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Reminder of Annual Requirements for Investment Managers

As we begin the New Year, we thought it would be helpful to remind our clients that manage separate accounts or private funds, whether hedge, private equity, or commingled funds (“Investment Managers”) of certain obligations that may be applicable to them under various U.S. federal and state laws and regulations.

Compliance with certain of these obligations is required within specific time periods after the end of the calendar year or the Investment Manager’s fiscal year. Other obligations are required on an annual or periodic basis. Certain other obligations may be characterized as best practices to be undertaken on a periodic basis, as opposed to a strict legal requirement. The beginning of the New Year may be a logical time to review and satisfy many of these obligations.

What follows below is a summary of the primary annual or periodic compliance-related requirements or best-practice obligations that may apply to many Investment Managers. This summary is not intended to provide a complete review of an Investment Manager’s obligations relating to compliance with applicable tax, partnership, limited liability, trust, corporate, or securities laws or rules, or non-U.S. or U.S. state law requirements.¹

Requirements for all Investment Managers

Determine investment adviser registration status under Investment Advisers Act, as amended by the Dodd-Frank Act.

All Investment Managers, whether or not registered with the Securities and Exchange Commission (“SEC”) or the states, should review the investment adviser registration requirements imposed by the Dodd-Frank Act’s amendments to the Investment Advisers Act of 1940, as amended (“Advisers Act”), and the SEC’s related rules adopted in 2011, to determine whether any changes in the firm’s registration status will be required. Investment Managers that determine they are required to register with the SEC must become registered by March 30, 2012, and should file their Form ADV with the SEC by February 14, 2012, because an application for registration can take up to 45 days to become effective. Investment Managers currently registered with the SEC must file an amendment to their Form ADV to confirm their eligibility for SEC-registration by March 30, 2012. Advisers no longer eligible for SEC-registration must withdraw their registration by June 28, 2012.

¹ Please also note that the following list is not intended to be exhaustive, or to provide a detailed statement of the specifics of the particular obligation. The following necessarily does not include all annual or periodic obligations applicable to all Investment Managers. Similarly, many of the obligations described below may not be applicable to all Investment Managers.

The Dodd-Frank Act eliminated the Advisers Act's "private adviser exemption," (i.e., fewer than 15 clients) upon which many private fund managers relied to avoid registration, and in its place added several limited exemptions discussed below. In addition, the Dodd-Frank Act and the rules adopted thereunder changed the eligibility requirements for SEC registration, increasing the minimum assets under management required to be eligible for SEC registration from \$25 million to \$100 million, subject to certain exceptions. As a result, many smaller advisers that are currently registered with the SEC will be required to withdraw from SEC registration and register with one or more States.

Mid-sized advisers.

Advisers with assets under management between \$25 million and \$100 million, referred to as "mid-sized advisers," are now generally expected to register with one or more States. SEC registration is permitted if the mid-sized adviser would be required to register in 15 or more States and is mandatory for mid-sized advisers that rely on a state law exemption from registration or that advise registered investment companies. Each adviser registered with the SEC on January 1, 2012, must file an amendment to its Form ADV no later than March 31, 2012 to report its assets under management, which is determined within 90 days of the filing. If the mid-sized adviser is prohibited from SEC registration, it must withdraw its registration by June 28, 2012.

Exempt reporting advisers.

Private fund adviser exemption. The Dodd-Frank Act created an exemption from SEC-registration as an investment adviser for Investment Managers that solely act as advisers to "private funds" (i.e., for purposes of this exemption, funds exempt from registration under Section 3 of the Investment Company Act) and have assets under management in the United States of less than \$150 million. Advisers relying on the private fund adviser exemption must file a report with the SEC on Form ADV consisting of a subset of items that would be required for registration, generally identifying information and assets under management. The deadline for submitting this report is March 30, 2012.

Venture capital fund advisers. The Dodd-Frank Act created an exemption from SEC-registration as an investment adviser for Investment Managers that solely advise "venture capital funds." Generally, a venture capital fund is a private fund that (i) holds no more than 20% of its capital in the securities qualifying portfolio companies, (ii) does not borrow or incur leverage in excess of 15% of the funds, capital contributions and uncalled committed capital, and any such borrowing is for a non-renewable term of no more than 120 calendar days, (iii) does not offer its investors redemption or liquidation rights except in extraordinary

circumstances, (iv) represents to investors that it is pursuing a venture capital strategy, and (v) is not a registered investment company or treated as a business development company. Venture capital fund advisers must file a report with the SEC on Form ADV consisting of a subset of items that would be required for registration, generally identifying information and assets under management. The deadline for submitting this report is March 30, 2012.

Foreign private advisers.

The Dodd-Frank Act created an exemption from SEC-registration as an investment adviser for Investment Managers that qualify as "foreign private advisers." Generally, to qualify as a foreign private adviser, an Investment Manager must (i) have no place of business in the United States, (ii) have fewer than 15 clients and investors in the United States and aggregate assets under management attributable to such clients and investors of less than \$25 million, and (iii) not hold itself out as an investment adviser to the public in the United States or act as investment adviser to an registered investment company.

Family office exclusion.

The Dodd-Frank Act amended the Advisers Act to exclude "family offices" from the definition of "investment adviser." Family offices that otherwise meet the broad definition of "investment adviser" but fail to meet the SEC's newly adopted definition of "family office" are required to be registered as investment advisers no later than March 30, 2012.

A "family office" generally is defined as any entity that provides investment advisory services and meets all of the following criteria: (i) it has no clients other than "family clients," (ii) it is wholly owned by family clients and exclusively controlled (directly or indirectly) by "family members" or "family entities," and (iii) it does not hold itself out to the public as an investment adviser. "Family clients" includes: current and former family members; certain "key employees" of the family office, charitable organizations funded exclusively by family clients, and a variety of other family entities formed for tax and estate planning purposes. "Family members" generally is defined as all lineal descendants of a common ancestor, so long as that common ancestor is not more than 10 generations removed from the youngest generation of family members. This aspect of the rule provides some flexibility in that the common ancestor for purposes of counting the 10-generation limit can be altered in order to capture a new generation as desired.

As the registration date of March 30, 2012, approaches, a family office that wishes to rely on the new exclusion from the definition of "investment adviser" should ensure that its operations comply with the SEC's definition of "family office."

