U.S. SECURITIES REGULATION

INVESTMENT ADVISERS ACT COMPLIANCE

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About the Author

GUY P. LANDER is a partner at Carter Ledyard & Milburn LLP in New York City, where he practices corporate and securities law for international and domestic companies and financial institutions. Over the years, his practice has emphasized a wide range of financial transactions, including U.S. and international public and private offerings, listing foreign companies on U.S. exchanges, mergers and acquisitions. Mr. Lander also devotes a significant part of his time to regulatory matters for financial services firms. He advises securities brokerage firms, money managers and hedge funds on their structuring, documentation, compliance, business activities and significant transactions.

Mr. Lander is the author of the highly regarded treatise "U.S. Securities Law for International Financial Transactions and Capital Markets," 3 Vols., West Group. He is also the author of three other books on securities law: "Resales of Restricted Securities Under SEC Rules 144 and 144A," BNA Corporate Practice Series; "What is Sarbanes-Oxley?" McGraw Hill and "U.S. Securities Regulation -All you need to know About Going Public, Listing, Reporting and Private Placements," Institutional Investor Books.

Mr. Lander is the former Chairman of the Committee on Securities Regulation of the New York State Bar Association ("NYSBA") and the former Chairman of NYSBA's Section on Business Law. He also participates in continuing legal education programs and is a frequent chair and speaker at programs sponsored by the NYSBA and New York City Bar, including those on public offerings, private placements and corporate governance.

This memorandum is intended to identify the most significant obligations and issues arising under the Investment Advisers Act of 1940 (the "Advisers Act") and its related rules and regulations as well as the accommodations for foreign registered advisers. It is not intended to be exhaustive.

A registered adviser can expect to undergo an inspection by the Securities and Exchange Commission ("SEC" or "Commission") within the first year of registration and once every three years thereafter.

I. Registration of Investment Advisers.

Generally, under the Advisers Act, all investment advisers offering advice for a fee in the United States must register with the SEC.

A. Definition. An "investment adviser" is: any person who, for compensation, engages in the business of advising others, either directly or through publications, as to the value of securities or the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, issues analyses or reports concerning securities.

B. Exemptions.

Specific exemptions exist for:

1. U.S. banks and bank holding companies (unless they act as adviser to a registered investment company);

2. lawyers and accountants;

3. broker-dealers rendering incidental advice without special compensation;

4. advisers whose only clients are insurance companies;

5. publishers of news or financial publications of general circulation; and

6. advisers who during the preceding 12 months have had fewer than 15 clients and who do not hold themselves out to the public as an investment adviser.

Under this exemption:

(i) The adviser may not advise a U.S. registered investment company; and

(ii) This exemption is not available to a non-U.S. adviser if it has more than 14 U.S. clients or if it plans any U.S. advertising campaign.

C. Registration.

"Investment advisers" must register with the SEC.

1. However, state registration is required instead for advisers with less than $25 million under management, if they are subject to state regulation at the place of their principal office and do not advise a registered investment company (currently, Wyoming is the only state that does not have state investment adviser regulations).

2. There are no experience, qualification, or examination requirements for Federal registration.

3. Advisers register on Form ADV, which includes a submission to jurisdiction and service of process in the United States.

D. Form ADV.

1. Filing.

(i) Part 1 is filed electronically. There is an initial filing fee ($150 -$1,100) and an annual updating fee ($100 - $550).[1]

(ii) Pending transition to electronic filing of Part II, that part must be retained by the Adviser in its files but is not filed with the SEC (Rule 204-1).

2. Form ADV requires disclosure of certain information including:

(i) form and jurisdiction of organization of the adviser;

(ii) identity of direct and indirect owners of 5% or more of the adviser's voting securities;

(iii) education and business affiliations of owners, partners, officers or directors;

(iv) bases of compensation;

(v) past criminal convictions, securities laws violations or bankruptcy;

[1] From November 1, 2006 through October 31, 2008, the SEC will waive the initial set up fee for Forms ADV filed electronically.

(vi) number of employees; number and types of clients and amount of funds under management;

(vii) types of services and fee structure;

(viii) types of investments, methods of analysis and investment strategies;

(ix) affiliations with other financial entities and use of affiliated entities for client transactions; and

(x) disclosure of all types of indirect compensation by clients or others (e.g., soft dollars).

3. Adviser registration with the SEC can generally be expected to take about four to six weeks. The process begins with the opening of an IARD (Investment Adviser Registration Depository) account with the Financial Industry Regulatory Authority, Inc. (as successor to NASD), which usually takes about two weeks. Thereafter, Part I of Form ADV can be submitted electronically and, absent unusual circumstances, is often approved by the SEC in about three weeks. Under the statute, the outside limit is 45 days after the filing. Within that time period, the SEC is required to either grant the registration or institute proceedings to determine whether registration should be denied.

4. Part 1 of Form ADV must be updated at least annually. However, more frequent updates are required for changes in certain information.[2]

5. Part II of Form ADV (the "Brochure") must be updated when the information becomes materially inaccurate.

6. Each client or prospective client must receive a written disclosure statement, which may be either a copy of Part II of the adviser's Form ADV or a brochure containing equivalent information (the "brochure rule"). It must be delivered to each prospective client (a) at least 48 hours before entering into the advisory agreement (for electronic delivery, the 48 hour period is measured from when the client is notified that the statement is available electronically), or (b) when entering into the contract if the client can terminate the contract without penalty within five business days after entering into the contract. Compliance with this requirement may be

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[2] From November 1, 2006 through October 31, 2008, the SEC will waive the annual fee ($100 - $550) for amendments to Form ADV that are filed electronically.

evidenced by an express acknowledgment of receipt incorporated in each advisory agreement.

Additionally, the adviser must offer to deliver a similar document annually, without charge, upon request.

E. Recordkeeping and Reporting Requirements.

1. Advisers must disclose to clients and prospective clients certain material facts, including:

   (i) facts about the adviser's financial condition that are reasonably likely to impair the adviser's ability to meet its commitments to clients, and

   (ii) facts concerning any legal or disciplinary event material to an evaluation of the adviser's integrity or ability to meet its commitments to clients.

   These facts must be disclosed promptly to clients, and under the same circumstances as the delivery of the brochure under Rule 204-3 to prospective clients.

2. Advisers must keep detailed records.

3. Partners, officers, directors and other employees participating in investment recommendations must report to the adviser all personal securities transactions.

