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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.

Tax Changes

1. **Tax Reform Bill.** The Tax Cuts and Reform Bill changes the treatment of the "carried interest" allocable to some investment advisers to investment funds, and will particularly affect hedge fund managers. It provides that long-term capital gain treatment (a maximum of 20%) within the carried interest generally will only be available for gains from assets held for at least three years. In addition, investment expenses (such as management fees) are generally no longer deductible. Managers should consider whether to change what type of entity the management company is for tax purposes (such as partnerships, C corporations or S corporations), and whether to charge the carried interest as a profit allocation or a fee. Managers should consult us, their accountants or other tax advisers early in 2018 to determine what actions might be advisable.

2. **Audit of Tax Returns.** An audit adjustment to the U.S. tax return of any entity taxed as partnership for any tax year beginning after 2017 could cause a tax liability (including interest and penalties) to be imposed on the partnership for the year during which the adjustment is determined. This liability generally is determined using the highest tax rates under the Internal Revenue Code applicable to U.S. taxpayers, although the partnership may be able to use a lower rate by taking into account that it has tax-exempt partners. The partnership may be able to elect to pass through such adjustments to the partners who participated in the partnership during the applicable year, in which case each such partner, and not the partnership, would be responsible for the payment of any tax deficiency. If a partnership makes such an election, interest on any deficiency will be two percentage points higher than the otherwise applicable rate on tax underpayments. If it does not make such an election, the current partners may bear the tax liability (including interest and penalties) arising from audit adjustments at significantly higher rates and in amounts that are unrelated to their economic interests in the items that are adjusted. Similar principles may apply to audits of any master fund.

A partnership will no longer have a "Tax Matters Partner" for audits beginning with the 2018 tax year, but will now have a "partnership representative." The general partner or its delegate will act as the partnership representative and will have the authority to bind the

partnership under the audit procedures becoming effective then. You should consult us as to whether you should amend your fund documents to reflect the new rules.

Changes to Form ADV

The SEC amended Form ADV, Part 1A to: (1) formalize an "umbrella" registration option for multiple advisers that operate a single advisory business; (2) require additional information about separately managed accounts ("**SMAs**"); (3) require additional information about advisers; and (4) clarify certain technical questions and requirements.

Some of the material requirements of these amendments are described in more detail below. The entire adopting release is at https://www.sec.gov/rules/final/2016/ia-4509.pdf.

1. **Umbrella Registration**. The amendments formalize the SEC staff's interpretations permitting related investment advisers that operate as a single advisory business and meet certain other requirements to register under a single Form ADV (an "**Umbrella Registration**"). An Umbrella Registration allows an adviser to register on Form ADV (the "**filing adviser**") and include its other related advisers ("**relying advisers**") on the same registration. The Umbrella Registration option is available only if:

- The adviser group advises only private funds, or "qualified clients" in SMAs, who would be eligible to invest in private funds and whose accounts pursue investment objectives substantially similar to those of the private funds;
- The filing adviser's principal office and place of business is in the U.S. and all of the substantive provisions of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**") and its rules apply to the dealings of each relying adviser with its clients (and each relying adviser is subject to SEC examination);
- Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control;
- The adviser group operates under a single code of ethics and written policies and procedures adopted and implemented in accordance with Advisers Act Rule 206(4)-7 and administered by a single chief compliance officer; and
- The filing adviser must provide information about each relying adviser in a new Schedule R to Part 1A.

An existing SEC no-action letter permits an entity created to act as a private fund's general partner or managing member to rely on the registered adviser's registration. Advisers may continue to rely on this position and such general partners and managing members are not required to be reported on new Schedule R.

An exempt reporting adviser (an "**ERA**") cannot file an Umbrella Registration because it is not registered. However, the SEC has issued FAQs that may allow an ERA and its affiliates to file a single Form ADV.
See: https://www.sec.gov/divisions/investment/iard/iardfaq.shtml#exemptreportingadviser

2. **New Information About SMAs**. The amendments modify Item 5 and Schedule D to collect the following additional information about SMAs:

(a) **SMA Assets Held in Specified Categories**. Advisers must report the approximate percentage of investment assets held in SMAs that fall into each of 12 categories, such as exchange-traded equities, non-exchange-traded equities, corporate bonds (separated by grade), derivatives and securities issued by registered investment companies. The SEC has not defined which assets fall within each category and advisers may use their own methods to make that determination.

(b) **Derivatives and Borrowings**. Advisers with SMA regulatory assets under management ("**RAUM**") of at least $500,000,000 must report varying degrees of information about derivatives and borrowings, depending on the amount of RAUM they manage. Your firm's RAUM is its assets under management reported in Part 1A, Item 5.F of Form ADV.

