SF SHARTSIS FRIESE LLP
425 Market Street • Eleventh Floor
San Francisco, California 94105

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VIA EMAIL

To Our Investment Adviser Clients and Other Friends:

This is our annual letter briefly reviewing various issues that our investment adviser clients should consider over the next few weeks. We will be pleased to respond to questions, assist you in preparing needed forms and otherwise assist you in satisfying any of the requirements discussed below. Please contact one of the attorneys in the Investment Funds & Advisers Group if you need assistance.

Legal and Regulatory Changes

1. **Corporate Transparency Act - Injunction Puts Filing Requirements on Hold**. The Corporate Transparency Act requires that all corporations, limited liability companies and other business entities that are formed within any U.S. state or foreign jurisdiction, that are registered to do business in the U.S. and that are not exempt under one of 23 different exemptions ("**Reporting Entities**"), disclose certain information regarding their beneficial owners on a beneficial ownership information report (a "**BOIR**"). Entities formed before January 1, 2024, were initially required to file BOIRs by January 1, 2025. Federal courts in the Fifth Circuit Court of Appeals then issued a nationwide injunction of the Corporate Transparency Act that prevented the U.S. government from enforcing the January 1, 2025, compliance deadline for existing Reporting Entities and any other BOIR filing deadlines for new Reporting Entities.

On January 23, 2025, the Supreme Court stayed the injunction so that Reporting Entities will again need to file. For Reporting Entities that have already submitted BOIRs, there is nothing to be done at this time. For Reporting Entities that have not yet filed BOIRs, they will need to file, although it is unclear as of today what the deadline is. We will provide updates when the deadlines are announced. Please see our client alerts regarding the Transparency Act for further information: Corporate Transparency Act Compliance Reminder and Guidance and Corporate Transparency Act – Nationwide Injunction Once Again Reinstated.

2. **New Anti-Money Laundering Requirements**. On August 28, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**") adopted a new rule requiring covered advisers to establish anti-money laundering ("**AML**") and counter-terrorist financing programs and, if the need arises, file suspicious activity reports with FinCEN (the "**FinCEN AML Rule**"). Advisers covered by the FinCEN AML Rule include exempt reporting advisers, most SEC-registered investment advisers, and foreign-located advisers (but only with

respect to their U.S. activities) ("**Covered Advisers**"),[1] who must comply with the FinCEN AML Rule by January 1, 2026. This FinCEN AML Rule is in addition to an adviser's existing obligations to screen investors against the sanctions lists maintained by the Office of Foreign Asset Control.

The FinCEN AML Rule will require Covered Advisers to include the following elements in their AML programs: (a) internal policies, procedures and controls reasonably designed to prevent covered advisers from being used for money laundering, terrorist financing, or other illicit finance activities; (b) designation of one or more AML compliance officers; (c) provision of ongoing AML training for appropriate personnel; (d) independent testing of the AML program's effectiveness; and (e) risk-based procedures for conducting ongoing customer due diligence and monitoring to (i) understand the nature and purpose of customer relationships for the purpose of developing and maintaining a customer risk profile, and (ii) identify and report suspicious transactions. Covered Advisers must review their current screening and monitoring policies and add any required AML procedures not already addressed, such as suspicious activity reporting and independent testing.

Covered Advisers may contractually delegate the implementation of their AML programs to a third party, such as a fund administrator, but the Covered Adviser must remain fully responsible and legally liable for the program's compliance and take reasonable steps to ensure that the third party conducts AML procedures effectively.

Covered Advisers will also be required to file Currency Transaction Reports for certain "transactions in currency" over $10,000 with FinCEN. Currently, all investment advisers are required to report such transactions on Form 8300 and the Currency Transaction Reports will replace Form 8300 for Covered Advisers. We intend to issue a client alert detailing FinCEN AML Rules requirements in greater detail shortly.

Additionally, the FinCEN AML Rule will require Covered Advisers to comply with existing Bank Secrecy Act Recordkeeping and Travel Rules, which require financial institutions to create and retain specified records for fund transmittals that equal or exceed $3,000 for transfers between financial institutions, subject to certain exceptions.

The adoption of the FinCEN AML Rule does not include specific requirements for Covered Advisers to implement a customer identification program or to collect beneficial ownership information for legal entity customers. Those requirements are subject to a proposed separate joint rulemaking between FinCEN and the SEC, which has not yet resulted in a final rule.

3. **Form SHO**. New Rule 13f-2 under the 1934 Act requires that "institutional investment managers" that exercise discretionary authority with respect to gross short positions exceeding certain thresholds in any given calendar month file Form SHO by the 14th of the following month. Form SHO applies to all institutional investment managers that exercise discretionary authority with respect to gross short positions exceeding the applicable thresholds,

[1] State-registered advisers, family offices, SEC-registered advisers that report no AUM on their Form ADVs and SEC-registered advisers who are registered solely because they are mid-sized advisers, multistate advisers or pension consultants are not subject to the FinCEN AML Rule.

regardless of their assets under management. Form SHO requires both end of the month information about short positions and daily information for each settlement date on which an institutional investment manager's reportable short positions change within the month.

If your firm has any managed accounts with gross short positions in equity securities that exceed the thresholds in a calendar month, then you will need to file Form SHO for that month. Advisers should start monitoring their short positions in January 2025, to determine whether they have any reportable short positions that need to be reported for the first Form SHO filing, which is due on February 14, 2025. Please refer to our client alert for more information about the Form SHO thresholds and filing requirements: New Monthly Short Position Reporting.

4. **Non-Competition Bans in California and Other States**. In 2024, the Federal Trade Commission ("**FTC**") attempted to broadly ban all post-employment non-competition clauses between employers and their workers. However, the FTC's rule was subsequently blocked by federal courts in the Fifth Circuit. Although appeals are pending, it is unclear if the federal non-competition ban will be revived. Regardless, several states have adopted similar bans on non-competition agreements (including California, Minnesota, North Dakota and Oklahoma). California Senate Bill 699, effective January 1, 2024, prohibits employers from entering into or attempting to enforce non-competition agreements under California law. It also prohibits the use of overly broad non-disclosure restrictions that are anti-competitive. In addition, other states have enacted or are enacting similar laws banning non-competition agreements and overly broad non-disclosure restrictions.

Advisers should review whether they have any employees or contractors in California and, if so, should consider reviewing and updating their form employment agreements, independent contractor agreements and other non-disclosure agreements, to remove potentially anti-competitive language. Advisers with agreements that may trigger this issue for employees or contractors in other states should consider contacting us to confirm whether such state has enacted similar restrictions.

5. **Qualified Professional Asset Managers**. Some SEC-registered investment advisers that provide services to and transact on behalf of employer-sponsored retirement plans, individual retirement accounts and certain private funds with retirement investors (collectively, "**Plan Clients**") rely on the Department of Labor's Prohibited Transaction Exemption 84-14, commonly referred to as the "**QPAM Exemption**." The QPAM Exemption permits SEC-registered advisers to engage in certain transactions on behalf of their Plan Clients that otherwise would be subject to the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 or Section 4975 of the Internal Revenue Code of 1986 (the "**Code**"). While the QPAM Exemption is not the only exemption available from such prohibited transaction restrictions, it is a frequently used exemption.

The Department of Labor amended the QPAM Exemption effective June 17, 2024. Under the amendment, advisers must take additional steps to qualify for the QPAM Exemption. Any SEC-registered investment adviser that desires to rely on the QPAM Exemption must email a notice to the Department of Labor. In addition, the adviser relying on the QPAM exemption should confirm that it has no owners or officers that are subject to a prior bad act that may constitute prohibited misconduct under the revised QPAM Exemption, among other requirements. The amendments to the QPAM exemption are described in greater detail in our New QPAM Exemption Requirements client alert.

6. **QEP Definition**. In October 2024, the Commodities Futures Trading Commission adopted amendments to Rule 4.7 of the Commodity Exchange Act ("**Rule 4.7**"), which updated the qualified eligible person ("**QEP**") definition. Rule 4.7 provides exemptions from certain compliance requirements for commodity pool operators ("**CPOs**") regarding commodity pool offerings to QEPs and for commodity trading advisors ("**CTAs**") regarding trading programs advising QEPs. The amendments changed the definition of "Portfolio Requirement" that certain persons (including natural persons who are accredited investors) must meet to be a QEP. Under the Portfolio Requirement, an investor must (a) have on deposit in margin and option premiums with a futures commission merchant of $400,000 (up from $200,000), (b) own securities of issuers not affiliated with the investor and other investments with an aggregate market value of $4 million (up from $2 million) or (c) have a portfolio that meets a combination of these two thresholds.

Additionally, the Rule 4.7 amendments codified exemptive letters that allow CPOs of funds of funds operating under Rule 4.7 to elect to distribute monthly account statements within 45 days of the month-end, instead of within 30 days of quarter-end.

CPOs relying on the Rule 4.7 exemption should contact us to discuss updating fund offering materials to account for Rule 4.7 amendments.

7. **Form PF Reporting Categories**. Form PF will be amended effective March 12, 2025, to require more granular reporting from Form PF filers. The new Form PF expands the categories of beneficial ownership for reporting funds (see Form PF question 22). Because most advisers that have a Form PF filing obligation gather the category information from their subscribers in the private fund's subscription agreement, these subscription documents should be updated to reflect these revised categories of beneficial ownership. You should review the responses provided by your existing investors and confirm whether you have the information needed to complete Form PF. Form PF reporting advisers that have not yet updated their subscription materials for these new Form PF beneficial ownership categories should contact us to update their subscription materials for this change.