4. Records must be maintained in the U.S., or the adviser must file an undertaking that it will furnish the SEC (at the adviser's expense within 14 days after written demand by the SEC) copies of all required records.

II. Internal Controls.

The adviser must maintain proper internal controls.

A. Factors suggesting a proper internal control environment include:

1. Compliance Officer.

2. Compliance manual.

3. Automated compliance system.

4. Supervisory system.

5. Internal compliance audits.

6. Commitment to correct problems promptly.

7. Support of top management.

B. An adviser must adequately supervise anyone subject to the adviser's control:

1. adopt and implement written policies and procedures designed to prevent violations of federal securities laws (i.e., implement an effective compliance program) and impose meaningful sanctions for violations;

2. review the policies and procedures at least annually for adequacy and effectiveness; and

3. designate a Chief Compliance Officer with sufficient knowledge of the Advisers Act and federal securities laws and authority to enforce the adviser's policies and procedures. To be considered "competent" by the SEC, the COO must be able to:

(i) identify and assess risks facing the compliance program;

(ii) create policies and procedures to address the risks identified; and

(iii) implement the policies and procedures while recognizing principles of good management and controls.

III. Code of Ethics.

The adviser must establish, maintain and enforce a written code of ethics that, at a minimum, addresses the following issues:

A. Standards of Conduct. Provide standards of business conduct required of advisory personnel, which reflect the adviser's fiduciary obligations and those of its advisory personnel.

B. Conflicts of Interest and Personal Securities Reporting and Pre-Approval Requirements. Address conflicts of interest that arise from Personal trading by advisory personnel. Require at least all "access persons"[3] to

[3] "Access Person" is defined to include all Supervised Persons who (A) have access to nonpublic information regarding any clients' purchase or sale of securities or nonpublic information regarding the portfolio holdings of any affiliated fund or (B) are involved in making securities recommendations to clients, or have access to such recommendations that are nonpublic. "Supervised Person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), and any employee, and any other persons who provide investment advice on behalf of the adviser and are subject to the supervision and control of the adviser. An adviser's partners, officers, and directors are presumed to be "access persons" if the adviser's primary business is providing investment advice.

submit personal securities reports and to obtain pre-approval for certain transactions.

1. Monitor employee trading. Require (i) an initial securities holdings report (upon becoming an access person), (ii) an annual securities holdings report and (iii) a quarterly securities transactions report, each disclosing nearly all securities holdings and transactions, as the case may be, in which the person submitting the report has a direct or indirect beneficial interest.[4] The adviser may require copies of monthly brokerage account statements in lieu of these reports.

2. Pre-Approval. Require pre-trade approval for investment in initial public offerings and private placements. An adviser can consider making the pre-trade approval procedures broader in scope than the procedures mandated by the Code of Ethics rule (discussed above).

C. Reporting of Violations. Require advisory personnel to report promptly any violations of the adviser's code of ethics to the chief compliance officer or, if the chief compliance officer also receives reports of all violations, to other persons designated in the code of ethics.

D. Distribution of Code. Provide advisory personnel with a copy of the code of ethics and any amendments thereto.

E. Written Acknowledgment of Receipt. Require advisory personnel to provide the adviser with a written acknowledgment of their receipt of the code and any amendments thereto.

F. Annual Review. Review the code of ethics for adequacy and effectiveness at least annually.

G. Describe Code of Ethics to Clients. Describe the code of ethics in Part II of Form ADV distributed to clients.

H. Recordkeeping. Maintain (i) a copy of the code of ethics for five years from the date on which any code of ethics was in effect; (ii) acknowledgments of receipt for five years after a person ceases to be a

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[4] Access persons do not have to report on either the holdings report or the transactions report (i) direct obligations of the Government of the United States, (ii) money market instruments, (iii) shares of a money market fund, (iv) shares of open-end mutual fund not affiliated with the adviser and (v) unit investment trusts that invest exclusively in unaffiliated open-end mutual funds. For purposes of the transactions report, transactions effected pursuant to an automatic investment plan would not have to be reported. In addition, securities that are held in an account over which the access person has no direct or indirect influence or control need not be reported.

supervised person; and (iii) a record of any violation of the code of ethics and any action taken as a result of the violation.

IV. Prevent the Misuse of Material, Non-public Information.

A. Policies and Procedures. The adviser must establish written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the adviser and any advisory employee or other person associated with the adviser. The policies and procedures should cover insider trading, including front-running (personal trading ahead of client orders) and scalping (trading ahead of client recommendations).

B. Implementing Policies and Procedures. The policies and procedures to prevent the misuse of material, non-public information can be included in an adviser's code of ethics. Procedures must include at least the following elements tailored to meet the specific operations of the adviser:

1. Restricted Lists, Watch Lists and Rumor Lists.

2. Information Barriers. Establish information barriers that restrict the flow of inside information on a need-to-know basis. Information barriers are particularly important in the case of an adviser that is part of a larger organization that provides investment banking, brokerage or other financial services.

3. Monitor Employee Trading. Establish procedures to monitor employee trading by requiring pre-trade approvals and post-trade reporting, and by generating exception reports that highlight employee trades made in securities on restricted or watch lists.

4. Training Programs. Annual presentation to employees should include a segment on insider trading and conflicts of interest.

5. Internal Enforcement. Investigate any breaches of policy; meaningful discipline should be imposed when an investigation confirms that a violation has occurred.

V. Custody.

The adviser must determine whether it has "custody" of client assets and, if so, comply with procedural requirements imposed on registered advisers having custody.

A. Custody of Client Assets. An adviser has custody of client funds and securities when it holds those funds or securities, directly or indirectly, or when the adviser has the authority to obtain possession of, or has access to, those funds and securities.[5]

B. Requirements Arising Out of Custody.

1. Procedural requirements.

(i) Maintain client funds and securities (except certain uncertificated privately-issued securities) in an account with a "qualified custodian”[6];

(ii) Inform client, after accepting custody and after any changes, of the place and manner in which assets are held;

(iii) Send, or have a reasonable basis to believe that the qualified custodian is sending, quarterly account statements to each client reflecting the client's funds and securities, as well as any debits, credits, and transactions in the client's account;[7] and

(iv) If the adviser (rather than the qualified custodian) sends quarterly account statements to clients, the adviser must undergo annual surprise audits (at a different time each year) by a certified public accountant to verify the funds and securities in the client's account and who must then submit to the SEC a report on Form ADV-E.