Requirements for SEC-Registered Investment Advisers

Update your Form ADV.

Investment Managers that are registered with the SEC as investment advisers under the Advisers Act (such managers, “Registered Managers”) must update their Form ADV Part 1A within 90 days of the Registered Manager’s fiscal year end. In June 2011, the SEC adopted amendments revising the Form ADV Part 1A. Among other things, these amendments increased the disclosure registered investment advisers are required to provide regarding the “private funds” they advise. The SEC has stated that all advisers registered with the SEC as of January 1, 2012, are required to file a Form ADV Part 1A using the new format no later than March 30, 2012. Therefore, advisers with a fiscal year end of December 31 will be filing their annual updating amendment using the “new” Form ADV Part 1A format. If an adviser would not otherwise be required to file its annual updating amendment between January 1, 2012, and March 30, 2012, such investment adviser is required to file an “other than annual amendment” to its Form ADV Part 1A, using the new format, prior to March 30. When completing and filing its annual updating amendment or other than annual amendment, a Registered Manager should also review its Form ADV Part 2A (or “brochure”) to determine whether any information contained therein has become materially inaccurate and requires updating. In addition, a Registered Manager must update its Form ADV promptly at any time certain information becomes inaccurate. Please refer to the General Instructions to the Form ADV in order to determine whether the form should be amended promptly. State-registered Investment Managers also may be subject to similar requirements.

Prepare and file your brochure.

Registered Managers are required to provide new and prospective clients with a narrative brochure (Part 2 of Form ADV) regarding the firm and brochure supplements regarding certain of the firm’s advisory personnel, written in plain English. Registered Managers are required to file their firm brochures (but not brochure supplements) electronically with the SEC, which will make them available to the public through the SEC web site, in addition to delivering the brochure and brochure supplements to clients.

Registered Managers applying for SEC registration after January 1, 2011, must file with the SEC a firm brochure that meets the requirements of the amended form as part of its application for registration on Form ADV. Existing Registered Managers should review their brochures to confirm that they contain no materially inaccurate information and update the brochures accordingly.

Deliver your brochure to clients.

Under the Advisers Act, Registered Managers must provide their clients with a copy of their updated brochure and brochure

supplements on an annual basis, at the time that the firm files its annual updating amendment to Form ADV with respect to new clients, and within 60 days of filing the annual amendment with respect to existing clients. New Registered Managers applying for SEC registration after January 1, 2011, generally must provide their clients with a copy of their brochure and brochure supplements upon registering.

Prepare and file Form PF.

In October 2011, the SEC and the Commodity Futures Trading Commission (“CFTC”) jointly adopted Rule 204(b)-1 under the Advisers Act, which requires Registered Managers that advise “private funds” with more than \$150 million in assets under management to periodically file Form PF with the SEC. If an adviser is not registered or required to be registered with the SEC, such as because it relies upon any of the available exemptions from registration (e.g., the Private Fund Adviser Exemption, discussed above), the adviser will not need to report on Form PF until such adviser is required to register with the SEC. Private fund advisers that are dually registered with the CFTC will satisfy certain proposed CFTC reporting obligations by filing private fund information on Form PF. The CFTC has separately proposed (but not finalized) a companion rule that would implement new reporting requirements that would apply only to commodity pool operators and commodity trading advisers.

The new rule creates categories of “Large Private Fund Advisers” and defines certain types of private funds such as “hedge funds,” “liquidity funds,” and “private equity funds.” An investment adviser must look to its regulatory assets under management attributable to private funds (i.e., generally, gross assets) to determine whether it is required to file Form PF and whether it is a Large Private Fund Adviser. Advisers should take note that certain aggregation principles apply when calculating these thresholds and depending on the type of private funds advised, an adviser will either have to measure its regulatory assets under management attributable to private funds monthly or annually.

All advisers required to file Form PF must complete Section 1 of the form, which requests basic information about the adviser and its assets under management and basic fund level information for each private fund advised. Section 1 also requests additional information for any hedge fund advised. Large hedge fund advisers, large liquidity fund advisers, and large private equity fund advisers also must complete Sections 2, 3, or 4 of Form PF, respectively.

As a general matter, the amount of information required to be reported, the frequency with which it is reported, and the initial deadlines for filing Form PF depend upon the amount of private fund assets advised and the types of private funds advised. Generally, all advisers to private funds required to report on Form

PF, except certain large hedge fund advisers and large liquidity fund advisers, will be required to report on Form PF annually, within 120 days of the end of the adviser's fiscal year. Certain large hedge fund advisers and large liquidity fund advisers will be required to file Form PF quarterly within 60 days and 15 days, respectively, of the end of each quarter. In addition, Rule 204(b)-1 sets out a two-stage initial reporting deadline phase-in for Form PF. The majority of advisers to private funds must start filing Form PF within 120 days following the end of their first fiscal year ending after December 15, 2012. Advisers with at least \$5 billion of assets under management attributable to hedge funds, liquidity funds, and private equity funds will begin filing Form PF following the end of their first fiscal year or quarter as applicable, ending after June 15, 2012.

Advisers to private funds should begin to familiarize themselves with Form PF now as the information required to be reported may require coordination with an adviser's back office function and/or service providers.

Review your required compliance procedures and code of ethics.

Under Advisers Act rules, Registered Managers must review their compliance policies and procedures no less than annually to assess their effectiveness. Written evidence of these reviews should be retained. In general, the review should encompass the following areas:

General review. According to the SEC, the review should consider any compliance matters that arose during the previous year, any changes in the business activities of the Registered Manager or its affiliates, and any changes in the Advisers Act or its rules that might suggest a need to revise the Registered Manager's policies and procedures. Although SEC rules require only annual reviews, Registered Managers also should consider the need for interim reviews in response to significant compliance events, changes in business arrangements, and legal or regulatory developments. Registered Managers should pay particular attention to their valuation, confidentiality, and insider trading policies and procedures, which have been areas of recent focus by the SEC. They should also be sure that the policies and procedures have been updated to reflect changes in law and regulation, including the firm's compliance with any disclosure or reporting requirements that may be required of Registered Managers that manage private funds as a result of the Dodd-Frank Act or otherwise.

