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BASIC U.S. REGULATORY REQUIREMENTS APPLICABLE TO PRIVATE INVESTMENT FUNDS AND PRIVATE INVESTMENT FUND MANAGERS[#]

(Updated as of 7/31/14)

A. Investment Company Act of 1940 – There are two exceptions that private investment funds may rely upon to avoid investment company status and registration with the Securities and Exchange Commission ("SEC"), Sections 3(c)(1) and 3(c)(7) of the Investment Company Act of 1940.

1. Section 3(c)(1) Funds – A 3(c)(1) fund involves a private placement by a fund that will have no more than 100 beneficial owners. Generally, in the case of offshore funds, only U.S. beneficial owners need to be counted. When counting beneficial owners of a 3(c)(1) fund, there will be a "look-through" to (i) the investor's underlying investors, if the investor owns 10% or more of the 3(c)(1) fund and the investor is (a) a fund-of-funds, (b) any other passive investment vehicle (including a family vehicle) relying upon Section 3(c)(1) or Section 3(c)(7) (discussed in A.2. below) or (c) a registered investment company, (ii) participants of any self-directed pension plan who have elected to have their plan monies invested in the 3(c)(1) fund, and (iii) the owners of any entity formed for the purpose, or considered to have been formed for the purpose, of investing in the 3(c)(1) fund (i.e., if 40% or more of the entity's assets are invested in the 3(c)(1) fund). There may be an "integration" of the investors of similar 3(c)(1) funds managed by the same investment manager. In a typical 3(c)(1) "master-feeder" structure, the total number of U.S. beneficial owners that may be invested in the aggregate in the two feeders is 100. Note that a husband and wife who are investing jointly in a 3(c)(1) fund will only count as one beneficial owner, as will a person who invests both in his individual capacity and through an IRA or other account of which he is the sole beneficial owner. "Knowledgeable employees" who invest in the fund are not counted as "beneficial owners" (see A. 3. below).

2. Section 3(c)(7) Funds – A 3(c)(7) fund involves a private placement only to "qualified purchasers" (generally, individuals with $5 million or greater in net "investments" and entities with $25 million or greater in net "investments"). Only certain types of investments are considered "investments" for purposes of Section 3(c)(7) (generally, publicly-traded securities listed on a U.S. national securities exchange or traded on NASDAQ; shares in registered investment companies and interests in private investment funds; cash, cash equivalents; real estate held for investment purposes; shares of non-public companies with total shareholder equity of $50 million or more; and commodity interests). While there is no explicit investor limitation found in Section 3(c)(7) such as the 100 beneficial owner limitation found in Section 3(c)(1), in order for a 3(c)(7) fund to avoid being considered a "reporting company" under relevant securities laws, it may not have

IT IS RECOMMENDED THAT ALL RECIPIENTS OF THIS DOCUMENT READ IT IN ITS ENTIRETY IMMEDIATELY UPON RECEIPT AND PERIODICALLY THEREAFTER. This document is intended to be a general overview of some of the basic regulatory requirements that may be relevant to an investment manager who sponsors or advises private investment funds and, to the extent applicable, separate accounts. THIS DOCUMENT IS NOT INTENDED AS, AND SHOULD NOT BE CONSIDERED TO BE, COMPREHENSIVE LEGAL ADVICE, SINCE THERE MAY BE ISSUES NOT ADDRESSED HEREIN AND/OR FURTHER DETAILED ANALYSIS OF THE PARTICULAR FACTS AND CIRCUMSTANCES MAY BE WARRANTED. As such, recipients of this document should not act or refrain from acting solely on the basis of the information contained herein without first seeking appropriate legal counsel. Additional materials on many of the items discussed in this document are available upon request.

more than (i) 2,000 investors or (ii) 500 non-accredited investors. "Knowledgeable employees" do not need to be qualified purchasers in order to invest in a 3(c)(7) fund (see A. 3. below).

3. Knowledgeable Employee Exception – Certain persons who are executive officers of the fund or its manager or who participate in the investment activities of the fund are "knowledgeable employees". Knowledgeable employees are not counted as beneficial owners for purposes of the 100 beneficial owner limitation of a Section 3(c)(1) fund and do not need to be qualified purchasers to invest in a Section 3(c)(7) fund. The determination of knowledgeable employee status must be made on a case-by-case basis.

4. Anti-Pyramiding Rule - If a hedge fund is seeking to invest in a registered investment company or a registered open-end investment company (which generally includes most ETFs, since they are usually considered to be investment companies), the fund's manager should be aware of the limits to such acquisition set forth in Sections 12(d)(1)(A)(i) and (B)(i) of the Investment Company Act of 1940, which state that generally no more than 3% of the voting securities of such investment companies may be owned in the aggregate by the acquiring fund and entities controlled by it.

