Important Dates and Reminders For Investment Advisers, Exempt Reporting Advisers, Commodity Trading Advisors and Commodity Pool Operators

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INVESTMENT ADVISERS

Annual Compliance Reviews

All investment advisers registered with the Securities and Exchange Commission ("SEC") or at the state level, are required to review their compliance policies and procedures at least annually (and best practice is for any investment adviser, whether SEC or state registered, or not, to engage in such a review). Many advisers with a December 31 fiscal year end traditionally conduct this review in March of each year. Regardless of when the review takes place, registered advisers should be sure to document the review process and the outcomes of the review.

Form ADV – Annual Amendment Due by March 31, 2021; Delivery of Updated ADVs to Clients

Form ADV for registered advisers (Parts 1A, 1B (state registered advisers only) and 2A) and Exempt Reporting Advisers (relevant portions of Part 1A) with a December 31 fiscal year end must be updated by March 31, 2021 through the Investment Adviser Registration Depository (IARD) website (www.iard.com). Please be sure to select "*annual amendment*" when updating Form ADV in order for the filing to qualify as the annual amendment to Form ADV. Failure to update Form ADV could lead to registration or status as an Exempt Reporting Adviser being revoked.

In addition to the requirements mentioned above, registered investment advisers are required to deliver updated brochures (Part 2A) and brochure supplements (Part 2B) to all clients within 120 days after the end of the adviser's fiscal year.

FINRA Updates Web CRD and IARD Security - Multi-factor Authentication

In 2020 FINRA upgraded its IARD and Central Registration Depository ("CRD") to include multi-factor authentication ("MFA"). As a result, existing users who have not already done so will be required to provide two pieces of identifying information to gain access to their account. The MFA security protocols provide for three options that a user may choose from to provide secondary authentication. These are, using a mobile application (such as the Duo Mobile app), authenticating by text message, or authenticating by receiving a phone call. These changes are meant to address internet passwords becoming increasingly vulnerable to hackers. Once a user has been notified that their accounts have been enabled with MFA, they will need to register their cellphone, landline, or tablet to enroll their devices in MFA.

Investment Advisers and other users of CRD and IARD should review their credentials to determine how many of their employees will need to enable MFA and that there are no internal policies (such as prohibiting employees from downloading applications on company issued mobile devices) which interfere with the ability of these users to successfully enable MFA.

Form ADV Part 3 "Relationship Summary"

In accordance with SEC rules issued in 2019, registered investment advisers with clients that are "retail investors" are required to provide Part 3 of Form ADV (Form CRS) to new and prospective clients and customers who are retail investors. For these purposes, the term "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." Note that an investment adviser to pooled investment vehicles containing investors who may be "retail investors", would not be required to deliver Form CRS to those pooled investment vehicle clients. However, managers advising clients other than pooled investment vehicles, such as separately managed accounts, should consider whether a Form CRS must be filed and delivered.

Investment advisers who were registered with the SEC before June 30, 2020 were required to electronically file their initial Relationship Summary by June 30, 2020 either as an other-than-annual amendment, or part of their initial application or annual updating amendment. Investment advisers filing an application for registration with the SEC on or after June 30, 2020 must include a Relationship Summary with their application for registration.

MA Registered-Advisers - Table of Fees

Beginning January 1, 2020, the Massachusetts Securities Division requires all Massachusetts registered investment advisers to provide a one-page stand-alone Table of Fees for Services to clients and prospective clients. The fee table must be updated and delivered consistent with the existing requirements for Form ADV.

Exempt Reporting Advisers – Monitoring of "Regulatory Assets Under Management"

Exempt Reporting Advisers are reminded to review their "regulatory assets under management" on a regular basis, to ensure that any increase in regulatory assets under management does not trigger additional requirements: such as full registration with the SEC, or for State Exempt Reporting Advisers, the need to also become an SEC Exempt Reporting Adviser.

"Regulatory assets under management" should be calculated in accordance with Item 5.F of Form ADV and the accompanying instructions.

Form PF

SEC registered investment advisers who manage private funds and have at least $150 million in regulatory assets under management attributable to "private fund assets" (as defined in the Form PF), are required to file Form PF through the IARD website (www.iard.com). Note, this may include assets of a separate account running a parallel strategy to a private fund managed by the adviser.