Code of ethics. Registered Managers must review the adequacy of their code of ethics annually and assess the effectiveness of its implementation. In addition, Registered Managers should determine whether they need to provide any ethics-related training of employees, or enhancements to their code in light of current

business practices and regulatory developments.

Business continuity/disaster recovery plans. Registered Managers should review and "stress-test" their required business continuity/disaster recovery plans no less than annually, and make any necessary adjustments. Promulgating and reviewing a business continuity/disaster recovery plan also is recommended for all Investment Managers, whether or not registered.

"Pay-to-play" practices. Investment Managers that seek to manage assets of state and local governments, including public retirement plans, are generally subject to federal, state, and local laws and regulations that restrict "pay-to-play" practices. Rule 206(4)-5 under the Advisers Act restricts the contribution and solicitation practices of Investment Managers and certain of their related persons. Specifically, Rule 206(4)-5 prohibits an Investment Manager from (i) receiving compensation for providing advisory services to a government entity for two years after the Investment Manager or certain of its executives or employees make a contribution to certain elected officials or candidates; (ii) providing direct or indirect payments to any third party that solicits government entities for advisory business unless this third party is a registered broker-dealer or investment adviser itself subject to "pay-to-play" restrictions; and (iii) soliciting from others, or coordinating, contributions to certain elected officials or candidates or payments to political parties where the Investment Manager is providing or seeking government business. Investment Managers subject to Rule 206(4)-5 also must keep required books and records.

Deliver your fund's audited financial statements.

Under the Advisers Act custody rules, Registered Managers that manage private funds and that are deemed to have custody of client assets (which generally will be most private fund managers) must provide audited financial statements of their fund, prepared in accordance with U.S. generally accepted accounting principles, to the fund's investors within 120 days of the fund's fiscal year-end, or 180 days for a fund-of-funds, to avoid complying with the full requirements of the custody rules. Registered Managers that do not satisfy the audit requirement will need to confirm that they are in compliance with the full requirements of the custody rule, including the annual surprise audit requirement.

Confirm your state notice filings/investment adviser representative renewals.

Registered Managers should review their current advisory activities in the various states in which they conduct business and confirm that all applicable state notice filings for the firm are made on the Investment Adviser Registration Depository ("IARD"). Registered Managers also should confirm whether any of their personnel need to be registered as "investment adviser

representatives” in one or more states and, if so, register those persons or renew their registrations with the applicable states, as needed.

Registered Managers should review allegations of sales practice violations made against a registered person in an arbitration or litigation, even in cases where the registered person is not a named party, and amend the registered person’s Form U-4 to disclose such information as necessary. Please be sure to use the most recent version of this form, as it is periodically amended.

Fund your IARD account.

Registered Managers should confirm that their IARD electronic accounts are adequately funded so as to cover payment of all applicable registration renewal fees with both the SEC and with any states, for the year.

Requirements for Registered CPOs and CTAs

Review and update your NFA registration.

Commodity pool operators (“CPOs”) and commodity trading advisors (“CTAs”) registered with CFTC must update their registration information via the National Futures Association’s (“NFA”) electronic online registration system (“ORS system”) annual registration questionnaire, and pay their annual NFA membership dues on or before the anniversary date that the CPO’s or CTA’s registration became effective. The NFA will deem a failure to complete the review of the annual registration questionnaire within 30 days following the date established by NFA as a request for withdrawal from registration.

The Firm and DR Information sections of the annual registration questionnaire include questions intended to assess the member firm’s futures-related business activity, if any. If the questions are not answered, the answers will default to “no activity,” which will be displayed in BASIC.

Complete your NFA self-examination questionnaire.

Under NFA rules, registered CPOs/CTAs must complete the NFA’s “self-examination questionnaire” on an annual basis. The completed questionnaire is not filed with the NFA. Instead, Investment Managers must retain the questionnaire for their records. Investment Managers that have branch offices should complete a separate questionnaire for each branch office. As part of this review, CPOs/CTAs should review any established compliance policies and procedures, and confirm whether amendments to those procedures, or additional procedures, may be warranted in light of the CPO’s/CTA’s current business.

File and distribute your commodity pool certified annual reports.

All registered CPOs that manage non-exempt pools and CFTC

Rule 4.7-exempt pools must file certified annual reports for their pools with the NFA within 90 days of the pool’s fiscal year-end (including pools that are fund-of-funds). The certified reports must be filed electronically through the NFA’s EasyFile system. If it is not possible to comply with this deadline, the Investment Manager must apply to the NFA for additional time to file the certified reports within 90 days after the date on which the certified report was otherwise required to be filed. The Investment Manager also must distribute the certified reports to the pool’s participants within the above 90-day deadline, unless the NFA grants an extension.

Confirm your compliance with NFA quarterly reporting requirements.

Registered CPOs are required to file quarterly reports with the NFA regarding their non-exempt pools and Rule 4.7-exempt pools. Investment Managers that are registered CPOs should confirm they are complying with this requirement on an ongoing basis.

As a reminder, registered CPOs that manage Rule 4.7-exempt pools may be able to avoid the above annual audit and quarterly reporting filing requirements as well as registration as a CPO altogether, under broader exemptions available under CFTC Rule 4.13. CPOs may wish to review Rule 4.13 to determine if this exemption is available to them.

Comply with your NFA-required ethics training policy.

Under the NFA’s ethics training rules, registered CPOs /CTAs should periodically consider whether additional ethics-related training of their registered “associated persons” may be needed, in light of the Investment Manager’s required ethics training policies and procedures.

Review your NFA-required business continuity/disaster recovery plan.

Under the NFA’s rules, registered CPOs or CTAs should periodically “stress-test” their required business continuity/disaster recovery plans and make any necessary adjustments.

Conform your compliance with retail forex rules.

Pursuant to CFTC rules, persons who operate pools or exercise discretionary trading authority with respect to “retail forex” transactions must register as commodity pool operators (“Forex CPOs”) or commodity trading advisors (“Forex CTAs”), as applicable. Retail forex transactions generally are off-exchange foreign currency transactions with customers who do not qualify as eligible contract participants (“ECP”).² Forex CPOs and Forex CTAs also are required to file their disclosure documents with the NFA and comply with recordkeeping and reporting requirements. Notwithstanding the foregoing, an Investment Manager engaging

in retail forex transactions may be able to rely on exemptions under CFTC Rule 4.13 to avoid registration altogether or CFTC Rule 4.7 to avoid the requirement that it file a disclosure document, provided that the requirements of those exemptions are met.

