreement with an independent third party that must act in investors' best interest, which agreement authorizes the independent third party to review, verify and approve invoices and receipts for all fees, expenses and withdrawals.

(e) Additionally, an adviser that advises non-fund clients or uses the independent third party procedure for a fund instead of the annual audit exemption must:

(1) Notify clients of the identity and location of the qualified custodian of the clients' assets;

(2) Have a reasonable basis after due inquiry for believing the clients receive account statements at least quarterly directly from the qualified custodian that (i) identify the amount of assets in the account at the end of the reporting period, and (ii) list all transactions in the account; and

(3) Retain a certified public accountant to conduct a surprise examination of client assets at least once each year at a time chosen by the accountant. An adviser that has custody only because of its authority to deduct its fees from client accounts is not subject to this requirement if the adviser has written authorization to deduct its fee, sends invoices for the amount of the fee to its custodian and the client, and notifies the DBO that it will rely on this exception to the Rule.

10. **Other State Registration Requirements**. A California (or other state) registered adviser also may be required to register in states in which the adviser has clients or any investment adviser representatives.

California Investment Advisers Not Registered in California or with the SEC

If your firm has an office in California and it is not (1) registered as an investment adviser with either the SEC or California, or (2) relying on the SEC's or California's exempt reporting adviser exemption discussed on pages 2-3, you should contact us immediately. If your firm is relying on one or both of the exempt reporting adviser exemptions, it must register with the SEC and/or California before accepting any client that is not a private fund. If your firm reports on its Form ADV annual updating amendment that its RAUM has reached at least $150,000,000 and it has complied with all reporting requirements applicable to an exempt

reporting adviser, it must file an application to register as an investment adviser with the SEC and make a notice filing in California within 90 days after filing that annual updating amendment. If your firm has not complied with all SEC reporting requirements applicable to an exempt reporting adviser, this 90-day transition period is not available. In that case, unless your firm qualifies for another exemption, its registration application must be approved by the SEC before its RAUM reaches $150,000,000.

If your firm is relying on the California private fund adviser exemption and its RAUM increases to over $25,000,000, it must file its SEC exempt reporting adviser notice within 60 days thereafter. Please contact us immediately if you believe you may need to make this filing. See Item 4 on page 2 for a discussion of how to calculate RAUM.

Investment Advisers Not Registered with the SEC that Have Clients or Offices in Other States

If you are not registered with the SEC and have one or more clients or offices in any state other than California, you may be required to register in that state. If your firm's RAUM is $25,000,000 or more, please contact us to discuss whether you must register with the SEC as an investment adviser or may rely on the SEC's exempt reporting adviser exemption discussed on pages 2-3. An investment adviser relying on the SEC's exempt reporting adviser exemption must file its initial Form ADV within 60 days after first relying on that exemption. See Item 4 on page 2 for a discussion of how to calculate RAUM.

Other Issues

1. **New Employee and Independent Contractor Whistleblower Notice Requirements**. The Defend Trade Secrets Act (the "DTSA"), which became effective on May 11, 2016, contains immunity protections for whistleblowers, who will not be liable under state or federal law for disclosing trade secrets if they make that disclosure (a) in confidence to a federal, state or local government official, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law, or (b) in a document filed in a lawsuit or other proceeding, if the filing is made under seal and protected from public disclosure. The DTSA requires employers to notify employees and independent contractors of this immunity in contracts and agreements entered into or updated after the DTSA's enactment that contain confidentiality provisions governing the use of the employer's trade secrets.

In addition, recent SEC enforcement actions warn against confidentiality clauses in employment-related agreements that may restrict or discourage employees from reporting securities law violations to the SEC.

You should contact us to update your firm's policies and procedures, form of employee and independent contractor agreements, and other contracts with confidentiality provisions entered into after May 11, 2016, such as employee separation agreements or management company partnership or limited liability company operating agreements with key employees. For more information, please see our Insights page at http://www.sflaw.com/blog-post/new-employee-independent-contractor-notice-requirements/.

2. **SEC Raises "Qualified Client" Net Worth Threshold**. The SEC raised the net worth threshold under the "performance fee rule" from $2,000,000 to $2,100,000, effective August 15, 2016. This change affects separate account clients and investment funds that rely on ICA section 3(c)(1) and pay a performance fee or allocation. It is irrelevant for investment funds that rely on ICA section 3(c)(7). The increased net worth requirement does not apply retroactively or to parties that entered into separate account agreements or invested in 3(c)(1) funds before August 15, 2016. Assuming that those investors' net worth exceeded $2,000,000 when they entered into such agreements or invested in such funds, an adviser may charge performance-based fees or allocations on additional capital investors contribute to such accounts or funds on or after August 15, 2016, even if such investors' net worth does not exceed $2,100,000 at the time of such additional contribution. If your firm charges performance-based fees or allocations to 3(c)(1) investment funds or separate account clients, you should contact us immediately to update your documents and forms. For more information, please see our Insights page at http://www.sflaw.com/blog-post/sec-raises-qualified-client-asset-threshold-effective-august-15-2016/.

