January 18, 2024

2024 REGULATORY UPDATE FOR INVESTMENT MANAGERS AND PRIVATE FUNDS

By Evan Hall, Jacqueline Jensen, Georgia Neal

The purpose of this update is to remind investment advisers, investment managers, private funds, commodity pool operators and commodity trading advisors about various annual and periodic regulatory, legal, reporting, compliance and other obligations, considerations and requirements, including required filings and reports with due dates in 2024. This update does not purport to be a comprehensive or exhaustive overview of all applicable compliance, reporting, regulatory, legal or other obligations that are or may be applicable to investment advisers, investment managers, private funds, commodity pool operators and/or commodity trading advisors.

FORM ADV ANNUAL UPDATING AMENDMENT FOR RIAs; ANNUAL DELIVERY OF PART 2A TO CLIENTS

Annual Updating Amendment

Each registered investment adviser ("RIA") must file an annual updating amendment to its Form ADV (including Part 1A and Part 2A) to update its responses to all items and questions within 90 days of the end of each fiscal year. Accordingly, an RIA with a December 31 fiscal year end will be required to file an annual updating amendment to its Form ADV by **March 30, 2024**. Because March 30 falls on a Saturday, we encourage RIAs to file their Form ADV annual updating amendments by **Friday, March 29, 2024**. The Form ADV annual updating amendment is filed electronically with the Securities and Exchange Commission ("SEC") (or applicable state regulatory authorities) via the Investment Adviser Registration Depository ("IARD"). An RIA must include the summary of material changes required by Item 2 of Part 2A either in the brochure (cover page or the page immediately thereafter) or as an exhibit to the brochure. Amendments to Part 2B of Form ADV generally are not required to be filed with the SEC (unless requested) or made publicly available on the IAPD website, but investment advisers registered with the State of Texas or other state regulatory authorities may be required to file amendments to Part 2B of Form ADV with such authorities (including as part of the annual updating amendment).

Please note that the IARD charges filing fees in connection with Form ADV annual updating amendments and each RIA should review the balance in its IARD account at FINRA to ensure that sufficient funds are available to cover such fees. SEC-registered RIAs must pay the filing fee reflected in the table below based on the amount of their regulatory assets under management. Filing fees for state-registered RIAs are waived.

Regulatory Assets Under Management	Filing Fee
More than $100 million	$225
$25 million to $100 million	$150
Less than $25 million	$40

Annual Delivery of Part 2A to Clients
Within 120 days of the end of each fiscal year, an RIA generally must deliver to each of its clients either (1) an updated Part 2A of Form ADV (including a summary of any material changes), or (2) a summary of any material changes to Part 2A of Form ADV, together with an offer to provide the updated Part 2A of Form ADV to any client promptly upon request. As a result, an RIA with a December 31 fiscal year end must deliver the updated Part 2A of Form ADV to clients by **April 29, 2024**.

Other-Than-Annual Amendments
In addition to the annual updating amendment, an RIA must file an "other-than-annual" amendment to Part 1A of its Form ADV promptly if and as required pursuant to General Instruction 4 to Form ADV. An RIA must also amend (and file) Part 2A of Form ADV promptly whenever any information in Part 2A of Form ADV becomes materially inaccurate.

FORM ADV ANNUAL UPDATING AMENDMENT FOR ERAs

Advisers relying on the "private fund adviser" and/or the "venture capital fund adviser" exemptions from registration as an investment adviser ("exempt reporting advisers" or "ERAs") are required to file reports with the SEC (and/or applicable state regulatory authorities) on Part 1A of Form ADV electronically via the IARD system. Like an RIA, an ERA generally must file an annual updating amendment to its Form ADV (on Part 1A of Form ADV) within 90 days of the end of its fiscal year. As a result, an ERA with a December 31 fiscal year end must file an annual updating amendment to its Form ADV by **March 30, 2024**. Because March 30 falls on a Saturday, we encourage ERAs to file their Form ADV annual updating amendments by **Friday, March 29, 2024**. The fee for initial reports and each annual updating amendment is $150 for an ERA and fees must be credited to an ERA's IARD account before an ERA can submit any filing. In addition to annual updating amendments, an ERA must also file an "other-than-annual" amendment to Form ADV promptly if and as required pursuant to General Instruction 4 to Form ADV.

An ERA relying on the private fund adviser exemption must calculate annually the private fund regulatory assets under management that it manages and report this amount on its annual Form ADV amendment. A private fund adviser that has complied with all ERA reporting requirements but is no longer eligible for the private fund adviser exemption because its regulatory assets under management meets or exceeds $150 million as of the end of its fiscal year must apply for registration with the SEC up to 90 days after filing its annual updating amendment and may continue advising private fund clients during this period. An adviser relying on this exemption, however, must be registered with the SEC (or, if applicable, one or more applicable states) prior to accepting a non-private fund client.

FORM CRS

Overview
All RIAs and broker-dealers that offer or provide (or seek or expect to offer or provide) services to "retail investors" are required to prepare and file the Form CRS ("relationship summaries") with the SEC (via the IARD system) and deliver copies of such relationship summaries to their current and prospective "retail investors".

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For purposes of Form CRS, "retail investor" is defined as "a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes". Importantly, firms should note that all natural persons, regardless of net worth or sophistication, are included in the definition of "retail investor". RIAs and broker-dealers that do not provide or offer services to "retail investors" are not required to prepare, deliver or file a Form CRS. For example, an RIA whose sole clients are pooled investment vehicles is not required to prepare Form CRS, even if the vehicles have one or more investors that are natural persons.

