

February 20, 2008

Memorandum to our SEC Registered Investment Adviser Clients

This Memorandum applies to any investment adviser that is registered with the SEC and is intended to remind you of certain annual regulatory requirements.

**I. ANNUAL REVIEW OF COMPLIANCE POLICIES AND PROCEDURES**

Each registered adviser is required to perform an annual review of the firm's policies and procedures. The annual review must assess the adequacy of the adviser's compliance policies and the effectiveness of their implementation. The SEC has indicated that, in conducting its annual review, a registered adviser should consider any compliance matters that arose during the previous year, any changes in the business activities of the adviser or its affiliates, and any changes in the Advisers Act or applicable regulations that may suggest a need to revise the policies and procedures. In determining the adequacy of an annual review, the SEC has indicated that it will consider a number of factors, including: the persons conducting the review, the scope and duration of the review and the adviser's findings and recommendations resulting from the review.

We recommend that the findings and recommendations resulting from the review be documented. Upon completion of the annual review, the adviser's Compliance Manual should be updated to reflect suggested improvements and/or regulatory changes.

In connection with the annual review, each registered adviser should perform all other annual reviews required by its Compliance Manual.

**II. ANNUAL UPDATE TO FORM ADV**

**A. Annual Amendment**

Each registered adviser must update its Form ADV within 90 days of its fiscal year end. For an adviser with a fiscal year ending December 31, the annual updating amendment must generally be completed by March 31 of the following year. Because 2008 is leap year, the annual updating amendment must be filed no later than Saturday, March 29. All amendments to Part 1 of Form ADV must be filed with the SEC electronically through IARD\*. A registered adviser may elect to file Part II of Form ADV electronically with the SEC, but is not obligated to do so. We recommend that advisers update Part II regularly, and at least annually, in addition to any interim required amendments.

In 2006, the SEC approved a two-year waiver of annual IARD filing fees for registered advisers. A registered adviser does not have to pay the fee associated with its annual amendments filed through October 31, 2008.

**B. State Notice Filings**

A state notice filing is required in any state in which an adviser has a specified number of clients. However, while the number of clients permitted in a state before a notice must be filed is generally five, the number differs from state to state. Each registered adviser should check the requirements for each state in which it has clients.

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\* IARD will be open to accept filings from 8 a.m. to 6 p.m. on March 29.

New notice filings may be made on the annual ADV updating amendment by checking the relevant box in Part 1, Item 2.B. and depositing the appropriate state fee(s) into the adviser's IARD financial account.

### **III. ANNUAL OFFER OF BROCHURE**

Each registered adviser is required to offer its "brochure" (typically Part II of Form ADV) to its advisory clients on an annual basis. We recommend that a registered adviser whose clients are private investment funds should extend the offer to all investors in the funds. If a client requests Part II of Form ADV, the adviser must send the client a copy within 7 days of the date of the request. Each adviser is required to keep copies of the annual offer letter to clients. We recommend that the adviser also keep copies of any subsequent requests and the (dated) letter by which Part II of Form ADV is transmitted to the client.

### **IV. ANNUAL DISCLOSURE OF PRIVACY POLICY**

Each registered adviser is required to provide its clients with an annual privacy notice describing the adviser'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 adviser collects and shares with others and the procedures the adviser has implemented to safeguard that information. If an adviser discloses nonpublic personal information about its clients to third parties (other than to affiliates and certain service providers), the adviser must also provide an "opt-out" notice, giving the client the opportunity to request that the adviser not disclose the information to third parties.

### **V. ANNUAL AUDITED FINANCIAL STATEMENTS**

A registered adviser that has custody of a private investment fund's client assets may satisfy its obligations under the custody rule by providing audited financial statements of the fund to investors in the private investment fund within 120 days after the end of the pool's fiscal year (180 days in the case of a fund-of-funds). The financial statements must be prepared in accordance with U.S. generally accepted accounting principles. For a private investment fund with a fiscal year that ends December 31, the annual audited financial statements must be sent to investors by April 29 of the following year (June 30 for funds-of-funds).

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Seward & Kissel's Model Compliance Manual has been updated as of January 2008. The Model Compliance Manual has been designed to assist our SEC registered adviser clients in complying with Rule 206(4)-7, which requires the adoption of written procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940. We have updated the Model Compliance Manual to reflect applicable amendments to the federal securities laws and related regulations, SEC staff no-action interpretative letters, issues raised by SEC examination staff in routine and other types of examinations, and industry best practices.

If you have any questions concerning any of these requirements, or if you need assistance with your filings, please contact an attorney in the investment management group at Seward & Kissel.

Seward & Kissel LLP