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GlobalNote®

SEC RELEASES FINAL RULES FOR INVESTMENT ADVISERS IN ACCORDANCE WITH DODD-FRANK ACT [1]

I. Introduction

On July 21, 2010, President Barack Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act" or the "Act") into law. The Act provides for major changes to the financial services industry, significant amendments to the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and a number of new requirements found in Title IV of the Act ("Title IV") entitled the "Private Fund Investment Advisers Registration Act of 2010." The provisions of the Dodd-Frank Act are effective as of July 21, 2011.

The Dodd-Frank Act also directed the Securities and Exchange Commission (the "SEC" or the "Commission") to create rules implementing certain provisions of the Act. On November 19, 2010, the SEC issued two releases with proposed rules which, if adopted, were to be effective on July 21, 2011. On June 22, 2011, the SEC issued two releases containing final versions of the proposed rules. These releases include Release No. IA-3221 titled "Rules Implementing Amendments to the Investment Advisers Act of 1940" (the "Implementing Release") and Release No. IA-3222 titled "Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers (the "Exemptions Release"). Pursuant to the final rules, the SEC postponed the implementation of several registration and compliance requirements for investment advisers until 2012 (as discussed further herein).

II. Registration of Private Fund Advisers

Pursuant to the rules governing investment advisers prior to the Dodd-Frank Act, investment advisers who had $25 million or more in assets under management, or were otherwise eligible to register (e.g., acting as an investment adviser to a registered investment company ("RIC")) were permitted to register with the SEC, and investment advisers who had $30 million or more assets under management were required to register with the SEC absent an exemption from registration, such as Advisers Act Section 203(b)(3). As discussed below, Title

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IV and the Implementing Release contain provisions that significantly change the registration requirements for investment advisers and the exemptions therefrom.

a. Eligibility for SEC Registration

i. Creation of New Categories of Investment Advisers

The provisions set forth in Section 410 of the Dodd-Frank Act and codified in Section 203A(a)(2) of the Advisers Act create a new classification of "mid-sized advisers." A "mid-sized adviser" is one that has regulatory assets under management ("AUM") (as discussed further herein) of between $25 million and $100 million. In accordance with this new class of investment advisers, the Dodd-Frank Act also raised the minimum threshold for required registration with the SEC to $100 million AUM. Section 410 of the Dodd-Frank Act prohibits a mid-sized adviser from registering with the SEC if that adviser is "required to be registered"[2] as an investment adviser in the state where it has its principal office and place of business. According to the Implementing Release, if a mid-sized adviser is either not "required to be registered" in the state where it maintains its principal office and place of business, or if registered, it is not subject to examination as an adviser by that state, it must register with the SEC. The SEC has surveyed all fifty states' securities authorities, and only New York and Wyoming will not subject their registered advisers to examination.[3] If a mid-sized adviser does not qualify for one of the exemptions from the prohibition on SEC registration listed below, it must register with that state's securities authorities.

According to Advisers Act Section 203A, if an adviser has less than $25 million AUM, it is labeled a "small adviser." All "small advisers" are prohibited from registering with the SEC and must register or qualify from an exemption from registration at the state level, unless a small adviser qualifies for an exemption from the prohibition on SEC registration (as discussed below). Finally, any investment adviser that is either an adviser to a business development company ("BDC") (and also has at least $25 million AUM) or an adviser to a RIC (regardless of its level of AUM) is *required* to register with the SEC.

ii. Exemptions from the Prohibition on SEC Registration

Although the Dodd-Frank Act prohibits many smaller and mid-sized advisers from registering with the SEC, there are several exemptions from this prohibition on SEC registration. In the Implementing Release, the SEC stated that any adviser, regardless of its AUM level, would be allowed to register with the SEC rather than at the state level if it fit into one of the following five categories: (i) certain pension consultants; (ii) certain investment advisers affiliated with an adviser registered with the SEC; (iii) investment advisers expecting to be

[2] In the Implementing Release, the SEC stated that an adviser is "required to be registered" in a particular state unless that adviser is exempt from registration under the law of the state in which it has its principal office and place of business, or is excluded from the definition of investment adviser in that state.