Large Hedge Fund Advisers (advisers with over $1.5 billion in hedge fund assets under management) must file Form PF quarterly within 60 calendar days after the end of each quarter, or by March 1, 2021 for the quarter ended December 31, 2020. Most other advisers must file annually within 120 days of the end of their fiscal year, or by April 30, 2021 for advisers with a December 31 fiscal year end. Advisers are cautioned to carefully review the definitions and the instructions for Form PF when determining the amount of "private funds assets" and "hedge fund assets."

Advisers who have not yet started preparing their Form PF filings are encouraged to start this process promptly.

Registered Advisers to Funds - Delivery of Audited Financial Statements

Registered investment advisers relying on the "audited financials exception" to the account statement delivery and independent verification requirements of the Custody Rule must deliver such audited financial statements for their fund to investors within 120 days of the end of the fund's fiscal year. Please note that funds which are 4.7 pools for CFTC purposes, have a 90-day deadline under CFTC rules (see the section entitled "*CPOs to 4.7 Pools - Delivery of annual audited financials and quarterly account statements*" below). The financial statements must be audited by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. Advisers to funds of funds must deliver such statements within 180 days of the end of the fund of funds' fiscal year.

Exempt Reporting Advisers - Delivery of Audited Financial Statements

Exempt reporting advisers in Massachusetts who manage private funds which rely on the exclusion from the definition of "Investment Company" set forth in Section 3(c)(1) of the Investment Company Act of 1940, as amended, and which funds are not "venture capital funds" (as defined by the Massachusetts Securities Division), must deliver annual audited financial statements for the fund to each beneficial owner of any such fund.

Exempt reporting advisers qualified in other states should consult their counsel to determine any annual requirements in such states.

Privacy Policy

Generally, all investment advisers must circulate a summary of their privacy policy to advisory clients who are natural persons each year. However, an exception to the annual privacy notice distribution requirement is available if the following two criteria are met by the investment adviser:

1. The investment adviser does not share nonpublic personal information with nonaffiliated third parties (other than as permitted under certain enumerated exceptions); and

2. The investment adviser's policies and practices regarding disclosure of nonpublic personal information have not changed since the last distribution of its policies and practices to its advisory clients.

For more information, see our January 6, 2016 Foley Adviser or please contact us.

California Consumer Privacy Act (the "CCPA")

The California Consumer Privacy Act (the "CCPA") went into effect on January 1, 2020 and creates new "consumer" rights relating to the access to, deletion of, and sharing of personal information that is collected by businesses. The CCPA defines "consumer" as any "natural person who is a California resident." Investment advisers may be subject to the CCPA if they have gross annual revenues in excess of $25 million and collect personal information from California residents. Advisers should consider whether they are subject to the CCPA where they have current investors, prospective investors, employees, independent contractors, other business contacts in California, or collect personal information on their website which may come from California residents. Businesses subject to the CCPA must provide notice to consumers at or before the point of data collection, make disclosures about the information that they collect and the rights held by consumers under the CCPA. They must also create procedures to respond to requests from consumers which would allow the consumer to know, delete, and opt-out within certain time frames and which would allow the business to verify the identity of consumers who make such requests. For more information, please see our December 16, 2019 Foley Adviser or contact us.

Cayman Islands Data Protection Law (the "DPL")

Investment advisers who manage funds organized in the Cayman Islands should take note that the DPL, designed to protect individuals' data and give them greater control over its use, came into effect on September 30, 2019. Advisers will need to review any Cayman fund's data privacy policies and procedures, update fund documents and review contracts with service providers. For more detailed information on the DPL, please refer to our September 3, 2019 Foley Adviser.

European General Data Protection Regulation (the "GDPR")

Advisers who manage funds that have European investors or are marketing in Europe, should take note that the GDPR went into effect in May 2018 and should consult with legal counsel. Compliance with the GDPR requires advisers to review their policies and procedures, updates to fund documents, third party contracts and may also require an appointment of an EU representative. For more information on the GDPR, please refer to our April 11, 2018 Foley Adviser.

Section 13(f) Filings

Investment advisers who are required to make quarterly Form 13F filings with the SEC must make such filings within 45 days after the end of each calendar quarter. The first of such filings for this year must be made by February 16, 2021 using EDGAR. These filings are necessary if in the previous calendar year the adviser had under management at least $100 million in securities traded on U.S. securities exchanges (including NASDAQ). Failure to file Form 13F in a timely manner could lead to an enforcement proceeding by the SEC.