Form CRS Delivery and Updating Requirements
An RIA generally must deliver a relationship summary to each retail investor before or at the time such RIA enters into an advisory agreement with such retail investor. An RIA must also deliver the most recent Form CRS to a retail investor who is an existing client or customer before or at the time it: (i) opens a new account that is different from the retail investor's existing account(s); (ii) recommends that the retail investor roll over assets from a retirement account into a new or existing account or investment; or (iii) recommends or provides a new investment advisory service or investment that does not necessarily involve opening a new account and would not be held in an existing account. RIAs must also deliver the relationship summary to a retail investor within 30 days upon the retail investor's request.

RIAs must update a relationship summary (including an exhibit highlighting the changes) and file it with the SEC in accordance with the instructions to Form CRS within 30 days of any information in the summary becoming materially inaccurate. Any changes in the updated relationship summary applicable to retail investors who are existing clients are required to be made available without charge within 60 days after the Form CRS becomes materially inaccurate. Any amended relationship summary that is delivered to a retail investor who is an existing client must highlight the most recent changes, as described in the Form CRS instructions.

CORPORATE TRANSPARENCY ACT

Beginning January 1, 2024, the beneficial ownership reporting requirements of the Corporate Transparency Act (the "CTA") became effective, requiring certain entities doing business in the United States to file reports with the Financial Crimes Enforcement Network ("FinCEN"), subject to a variety of available exemptions.

Unless a specific exemption is available, all domestic entities that are formed by filing a document with a secretary of state or similar office and all foreign entities that register to do business in the United States generally are required to file (and update when necessary) a beneficial ownership information report (a "BOI Report") with FinCEN. The types of entities generally required to file a BOI Report include, without limitation, corporations, limited liability companies, and limited partnerships and, unless otherwise exempt, are referred to as "Reporting Companies". As a result of the broad application of the CTA rules, each separate entity in a fund structure will need to be separately analyzed and considered.

The CTA provides 23 specific exemptions that, if applicable, relieve an entity that is otherwise a Reporting Company from the obligation to file a BOI Report, including, without limitation: (i) RIAs and investment companies registered with the SEC, (ii) venture capital fund advisers, (iii) SEC-registered brokers or dealers, (iv)

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pooled investment vehicles, (v) entities registered under the Commodity Exchange Act, (vi) large operating companies, and (vii) any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by certain other entities exempt from the CTA BOI reporting requirements, including those entities listed in (i)-(vi) above.

For a more in-depth discussion of the CTA and its impact on RIAs and private funds, please visit https://www.haynesboone.com/news/alerts/corporate-transparency-act--implications-for-investment-advisers-and-their-fund-structures and https://www.haynesboone.com/news/alerts/corporate-transparency-act-countdown-beneficial-ownership-reporting-is-here. More information regarding who has access to beneficial ownership information can be accessed at https://www.haynesboone.com/news/alerts/final-countdown-to-the-corporate-transparency-act-fincen-finalizes-boi-access-rule.

Non-exempt entities required to file BOI Reports with FinCEN will have until **January 1, 2025** if they were formed prior to January 1, 2024. Reporting Companies formed on or after January 1, 2024, will have a shorter period to comply: 90 days post-formation if formed during 2024, and 30 days post-formation if formed during or after 2025.

AMENDED FORM PF REQUIREMENTS

An RIA is required to file Form PF with the SEC if it: (i) advises one or more private funds; and (ii) collectively, with its related persons (other than related persons that are separately operated), had private fund regulatory assets under management of $150 million or more as of the end of its most recently completed fiscal year. Form PF must be filed with the SEC electronically through the Private Fund Reporting Depository (“PFRD”) system, a subsystem of the IARD. In order to determine if an RIA meets the $150 million minimum reporting threshold or is a large private fund adviser for purposes of Form PF (as discussed below), such RIA is required to aggregate for each type of private fund: (i) assets of separately managed accounts that pursue substantially the same investment objective and strategy and invest in substantially the same positions as such private funds, unless the value of those accounts exceeds the value of the private funds with which they are managed; and (ii) assets of private funds advised by any of the RIA’s related persons (other than related persons that are separately operated). An RIA is permitted to file a consolidated Form PF reporting the private fund assets managed by such RIA and its related persons. On May 3, 2023, the SEC adopted amendments to Form PF which significantly expand the reporting obligations of large hedge fund advisers and private equity fund advisers (as summarized in **bold** below).

Large hedge fund advisers (*e.g.*, RIAs with $1.5 billion or more in regulatory assets under management attributable to “hedge funds” as of the end of any month in the prior fiscal quarter) are required to file Form PF on a *quarterly* basis within 60 days of the end of each fiscal quarter (*i.e.*, **February 29, 2024,** with respect to the fiscal quarter ending December 31, 2023). **Beginning December 11, 2023, large hedge fund advisers must file a current report on Section 5 of Form PF as soon as practicable upon, but no later than 72 hours after, the occurrence of certain “current reporting events” with respect to any of the RIA’s “qualifying hedge funds” (*i.e.*, any hedge fund with a net asset value of at least $500 million, individually or together with feeder funds, parallel funds and/or dependent parallel managed accounts). “Current reporting events” include (1)**

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extraordinary investment losses, (2) margin increases, (3) margin defaults or inability to meet a call for margin, (4) counterparty defaults, (5) operational events, (6) significant withdrawals or redemptions, and (7) inability to satisfy redemptions or withdrawals.