In addition, advisers to hedge funds may want to review the new Form PF in advance of applicable filing deadlines, as more enhanced reporting is required and how advisers report complex fund structures (including certain types of master-feeder arrangements and parallel fund structures) has changed. The SEC has also revised Instruction 9 of Form PF to require large hedge fund advisers and large liquidity fund advisers to update Form PF after the end of each calendar quarter, rather than after each fiscal quarter, as Form PF currently requires.

8. **Amendments to Regulation S-P**. Regulation S-P requires SEC-registered advisers to adopt written policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information. On May 16, 2024, the SEC adopted amendments to Regulation S-P (the "**Reg S-P Amendments**") that will require SEC-registered advisers to also develop written incident response programs to handle cybersecurity breaches. Large SEC-registered advisers (advisers with over $1.5 billion in AUM) must comply

with these new requirements by December 3, 2025, and all other SEC-registered advisers must comply by June 3, 2026.

To be compliant, an incident response program must require the SEC-registered adviser to (a) assess the scope of any unauthorized data access event and identify compromised information and systems, (b) take steps to contain the breach and prevent further unauthorized access or use of customer information and (c) notify each affected individual whose sensitive customer information was, or is reasonably likely to have been, accessed or used without authorization, as soon as practicable, but no later than 30 days after the SEC-registered adviser becomes aware of the breach, unless the adviser determines (after reasonable investigation) that sensitive customer information has not been, and is not reasonably likely to be, used in a manner that would result in substantial harm or inconvenience. Although an incident response program must address these general elements to comply with the Reg S-P Amendments, SEC-registered advisers should tailor their policies and procedures to their particular circumstances.

The Reg S-P Amendments require SEC-registered advisers to oversee service providers with access to adviser information, which may include conducting due diligence assessments and ongoing monitoring of service providers. SEC-registered advisers must ensure that their service providers will notify them as soon as possible, but no later than 72 hours, after becoming aware of a breach involving the SEC-registered adviser's customer information.

Although the compliance deadline for the Reg S-P Amendments is not until 2026, SEC-registered advisers should consider proactively amending service provider contracts to include provisions that will help evidence compliance with these new requirements. We intend to issue a client alert detailing the Reg S-P Amendments in the coming weeks.

9. **FTC Safeguard Rule**. As noted in our FTC Safeguard Rule for Exempt Reporting Advisers and State Registered Advisers client alert, the FTC implemented rules under the Gramm-Leach-Bliley Act of 1999 (the "**GLBA**") requiring that financial institutions safeguard the consumer information that they collect and maintain (the "**Safeguard Rule**"). The FTC's Safeguard Rule applies to certain financial institutions, including state-registered advisers and exempt reporting advisers. The equivalent rule for SEC-registered investment advisers is Regulation S-P (described above).

State-registered advisers and exempt reporting advisers that have not yet evaluated their technology systems for compliance with the Safeguard Rule should do so without delay. The Safeguard Rule requires subject advisers' information security systems to include the development, implementation and continuous monitoring of a comprehensive information security program, which includes: access controls; multi-factor authentication; an incident response plan; data inventory; security awareness training for employees; encryption of customer data; and secure testing and disposal methods. Advisers subject to the Safeguard Rule must also develop and implement a risk assessment that identifies risks to information security and evaluates whether the adviser's policy is sufficient to safeguard against those risks. If such an adviser subject to the Safeguard Rule collects information on more than 5,000 consumers, additional more stringent requirements apply, including implementation of certain testing procedures and a written incident response plan.

Recent amendments to the Safeguard Rule added a security breach reporting requirement that became effective on May 13, 2024. Those subject to the Safeguard Rule are required to notify the FTC of instances of unauthorized acquisition of unencrypted, personally identifiable, nonpublic financial information of more than 500 consumers (each instance, a "**Notification Event**"). "Consumer" refers to any individual with whom an investment fund or investment adviser has a continuing relationship to provide financial products or services for personal, family or household purposes (generally, institutional investors and other business entity investors are excluded from this definition of consumer). Each Notification Event must be reported to the FTC as soon as possible, but no later than 30 days after the discovery of the Notification Event. The reporting form is available on the FTC's website and must include descriptions of the information involved in the Notification Event and the consumers affected by the Notification Event.

10. **The New U.S. Outbound Investment Security Program**. New U.S. Department of the Treasury final regulations implementing Executive Order 14105, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern" (the "**Outbound Investment Rule**") became effective January 2, 2025. The rule is intended to limit U.S. assets being used to advance the development of sensitive technologies, including the development of technologies and products in semiconductors, microelectronics, quantum information technologies and artificial intelligence, in certain foreign countries of U.S. national security concern. The Outbound Investment Rule is administered by the newly created Office of Global Transactions in the Treasury's Office of Investment Security. To date, the only identified country of concern is the People's Republic of China, including the Special Administrative Regions of Hong Kong and Macau.

Unless an exception applies, the Outbound Investment Rule applies to many kinds of investment transactions carried out by U.S. persons involving a person from a country of concern, including equity acquisitions, debt financing and joint ventures, with respect to one of the technologies identified above. The Outbound Investment Rule imposes either notification requirements or a prohibition of the covered transaction based on certain characteristics of the technology involved in the covered transaction.

A covered transaction that would be either a prohibited transaction or a notifiable transaction may qualify for a transaction exception. Exceptions include, but are not limited to, any investment by a U.S. person: (a) in a publicly traded security (including a security traded on a non-U.S. exchange, a U.S. exchange or a security traded OTC; provided that such transaction does not afford the U.S. person rights beyond standard minority shareholder protections) or security issued by a registered investment company, such as an index fund, mutual fund or exchange-traded fund, (b) made as a limited partner in a venture capital fund, private equity fund, fund of funds or other pooled investment fund, if such investment is $2 million or less or if the U.S. person has received a contractual assurance that its capital will not be used by the fund to engage in what would be a covered transaction and (c) in certain derivative securities (so long as such derivative does not confer the right to acquire equity, any rights associated with equity or any assets in or of a person from a country of concern).

Penalties for violations of the Outbound Investment Rule can be substantial, and the Secretary of the Treasury is authorized to require the divestment of any prohibited transaction.

11. **San Francisco Proposition M Changes Gross Receipts Tax**. On November 5, 2024, San Francisco voters approved Proposition M, which modifies the San Francisco gross receipts tax, with implications for asset managers residing in San Francisco or that have investors located in San Francisco.

Prior to the implementation of Proposition M, the tax rate for gross receipts from financial services between $2.5 million to $25 million was scheduled to be 0.816% for 2025. For taxpayers that engaged in business inside and outside San Francisco, gross receipts were apportioned to San Francisco based on payroll (the percentage of compensation paid to employees in San Francisco out of total compensation paid to all employees).

Proposition M changes both the tax rates and the apportionment formulas. Tax rates are generally higher. For example, for tax years 2025 and 2026, under Proposition M taxpayers with gross receipts between $2.5 million to $25 million would see an increase in the tax rate to 3%, which further increases in subsequent years. In addition, instead of apportioning gross receipts to be taxed in San Francisco based solely on payroll, 75% of the gross receipts would be apportioned to San Francisco based on sales and only 25% would continue to be apportioned to San Francisco based on payroll.

Gross receipts from sales of services (for the 75% portion referenced above) are taxed in San Francisco if the purchaser of services received the benefit of the services in the city. While regulations are still to be issued to interpret the meaning of receiving the benefit of services in San Francisco, sales apportionment is expected to be similar to the rules that source asset management fees to California based on the location of a fund's investors.

Despite the increase in tax rates, San Francisco-based advisers to investment funds with investors located outside San Francisco may find that their overall tax liability will go down because of the decrease in the tax base that is apportioned to San Francisco. Advisers to investment funds with investors located in San Francisco may see their exposure to SF gross receipts tax grow. We intend to issue a client alert detailing the Proposition M changes after the final version of these regulations have been issued.

12. **Policies and Procedures Updates for Recent Enforcement Actions**. The SEC has recently brought successful enforcement actions regarding whistleblower violations, recordkeeping for off-channel communications and shadow insider trading. Advisers should consider updating their policies and procedures in light of those actions, as described below.

(a) **Whistleblowing**. Rule 21F-17(a) of the Securities Exchange Act ("**Rule 21F-17**") prohibits any person from taking action to impede an individual from communicating directly with the SEC about possible securities law violations. Although Rule 21F-17 is not new, the SEC has recently expanded who it targets for its enforcement, levied higher penalties for violations and scrutinized a wider set of agreements for potential violations. Public companies, private companies, broker-dealers, investment advisers (exempt reporting advisers and SEC-registered advisers) and other financial services entities should review their policies and procedures along with employment and independent contractor agreements, separation agreements, vendor and third party agreements, client agreements and any other agreements with confidentiality requirements, for language that may violate Rule 21F-17. If such agreements or policies include non-disclosure restrictions that do not expressly permit voluntary disclosure to the SEC regarding possible securities violations, the firm may need to notify the contract counterparty or policy recipient of their whistleblower rights and amend the agreement or policy to add corrective language. Please see our client alert regarding Rule 21F-17 violations and enforcement actions for more information: SEC Cracks Down on Whistleblower-Impeding Language.