Section 13(g) Filings

The SEC permits "qualified institutional investors" (such as registered advisers) and "passive investors" (which may include non-registered advisers or funds managed by registered or non-registered advisers) who have 5% or greater beneficial ownership (a broadly defined concept that goes beyond just who owns the shares) of a class of registered equity securities to report this ownership on Schedule 13G, instead of the more demanding Schedule 13D. For "qualified institutional investors," an initial Schedule 13G must be filed using EDGAR, within 45 days after the end of the calendar year if as of the close of business on December 31 its beneficial ownership exceeds 5% (i.e., by February 16, 2021 with respect to positions from calendar year 2020). In addition, a registered adviser who files Schedule 13G as a qualified institutional investor must notify any person (such as a client) on whose behalf it holds 5% beneficial ownership of any transaction that such person may be required to report (for example, the acquisition of that five percent). For "passive investors," the initial Form 13G filing must be submitted within 10 days of the event which triggers the filing requirement.

With respect to both "qualified institutional investors" and "passive investors" an annual amendment is required to be filed within 45 days after the end of each calendar year to report any change in holdings for that year (i.e., by February 16, 2021). The annual amendment should report holdings as of December 31. A copy of such filing should also be sent to the issuer.

Please note that both qualified institutional investors and passive investors must make additional filings upon certain changes in ownership or changes in investment purpose.

Form 13H Filings

Form 13H filings are required to be made by "large traders," which is defined under Rule 13h-1(a)(1) as a person or entity who directly or indirectly exercises investment discretion over one or more accounts and effects transactions in an aggregate amount equal to or greater than the "identifying activity level." The "identifying activity level" is defined as aggregate transactions in "NMS securities" that equal or exceed two million shares, or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month. The term "NMS securities" refers generally to exchange-listed securities, including both equities and options.

Large traders must submit an initial Form 13H within 10 days of reaching the identifying activity level. An amended filing must be submitted promptly following the end of the calendar quarter in which any of the information contained in a previously filed Form 13H becomes inaccurate for any reason. Otherwise, large traders must make annual filings no later than 45 days after the calendar year end (i.e., by February 16, 2021).

On December 16, 2020 the SEC issued a Risk Alert containing observations from the Office of Compliance Inspections and Examinations ("OCIE") in their examination of registered investment advisers for compliance with Rule 13h-1 relating to "large traders". Among the observations were that, as part of OCIE's examinations, they identified numerous instances of investment advisers that were either not aware of the Rule or were not familiar with certain requirements of the Rule. As a result of these observations, OCIE encouraged investment advisers to review their compliance policies and determine whether they qualify as a "large trader".

"New Issues Rules" – Annual Eligibility Verification

The New Issues Rules requires FINRA members or their associated persons ("Members") to obtain an affirmative written statement that the account is eligible to purchase new issues in compliance with the New Issues Rules, within twelve months prior to a sale of a new issue to an account holder, either from the account holder or its authorized representative. Members are required to verify this status on an annual basis. The initial verification of an account holder's status under the New Issues Rules must be a positive affirmation of the account holder's non-restricted status. However, the New Issues Rules also allows Members to follow a "negative consent" process for annual verification of an account holder's status by sending a notice asking the account holder if there has been any change in its status. Unless an account holder affirmatively reports a change in status, the Member is permitted to rely on its existing information regarding a particular account holder. In many cases, Members rely on representations from investment advisers who must, in turn, determine the eligibility status of separate account clients and investors in hedge funds. Investment advisers investing in new issues, should remember to undertake the annual verification as to new issues eligibility with their clients and investors. It is important to note that on November 5, 2019, the SEC approved changes to the New Issue Rules effective January 1, 2020 that may allow for additional private fund investor and advisory client participation in new issues. Given these changes, investment advisers investing in new issues should revise their fund offering documents and annual eligibility questionnaires to adequately identify investors that are able to participate in new issues.

COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

Form PQR

Registered Commodity Pool Operators ("CPOs") must file NFA Form PQR through the EasyFile system on the National Futures Association ("NFA") website (www.nfa.futures.org) within 60 days after the end of the quarters ending March, June and September. Reports for the quarter ending December 31 are due within 90 days of the calendar year end for Small (AUM <$150 million) or Mid-Sized CPOs (AUM >$150 million <$1.5 billion) and within 60 days of the calendar year end for Large CPOs (AUM> $1.5 billion). Each Form PQR filed after its due date will be subject to a late filing fee of $200 for each business day that it is late.