Large private equity fund advisers (*e.g.*, RIAs with $2 billion or more in regulatory assets under management attributable to "private equity funds" as of the last day of their most recently completed fiscal year) are required to file Form PF on an *annual* basis within 120 days of the end of each fiscal year (*i.e.*, **April 29, 2024** with respect to the fiscal year ending December 31, 2023). **Beginning June 11, 2024, large private equity fund advisers will be required to submit more detailed information in their annual Form PF filings as part of the newly amended Section 4. Revised Section 4 will require additional information regarding private equity fund investment strategies, geographical breakdown of investments, fund-level borrowings, events of default, bridge financing to controlled portfolio companies, and general partner and limited partner clawbacks. For a large private equity fund adviser with a December 31 fiscal year end, this more detailed information must be included in the adviser's Form PF to be submitted by April 30, 2025.**

Smaller private fund advisers (*e.g.*, RIAs with $150 million or more in private fund regulatory assets under management, but less than $1.5 billion in regulatory assets under management attributable to "hedge funds") are required to file Form PF on an *annual* basis within 120 days of the end of each fiscal year (*i.e.*, **April 29, 2024** with respect to the fiscal year ending December 31, 2023).

Beginning December 11, 2023, all private equity fund advisers that are required to file Form PF are required to file a Section 6 "private equity event report" upon the occurrence of certain "private equity reporting events" within 60 calendar days after the end of the fiscal quarter in which the event occurred. "Private equity reporting events" include (1) adviser-led secondary transactions, (2) general partner removal, or (3) election to terminate investment period or fund.

Section 1 of Form PF must be completed by all private fund advisers, Section 2 must be completed by all large hedge fund advisers (and Section 2b requires additional information about any hedge fund advised by the adviser that had a net asset value of at least $500 million as of the end of any month in the prior fiscal quarter), Section 3 must be completed by all large liquidity fund advisers, and Section 4 must be completed by all large private equity fund advisers. As noted above, Section 5 of Form PF must be filed by large hedge fund advisers promptly after the occurrence of any "current reporting events", and Section 6 of Form PF must be filed by private equity fund advisers upon the occurrence of certain "private equity reporting events."

The current fee for filing annual and quarterly Form PF reports is $150. We recommend that private fund advisers coordinate with their accounting, compliance, administrative and legal advisers to determine the appropriate filing category, filing deadline, reporting frequency and information required to be reported.

The final SEC adopting release with respect to the amended Form PF requirements is available at https://www.sec.gov/files/rules/final/2023/ia-6297.pdf.

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FORM 13F

Section 13(f)(1) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires each institutional investment manager that exercises investment discretion over accounts holding $100 million or more in "Section 13(f) securities" (which generally include equity securities traded on exchanges or NASDAQ and certain convertible debt securities) to file quarterly reports on Form 13F within 45 days of the end of each calendar quarter. The Form 13F reporting requirement begins at the end of a given year (with respect to the fourth quarter of such year) in which an institutional investment manager's holdings reach the Section 13(f) threshold on the last trading day of any month of that year. After the initial Form 13F filing, a manager's filing obligation continues for at least the first three quarters of the subsequent calendar year (even if a manager's holdings drop below the threshold) and, if the manager continues to have discretion over at least $100 million in Section 13(f) securities, may continue indefinitely. The Form 13F for the fourth quarter of 2023 will be due on or before **February 14, 2024**. **As discussed below, institutional investment managers required to file reports under Section 13(f) will also be required to file their initial Form N-PX by August 31, 2024, and on an annual basis thereafter.**

NEW FORM N-PX

On November 2, 2022, the SEC adopted new Rule 14Ad-1 under the Exchange Act, which requires institutional investment managers that are required to file reports under Section 13(f) of the Exchange Act to report on new Form N-PX their proxy voting record with respect to certain shareholder advisory votes on executive compensation. Under new Rule 14Ad-1, managers are required to report on Form N-PX the same types of say-on-pay votes required by Section 14A of the Exchange Act, including those votes related to: the approval of executive compensation; the frequency of such votes; and "golden parachute" compensation in connection with a merger or acquisition.

Institutional investment managers will be required to file the first reports on Form N-PX by **August 31, 2024**, with the reports covering the period from July 1, 2023 to June 30, 2024. Because August 31 falls on a Saturday, we encourage institutional investment managers to file their first reports on Form N-PX by **Friday, August 30, 2024.** Thereafter, reports on Form N-PX must be filed by no later than August 31 of each year and must cover the most recent one-year period running from July 1 to June 30.

The final SEC adopting release discussing Form N-PX is available at https://www.sec.gov/rules/final/2022/33-11131.pdf.

AMENDED SCHEDULE 13D AND SCHEDULE 13G REQUIREMENTS

In October 2023, the SEC adopted amendments to the requirements for beneficial ownership reporting on Schedules 13D and 13G under Section 13 of the Exchange Act. These amendments, among other things, (i) accelerate filing deadlines for Schedules 13D and 13G, as summarized below, (ii) change the triggering event for amendments to Schedule 13G to a "*material* change in the information previously reported" from the current "*any* change in the information previously reported", (iii) require Schedules 13D and 13G to be filed in

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structured, machine-readable data language, and (iv) require reporting of cash-settled derivative securities under Item 6 of Schedule 13D. Additionally, the new rules provide guidance on when holders of certain derivative securities are deemed to beneficially own the reference security, as well as guidance on when a “group” is formed for purposes of beneficial ownership reporting.

Schedule 13D

Under Section 13(d) of the Exchange Act, any person that acquires more than 5% beneficial ownership of a class of voting equity securities registered under Section 12 of the Exchange Act must file a Schedule 13D with the SEC within **5 business days** (instead of 10 calendar days under the prior rules) after its holding exceeds 5% (unless the person is eligible to report its holdings on Schedule 13G, as discussed below). For purposes of Schedules 13D and 13G, the “beneficial owner” can be the adviser, one or more private funds that own the relevant securities, the general partners or managing members of private funds, and/or the adviser’s portfolio managers and principals.