[3] *See* http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm. In the Implementing Release, the SEC had initially listed Minnesota as another state that would not subject its advisers to examination, but Minnesota has since been removed from the list.

eligible for SEC registration within 120 days of filing Form ADV; (iv) certain multi-state investment advisers;[4] and (v) certain internet advisers.

iii. Assets Under Management Calculation

In the Implementing Release, the SEC redefined its method of calculating AUM for the purposes of classifying investment advisers and determining their eligibility for SEC registration. Prior to the final SEC rules, the level of "assets under management" were calculated according to the "securities portfolios with respect to which an adviser provides continuous and regular supervisory or management services." The Form ADV Instructions also previously allowed advisers to exclude certain assets including proprietary assets, assets managed by advisers who did not receive compensation for their advisory services, and assets of foreign clients, from all AUM calculations.

According to the Implementing Release, Form ADV will now refer to an adviser's "regulatory assets under management." The SEC created this new method of calculation in order to have a uniform system of calculating AUM. As defined by the SEC, regulatory AUM includes all securities portfolios for which investment advisers "provide continuous and regular supervisory or management services, regardless of whether these assets are family or proprietary assets, assets managed without receiving compensation, or assets of foreign clients." According to the Implementing Release, regulatory AUM are calculated on a "gross basis" without deducting any outstanding indebtedness or accrued but unpaid liabilities. As proposed, the SEC is also enacting a rule requiring an annual determination of an adviser's regulatory AUM rather than on a more frequent basis.

iv. Process for Transition to State Registration

As many investment advisers previously registered with the SEC will now have to withdraw their federal registration and register at the state level, the SEC has set forth guidelines for this transition.

*Existing Registrants***.** According to the Implementing Release, all advisers currently registered with the SEC must file an amended Form ADV by March 30, 2012. This revised Form ADV (as discussed further herein) asks advisers to indicate whether or not they remain eligible for SEC registration. Any mid-sized adviser that no longer qualifies for SEC registration must file a Form ADV-W, a form indicating their withdrawal from SEC registration, and register at the state level by June 28, 2012. The Implementing Release also notes that any investment adviser that is registered with the SEC as of July 21, 2011 must remain registered until January 1, 2012 (unless an exemption from registration applies), in order for the SEC to accommodate updates to the Investment Adviser Registration Depository ("IARD") system.[5]

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4 In accordance with the Dodd-Frank Act, the SEC amended Advisers Act Rule 203A-2 to allow any investment adviser that is required to register as an adviser with fifteen (15) or more states to register with the SEC. This reflects a shift from the previous thirty (30) state requirement.

5 In the proposed rules, the SEC originally required mid-sized advisers to withdraw their SEC registration and register at the state level by October 19, 2011.

New Applicants. Any previously unregistered adviser that qualifies as a mid-sized adviser may register with either the SEC or the appropriate state securities authority until July 21, 2011, the effective date of the final SEC rules. After July 21, 2011, all mid-sized advisers must register with the appropriate state securities authority. Only those advisers who have over $100 million in AUM (and those mid-sized advisers who qualify for an exemption from the prohibition on SEC registration) will be allowed to register at the federal level, and must do so by filing a Form ADV by March 30, 2012.

Assets Under Management Buffer. In the Implementing Release, the SEC has also resolved to eliminate the current buffer for advisers that have AUM close to the threshold requiring a switch in registration. Previously, the rules provided that an investment adviser would not have to register with the SEC until they had AUM of over $30 million. If an adviser had between $25 million and $30 million AUM, it could opt to register with the SEC but would not be forced to until its AUM exceeded $30 million. According to the Implementing Release, the SEC has created a new buffer for mid-sized advisers with AUM close to $100 million.[6] According to amended Advisers Act Rule 203A-1(a)(1), a mid-sized adviser does not have to register with the SEC until its AUM exceeds $110 million (as determined at the end of that adviser's current year-end in its annual updating amendment to Form ADV). Similarly, an already-registered investment adviser does not have to withdraw its SEC registration until its AUM is less than $90 million (at the end of that adviser's current year-end). It is important to note that an adviser has the option of either registering or withdrawing its registration before reaching those benchmarks.[7]

b. New Reporting Requirements for Investment Advisers

i. <u>Form ADV</u>

In an effort to increase oversight of investment advisers, the SEC has adopted several rules that revise the existing Form ADV.