CPOs to 4.7 Pools - Delivery of Annual Audited Financials and Quarterly Account Statements

CPOs managing 4.7 pools must deliver to pool participants and file with the NFA, certified (per the certification guidelines in Rule 4.7) annual reports that include audited financial statements within 90 days of the end of the fiscal year, or by March 31, 2021 for advisers with a December 31 fiscal year end. CPOs of fund of funds can request an extension of up to 180 days after the end of the fiscal year to deliver and file these reports. CPOs managing 4.7 pools must also deliver certified (per the certification guidelines in Rule 4.7) quarterly account statements to the pool's participants.

Annual Certification - 4.13(a)(3) and 4.14(a)(8)

Fund managers relying on the exemption from registration as a commodity pool operator with the CFTC, set forth in Rule 4.13(a)(3): the so-called "de minimis exemption", and fund managers relying on the exemption from registration as a commodity trading adviser with the CFTC set forth in Rule 4.14(a)(8), must reaffirm their claim of exemption or exclusion from registration each year. The annual affirmation may be made through the NFA's Exemption System (http://www.nfa.futures.org/NFA-electronic-filings/exemptions.HTML) and must be made within 60 days of the end of the calendar year, or by March 1, 2021 for calendar year 2020. Failure to submit an affirmation by this deadline will result in a withdrawal of the exemption or exclusion from registration.

Form PR

All registered Commodity Trading Advisers ("CTAs") must file NFA Form PR through the EasyFile system on the NFA website within 45 days after the end of each of the quarters ending March, June and September. They must also file a year-end report within 45 days of the calendar year end. Each Form PR filed after its due date will be subject to a late filing fee of $200 for each business day that it is late.

NFA Bylaw 1101 Compliance

All registered CPOs and CTAs must have procedures in place to comply with NFA Bylaw 1101. NFA Bylaw 1101 prohibits NFA members from conducting customer business with a non-NFA Member that is required to be registered with the CFTC. To be in compliance, the procedures should include: (1) the steps firm personnel will take to determine if an entity is required to be registered with the CFTC and to be an NFA Member and (2) a requirement that firm personnel review BASIC to verify that the entity is registered with the CFTC and an NFA Member (if registration and membership are required), or has an exemption from registration on file with the NFA. The procedures should also require firm personnel to document the review and maintain the documentation.

Additionally, the NFA requires Members to take reasonable steps to confirm each year that previously exempt CPOs/CTAs with which a Member transacts customer business, continue to be exempt by confirming that such parties have affirmed their exemptions on the NFA website within 60 days of the end of the calendar year. If the Member learns that a person does not intend to file a notice affirming an exemption, or the person does not file a notice affirming the exemption within 60 days of the end of the calendar year, then the Member must promptly obtain a written representation as to why the person is not required to register or file a notice exemption, and evaluate whether the representation appears adequate based upon the information that the Member knows about the person. If the Member ultimately determines that the person's written representation is inadequate and the person is required to be registered, then the Member must put a plan in place to cease transacting customer business with the person, or risk violating NFA Bylaw 1101.

Swaps Proficiency Requirements

On January 31, 2020 the NFA's Swaps Proficiency Requirements ("SPRs") went into effect. As a result, each individual who was approved as a swap associated person ("Swap AP") of a CPO or a CTA as of January 31, 2020 must satisfy the SPRs by January 31, 2021 to remain approved as a Swap AP. Any individual who was not a Swap AP as of January 31, 2020 will be required to satisfy the SPRs prior to being approved as a Swap AP of a CPO or CTA. For Swap APs who are not conducting swaps activities and will not do so in the future, NFA Member FCMs, IBs, CPOs and CTAs were required to withdraw their swap designation prior to the compliance date of January 31, 2021. If such NFA Members have not already done so, they should complete such withdrawals.

Swap APs of CPOs and CTAs will be required to satisfy the Short Track Proficiency Requirements, which consist of four modules and a total of 60 test questions which are administered online. Swap APs may take the SPRs at: https://nfa-swaps-proficiency-requirements.moonami.com. CPOs and CTAs that engage in swaps trading are required to designate a Swaps Proficiency Requirements Administrator (an "SPR Admin") to be responsible for coordinating the enrollment of individual Swap APs in the SPRs. The SPR Admin must be designated by completing the SPR Admin Form on the NFA's website at: https://www.nfa.futures.org/electronic-filing-systems/SPR-admin.html.