B. Securities Act of 1933 – Generally, to avoid registration of the private fund's securities, fund interests must be offered and sold on a private placement basis to prospective investors with whom there is a substantive pre-existing relationship. A "substantive pre-existing relationship" has been defined to be a relationship with regular contact over a period of time where the general partner, or an agent acting on its behalf, has had sufficient time to review and assess the financial circumstances and/or sophistication of the potential investor prior to offering fund interests to such person. A "private placement" further requires that no form of general solicitation or advertising be used in the offer or sale of the fund interests, including, without limitation, cold calls, use of the media (e.g., advertisements, press releases, articles, etc.), public interviews or password-free websites. In addition, generally, investors must be "accredited", e.g., individuals need to have at least a $1 million net worth (excluding their primary residence) or $200,000 in income in each of the two most recent years with a reasonable expectation of reaching the same level in the current year, and entities need to have at least $5 million in total assets. Subject to other applicable legal requirements, a fund may sometimes have up to 35 non-accredited investors, all of whom should be financially sophisticated. The foregoing is derived from Rule 506(b) of Regulation D, a safe harbor under the Securities Act of 1933, upon which most private funds rely. Under Rule 506, a Form D must be filed with the SEC (see H.1. below).

Elimination of the Ban on General Solicitation for Private Placements under Rule 506(c) of Regulation D – On July 10, 2013, at the direction of the "Jumpstart Our Business Startups Act" (the "JOBS Act"), the SEC adopted Rule 506(c) of Regulation D under the Securities Act. Rule 506(c) permits an issuer to conduct a private placement of securities under Rule 506 while engaging in general solicitation or general advertising in offering and selling securities, *provided* that: (i) the offering complies with the general requirements for a Regulation D private placement, which are set forth in Rule 501 and 502; (ii) all purchasers of the securities are “Accredited Investors” as such term is defined under the Securities Act; and (iii) the issuer takes reasonable steps to verify that such purchasers are Accredited Investors. The Rule provides a non-exclusive list of methods that issuers may use to satisfy the verification requirement for purchasers who are natural persons. Importantly, the emphasis of the new rule is on the status of purchasers, not on the offerees. The SEC also added a new information item to Form D for issuers to indicate when they are relying on Rule 506(c). Notably, the elimination of the ban on general solicitation applies to the issuer and anyone acting on behalf of the issuer. These changes took effect on September 23, 2013.

Disqualification and Disclosure Provisions of Rule 506(d) of Regulation D – On July 10, 2013, the SEC adopted Rule 506(d) of Regulation D under the Securities Act which disqualifies securities offerings involving certain “felons and other ‘bad actors’”. Specifically, an issuer may not rely on the Rule 506 offering exemption if the issuer or certain other persons involved with the offering (“Covered Persons”) has a “Disqualifying Event” listed in the Rule (*e.g.*., certain criminal convictions, court injunctions, orders and suspensions), unless the disqualification is waived or otherwise remedied. Covered Persons under Rule 506(d) include: (i) the issuer; (ii) any predecessor of the issuer; (iii) any affiliated issuer; (iv) any director, executive officer, other officer participating in the offering, general partner or managing member of the issuer; (v) any beneficial owner of 20% or more of the issuer's outstanding voting equity securities; (vi) any promoter connected with the issuer in any capacity at the time of such sale; (vii) any investment manager of an issuer that is a pooled investment fund; (viii) any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with such sale of securities; (ix) any general partner or managing member of any such investment manager or solicitor; or (x) any director, executive officer or other officer participating in the offering of any such investment manager or solicitor or general partner or managing member of such investment manager or solicitor.

Rule 506(d) became effective on September 23, 2013 (the "Effective Date") and a failure to comply may result in a loss of the ability of a fund to rely on the Rule 506 offering exemption. Events occurring prior to the Effective Date that would be Disqualifying Events had they occurred after the Effective Date will not disqualify an issuer from relying on Rule 506, but must be disclosed in writing to offerees a reasonable time prior to sale. Any issuer that made sales at a time when there were unknown Disqualifying Events may still rely on Rule 506 for those prior sales if the issuer can establish that it did not know and, in the existence of reasonable care, could not have known, that such Disqualifying Events existed. An issuer that is disqualified from relying on Rule 506 may, under certain circumstances, privately offer securities, but will be required to rely on more limited and burdensome exemptions from registration.