3. **New Department of Labor Regulation**. On April 8, 2016, the U.S. Department of Labor ("DOL") issued its long-awaited final regulation redefining what constitutes "investment advice" that makes the adviser a "fiduciary" to plans, plan participants and IRA owners under ERISA and the prohibited transaction excise tax rules of the Internal Revenue Code. The final regulation is scheduled to become applicable on April 10, 2017. This change applies to investment advisers that give advice to "separate account" clients. We believe that it generally should not apply to an investment adviser to a private investment fund, even if the fund is a "plan assets" fund, if the investment adviser only manages the fund's portfolio on a discretionary basis and does not provide any advice to fund investors. For more information, please see our Client Alerts on this regulation and new guidance, which are at available at our Insights page at http://www.sflaw.com/blog-post/new-department-labor-regulation/ and http://www.sflaw.com/blog-post/department-labor-fiduciary-rules-effect-investment-adviser-marketing-practices-rollover-recommendations/.

4. **Performance-Related Books and Records Rule Amendments**. The SEC recently adopted Advisers Act rule amendments requiring investment advisers to maintain additional records of performance calculations and performance-related communications to any person.

Previously, advisers only had to retain supporting documentation for communications distributed to 10 or more persons. They now must retain supporting documentation for performance calculations or rates of return used in any written communication distributed, directly or indirectly, to any person (including, for example, one-on-one communications). The amendments also require retention of additional written materials related to performance. The amendments will apply to any communication or material distributed or circulated after October 1, 2017, even if such communications or materials relate to performance before that date.

Investment advisers may need to modify existing practices, especially relating to retaining communications (and associated performance calculations) provided to limited groups of investors. You should review your firm's record retention policies and contracts with third-

party service providers to ensure that all correspondence (including emails) relating to calculating and communicating about performance (regardless of the number of recipients) is captured, backed up and maintained in accordance with the new requirements. More information is available at our Insights page at http://www.sflaw.com/blog-post/performance-related-books-records-rule-amendments/.

5. **Cybersecurity and Identity Theft**. Every SEC-registered investment adviser and every adviser that is a member of the NFA must have a cybersecurity policy. In addition, identity theft rules and guidelines of the Commodity Futures Trading Commission (the "CFTC") and the SEC require certain entities to implement a red-flags program designed to detect, prevent and mitigate identity theft. Cybersecurity also continues to be an enforcement priority for the SEC. In June, a large broker-dealer agreed to pay a $1 million penalty to settle charges related to its failures to protect customer information resulting from its failure to adopt written policies and procedures reasonably designed to protect customer data. If your firm has not adopted identity theft policies and procedures that comply with these guidelines, please contact us.

Advisers that are not regulated by the CFTC or the SEC are subject to similar Federal Trade Commission rules, but those rules lack clear compliance guidelines. We recommend that such advisers adopt identity theft policies and procedures that follow the SEC and CFTC compliance guidelines.

Please call us if you would like us to review your firm's compliance policies and procedures.

6. **Annual Notice of Privacy Policy**. Investment advisers, whether or not registered with the SEC, and private funds domiciled in the U.S. or having U.S. investors, are subject to SEC and Consumer Financial Protection Bureau regulations governing the privacy of consumer financial information. These regulations require every such adviser and private fund to provide notices to clients and investors disclosing the types of non-public personal information ("NPI") the adviser or private fund collects and the extent to which it discloses that information. If the adviser or fund discloses NPI (other than certain exempt disclosures) it must give each consumer the opportunity to opt out of non-exempt disclosures. Examples of exempt disclosures are disclosures to the adviser's or fund's attorney, accountants or administrator, disclosures required by law or necessary to provide services that a consumer requests, and disclosures made at a consumer's request.

If your firm (a) discloses NPI in ways that are not exempt from the federal opt-out requirement or (b) has changed its practices regarding sharing NPI that were described in its last notice to clients or investors, you must deliver an annual privacy notice to clients and investors at least once every 12 months. You may define the 12-month period, but you must apply it consistently. You may deliver the annual notice conveniently by including it in an individual account client's first quarter bill or in your annual letter to investors reporting last year's results. Please call us if you share your clients' or investors' NPI with anyone, including affiliates, or obtain consumer credit reports in your business.

7. **Pay-to-Play and Lobbyist Rules**. SEC rules disqualify investment advisers, their key personnel and placement agents acting on their behalf, from seeking engagement by a

government client if they have made political contributions that exceed specified thresholds. California requires internal sales professionals who meet the definition of "placement agents" (people who for compensation act as finders, solicitors, marketers, consultants, brokers, or other intermediaries in offering or selling investment advisory services to certain government entities, including a state public retirement or university system) to register with the state as lobbyists, and comply with California lobbyist reporting and regulatory requirements.

Other state and local governments have similar requirements, but they differ widely, so you should call us before your firm solicits any state or local government entity.

8. **Website Terms of Use**. A Federal Ninth Circuit Court of Appeals decision, which covers 9 Western states, including California, suggests that a business cannot enforce its website's Terms of Use against users unless it can show that the users actually saw the terms of use. If you have a website that disseminates material information to clients and investors or that supports client or investor transactions, we recommend that the site require users to agree to that website's Terms of Use through an "I agree" button. Please call us if you would like to discuss this matter.