(c) **Other New SMA Information**. Advisers must identify any custodian that holds at least 10% of the adviser's SMA RAUM and the amount of assets the custodian holds.

3. **Other Key Changes**. An adviser is required to disclose other new information, including:

(a) **Investment Adviser-Specific Information (Item 1)**:

- Social media platforms (such as LinkedIn and Twitter) where the adviser has a presence and controls the content (employees' social media accounts need not be disclosed unless the adviser controls their content);
- The number of offices in which it conducts business and other information for each of its 25 largest offices;
- Whether its chief compliance officer is employed by someone else (that is, whether it has an outsourced chief compliance officer) and if so, the employer; and
- An adviser that has more than $1 billion in assets (not assets under management, but the adviser's own assets) must now indicate the amount of such assets within specified ranges.

(b) **Client-Specific Information (Item 5):**

This information must be provided about separate account clients and clients that are investment funds.

- The number of clients in certain categories and the RAUM attributable to each category;
- Approximate RAUM attributable to non-U.S. clients;
- The number of clients for which the adviser has no RAUM; and
- Whether ownership of the adviser's 3(c)(1) private funds is limited to "qualified clients" as defined under Advisers Act Rule 205-3 (commonly known as the "Performance Fee Rule").

The Form ADV amendments will require some investment advisers to gather more information than in prior years. Affected investment advisers should allow extra time for their 2018 annual update.

Cryptocurrency Regulatory Updates

We have had a significant increase over the past few years in inquiries from existing and new clients interested in investing in, or launching new funds focused on, cryptocurrencies, initial coin offerings ("ICOs") and blockchain-related investments. Two primary compliance considerations for such managers are:

- The "custody rule" under the Advisers Act generally requires that SEC-registered investment advisers hold client funds or securities at a "qualified custodian" (generally a bank, broker-dealer or FCM). Only a few firms currently offer custody services with respect to cryptocurrencies and related investments.

- Any registered CPO or CTA that executes a transaction involving a cryptocurrency or cryptocurrency derivative must notify the NFA by amending the firm-level section of its annual questionnaire. In addition, beginning with the first quarter of 2018, registered CPOs and CTAs that have executed transactions involving cryptocurrencies or related derivatives will also be required to report the number of their client accounts that executed one or more transactions involving a cryptocurrency as well as the number of their client accounts that executed one or more transactions involving a cryptocurrency derivative during each calendar quarter. This information must be submitted to the NFA through the firm's questionnaire no later than 15 days after the end of a quarter.

In addition, managers should also consider whether to update their policies and procedures to address personal investments by employees in these types of assets.

Federally Registered Investment Advisers

1. **Annual Updating Amendment to Form ADV**. If your firm is SEC-registered, 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, 2017, the deadline is March 31, 2018. 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 2017. 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's annual updating amendment are (a) $40 if the adviser's RAUM is 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. 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.

2. **Other Amendments to Form ADV**. In addition to the annual updating amendment, an SEC- or state-registered adviser must amend Part 1A of its Form ADV, including corresponding sections of Schedules A, B, C, D, and R, promptly, if:

- It is adding or removing a relying adviser as part of its umbrella registration;
- Information in (a) Items 1 (except 1.O. and Section 1.F. of Schedule D), 3, 9 (except 9.A.(2), 9.B.(2), 9.E. and 9.F.) or 11 of Part 1A, (b) Items 1, 2.A. through 2.F. or 2.I. of Part 1B or (c) Sections 1 or 3 of Schedule R, becomes inaccurate in any way; or
- Items 4, 8, or 10 of Part 1A, Item 2.G. of Part 1B, or Section 10 of Schedule R becomes materially inaccurate.

An other-than-annual amendment is not required to update Items 2, 5, 6, 7, 9.A.(2), 9.B.(2), 9.E., 9.F., or 12 of Part 1A, Items 2.H. or 2.J. of Part 1B, Section 1.F. of Schedule D or Section 2 of Schedule R even if those items have become inaccurate. Part 2 must be amended promptly whenever any information in it becomes materially inaccurate.

An adviser is not required to update its brochure between annual amendments solely because the amount of assets it manages or its fee schedule has changed. However, if you are updating Part 2 for another reason, and the amount of assets you manage listed in Item 4.E. or your fee schedule listed in Item 5.A. has become materially inaccurate, you should update that item. An other-than-annual amendment to Part 2 need not include a summary of material changes.

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, 2017, the deadline is April 30, 2018. 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, 2018. 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 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. 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 your investment advisory fees.