C. Investment Advisers Act of 1940; State Investment Adviser Registration and Notice Filings – As of March 30, 2012, a manager with "regulatory assets under management" of at least $25 million at the time it commences its advisory activities must either be registered with the SEC or the applicable state regulatory authority or be entitled to rely on an exemption from registration at the time of such commencement. "Regulatory assets under management" is very broadly defined and includes gross assets, assets on which fees are not charged and uncalled capital.

SEC-Registered Adviser - If a manager is registered as an investment adviser with the SEC, it will, among other things: have to (i) file through the IARD system its Form ADV, Part 1 and Part 2A (the "Firm Brochure"); (ii) initially deliver its Part 2A, annually deliver its Part 2A (or provide a summary of material changes with an offer to deliver its Part 2A), promptly amend its Part 2A when certain information becomes materially inaccurate and promptly deliver its Part 2A whenever it amends disciplinary information or Item 9; and (iii) initially deliver its Part 2B (the "Brochure Supplement") for certain supervised persons, promptly update it when information becomes materially inaccurate and deliver its updated Part 2B thereafter to the extent existing disciplinary disclosure has materially changed or there is new disclosure of a disciplinary event. In addition, a manager that is registered as an investment adviser with the SEC will be subject to periodic SEC audits; be permitted to charge performance fees only to those investors in 3(c)(1) funds who represent that they are "qualified clients" (generally, those investors that have a $2 million net worth, excluding the value of their primary residence; however, in the case of a 3(c)(1) fund-of-funds investing in the hedge fund, each of the investing fund's U.S. investors must meet this criteria); and be required to appoint a compliance officer and adopt various policies and procedures, including relating to its custody of client funds, proxy voting, personal trading and insider trading.

A "mid-sized adviser" is prohibited from registering with the SEC if it: (i) is "required to be registered" as an investment adviser in the state in which it maintains its principal office and place of business; (ii) if registered, would be "subject to examination"; and (iii) has regulatory assets under management of between $25 million and $100 million. Currently, the only states where a manager would not be "subject to examination" are Wyoming and New York. Therefore, a manager with its principal office and place of business in Wyoming or New York that has regulatory assets under management of more than $25 million is required to register with the SEC, unless an exemption from registration is available.

State Investment Adviser Registration or Notice Filing - Many states require registration of investment advisers, even if the manager is exempt from SEC registration, or notice filings for an SEC-registered investment adviser. In addition, some states have adopted or are adopting requirements for investment advisers with regard to compliance policies and procedures similar to those adopted by the SEC.

<u>Private Fund Adviser Exemption</u> - A manager is exempt from SEC registration if the manager: (i) acts solely as an investment adviser to one or more "qualifying private funds" and (ii) has regulatory assets under management of less than $150 million (the "Private Fund Adviser Exemption"). A manager who advises even a single client that is not a "qualifying private fund" (such as, for example, a managed account established for an individual) is precluded from relying on the Private Fund Adviser Exemption. A manager that relies on the Private Fund Adviser Exemption is considered an "Exempt Reporting Adviser" and must complete a limited subset of items on Form ADV, Part 1 and file such form through the IARD system (the "Exempt Reporting Adviser Application"). A manager that was formed after January 1, 2012 and is relying on the Private Fund Adviser Exemption must submit its initial Exempt Reporting Adviser Application within 60 days after first relying on the Private Fund Adviser Exemption. An Exempt Reporting Adviser Application will be publicly available upon being filed.

<u>Non-U.S. Adviser Exemptions</u> - A manager that is located outside of the United States will be exempt from registering with the SEC if the manager (i) has no place of business in the U.S.; (ii) has fewer than 15 U.S. clients and U.S. investors in private funds managed by the manager; (iii) has less than $25 million in regulatory assets under management attributable to such U.S. clients and investors; and (iv) does not hold itself out to the public in the U.S. as an investment adviser (the "Foreign Adviser Exemption"). Alternatively, a manager that has its principal place of business outside the United States may rely on the Private Fund Adviser Exemption described above if it (i) has no clients that are U.S. persons other than qualifying private funds, and (ii) manages no assets from a place of business in the U.S. other than private fund assets having a total value of less than $150 million. Therefore, a non-U.S. adviser with <u>no</u> place of business in the U.S. and whose only U.S. clients are private funds will not be required to register with the SEC, regardless of the amount of private fund assets under management attributable to U.S. investors. A non-U.S. manager that can rely on the Foreign Private Adviser Exemption is completely exempt from the Advisers Act and will not be subject to any additional registration requirements or regulatory oversight from the SEC. A non-U.S. manager that relies on the Private Fund Adviser Exemption will be considered an "Exempt Reporting Adviser" and must submit an Exempt Reporting Adviser Application.