9. **San Francisco Gross Receipts Tax**. San Francisco replaced its current payroll expense tax with a gross receipts tax that is being phased in gradually over five years through 2018. For investment advisers and others in the financial services industry, the tax rate is from 0.40% to 0.56%, depending on the amount of gross receipts attributable to San Francisco. Gross receipts generally are allocated based on the percentage of a company's payroll attributable to San Francisco. Although this rate is lower than the former 1.5% payroll expense tax rate, some investment advisers will see their overall San Francisco tax increase, because their gross receipts will be substantially greater than their payroll expense.

An investment fund is generally treated as not having any gross receipts for purposes of the tax, even if the fund's investment adviser is located in San Francisco. An investment adviser's gross receipts do not include net gain on investment of its own capital. An investment adviser will, however, be required to include management fees and performance-based fees in its gross receipts. The ordinance is not entirely clear about whether a performance-based profit allocation or carried interest should be included in the gross receipts of an investment adviser located in San Francisco. An investment adviser in San Francisco should consult us or its accountants to discuss how the gross receipts tax affects it.

10. **Investment Fund Issues**.

(a) **New Issues**. Generally, you may rely for 12 months on representations made by investors in your funds in their offering questionnaires regarding their eligibility to participate in profits and losses from "new issues." After that, you must obtain a recertification of those representations each year. A convenient way to obtain the recertifications is to send a request in the annual letter that your firm sends to investors. Recertifications can be obtained by negative consent. You should contact us before you prepare to obtain the recertifications so that we can advise you on appropriate documentation.

(b) **"Bad Actor" Disqualification**. Rule 506 disqualifies any issuer from relying on Regulation D in any securities offering in which certain persons participating in such offering had certain "disqualifying events," that is, certain criminal convictions and regulatory violations.

An investment adviser must determine whether it is subject to the bad actor disqualification rule each time it offers or sells securities in reliance on rule 506. The SEC has stated that an issuer may reasonably rely on the agreement of a person covered by the bad actor rule to provide notice of a potential or actual disqualifying event in, for example, a contract or undertaking in a questionnaire or certification. If an offering is continuous, delayed or long-lived, however, the issuer must update its inquiry periodically.

An adviser to a fund relying on any provision of rule 506 should require each of its employees and certain other persons participating in the offering of fund interests to provide written representations that he or she has not been subject to any disqualifying events and conduct other appropriate due diligence at least annually. For this purpose, an investor holding at least 20% of an investment fund's voting securities may be deemed to be participating in that fund's offering. If you have not contacted us to revise your firm's employee questionnaire and fund subscription documents and taken other steps to comply with these amendments, please contact us as soon as possible.

(c) **European Union Alternative Investment Fund Managers Directive ("AIFMD")**. AIFMD is a European Union ("EU") directive that attempts to harmonize regulation of marketing and management of investment funds across the EU. If your firm manages a fund that has EU investors, is marketing in the EU or accepts or would accept EU investors even if it is not marketing there, your firm is subject to AIFMD, and if you have not done so already, you should contact us to discuss how it will affect your firm and any funds that it manages.

In particular, a fund manager subject to AIFMD that has assets under management of at least €100 million must file Annex IV in each EU Member State where the manager markets alternative investment funds. Reporting frequency for Annex IV is determined by AUM. Firms managing between €100 million and €500 million must file annually, those managing between €500 million and €1 billion must file semi-annually and those managing in excess of €1 billion must file quarterly. The filing thresholds also take leverage into account. For example, a firm managing €400 million that uses leverage might be required to file Annex IV semi-annually or quarterly instead of annually depending on the amount of leverage used.

We have received questions from clients regarding offering fund interests in Switzerland, which is not an EU country and therefore not subject to AIFMD. It does, however, have its own strict private offering requirements. Please call us before conducting any discussions with a prospective Swiss investor.

If you would like more information about offering fund interests in Europe, please contact us.

(d) **Foreign Account Tax Compliance Act ("FATCA") and the Common Reporting Standard ("CRS")**.

(1) **Non-U.S. Funds**. Under FATCA, an offshore fund, including an offshore master fund, must (A) register with the IRS as a "foreign financial institution" to obtain a Global Intermediary Identification Number (or GIIN), (B) appoint a FATCA responsible officer, (C) gather and review information about the fund's investors to ascertain whether it has direct or indirect reportable U.S. investors, for which it can use the most recent IRS Forms W-9 or W-8BEN (or one of the other forms in the W-8 series), and (D) report information about certain U.S. investors to either the IRS or the country in which the fund is organized. Failure to comply can result in a 30% withholding tax on U.S. source income. The IRS updated two of its W-8 series of forms in 2016. An offshore fund that attaches those forms to the fund's documents should assume it is using the current versions.

Similarly, the United Kingdom and its Overseas and Crown Dependencies, including the Cayman Islands and British Virgin Islands, have entered into intergovernmental agreements ("UK IGAs") implementing an automatic exchange of information for tax purposes. These UK IGAs require funds domiciled in those jurisdictions to undertake due diligence and annual reporting on specified UK persons, but no withholding taxes are assessed in the event of non-compliance.