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 ERA (i.e., an exempt reporting adviser). (California has a similar registration exemption that is discussed on page 8). See Item 2(b) on page 3 for a discussion of how to calculate RAUM.

ERAs are required to file Part 1A of Form ADV on the IARD and disclose organizational and operational information, but need not include all of the information required of SEC-registered investment advisers. Such Part 1A must be amended as described in Items 1 and 2 beginning on page 7. An ERA is not required to prepare and deliver to investors Part 2 of Form ADV. A registered adviser that is switching to ERA status must first withdraw its registration by filing Form ADV-W on the IARD before filing its first Part 1A as an ERA.

An adviser that is exempt from registering with the SEC because it is an ERA may also be required to register as an ERA 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 2018 renewal fees through the IARD system. These fees are in addition to the IARD filing fees mentioned above on page 4.

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, and 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 cover the following:

- Any compliance matters that arose last year;
- Any changes in your firm's business activities;
- Any changes in the Advisers Act or its rules that require revisions to your firm's policies and procedures;
- The adequacy of your firm's code of ethics, including documenting that review and assessing the effectiveness of the code's implementation;
- A review and test of your firm's business continuity/disaster recovery plans;
- An evaluation of the execution services your firm receives from brokers it uses to execute client trades;
- An evaluation of whether all trade errors have been properly addressed as provided in your firm's trade error policy;
- A determination of whether your firm should provide ethics training to its employees or enhancements to its code in light of its current practices; and
- An evaluation of whether 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.

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 ERA, 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, 2017, the deadline is March 31, 2018. 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 SEC ERA's annual

updating amendment is $150. There is no IARD fee for a state ERA's annual updating amendment.

2. **Other Amendments**. In addition to the annual updating amendment, an ERA must amend its Form ADV promptly if:

- Information in Items 1 (except Item 1.O. and Section 1.F. of Schedule D), 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 ERA 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 ERA, 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 ERA, this 90-day transition period is not available. If your firm does not qualify for another exemption, the SEC must approve its application for registration before its RAUM reaches $150,000,000. See Item 2(b) on page 3 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 its fiscal year end. For an adviser whose fiscal year ended December 31, 2017, the deadline is March 31, 2018. 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 2017. 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 2018 renewals, the IARD has waived its annual $100 system processing fee for state-registered advisers and reduced its $45 system processing fee for investment adviser representatives to $10.

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 2017 with instructions on how to pay this fee through the IARD system. If you did not receive that package or otherwise did not pay the annual fee for 2018, 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.

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 5.

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 2(b) on page 3 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 ERA exemption summarized in Item 5 on page 6. See Item 2(b) on page 3 for a discussion of how to calculate RAUM. See Item 3 on page 8 for a discussion of the California private fund adviser 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 12 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 at http://www.dbo.ca.gov/forms/doc/DBO260.237.2.pdf and http://www.dbo.ca.gov/forms/doc/DBO260.241.2b.pdf. 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 ERA exemption discussed on page 8 , you should contact us immediately. If your firm is relying on one or both of the ERA 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 ERA, 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 ERA reporting requirements, 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 ERA notice within 60 days thereafter. Please contact us immediately if you believe you may need to make this filing. See Item 2(b) on page 3 for a discussion of how to calculate RAUM.

Investment Advisers Not SEC-Registered 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 ERA exemption discussed on page 6. An investment adviser relying on the SEC's ERA exemption must file its initial Form ADV within 60 days after first relying on that exemption. See Item 2(b) on page 3 for a discussion of how to calculate RAUM.

Other Issues

1. **Employee and Independent Contractor Whistleblower Notice Requirements**. The Defend Trade Secrets Act (the "**DTSA**") 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, 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, 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. **Department of Labor Fiduciary Regulation**. The U.S. Department of Labor ("**DOL**") issued its 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. New prohibited transaction exemptions, including the Best Interest Contract ("**BIC**") Exemption, and amendments to existing prohibited transaction exemptions issued under the new fiduciary regulation now apply, but the DOL provided a transition period during which SEC-registered advisers that seek to comply with the BIC Exemption need only adhere to the exemption's "Impartial Conduct Standards" instead of satisfying the full set of that exemption's conditions. The DOL also issued a temporary enforcement policy under which neither it nor the Internal Revenue Service will

pursue claims against fiduciaries who, during the transition period, are working diligently and in good faith to comply with the fiduciary regulation and its exemptions. That transition period and temporary enforcement policy extend through July 1, 2019.