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[5] Rule 206(4)-2 provides three examples to illustrate that an adviser has custody when (1) it has *possession* of client funds or securities, even temporarily, (2) it has the *authority to withdraw* funds or securities from a client's account or (3) it acts in any capacity that *gives the adviser legal ownership of, or access to,* the client funds or securities.

[6] A list of qualified custodians is set forth in Rule 206(4)-2, which includes U.S. banks and U.S. registered broker-dealers.

[7] An adviser is exempt from the obligation to send quarterly reports to limited partners or beneficial owners of limited partnerships and other pooled investment vehicles if the partnership or other vehicle is subject to an annual audit and distributes its audited report to its investors within 120 days of the end of its fiscal year.

2. Recordkeeping Requirements.

(i) Records showing all securities transactions (including certificate numbers) and all debits and credits to the account.

(ii) Separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debit and credits.

(iii) Copies of confirmations of all transactions effected by or for the account of any such client.

(iv) A record for each security in which any client has a position, showing the name of such client, and the location of each security.

3. Form ADV Implications. Disclose existence of custody on the adviser's Form ADV.

VI. Reporting Requirements - Form ADV.

A. Accuracy of Information. The adviser should ensure the accuracy and adequacy of information included on Form ADV, including through periodic reviews of the document by senior management, and legal, compliance and professional staff. The adviser should assign responsibility for keeping the ADV current, including:

1. Monitoring changes in the firm's personnel;

2. Tracking disciplinary actions against firm employees and related persons;

3. Monitoring changes in the firm's investment style, products offered or methods of securities analysis, etc.

B. Amending the Form ADV.

1. Part I of Form ADV. Part I of Form ADV is filed with the SEC.

(i) Part I must be amended annually, within 90 days after the end of the adviser's fiscal year, and otherwise on a timely basis when certain changes occur.

(ii) Absent an exception, all such filings must be made electronically through the IARD system.

2. Part II of Form ADV. Part II of Form ADV (the "brochure") must be updated if and when the information becomes materially inaccurate. Adviser must deliver its brochure to clients as described below.

C. Initial Delivery of Brochure to New Clients. Supply adviser's "brochure" (Part II of the adviser's Form ADV or a brochure containing all the information required under Part II) to each prospective client.

D. Annual Delivery or Offer to Deliver Brochure to Existing Clients. The adviser must deliver annually, or offer in writing to deliver upon request free of charge, a copy of the brochure. The adviser must mail the brochure within seven days of receiving the request.

VII. Advertising and Performance Information.

A. Definition of Advertising.

1. Under the Advisers Act, advertising is defined broadly to include any notice, or other written communication addressed to more than one person or any notice or other announcement in a publication or by radio or television that offers (1) any analysis, report or publication concerning securities or that is intended to be used in selecting securities or deciding when to buy or sell, (2) any graph, chart, formula or other device to be used in selecting securities or deciding when to buy or sell or (3) any other investment advisory service for securities. This broad definition covers material designed to solicit new clients or maintain existing clients.

2. SEC staff typically does not view documents such as prospectuses, sales literature or fund advertisements as advisory advertisements, since they typically are not designed to solicit new clients or maintain existing clients.

B. Requirements and Restrictions.

1. Restrictions on Use of Performance Data.

(i) Fair use of Performance Data: If the adviser chooses to include performance data in its advertisements, it must present the information fairly and make appropriate disclosures.

(ii) Performance Data Presented "Net of Fees": If performance data is presented, it must be net of fees.

(iii) Performance Data Calculated with Model Fees: If composite performance data for accounts managed under a

particular investment strategy is presented, the adviser may deduct actual fees charged to clients, and may deduct a model fee only if the model fee represents the highest fee charged to any account managed under that strategy during the performance period.

(iv) Use of Performance Achieved at Other Firms: Performance data achieved by a portfolio manager while at another firm may not be used unless: (1) the portfolio manager was primarily responsible for the performance results and no other person played a significant role in achieving the performance results, (2) the predecessor firm's accounts are so similar to accounts currently managed that performance results are relevant, (3) all accounts managed that are substantially similar are advertised, (4) the advertisement is consistent with relevant SEC interpretations and (5) the advertisement includes all relevant disclosures, including that the accounts were managed at another firm.

(v) The adviser may not claim in an advertisement that it presents performance data in conformance with standards developed by the CFA Institute (formerly AIMR), unless the data is actually presented in conformance with these standards.

2. Other Specific Restrictions. The adviser may not publish, circulate or distribute any advertisement that:

(i) Refers to any testimonial concerning the adviser or any advice, analysis, service or report of the adviser;

(ii) Refers to past specific recommendations that were or would have been profitable to any person (unless the advertisement includes or offers to furnish a list of all recommendations made by the adviser within the preceding year);

(iii) Suggests that any graph, chart, formula or other device can be used to determine which securities to buy or sell, or when to buy or sell, or can assist investors in making their own decisions, without prominently disclosing its limitations and the difficulties of use;

(iv) Contains any statement to the effect that any report, analysis, or other service will be provided free of charge, unless the materials or services are actually provided free of charge and without obligation; or

(v) Contains any untrue statement of a material fact, or is otherwise false or misleading.

3. Internal Compliance Procedures.

(i) Establish policies and procedures to ensure employees do not distribute advertisements without prior approval from legal/compliance.

(ii) Maintain copies of certain communications with clients as well as copies of advertisements sent to ten or more persons in an advertising file that is available for inspection by SEC Staff.

(iii) Maintain records necessary to support performance data, if applicable.

VIII. Document Retention.

The adviser must develop and adhere to a policy for retention of books and records that complies with the Advisers Act.

A. Type of Records To Be Retained. Maintain accurate books and records on a current basis, including typical corporate and accounting records and records necessary to demonstrate compliance with the adviser's fiduciary duty to its clients. The required books and records include, but are not limited to, the following:

1. Corporate records (including articles of incorporation, by-laws, charters, and board minutes);

2. Accounting records (including a memorandum of each order given, general and auxiliary ledgers, journals, trial balances, check books, and bank statements);

3. Client records (including contracts and any powers of attorney);

4. Transaction records (including order tickets, confirmation statements, and trade reports);

5. Communication records (including marketing materials, client inquiries, client complaints, research reports and other materials received from third parties, and records supporting advertised performance presentation information, if applicable); and

6. Other records described in this memorandum.

B. Five Year Retention Period.

1. Books and records required under the Advisers Act generally must be preserved in an appropriate office of the adviser for a period of not less than two years from the end of the fiscal year during which the last entry was made on the record or during which the adviser last published or otherwise disseminated the regulated information, and thereafter in an easily accessible place for an additional three years.