Private Fund Reporting (Item 7.B). Item 7.B requires information about each of the private funds advised by an adviser. The SEC is now also requiring advisers to complete a separate Section 7.B.(1) and a separate Schedule D for each private fund that they manage. These request information about the size, strategy, organization and other detailed characteristics of each private fund (Part A) as well as information concerning several types of service providers that perform services for these private funds (including auditors, prime brokers, custodians, administrators and marketers) (Part B). All of the information collected by the SEC from Item 7.B will be disclosed to the public.

In contrast to the proposed version of the SEC rules, however, the SEC is not adopting amendments to Part A that would have required an adviser to disclose each private fund's net assets, to report private fund assets and liabilities by class and categorization in the fair value

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[6] This buffer is not available for advisers to either a RIC or a BDC and is also not available to advisers that are eligible for one of the exemptions from the prohibition on SEC registration as listed in Advisers Act Rule 203A-2.

[7] Once an adviser has more than $100 million AUM, it can voluntarily register with the SEC, and it can similarly withdraw its registration once it has less than $100 million AUM.

hierarchy established under Generally Accepted Accounting Principles ("GAAP"), or to specify the percentage of each fund owned by particular types of beneficial owners. In Part A, the SEC has diverged from its proposed rules in relation to the definition of a qualifying "hedge fund" by excluding securities asset funds from the definition and by stating that, in relation to funds classified in relation to whether performance fees or allocations are calculated by taking into account unrealized gains, this definition only includes fees or allocations that may be *paid* to an investment adviser. The final definition of a "hedge fund" also includes a *de minimis* exception for funds involved in short selling that hedges currency exposure or manages duration. In Part B, the SEC has decided not to require advisers to name any third parties performing valuations on behalf of a fund as originally proposed.

Advisory Business Information (Item 5). Item 5 requires advisers to provide information regarding the adviser's business, employees, client base and AUM as well as details about the types of services they provide. As stated in the Implementing Release, the SEC has adopted amendments to this Item that requires an adviser to describe how many of its employees are investment adviser representatives or licensed insurance agents. As opposed to the proposed version of the rules which stated that all advisers must report specific percentages of AUM by client type, the SEC has revised the rule so that advisers must only approximate these AUM percentages in twenty-five percent (25%) segments.

Other Business Activities and Financial Industry Affiliations (Items 6 and 7). Items 6 and 7 require advisers to provide information pertaining to all types of financial services that they provide to their clients. The SEC has amended these Items to require information regarding whether an adviser is a related person is a trust company, registered municipal advisor, registered security-based swap dealer or major security-based swap participant, as well as whether the adviser is an accountant or lawyer. These new rules also require advisers to provide information about other types of business that they are engaged in as well as identifying information for the adviser's related persons. However, contrary to the proposed rules, the SEC is permitting advisers to omit reporting about certain related persons if, among other things, the advisers have no business dealings or do not conduct shared operations with those related persons.

Additional Form ADV Revisions. The SEC has also made revisions to several other sections of Form ADV including Item 8 (Participation in Client Transactions), Item 9 (Custody) and Item 1.O (Reporting $1 Billion in Assets) as well as several other technical amendments.

ii. Exempt Reporting Advisers

The SEC has set forth new reporting requirements for investment advisers claiming an exemption from federal registration (as discussed below). Prior to the Dodd-Frank Act, investment advisers who were exempt from registration with the SEC were not subject to any reporting requirements. However, the SEC will now require certain exempt advisers (those relying on the exemptions found in Advisers Act Sections 203(l) (venture capital fund advisers) and 203(m) (certain private fund advisers) as discussed further herein) to fill out and file certain portions of Form ADV[8] on an annual basis. According to the amended Form ADV Instructions, any adviser claiming an exemption under the Advisers Act must submit an initial Form ADV

[8] Exempt reporting advisers must complete Items 1, 2.B., 3, 6, 7, 10 and 11 of Form ADV.

within sixty (60) days of relying on such exemption. In addition, any exempt reporting adviser must file an updated Form ADV annually within ninety (90) days of the end of the adviser's fiscal year. An exempt reporting adviser must also file more frequent updates if certain Form ADV responses become inaccurate. Finally, an adviser must file an amendment to its Form ADV to indicate that it is filing a final report once it no longer relies on an exemption from registration. According to the Implementing Release, the SEC does not plan to conduct compliance examinations of exempt reporting advisers on a regular basis, but it may do so if there are any indications of wrongdoing.