Additional NFA/CFTC Requirements

On at least an annual basis, registered CPOs and CTAs must also:

- Complete an NFA Annual Questionnaire on the NFA website
- Complete the electronic Annual Registration Update
- Pay NFA dues on the anniversary date of the firm's registration
- Complete NFA's annual Self-Examination Questionnaire and affirmation
- Send the firm's Privacy Policy to every participant in a pool
- Test the firm's Disaster Recovery Plan and make any necessary adjustments
- Provide Ethics Training to firm employees
- Review the firm's written information security program (ISSP) using either in-house staff with appropriate knowledge or by engaging an independent third-party information security specialist
- Supervise the operations of and conduct an annual onsite inspection of every Branch Office
- Update the firm's Questionnaire as the firm's information changes, including for any pools that have liquidated

OTHER REMINDERS

Rule 506 - "Covered Person" (or "Bad Actor") Questionnaires

Investment advisers relying on Rule 506 of Regulation D in connection with any ongoing offering of private fund interests are reminded to collect updated "covered person" (or "bad actor") questionnaires from each of their covered persons on a regular basis. While no specific regulations have been issued indicating how frequently this information should be refreshed, industry guidance suggests that advisers should consider doing this as frequently as quarterly. "Covered persons" include, among others, the private fund, all directors, executive officers, general partners and managing members of the private fund, the investment manager of the private fund, placement agents, and any beneficial owner of 20% or more of the private fund's outstanding voting equity securities calculated on the basis of voting power, even if not a control person of the private fund. For additional information regarding who qualifies as a "covered person" and the "bad actor" requirements, please refer to our July 23, 2013 Securities Alert.

Annual Amendment to Form D

Investment advisers conducting ongoing offerings of securities in reliance on Rule 506 of Regulation D are reminded that an amendment to Form D is required to be filed with the SEC at least annually. In addition, various states require that a filing (sometimes together with a filing fee) be submitted annually or upon closure of any open offering.

Cayman Islands Private Funds Law and Mutual Funds Law

On February 7, 2020 the Cayman Islands Government enacted the Private Funds Law, 2020 (the "Private Funds Law") and the Mutual Funds (Amendment) Law, 2020 (the "Mutual Funds Law"). Under the Private Funds Law, new and existing closed-ended Cayman fund vehicles such as partnerships, companies, unit trusts and limited liability companies are required to register with the Cayman Islands Monetary Authority (CIMA) and are subject to requirements in relation to valuation, custody, cash management and identification of securities. Further, under the Private Funds Law, all closed-ended funds subject to the law must have their accounts audited annually by a CIMA approved auditor, together with an obligation to file audited accounts with CIMA. The Mutual Funds Law now also requires registration with CIMA for mutual funds with 15 or fewer investors and the filing of annual financial returns with CIMA.

Economic Substance Law

The Cayman Islands Economic Substance Law which became effective January 1, 2019. introduced certain reporting and economic substance requirements for "relevant entities" conducting "relevant activities." All Cayman Islands companies, limited liability companies, limited liability partnerships and registered foreign companies must file an annual notification filing ("ES Notification") in Cayman regardless of whether or not they are "relevant entities", or claim an exemption from being a "relevant entity" because they are an investment fund tax resident in another jurisdiction. Trusts and partnerships do not have to file ES Notifications. The ES Notification filing is a prerequisite to filing an annual return on or before January 31, 2021. An entity which claims an exemption by virtue of being an investment fund, tax resident in another jurisdiction or a domestic company, will not be required to file an annual ES report ("ES Report"). Investment advisers should work with their Cayman service providers on an annual basis to determine whether an entity falls within the classification of a "relevant entity", whether the nature of its activities falls within the scope of the economic substance regime and finally to ensure any ES Notification and, if required, ES Report filing is made.

FATCA and CRS

In order to comply with FATCA, fund managers should ensure that the funds they manage have identified and documented their respective investors (e.g., collected and verified an IRS Form W-8 or W-9, as applicable, and any other required information, from each investor) and that they have policies and procedures in place to collect the appropriate information and documentation from new investors (if new investors can be admitted). U.S. funds that made withholdable payments (e.g., U.S.-source interest and dividends) to non-U.S. persons during 2020 will be required to furnish certain information to such non-U.S. persons and file information returns with the IRS by March 15 2021, even if withholding was not required, and such funds may also have withholding obligations with respect to withholdable payments made to certain non-U.S. investors during 2021. Non-U.S. funds may have registration and information reporting obligations (with respect to 2020) in their respective jurisdictions between April and July 2021.