Investment Managers that engage in retail forex transactions should confirm they are in compliance with the foregoing retail forex rules and other applicable requirements related to retail forex transactions.

Investment Managers should also be aware that, as of this writing, the CFTC is in the process of writing rules that may impose registration requirements on certain advisers that manage client accounts that trade swaps or other over-the-counter derivatives, pursuant to the derivatives reform mandated by the Dodd-Frank Act.

Proposal to repeal 4.14(a)(3) and (4) and revise Rule 4.5.

Investment Managers should note that the CFTC has proposed rules that would rescind or restrict several common exemptions from CPO and CTA registration. Specifically, the CFTC proposed amendments to its rules that would rescind in their entirety the CPO registration exemptions in Rules 4.13(a)(3) and (a)(4). The CFTC also proposed a conforming amendment that would eliminate the exemption from registration as a CTA pursuant to CFTC Rule 4.14(a)(8)(i)(D) for firms that render commodity trading advice to commodity pools whose CPOs rely on CFTC Rule 4.13(a)(3) or (a)(4). In addition, the CFTC proposed to limit the use of commodity interests by registered investment companies for non-bona fide hedging purposes to five percent of the liquidation value of the entity's portfolio, in order for the registered investment company's manager to claim exclusion from the definition of CPO pursuant to CFTC Rule 4.5. The CFTC's proposal, if adopted, would bring sweeping changes to the thousands of hedge funds, funds-of-funds, and other investment funds and managers that invest in the commodities markets, directly or indirectly, both within and outside of the United States.

Other Requirements or Best Practices for all Investment Managers

Annual privacy notice.

Under SEC Regulation S-P and Part 160 of the CFTC Regulations, Registered Managers and CPOs/CTAs must provide clients and investors who are natural persons a copy of their privacy policy on an annual basis, even if there are no changes to the privacy policy. In addition, all other Investment Managers are generally subject to the Federal Trade Commission privacy requirements and also may be subject to state privacy laws that impose additional requirements.

Confirm your ongoing new issues compliance.

Under Financial Industry Regulatory Authority ("FINRA") Rule 5130 applicable to broker-dealers that are members of FINRA, Investment Managers that purchase "new issues" for a fund or separately managed client account from such FINRA members must obtain written representations every 12 months from the account's beneficial owners confirming their continued eligibility to participate in new issues. In addition, FINRA Rule 5131 prohibits "spinning," which is the practice of allocating shares in new issues to any account in which certain persons that may influence or direct the provision of investment banking services to the FINRA member, have a beneficial interest. In determining whether an account is subject to the spinning prohibitions, a FINRA member may rely on written representations obtained within the prior 12 months from the account's beneficial owners. The annual representations under both Rules 5130 and 5131 may be updated annually through "negative consent" letters.

Review your anti-money laundering and OFAC programs.

FinCEN previously has withdrawn its proposed anti-money laundering regulations for unregistered investment companies, certain investment advisers, and CTAs. As a result, most Investment Managers are not required to establish a written anti-money laundering program under the Bank Secrecy Act, as amended by the USA PATRIOT Act ("BSA"). Nonetheless, the SEC has required Registered Managers to have such policies in place under its examination authority. Also, many counterparties, broker-dealers, and clients/investors have required Investment Managers to maintain such policies. Thus, although not being imposed as a requirement by FinCEN, prudent business practice will dictate that most Investment Managers who previously have instituted anti-money laundering programs under these proposed regulations, retain such programs. In those situations, the Investment Manager should review its program, including its anti-money laundering risk assessment, on an annual basis to determine whether the program is reasonably designed to ensure compliance with the BSA, given the business, customer base, and geographic footprint of the Investment Manager. In addition, the Investment Manager should review its compliance program to ensure compliance with the economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"), which are not affected by FinCEN's decision to withdraw its rules proposal. The foregoing reviews should be independent and conducted by an outside professional, internal audit, or an appropriate officer or employee of the Investment Manager with knowledge of the BSA and the economic sanctions programs administered by OFAC.

² Investment Managers should be aware that the Dodd-Frank Act amended the ECP definition in the Commodity Exchange Act to require that any commodity pool seeking to qualify as an ECP for purposes of retail forex transactions must itself only consist of participants that are themselves ECPs.

Amend your Schedules 13G or 13D.

Investment Managers whose client or proprietary accounts, separately or in the aggregate, are beneficial owners of five percent or more of a registered voting equity security, and who have reported these positions on Schedule 13G, must update these filings annually within 45 days of the end of the calendar year, unless there is no change to any of the information reported in the previous filing (except the holder's percentage ownership due solely to a change in the number of outstanding shares). This is in addition to any amendments that may have been required during the calendar year. Investment Managers reporting on Schedule 13D are required to amend their filings "promptly" upon the occurrence of any "material changes" including (but not limited to) any increase or decrease of one percent or more in their holdings. Investment Managers whose client or proprietary accounts are beneficial owners of ten percent or more of a registered voting equity security also must check to determine whether they are subject to any reporting obligations, or potential "short-swing" profit liability or other restrictions, under Section 16 of the Securities Exchange Act of 1934 ("Exchange Act").

File your Form 13F.

All "institutional investment managers," whether or not registered as investment advisers, must file a Form 13F with the SEC if they exercise investment discretion with respect to \$100 million or more in securities subject to Section 13(f) of the Exchange Act (generally, exchange-traded securities, shares of closed-end investment companies, and certain convertible debt securities), disclosing certain information regarding their holdings. The first filing must occur within 45 days after the end of a calendar year during which the Investment Manager reaches the \$100 million filing threshold (calculated as of the last trading day of any month in that year), and within 45 days of the end of each calendar quarter thereafter, for so long as the Investment Manager continues to meet the \$100 million filing threshold (again calculated as of the last trading day of any month during the year).

File your Form 13H.

Pursuant to recently adopted Rule 13h-1 under the Exchange Act, Investment Managers that meet the definition of "Large Trader" must register with the SEC using Form 13H. They must also update their Form 13H on an annual basis and, if any information in the Form 13H becomes inaccurate for any reason, file an amended Form 13H by the end of the calendar quarter during which the information becomes inaccurate. "Large Trader" is defined as a person who, directly or indirectly, through the exercise

of investment discretion, effects transactions in NMS securities³ that exceed, in the aggregate, (i) \$20 million fair market value or 2 million shares on any calendar day, or (ii) \$200 million fair market value or 20 million shares over the course of any calendar month.