2. The following documents must be preserved in the adviser's principal office until at least three years after the termination of the enterprise: articles of incorporation (or partnership articles or certificates); minute books; and stock certificate books of the adviser and of any predecessor.

C. Electronic Recordkeeping.

1. If the adviser maintains books and records electronically, the adviser must arrange and index the records in a way that permits easy location, access and retrieval of any particular record. The adviser must also separately store, for the period of time required for preservation of the original record, a duplicate copy of the record on any medium allowed by Rule 204-2 (i.e., electronic storage media). When requested by the SEC, the adviser promptly (i.e., no later than within 24 hours) and, in some cases, immediately (i.e., within a few hours of request) must provide any of the following:

    (i) a legible, true, and complete copy of the record in the medium and format in which it is stored;

    (ii) a legible, true, and complete printout of the record; and

    (iii) means to access, view, and print the records.

2. Special Procedures for Electronic Storage Media. In the case of records on electronic storage media, the adviser must establish and maintain the following procedures.

    (i) maintain and preserve the records, so as reasonably to safeguard them from loss, alteration, or destruction;

    (ii) limit access to the records to properly authorized personnel and the SEC; and

(iii) reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

3. E-mail. Advisers are required to keep all e-mails to the extent they relate to the records required to be retained under Rule 204-2. An adviser must determine the appropriate method for e-mail retention and retrieval. However, the SEC has provided informal guidance on e-mail retention and production. Advisers should be prepared to provide e-mails to the SEC Staff (preferably in electronic, searchable form) within 24 hours of a request. Advisers should also review e-mails on a regular basis to

   (i) ensure that e-mails subject to the retention rule are retained; and

   (ii) monitor for possible violations of law or firm policies by its employees.

IX. Contracts.

Contracts with advisory clients must have certain basic provisions, and not contain certain prohibited provisions, that clients cannot waive.

A. Required Non-Assignment Clause. A clause stating that the adviser may not assign the contract without the client's consent is required.

B. Prohibited Waiver of Compliance Clause. Clauses that allow the adviser to waive compliance with any provisions or rule of the Advisers Act, or under federal and state securities laws, are not permissible.

C. Prohibited Hedge Clause and Arbitration Clauses. Clauses that imply or suggest to a client that he or she has waived a fundamental and non-waivable cause of action are not permissible.

D. Prohibited Performance Fees. Performance fees are prohibited except for clients with at least $1.5 million of net worth or at least $750,000 of assets under management.

E. Termination. For a registered investment company clients, a clause providing that the fund directors or shareholders may terminate the contract at any time, without penalty, on not more than 60 days' notice.

F. Partnership Changes. If the adviser is a partnership, the contract must provide that the adviser will notify the client of any changes in the membership of the partnership (other than changes in the limited partners in a limited partnership) within a reasonable time after the change.

Generally, contracts that do not comply with the Advisers Act are void and may not be entered by the adviser. Contracts with registered investment companies are subject to additional requirements under the Investment Company Act of 1940.

X. Portfolio Management.

A. Best Execution. An adviser must obtain best execution when executing trades on behalf of a client. An adviser must:

1. Execute securities transactions for clients in such a manner that the clients' total costs or proceeds in each transaction is the most favorable under the circumstances.

2. Ensure ongoing compliance by periodic and systematic evaluation of execution performance of broker-dealers.

B. Brokerage Arrangements. Generally, an adviser must ensure that any soft dollar and other directed brokerage arrangements are consistent with its fiduciary duty to obtain "best price and execution" for its clients and are fully disclosed to clients. Soft dollar arrangements are arrangements in which a portion of the commission paid by the adviser to the broker-dealer for brokerage transactions is earmarked to pay for products or services, such as research services, in exchange for the adviser directing the client's brokerage transactions to the broker-dealer. Other directed brokerage arrangements may include arrangements in which (i) an adviser is instructed by its client to direct the brokerage transactions for that client to certain brokers or (ii) an adviser of an investment fund directs the fund's trades to a broker-dealer that promotes the sale of the fund's securities (the SEC has prohibited the use of this type of directed brokerage arrangements by advisers to registered investment companies).

C. Principal Transactions. The adviser (and its affiliates) must not engage in principal transactions (including riskless principal transactions) with any client unless it (1) determines that such transactions are in the best interests of the client; (2) discloses its practice on its Form ADV; and (3) obtains consent of the client for each transaction (blanket consents, except in very limited circumstances, are not permissible) before executing the transaction or before it settles and adequately discloses the profit earned by the adviser on the transaction. This restriction applies to any client's purchase or sale of a security where the adviser or its affiliate is the counterparty, and any purchase or sale among clients advised by the adviser or to whom the adviser recommends the transaction.

D. Agency Cross Transactions. The adviser must not engage in agency cross transactions unless it (1) determines that these transactions are in the best interests of the client and each client receives best execution; (2) discloses

this practice on its Form ADV and to its clients; and (3) complies with the requirements of Section 206(3) or Rule 206(3)-2.

1. To rely on Rule 206(3)-2, the following five conditions must be satisfied:

   (i) the client must prospectively authorize agency cross transactions in writing;

   (ii) the adviser must disclose to the client in writing the capacities in which it will act and the possibly conflicting division of loyalty and responsibility it may face in an agency cross transaction;

   (iii) each agency cross transaction must be confirmed in writing;

   (iv) the adviser must provide the client with an annual summary of all agency cross transactions; and

   (v) all client statements must disclose that the client may terminate the agency cross transaction authority at any time by written notice to the adviser

   The SEC has confirmed that these disclosure and consent requirements may be satisfied through electronic media.

   Rule 206(3)-2 would generally not be available where both a buyer and seller are advised on the transaction by the same adviser (or a person controlling, controlled by or under common control with the adviser), since the protection of arm's-length bargaining may not be present.

2. For investment funds, authorization is often included in the investor subscription agreements.

E. Aggregation of Client Orders. An adviser is permitted to aggregate client orders, however, it must (i) disclose its aggregation policy on its Form ADV, and separately to each client and to the broker-dealers through which the aggregate orders are placed; (ii) prepare a written aggregation statement entering an aggregation order; (iii) not favor any client; (iv) promptly allocate the securities on a fair and equitable basis (allocation must be done beforehand or promptly after the transaction); and (v) not receive any additional compensation because of the aggregated order.