Finally, over 90 other countries (but not the United States) have agreed to exchange tax information with each other under CRS, an international convention that has been developed by the Organisation for Economic Cooperation and Development, to improve tax transparency, similar to the FATCA information that is reported to the IRS. CRS requires financial entities in the adopting countries to gather information on all investors' tax residency, including controlling persons and indirect owners for some entities, and report that information to the local tax information authority. That tax residency information will be shared with the other CRS participating countries. Funds organized in the Cayman Islands, the British Virgin Islands and many other jurisdictions will file their first CRS reports in 2017, which will include investor information from 2016.

The Cayman Islands, the British Virgin Islands and many other jurisdictions have passed FATCA- and CRS-related legislation implementing obligations for investment funds organized in those jurisdictions. Cayman and British Virgin Island funds should now have substantially completed gathering investor due diligence on existing investors to satisfy the additional reporting requirements under FATCA, the UK IGAs and CRS. CRS due diligence on preexisting entity investors and individuals whose account value at the fund is US$1,000,000 or less must be completed by the end of 2017; other due diligence deadlines have passed in these jurisdictions. Many jurisdictions have adopted FATCA/CRS due diligence questionnaires, which are a safe harbor for determining an investor's tax residency and whether an investor is reportable. Offshore funds should be using either these questionnaires or other questionnaires that satisfy all the due diligence requirements.

As noted above, the local requirements implementing FATCA, the UK IGAs and CRS require covered financial institutions to notify the local tax information authority if the institution has reporting obligations under these requirements and to upload data about reportable account

to the local tax information authority. In the Cayman Islands, for example, notification is required by April 30, 2017, and reporting is due by May 31, 2017.

(2) **U.S. Funds**. A U.S. fund with offshore investors must obtain information from those investors identifying direct and indirect U.S. account holders, using the most recent IRS forms. As of January 1, 2017, withholding on gross proceeds payable to investors that are foreign financial institutions that have not complied with FATCA is required.

(3) **FATCA/CRS Compliance**. FATCA and CRS are both complicated reporting obligations, and the portals for registration and reporting in some jurisdictions can be difficult to navigate. Some entities that are exempt from reporting under FATCA will be required to notify and report under CRS. The due diligence required to determine whether investors are reportable over the portals under the various requirements can also be complicated, since some of the definitions and requirements are different between FATCA and CRS. If you have not done so already, you should consult your administrators, tax advisers and us as soon as possible about how FATCA, CRS and similar legislation might affect any funds that your firm manages.

Some funds' governing documents may need to be amended to comply with the reporting and withholding requirements, and most funds' offering and subscription documents should be updated to reflect these requirements and the due diligence that applies to new investors. In particular, if you advise any funds organized in a CRS jurisdiction and you have not reviewed your fund's subscription documents to gather the new information required under CRS, please call us as soon as possible.

(e) **Issues Affecting Managers of Funds that Trade Commodity Interests and Swaps**. A discussion of requirements applicable to registered CPOs and CTAs is also on pages 20-22. The following issues apply to advisers that may not be so registered but that trade commodity interests and certain swaps for the funds and accounts that they manage.

(1) **CFTC Self-Executing Relief for Delegation by Commodity Pool Operators**. If a fund's CPO (typically the general partner of a fund organized as a partnership or the directors of a fund organized as a corporation) is not registered as a CPO, it may wish to delegate its CPO responsibilities rather than registering. The CFTC has eliminated the requirement that unregistered CPOs obtain no-action relief to delegate their CPO responsibilities to registered CPOs. The CFTC permits such delegation without any filing by the delegating CPO as long as the designated CPO is registered and the delegating CPO and the designated CPO meet certain requirements. Please call us if you would like to discuss this delegation.

(2) **Swaps**. The definitions of "commodity pool operator" and "commodity trading adviser" include advisers that invest in certain types of swaps. An investment adviser of accounts that invest such swaps is a CPO or CTA, or both, even if it does not invest in futures or other commodity interests. Therefore, all advisers must determine whether the instruments in which they invest include swaps that are regulated by the CFTC. The definition of "swap" is complex. Some instruments that are commonly called swaps are not treated as swaps subject to CFTC regulation, and some instruments that are not traditionally

called swaps are regulated by the CFTC as swaps. If you have not considered or discussed with us whether your firm's swaps trading might cause it to be a CPO or a CTA, you should do so immediately.

(3) **Advisers that Rely on CFTC Rule 4.13(a)(3) CPO Registration Exemption**. The exemption from CPO registration under CFTC Rule 4.13(a)(3), which is widely used by CPOs of private funds, is available to managers of funds whose investments in commodity interests and CFTC-regulated swaps are very limited. A fund may qualify for it if either (i) the aggregate initial margin and premiums required to establish the fund's positions in commodity interests and swaps do not exceed 5% (measured when the most recent position was established) of the liquidation value of the fund's portfolio, taking unrealized profits and losses into account, or (ii) the aggregate net notional value of the fund's positions in commodity interests and swaps is not greater than the portfolio's liquidation value. The exemption also requires that the fund be privately offered and not marketed as a vehicle for trading commodity interests and generally requires that U.S. investors in the fund be accredited investors as defined in Regulation D under the 1933 Act or knowledgeable employees.

A CPO relying on the 4.13(a)(3) exemption must claim the exemption by filing a notice with the NFA, and reaffirm such claim annually within 60 days after the end of each year. The 2016 reaffirmation filing is due by March 1, 2017. In December 2016, the NFA sent an email reminder of the reaffirmation requirement.