The OECD Common Reporting Standard ("CRS") is substantially similar to FATCA, but it applies on a global scale, and must be made in addition to FATCA for funds in CRS jurisdictions (e.g. Cayman Islands, BVI, but not the United States). The due diligence and information reporting requirements under CRS are intended to expand upon the corresponding requirements under FATCA. For managers of funds in CRS jurisdictions, such funds are required to identify and document their respective investors (e.g., collect and verify CRS Self-Certification Forms) and adopt policies and procedures relating to CRS compliance. Non-U.S. funds subject to CRS may have registration and reporting obligations (with respect to 2020) in their respective jurisdictions between April and July 2021.

Managers of funds with FATCA and/or CRS compliance obligations should consult with counsel and/or accountants immediately to determine what actions are required.

Foreign Bank Account Report ("FBAR")

Every U.S. person (including both individuals and entities) that had a financial interest in, or signature authority over, one or more non-U.S. financial accounts (e.g., bank accounts and mutual fund interests, but not equity interests in a hedge fund, private equity fund or other private investment fund) during 2020 must file an "FBAR" (Foreign Bank Account Report) with the U.S. Treasury, if the aggregate value of such accounts exceeded $10,000 at any time during 2020. For this purpose, a U.S. person will be deemed to hold a financial interest in the non-U.S. financial accounts held by an entity or trust if such U.S. person owns, directly or indirectly, more than 50% of the voting power or value of such entity or trust. If an FBAR for 2020 is required, it must be filed electronically with the U.S. Treasury on or before April 15, 2021. The U.S. Treasury, however, will grant filers failing to meet the FBAR due date an automatic extension to October 15, 2021; specific requests for this extension are not required. Failure to comply may expose a U.S. person to a civil penalty of up to $10,000. Willful FBAR violations may expose a U.S. person to an increased civil penalty of up to the greater of $100,000 or 50% of the aggregate high value of the accounts for the year in question, as well as criminal penalties.

Country-by-Country Reporting ("CbCR")

In addition to FATCA, CRS, and FBAR, fund managers may have additional reporting obligations under Country-by-Country Reporting ("CbCR") rules that have been implemented by numerous jurisdictions around the world. In general, "multinational enterprise groups" (e.g., chains of related entities that include two or more entities that are formed or that operate in different countries) may be required to register with local authorities and self-report certain information about the group's structure and ownership if: (1) group entities are required to consolidate for financial reporting purposes, and (2) the revenue of the consolidated entities for the prior reporting period exceeds U.S. $850 million. To the extent CbCR reporting is required for activities in 2020, the corresponding reports may be due as early as February 28, 2021, depending upon the jurisdiction. The revenue threshold may cause most multinational groups, including multinational investment fund structures, to not have a reporting obligation under CbCR, but fund managers should be aware of CbCR and should review their respective fund structures to determine if CbCR may apply.

Employee Confidentiality Provisions

Advisers are reminded that SEC Rule 21F-17(a) under the Exchange Act broadly prohibits any person from taking any action to "impede" any other person from reporting to the SEC any possible violation of federal securities law or regulation. In other words, the rule bars companies from doing anything that might "chill" whistleblowing. This has been interpreted to include, among other things, using blanket confidentiality language in: employment agreements, employee handbooks, and codes of conduct, that states company information is confidential and must not be used or disclosed without permission from the company. In April 2015, the SEC brought its first enforcement action, In the Matter of KBR, Inc., for a violation of Rule 21F-17(a). Since then, the SEC has made clear that further enforcement actions will follow and that companies must promptly review – and if necessary, revise – all of their relevant materials. Revisions to employee documents and manuals may be warranted and we recommend reviewing these materials and implementing any changes which are necessary or advisable promptly.

Cybersecurity

Cybersecurity is arguably the current greatest focal point of the SEC and state regulators. The SEC has again included it as an area of examination focus for 2021. Advisers that have not yet conducted a cybersecurity review or adopted a cybersecurity policy should do so. Advisers should review the August 2017 Risk Alert from the SEC and consider implementing the policies and procedures that are noted as being robust.