The occurrence of *any material change* in the facts set forth in a filed Schedule 13D will, in general, trigger the requirement to file an amendment to such previously filed Schedule 13D within **2 business days** after such change. A material change includes, without limitation, a material change in the percentage of the class of securities beneficially owned by a reporting person.

Schedule 13G

Schedule 13G is a short-form disclosure statement that certain categories of investors may file in lieu of the Schedule 13D under certain circumstances. An investor must specifically fall within one of the three categories that are permitted to file a Schedule 13G: (1) “qualified institutional investors,” (2) “passive investors,” and (3) certain other exempt investors. Depending on the circumstances and the category of investor (*i.e.*, passive investor, exempt investor, or qualified institutional investor), an initial Schedule 13G filing must be made either: (i) within **5 business days** (instead of 10 calendar days under the prior rules) after the filing requirement arises; (ii) within **5 business days** (instead of 10 calendar days under the prior rules) after the end of the month in which the filing requirement arises; or (iii) within **45 days after the end of the quarter** (instead of 45 days after the end of the calendar year under the prior rules) in which the filing requirement arises. Schedule 13G must be amended under certain circumstances including: (A) within 45 days after the end of the **quarter** in which there are any **material** changes in the information reported on a previously filed Schedule 13G (instead of 45 days after the end of the calendar year in the event of any changes in the information reported on a previously filed Schedule 13G under the prior rules); (B) for certain investors, within **2 business days** (instead of “promptly” under the prior rules) after certain changes in ownership occur; and (C) for certain other investors, within **5 business days** (instead of 10 calendar days under the prior rules) after the end of the month in which such changes in ownership occur.

In order to reduce some of the potential burdens on filers, compliance with the revised Schedule 13G filing deadlines (as described above) will not be required until September 30, 2024, and reporting persons will continue to comply with the prior Schedule 13G filing deadlines through September 29, 2024. As a result, a Schedule 13G filer will be required to file an amendment by **February 14, 2024** if, as of December 31, 2023, there

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were *any changes* in the information the filer previously reported on Schedule 13G. **Beneficial owners will be required to comply with the revised Schedule 13G filing deadlines beginning on and after September 30, 2024.**

If a Schedule 13G filer ceases to be a passive investor (*i.e.*, if the filer holds the securities with the purpose of changing or influencing control of the issuer) or is otherwise no longer eligible to file a Schedule 13G rather than a Schedule 13D, such filer is required to file a Schedule 13D within **2 business days** of such change. There is a 10-day cooling off period after such filing is made during which the investor may not purchase securities of the issuer or its controlling entities and may not vote securities of the issuer.

To accommodate the accelerated filing deadlines as discussed above, the SEC has extended the deadline for submitting Schedules 13D and 13G from 5:30p.m. Eastern Time to **10p.m. Eastern Time** in order to be deemed filed on the same business day. The effective date of these amendments is **February 5, 2024**. Compliance with the amended Schedule 13D deadlines will be required by **February 5, 2024**, and compliance with the amended Schedule 13G filing deadlines will be required beginning on **September 30, 2024**. Compliance with the structured, machine-readable data language requirement will be required by **December 18, 2024**, but filers may begin to voluntarily comply with the structured data requirement on December 18, 2023.

For an in depth discussion of the amended beneficial ownership reporting requirements, please visit https://www.haynesboone.com/news/alerts/sec-adopts-amendments-to-section-13-beneficial-ownership-reporting-requirements.

The final SEC adopting release relating to the Section 13 Beneficial Ownership Reporting Amendments can be found at https://www.sec.gov/files/rules/final/2023/33-11253.pdf.

FORM 13H

Rule 13h-1 under the Exchange Act imposes reporting requirements on any person (including a firm or individual) whose transactions in covered securities (in general, any security listed on a national securities exchange), together with transactions of persons subject to its control (a “Large Trader”), equal or exceed: (i) 2 million shares or shares with a fair market value of $20 million during any calendar day; or (ii) 20 million shares or shares with a fair market value of $200 million during any calendar month. A Large Trader must self-identify to the SEC, obtain from the SEC a Large Trader Identification Number, and provide that number to U.S. broker-dealers through which it trades. Unless it becomes inactive, a Large Trader must update its Form 13H within 45 days after the end of each calendar year (with respect to the 2023 year-end, by **February 14, 2024**) and promptly following the end of a calendar quarter in the event that any information contained in the Form 13H becomes inaccurate. A Large Trader may suspend its filing obligation if it has not traded securities in excess of the identifying activity level at any time during the preceding year.

ANNUAL NEW ISSUES CERTIFICATIONS; AMENDMENTS TO NEW ISSUES RULES

Investment funds that desire or intend to invest in “new issues” (*i.e.*, equity securities issued in an initial public offering) should send an annual “new issues” questionnaire and certification to all investors to obtain and/or

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confirm the investors' "exempted person", "restricted person" and "covered person" status. This annual certification can be obtained and effected through a negative consent letter or process.

FORM D AND BLUE-SKY NOTICE FILINGS

Form D is required to be filed with the SEC by all issuers that sell securities in reliance on the exemption from registration set forth in Regulation D under the Securities Act of 1933, as amended (the "Securities Act"). This includes interests in hedge funds, private equity funds, real estate funds or other privately-offered pooled investment vehicles. An issuer must file an initial Form D notice with the SEC for each new offering of securities no later than 15 calendar days after the date of first sale of securities in the offering. In addition to the initial filing, Form D must be amended on or before the anniversary of the issuer's previous Form D filing if the offering of securities is continuing at that time. Form D must also be amended to correct a material mistake or to reflect a change in the information provided in the previously filed Form D. An issuer that files an amendment to a previously filed Form D must provide current information in response to all requirements of the Form D, regardless of the reason that the amendment is being filed. Form D filings (and amendments thereto) must be filed electronically using the SEC's EDGAR system.