F. Valuation of Portfolio Holdings. An adviser must develop and adhere to pricing policies and procedures consistent with industry practice, SEC standards and its marketing and offering materials.

1. Adopt and implement procedures designed to ensure that securities and instruments are priced in an appropriate and reasonable manner.

2. Policies should be consistent with disclosure made by the adviser.

G. Suitability. An adviser has a fiduciary duty to recommend or effect transactions that are suitable for its client.

H. Use of Affiliated Broker-Dealers. An adviser must disclose the nature and extent of any conflict of interest and must continue to seek best execution. Restrictions may apply when the client is an investment company or an ERISA account. The use of an affiliated broker-dealer to execute client transactions also triggers the principal transaction obligations described above under “Principal Transactions.”

XI. Trade Error Correction.

A. Correcting Errors. When correcting trade errors, the adviser must not (i) pass the cost of any losses on to the client, (ii) use soft dollar credits with brokers to cover any losses or (iii) use other client accounts to correct errors.

B. Procedures. The adviser must maintain error correction procedures and follow the procedures consistently.

C. Recordkeeping. The adviser must maintain records of all trade errors.

XII. Proxy Voting Policies and Procedures.

An adviser has a fiduciary obligation to clients when it has the authority to vote client proxies.

A. Obligations.

1. Adopt and implement written policies and procedures (i) reasonably designed to ensure that the adviser votes proxies on client portfolio securities in the best interest of the client; and (ii) addresses how the adviser resolves material conflicts of interest.

2. Disclose proxy voting policies and procedures to clients and provide copies upon request.

3. Inform to clients as to how they may obtain information on how the adviser voted their securities.

B. Recordkeeping. An adviser must maintain certain books and records relating to proxy voting, including:

1. proxy voting policies and procedures;

2. proxy statements received regarding client securities;

3. records of votes cast by the adviser on behalf of clients;

4. records of any written request from a client for proxy voting information; and

5. any documents prepared by adviser that were material to making a decision on how to vote, or that memorialized the basis for that decision.

XIII. Other Prohibitions and Requirements under the Advisers Act.

A. Misleading or Untrue Statements. The Advisers Act makes it unlawful for any person to willfully make any misleading or untrue statement of a material fact or omit a material fact in an SEC filing.

B. Anti-Fraud Provision. The Advisers Act also contains a general anti-fraud provision against fraudulent, deceptive or manipulative acts, similar to that found in the other federal securities laws.

C. Referral Arrangements. Referral fees are prohibited unless they are paid under a written agreement, a disclosure statement that complies with the Advisers Act is provided to the client being referred, and the client acknowledges in writing that it has received the disclosure statement.

D. Use of the Term "Investment Counsel." A registered adviser may not imply he has been recommended or approved by the U.S. government. The term "investment counsel" may be used only by persons whose principal business is acting as an investment adviser and a substantial portion of its business consists of providing investment supervisory service.

XIV. Accommodations for Registered Foreign Advisers

A. SEC No-Action Letters. A registered foreign adviser (and its participating affiliates) was permitted to provide investment advisory services under applicable foreign law for its foreign clients without complying with much of the Advisers Act, provided the registered foreign adviser's activities did not involve conduct or effects in the United States. The registered foreign adviser was able to provide investment advisory services to non-U.S. clients:

1. without complying with the following provisions of the Advisers Act and the rules thereunder:

(i) Rule 204-2(a)(3) and (7) (which require investment advisers to keep books and records concerning specific securities transactions and recommendations) for transactions involving non-U.S. clients that did not relate to advisory services performed by the registered adviser on behalf of U.S. clients or "related securities transactions;"

(ii) Rule 204-2(a)(8), (9), (10), (11), (14), (15), and (16) and Rule 204-2(b) (which specifies the additional books and records that must be kept by investment advisers that have custody or possession of client funds or securities) for transactions involving, or representations or disclosures made to, non-U.S. clients;

(iii) Rule 204-3 (known as the "brochure rule," which requires investment advisers to deliver to clients and prospective clients a written disclosure statement called a "brochure");

(iv) Section 206(3) (which regulates principal transactions and agency cross transactions between an investment adviser and its clients) and Rules 206(4)-1, 206(4)-2, 206(4)-3, and 206(4)-4 (which regulate, respectively, advertisements by investment advisers, custody or possession of client funds or securities by investment advisers, payment of cash referral fees by investment advisers, and financial and disciplinary information that investment advisers must disclose to clients and prospective clients);

(v) Section 205 (which regulates investment advisory contracts by, among other things, placing limitations on performance fees and assignment of advisory contracts); and

(vi) Section 215 (which regulates the validity of investment advisory contracts); and

2. to the extent that acts or omissions of the registered foreign adviser involved no conduct or had no effects in the United States, or had no effects on U.S. clients of the registered adviser:

(i) without any policies or procedures required by or established under Section 204A (which requires investment advisers to maintain and enforce written policies and procedures reasonably designed to prevent insider trading by the adviser or its associated persons, in violation of the Advisers Act, the Exchange Act, or the rules thereunder); or

(ii) engaging in acts or omissions that violate Section 206(1), (2), or (4) (the general antifraud provisions of the Advisers Act).

B. Further, participating affiliates can provide investment advice to foreign clients solely under applicable foreign law without being required to register under the Advisers Act, as long as those activities did not constitute conduct, or have effects, within the United States.

XV. Privacy Laws.

Regulation S-P is designed to safeguard nonpublic personal information about natural persons ("consumers") who obtain financial services or products from the adviser or consumers who establish an ongoing business relationship with the adviser ("customers"). A person who fills out an application for services or products, even if the application is rejected, is considered a consumer under Regulation S-P. Subject to certain limited exceptions, the adviser must not disclose nonpublic personal information about a consumer or customer to un-affiliated third parties unless the adviser provides certain disclosures to the consumer or customer and the consumer or customer elects not to opt out of the disclosure of the information to third-parties. An adviser must:

A. Adopt or codify privacy policies and procedures in accordance with Regulation S-P;

B. Provide consumers and customers with an initial, and customers with an annual, notice of its privacy policies and practices;

C. Provide consumers and customers with the ability to "opt out" of disclosures to certain third parties; and

D. Periodically review the privacy policies and procedures.

XVI. SEC Examinations, Enforcement and Penalties.

The SEC conducts compliance inspections to determine whether an adviser is conducting its activities: (i) in accordance with the Advisers Act and other applicable laws; (ii) consistent with its disclosures made to clients in its Form ADV; and (iii) with adequate systems and procedures to ensure its operations are in compliance with the law.