(b) **Off-Channel Communications**. Rule 204-2(a)(7) under the Investment Advisers Act of 1940 (the "**Advisers Act**") requires SEC-registered advisers to preserve certain communications, including those related to recommendations and advice, the receipt, disbursement or delivery of funds or securities, and the placing or execution of any order to purchase or sell any security. In 2024, the SEC announced charges against multiple SEC-registered advisers and broker-dealers for recordkeeping violations with respect to employees conducting business communications using personal texting platforms that did not preserve such communications, resulting in significant penalties. In one such action, an adviser was charged with both violating the recordkeeping requirements of the Advisers Act because it did not preserve copies of such text messages and failing to enforce its code of ethics, which banned employees from using non-retained electronic communications for business communications. SEC-registered advisers should review their policies and procedures in light of employee texting practices. Please see our client alert regarding one of the SEC's enforcement actions relating to the SEC's sweep of off-channel communications for more information: SEC Charges Investment Adviser with Recordkeeping Failures Related to "Off Channel" Communications.

(c) **Shadow Trading; Material Nonpublic Information**. This year the SEC achieved a successful verdict in the first "shadow trading" case the agency has brought. Shadow trading is a type of insider trading where an individual uses material nonpublic information ("**MNPI**") about one company to trade securities in a different but economically parallel company whose stock could be impacted by such information. The SEC also brought multiple actions against SEC-registered investment advisers for failing to establish specific enough policies "reasonably designed" to prevent misuse of MNPI, even though there was no evidence that such adviser illegally traded on that MNPI or that the adviser lacked a policy on the use of MNPI.

Both SEC-registered and exempt reporting advisers should consider whether their existing policies and procedures adequately prohibit shadow trading. Please see our client alert on shadow trading for more information: "Shadow" Insider Trading – SEC Wins Jury Trial in Closely Watched Insider Trading Case. Advisers should also make sure their policies on MNPI are tailored to the specific types of MNPI that the firm and its employees may obtain. Policies and procedures should also be customized with an appropriate mechanism to escalate MNPI issues to knowledgeable compliance staff or outside counsel.

13. **Florida Securities Disclosures**. Effective October 1, 2024, the Florida legislature amended Chapter 517 of the Florida Securities and Investor Protection Act ("**Chapter 517**"), modernizing the state's disclosure and notice requirements for issuers offering private placements of securities to residents in Florida. The amendment to Chapter 517 requires an issuer to permit all Florida resident investors to void any purchase of privately offered securities within 3 days of purchase, whereas previously investors only had this option if there were more than 5 securities purchasers who were residents of Florida. The amendments also limit the time period during which

an investor may void such a purchase to within 3 days of the transaction date. Previously, investors could void such a transaction within 3 days of the later of (a) the transaction date or (b) the date that the recission privilege was communicated to the investor by the issuer. The amendments removed option (b) to prevent recissions many years after such a purchase of privately offered securities.

Many investment funds include a disclosure to Florida investors in their offering materials, which is now likely outdated due to these amendments to Chapter 517. Please contact us to discuss updating your fund's offering materials with a revised disclosure to prospective Florida investors.

14. **Amendment to Advisers Act Recordkeeping Rule**. Effective May 28, 2024, the SEC adopted amendments to Rule 15c6-1 under the Securities Exchange Act of 1934 (the "**Exchange Act**"), which shortened the standard settlement cycle for most broker-dealer transactions from 2 business days after the trade date (T+2) to 1 business day (T+1). To promote the completion of allocations, confirmations and affirmations by the end of the trade date for transactions between broker-dealers and their institutional customers, new Exchange Act Rule 15c6-2 requires broker-dealers to either enter into written agreements with the relevant parties or have procedures to complete such allocations, confirmations and affirmations no later than the end of the trade date. Concurrently, the SEC amended Advisers Act Rule 204-2 to require SEC-registered investment advisers to make and keep records of the allocations, confirmations and affirmations for securities transactions subject to the requirements of new Exchange Act Rule 15c6-2(a) (which includes most securities transactions), with a date and time stamp for each allocation and affirmation that indicates when the allocation and affirmation was sent or received. Advisers should update their recordkeeping policies and procedures and review existing processes, to confirm all such documentation is retained and that all allocations and affirmations are date and time stamped. More information regarding these changes can be found in the SEC's Risk Alert discussing Rule 15c6-1.

15. **Second U.S. Tax Court Decision on Self-Employment Tax Exception**. On December 23, 2024, the Tax Court ruled in *Denham Capital Management LP v. Commissioner* that limited partners that actively participated in the activities of a private equity fund manager were subject to self-employment tax. This ruling is of interest to investment fund managers who have structured their share of management fee income, as well as their share of performance fees, to qualify for a statutory limited partner exception from self-employment tax (commonly referred to as the "Medicare tax workaround"), which typically uses an investment adviser entity or vehicle formed as a limited partnership to receive management fees and performance fees. *Denham* is the first court case applying the functional analysis test described in the November 2023 ruling in *Soroban Capital Partners LP v. Commissioner*. In *Soroban*, the Tax Court held that limited partners of a state law limited partnership were not automatically entitled to the limited partner exception to self-employment tax under Code Section 1402(a)(13) but rather were required to satisfy a functional test showing that they were not active partners.

The Tax Court in *Denham* determined that the partners of the private equity fund manager were not entitled to the limited partner exception by considering the functional test factors, including the guaranteed payments that the partners received as compared to their distributive share of income, their total returns earned relative to their capital contributions, their roles as disclosed in investment fund offering materials and their control over firm personnel decisions. Court cases challenging *Soroban* are currently pending in the Tax Court and Fifth Circuit Court of Appeals.

If your firm relies on the limited partner exception from self-employment tax (for more information, see our Client Alert on the *Soroban* decision), consider contacting us to discuss what steps may be appropriate in light of the new *Denham* ruling.

Federally Registered Investment Advisers

1. **Annual Updating Amendment to Form ADV**. If your firm is SEC-registered, you must amend its Form ADV each year on IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2024, the deadline is Monday, March 31, 2025. The annual amendment must update your firm's responses to all items in Parts 1 and 2 of Form ADV.

When you amend Part 1, IARD will prompt you to indicate the type of amendment. You should select "annual updating amendment," and indicate that the amendment is for 2024. Unlike Part 1, Part 2A is not an online form. Instead, you must upload Part 2A to IARD as a separate document in text-searchable PDF format. An SEC-registered investment adviser is not required to file Part 2B, or any amendments to it, but must keep its updated Part 2B in its records.

The IARD filing fees for an SEC-registered adviser's annual updating amendment are (a) $40 if the adviser's RAUM is below $25 million, (b) $150 if RAUM is between $25 million and $100 million and (c) $225 if RAUM is over $100 million. You must fund your IARD account with the appropriate amount before you submit the amendment. Information about funding your firm's IARD account is at the IARD Accounting Information site.

To determine your firm's RAUM, include the securities portfolios for which your firm provides continuous and regular supervisory or management services as of the date you file the Form ADV amendment (e.g., March 31 if you wait until the final day). Your firm's RAUM should be based on the current market value of the assets in those portfolios as of a date within 90 days before the date you file the Form ADV amendment. You should determine market value using the same method you use to report account values to clients or calculate your investment advisory fees.

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

- It is adding or removing a relying adviser as part of its umbrella registration;

- Information in Items 1 (except 1.O. and Section 1.F. of Schedule D), 3, 9 (except 9.A.(2), 9.B.(2), 9.E. and 9.F.) or 11 of Part 1A, Items 1, 2.A. through 2.F. or 2.I. of Part 1B or Sections 1 or 3 of Schedule R, becomes inaccurate in any way; or

- Items 4, 8, or 10 of Part 1A, Item 2.G. of Part 1B, or Section 4 of Schedule R become materially inaccurate.

An SEC-registered (or state-registered) adviser must also promptly amend its Form ADV when it receives its annual audit if question 23(h) of Item 7.B.(1) was previously answered as "Report Not Yet Received." Failure to file this amendment exposes private fund advisers to SEC enforcement actions under the Advisers Act Custody Rule.

An other-than-annual amendment is not required to update Items 2, 5, 6, 7 (except 7.B.(1), question 23(h)), 9.A.(2), 9.B.(2), 9.E., 9.F., or 12 of Part 1A, Items 2.H. or 2.J. of Part 1B, Section 1.F. of Schedule D or Section 2 of Schedule R, even if those items have become inaccurate.

Part 2 must be amended promptly whenever any information in it becomes materially inaccurate, although no update of Part 2 between annual amendments is required if only the amount of assets an adviser manages or its fee schedule have changed. However, if you update Part 2 for another reason, and the amount of assets you manage listed in Item 4.E. or your fee schedule listed in Item 5.A. have become materially inaccurate, you should update that item. An other-than-annual amendment to Part 2 does not need to include a summary of material changes.

3. **Requirements to Deliver Part 2 to Clients**. An SEC-registered adviser whose Part 2A has materially changed since the last annual updating amendment must deliver to clients annually within 120 days after the adviser's fiscal year end either (a) an amended Part 2A, including a material changes summary or (b) a separate material changes summary that also offers to provide a copy of Part 2A. For an adviser whose fiscal year ended December 31, 2024, the deadline is April 30, 2025. Clients that previously received Part 2B need not be provided an updated copy of Part 2B unless the disciplinary information disclosed in it has changed materially.

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

4. **Form CRS**. SEC-registered advisers with "retail clients" are required to file and deliver to those retail clients Part 3 of Form ADV (also called Form CRS). In Form CRS, an adviser must provide a plain English description of the relationship between the adviser and a retail client. A "retail client" is any natural person who seeks or receives advisory services "primarily for personal, family or household purposes." Entities, including investment funds, are not retail clients, even if any fund investor is a natural person.