In addition, Form D notice filings (or "blue sky filings") generally are required to be made in each state in which an issuer's securities are sold to investors. Blue sky filings typically consist of a copy of the Form D filed with the SEC, a consent to service of process (such as a Form U-2) and a filing fee. State blue sky filings generally are required to be made in such state within 15 days after the date of the first sale of securities to an investor in such state. Please note that some states require that every amendment to the Form D that is filed with the SEC also be filed in that state (whether or not there are new sales in that state). Most states allow for either electronic or paper Form D notice filings, with the majority of states accepting and a few states mandating the electronic filing of Form D.

BEA AND TIC REPORTS

U.S. institutional investors may be subject to reporting requirements under the Treasury International Capital (TIC) and the Treasury Foreign Currency systems of the U.S. Department of the Treasury, and under the so-called BE system of the U.S. Department of Commerce's Bureau of Economic Analysis (BEA). The TIC system collects data from the United States on cross-border portfolio investment flows and positions between U.S. residents (including U.S.-based branches of firms headquartered in other jurisdictions) and foreign residents (including offshore branches of U.S. firms) through a series of forms. Each of the TIC forms requires reporting only if a certain threshold of cross-border activity is reached. Certain TIC forms must be filed monthly, quarterly or annually; others every five years; and still others must be filed only upon request by the Federal Reserve Bank of New York. Data on cross-border direct investment is collected by the BEA, U.S. Department of Commerce. "Direct investment" is the ownership or control, directly or indirectly, by a person or affiliated group, of 10% or more of the voting securities of an incorporated business enterprise, or an equivalent interest in an

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unincorporated enterprise. Similar to TIC forms, BEA forms are filed variously on a monthly, quarterly or annual basis, every five years or upon the BEA's request.

Investment managers and other institutional investors are encouraged to review the applicable reporting requirements and thresholds to determine if and when they are required to file reports or claims of exemption with the U.S. Department of the Treasury or BEA.

ANNUAL REVIEW OF COMPLIANCE POLICIES

Pursuant to Rule 206(4)-7 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), RIAs must establish, adopt and implement written compliance policies and procedures that are reasonably designed to prevent violations of the Advisers Act and other applicable securities laws. Each RIA must identify the conflicts of interest and activities that create compliance risks for the firm and create policies and procedures that are reasonably designed to address those risks. The policies and procedures should be designed to prevent violations from occurring, to detect violations that have occurred and to correct such violations.

Rule 206(4)-7 also requires an RIA to review its policies and procedures on at least an annual basis for adequacy and effectiveness of implementation. **Effective as of November 13, 2023, all RIAs must now document the annual reviews of their compliance policies and procedures in writing. Rule 206(4)-7 does not prescribe a specific format for the written documentation, and the SEC noted that RIAs have the flexibility to record or document the results of the annual review in a manner that best fits their business and to use the review procedures that they have found most effective.** Although Rule 206(4)-7 requires only annual reviews, RIAs generally should conduct periodic and interim reviews of their compliance policies and procedures throughout the year. When conducting an annual review, an RIA should take into account and consider any developments during the year that might suggest a need to revise or modify or amend such adviser's compliance policies and procedures including, among other things: (i) changes in applicable laws, rules or regulations; (ii) changes in the adviser's business activities or operations (such as entering a new line of business); (iii) any compliance issues that arose during such year; (iv) the results of any SEC examinations of the adviser; and (v) recent SEC enforcement actions or proceedings. The goals of the annual review should be to determine whether an RIA's compliance program reasonably and effectively prevents compliance issues and problems from arising, detect compliance issues that have arisen, and promptly address any issues or problems that have occurred. The annual review process should incorporate reasonable and appropriate "forensic tests" to evaluate the compliance program. "Forensic tests" are quality control or transactional tests that help to identify weaknesses or deficiencies in an adviser's compliance program or instances in which the adviser's policies may have been circumvented or are otherwise not operating effectively.

The SEC typically asks RIAs to produce documentation evidencing required annual reviews during examinations. The failure to conduct (or to timely conduct) and/or adequately document annual compliance reviews is one of the top issues identified by the SEC during examinations and any such failure could result in enforcement proceedings by the SEC. Compliance training should also be provided to supervised persons on at least an annual basis and more frequently as necessary or appropriate.

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ERAs generally are not required to establish, adopt and implement comprehensive compliance policies and procedures pursuant to Rule 206(4)-7 under the Advisers Act or to comply with most of the other rules under the Advisers Act. Nonetheless, unregistered advisers are subject to the anti-fraud provisions of the Advisers Act, and ERAs are subject to the pay-to-play rule under the Advisers Act as well as the requirement to adopt policies and procedures reasonably designed to prevent insider trading. Generally, then, it is advisable for ERAs to establish, adopt and implement certain minimum policies and procedures to ensure compliance with the applicable provisions of the Advisers Act. An ERA should review at least annually the adequacy of its policies and procedures and make any appropriate revisions and updates.

The SEC's Division of Examinations released the following Risk Alerts in 2023 that are applicable to RIAs: (i) Risk Alert: Investment Advisers: Assessing Risks, Scoping Examinations, and Requesting Documents; (ii) Risk Alert: Observations from Anti-Money Laundering Compliance Examinations of Broker-Dealers; (iii) Risk Alert: Examinations Focused on Additional Areas of the Adviser Marketing Rule; (iv) Risk Alert: Observations from Examinations of Investment Advisers and Investment Companies Concerning LIBOR-Transition Preparedness; (v) Risk Alert: Safeguarding Customer Records and Information at Branch Offices; and (vi) Risk Alert: Observations from Examinations of Newly-Registered Advisers. RIAs would be well-advised to carefully consider and review the Division of Examinations' guidance in these and other recent Risk Alerts and assess their compliance policies and procedures accordingly. RIAs should document any steps or measures taken to evaluate and address such concerns or other concerns related to these and other recent Risk Alerts.