A. The SEC staff generally focuses on the following areas of the adviser's compliance program:

1. Full and fair disclosure to clients of all material facts regarding the adviser's business.

2. Effective system of compliance controls.

3. Accurate maintenance of books and records that are required under the Advisers Act.

4. Controls and procedures that comply with custody requirements and minimize risks to clients in custody situations.

5. Accurate and fair performance information and advertising.

6. Monitoring of brokerage arrangements and policies and procedures to ensure best execution.

7. Policies and procedures to monitor personal securities trading by the adviser and adviser representatives.

8. Fulfillment of contractual obligations under the firm's advisory agreements with clients, including investing in a manner that is consistent with client mandates.

9. Controls to assure that fees are appropriate for the client and consistent with disclosures made by the adviser.

10. Ongoing supervision of employees, service providers and sub-advisers.

B. The SEC may revoke the registration of an investment adviser in various circumstances involving violations of law including:

1. Failure of the adviser to reasonably supervise a person who violates the various securities laws.

2. However, registration will not be revoked if (i) the adviser had established procedures and a system for applying them that would reasonably be expected to prevent and detect a violation of the securities laws and (ii) the adviser did not have reasonable cause to believe that the procedures were not being complied with.

C. The SEC has broad enforcement powers, including powers to subpoena witnesses and records and to seek injunctions for Advisers Act violations.

1. Any person aggrieved by an SEC order may obtain review of the order in the U.S. appellate courts.

2. U.S. District Courts have jurisdiction over violations of the Act and, concurrently with state courts, of suits in equity to enjoin violations of the Advisers Act.

3. Any person who willfully violates any provisions of the Advisers Act or its rules is subject to a fine of up to $10,000 or

imprisonment for up to five years for criminal actions, or civil penalties ranging from $5,000 to $100,000 for natural persons or $50,000 to $500,000 for institutions.

XVII. Registration of Hedge Fund Advisers.

On June 23, 2006, the U.S. Court of Appeals District of Columbia Circuit issued a decision that vacated hedge fund adviser Rule 203(b)(3)-2. The rule required a look through of "private funds," to count the fund's investors when determining the number of clients the adviser advises. *Goldstein v. Securities and Exchange Commission*, No. 04-1434 (D.C. Cir. June 23, 2006).

For hedge fund advisers that have remained registered with the SEC, the following amendments to the Advisers Act remain effective:

A. Rule 204-2. Excuses newly-registered advisers from compliance with performance data recordkeeping requirements to the extent that the performance records were incomplete before registration with the SEC. The amended Rule also clarifies that "books and records" required to be maintained and available for SEC inspection include the books and records of the private funds for which the adviser or an affiliate acts as general partner or managing member or in a similar capacity.

B. Rule 205-3. Allows registered advisers to charge performance fees to "qualified clients" and for advisers previously exempt from registration to charge investors who were existing investors in the private fund prior to February 10, 2005.

C. Rule 206(4)-2. Extends the deadline under the adviser custody rule for advisers to funds of funds to deliver year-end audited financial statements to investors from 120 days to 180 days.

D. Rules 222-2 and 203A-3. Clarify that advisers may count clients for other purposes (e.g., for purposes of the definition of "investment adviser representative" in Rule 203A-3) without regard to the new look through requirements.

E. Form ADV. Requires private fund advisers to identify themselves not simply as advisers (as Form ADV currently requires) but specifically as hedge fund advisers.

XVIII. Proposed Anti-Money Laundering Rule.

In 2003, the Treasury Department issued a proposed rule that would require two categories of advisers to establish anti-money laundering ("AML") programs under Section 352 of the USA PATRIOT Act of 2001 (the" Patriot Act"). This rule proposal has not been approved by the Financial Crimes Enforcement Network ("FinCEN"). Advisers may elect to establish anti-money laundering programs on their own.

A. Categories of Advisers Subject to the Proposed Rule.

1. Registered advisers that have a principal office and place of business in the U.S. and report to the SEC that they have assets under management.[8]

2. Unregistered advisers that have $30 million or more of assets under management and are relying on the registration exemption provided by Section 203(b)(3) of the Advisers Act (which exempts advisers with fewer than 15 clients that do not publicly hold themselves out as advisers).

B. Obligations. Although an adviser may tailor its AML programs to its size and resources, the AML program, at a minimum, should:

1. Establish and implement policies, procedures and internal controls reasonably designed to prevent the adviser from being used to launder money or finance terrorist activities and to achieve and monitor compliance with applicable provisions of the Bank Secrecy Act;

2. Provide for independent testing of compliance by company personnel or a qualified outside party, which would include a written assessment or report as part of the review process;

3. Designate an executive level person or persons to be responsible for implementing and monitoring the program; and

4. Provide ongoing training for appropriate company personnel, the level, frequency and focus of which would depend on the nature of the employment.

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[8] This group includes registered advisers with either discretionary or non-discretionary authority to manage client assets but excludes state-registered advisers that have less than $30 million of assets under management or advisers that are registered with the SEC but do not manage client assets.

XIX. OFAC.

The Office of Foreign Asset Controls (OFAC) oversees the enforcement of sanctions programs against foreign states, financial institutions, and certain individuals (typically drug traffickers and terrorists). An adviser's obligations under OFAC sanctions programs are separate and distinct from any obligations for anti-money laundering.

A. Obligation. All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. For certain programs, such as those for Cuba and North Korea, all foreign subsidiaries owned or controlled by U.S. companies also must comply. Certain programs also require foreign persons in possession of U.S. origin goods to comply.

B. SDN List. Investment adviser clients are subject to review by the adviser against the OFAC list of Specially Designated Nationals and Blocked Persons (SDN).

If you have any questions regarding the foregoing, please contact Guy P. Lander (212-732-3200).

The information and comments contained herein are for the general information of the reader and are not intended as advice or opinions to be relied upon in relation to any particular circumstances. For particular applications of the law to specific situations, the reader should seek professional advice.