(4) **Advisers that Rely on CFTC Rule 4.14(a)(8) CTA Registration Exemption**. In addition to serving as a CPO, an investment adviser to a fund that invests in commodity interests or CFTC-regulated swaps is the CTA of that fund. An adviser to a separately managed account that invests in commodity interests or such swaps is also a CTA. A CTA is required to register with the CFTC, unless it qualifies for an exemption. The CTA registration exemption most commonly used by investment advisers whose investments in commodity interests and swaps are limited, is self-executing and does not require any action by the adviser. However, some advisers rely instead on the exemption in CFTC Rule 4.14(a)(8). This exemption may be used by a CTA whose commodity interest trading advice is solely incidental to its business of providing securities investment advice, and that provides commodity investment trading advise only to pools, each of whose CPOs is either registered or relying on the Rule 4.13(a)(3) exemption. An adviser relying on the 4.14(a)(8) exemption must claim it by filing a notice with the NFA and reaffirm it annually within 60 days after the end of each year. Please contact us if you would like to discuss exemptions from CTA registration.

(f) **Electronic Schedules K-1**. The IRS permits a partnership (and a limited liability company taxed as a partnership) to issue a Schedule K-1 to a partner solely by electronic means if the partnership has received the partner's affirmative consent. The consent must be obtained in a manner that demonstrates that the partner can access the electronic format in which the K-1 is furnished. For example, a partnership can e-mail a consent form to its partners in whatever electronic format it intends to send the K-1s and ask the partners to sign and return their consents electronically. Alternatively, a partnership may send a paper letter to its partners attaching the consent with instructions to send it back using the electronic means that the partnership intends to use, or the partnership may post the consent on its website with

instructions to respond electronically. State rules may differ regarding electronic K-1s and the partnership may still be required to send state K-1s on paper.

A partnership also must provide each partner with a statement with specific disclosures, including the procedures for withdrawing the consent, a description of the hardware and software necessary to access the electronic K-1s and how long the consent is effective. You should consult us or your accountants if you want to send K-1s to your partners electronically.

(g) **Amendments to Form D**. If you manage a private fund, you likely are required to file a notice on Form D of the offering of interests in the fund in reliance on an exemption in Regulation D under the 1933 Act and amend it annually. Form D is filed electronically with the SEC and on paper or electronically in states where the fund sells interests to U.S. persons. We can prepare Form D for your signature and file it on your behalf. To file with the SEC, you must obtain electronic filing codes from the SEC. If you have not filed an electronic Form D or we have not filed one on your behalf, you should contact us about obtaining the codes and filing the required amendment.

(h) **Blue Sky**. Before offering or selling any interests in a private fund to U.S. persons, you should inform us of the states of residence of potential new investors and of existing investors who may purchase additional interests or shares, so that we can review and advise you on compliance with applicable state securities laws and obtain the necessary electronic filing codes in advance of the filing deadline if such offer and sale requires that a Form D be filed with the SEC.

(i) **Updating Offering Documents**. If you manage a private fund, you should review and update the fund offering documents annually to reflect changes in such matters as soft dollar arrangements and other brokerage practices, performance data, annual financial information and tax and legal requirements.

(j) **Designation of Liquidating Person**. If you manage a private fund under a limited partnership agreement that provides for the designation of a "liquidating person" to liquidate the partnership's assets if the general partner is unable to do so, you should confirm that your appointment of a liquidating person, if any, is consistent with your current desires. Please call us if you would like to appoint or replace a liquidating person.

(k) **Investors that Are Mutual Funds**. If a registered investment company (a "mutual fund") is an investor in a private fund that you manage, the mutual fund may be an "affiliate" of the fund if it owns 5% or more of the fund. Please contact us to discuss this issue if you believe it may be relevant to you.

(l) **3(c)(1) Count**. If any private fund that you manage relies on the exception from the definition of "investment company" in ICA section 3(c)(1), you should consider consulting with us regarding the number of investors in the fund for purposes of the 100-investor limit in section 3(c)(1). The SEC rules for counting investors for this purpose are complex and technical.

(m) **Form PF**. An investment adviser must file Form PF if its RAUM attributable to private funds is $150,000,000 or more as of any December 31 and it is registered (or required to be registered) either with the SEC as an investment adviser or with the CFTC as a CPO or CTA. The SEC and CFTC are required to keep all Form PF information confidential and cannot be compelled to disclose it pursuant to the Freedom of Information Act, but may use it for inspection and enforcement purposes.

Most advisers are required to file Form PF annually. For advisers whose fiscal year ends December 31, the filing deadline is April 30, 2017. If an adviser's RAUM attributable to private funds is at least $1,500,000,000 as of the end of any month, however, it must file a Form PF within 60 days after the end of the fiscal quarter in which it exceeded that threshold and thereafter must file an updated Form PF within 60 days after the end of each fiscal quarter. Some service providers offer products and services intended to facilitate preparing and filing Form PF. Please call us if you would like to discuss Form PF.