REVIEW AND UPDATE OFFERING, DISCLOSURE AND SUBSCRIPTION DOCUMENTS

Investment managers should review all private fund offering and disclosure documents on at least an annual basis (and more frequently as necessary or appropriate) to ensure that such documents are accurate and complete in all material respects and comply with applicable laws and regulations (and the investment manager's policies) and make any necessary updates or changes. Marketing materials, pitch books and standard due diligence questionnaire responses should also be reviewed on at least an annual basis. Investment managers should also review and revise private fund offering documents as necessary and appropriate to ensure compliance with the new Private Fund Adviser Rules (as defined below).

PREPARATION AND DELIVERY OF ANNUAL AUDITED FINANCIAL STATEMENTS

Investment managers should work with fund auditors to ensure timely and correct preparation and delivery of annual audited financial statements to investors in accordance with the requirements set forth in Rule 206(4)-2 under the Advisers Act (and any other applicable laws, rules and regulations). In particular, a private fund's annual audited financial statements generally must be distributed to investors within 120 days of the end of such fund's fiscal year (or within 180 days after the end of such fiscal year for a private fund that invests 10% or more of its total assets in other pooled vehicles that are not, and are not advised by, a related person of the vehicle or its fund manager) and promptly upon liquidation. **After March 14, 2025, RIAs must obtain financial statement audits of all private funds, and the surprise examination option under Rule 206(4)-2 under the Advisers Act will no longer be available to RIAs with respect to their private funds.**

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BAD ACTOR CERTIFICATIONS

Rule 506(d) and (e) of Regulation D under the Securities Act precludes reliance on the exemption from registration set forth in Rule 506 of Regulation D by any private fund or other issuer that has committed, or is subject to, one or more disqualifying events, or which has certain relationships with other persons ("covered persons") who have committed or are subject to such disqualifying events. With respect to any private fund offerings conducted pursuant to or in reliance upon Rule 506 of Regulation D, the private fund should update, with reasonable care, its factual inquiries (*i.e.*, by email or questionnaire) to determine whether it has committed or is subject to, or any "covered persons" have committed or are subject to, any "disqualifying events". Disqualifying events may also require disclosure in Form ADV and in the applicable offering documents.

CFTC ANNUAL EXEMPTION AFFIRMATIONS

Many fund managers who manage funds or investment vehicles that directly or indirectly trade in commodity interests rely on and claim one or more exemptions or exclusions from registration with the CFTC as a CPO or CTA. CFTC regulations require any person or entity claiming an exemption or exclusion from registration as a CPO under CFTC Regulation 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3) or 4.13(a)(5), or an exemption from registration as a CTA under CFTC Regulation 4.14(a)(8), to annually affirm the applicable notice of exemption or exclusion within 60 days of the end of each calendar year (*i.e.*, **February 29, 2024** for this affirmation cycle). Failure to affirm an active exemption or exclusion from CPO or CTA registration will result in the exemption/exclusion being withdrawn on March 1, 2024. Any person or entity may complete the annual affirmation process by accessing NFA's Exemption System through the Electronic Filings section of the NFA's website.

REPORTING, FILING AND OTHER COMPLIANCE REQUIREMENTS OF CFTC-REGISTERED CPOs AND CTAs

CFTC-registered CPOs and CTAs are subject to various reporting, filing and other compliance-related requirements which may vary depending upon certain traits and characteristics of the CPO or CTA and/or the pools they operate and/or advise. An overview of certain of the material periodic and annual reporting, filing and other compliance-related requirements that are or may be applicable to CFTC-registered CPOs and CTAs is set forth below:

- **NFA Annual Registration Update and Questionnaire.** In order to maintain its membership with the NFA and registration with the CFTC, a CFTC-registered CPO or CTA must annually: (i) file an electronic Annual Registration Update in the NFA's Online Registration System (ORS) when notified through NFA's Dashboard; (ii) complete the NFA's Annual Questionnaire on the CPO's membership anniversary date using NFA's Annual Questionnaire system; and (iii) complete NFA's Self-Examination Questionnaire as discussed below.

- **Annual NFA Membership Fees.** CFTC-registered CPOs and CTAs must pay certain annual fees to the NFA including annual registration records maintenance fees (currently $100 for each category of registration) and NFA membership dues (currently $750 for each category of registration).

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- **NFA Annual Compliance Review.** NFA members must review their operations on at least an annual basis using the NFA's Self-Examination Questionnaire, which is designed to aid NFA members in recognizing potential problem areas and to alert them to procedures that need to be revised or strengthened. The NFA Self-Examination Questionnaire includes a general questionnaire that must be completed by all NFA members and supplemental questionnaires (*i.e.*, CPO and CTA) that must be completed as applicable. After reviewing the NFA Self-Examination Questionnaire, an appropriate supervisory person must sign and date a written attestation stating that he or she reviewed the member's operations in light of the matters covered in the questionnaire.

- **NFA Bylaw 1101**. NFA Bylaw 1101 prohibits CFTC-registered CPOs and CTAs from doing business with non-members that are required to be registered with the CFTC in any capacity or to be members of the NFA. CPOs and CTAs should have adequate policies and procedures in place to ensure compliance with NFA Bylaw 1101, such as conducting due diligence on other firms and persons with which or whom they do business (such as brokers, counterparties and investors in pools). In particular, a CFTC-registered CPO generally should take steps to confirm the status of certain types of pool investors on at least an annual basis – for example, by checking the NFA website to confirm compliance by investors with requirements to file any exemption affirmation notices (*e.g.*, under CFTC Rule 4.13(a)(3)) within 60 days of the end of each calendar year. If a CPO or CTA learns that a person does not intend to file a notice affirming the applicable exemption, or the person does not file a notice affirming the exemption by **February 29, 2024**, then the CFTC-registered CPO or CTA should promptly obtain a written representation as to why the person is not required to register or file a notice of exemption and evaluate whether the representation appears reasonable and adequate.