Pay-to-Play

Advisers who manage assets of one or more government entities (whether as separate clients or investors in an investment fund managed by the adviser), or who engage placement agents to market to government entities, are required to comply with the provisions of SEC Rule 206(4)-3, also known as the "Pay-to-Play Rule". The Pay-to-Play Rule, which applies whether the Adviser is registered with the SEC or an exempt reporting adviser for SEC purposes, places certain restrictions on the type and amount of political contributions and/or services to political candidates, campaigns, or PACs that may be made by an adviser or its affiliates (in certain circumstances including contributions made prior to becoming affiliated with the adviser). In addition, the Pay-to-Play Rule places requirements on who an adviser may engage to solicit government entities on the Adviser's behalf. In addition, advisers subject to the Pay-to-Play Rule are required to maintain books and records to document their compliance with the rule. Any adviser currently managing assets of any government entity, or that is or intends to market its services to any government entity, should consult with counsel to ensure adequate policies and procedures are in place for purposes of compliance with the Pay-to-Play Rule.

International Swaps and Derivatives Association Standard Documentation ("ISDAs")

Advisers who use swaps are reminded of the various Dodd-Frank and European Market Infrastructure Regulation ("EMIR") requirements. Every party to a swap must have a CICI/LEI number and should enter into the August DF Protocol, the March DF Protocol and, if an EU counterparty is involved, potentially several EMIR related protocols. Advisers with EU counterparties are also reminded to monitor the status of each fund they manage for NFC- or NFC+ status, and to update their EMIR NFC filing as needed. Finally, advisers should be mindful of whether particular swaps they are trading fall within the clearing requirements. Finally, with respect to uncleared swaps, the new variation margin rules went into effect March 1, 2017. Advisers who have not taken the necessary steps to update their credit support documentation should contact counterparties immediately to begin that process.

EU Short Reporting

Advisers that deal in securities of issuers located in the European Union, or securities listed on EU exchanges, should be mindful of the EU short reporting rules (which generally require reporting of short positions of 2% or greater of an EU issuer). We have seen increased enforcement activity from EU regulators in this area in recent years. Advisers should note that swaps, ADRs and other derivative instruments may also be deemed "EU short positions" that must be reported.

EU Alternative Investment Fund Managers Directive ("AIFMD")

As a reminder, the AIFMD went into full effect in July 2014. Managers who currently market or are looking to market a fund in the EU should consult EU counsel to determine what actions are required. Such consultation should occur well in advance of any anticipated marketing of a fund in the EU as registration under the AIFMD requires a few months to complete.

Form SLT

Treasury International Capital ("TIC") Form SLT is required to be filed by certain custodians, investment advisers and investors. Reporting entities include an investment adviser that has $1 billion or more of "reportable securities", as of the last business day of the reporting month. Form SLT must be submitted by the reporting entity with at least $1 billion in reportable securities to the Federal Reserve Bank, no later than the 23rd calendar day of the month following the month of reporting. The Form may be submitted electronically, by mail or fax. Determining whether an adviser must submit this form is complex, and advisers with $1 billion or more in AUM are urged to consult with counsel if they are uncertain whether they should be making this filing.

Bureau of Economic Analysis ("BEA") Reporting

All investment advisers, whether or not registered, should review their obligations for reporting to the Department of Commerce's Bureau of Economic Analysis. For more detailed information on these BEA requirements please refer to our May 12, 2015 Foley Adviser.

General Updates to Fund Documents

All investment advisers, whether or not registered, are reminded that reviews of all fund documents should be undertaken on a periodic basis. In particular, the constituent documents for funds that are either limited liability companies or limited partnerships should be reviewed for compliance with the Revised Partnership Tax Audit Rules, which went into effect for tax years beginning on and after January 1, 2018. Registered investment advisers may undertake this review as part of their annual compliance review. To the extent that such a review has not been undertaken during the last two years, it is recommended that such a review be undertaken at this time.

Annual Delaware Tax

Limited partnerships and limited liability companies formed in Delaware are required to pay an annual tax in the amount of $300 by June 1 of each year.

Annual State Filings

Limited partnerships and limited liability companies may be required to file an annual report in their state of formation and/or in states in which they are qualified to do business. If you have any questions about applicability of such requirements, please consult with legal counsel.

RELATED INDUSTRIES

- Investment Advisers & Private Funds

RELATED PRACTICES

- Private Equity Funds
- Venture Capital Funds
- Hedge Funds
- Investor Representation