(n) **Form SLT**. Department of the Treasury Form SLT gathers monthly information about long-term foreign securities held by certain U.S. residents and long-term U.S. securities held by foreign residents, including private investment funds and their managers. "Long-term" means having an original maturity of more than one year or no contractual maturity. Only entities file Form SLT. Natural persons do not file.

An investment adviser may be required to file Form SLT if it is the general partner or investment adviser of a private investment fund and has assets under management of at least $1,000,000,000. An investment adviser that manages less than $1,000,000,000 or that manages only separate accounts is not required to file. Form SLT reportable securities typically include: (1) interests in U.S. master funds held by foreign feeder funds; (2) interests in foreign master funds held by U.S. feeder funds; (3) interests held by third-party foreign investors in a U.S. fund of which the investment adviser is the general partner; and (4) portfolio securities held by U.S. funds that are issued by foreign issuers and are not held by a U.S. custodian. An investment adviser must file a consolidated report for all U.S. entities in its organization and all U.S. funds that it manages if the aggregate fair value of Form SLT reportable securities in all such accounts is $1,000,000,000 or more.

If an entity's Form SLT reportable securities on the last business day of any month exceed the $1,000,000,000 threshold, it must begin filing Form SLT as of that month and must continue to file for each subsequent month in the same calendar year, whether or not it continues to meet the reporting threshold. The Form SLT for any month is due on the 23rd of the next month or the first business day thereafter if the 23rd is a weekend or holiday.

(o) **BEA Changes to Direct Investment Survey Reporting Requirements**. The Bureau of Economic Analysis, Department of Commerce ("BEA") has changed its surveys of direct investment (voting interests of 10 percent or more) that will affect some private funds and will be implemented beginning in 2017. More information is available on the BEA's website at https://www.bea.gov/surveys/privatefunds/index.htm. These changes are intended to simplify reporting for private funds. The BEA expects that many hedge funds that have been subject to BEA direct investment reporting as a result of cross-border voting interests will instead be subject to reporting to the U.S. Treasury Department's Treasury International Capital

(TIC) system, which applies to hedge fund groups with total cross-border investments exceeding the much higher TIC reporting thresholds. Under the changes, any cross-border voting investments of 10 percent or more in, or by, private funds will only be subject to BEA reporting if such investments involve, directly or indirectly, a direct investment in an "operating company," which the BEA defines as "companies that are not other private funds or holding companies."

The BEA has indicated that it will notify entities that are potentially affected by these changes in 2017 and have previously filed annual and/or quarterly surveys of direct investment abroad (BE-11 and BE-577) or foreign direct investment in the U.S. (BE-15 and BE-605).

11. **Section 13 and 16 Filings**. The following filing requirements apply to an investment adviser whether or not it is SEC-registered.

(a) **Schedule 13D/13G**. If you have or share investment discretion or voting power over 5% or more of a class of equity securities of a public company, you may be required to file Schedule 13D or 13G. If you have reached or anticipate reaching that threshold with respect to any class of equity securities, you should contact us. If you have filed a Schedule 13G and the information in it changed as of December 31, 2016, you may be required to file an amended Schedule 13G by February 14, 2017.

(b) **Forms 3, 4 and 5**. If you have or share investment discretion or voting power over more than 10% of a class of equity securities of a publicly traded company, or if you or any of your affiliates is a director or officer of a publicly traded company, you or your affiliate may be required to file with the SEC an initial ownership report on Form 3. Form 3 generally must be filed by a 10% owner within 10 days after exceeding the 10% threshold and by a director or officer within 10 days after assuming that office. Thereafter, such an insider generally must report changes in its beneficial ownership of securities on Form 4 (typically, a purchase or sale of the issuer's securities, including cross trades between funds that your firm manages) within 2 business days after the date of the change. An annual report on Form 5 must be filed with the SEC within 45 days after the fiscal year by every person who was an insider of a publicly traded company during the year to report previously unreported transactions during the year that should have been reported on Form 4 but were not, and certain other transactions that may be reported on Form 5.

(c) **Form 13F**. If your firm exercises investment discretion over $100,000,000 or more invested in "13(f) securities," it must report its holdings to the SEC on Form 13F within 45 days after the end of the first calendar year in which it reached the $100,000,000 threshold as of the end of any month, and must make quarterly filings thereafter. 13(f) securities typically include stocks, certain options, warrants, convertible debt securities and exchange-traded funds that are traded on a national securities exchange. The SEC's official list of 13(f) securities is posted at http://www.sec.gov/divisions/investment/13flists.htm. If your firm first became required to file Form 13F in 2016, your initial Form 13F is due by February 14, 2017.

(d) **Form 13H**. If your firm directly or indirectly, including through entities that it controls, purchases or sells, through one or more registered brokers, any NMS security on

behalf of any discretionary accounts in an aggregate amount of at least 2,000,000 shares or $20,000,000 during any day or 20,000,000 shares or $200,000,000 during any calendar month, you must file Form 13H with the SEC within 10 days after crossing that threshold. NMS securities are typically exchange-listed equities, ETFs and options.

When your firm files Form 13H, it will receive from the SEC a "large trader identification number," or "LTID," which it must provide to each of the brokers with which it has an account. Those brokers must record trading information associated with this LTID and disclose it to the SEC on request. Your firm must amend Form 13H within 10 days after the end of any calendar quarter during which information in its last filed Form 13H becomes inaccurate and, whether or not there have been any changes in the information in your firm's Form 13H, you must amend it annually. Your annual amendment for 2016 is due by February 14, 2017. Please contact us immediately if you believe that you might be required to file Form 13H or you would like our assistance in filing the required annual amendment.