Review your fund offering materials.

Except for commodity pool disclosure documents that are filed with the NFA, fund offering materials do not automatically "expire" after a certain time period. However, as a general securities law disclosure matter, and for purposes of federal and state anti-fraud laws, Investment Managers must continually ensure that their fund offering materials are kept up to date and contain all material disclosures that may be required in order for the fund investor to be able to make an informed investment decision. Accordingly, now may be an appropriate time for Investment Managers to review their offering materials and confirm whether or not any updates or amendments are needed. In considering whether changes to offering materials may be needed, Investment Managers should especially take into account the impact, if any, of the global financial crisis and recent regulatory reforms on their funds. Among other things, Investment Managers should review the fund's current investment objectives and strategies, valuation practices, redemption policies, and risk disclosures (including but not limited to, disclosures regarding market volatility and counterparty risk), their current personnel, service provider, and advisor relationships, and any relevant legal or regulatory developments. Additionally, as noted below, Investment Managers should review their subscription documents in light of the changes made to the accredited investor and qualified client "net worth" calculation.

Review your compliance procedures.

Even those Investment Managers that are not registered as investment advisers with the SEC or any state, and therefore are not required to maintain and review formal written compliance policies and procedures should, as a best practice, review no less than annually any established policies and procedures, whether or not they are in writing, to confirm their continued efficacy in light of the Investment Manager's current business practices and market conditions. Investment Managers that do not have written policies and procedures may wish to consider whether it makes sense to establish written procedures in light of the Investment Manager's current business. Investment Managers should also be sure that their policies and procedures have been updated to reflect changes in law and regulation, including the firm's compliance with any new disclosure or reporting requirements that may be required of

³ NMS security is defined in Rule 600(b)(46) under the Exchange Act (within Regulation NMS) as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options."

unregistered Investment Managers that manage private funds as a result of the Dodd-Frank Act or otherwise.

Renew Form D and review your state blue sky filings.

Investment Managers to private funds are reminded of the annual mandatory electronic filing for continuous offerings on Form D. Also, many state securities “blue sky” filings expire on a periodic basis and must be renewed. Consequently, now may be an appropriate time for an Investment Manager to review the blue sky filings for its funds and determine whether any updated filings, or additional filings, are necessary.

Review your liability insurance needs.

As a general matter, Investment Managers are not required to purchase management liability insurance, such as directors and officers liability coverage, fiduciary liability coverage, or errors and omissions liability coverage. It may be prudent, however, for Investment Managers that do not have such coverage to periodically assess whether management liability insurance makes sense for them in light of their current business and, if so, what type of coverage and in what amounts. Investment Managers that do have coverage should consider reviewing the adequacy of such coverage.

Complying with state and municipal lobbyist regulations.

Investment Managers who provide investment advisory services to state or municipal pension or retirement plans (“Plans”) should consider whether they or their personnel are considered lobbyists in each jurisdiction in which they solicit Plans. Traditionally, the regulation of lobbyists at the state and municipal level had largely been limited to those individuals or entities that sought to influence legislative or rulemaking actions. However, many jurisdictions have begun to define lobbying more broadly to include the act of soliciting investment advisory business from Plans.

While each state’s lobbying laws are different, those persons or entities that fall within the definition of “lobbyist” are typically required to fulfill some or all of the following requirements: registration with a governmental body and payment of a fee; attending lobbyist education training; and filing periodic reports containing expenditures and other relevant information. Persons who fail to comply with these requirements may be subject to fines, revocation of one’s lobbyist privileges or other sanctions. As a result, Investment Managers who solicit Plans should become familiar with the lobbying regulations for each jurisdiction in which they solicit Plans.

Volcker Rule

One obligation that is not directly applicable to Investment Managers, but which may significantly affect them, is the so-called “Volcker Rule” in the Dodd-Frank Act. While the requirement

will not be effective until the earlier of July 21, 2012, or 12 months after the date federal regulators issue final rules to implement the statute, many firms are already taking steps to comply and that is already having a present effect on some Investment Managers.

The statute generally prohibits a bank and its affiliates from engaging in proprietary trading and, more pertinently, from acquiring or retaining any ownership interest in, or sponsoring, a hedge fund or private equity fund. The statute provides for a conformance period for divestitures, once the final regulations go into effect, and that conformance period ranges from two years to ten years depending on the willingness of regulators to grant extensions and the liquidity of a particular fund in which the banking entity had an investment and was contractually committed to invest in as of May 1, 2010. There are also exceptions for banking entity-organized funds only offered to customers of such entities and in which the banking entity only maintains a de minimis investment and also for funds outside the U.S. not offered in the U.S. where the banking entity is a foreign banking firm (not controlled by a U.S. banking firm).

In addition, the statute prohibits any banking entity that serves as an investment manager, investment adviser, or sponsor of a fund, and any of the banking entity’s affiliates, from extending credit to the fund, purchasing assets from the fund, accepting the fund’s shares as collateral for a loan to another person, or issuing a guarantee on behalf of the fund.

Updates to Qualified Client and Accredited Investor Thresholds

In July 2011, the SEC issued an order updating the thresholds for determining whether an investor is a “qualified client.” Prior to these amendments, an investor was considered a qualified client if the investor has (i) \$750,000 in assets under management with the adviser or (ii) a net worth of at least \$1.5 million. These thresholds were raised to \$1 million and \$2 million, respectively. This order was effective as of September 19, 2011. Additionally, in late December 2011, the SEC finalized its changes to the accredited investor net worth standard. Specifically, the SEC amended the net worth calculation when determining whether an individual’s net worth exceeds \$1 million. The Dodd-Frank Act excludes an individual’s primary residence from the net worth calculation. Under the SEC’s amendments, indebtedness secured by an individual’s primary residence is not considered a liability in the calculation of net worth if, at the time the securities are sold, the estimated fair market value of such residence exceeds the amount of such indebtedness. However, if the indebtedness secured by the individual’s primary residence exceeds the estimated fair market value of the residence, such excess indebtedness must be included as a liability in the net worth calculation. Further, any increase in the amount of indebtedness secured by the individual’s

primary residence in the 60 days preceding the sale of securities (other than as a result of acquiring such primary residence) will be included as a liability in the net worth calculation. Investment Managers should review their subscription documents to ensure that these changes are reflected.