c. Changes to Exemptions from Registration under the Advisers Act for Private Fund Advisers[9]

i. Elimination of Private Adviser Exemption

Title IV eliminated the private adviser exemption that was previously found in Advisers Act Section 203(b)(3) (known as the "private adviser exemption"). The private adviser exemption provided that an adviser who (i) had fewer than fifteen (15) clients (where each fund was counted as one client) during the preceding twelve (12) months, (ii) did not hold himself out generally to the public as an investment adviser, and (iii) did not act as an adviser to a RIC or a BDC, was exempt from registration as an investment adviser under the Advisers Act. Prior to the Dodd-Frank Act, many investment advisers relied on this private adviser exemption. The elimination of this exemption, effective as of July 21, 2011, is one of the most notable amendments to the registration rules of the Advisers Act and will require many previously unregistered investment advisers who meet the jurisdictional thresholds described herein to register as investment advisers with the SEC (unless an exemption from registration applies).

ii. Limitation on Intrastate Exemption

The Act narrowed the "intrastate exemption" found in Advisers Act Section 203(b)(1), which provides an exemption from SEC registration for certain intrastate advisers. As revised, this exemption will no longer be available to investment advisers to private funds after July 21, 2011.

iii. Change to CFTC-Registered Exemption

The Act preserves Advisers Act Section 203(b)(6) of the Advisers Act, which provides an exemption from registration to commodity trading advisors ("CTAs") registered with the U.S. Commodities Futures Trading Commission (the "CFTC") "whose business does not consist primarily of acting" as investment advisers as defined in Section 202(a)(11) and who do not serve as investment advisers to a RIC or a BDC. However, Title IV also expands the exemption for registered CTAs who manage a private fund as long as, after July 21, 2011, the business of the adviser does not become "*predominantly* the provision of securities-related advice." Of note, the term "predominantly" is not defined in the Act.

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[9] Title IV adds a definition of "private fund" in Section 202(a)(29) of the Advisers Act. The term "private fund" is defined to mean an issuer that would be an investment company, as defined in §3 of the Investment Company Act of 1940, as amended (the "Company Act"), but for §3(c)(1) (i.e., privately-offered funds with fewer than 100 investors) or §3(c)(7) (i.e., privately-offered funds where all investors are qualified purchasers) of the Company Act.

d. New Exemptions from Registration under the Advisers Act

i. Addition of Exemption for Foreign Private Advisers

Title IV amends Advisers Act Section 203(b)(3) to add an exemption for "foreign private advisers." As defined in Advisers Act Section 202(a)(30), a "foreign private adviser" is an adviser who (i) has no place of business in the U.S., (ii) has, in total, fewer than 15 clients *and investors* in the U.S. in private funds advised by the investment adviser, (iii) has aggregate AUM attributable to clients in the U.S. and investors in the U.S. in private funds advised by the investment adviser of less than $25 million,[10] and (iv) neither (a) holds itself generally to the U.S. public as an investment adviser, nor (b) acts as (I) an investment adviser to any RIC or (II) a company that has elected to be a BDC and has not withdrawn its election.

Title IV incorporates a "safe harbor" provision for foreign private advisers in relation to counting "clients" for the purposes of this exemption. Specifically, Advisers Act Rule 202(a)(30)-1 allows an adviser to treat as a single client a natural person as well as (i) that person's minor children; (ii) any relative, spouse, or relative of the spouse with the same principal residence; and (iii) all accounts and all trusts of which that person and/or the person's minor child or relative, spouse or relative of the spouse with the same principal residence are the only primary beneficiaries. Rule 202(a)(30)-1 also allows advisers to treat as a single client a corporation, general or limited partnership, trust or other legal organization to which the adviser provides legal advice, as well as two or more legal organizations that have identical shareholders, partners, limited partners, member or beneficiaries. As noted in the Exemptions Release, the SEC is also forcing advisers to count as "clients" those persons for whom the adviser provides advisory services without compensation. In the Exemptions Release, the SEC incorporated generally the definition of "in the U.S." from that found in Regulation S (with some minor definitional additions).

ii. Addition of Exemption for Venture Capital Fund Advisers

Title IV also added Section 203(l) to the Advisers Act to provide an exemption from registration for investment advisers that advise solely one or more "venture capital funds." In Rule 203(l)-1, the SEC generally defined the term "venture capital fund" as a private fund that: (i) represents to investors and potential investors that it pursues a venture capital strategy; (ii) holds no more than twenty percent (20%) of the fund's capital commitments in non-qualifying investments[11] (other than short-term holdings); (iii) does not borrow or otherwise incur leverage, other than limited short-term borrowing (excluding certain guarantees of qualifying portfolio company obligations by the fund); (iv) does not offer its investors redemption or other similar

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[10] While the Act provided the SEC with the ability to raise this amount to more than $25 million, it declined to do so in the Exemptions Release.