12. **Compliance Policies**. Whether or not your firm is registered with the SEC, we recommend that you discuss with us adopting and annually reviewing a code of ethics and compliance procedures. Among other things, your compliance procedures should:

(a) Require each employee to certify quarterly or annually that he or she has complied with those procedures (and you should now require each employee to submit that certification to your compliance officer for 2016).

(b) Require that the compliance procedures be reviewed annually. (See item 8 on pages 3-4.)

(c) Include provisions expressly stating that the firm's policies do not prohibit employees from reporting possible violations of federal laws to the SEC or any other government agency or making other disclosures that are protected under federal whistleblower laws. (See item 1 under "Other Issues".)

(d) Include provisions reasonably designed to protect customer records and information. (See item 3 under "Other Issues".)

13. **Management Company Allocations**. If your firm is organized as a limited liability company or limited partnership, you may have issued profit interests to key employees. If your operating agreement or limited partnership agreement provides that the manager or general partner may adjust each participant's profit interest for the coming year on or before a specified date (typically January 31 of that year), you should make these allocation decisions, in writing and in accordance with the applicable operating agreement or limited partnership agreement, on or before the specified date.

14. **Covenants in Swap, Securities Lending and Margin Lending Agreements**. Most swap, securities lending and margin lending agreements (some of which may be in brokerage account agreements) include covenants that require your firm or its client or fund to notify the counterparty if certain events occur. One common covenant requires notice to the counterparty if the net asset value of the client or fund decreases more than a specified

percentage during a given period or below a specified amount. You should review those provisions carefully. You should also comply with other common covenants that require that you deliver information (such as monthly NAV estimates and your funds' audited financial statements) by the specified deadlines.

15. **Foreign Bank Account Reports**. Every U.S. person or entity that had a financial interest in, or signatory authority over, a financial account in a foreign country in 2016 generally must file Form TD F 90-22.1 if the aggregate value of all such accounts exceeded $10,000 at any time during 2016. The Form must be received by the Department of Treasury by April 15, 2017, which may be extended to October 15. Failure to file the Form when required can result in significant monetary or criminal penalties. You should consult us or your accountants on whether you must file this Form.

16. **ERISA Fee Disclosures**. If your firm manages an ERISA plan account or an ERISA plan assets fund and either the compensation you receive from the plan or from other parties, or the services you provide to the plan or fund have changed, you must disclose those changes to the plan fiduciary. Please contact us if you would like our help in drafting those disclosures.

17. **Commodities and Futures Trading**. If your firm is registered as a CPO or CTA, it must comply with the requirements listed below. Please see also the discussion above on pages 15-16 of issues that may apply to advisers that invest in commodity interests and certain swaps but are not registered as CPOs or CTAs.

(a) **Requirements Applicable to Registered CPOs and CTAs**.

(1) **Update NFA Registration**. Annually, you must update your firm's registration information via the NFA's electronic filing system, including electronically submitting the NFA's Annual Questionnaire and paying your annual NFA membership dues. The NFA should send an email reminder of such update and dues, which are due by the anniversary of your firm's registration. Dues are $750 for CPOs and CTAs, plus an annual records maintenance fee of $100 for each registration category.

(2) **Complete NFA Self-Examination Questionnaire**. Your firm must complete the NFA's "self-examination questionnaire" annually. The completed questionnaire is not filed with NFA, but must be retained in your firm's records. As part of this review, you should review your compliance policies and procedures, and confirm whether amendments to those procedures, or additional procedures, may be warranted in light of your firm's current business.

(3) **Other Annual Requirements**. At least annually, you must:

- test your disaster recovery plan and make any necessary adjustments;
- provide ethics training in accordance with the NFA's rules; and

- file any new exemption notices electronically with the NFA.

(b) **Additional Requirements Applicable to Registered CPOs**.

(1) **Reporting Requirements**. Your firm must file CFTC Form CPO-PQR and NFA Form PQR with the NFA. These forms include various identifying and operating data of the CPO. The two forms overlap considerably, and in many cases filing one will be deemed to satisfy the obligation to file the other. CFTC Form CPO-PQR and NFA Form PQR are similar to SEC Form PF. A CPO that is also registered with the SEC as an investment adviser and files SEC Form PF does not need to complete the items on Form CPO-PQR that request the same information that it reports on its Form PF.

Filings must be made quarterly or annually, depending on the firm's assets under management ("AUM"). The method of calculating AUM for purposes of filing Form CPO-PQR differs from the method of calculating RAUM for SEC purposes. Please contact us to discuss the filings and filing dates that apply to your firm or if you have questions about calculating AUM and RAUM. As of September 30, 2016, each late Form CPO-PQR is subject to a $200 fee for each business day it is late. Payment and acceptance of such fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

(2) **File and Distribute Commodity Pool Reports**. For each pool that your firm manages, you must furnish each investor monthly or quarterly account statements containing certain specified financial information. In addition, you must prepare an annual report for each pool and furnish it to each investor in the pool, and the NFA, within 90 days after the end of the pool's fiscal year (which is shorter than the 120 days that generally applies under the SEC and California custody rules). Each pool's disclosure document should be updated regularly and may need to comply with specific CFTC disclosure rules. It may also need to be filed with the CFTC and the NFA. Please call us if you would like to discuss these requirements.