An SEC-registered adviser must amend its Form CRS within 30 days if any information in it becomes materially inaccurate, and notify its retail investor clients, without charge, of the changes within 60 days after the updates are required to be made. The notice must highlight the changes by, for example, marking the revised text or summarizing the material changes. While an SEC-registered adviser is preparing its required annual amendment to other Parts of Form ADV, it should carefully review its Form CRS to ensure consistency and uniformity across the documents. The instructions for preparing Form CRS can be found here: Form CRS Instructions.

5. **Switching to State Registration**. If the RAUM reported on your firm's annual updating amendment is below $90 million, the firm will likely be required to withdraw its SEC investment adviser registration no later than 90 days after the annual amendment filing date. In that case, unless the firm qualifies for an exemption from state registration, you should file an application for state registration in time to ensure that it is registered by such applicable date. State registration may take several months.

6. **State Notice Filings**. An SEC-registered adviser may be required to make notice filings and pay fees in each state in which it has clients or a place of business. Some states require an SEC-registered adviser making notice filings to file Form ADV Part 2 and other documents. An SEC-registered adviser that has previously made state notice filings should have received an electronic package from FINRA last fall with instructions for renewing those notice filings and paying the required 2024 renewal fees through the IARD system. These fees are in addition to the IARD filing fees discussed on page 10.

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

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

- Any compliance matters that arose last year;
- Any changes in your firm's business activities;
- Any revisions to your firm's policies and procedures required by changes to the Advisers Act or its rules;
- The adequacy of your firm's code of ethics, including documenting that review and assessing the effectiveness of the code's implementation;
- A review and test of your firm's business continuity/disaster recovery plans (including an evaluation of whether you should designate a successor manager or liquidating person as discussed on page 33);
- A review and test of your firm's cybersecurity program;

- An evaluation of the execution services your firm receives from brokers it uses to execute client trades (if any);
- An evaluation of whether all trade errors have been properly addressed as provided in your firm's trade error policy;
- A determination of whether your firm should provide ethics training to its employees or enhance its code in light of its current practices; and
- An evaluation of whether your policies and procedures are adequately tailored to your business and whether your firm is following them.

If you have not already done so, you should consult us before you review your firm's compliance policies and procedures.

9. **Custody**. An SEC-registered adviser that has or is deemed to have custody of client funds or securities must indicate that it has custody of client assets on its Form ADV and comply with the Advisers Act Custody Rule. This includes:

(a) Maintaining client funds and securities with a qualified custodian;

(b) Having a reasonable basis to believe that the custodian sends account statements to clients at least quarterly; and

(c) Undergoing an annual surprise examination by an independent public accountant registered with, and subject to inspection by, the Public Company Accounting Oversight Board ("**PCAOB**").

An SEC-registered adviser that manages a private fund is not required to have the qualified custodian deliver quarterly account statements to investors or submit to surprise examinations, if the adviser sends the fund's annual audited financial statements to each investor within 120 days (or for a fund of funds, 180 days) after the end of the fund's fiscal year. The financial statements must be prepared in accordance with GAAP and must be audited by an independent public accountant registered with and subject to inspection by the PCAOB.

Exempt Reporting Advisers ("ERAs")

1. **Two SEC ERA Exemptions**. An investment adviser with RAUM under $150 million that advises only private funds is exempt from SEC registration as a private fund ERA under Advisers Act Rule 203(m). An investment adviser that only advises venture capital funds is exempt from SEC registration as a venture capital ERA under Advisers Act Rule 203(l). A "venture capital fund" is a private fund that: (a) holds no more than 20% of its capital commitments in non-qualifying investments (other than short-term holdings, qualifying investments generally consist of equity securities of qualifying portfolio companies that are acquired by the fund directly from the portfolio company); (b) does not borrow or otherwise incur leverage, other than limited short-term borrowing (excluding certain guarantees of qualifying portfolio company obligations by the fund); (c) does not offer its investors redemption or other similar liquidity rights except in

extraordinary circumstances; (d) represents itself as pursuing a venture capital strategy; and (e) is not registered under the ICA and has not elected to be treated as a business development company.

ERAs relying on either of the two exemptions are required to file Part 1A of Form ADV on IARD and disclose organizational and operational information but need not include all of the information required of SEC-registered investment advisers. An ERA is not required to prepare and deliver to investors Part 2 of Form ADV. A registered adviser that is switching to ERA status must first withdraw its registration by filing Form ADV-W on IARD before filing its first Part 1A as an ERA.

An adviser that is exempt from registering with the SEC because it is an ERA may also have to file as an ERA or register as an investment adviser in each state where it has an office. For example, California has a similar registration exemption that is discussed below.

ERAs should be aware that the SEC takes the view that advisers and their affiliates cannot circumvent the requirements under the Advisers Act by separately organizing if they are operationally integrated. For example, an investment adviser relying on the exemption from registration for private fund advisers under section 203(m) of the Advisers Act generally cannot be affiliated and operationally integrated with an adviser that relies on the venture capital fund exemption under section 203(l) of the Advisers Act. If the affiliates are operationally integrated, then each would fail to qualify for either of the SEC registration exemptions.

2. **Annual Updating Amendment to Form ADV**. If your firm is an SEC or California ERA (described below), you must file an annual updating amendment to its Form ADV, Part 1A each year on IARD within 90 days after the end of its fiscal year. For an adviser whose fiscal year ended December 31, 2024, the deadline is March 31, 2025. When you submit your firm's annual updating amendment, you must update the responses to all required items of Part 1A, including corresponding sections of Schedules A, B, C and D. The IARD filing fee for an SEC ERA's annual updating amendment is $150. There is no IARD filing fee for a state ERA's annual updating amendment.

3. **Other Amendments**. In addition to the annual updating amendment, an ERA must amend its Form ADV, Part 1A promptly if:

- Information in Items 1 (except Item 1.O. and Section 1.F. of Schedule D), 3 or 11 becomes inaccurate in any way; or
- Information in Item 10 becomes materially inaccurate.

4. **Additional Requirements for California ERAs**. An adviser that relies on the California ERA exemption from investment adviser registration in California is only eligible for this exemption if it provides advice solely to one or more qualifying private funds (which is a fund that qualifies for exclusion from the definition of investment company under one or more of ICA sections 3(c)(1), 3(c)(5) and 3(c)(7)). A California ERA must also continue to meet the following requirements in addition to updating its Form ADV, Part 1A:

- It must pay the application and renewal fees required of a California-registered adviser; and

- Neither the adviser nor any of its advisory affiliates may have committed any disqualifying act nor have done any of the acts or satisfied any of the circumstances providing grounds for the California Department of Financial Protection and Innovation (the "**DFPI**") to deny, suspend or revoke its or their investment adviser certificates. Disqualifying acts are set forth in Rule 262 of Regulation A under the Securities Act of 1933, and generally are acts that would result in a disciplinary action that must be disclosed on Form ADV.

A private fund adviser that relies on the California ERA exemption and advises a "retail buyer fund" must meet the additional requirements listed below. A retail buyer fund is a private fund that is not a venture capital company and that is excluded from the definition of "investment company" under ICA section 3(c)(1) or 3(c)(5). That is, a fund that is excluded under ICA section 3(c)(7) is not a retail buyer fund. Under the California ERA exemption, a venture capital company is similar to a venture capital fund as defined in Advisers Act Rule 203(l) (described above) but with a slightly broader definition.

- Each investor in a retail buyer fund must either (a) be an accredited investor or a manager, director, officer or employee of the adviser, or (b) obtain the interests in the fund through a divorce settlement, gift, inheritance or other transfer that is not a sale;

- At or before the time an investor invests in a retail buyer fund, the adviser must disclose in writing information about the services the adviser will provide and the duties, if any, it owes to the fund and such investor;

- The adviser must provide the fund's annual audited financial statements to each investor within 120 days after the end of each fiscal year (or 180 days for a fund of funds); the auditor must be a member of, and inspected by, the PCAOB; and

- The adviser must comply with the Advisers Act performance fee rule.

If your firm relies on the California private fund ERA exemption and its RAUM increases to over $25 million, it must file its SEC ERA notice (as either an SEC private fund ERA or SEC venture capital ERA) within 60 days thereafter. Please contact us immediately if you believe you may need to make this filing.

5. **Switching to SEC or California Registration**. If your California-based firm is relying on either SEC ERA exemption (for private fund ERAs or venture capital ERAs) or the California ERA exemption, it will lose that applicable exemption if it accepts any client that is not a private fund and must register with the SEC or the DFPI (depending on its RAUM) before accepting any such client.

In addition, if your firm (a) advises any private funds that do not qualify as venture capital funds, (b) reports on its Form ADV annual updating amendment that its RAUM has reached at least $150 million and (c) has complied with all reporting requirements applicable to an SEC private fund ERA, it must file an application to register as an investment adviser with the SEC and, if it has a California office, is likely required to make a notice filing in California within 90 days of filing its annual updating amendment. If your firm has not complied with all SEC private fund ERA reporting requirements, this 90-day transition period is not available. In that case, unless your firm qualifies for another exemption, its registration application must be approved by the SEC before its RAUM reaches $150 million.

If your firm is an SEC venture capital ERA and expects to advise a fund that does not qualify as a venture capital fund, and your firm does not qualify for the private fund exemption because your RAUM is $150 million or more, the SEC generally must approve your firm's application for registration before the firm may advise any fund that does not qualify as a venture capital fund.

Investment Advisers Certificated by California DFPI

1. **Annual Updating Amendment of Form ADV**. If your firm is a California-registered adviser, it must amend its Form ADV each year on IARD within 90 days after its fiscal year end. For an adviser whose fiscal year ended December 31, 2024, the deadline is March 31, 2025. The firm must update all of Parts 1, 2A and 2B.