<u>Adviser with Less than $25 Million</u> - A manager that commences its advisory activities with less than $25 million of regulatory assets under management should carefully monitor the level of regulatory assets under management and ensure that it either (i) submits an Exempt Reporting Adviser Application within 60 days after its regulatory assets under management reaches $25 million (assuming that it may rely on the Private Fund Adviser Exemption) or, (ii) if it cannot rely on the Private Fund Adviser Exemption or any other applicable exemption, registers with the SEC or, if it is a mid-sized adviser that is prohibited from registering with the SEC, registers with the applicable state authority, prior to its regulatory assets under management reaching $25 million. It should be noted that even if a manager is exempt from registering with the SEC in reliance on the Private Fund Adviser Exemption, the manager should still evaluate whether, under state laws, it is required to register with a state securities authority or "notice file" with such state securities authority (i.e., provide it with a copy of its Exempt Reporting Adviser Application).

D. <u>Commodity Exchange Act and related National Futures Association Rules</u> – If a private investment fund trades in commodity interests (including any commodity for future delivery, certain security futures products, certain swaps and "retail forex transactions"), Commodity Futures Trading Commission ("CFTC") registration of the fund's manager and/or general partner as a commodity pool operator may be required, unless registration relief is available. The CFTC registration requirement would also apply to the manager and/or general partner of (i) an offshore fund with a U.S. jurisdictional nexus (such as funds with a U.S. manager, U.S. director(s) and/or U.S. investors), and (ii) a fund-of-funds that invests in other funds that trade in commodity interests. Among other things, CFTC registration usually requires that certain "associated persons" of the manager pass a Series 3 exam.

CFTC registration imposes various reporting, recordkeeping and disclosure obligations. These obligations may be mitigated to some degree, if the registered manager is able to rely on the exemptions found in CFTC Rules 4.7 or 4.12(b). Rule 4.7 requires investors to be "qualified eligible persons," who are generally persons who are both accredited investors and have specified dollar amounts of certain investments. Rule 4.12(b) is available if the fund meets certain criteria, including that its trading in commodities is "solely incidental" to its securities trading and that no more than 10% of its assets are committed as initial margins and premiums on commodity futures and commodity options contracts.

Alternatively, a manager may seek complete relief from registration as a commodity pool operator if the fund's participants are all accredited investors, knowledgeable employees, non-U.S. persons, qualified purchasers and/or certain family trusts formed by accredited investors, the fund is not marketed in a public manner in the U.S. and the manager claiming the exemption operates the fund such that it meets one of the following trading limitations (whether or not for hedging) at all times: (1) the aggregate initial margin and premiums required to establish commodity positions will not exceed 5% of the liquidation value of the fund's portfolio after taking into account unrealized profits and losses on any such positions (provided that with respect to an option that is in-the-money at the time of purchase, the in-the-money amount may be excluded in computing the 5%), or (2) the aggregate net notional value of such positions will not exceed 100% of the liquidation value of the fund's portfolio after taking into account unrealized profits and losses on any such positions (CFTC Rule 4.13(a)(3)). Note: Since Rule 4.13(a)(3) requires that the fund not be marketed in a public manner, such a fund may not be offered pursuant to Rule 506(c) of Regulation D under the Securities Act.

An electronic filing must be made with the National Futures Association ("NFA") prior to any investment in commodity interests and annually thereafter in order to claim relief based on Rule 4.13(a)(3). Any manager that claims an exemption under 4.13(a)(3) will be required to maintain books and records relating to its commodity trading and will be subject to any special calls that the CFTC may impose relating to eligibility for, and compliance with, the exemption. Managers relying on the Rule 4.13(a)(3) exemption are also required to annually reaffirm the notice of exemption within 60 days after the calendar year through the NFA's Electronic Exemption System. Any manager that fails to file a notice reaffirming the exemption will be deemed to have requested a withdrawal of the exemption.

Note that a manager that provides advisory services to a managed account with respect to the value of commodity interests or the advisability of trading in commodity interests will need to register as a commodity trading advisor with the CFTC, unless an exemption is available. For example, CFTC Rule 4.14(a)(10) provides an exemption from registration as a commodity trading advisor if the manager has provided commodity trading advice to 15 or fewer persons during the past 12 months and does not generally hold itself out to the public as a commodity trading advisor.