Your firm's compliance policies and procedures should address the DOL's new regulation and exemptions (whether or not the firm is SEC-registered). If you use a compliance consultant, check whether that firm is addressing this issue. If not, please call us. For or more information, please see our Client Alerts 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 https://www.sflaw.com/blog-post/upcoming-dol-fiduciary-rule-compliance-deadline/.

3. **Performance-Related Books and Records Rule**. The SEC now requires investment advisers to maintain additional records of performance calculations and performance-related communications to any person after October 1, 2017, even if such communications or materials relate to performance before that date.

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.

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/.

4. **Cybersecurity and Identity Theft**. Every SEC-registered investment adviser and every adviser that is an NFA member 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 2017, 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.

5. **Annual Privacy Policy Notice**. 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.

6. **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.

7. **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.

8. **San Francisco Gross Receipts Tax**. San Francisco imposes a gross receipts tax on investment advisers and others in the financial services industry located in San Francisco. 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.

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.

9. **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" such as 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) **Foreign Account Tax Compliance Act ("<u>FATCA</u>") and the Common Reporting Standard ("<u>CRS</u>")**.

(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. An offshore fund that attaches those forms to its documents should be sure it is using the current versions because several of those forms were recently updated.

Similarly, over 90 other countries (but not the U.S.) have agreed to exchange tax information with each other under CRS, an international convention developed by the Organisation for Economic Cooperation and Development, to improve tax transparency. CRS is similar to the FATCA information that is reported to the IRS, but no withholding taxes are assessed on non-compliance. Finally, 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 filed their first CRS reports in 2017, which included 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 Islands and British Virgin Islands funds should now have substantially completed gathering investor due diligence on existing investors to satisfy the additional reporting requirements under FATCA and CRS. 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 and CRS require covered financial institutions to notify (or register with) the local tax information authority whether the institution has reporting obligations under these requirements, keep that information up-to-date and annually upload data about each reportable account to the local tax information authority. In the Cayman Islands, for example, FATCA and CRS reporting is due by May 31, 2018, and CRS reports are required, even if there is nothing to report (known as nil reports). The Cayman Islands does not require nil FATCA reports.

Cayman Islands rules adopted in 2017 require Cayman Islands funds to have their own written CRS policies and procedures. Please contact us or your Cayman Islands counsel if you advise Cayman Islands funds that have not already prepared and adopted CRS policies and procedures.

(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. Withholding on gross proceeds payable to investors that are foreign financial institutions that have not complied with FATCA is required.

(d) **Regulations that May Affect Offering of Fund Interests in the European Union ("EU").** Some of these are discussed briefly below. If you would like more information about offering fund interests in Europe, please contact us or your EU counsel.

(1) **Second Markets in Financial Instruments Directive ("MiFID II").** MiFID II is a new series of market regulations that became effective on January 3, 2018. There are a number of new requirements that could affect investment advisers outside the EU. For example, MiFID II may affect non-EU investment advisers that:

- trade on EU trading venues;
- trade with (or are clients of) EU counterparties;
- market their funds and through EU distributors; or
- provide investment management services directly to EU clients.

In particular, MiFID II imposes disclosure requirements on EU third-party introducers, selling agents, private banks, wealth managers and financial advisers that offer or recommend fund interests that are distributed in the EU to "retail" investors, which includes even ultra-high net worth individuals and non-institutional entities. If a U.S. fund manager has a relationship with an EU institution that might introduce that manager's funds to EU investors, that institution will likely request the U.S. manager to provide the information for the required disclosures. If a U.S. manager offers fund interests directly to EU investors, it may have to make the disclosures.

(2) **Packaged Retail and Insurance-Based Investment Products ("PRIIPs") Regulation (the "PRIIPs Regulation").** The PRIIPs Regulation became effective on January 1, 2018. A fund interest would typically be a PRIIP.

One requirement of the PRIIPs Regulation is that a fund must provide a key information document ("**KID**") to EU retail investors investing in PRIIPs. For this purpose, a retail investor is defined the same as under MiFID II. KIDs must be in a prescribed format, presenting various data on costs, risks and rewards, according to set methodologies. A KID generally contains different information than the standard Private Offering Memorandum that our clients' funds use, and must be delivered in addition to that Memorandum. Similar to the requirements under MiFID II, if a U.S. fund manager uses a third-party distributor to offer its funds in the EU, it is the distributor's obligation to provide the KID, but the U.S. fund manager would be required to provide the information required by the KID. If a U.S. manager offers fund interests directly to EU retail investors, the fund manager is obligated to provide the KID.