When you amend Part 1, the IARD system will prompt you to indicate the type of amendment. You should select "annual updating amendment" and indicate that the amendment is for the fiscal year that ended December 31, 2024. Unlike Part 1, Parts 2A and 2B are not online forms. Instead, you must upload them to IARD as separate documents in text-searchable PDF format.

2. **California Annual Fees**. A California-registered adviser must pay a $125 annual fee before December 15 of each year. You should have received an electronic package from FINRA in late 2024 with instructions on how to pay this fee through the IARD system. If you did not receive that package or otherwise did not pay this annual fee, please contact us. An adviser that failed to pay the fee in December should have received a notice from FINRA and will now have a "Failure to Renew" registration status on the SEC's Investment Adviser Public Disclosure website. An adviser that continues to fail to pay the fee could have its investment adviser certificate summarily revoked.

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

4. **Part 2 Client Delivery Requirements**. The DFPI encourages all California-registered advisers to deliver Part 2 to clients on the same schedule that applies to SEC-registered advisers, which is summarized on page 11.

5. **Switching to SEC Registration**. If your firm's RAUM is $100 million or more, you should contact us to discuss whether you must register as an investment adviser with the SEC.

6. **Switching to the California Private Fund Adviser Exemption**. If your California-based firm's RAUM is below $150 million and it advises only private funds, it may be eligible for the California private fund adviser exemption, which is similar to the SEC ERA exemption summarized on pages 14 and 15. See pages 14 and 15 for a discussion of the California private fund adviser exemption.

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

8. **Balance Sheet and Income Statement, Minimum Financial Requirements Computation and Verification**. A California-registered adviser that has investment discretion over client assets or receives fees for advisory services 6 months or more in advance must (a) maintain in its records a written monthly calculation indicating that it satisfies California's minimum financial requirements (generally a minimum net worth of $10,000 for an adviser that does not have custody of client assets and $35,000 for an adviser that does have such custody) and (b) file with the DFPI an annual balance sheet and income statement prepared in accordance with generally accepted accounting principles, together with a schedule showing that the adviser satisfies the minimum financial requirements. These financial statements must be audited unless the adviser has not held or accepted custody of funds or securities for any client or owed money or securities to any client, during the period covered by the report.

The financial statements and accompanying schedules should be filed as of the same date for each calendar year, except that the first report must be as of a date within 12 months after the adviser's certificate became effective. You should submit the financial information with the verification form required by the DFPI within 90 days of the date the financial information is provided. The verification and minimum financial requirements forms can be found here: Verification Form and Minimum Financial Requirements Worksheet. Your firm's accountants may be able to assist you in preparing the statement of financial condition and income statement.

9. **Custody**. A California-registered adviser that holds, directly or indirectly, client assets or has the authority to obtain them must:

(a) Indicate that it has custody of client assets on its Form ADV;

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

(c) If advising a private fund:

(1) Send a statement to every investor at least quarterly that shows (A) the total amount of all additions to and withdrawals from the fund, (B) the opening and closing value of the fund for the reporting period, (C) a list of all of the fund's securities positions on the closing date of the reporting period that are required to be disclosed under GAAP for non-registered investment partnerships, and (D) a

list of all redemptions and withdrawals by the investor and the value of the investor's interest in the fund; and

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

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

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

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

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

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

California Investment Advisers Not Registered in California or with the SEC or Exempt.

If your firm has a California office and it is not (a) registered as an investment adviser with either the SEC or California, or (b) relying on the SEC's or California's ERA exemptions, you should contact us immediately. If your firm relies on either of the ERA exemptions, it must register with the SEC and/or California before accepting any client that is not a private fund, as described on pages 13 to 16.

Investment Advisers Not Registered with the SEC or States in which they have Clients or Offices or Exempt

If you are not registered with the SEC and have one or more clients or offices in any state other than California, you may be required to register in that state. Please contact us immediately if you believe you may need to register in a state.

In addition, if your firm's RAUM is $25 million or more, please contact us to discuss whether you must register with the SEC as an investment adviser or may rely on the SEC's ERA exemptions discussed on pages 13 and 14. An adviser relying on either of the SEC's ERA exemptions must file its initial Form ADV within 60 days after first relying on that exemption.

Other Issues

1. **California Consumer Privacy Act, as amended by the California Privacy Rights Act (the "CCPA") and Other Privacy Regulations**. Generally, an adviser that does business in California and as of January 1 of the calendar year had a gross annual revenue of over $26,625,000 million in the prior calendar year will be subject to CCPA privacy rules in the current calendar year. This gross annual revenue threshold adjusts every odd year based on increases to the Consumer Price Index. An adviser that is subject to the CCPA may need to update its website, develop an additional CCPA-specific privacy policy, provide notifications whenever personal information is collected from California residents and update its contracts with service providers, among other tasks. In addition, CCPA subject businesses with California-resident employees, job applicants, independent contractors and other individuals whose personal information is stored or processed in human resources information systems, CRM systems and contact management systems are also entitled to certain rights under the CCPA. More information can be found in our client alert: Upcoming July 1, 2023 Compliance Deadline Under the California Consumer Privacy Act. Penalties for noncompliance could be up to $2,663 per violation (and higher for intentional violations), with each impacted California consumer potentially giving rise to a separate violation.

Other jurisdictions have also adopted or are in the process of adopting consumer privacy protection requirements. Please contact us if you believe your firm is or may become subject to the CCPA or if you would like to discuss the applicability of the privacy requirements of other jurisdictions.

2. **Annual Privacy Policy Notice**. Investment advisers, whether or not registered with the SEC, and private funds domiciled in the U.S. or having U.S. investors, are subject to SEC and FTC regulations under GLBA governing the privacy of consumer financial information. These regulations require every adviser and private fund to notify clients and investors of the types of non-public personal information ("**NPI**") the adviser or fund collects and the extent to which it discloses that information. If the adviser or fund discloses NPI (other than certain exempt disclosures) it must give each consumer the opportunity to opt out of non-exempt disclosures. Examples of exempt disclosures are disclosures to the adviser's or fund's attorney, accountants or administrator, disclosures required by law or necessary to provide services that a consumer requests and disclosures made at a consumer's request. Non-exempt disclosures include sharing NPI with unaffiliated third parties for those parties to market their services to an adviser's consumer.

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

Advisers that may be subject to the CCPA, as described on page 19, should contact us to discuss how the CCPA's requirements interact with the privacy regulations described here, to ensure that their privacy notices and policies are consistent with both regulatory schemes.

3. **Pay-to-Play and Lobbyist Rules**. SEC rules disqualify investment advisers, their key personnel and placement agents acting on their behalf from seeking engagement by a government client if they have made political contributions that exceed specified thresholds. California requires internal sales professionals who meet the definition of "placement agents" (people who, for compensation, act as finders, solicitors, marketers, consultants, brokers or other intermediaries in offering or selling investment advisory services to certain government entities, including a state public retirement or university system) to register as lobbyists with the state and to comply with California lobbyist reporting and regulatory requirements.

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

4. **SEC Investment Adviser Marketing Rule**. The SEC Division of Examinations has published three risk alerts noting areas of examination focus for the SEC's rule governing marketing, testimonials and endorsements (the "**Marketing Rule**"). Marketing Rule compliance is anticipated to continue to be an area of focus for SEC examiners in 2025 as the SEC continues its enforcement sweep for Marketing Rule compliance. Additional information on the rule is available in our client alerts: SEC Marketing Rule Information and Upcoming Compliance Deadline for SEC Marketing Rule.

5. **PTE Tax and the SALT Deduction**. Many states, including California, have passed a workaround to the $10,000 cap on a federal income tax deduction for state and local taxes. The workaround varies state by state, but generally certain passthrough entities may pay an entity-level tax on behalf of their owners' share of the passthrough entity's income. The passthrough owners then receive a tax credit to be applied to their personal state income tax. For federal income tax purposes, the entity level tax generally acts as a deduction against an owner's share of the passthrough's income, thus reducing the owner's overall federal taxable income (effectively making such state income taxes deductible). Each state's version of this workaround may require additional structuring considerations to meet the applicable requirements, and federal law remains unclear on a number of points. Fund managers earning both ordinary income on management fees and long term capital gains on carried interest and invested capital should evaluate whether these income sources could benefit from this passthrough entity tax.

6. **California Sourcing of Non-Resident Asset Management Fees**. California intends to finalize regulations under consideration since 2017, which are expected to go into effect for tax years beginning on or after January 1, 2025. These regulations would subject asset management fees to income tax in California if the asset manager (a firm that provides asset management services) receives fees from California-resident investors. Asset management services are defined under the regulations as providing direct or indirect management, distribution or administration services to a fund.

Asset managers not resident in California are generally subject to income tax in California on income sourced to California. Sales income is determined to be sourced to California based on the business' sales from within California divided by the business' gross receipts globally. Sales are determined to be within California if the customers received the benefit of services in California.

The proposed regulations provide that the benefit of asset management services is received where the fund's investors are domiciled. As a result, a share of asset management fees would be subject to tax based on the average percentage of interests in the fund held by California-domiciled investors. An investor's domicile is presumed to be the investor's billing address, unless the asset manager has actual knowledge that the investor's principal place of business is different from the investor's billing address.