“FBAR” Filing Requirements and Form TD F 90-22.1.

United States persons with “financial interests” in “financial accounts” in foreign countries must file an a Report of Foreign Bank and Financial Accounts (“FBAR”) on Form TD F 90-22.1 by June 30 of each year. Investment Managers must evaluate annually whether accounts maintained on behalf clients, in particular, offshore private funds, trigger FBAR filing obligations.

Form SLT

In June 2011, the Department of the Treasury finalized Form SLT, which aims to capture information regarding transactions of long-term securities between United States residents and foreign entities. United States entities that (i) issue securities to foreign residents and/or (ii) hold securities issued by foreign entities are required to file a Form SLT if the amount of such securities exceeds \$1 billion (and such securities are not otherwise held by a U.S.-resident third-party custodian). While the form was due on a quarterly basis in 2011, in 2012, the form is required to be completed and filed on a monthly basis. Additionally, once the \$1 billion threshold is met in a month, the reporting entity must provide Form SLTs for the remainder of the calendar year, regardless of whether the \$1 billion threshold is met in later months of that calendar year.

ERISA-Related Requirements or Best Practices

There are also changes on the horizon under the Employee Retirement Income Security Act of 1974 (“ERISA”) and related Department of Labor (“DOL”) regulations that are important to Investment Managers that accept clients who are ERISA plans or that manage private funds that are subject to ERISA. These developments and other important ongoing ERISA compliance considerations are summarized below. Please contact us should you have any questions regarding compliance with any of the following requirements or their applicability to your specific situation.

Changes on the Horizon

Prepare for disclosures of service provider compensation.

Regulations requiring disclosure of compensation and other information by certain service providers to ERISA-governed retirement plans or ERISA-governed funds are slated to become effective April 1, 2012. These regulations are commonly referred to as the DOL’s “408(b)(2)” or “service provider” regulations.

At the time of this publication, however, the regulations remain in “interim final” form, with final regulations expected soon. Because the regulations are not yet in final form, the effective date of the disclosures could be delayed, although the DOL has, at least informally, indicated its desire not to delay the effective date beyond April 1.

Among “covered service providers” under the interim regulations are those providing fiduciary services directly to a plan or to a plan assets entity (such as a group trust or a fund exceeding the 25% “significant participation” test). The regulations generally require disclosure of all compensation paid to the covered service provider, its affiliates, or its sub-contractors. This includes non-monetary compensation, as well as indirect compensation received from parties other than the plan or plan sponsor. In contrast to the Form 5500 Schedule C disclosures (which are briefly summarized below), these disclosures are required only at “point of sale” (and when the disclosed information changes). The 408(b)(2) regulations do not apply to funds that do not exceed the 25% significant participation test. In contrast, the Form 5500 Schedule C reporting requirements (discussed below) apply to plans that do not exceed the 25% significant participation test. Neither the Form 5500 rules nor the 408(b)(2) regulations apply to funds that are not plan assets due to being “operating companies,” such as venture capital operating companies or real estate operating companies.

Additional disclosures are required from those covered service providers providing fiduciary services to a plan assets entity relating to compensation charged against a plan’s investment in the plan assets entity and the annual operating expenses of the plan assets entity. If a fund that was not previously a plan assets entity becomes one after April 1, 2012, fiduciaries to that fund must make the required disclosures within 30 days from the date on which the fiduciary knows that the fund is a plan assets entity.

The interim regulations do not require that all required disclosures be made in a single document, but the disclosures are required to be in writing. It may be the case, however, that the final regulations could require a separate summary disclosure in addition to the more detailed disclosure. Those Investment Managers with ERISA plan clients may wish to evaluate how they will comply with the regulations and can expect inquiries from ERISA plan clients about compliance efforts.

Prepare for upcoming disclosures to plan participants in ERISA-governed participant-directed plans.

The DOL has issued final regulations on disclosures required to be provided to plan participants who have a right to direct the investment of the assets of their accounts under 401(k) or other defined contribution plans subject to participant-directed

investments. These regulations are commonly referred to as the DOL's "404(a)" regulations. In contrast to disclosures required by the service provider regulations (described above), the plan administrator is required to provide these disclosures to plan participants. Service providers are not directly obligated to make these disclosures (unless they have contractually agreed to do so). Practically speaking, plan administrators will likely look to their service providers for much of the information required to be disclosed. The regulations provide that a plan administrator will not be liable for the completeness and accuracy of information provided by a plan service provider if the plan administrator relies on that information reasonably and in good faith. Thus, Investment Managers who provide products or services to 401(k) or other participant-directed plans may wish to evaluate how they will provide this information. In particular, Investment Managers may wish to evaluate whether they have all of the information to be reported. For example, if a custodian engages in securities lending or if a plan administrator charges plan-level expenses against a fund, those expenses would need to be disclosed but currently may not otherwise be maintained or reported.

The effective date for the 404(a) regulations may be pushed back to the extent the effective date of the service provider regulations are delayed beyond April 1, as the participant disclosures are required no later than 60 days after the effective date of the service provider regulations. Currently, initial disclosures are required to be made by May 31, 2012. Thus, to the extent the service provider regulations are delayed, we would expect the May 31, 2012 participant disclosure deadline would be delayed as well.

The regulations require disclosure of certain information about the plan's investment options in a comparative chart format so that all investment options under the plan can be compared in an "apples-to-apples" manner. Importantly, the required format for much of this information is borrowed from mutual fund disclosure rules, which likely will represent new reporting and disclosure requirements for funds such as group trusts, collective investment trusts ("CITs") and private funds not directly subject to the mutual fund rules.

While the participant disclosure regulations are generally in final form, special disclosures for "qualified default investment alternatives" and, more specifically, "target-date funds" are currently in proposed form and these rules are on the DOL's regulatory agenda to be finalized in 2012. Target date funds, which are investment funds in which the asset allocation generally shifts to become more conservative as retirement approaches, are also the subject of SEC-proposed rules from 2010 applicable to target date funds that are registered funds.

Watch for DOL re-proposal of definition of "fiduciary."