E. Employee Retirement Income Security Act of 1974 ("ERISA") – A private investment fund manager of a U.S. or offshore fund typically will limit the investments in the fund by benefit plan investors to less than 25% of the value of each class of securities within the fund, excluding from the calculation any non-benefit plan investor interests held by the investment manager and certain affiliated persons or sponsors. Only: (i) employee benefit plans subject to the fiduciary responsibility provisions of Title I of ERISA (e.g., U.S. corporate pension plans and "Taft Hartley Plans"); (ii) plans and accounts subject to Section 4975 of the Internal Revenue Code (e.g., IRAs and Keogh plans); and (iii) entities that are deemed to be investing plan assets (e.g., entities that exceed their 25% thresholds with respect to ERISA plan, IRA and Keogh plan investors) will count as benefit plan investors. If a fund reaches its 25% threshold in any class, there are numerous issues that are raised, which generally include the necessity of registering federally as an investment adviser, bonding and custody matters, personal and additional liabilities, indemnification limitations and prohibited transaction rules.

F. Securities Exchange Act of 1934 ("Exchange Act"), Advisers Act and Hart-Scott-Rodino Act Filings

1. Forms 13G and 13D – A Schedule 13G filing with the SEC is generally required if a manager or a fund is the beneficial owner of a passive investment position of greater than 5% (but less than 20%) of the outstanding securities of a voting class of a publicly-traded "equity" security registered under the Exchange Act. The beneficial ownership calculation also includes derivative securities which are exercisable within 60 days. A Schedule 13D filing is generally required if the position size is 20% or greater, or if the position size is between 5% and 20% and is not a passive investment. Filings are generally required within 10 days after the initial trigger is met and at

various other times to reflect certain changes in status. A registered investment adviser may be subject to less frequent 13G filing requirements.

2. Form 13F – A manager must make a quarterly Form 13F filing if, in the prior year, the manager had investment discretion at the end of any month over more than $100 million in certain equity securities (typically publicly-traded long U.S. equities, options, warrants and certain convertible securities). The SEC updates the list of these equity securities quarterly.

3. Form 13H - Rule 13h-1 under Section 13(h) of the Exchange Act requires each "large trader" to identify itself to the SEC by electronically filing Form 13H through EDGAR and to disclose to registered broker-dealers effecting transactions on its behalf its large trader identification number and each account to which the identification number applies. A "large trader" is any person that, directly or indirectly, including through other persons controlled by such person, exercises investment discretion over transactions in NMS securities, by or through one or more registered broker-dealers, in an aggregate amount equal to or greater than (i) during a calendar day, either two million shares or shares with a fair market value of $20 million; or (ii) during a calendar month, either twenty million shares or shares with a fair market value of $200 million. "NMS securities" refer generally to U.S. exchange-listed securities, including equities and options. Rule 13h-1 also requires registered broker-dealers to maintain certain information and records with respect to transactions effected by or through an account carried by the broker-dealer for the large trader and to provide such records to the SEC upon its request.

4. Forms 3 and 4/Section 16 – A filing with the SEC is generally required by a director, officer or a 10% or more beneficial owner of any class of a publicly-traded "equity" security (looking at all accounts over which such person has investment discretion). "Short swing profits" may have to be disgorged to the issuer with respect to purchases and sales or sales and purchases within six months (which, for this purpose, may include routine transactions such as rebalancing trades and in-kind distributions). Form 3 filings are required 10 days after the initial threshold is reached and a filing obligation may arise even if no additional purchases are made. Form 4 filings are required within two business days after a transaction in the subject security to reflect certain changes in ownership status. The manager and certain of its principals (and sometimes the fund) may be reporting persons on these forms. There may be certain advantages to being an SEC-registered investment adviser when making these filings.

5. Form PF – SEC-registered investment advisers with at least $150 million in regulatory assets under management attributable to private funds must file Form PF. Managers are required to disclose on Form PF certain information relating to the manager and the private funds that it advises. The amount of information required to be disclosed varies depending on (i) the types of private funds advised (i.e., hedge funds, private equity, liquidity funds, etc.) and (ii) the regulatory assets under management. Generally, a manager is required to file Form PF within 120 days after the end of its fiscal year. However, a manager with at least $1.5 billion in regulatory assets under management attributable to hedge funds will be required to file Form PF on a quarterly basis within 60 days after the end of each quarter. Unlike Form ADV, a manager's Form PF is not a publicly available document.

6. Hart-Scott-Rodino Act – An advance notification filing with both the Federal Trade Commission ("FTC") and the Department of Justice is generally required for each fund proposing to make an acquisition of voting securities which would result in the fund's owning voting securities (whether exchange-traded or not) and other assets of an issuer with an aggregate value in excess of $75.9 million, taking into account any applicable requirements to aggregate holdings in such issuer across commonly controlled funds. The filing fee ranges from $45,000 for transactions below $151.7 million to $280,000 for transactions starting at $758.6 million. If a private investment fund is able to satisfy either the passive investor exemption (i.e., the acquisition is solely for investment and the acquiring person would end up holding no more than 10% of the issuer's voting shares) or the institutional investor exemption (i.e., generally, banks, insurance companies, broker-dealers, registered investment companies and similar institutions acquiring no more than 15% of the

issuer's voting securities as long as the acquisition is in the ordinary course of business and is for investment purposes), it will not have to make a filing.