- **Ethics Training**. Registered CPOs and CTAs are required to comply with the ethics training requirements of the CFTC and the NFA and to adopt, implement and maintain a written ethics training policy. In particular, such written ethics training policy should require employees (particularly associated persons of the CPO or CTA) to receive ethics training on a periodic basis (including within six months of becoming registered as a CPO or CTA). For information regarding how to comply with the ethics training requirements, CPOs and CTAs should review NFA Interpretive Notice 9051.

- **Business Continuity and Disaster Recovery Plan**. All NFA members must adopt a business continuity and disaster recovery plan reasonably designed to enable it to continue operating, to re-establish operations, or to transfer its business to other members with minimal disruption. The business continuity and disaster recovery plan should cover all essential operations and be tailored to the individual needs of the firm. Firms must make sure their employees are aware of the plan's essential components. At a minimum, the plan must address, as applicable: (1) establishing back-up facilities, systems, and personnel in a separate geographic facility or area; (2) copying essential documents and data periodically, and storing them off-site; (3) considering and minimizing the impact of business interruptions to third parties; and (4) developing a communication plan to contact essential parties. Firms must update their plans as necessary and periodically assess their effectiveness.

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- **Cybersecurity Programs**. NFA members must adopt and enforce a written information systems security program (ISSP) in accordance with guidelines set forth by the NFA in its Interpretive Notice Regarding Information Systems Security Programs, originally issued in 2015 and amended in 2019 (as amended, "ISSP Notice"). The ISSP Notice states that written ISSPs must be approved in writing by the firm's Chief Executive Officer or certain other senior level officers with specified information system security responsibility and authority, or by a committee that includes one of these individuals (with special approval provisions where the firm meets its obligations through participation in a consolidated entity ISSP that has been approved at the parent company level). The ISSP should contain: (1) a security and risk analysis; (2) a description of the safeguards against identified system threats and vulnerabilities; (3) the process used to evaluate the nature of a detected security event, understand its potential impact, and take appropriate measures to contain and mitigate the breach; and (4) a description of the firm's ongoing education and training related to information systems security for all appropriate personnel. A firm is required to monitor and regularly review the effectiveness of its ISSP and make adjustments as appropriate.

- **Outsourcing of Regulatory Functions.** Pursuant to NFA Notice 9079, any NFA member that outsources regulatory functions must adopt and implement a supervisory framework over its outsourcing function to mitigate outsourcing-related risks. The term "regulatory function" refers to functions that the firm itself would otherwise be required to undertake in order to comply with regulatory requirements imposed on the firm by NFA or the CFTC. The outsourcing framework requirement is designed to mitigate the risks associated with outsourcing regulatory functions, and arises from NFA Compliance Rule 2-9, which places a continuing responsibility on firms to diligently supervise their employees and agents in all aspects of their commodity interest activities. NFA Notice 9079 requires the framework to address, at a minimum, the following five areas: (1) initial risk assessment; (2) onboarding due diligence; (3) ongoing monitoring; (4) termination; and (5) recordkeeping. NFA members are required to review their existing outsourcing policies and procedures and, if appropriate, make adjustments in accordance with the requirements and guidance set forth in Notice 9079.

- **CFTC Form CPO-PQR, CFTC Form CTA-PR, NFA Form PQR and NFA Form PR**. CFTC-registered CPOs and CTAs must file periodic reports with the CFTC and NFA on CFTC Form CPO-PQR, CFTC Form CTA-PR, NFA Form PQR and NFA Form PR, as applicable, in each case in accordance with the filing deadlines summarized below. All of these forms must be filed electronically using the NFA's EasyFile System.

    - **CPOs**. Unless otherwise exempt, a CFTC-registered CPO generally is required to complete and electronically file CFTC Form CPO-PQR Schedule A with the NFA within 60 days of the end of each calendar quarter during which such CPO is a reporting person and operates at least one commodity pool. Form CPO-PQR consists of two parts. Part I of Form CPO-PQR collects basic information, including the CPO's name, NFA identification number, legal entity identifier, contact person, total number of employees and equity holders, total number of pools operated by the CPO, etc. Part 2 also requires information on changes in the pool's assets under

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management during the reporting period, subscription and redemption terms, restrictions on investor liquidity, monthly and annual performance information, and the pool's schedule of investments. The NFA also requires CPO members to electronically file NFA Form PQR with the NFA, and a CPO may file NFA Form PQR in lieu of filing CFTC Form CPO-PQR. A CPO that is registered, but operates only pools for which it maintains an exclusion from the definition of the term "CPO" in CFTC Rule 4.5 and/or an exemption from registration as a CPO in CFTC Rule 4.13, is not required to file Form CPO-PQR or NFA Form PQR. CFTC Rule 4.27(d) does not permit a CPO that is also registered as an investment adviser with the SEC to list its investment vehicles that are not "private funds" (for example, commodity pools) on SEC Form PF in lieu of including such vehicles in its CFTC Form CPO-PQR. These investment vehicles need to be included in the CPO's Form CPO-PQR.