In October 2010, the DOL issued proposed regulations that

would expand the circumstances under which a party who provides investment advice to an ERISA plan or an IRA would be considered a "fiduciary" under ERISA, changing a well-established regulation which has been in place since 1975. As proposed, the changes would be broad based and could significantly affect advisory relationships for ERISA plans and IRAs. The proposal generated significant controversy, criticism and concerns about the expansion of the fiduciary definition and its effect on currently permitted services and practices.

On September 19, 2011, the DOL withdrew its proposal and announced its intention to re-propose its changes to the definition of investment advice in 2012. The DOL has indicated that the re-proposal will clarify that fiduciary status will be limited to the provision of individualized advice directed to specific parties (presumably to try to address concerns raised that the definition could cause even a party producing a plan newsletter to be treated as providing investment advice and hence a fiduciary) and that it would propose ERISA prohibited transaction class exemptions to address concerns about current practices and services.

Pending the re-proposal of the definition, Investment Managers who provide services to ERISA plans, IRAs, or private funds subject to ERISA and their affiliates may wish to stay abreast of developments on this regulatory initiative. The upcoming elections could significantly affect the DOL's ability to finalize any changes it proposes to make.

Monitor consequences of Dodd-Frank Act for ERISA plans.

The Dodd-Frank Act included several provisions that could have significant consequences for ERISA-governed retirement plans.

Under CFTC rules defining "major swap participant," retirement plans are not excluded from the definition, as had been the hope of many in the retirement plan industry seeking to avoid the more significant and potentially costly aspects of the Dodd-Frank Act reforms. Potentially mitigating the impact of not being categorically excluded from the definition, however, the proposed regulations exclude swaps "maintained by employee benefit plans for hedging or mitigating risks in the operation of the plan" from certain of the numerical tests proposed to determine "major swap participant" status, which may have the practical effect of excluding many retirement plans.

Under the CFTC's business conduct rules, plans are categorized as "special entities." A swap dealer (other than a swap dealer also acting as an advisor to an ERISA plan counterparty) must have a reasonable basis to believe that the ERISA plan counterparty has a representative that is an ERISA fiduciary. The rules also include a safe harbor that provides that a swap dealer will not be acting as an advisor to an ERISA plan counterparty if the ERISA plan counterparty represents in writing that it has an ERISA fiduciary

to evaluate the swap transactions and the ERISA fiduciary represents in writing that it will not rely on the swap dealer's recommendations, among other representations.

The Dodd-Frank Act also requires the CFTC and the SEC to study whether stable value "wrap" contracts fall within the definition of "swaps" and, if so, whether stable value contracts should be exempted from the Dodd-Frank Act. The resolution of these issues could significantly affect how plans manage their investments. The CFTC and the SEC issued a set of questions regarding stable value that it invited commenters to address. The comments were due in September 2011, but any final report is still pending. Once the report is issued, those Investment Managers with ERISA clients/investors may wish to evaluate the effect of these provisions on its management of ERISA assets.

Monitor developments regarding Puerto Rican plans invested in group trusts.

The eligibility of Puerto Rican plans to participate in tax-exempt "group trusts" has been unsettled for some time as the Internal Revenue Service ("IRS") had announced in 2010 that it would issue guidance on this subject. Pending such guidance, Revenue Ruling 2011-1 provided transition relief allowing Puerto Rican plans then participating in group trusts to continue participating until December 31, 2011. As the IRS's guidance on the group trust eligibility of Puerto Rican plans has not yet been issued, Notice 2012-6 was issued to extend the transition relief provided by Revenue Ruling 2011-1 and allow existing Puerto Rican plan investors in group trusts, to remain invested in the group trusts pending further guidance. Investment Managers of group trusts with Puerto Rican plans should monitor developments in this area carefully.

Review "exclusive benefit" provisions of governmental plans invested in group trusts.

Revenue Ruling 2011-1 set forth certain new requirements for group trusts to retain their tax-exempt status. With one exception, group trusts were required to incorporate the new requirements by December 31, 2011. The exception is the requirement set forth in Revenue Ruling 2011-1 that a governmental plan investor in a group trust must have a provision in its governing document that it is impossible for any part of the corpus or income of the governmental plan to be used for, or diverted to, purposes other than for the exclusive benefit of the plan participants and their beneficiaries, a so-called "exclusive benefit" rule. In Notice 2012-6, the IRS extended that deadline for governmental plans for which the authority to amend the plan is held by a legislative body that meets in legislative session. Such a governmental plan will not fail to satisfy the requirements of Revenue Ruling 2011-1 if the plan is modified to satisfy the exclusive benefit rule by

the earlier of (a) the close of the first legislative session of the legislative body with authority to amend the plan that begins on or after January 1, 2012, or (b) January 1, 2015.

While many group trust sponsors have likely already addressed these issues, Notice 2012-6 provides some relief for governmental plans unable to make required excluded exclusive benefit rule amendments before the December 31, 2011 deadline.

Review final regulations on investment advice to plan participants or IRA owners.

On December 27, 2011, the DOL issued final regulations governing the provision of investment advice to plan participants by plan service providers, including plan service providers whose investment options are offered under the plan. The rules require that the fiduciary adviser that provides the investment advice in reliance on the exemption may not receive from any party, either directly or indirectly, any fee or other compensation (including commissions, salary, bonuses, awards, promotions, or other things of value) that varies depending on the basis of a participant's or beneficiary's selection of a particular investment option unless the advice is pursuant to a computer model meeting the conditions set forth in the rule. The DOL clarified that the final rules do not replace or supersede previous DOL guidance on which advisors may be relying, such as the so-called "Sun America" advisory opinion.

Ongoing ERISA Compliance and Monitoring
Review private fund compliance with 25 percent limit.

Investment Managers managing private funds that seek to maintain compliance with the 25 percent ("significant participation") exception from ERISA plan assets status should consider periodically reviewing their processes for best practices. For example, Investment Managers of private funds may wish to reconfirm whether their fund of funds or other fund investors are "benefit plan investors" subject to ERISA or Section 4975 of the Code for purposes of reconfirming their funds' compliance with the 25 percent "significant participation" exception under ERISA and, if so, the extent to which that investor's assets are (and will be) plan assets. Only the portion of these investors' assets that are subject to ERISA need be counted for this purpose. As this percentage can fluctuate over time, we recommend establishing an "upper limit" percentage which the investor will agree not to exceed. However, if your fund is pushing up against the 25 percent limit, you may wish to more closely monitor these limits so as to free up more ERISA capacity. In addition, as noted above, if a fund becomes a plan assets fund after April 1, 2012, the service provider disclosure regulations will require disclosures within 30 days of the Investment Manager knowing that a fund is a plan assets fund.