G. Rules Relating to Customer/Client Information - Various rules have been passed by the SEC, FTC and CFTC requiring the adoption and disclosure of policies and procedures to safeguard client information whenever a new client relationship is established and on an annual basis thereafter. A paragraph outlining such procedures is generally included in the fund's subscription agreement or is provided as an exhibit to the subscription agreement and such policy must also be given out on an annual basis. The privacy rules are applicable to registered and unregistered investment advisers, as well as to commodity pool operators. There are additional policies that may need to be implemented if an adviser has the authority to pay withdrawal proceeds to third parties upon instruction from an investor.

Privacy Notice – Pursuant to Regulation S-P, promulgated under section 504 of the Gramm-Leach-Bliley Act, if the manager is a registered investment adviser, the manager is required to provide its clients with an annual privacy notice describing the manager's policies regarding its disclosure of clients' nonpublic personal information. The annual notice must be provided at least once in any period of 12 consecutive months. The privacy notice must disclose the types of information the manager collects and shares with others and the procedures the manager has implemented to safeguard that information. If a manager discloses nonpublic personal information about its clients to third parties (other than to affiliates and certain service providers), the manager must also provide an "opt-out" notice, giving the client the opportunity to request that the manager not disclose the information to such third parties. Even if a manager is not registered as an investment adviser with the SEC, the manager is subject to comparable requirements under similar privacy rules issued by the Federal Trade Commission.

H. "Blue Sky" Filings and Related Matters

1. Federal Form D Filing – A filing with the SEC of a Form D must be made within 15 calendar days after the first sale of interests by a U.S. fund. An offshore fund is required to make such a filing within 15 calendar days after its first sale to a U.S. investor. The manager should promptly inform counsel about all sales that have taken place so that counsel can make the appropriate filing within the required time frame. Amendments/updates to such filing may be required if there are material changes to the information included in this filing, e.g., the name or address of the issuer. An annual amendment to such filing is also required to be made if the offering is continuing. Failure to comply with federal securities laws carries with it potential civil and criminal penalties.

2. State "Blue Sky" Notice Filings - Generally, in addition to the federal Form D filing, a fund will be required to make a "blue sky" filing in a state after the first sale of a fund interest is made to an investor in such state. State blue sky filings are required to be made within 15 calendar days after the first sale in the state and include a Form D, a consent to service of process on Form U-2 and a filing fee. Offshore funds will be required to make state blue sky filings with regard to sales to their U.S. investors. It is recommended that a manager should inform counsel about all sales that have taken place in any state within 3 calendar days of a subscription so that counsel can make the appropriate filings within the required time frame. Amendments/updates to such filings may be required if there are material changes to the information included in these filings, e.g., the name or address of the issuer. Annual renewals of such filings may also be required in certain states if the offering is continuing. Sales information should be provided promptly to counsel as many states impose substantial penalties for late filings. Failure to comply with state securities laws carries with it potential civil and criminal penalties.

3. Non-U.S. Filings/Registrations/AIFMD. Non-U.S. jurisdictions may have similar filing or registration requirements about which local counsel in the relevant jurisdictions should be consulted. The EU's Alternative Investment Fund Managers Directive (the "AIFMD"), which went into effect on July 22, 2013, sets forth a new regulatory regime likely to affect most hedge fund managers, wherever based, if they are actively marketing their funds ("alternative investment funds" or "AIFs") to EU investors, since such managers would likely be considered alternative

investment fund managers ("AIFMs") under the AIFMD. While EU-domiciled AIFMs will be able to market their EU AIFs through a "passport" regime, U.S.-based AIFMs actively offering their funds (*e.g.*, via a Cayman-based fund or an EU-based fund) to EU investors will, for the near future, not have access to a marketing passport, and will be required to comply with the relevant private placement rules within the given EU jurisdictions and certain aspects of the AIFMD, including: (i) extensive disclosure requirements to investors; (ii) additional financial reporting to investors and EU regulators; and (iii) a comprehensive reporting on the manager's operations under Annex IV.

I. Miscellaneous

1. Financial Reporting – Typically, year-end audited financials as well as periodic unaudited reports, will be sent to private fund investors. If the manager is an SEC-registered investment adviser, in order to take advantage of certain reporting exceptions under the custody rule set forth in the Investment Advisers Act of 1940, it must distribute financials audited in accordance with GAAP within 120 days after the end of the fund's fiscal year, or within 180 days, if it is a fund-of-funds (or within 260 days, if it is a fund of fund-of-funds). There will be specific issues relevant to the preparation and filing of these reports if the fund is under CFTC jurisdiction or is deviating from GAAP in any way (including with respect to the amortization of organizational expenses or the non-disclosure of portfolio positions).