7. **Continuing Education Requirements for Investment Adviser Representatives**. As of January 1, 2025, twenty-two states, including California, have adopted a continuing education requirement for investment adviser representatives (an "**IAR**") acting for either a state-registered or SEC-registered adviser. Generally, supervised persons of investment advisers who provide personal investment advice to individuals who are not "qualified clients" (as defined under the Advisers Act) may have to comply with Investment Adviser Representative licensing requirements. Many other states are in the process of adopting such requirements for IARs subject to state regulation. These requirements, based on a model securities rule adopted by the North American Securities Administrators Association (the "**NASAA**") in 2020, require an IAR to complete 12 continuing education credits by the end of each year. The 12 credits must include 6 credits of Products and Practices courses and 6 credits of Ethics and Professional Responsibility courses. Details of how to sign up for approved continuing education courses and track continuing education credit can be found on NASAA's website here: https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-representative-continuing-education.

The 2025 continuing education compliance period runs from January 1, 2025, through December 31, 2025. However, an IAR registering for the first time in a state in 2025, is not subject to the continuing education requirements until 2026. Similarly, if an IAR is registered only in states without a continuing education requirement and subsequently becomes registered in a state with a continuing education requirement for the first time, that IAR will not need to comply with the annual requirements until the next calendar year. For example, if an IAR has not been registered in any states requiring continuing education and registers in California in 2025, that IAR will begin complying with the California continuing education requirements in 2026.

An IAR who is registered in multiple states who is also registered as an IAR in his or her home state is in compliance if the IAR's home state has continuing education requirements that are at least as stringent as the model securities rule and the IAR is in compliance with the continuing education requirements of his or her home state.

8. **Cryptocurrency Developments.**

(a) **New IRS Regulations for Brokers of Digital Assets**. In July 2024, the Internal Revenue Service ("**IRS**") and U.S. Department of the Treasury issued final regulations implementing reporting rules for brokers of digital assets, requiring digital asset brokers to file information returns and furnish payee statements reporting gross proceeds and adjusted basis on dispositions of certain digital assets effected for customers. Digital asset broker reporting would generally begin for transactions undertaken in 2025, requiring reporting starting in 2026; however, the final regulations delayed cost basis reporting, which will only be required for transactions undertaken during or after 2026. Examples of digital asset brokers under these regulations include custodial digital asset trading platforms, digital asset hosted wallet providers, digital asset kiosk owners and digital asset issuers that regularly offer to redeem those digital assets.

On December 27, 2024, the IRS and Treasury released final regulations that further interpreted the definition of digital asset broker to include digital asset middlemen that provide "front-end services" and certain transaction effectuating services for DeFi transactions, expanding the scope of the service providers subject to the broker reporting regulations summarized above. Front-end service providers include graphical user interfaces and similar software programs which allow users to operate trading protocols, such as Uniswap. Digital asset middlemen, who know or are in a position to know their customers and the nature of the transaction, providing effectuating services like digital asset payment processing or commodities transactions involving digital assets, are also brokers under the regulations. These rules for DeFi participants will be effective beginning January 1, 2027, and may require significant changes in DeFi architecture to record required information from transaction participants. Three blockchain advocacy groups have sued over these regulations in the Northern District of Texas, claiming these latest regulations are unconstitutional. It is unclear whether this suit will be successful, but if not, these new regulations may cause significant changes to the U.S. DeFi industry.

(b) **Compliance.** Some compliance considerations for advisers that manage funds or other accounts focused on, or invested in, cryptocurrencies, initial coin offerings and other blockchain-related investments are:

- The Custody Rule under the Advisers Act generally requires that SEC-registered investment advisers hold client funds or securities at a "qualified custodian" (generally a bank, broker-dealer or futures commission merchant).

- National Futures Association ("**NFA**") Bylaw 1101 prohibits any registered CPO or CTA from conducting futures-related business with non-members that are required to be registered with the CFTC but have not done so (such as unregistered contract markets that provide U.S. users leveraged exposure to digital assets in violation of the Commodity Exchange Act). Registration status can be confirmed via the NFA BASIC database.

- Advisers trading digital assets should monitor the registration status of their qualified custodians and centralized exchanges used for trading digital assets and digital asset derivatives. Advisers should be prepared to change such service providers, as needed, to comply with SEC and/or NFA requirements to use qualified custodians and registered exchanges, as applicable. The regulatory status of service providers in the digital asset space is quickly evolving and can be convoluted.

- Any registered CPO or CTA that executes a transaction involving a cryptocurrency or cryptocurrency derivative must notify the NFA by amending the firm-level section of its annual questionnaire. NFA's Interpretive Notice 9073 establishes disclosure requirements for registered CPOs and CTAs trading in cryptocurrency or cryptocurrency derivatives. In addition, registered CPOs and CTAs that have executed transactions involving cryptocurrencies or related derivatives must report the number of their client accounts that executed one or more transactions involving a cryptocurrency and the number of their client accounts that executed one or more transactions involving a cryptocurrency derivative during each calendar quarter. This information must be submitted to the NFA no later than 15 days after the end of a quarter via the firm's questionnaire.

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

9. **Section 83(b) Elections**. Advisers frequently grant employees or service providers a share of the performance allocation or the carried interest, otherwise known as a profits interest, that may be subject to vesting. Such profits interests entitle the holder to a share of profits generated after their grant date. Section 83(b) elections enable taxpayers to be taxed on the value of nonvested property at the time of grant and the time of election, rather than at the time of vesting, when presumably the value of the property will have increased.

The IRS has ruled that certain profits interests meeting a safe harbor are taxed at a liquidation value of zero. Safe harbor requirements include, but are not limited to the following: (a) the profits interest does not entitle the owner to a predictable stream of income, (b) the interest cannot be transferred within two years of grant and (c) the interest cannot be an ownership interest in a publicly traded partnership.

The IRS has issued authority that a nonvested safe harbor profits interest is not taxable to the recipient even without a Section 83(b) election. Because this authority only applies to nonvested profits interests that satisfy the safe harbor requirements, it is typical for principals of general partner entities to venture capital funds or private equity funds to incentivize employees by making grants of profits interests that involve 83(b) elections.

In November 2024, the IRS released Form 15620, an electronic form for making certain elections described under Section 83(b) of the Code. The electronic Form 15620 provides a method for taxpayers to make Section 83(b) elections without drafting their own form. However, because this Form 15620 does not provide a means for a grantee to demonstrate that their election is being made on a protective basis, and because taxpayers may still file their own forms, many advisers may continue to facilitate profit interest grantees filing a hard copy form rather than the electronic version.

10. **Investment Fund Issues.**

(a) **Funds that Buy New Issues**. Generally, you may rely for 12 months on representations made by investors in your funds in their offering questionnaires regarding their eligibility to participate in profits and losses from new issues. After that, you must obtain a re-certification of those representations each year. A convenient way to obtain the re-certifications is to send a request in the annual letter that your firm sends to investors. Re-certifications may be obtained by negative consent.

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

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

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

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

(i) **Non-U.S. Funds**. The Cayman Islands, the British Virgin Islands and many other jurisdictions have passed legislation implementing FATCA and CRS obligations for investment funds organized in those jurisdictions. Many jurisdictions have adopted forms of FATCA/CRS self-certification questionnaires to obtain from investors all requisite information and a satisfactory form of declaration as to the investor's FATCA/CRS status. Non-U.S. funds should use either these questionnaires or other questionnaires (many fund administrators have their own preferred forms) that satisfy all the due diligence requirements. An offshore fund that attaches those forms to its documents should be sure it is using the current versions.

The local requirements implementing FATCA and CRS require covered financial institutions to notify (or register with) the local tax information authority when the institution has reporting obligations under these requirements, appoint a designated point of contact, keep that information up to date, undertake due diligence in relation to investors and annually upload data about each reportable account to that local authority. Non-U.S. funds should work with counsel or other service providers familiar with the applicable jurisdiction's requirements to determine the applicable due diligence, filing and compliance requirements and due dates.

(ii) **U.S. Funds**. A U.S. fund with offshore investors must obtain information from those investors identifying direct and indirect U.S. account holders, using the most recent IRS forms.

(d) **Cayman Islands Funds Beneficial Ownership Transparency Act**. The Cayman Islands' new beneficial ownership regime (the "**BOTA Regime**") under the Beneficial Ownership Transparency Act (As Revised) (the "**BOT Act**") became effective on July 31, 2024. The BOT Act aims to align the Cayman Islands' BOTA Regime with global standards regarding transparency on beneficial ownership, such as the U.S. Corporate Transparency Act, and replaces the previous beneficial ownership reporting regime introduced in 2017. The BOTA Regime mandates more comprehensive transparency measures regarding beneficial ownership to combat money laundering, tax evasion and terrorist financing. Key features of the BOTA Regime include: (i) an extended scope to all Cayman Islands legal entities, including exempted limited partnerships and limited partnerships; (ii) amending the exemptions available to reporting entities; (iii) clarifying the definition of "beneficial owner" that must be reported on the filing; and (iv) providing alternative compliance routes for certain reporting entities. Certain foreign entities, including registered foreign companies like the U.S. general partners of Cayman Islands partnerships, are excluded from the BOT Act requirements. The BOT Act imposes administrative penalties and other sanctions for non-compliance, including fines and imprisonment for persistent offenders. Enforcement of the new BOTA Regime is expected to have begun. If you would like more information on the BOT Act and BOTA Regime, please contact us or your Cayman Islands counsel.

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

(i) **Second Markets in Financial Instruments Directive ("MiFID II")**. MiFID II may affect non-EU investment advisers that:

- Trade on EU trading venues;

- Trade with (or are clients of) EU counterparties;
- Market their funds through EU distributors; or
- Provide investment management services directly to EU clients.

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

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

The prevailing market view appears to be that KIDs must only be provided to existing retail investors when they make new investments, although this is not entirely clear under the PRIIPs Regulation. However, if you want to accept investments from new EU retail investors, you must produce a KID for each fund you offer to retail investors in the EU and publish the KIDs on its website or coordinate with distributors of its funds in the EU to produce the KIDs.