[11] In the Exemptions Release, the SEC defined "qualifying investments" as (i) equity securities of qualifying portfolio companies that are directly acquired by the fund from the company, (ii) equity securities of qualifying portfolio companies that are exchanged for directly acquired equity issued by the same qualifying portfolio company, or (iii) equity securities issued by a company of which a qualifying portfolio company is a majority-owned subsidiary or predecessor, and that is acquired by the fund in exchange for directly acquired equity.
The SEC defined a "qualifying portfolio company" as a company that "(i) is not a reporting or foreign traded company and does not have a control relationship with such company, (ii) does not incur leverage in connection with the investment by a private fund and distribute the proceeds of any such borrowing to the private fund in exchange for the private fund investment, and (iii) is not itself a fund."

liquidity rights except in extraordinary circumstances; (v) is not registered under the Company Act; and (vi) has not elected to be treated as a BDC.

The SEC has also adopted a "grandfather" clause in Advisers Act Rule 203(l)-1 that allows certain existing private funds to qualify as a "venture capital fund." The SEC will consider a private fund to be a "venture capital fund" if it (i) represented to investors and potential investors at the time the fund offered its securities that it pursues a venture capital strategy; (ii) has sold securities to one or more investors prior to December 31, 2010; and (iii) does not sell any securities to, including accepting any capital commitments from, any person after July 21, 2011. All investment advisers exempt pursuant to Section 203(l) will be required to maintain appropriate records and provide periodic reports to the SEC.

iii. Addition of Exemption for Certain Private Fund Advisers

In the Exemptions Release, the SEC set forth a new exemption from registration for investment advisers who only advise private funds.[12] Advisers Act Rule 203(m)-1 provides an exemption from registration for any investment adviser that (i) acts solely as an adviser to private funds and (ii) has AUM in the U.S. of less than $150 million. For foreign investment advisers, the exemption is only available if that adviser's U.S. clients are strictly private funds, and all assets managed by that adviser at a place of business in the U.S. do not exceed $150 million in private fund AUM. According to the Exemptions Release, the SEC has stated that private fund AUM must only be calculated on a yearly basis. This exemption will not be available to investment advisers that have any clients other than private funds (e.g., managed accounts). Investment advisers exempted under this rule will be required to maintain appropriate records and provide periodic reports to the SEC in Form PF (as discussed below).

iv. Addition of Exemption for SBIC Advisers

Title IV adds Advisers Act Section 203(b)(7) to provide an exemption for an investment adviser who is not a BDC and who solely advises (i) small business investment companies that are licensees under the Small Business Act of 1958, (ii) entities that have received a notice to proceed to qualify as a small business investment company and (iii) applicants that are affiliated with any entity described in subparagraph (i) who have a pending application to be licensed under the Small Business Investment Act.

e. Other Changes to Registration Under the Advisers Act

i. Amendments to the "Pay-to-Play" Rule

Advisers Act Rule 206(4)-5, or the "Pay-to-Play" Rule, prevents certain investment advisers from seeking to influence government action through political contributions. The SEC has amended this rule to make it applicable to exempt reporting advisers as well as exempt foreign private advisers. In addition, the revised Rule will allow an adviser to pay a registered municipal advisor to serve as a placement agent in order to solicit government entities on its behalf as long as that municipal advisor is registered under Section 15B of the Exchange Act and

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[12] In the Exemptions Release, the SEC noted that it is expanding the Title IV "private fund" definition to also include any fund that qualifies for an exclusion from the definition of "investment company" found in section 3 in the Company Act, as well as any private fund that invests in other private funds.

is subject to pay-to-play rules adopted by the Municipal Securities Rulemaking Board ("MSRB").

ii. Addition of Family Office Exclusion

Advisers Act Section 202(a)(11)(G) directs the SEC to exclude "family offices" from the definition of "investment adviser" under the Advisers Act. Please see our article titled "Developments in Family Office Regulation: Part Three" for more information regarding the SEC's new family office rules.