2. Special Term Side Letters – Prior to signing a side letter, the manager should make sure that counsel reviews it to ensure that the fund's legal documents allow the manager to agree to such terms and that the terms are not overreaching. In addition, the manager should make sure that the terms of any side letter with a client are not inconsistent with previously executed side letters with other clients (e.g., if the previously executed side letters contain so-called "most favored nation" or "MFN" clauses) and are disclosed as appropriate in the relevant offering memorandum.

3. Marketing Materials – All marketing items, including performance presentations, web sites and PowerPoint presentations, should first be reviewed by counsel to ensure compliance with all relevant laws, regulations and rulings, as well as consistency with other fund documentation.

4. Anti-Money Laundering – The manager should adopt appropriate anti-money laundering procedures in accordance with the USA PATRIOT Act and other applicable regulations.

5. Reports to the U.S. Department of Treasury on Cross-Border Transactions – The manager may be required to file certain forms with the Federal Reserve Bank of New York, on behalf of the Department of Treasury, if it manages a U.S. fund that invests in foreign securities (including interests in an offshore master fund) and/or a U.S. fund with foreign investors (including an offshore feeder fund with interests in the U.S. fund). The most relevant forms and reporting requirements for a manager are as follows: (a) TIC Form SLT, which is a monthly report of U.S. securities held by foreign residents and foreign securities held by U.S. residents, with a $1 billion threshold, not including reportable securities held by a U.S. resident custodian; (b) TIC Form S, which is a monthly report of purchases and sales of long term securities by foreigners, with a $50 million threshold; (c) TIC Form SHCA, which is an annual report of fund ownership of foreign securities, with a $100 million threshold, or a reporting requirement exists if contacted by the Federal Reserve; (d) TIC Form SHC, which is a of report of fund ownership of foreign securities, submitted every five years with a $100 million reporting threshold, or a reporting requirement exists if contacted by the Federal Reserve; (e) TIC Form SHLA, which is an annual report of all interests in the manager's U.S. funds held by foreign residents, with a $100 million reporting threshold, or a reporting requirement exists if contacted by the Federal Reserve;(f) TIC Form SHL, which is a report of all interests in the manager's U.S. funds held by foreign residents submitted every five years, with a $100 million reporting threshold, or a reporting requirement exists if contacted by the Federal Reserve; and (g) TIC Form B, which is a monthly and quarterly report of certain cross-border claims and liabilities. The manager should discuss the calculation of the

threshold level of each form with counsel to determine if a reporting requirement exists. The Bureau of Economic Analysis (the "BEA") also has promulgated forms that may be applicable to certain investment managers. A manager's TIC and BEA forms are not publicly available.

6. Investor Eligibility – The manager will need to monitor (or ensure that a third party monitors) that investors properly complete subscription documents, including all representations relating to accredited investor status, qualified client status, if applicable (and qualified purchaser status for a 3(c)(7) fund), and representations designed to elicit whether investors are eligible to participate in the fund's purchase of initial public offerings of equity securities ("new issues") in light of limits imposed on certain "restricted persons" under FINRA Rule 5130 or "covered persons" under FINRA Rule 5131. Managers will also need to monitor (or ensure that a third party monitors) the number of investors in the fund to make sure that the fund does not exceed the permitted number of non-accredited investors (see B. above), the number of beneficial owners permitted if it is a 3(c)(1) fund (see A.1. above) or the number of investors permitted before the fund is considered a reporting company (See A.2. above).

7. Tax and Audit Concerns – Depending on the fund's jurisdiction, the location of its manager, the locations and tax status of its investors, as well as the securities and other instruments in which the fund invests, there may be pertinent tax issues that will need to be addressed, including, without limitation, structuring the management companies and the fund(s), making timely "check-the-box" elections for offshore master funds established as corporations, providing QEF information to certain U.S. taxpayer investors investing in an offshore PFIC, determining the fund's trader/investor status, and considering applicable tax shelter regulations, "effectively connected income" concerns, Accounting Standards Codification Topic 740 ("ASC 740") (formerly known as "FIN 48") compliance, FATCA compliance and other items.

8. Updating Fund Documentation – The fund's offering documentation should be reviewed on a periodic basis and updated as needed to reflect any material changes or as otherwise may be required by law.