APPENDIX A

U.S. REGULATORY FILINGS BY HEDGE FUND MANAGERS[9]

Listed below are regulatory filings (excluding tax-related, broker-dealer and state "blue sky" filings) that hedge fund managers may be required to make in the United States depending on either their trading activity or their status as a regulated entity. The filings made to regulators by individual hedge fund managers will vary depending on the type and volume of trading in which they engage, their business model and the jurisdictions in which they operate. For example, like other market participants and institutional investors, hedge fund managers are required to make certain filings in the United States if the size of the positions they hold in certain markets reaches "reportable" levels. In addition, some hedge fund managers are regulated entities in the United States or are otherwise subject to a regulatory regime, and, like other similarly situated entities, are required to make certain filings in that capacity. This appendix lists filings required in the United States where these circumstances apply to a hedge fund manager. Hedge fund managers may also be subject to regulatory reporting and filing requirements in the foreign jurisdictions in which they conduct their business.[10]

Federal Reserve

Treasury Securities Position and Foreign Exchange Transaction Reporting

1.	*Large Position Reporting*	Report of positions in specific Treasury security issues that exceed the large position threshold specified by the U.S. Treasury Department (minimum $2 billion). Reports are filed in response to notices issued by the U.S. Department of the Treasury if the threshold is met. Reports are filed with the Federal Reserve Bank of New York and are not public.
2.	*Form FC-1*	Report of weekly, consolidated data on the foreign exchange contracts and positions of major market participants. Reports to be filed throughout the calendar year by each foreign exchange market participant which had more than $50 billion equivalent in foreign exchange contracts on the last business day of any calendar quarter during the previous year. The report is filed with the appropriate Federal Reserve Bank

[9] This information has been taken directly from the Managed Funds Association's 2007 Sound Practices for hedge fund managers.
[10] To the extent hedge funds deal in securities or futures, we note that the Securities and Exchange Commission (the "SEC") and the Commodity Futures Trading Commission (the "CFTC") have the authority to investigate hedge funds directly should hedge funds commit fraud or otherwise violate the statutes under the SEC's or the CFTC's jurisdiction.

acting as agent for the U.S. Department of the Treasury and is not public.

3. *Form FC-2* Report of monthly, consolidated data on the foreign exchange contracts and foreign currency denominated assets and liabilities of major market participants.

Reports to be filed throughout the calendar year by each foreign exchange market participant that had more than $50 billion equivalent in foreign exchange contracts on the last business day of any calendar quarter during the previous year.

The report is filed with the appropriate Federal Reserve Bank acting as agent for the U.S. Department of the Treasury and is not public.

4. *Form FC-3* Report of quarterly, consolidated data on the foreign exchange contracts and foreign currency denominated assets and liabilities of major market participants.

Reports to be filed throughout the calendar year by each foreign exchange market participant that had more than $5 billion equivalent in foreign exchange contracts on the last business day of any calendar quarter during the previous year and that does not file Form FC-2.

The report is filed with the appropriate Federal Reserve Bank acting as agent for the U.S. Department of the Treasury and is not public.

Treasury Auction Filings

5. *Treasury Auction* Treasury security reports filed as necessary. Confirmations must be filed by any customer who is awarded a par amount of $500 million or more in U.S. government securities in a Treasury auction. The confirmation must include its reportable net long position, if any.

The confirmation is filed with the Federal Reserve Bank to which the bid was submitted and is not public.

Treasury International Capital Forms

6. *Forms CQ-1 and CQ-2* Forms filed by U.S. persons who have claims on, or financial liabilities to unaffiliated foreigners, have balances on deposit with foreign banks (in the U.S. or abroad) or otherwise engage in transactions in securities or other financial assets with foreigners. Forms CQ-1 ("Financial Liabilities to, and Claims on, Unaffiliated Foreigner Residents") and CQ-2 ("Commercial Liabilities to, and Claims on, Unaffiliated Foreigner Residents") are quarterly reports, which collect data on financial and commercial liabilities to, and claims on, unaffiliated foreigners

held by non-banking enterprises in the United States, which must be filed when the consolidated total of such liabilities are $50 million or more during that period for Form CQ-1, and $25 million or more during that period for Form CQ-2.

The forms are filed with the Federal Reserve Bank of New York and are non-public except for aggregate information.

7. *Form S* — Form filed by any U.S. person who purchases or sells $2 million or more of long-term marketable domestic and foreign securities in a month in direct transactions with foreign persons.

The form is filed with the Federal Reserve Bank of New York and is non-public except as to aggregate information

Securities and Exchange Commission ("SEC")

Sale of Securities by an Issuer Exempt from Registration for Private Placement under Regulation D or Section 4(6)

8. *Form D* — Notice of sale filed after securities, such as interests in a private hedge fund, are sold in reliance on a Regulation D private placement exemption or a Section 4(6) exemption from the registration provisions of the Securities Act of 1933, as amended (the "Securities Act"). The form is filed with the SEC and relevant states and is publicly available.

Secondary Sale of Restricted and Control Securities Under Rule 144

9. *Form 144* — Form filed as notice of the proposed sale of restricted securities or securities held by an affiliate of the issuer in reliance on Rule 144 when the amount to be sold during any three month periodexceeds 500 shares or units, or has an aggregate sales price in excess of $10,000. The form is filed with the SEC and the principal national securities exchange, if any, on which such security is traded and is publicly available.

Ownership of Equity Securities Publicly Traded in the United States

10. *Schedule 13D* — Disclosure report for any investor, including a hedge fund and its fund manager, who is considered beneficially to own more than 5% of a class of equity securities publicly traded in the U.S. The report identifies the source and amount of the funds used for the acquisition and the purpose of the acquisition.

This reporting requirement is triggered by direct or indirect acquisition of more than 5% of beneficial ownership of a class of equity securities publicly traded in the U.S. Amendments must be filed promptly for material ownership changes. Some investors may instead report on short-form Schedule 13G if they are eligible. See "11. Schedule 13G" below.

The report is filed with the SEC and is publicly available.

11.	*Schedule 13G*	Short form disclosure report for any passive investor, including a hedge fund and its fund manager, who would otherwise have to file a Schedule 13D but who owns less than 20% of the subject securities (or is in certain U.S. regulated investment businesses) and has not been purchased for the purpose of influencing control. This reporting requirement is triggered by direct or indirect acquisition of beneficial ownership of more than 5% of a class of equity securities publicly traded in the U.S. Amendments must be filed annually if there are any changes, and either monthly (for U.S. regulated investment businesses) or promptly (for other passive investors) if ownership changes by more than 5% of the class. The report is filed with the SEC and is publicly available.
12.	*Forms 3, 4 and 5*	Every director, officer or owner of more than 10% of a class of equity securities of a domestic public company must file a statement of ownership. The initial filing is on Form 3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The statements contain information on the reporting person's relationship to the company and on purchases and sales of the equity securities. Form 3 reporting is triggered by acquisition of more than 10% of the equity securities of a domestic public company, the reporting person becoming a director or officer, or the equity securities becoming publicly traded, as the case may be. Form 4 reporting is triggered by any open market purchase, sale, or an exercise of options of those reporting under Form 3. Form 5 reporting is required annually for those insiders who have had exempt transactions and have not reported them previously on a Form 4. The statements are filed with the SEC and are publicly available.