(3) **Offering Document**. If your firm is soliciting new investors for your pools, you must distribute an offering document that complies with specific CFTC rules and filing requirements unless you have made a filing claiming relief from certain of those obligations. Please call us if you would like to discuss CPO disclosure requirements.

(c) **Additional Requirements Applicable to Registered CTAs**.

(1) **Reporting Requirements**. You must file a report on Form CTA-PR with the NFA annually within 45 days after the end of each year. You must also file NFA Form PR quarterly within 45 days after the end of the quarters ending in March, June and September. Form PR is very similar to Form CTA-PR but contains additional information. A CTA that is also registered with the SEC as an investment adviser and is required to file Form PF must file Form PF in lieu of filing Form CTA-PR with respect to private funds. As of September 30, 2016, each late Form CTA-PR will be subject to a $200 fee for each business day it is late. Payment and acceptance of the fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

(2) **Annual Verification by FCM**. At least annually, the FCM that carries your firm's client accounts will contact your clients to verify that the information your firm obtained under NFA Compliance Rule 2-30(c) remains materially accurate, and provide each client the opportunity to correct and complete the information. If the FCM notifies you of any material changes to the information, you must assess whether your firm must provide additional risk disclosure to the client.

(3) **Analysis Trade Allocation**. If your firm places bunched orders, you should analyze each trading program at least quarterly to ensure that the order allocation method is fair and equitable and document this analysis.

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We will be pleased to respond to questions, assist you in preparing needed forms and otherwise assist you in satisfying any of the requirements discussed in this letter. Please contact 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

TO THE COMMISSIONER OF BUSINESS OVERSIGHT OF
THE STATE OF CALIFORNIA

VERIFICATION FORM PURSUANT TO
CALIFORNIA CODE OF REGULATIONS RULE 260.241.2(b)

(Executed WITHIN or WITHOUT of the State of California)

I, ______________________________________, declare under penalty of perjury under the laws of the State of California that I have read the annexed financial report and supporting schedules and know the contents thereof to be true and correct to my best knowledge and belief; and neither the licensee nor any partner, officer, or director thereof have any proprietary interest in any account classified solely as that of a customer.

Executed this _____ day of ____________________, ____________, at

__________________________ __________________________
City State

____
(Signature of person signing report)

____
(Title of person signing report)

____ __________________
(Name of Licensee) (File Number)

INSTRUCTIONS:

If the broker-dealer, investment adviser is a sole proprietorship, the verification shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

STATE OF CALIFORNIA –DEPARTMENT OF BUSINESS OVERSIGHT

MINIMUM FINANCIAL REQUIREMENTS WORKSHEET

DBO - 260.237.2 (Rev. 4-16)

STATE OF CALIFORNIA
BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
Department of Business Oversight

CRD NUMBER: ____________________

APPLICANT'S NAME: ____________________

COMPUTATIONS AS OF: ______/______/______

TYPE OF REPORT (Initial, Annual, Interim): Annual Report

SUMMARY:

NET WORTH	From (b) below	A	$0.00
MINIMUM NET WORTH REQUIRED	[Per Section 260.237.2(a)(b) CCR]	B	
EXCESS/ (DEFICIT) IN NET WORTH	[A-B]		$0.00
EXCESS/ (DEFICIT) IN NET WORTH @120%	From (d) below	C	$0.00

NET WORTH [Per Section 260.237.2(d)]

TOTAL ASSETS			
Less: EXCLUDED ASSETS	From (c) below	a	$0.00
Total Allowed Assets			$0.00
TOTAL LIABILITIES			
NET WORTH (Total Allowed Assets - Total Liabilities)	(Transfer to A above)	b	$0.00

EXCLUDED ASSETS [Per Section 260.237.2(d)]

NON CURRENT PREPAID EXPENSES			
DEFERRED CHARGES			
GOODWILL			
FRANCHISE RIGHTS			
ORGANIZATIONAL EXPENSES			
PATENTS			
COPYRIGHTS			
MARKETING RIGHTS			
UNAMORTIZED DEBT DISCOUNT AND EXPENSE			
ALL OTHER ASSETS OF INTANGIBLE NATURE			
HOME, HOME FURNISHINGS, AUTOMOBILES AND OTHER			
PERSONAL ITEMS NOT READILY MARKETABLE (INDIVIDUAL)			
ADVANCES OR LOANS TO STOCKHOLDERS AND OFFICERS			
ADVANCES OR LOANS TO PARTNERS (PARTNERSHIP)			
TOTAL EXCLUDED ASSETS	(Transfer to a above)	c	$0.00

120% TEST [Per Section 260.241.2(d)]

NET WORTH	(From (A) above)		$0.00
MINIMUM NET WORTH REQUIRED @ 120%	(From (B) above x 120%)		$0.00
EXCESS/ (DEFICIT) IN NET WORTH @120%	(Transfer to C Above)	d	$0.00