9. Political Contributions – The manager is prohibited from receiving compensation for providing advisory services to a government entity for two years following any contribution, other than certain de minimis contributions, made on or after March 14, 2011 by the manager or its covered associates to an official of the government entity who is or will be in a position to influence the award of advisory business. Accordingly, to the extent the manager provides or seeks to provide advisory services to government entities, whether directly or through a fund it manages, the manager will need to adopt policies and procedures to ensure that neither the manager nor any of its covered associates makes a contribution that would trigger the two-year time out. In addition, if a person made a contribution to an official of a government entity who is in a position to influence the award of advisory business less than two years prior to such person becoming a covered associate, the investment adviser that hires, transfers or promotes the contributing covered associate is prohibited from receiving compensation for providing advisory services to such government entity from the hiring, transfer or promotion date until the two-year period (or in certain cases, a six-month period) has ended. Therefore, the manager will be required to "look back" in time when employing or promoting a person who would be considered a covered associate to determine whether it will be subject to any restrictions on receipt of advisory compensation as a result of such employment or promotion. The manager may have additional responsibilities under the code of conduct of the government plan it manages or seeks to manage and/or the laws of the state in which such plan is located.

10. Third Party Marketers – If the manager is using a third party marketer or solicitor to sell interests in a fund, the marketer should be registered as a broker-dealer in good standing and be otherwise licensed in all jurisdictions in which it is operating and in which offers and sales of the fund's interests are being made by such marketers, and such arrangements will have to be disclosed in the fund's Form D and "blue sky" filings. If the manager is an SEC-registered investment adviser, third party solicitation arrangements will need to comply with the requirements of Rule 206(4)-3

of the Investment Advisers Act. Note that the SEC has issued guidance stating that Rule 206(4)-3 generally does not apply to cash payments a manager makes to a person solely to compensate that person for soliciting investors to invest in an investment pool managed by the manager.

In addition, as of June 13, 2012, if the manager is paying a third party marketer or solicitor to solicit government business for the manager, such third party marketer or solicitor must be a "regulated person," which includes certain broker-dealers, registered investment advisers and municipal advisors that are themselves subject to similar "pay to play" restrictions.

11. Municipal Advisor Registration – A manager may need to register as a “Municipal Adviser” if they are either (i) providing advice to municipal entities; (ii) providing advice with respect to municipal securities; or (iii) soliciting investors in connection with the solicitation for municipal securities. There are various exemptions from registration as a Municipal Adviser that may be available to a manager.

12. Short Sales – Regulation M under the Securities Exchange Act of 1934 is comprised of a series of rules designed to prohibit price manipulation in securities offerings. Specifically, Rule 105 of Regulation M generally prohibits the purchase of securities in a secondary offering if the purchaser had previously sold the securities short within the “restricted period,” even if the securities purchased in the offering are not being used to cover the short position. For purposes of the Rule, the “restricted period” consists of the shorter of: (1) the five business days preceding the pricing of the offering, or (2) the period between the prospectus being declared effective and the pricing. The Rule applies only to registered firm commitment offerings of equity securities. There are certain limited exceptions to Rule 105.

13. Transaction-Related Documentation – To the extent that the fund enters into prime brokerage arrangements, purchases securities in private placements, or enters into swap, lending or other document-intensive transactions, the manager generally should have counsel review the documents to ensure that the documents legally and accurately reflect the business terms to which the manager has agreed, and also to receive the benefit of counsel's input regarding industry standards and practices concerning the transaction.

14. Trademark Issues – The manager should monitor and be aware of issues relating to its own use of its name and its funds' names and the use of its name and the names of its funds by possible competitors.

15. Contingency Plans - Since September 11, 2001, authorities have articulated the need to implement effectively tailored contingency plans to mitigate the effects of natural disasters, wide-scale emergencies, terrorist acts and other catastrophic events. It is recommended that such plans address the loss of access to information, facilities and/or personnel, among other issues.

16. Best Practices -- The President's Working Group on Financial Markets issued sets of best practices for the hedge fund industry and for hedge fund investors in an effort to increase accountability for participants in the hedge fund industry, covering such areas as disclosure, valuation, risk management, trading and operations, conflicts, and the due diligence process. While the industry report acknowledges that smaller managers will be unable to adopt all of the practices in the report, especially at inception, the report is intended to provide helpful guidance and direction to such managers as they build and develop their businesses. It is also advisable for hedge fund managers to be aware of the contents of the investors' report, as it is likely that fiduciaries and other investors will adopt many of the recommendations set forth therein in making decisions about hedge fund investments.

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If you have any questions with respect to any of the foregoing information, please do not hesitate to contact any of the attorneys in Seward & Kissel's Investment Management Group at 212-574-1200.