Comply with Form 5500 fee disclosures.

Form 5500 is the annual report required to be filed by ERISA plans with the IRS and the DOL. In addition, Form 5500 also may be filed on a voluntary/elective basis by collective trusts and other funds, the assets of which are treated as ERISA plan assets.

Schedule C to the Form 5500 requires disclosures of fees and other compensation received by service providers to ERISA plans (such as Investment Managers). Although the Form 5500 filing is generally the responsibility of the ERISA plan client, clients will look to Investment Managers to provide the necessary information. Investment Managers of plan assets funds who have elected to file Form 5500s on behalf of the fund will need to comply with these additional compensation reporting requirements.

For example, required reporting includes all money and other things of value (such as gifts, awards, or trips) received by a person *directly or indirectly* from an ERISA plan in connection with services rendered to the plan. Indirect compensation includes amounts received other than directly from the ERISA plan, such as fees and expense reimbursements from pooled investment vehicles in which a plan invests, float revenue, and soft dollars. Non-monetary compensation includes, for example, gifts, awards, and trips and is reportable on Form 5500 Schedule C subject to certain de minimis exceptions (basically, the non-monetary compensation must be valued at less than \$50 and the aggregate of all non-monetary compensation from one source in a calendar year must be valued at less than \$100). Please contact us if you have questions about particular types of compensation.

Importantly, these reporting rules apply to direct and indirect compensation in connection with funds that comply with the 25 percent “significant participation” exception from ERISA plan assets status (with the exception of compensation received from operating companies, including “venture capital operating funds” and “real estate operating funds”).

Update your cross-trading policies and procedures for the statutory cross-trading exemption.

Compliance with the statutory exemption for cross-trading is generally conditioned upon establishing—in advance—specific policies and procedures and providing advance notice to ERISA clients/investors of these policies and procedures. In the case of ERISA clients with separately managed accounts, actual client consent or revisions to investment management agreements may also be required. If you have not previously considered bringing your policies into compliance with the statutory cross-trading exemption, this may be an item worth adding to your checklist for the coming year.

Update and confirm your ongoing ERISA-related compliance generally.

As a best practice, Investment Managers that manage plan assets should periodically review their existing investment policies and investment guidelines and trading practices and relationships to confirm that they are consistent with current requirements under ERISA. Significant changes in trading practices and investment policies and investment guidelines also should be reviewed for ERISA compliance. ERISA-related policies and procedures also should be reviewed periodically, such as cross-trading policies, proxy voting policies, and gift and gratuity policies, to reflect changes in the Investment Manager’s practices or changes in the law.

Consider expanding group trust eligibility based on IRS Revenue Ruling 2011-1.

The IRS has expanded the types of investors eligible to participate in a group trust to include custodial accounts under Section 403(b) (7) of the Code, retirement income accounts under Section 403(b) (9) of the Code, and governmental plans that provide retiree welfare benefits. Group trust documents may need to be amended to reflect the expanded eligibility.

File all group trust amendments with the IRS.

Investment Managers who sponsor group trusts that have been amended during the current calendar year, including amendments in response to Revenue Ruling 2011-1, discussed above, must timely file all material amendments with the IRS to maintain the group trust’s determination letter.

Review compliance with ERISA’s fidelity bond requirements, if applicable.

Investment Managers with ERISA plan clients or those managing plan assets are required by ERISA to maintain a fidelity bond unless the Investment Manager has determined that it is exempt from ERISA’s fidelity bond requirements. Ongoing bonding arrangements should be reviewed on an annual basis to confirm that the Investment Manager is maintaining the bond in the correct amount and with the correct terms to satisfy ERISA’s requirements.

Investment Managers may wish to review whether changes in their ERISA plan clients require changes to bonding arrangements (for example, an ERISA plan that did not previously hold employer securities may have acquired employer securities, necessitating a higher bond amount). Changes to a fund advised by the Investment Manager may also dictate changes to the fidelity bond (for example, if a plan assets fund goes under 25 percent, a fidelity bond may no longer be required and, conversely, when a fund

exceeds the 25 percent limit, the fidelity bonding rules would generally be triggered on that date).

Comply with “FBAR” filing requirements.

United States persons with “financial interests” in “financial accounts” in foreign countries must file an FBAR on Form TD F 90-22.1 by June 30 of each year. While employee benefit trusts are subject to the FBAR requirements, there was additional guidance in 2011 that provided some relief from the FBAR filing requirements. For example, the 2011 guidance provides that a person does not have the signature authority to trigger an FBAR filing obligation if the foreign financial institution will not act upon a direct communication from that individual. Thus, if a foreign financial institution will act upon a direct communication of a plan trustee, but not a member of the plan’s fiduciary committee, the member of the plan’s fiduciary committee does not have signature authority for FBAR purposes even if the member has discretionary investment authority. Also, the 2011 guidance provided relief for foreign commingled investment vehicles other than foreign mutual funds. Investment Managers may wish to

evaluate annually whether accounts maintained on behalf of ERISA plan clients trigger FBAR filing obligations.

Review developments in the law applicable to governmental plan clients.

Investment Managers who manage the assets of governmental plans (which are not subject to ERISA) should review developments in the past year in the law applicable to those plans that may affect plan investments. In recent years, a number of states have adopted restrictions on the use of placement agents and giving of political contributions in connection with plan investments, as well as instituted enhanced disclosure requirements for plan service providers. States and municipalities also continue to adopt laws that limit or restrict permissible investments by public pension plans, such as laws that limit investment in certain countries or impose limits on certain categories of investments. In addition, portfolio declines may require rebalancing from alternative or private equity investments to the extent governmental plan-enabling laws limit these types of investments to a specified percentage of the plan’s overall assets.

If you have any questions about the matters contained in this Client Briefing or would like assistance in complying with any of the above requirements, please contact any of the Winston & Strawn professionals listed below:

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