III. Private Fund Systemic Risk Data Collection

Title IV has imposed certain recordkeeping and reporting requirements on registered investment advisers that advise private funds. These new requirements supplement those previously required under the Advisers Act. As discussed above, certain exempt advisers may also now be subject to reporting and recordkeeping requirements.

a. General Recordkeeping and Reporting Requirement and SEC Examinations

The Act adds Advisers Act Section 204(b) which provides that the SEC may require any registered investment adviser to maintain records and file reports with the SEC (and provide or make available those reports or records or the information contained therein to the Financial Stability Oversight Council (the "Council")) regarding the private funds advised by the investment adviser as necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk by the Council. The records and reports of any private fund advised by an investment adviser shall be deemed to be the records and reports of the investment adviser. These records will be subject to periodic SEC examination as well as additional examinations as the SEC may deem necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.

b. Form PF and Adviser Classifications

On January 26, 2011, the SEC and CFTC issued a joint release (the "Form PF Joint Release") proposing the creation of Form PF and implementing specific new reporting and recordkeeping requirements as directed by the Act. In the Form PF Joint Release, the SEC and CFTC reiterated that any registered investment adviser who advises one or more private funds must comply with the new recordkeeping and reporting requirements and file a Form PF on an ongoing basis. The Form PF Joint Release also created two categories of advisers, each of which has different Form PF reporting requirements. "Smaller" private fund advisers are those that have less than $1 billion in AUM, and these advisers must make Form PF filings on an annual basis beginning on March 30, 2012. "Large Private Fund Advisers" are those that have at least $1 billion in AUM, and these advisers must make Form PF filings quarterly, beginning on January 15, 2012.

c. Required Information

The records and reports required to be maintained by both types of private fund advisers and subject to inspection by the SEC in the Form PF Joint Release include, for each private fund advised by the adviser, (i) the amount of AUM and use of leverage, including off-balance sheet

leverage, (ii) counterparty credit risk exposure, (iii) trading and investment positions, (iv) valuation policies and practices of the fund, (v) types of assets held, (vi) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors, (vii) trading practices, and (viii) any other information the SEC (in consultation with the Council) determines is necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk. "Large Private Fund Advisers" must provide additional information regarding their aggregate advised hedge funds' identification information, exposures and trading, risk metrics, and financing and investor information.

d. SEC/CFTC Joint Registrations

Title IV required the SEC and the CFTC to jointly promulgate rules with regard to the recordkeeping and reporting of private funds for investment advisers registered under both the Advisers Act and the Commodity Exchange Act, as amended (the "CEA"). The Form PF Joint Release satisfied this requirement by setting forth reporting rules for registered investment advisers (regulated by the SEC) and commodity pool operators ("CPOs") and commodity trading advisers ("CTAs") (both regulated by the CFTC).

e. Information Sharing

The SEC will make available all reports, documents, records and information filed pursuant to the above private fund reporting requirements ("Private Fund Reporting Requirements") (i) the Council considers necessary for the purpose of assessing the systemic risk posed by a private fund, (ii) the SEC considers necessary to comply with any request for information from any other Federal department or agency or any self-regulatory organization requesting a report or information for purposes within the scope of its jurisdiction, and (iii) the SEC considers necessary to comply with any order of U.S. court in an action brought by the U.S. or the SEC. The SEC shall report annually to Congress on how the SEC has used the data collected pursuant to the Private Fund Reporting Requirements to monitor the markets for the protection of investors and the integrity of the markets.

f. Confidentiality

The SEC, the Council and any department, agency or self-regulatory organization that receives reports or information from the SEC pursuant to the Private Fund Reporting Requirements cannot be compelled to disclose any report or information (except as provided above) and are exempt from FOIA requests with respect to such reports or information. Any proprietary information of an investment adviser ascertained by the SEC shall be subject to the same limitations on public disclosure as any facts ascertained during an examination (as provided in Advisers Act Section 210(b)). Proprietary information includes: sensitive, non-public information regarding the adviser's investment or trading strategies, analytical or research methodologies, trading data, computer hardware or software containing intellectual property, and any additional information that the SEC determines to be proprietary. The SEC will be allowed to compel an investment adviser to disclose the identity, investments, or affairs of its clients for the purposes of assessment of potential systemic risk.

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If you have any questions or wish to discuss issues or concerns relating to Title IV, the new SEC rules or any other item mentioned herein, please do not hesitate to contact us.