The prevailing market view appears to be that KIDs only must be provided to existing investors when they make new investments after the PRIIPs Regulation applies, although this is not entirely clear under the PRIIPS Regulation. Nevertheless, a fund manager that wants to continue to receive investments from EU retail investors must produce a KID for each fund it offers to retail investors in the EU and publish the KIDs on its website, or coordinate with any distributors of its funds in the EU to produce the KIDs.

(3) **General Data Protection Regulation (the "GDPR")**. The GDPR will become effective on May 25, 2018, and may apply to a non-EU fund manager that offers fund interests in the EU. It seeks to align and bolster personal data protection across the EU, including, for example, requirements to provide expanded notices about how personal information will be used, limitations on retaining personal data, increased requirements to delete or hand over an individual's information on request, mandatory data breach notification, requirements to maintain records of data processing activities and transfers of personal data, and standards for data controllers to demonstrate that they have obtained valid consent for certain data processing activities.

Personal data includes employee, investor and client data in the EU that relates to a living individual (whether or not an EU citizen) who can be identified from the data (or from the data and other information in a fund manager's possession). Personal data can include an individual's business email address and contact details. Personal data may be in employment agreements, carried interest documentation, anti-money laundering information, subscription agreements and, potentially, side letters.

If a non-EU fund manager does not have an office or offer funds in the EU, the manager may not be subject to the GDPR. However, anyone that holds U.S. citizens' data in the EU (whether or not those citizens live in the EU or the U.S.) must comply with the GDPR. As a practical matter, the data of U.S. citizens not living in the EU that is merely processed in the EU might not be an enforcement priority.

The GDPR imposes fines for non-compliance of up to the greater of €20 million or 4% of a business's worldwide annual turnover. If a fund manager's privacy or data security measures fail to comply with the GDPR, it also may be subject to action by data supervisory authorities appointed in each EU Member Stated to enforce data protection laws, which may lead to enforcement orders, fines or other liabilities, and claims for damages from investors.

(4) **Alternative Investment Fund Managers Directive ("AIFMD")**. AIFMD 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 likely subject to AIFMD. If you have not done so already, you should contact us to discuss how AIFMD affects your firm and any funds that it manages.

In particular, a fund manager that markets fund interests in the EU and 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 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.

(e) **Other International Offering/Sale Requests**. Clients frequently ask us about offering fund interests in non-EU countries. Many other countries also have strict private

offering requirements. Please call us before conducting any discussions with a prospective non-U.S. investor.

(f) **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 24 and 25. 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 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 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 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 2017 reaffirmation is due by March 1, 2018. In December 2017, 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.

(g) **Amendments to Form D**. If you manage a private fund, you likely are required to file a notice of the offering of fund interests on Form D 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 a Form D or we have not filed one on your behalf, you should contact us.

(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 a Form D filing 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 section 3(c)(1) 100-investor limit. The SEC rules for counting such investors are complex.

(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, 2018. If, however, an adviser's RAUM attributable to private funds is at least $1,500,000,000 as of the end of any month 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 $1,000,000,000, 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. 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 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).

10. **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, 2017, you may be required to file an amended Schedule 13G by February 14, 2018.

(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 2017, your initial Form 13F is due by February 14, 2018.

(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 2017 is due by February 14, 2018. 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.

11. **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 2017).

(b) Require that the compliance procedures be reviewed annually. (See Item 8 on page 6.)

(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 on page 12.)

(d) Include provisions reasonably designed to protect customer records and information. (See item 4 on page 13.)

12. **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.

13. **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.

14. **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 2017 generally must file FinCen Form 114 if the aggregate value of all such accounts exceeded $10,000 at any time during 2017. The Form must be received by the Department of Treasury by April 17, 2018, 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.

15. **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.

16. **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 page 19 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 on the NFA's electronic filing system, including submitting an annual questionnaire and paying annual 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 questionnaire is not filed with NFA, but must be retained in your firm's records. You should review your compliance policies and procedures, and confirm whether amendments, 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 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. The two forms overlap considerably, and in many cases filing one will be deemed to satisfy the obligation to file the other. They also are similar to

SEC Form PF. A CPO that is also an SEC-registered investment adviser and files Form PF need not complete the items on Form CPO-PQR that request the same information as Form PF.

Filings are required quarterly or annually, depending on the firm's assets under management ("AUM"). The method of calculating AUM for this purpose differs from the calculation of 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. A 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. You also 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 Form CTA-PR with the NFA annually within 45 days after the end of each year, and 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 an SEC-registered 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. A late Form CTA-PR is 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, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant, Ellyn Roberts, Anthony Caldwell or David Suozzi.

SHARTSIS FRIESE LLP