(iii) **UK and EU General Data Protection Regulation ("GDPR")**. UK or EU GDPR may apply to a U.S. fund manager that offers fund interests in the UK or EU. UK or EU GDPR contain requirements to provide notices about how personal information will be used, limitations on retaining personal data, requirements to delete or hand over an individual's information on request, mandatory data breach notification, requirements to maintain records of data processing activities and transfers of personal data, and standards for data controllers to demonstrate that they have obtained valid consent for certain data processing activities. If your firm (or a third party acting on its behalf) carries out personal data processing activities through a UK or EU establishment (such as by having an office or agent in the UK or an EU member state), you may be subject to UK or EU GDPR. If not, but your firm either (A) targets offering goods or services to individuals in the UK or EU (such as through specialized currency offerings of funds or other customized UK or EU marketing efforts), or (B) monitors the online behavior of UK or EU individuals (such as by profiling such persons via cross-context behavioral advertising), then you also may be subject to UK or EU GDPR (as applicable). Please refer to our prior annual letters for more detailed information on GDPR or contact us regarding your particular inquiry.

(iv) **Alternative Investment Fund Managers Directive ("AIFMD")**. AIFMD attempts to harmonize across the EU how investment funds are marketed and managed. If your firm manages a fund that has EU investors, or your fund is marketing in the EU or accepts or would accept EU investors even if it is not marketing there, your firm is likely subject to AIFMD. The Council of the EU published amendments to AIFMD (commonly referred to as AIFMD II) in 2024 and EU member states have 2 years to transpose those rules into national law. AIFMD II will generally apply from April 16, 2026, onwards, with some rules subject to a transitional period. AIFMD II introduces new requirements and restrictions for alternative investment funds that originate loans, and introduces additional investor disclosure requirements, including reporting information regarding resources that managers use to comply with AIFMD, how managers prevent conflicts of interest and fees, charges and expenses borne by investors. The AIFMD regime in the UK and EU will differ materially once AIFMD II is implemented. Please refer to our prior annual letters for more detailed information on AIFMD or contact us regarding how AIFMD II may affect your firm and any funds that it manages.

(f) **Other International Offering/Sale Requests**. Clients frequently ask us about offering fund interests in non-EU countries. Many countries have strict private offering requirements. Please contact us before sending marketing materials or conducting any discussions with a prospective non-U.S. investor.

(g) **Amendments to Form D**. If you are offering private fund interests, it is likely you are required to file a notice of the offering of fund interests on Form D and amend it annually. Form D is filed electronically with the SEC and on paper or electronically in states where the fund sells interests. We can prepare Form D for your signature and file it on your behalf. If you have not filed a Form D or we have not filed one on your behalf, you should contact us.

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

(i) **Form PF**. An investment adviser must file Form PF if its RAUM attributable to private funds is $150 million or more as of December 31 of any year and it is registered (or required to be registered) either with the SEC as an investment adviser or with the CFTC as a CPO or CTA. The SEC and CFTC are required to keep all Form PF information confidential and cannot be compelled to disclose it pursuant to the Freedom of Information Act but may use it for inspection and enforcement purposes. In most cases, Form PF must be filed annually, except (A) quarterly event reporting is required by private equity fund advisers for certain triggering events and (B) large hedge fund advisers (with at least $1.5 billion in hedge fund assets under management) must report within 60 calendar days after the end of each calendar quarter and within 72 hours of certain triggering events. For more information on periodic Form

PF filing requirements that became effective in 2023, see our client alert SEC Adopts Amendments to Expand the Scope of Form PF.

For advisers who are subject to quarterly filings and whose fiscal year ended December 31, 2024, the Form PF filing deadline is April 30, 2025. When a hedge fund adviser's RAUM attributable to private funds first reaches $1.5 billion as of the end of any month, it must file a Form PF within 60 days after the end of the calendar quarter in which it exceeds that threshold and thereafter must file an updated Form PF within 60 days after the end of each calendar quarter.

(j) **Filings with the U.S. Bureau of Economic Analysis and Department of the Treasury**.

(i) **Form BE-10 and BE-180**. Every 5 years, the U.S. Bureau of Economic Analysis (the "**BEA**") conducts a benchmark survey of U.S. direct investment abroad by collecting Form BE-10 and a survey of U.S. financial services providers and foreign persons by collecting Form BE-180. The next BEA benchmark surveys will be due in 2025. U.S. investment advisers with non-U.S. clients and investment funds may be required to file one or both of the BE-10 and BE-180 surveys.

A Form BE-10 survey will be required of any U.S. person that has a foreign affiliate – that is, that has a direct or indirect ownership or control of at least 10% of the voting equity of a foreign business enterprise during the U.S. person's 2024 fiscal year, including offshore master and feeder funds. Advisers are also expected to be required to file a Form BE-10 if their investment funds together own or control, directly or indirectly, 10% or more of the voting securities of any foreign business enterprise. Certain advisers may also receive a notification from the BEA to file Form BE-10. If an adviser is notified by the BEA to file a Form BE-10 but they do not meet the filing requirements, the BE-10 Claim for Not Filing must be submitted. If an adviser is not notified by the BEA to file a Form BE-10 and does not meet the BE-10 filing requirements, no action will be necessary. If an adviser is not notified by the BEA to file a Form BE-10, but does meet the filing requirements, it should plan to file. The filing deadline is May 30, 2025. Updated 2025 filing instructions for Form BE-10 and detailed guidance on how to use the BEA's e-filing system will be available on the BEA website (www.bea.gov) closer to the filing deadline.

Advisers who are required to file Form BE-180 should be notified of their filing requirements by the BEA in May 2025 and the associated BE-180 filings will be due July 31, 2025. This filing generally affects advisers who receive management fees or profit allocations from non-U.S. persons (including from a non-U.S. investment fund, even if all of the investors in the non-U.S. fund are U.S. tax exempt persons). It is not expected for advisers to be required to file a Form BE-180 unless they are notified by the BEA.

(ii) **Form SLT**. The U.S. Department of the Treasury's Form SLT (Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents) is designed to gather monthly information about holdings of certain securities. If your firm has less than $1 billion in assets under management, it generally will not be required to file Form SLT. You should discuss Form SLT filing requirements with your firm's accountants if (A) your firm is the investment adviser to a non-U.S. investment fund or (B) it manages a U.S.-based investment fund that holds securities issued by non-U.S. issuers and are not held by a U.S. custodian (for example, an investment fund holds an investment in a Brazilian security that is not held by a U.S. custodian).

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

(l) **Investor Count**. If any private fund that you manage relies on the exception from the definition of "investment company" in ICA section 3(c)(1), you should consider consulting with us regarding the number of investors in the fund for purposes of the section 3(c)(1) 100-investor limit for investment funds. The SEC rules for counting such investors are complex. Please contact us if you would like our assistance in determining whether the funds your firm manages meet the section 3(c)(1) investor limits.

If you manage a qualifying venture capital fund, the fund may not have more than 250 investors if it (i) has no more than $12 million in aggregate capital contributions and uncalled committed capital, (ii) is a "venture capital fund" as defined for the "venture capital fund adviser" exemption under the Advisers Act and (iii) does not make a public offering of its securities. A venture capital or other fund may still rely on the traditional section 3(c)(1) 100-investor exclusion.

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

(n) **Issues Affecting Managers of Funds that Trade Commodity Interests and Swaps**. A discussion of requirements applicable to registered CPOs and CTAs is on pages 33 to 35. The following issues apply to advisers that may not be so registered but that trade commodity interests, certain swaps or retail off-exchange forex contracts for the funds and accounts that they manage.

(i) **CFTC Self-Executing Relief for Delegation by CPOs**. If a fund's CPO (typically the general partner of a fund organized as a partnership or the directors of a fund organized as a corporation) is not registered as a CPO, it may wish to delegate its CPO responsibilities rather than registering. The CFTC permits delegation without any filing as long as the designated CPO is registered and the delegating CPO and the designated CPO meet certain requirements. Please contact us if you would like to discuss this delegation.

(ii) **Swaps**. The definitions of "commodity pool operator" and "commodity trading adviser" include advisers that invest in certain swaps. An investment adviser of accounts that invest in such swaps is a CPO or CTA, or both, even if it does not invest in futures or other commodity interests. Therefore, advisers must determine whether the instruments in which they invest include swaps that are regulated by the CFTC. The definition of "swap" is complex. Some instruments that are commonly called swaps are not treated as swaps subject to CFTC regulation, and some instruments that are not traditionally called swaps are regulated by the CFTC as swaps. Perpetual futures, a derivative contract that enables ongoing speculation on the future price of a cryptocurrency asset, are swaps regulated by the CFTC as commodity interests. If you have not considered or discussed with us whether your firm's swaps trading might cause it to be a CPO or a CTA, you should do so immediately.

Individuals registered as associated persons ("**APs**") of NFA members that engage in swaps activity must meet the NFA's Swaps Proficiency Requirements. Each NFA member with APs required to meet these requirements must designate a Swaps Proficiency Requirements Administrator who will coordinate enrollment and track progress. FAQs regarding these requirements are available on the NFA website.

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

A CPO relying on the 4.13(a)(3) exemption must claim the exemption by filing a notice with the NFA and reaffirm that claim annually within 60 days after the end of each year. The 2025 reaffirmation is due by March 1, 2025. The NFA should have sent email reminders of the reaffirmation requirement in December 2024.