- **CTAs**. Under CFTC Rule 4.27, a registered CTA that directs commodity interest accounts generally must on an annual basis electronically file with the NFA a report on Form CTA-PR. The Form CTA-PR filing is required to be made electronically with the NFA within 45 days of the end of each calendar year. The form requests general information about the CTA, including the CTA's name and contact information, the number of trading programs offered by the CTA, and the number of those programs for which the CTA directs commodity pool assets. The form requests the amount of assets managed by the CTA, the amount of assets attributable to pools managed by the CTA, the names of each pool managed by the CTA, and the names of each CPO for each such pool that reports for that pool on the CFTC's reporting form for registered CPOs (Form CPO-PQR). In addition, pursuant to NFA Rule 2-46, a registered CTA that is required to file Form CTA-PR must file NFA Form PR, which requests detailed information about each of a CTA's trading programs, within 45 days of the end of each calendar quarter ended March, June, and September, and a year-end report within 45 days of the calendar year-end. NFA Form PR consists of CFTC Form CTA-PR, plus certain additional information relating to relationships (that is, with carrying brokers, introducing brokers, sub-advisers), assets under management for each trading program, and monthly performance during the quarter for each trading program. Both Form CTA-PR and NFA Form PR are filed through the NFA's electronic EasyFile filing system. CTAs can satisfy both the CFTC and NFA reporting requirements by filing NFA Form PR with the NFA within 45 days after the end of each calendar quarter. Notwithstanding the foregoing, the following registered CTAs are not required to make Form CTA-PR or NFA Form PR filings: (i) a CTA that is registered, but does not direct the trading of any commodity interest accounts, (ii) a CTA that is registered, but directs only the accounts of commodity pools for which it is registered as a CPO and complies with CFTC Rule 4.14(a)(4), and (iii) a CTA that is registered, but directs only the accounts of commodity pools for which it is exempt from registration as a CPO and complies with CFTC Rule 4.14(a)(5).

- **Financial Reporting Requirements**. All CFTC-registered CPOs, including those relying on the relief set forth in CFTC Rule 4.7, are required to provide certain periodic financial information and reports to pool participants. In particular, a CFTC-registered CPO relying on CFTC Rule 4.7 generally is required to

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provide pool participants with quarterly account statements (within 30 days following the end of each applicable period) and an annual report (prepared in accordance with U.S. GAAP) (within 90 days after the end of each fiscal year or the permanent cessation of trading, whichever is earlier). The annual report must include the following: (i) the net asset value of the pool for the two preceding fiscal years, (ii) the net asset value per outstanding participation unit in the pool as of the end of each of the pool's two preceding fiscal years, or the total value of the participants interest or share in the pool as of the end of the pool's two preceding fiscal years, (iii) a Statement of Financial Condition as of the end of the pools fiscal year and the preceding fiscal year, (iv) the Statement of Income (Loss), Statement of Changes in Financial Condition, and Statement of Changes in Net Asset Value for the period starting with the most recent of (A) the date of the last such statement filed with the CFTC and NFA, or (B) the date of formation of the pool and statements for the preceding fiscal year must also be included, (v) appropriate footnote disclosures and any additional material information as may be necessary to make the required statements not misleading, (vi) signed oath or affirmation, and (vii) certification by an independent certified public accountant and auditor's report that must contain a number of specified items and an auditor's opinion. With respect to each pool that it operates, a CPO generally must file a copy of the annual report of such pool with the NFA via the NFA's EasyFile system within 90 days of the end of each fiscal year (or within 180 days of fiscal year end for a pool that is a fund of funds, subject to certain conditions).

PRIVATE FUND ADVISER RULES

On August 23, 2023, the SEC adopted new rules and rule amendments under the Advisers Act that will significantly impact and affect private fund advisers, including both RIAs and ERAs (the "Private Fund Adviser Rules"). The Private Fund Adviser Rules generally provide for (i) significantly increased disclosure and periodic reporting requirements, including with respect to financial performance, preferential treatment provided to investors, and fees and expenses, (ii) mandatory annual audits of private funds, (iii) certain disclosure and other requirements with respect to adviser-led secondary transactions, including requirements to obtain and distribute third-party fairness or valuation opinions in connection with such transactions, (iv) investor disclosure and/or consent requirements with respect to certain types of restricted activities, including, but not limited to, charging fees or expenses related to a portfolio investment on a non-pro rata basis, borrowing from a private fund, charging certain regulatory, compliance or regulatory investigation fees and expenses to a private fund, and (v) prohibitions on granting preferential redemption rights or providing preferential portfolio information rights or transparency to certain private fund investors. The dates by which private fund advisers will be required to comply with the Private Fund Adviser Rules vary with respect to the specific provisions of the rules and by the size of the private fund adviser (in general, the compliance date will be either September 14, 2024 or March 14, 2025). The Private Fund Adviser Rules are expected to significantly increase the costs of compliance for private funds and private fund advisers, including RIAs and ERAs, and may require significant amendments and revisions to the private fund governing documents and adviser practices and/or disclosures with respect to private funds, some of which may materially alter the terms and/or costs of an investment in such funds. We encourage all private fund managers to begin taking steps to ensure compliance with the Private Fund Adviser Rules.

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For an in-depth summary of the Private Fund Adviser Rules, please visit https://www.haynesboone.com/news/alerts/sec-adopts-significant-new-rules-for-advisers-and-private-funds and https://www.haynesboone.com/news/alerts/summary-table-of-new-private-fund-adviser-rules. For a panel discussion with Haynes Boone on these new rules, please visit https://www.haynesboone.com/news/alerts/haynes-boone-walks-through-new-sec-rules-for-advisers-and-private-funds.

The final SEC adopting release relating to the Private Fund Adviser Rules is available at https://www.sec.gov/files/rules/final/2023/ia-6383.pdf.

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For more information regarding the foregoing, please contact a member of the Haynes Boone Investment Management Practice Group.

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