(iv) **Advisers that Rely on CTA Registration Exemption**. In addition to serving as a CPO, an investment adviser to a fund that invests in commodity interests, CFTC-regulated swaps or retail forex transactions is the CTA of that fund. An adviser to a separately managed account that invests in commodity interests, swaps or retail forex transactions is also a CTA. A CTA is required to register with the CFTC unless it qualifies for an exemption. The exemptions most commonly used by investment advisers are self-executing and do not require any action by an adviser. Typically, an adviser relying on one of these exemptions provides advice solely to pools for which the adviser is exempt from CPO registration or provides only limited advice regarding commodity interests, swaps and retail forex transactions. However, some advisers rely on the exemption in CFTC Rule 4.14(a)(8). An adviser relying on this exemption must claim it by filing a notice with the NFA and reaffirm it annually within 60 days after the end of each year. Please contact us if you would like to discuss exemptions from CTA registration.

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

(a) **Schedule 13D/13G**. If you have or share investment discretion or voting power over 5% or more of a class of equity securities of a public company, you may be required to file Schedule 13D or 13G. If you have reached or anticipate reaching that threshold with respect to any class of equity securities, you should contact us and review the filing deadlines described in our client alert available here: Amendments to Rules Governing Beneficial Ownership Reporting.

Unless you qualify to file a Schedule 13G, you must file a Schedule 13D within 5 business days after the date on which your beneficial ownership of a security exceeds 5%. If you have filed a Schedule 13D, and the information in it materially changes (including if your beneficial ownership of a security changes by more than 1% of the outstanding shares), you are required to file an amended Schedule 13D within 2 business days of such material change.

If you are eligible to file a Schedule 13G, the deadline for you to file a Schedule 13G depends on whether you are a qualified institutional investor or a passive investor. In general, a qualified institutional investor must file an initial Schedule 13G within 45 days after the end of the calendar quarter in which their beneficial ownership of a security exceeds 5%. A passive investor must file an initial Schedule 13G within 5 business days after the date on which its beneficial ownership of a security exceeds 5%.

If you have filed a Schedule 13G and the information in it has changed materially as of the last day of a calendar quarter from the latest Schedule 13G you have filed, you are required to file an amendment to that Schedule 13G within 45 days of the end of the quarter. In addition, if you are a qualified institutional investor, you must amend a Schedule 13G within 5 business days of the end of a month if your beneficial ownership as of the last day of that month exceeds 10% and, thereafter, if your beneficial ownership as of the last day of the month changes by more than 5%. If you are a "passive investor," you must amend Schedule 13G within 2 business days of the date on which your beneficial ownership exceeds 10% and, thereafter, within 2 business days if your beneficial ownership changes by more than 5%.

The rules regarding calculating your beneficial ownership percentage of a class of securities and eligibility to file Schedule 13G are complex.

(b) **Forms 3, 4 and 5**. If you have or share investment discretion or voting power over more than 10% of a class of equity securities of a publicly traded company, or if you or any of your affiliates is a director or officer of a publicly traded company, you or your affiliate may be deemed a statutory insider of that company for purposes of section 16 of the Exchange Act and be required to file an initial ownership report on Form 3 with the SEC. Form 3 generally must be filed by a 10% owner within 10 days after exceeding the 10% threshold and by a director or officer within 10 days after assuming that office. Thereafter, such an insider generally must report changes in its beneficial ownership of securities (typically, a purchase or sale of the issuer's securities, including cross trades between funds that your firm manages) on Form 4 within 2 business days after the date of the change. Every person who was an insider of a publicly traded company must file an annual report on Form 5 with the SEC within 45 days after the end of the company's fiscal year, to report previously unreported transactions during the year that should have been reported on Form 4 but were not, and certain other transactions that may be reported on Form 5.

(c) **Form 13F**. If your firm exercises investment discretion over $100 million or more that is invested in "13(f) securities" as of the end of any month in a year, you must report such holdings to the SEC on Form 13F within 45 days after the end of that year and must make quarterly filings thereafter. 13(f) securities typically include stocks, certain options, warrants, convertible debt securities and exchange-traded funds that are traded on a national securities exchange. The SEC's official list of 13(f) securities is updated on a quarterly basis and is posted here: 13(f) Securities List. If your firm first became required to file Form 13F in 2024, your initial Form 13F is due by February 14, 2025.

(d) **Form N-PX**. Each Form 13F filer must report annually on Form N-PX how it voted proxies concerning certain shareholder advisory votes on executive compensation ("say-on-pay" votes). You are not required to report how you vote proxies on other matters. Form N-PX is due no later than August 31 of each year for the most recent 12-month period ending on June 30th. The next reporting deadline for Form N-PX is August 31, 2025, with these reports covering the period from July 1, 2024, through June 30, 2025.

(e) **Form 13H**. If your firm directly or indirectly, including through entities that it controls, purchases or sells, through one or more registered brokers, any NMS security on behalf of any discretionary accounts in an aggregate amount that exceeds the identifying activity threshold, you must file Form 13H with the SEC within 10 days after crossing that threshold. The identifying activity of threshold is (a) at least 2 million shares or $20 million during any day, or (b) 20 million shares or $200 million during any calendar month, you must file Form 13H with the SEC within 10 days after crossing that threshold. NMS securities are typically exchange-listed equities, ETFs and options.

When your firm files Form 13H, it will receive a "large trader identification number," or "LTID," from the SEC. You must provide your firm's LTID to each of the brokers with which your firm has an account. Those brokers must record trading information associated with this LTID and disclose it to the SEC on request. You must amend Form 13H within 10 days after the end of any calendar quarter during which information in your last filed Form 13H becomes inaccurate. Whether or not there have been any changes in the information in your firm's Form 13H, you also must amend it the Form 13H annually within 45 days of the end of each calendar year. The annual amendment for 2024 is due by February 14, 2025. Please contact us immediately if you would like our assistance in filing the amendments to your Form 13H.

12. **Profit Sharing and Waivers**. Your firm may have issued profit interests to key employees and partners. If your operating agreement or limited partnership agreement provides that the manager or general partner may adjust each participant's profit interest for the coming year on or before a specified date (typically January 31 of that year), you should make these allocation decisions, in writing and in accordance with the applicable operating agreement or limited partnership agreement, on or before that specified date. If you plan to waive management fees (including in lieu of cash payments on a general partner commitment) or items of profit or gain (including to plan into long-term capital gains), you should make these decisions in writing in accordance with the applicable underlying fund agreements.

13. **Covenants in Swap, Securities Lending and Margin Lending Agreements**. Most swap, securities lending and margin lending agreements (some of which may be in brokerage account agreements) include covenants that require your firm or your clients or funds to notify the

counterparty if certain events occur. One common covenant requires notice if the net asset value of the client or fund decreases more than a specified percentage during a given period or below a specified amount. You should review those provisions carefully. Other common covenants may require you to deliver information (such as monthly NAV estimates and your funds' audited financial statements) by specified deadlines.

14. **Foreign Bank Account Reports**. Every U.S. person or entity that had a financial interest in, or signatory authority over, a financial account in a foreign country in 2024 generally must file FinCEN Form 114 if the aggregate value of all such accounts exceeded $10,000 at any time during 2024. Form 114 must be received by the Department of Treasury by April 15, 2025, which may be automatically extended to October 15, 2025. Failure to file Form 114 when required can result in significant monetary or criminal penalties. You should consult your accountants on whether you must file Form 114.

15. **Designation of Liquidating Person or Successor Manager**. If you manage a private fund under a limited partnership agreement that provides for the designation of a "liquidating person" to liquidate the partnership's assets if the general partner is unable to do so, you should confirm that your appointment of a liquidating person, if any, is consistent with your current intentions. Even if you do not manage a private fund, you should consider designating a successor manager to manage or wind up your firm if you are unable to do so, especially if your firm has only one portfolio manager. The SEC staff has included questions about succession plans in some examinations. Please contact us if you would like to appoint or replace a liquidating person or successor manager.

16. **Registered CPOs or CTAs**. If your firm is registered as a CPO or CTA, you must comply with the requirements listed below. Please see also the discussion on pages 29 and 30 of issues that may apply to advisers that invest in commodity interests and certain swaps but are not registered as CPOs or CTAs.

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

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

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

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

- Test your disaster recovery plan and make any necessary adjustments;

- Provide ethics training in accordance with the NFA's rules;
- Review the CPO's or CTA's written information systems security program and provide related cybersecurity training to employees; and
- File any new exemption notices with the NFA.

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

(i) **Reporting Requirements**. Your firm must file CFTC Form CPO-PQR and NFA Form PQR with the NFA. The two forms overlap considerably, and all CPOs are permitted to meet their CFTC Form CPO-PQR filing requirement by filing NFA Form PQR.

Filings are required quarterly or annually, depending on the firm's assets under management ("**AUM**"). The method of calculating AUM for this purpose differs from the calculation of RAUM for SEC purposes. A late Form CPO-PQR is subject to a $200 fee for each business day it is late. Payment and acceptance of such fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

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

(iii) **Offering Document**. If your firm is soliciting new investors for your pools, you must distribute an offering document that complies with specific CFTC rules and filing requirements unless you have made a filing claiming relief from certain of those obligations.

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

(i) **Reporting Requirements**. You must file Form CTA-PR with the NFA annually within 45 days after the end of each year, and NFA Form PR quarterly within 45 days after the end of the quarters ending in March, June and September. Form PR is very similar to Form CTA-PR but contains additional information. A late Form CTA-PR is subject to a $200 fee for each business day it is late. Payment and acceptance of the fees, however, does not preclude the NFA from filing a disciplinary action for failure to comply with the deadline.

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

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

SHARTSIS FRIESE LLP