Registered and Unregistered Institutional Investment Managers

13.	*Form 13F*	Quarterly position report for registered and unregistered institutional investment managers (i.e., any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person) with investment discretion over $100 million or more in equity securities publicly traded in the U.S. Reports contain position information about the equity securities under the discretion of the fund manager, and the type of voting authority exercised by the fund manager. The reporting requirement is triggered by an institutional investment manager holding equity securities having an

aggregate fair market value of at least $100 million on the last trading day of a calendar year and require a report as of the end of that year and each of the next three quarters.

The reports are filed with the SEC and are publicly available.

Material Associated Persons of Registered Broker-Dealers

14. *Form 17-H* Material Associated Persons (MAP) reports, filed by registered broker-dealers. Some hedge fund managers are affiliated with registered broker-dealers. MAPS generally include material affiliates and parents and may therefore include an affiliated hedge fund manager or the related hedge fund. Broker-dealers must report (1) organizational charts of the broker-dealer, (2) risk management policies of the broker-dealer, (3) material legal proceedings and (4) additional financial information including aggregate positions, borrowing and off-balance sheet risk for each MAP.

The reporting requirement is triggered by status as broker or dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended.

This report is filed with the SEC quarterly and cumulatively at year-end and is not public.

There are also a variety of filings with the SEC and the securities self-regulatory organizations that must be made by registered broker-dealers and their employees who are associated persons.

Investment Adviser Registration under the Investment Advisers Act of 1940

15. *Form ADV* The SEC's uniform application for investment adviser registration filed by a Hedge Fund Manager eligible to register with the SEC under the Advisers Act. This form is divided into two parts. Information submitted in Part I is filed electronically with the National Association of Securities Dealers Investment Adviser Registration Depository and includes information regarding, among other things, the investment adviser's business, their educational background, and whether they have been sanctioned for violating securities or other laws.

Information in Part II is intended primarily for the adviser's clients. Part II contains information relating to the business practices, fees, investment strategies, and conflicts of interest the investment adviser may have with its clients. Part II is not submitted to the SEC but is deemed to be filed so long as a copy is maintained in the adviser's files and is subject to review by the SEC.

Both parts are required to be updated annually, within 90 days of

the adviser's fiscal year end, and whenever it becomes materially inaccurate. However, certain changes may require the investment adviser to promptly amend Part I.

Commodity Futures Trading Commission ("CFTC") and National Futures Association ("NFA")

Registered Commodity Trading Advisors ("CTAs") and Commodity Pool Operators ("CPOs")

16. *Commodity Pool Operator and Commodity Trading Advisor Registration*

An individual or entity operating or soliciting funds for a commodity pool, which would include a Hedge Fund Manager for a Hedge Fund that trades futures or options on futures, may be required to register as a CPO, unless it qualifies for an exemption from registration. An exemption from registration is available if the pool is: (1) sold only to accredited investors, "knowledgeable employees"; or certain qualified eligible persons; and (2) engaged in limited trading of commodity interests (as measured by certain portfolio tests) (CFTC Regulation 4.13(a)(3)). There is also an exemption from registration for CPOs that admit only highly sophisticated participants, which include: (1) natural persons who are qualified purchasers, knowledgeable employees, or non U.S. persons; and (2) entities that are qualified eligible persons or accredited investors (CFTC Regulation 4.13(a)(4)).

An individual or entity that, for compensation or profit, advises others (directly or indirectly) as to the value of or advisability of buying or selling futures contracts or options on futures generally must register as a CTA unless it qualifies for the statutory exemption in Section 6m(1) of the Commodity Exchange Act or the exemption provided in CFTC Regulation 4.14(a)(8). Providing advice indirectly includes having the authority to allocate the assets of a fund or account to another CTA to trade. A CTA may avail itself of the Section 6m(1) exemption if the CTA has provided futures trading advice to 15 or fewer persons (legal organizations being deemed a single person) in the past 12 months and does not generally hold itself out to the public as a CTA. CFTC Regulation 4.14(a)(8) permits a CTA to claim exemption from registration if its futures trading advice is incidental to its securities advice and is given only to certain limited categories of clients, including pools operated under Regulation 4.13(a)(3) or 4.13(a)(4). These exemptions are available to Hedge Fund Managers, whether or not registered with the SEC or a state authority.

The documents required for registration as a CPO or CTA are: (1) a completed Form 7-R (which provides CPO or CTA information); (2) a completed Form 8-R (which provides

biographical data) and fingerprint card for each principal (defined to include executive officers, directors, and 10% owners), branch office manager, and associated person (defined to include persons soliciting fund interests or accounts or supervising persons so engaged), and proof of passage of the "Series 3" exam for each associated person; and (3) proof of passage of the "Series 3" and futures branch office manager exams for each branch office manager.

A person seeking to rely on either the CFTC Regulation 4.13(a)(3) or 4.13(a)(4) CPO registration exemption must furnish to each prospective participant in the relevant pool: (1) a statement that the person is exempt from registration with the CFTC as a CPO and that, unlike a registered CPO, it is not required to deliver a disclosure document and a certified annual report to participants in the pool; and (2) a description of the criteria pursuant to which it qualifies for the exemption from registration. A person seeking to rely on any of the CPO registration exemptions must file with NFA an online notice claiming the relevant exemption and providing certain information specified in the relevant rule. These disclosures and filings must be made no later than the time at which a subscription agreement for the relevant pool is delivered to a prospective participant in such pool.

CFTC Regulation 4.13 requires a person claiming exemption from CPO registration thereunder to: (1) keep all books and records prepared in connection with its activities as a CPO for five years from the date of preparation (and maintain such books in a readily accessible place for the first two years of such period); and (2) ensure that annual reports to pool participants (if provided) are prepared in accordance with generally accepted accounting principles consistently applied (and, if certified, certified in accordance with CFTC Regulation 1.16).

A person relying on the CFTC Regulation 4.14(a)(8) exemption from CTA registration must keep all books and records prepared in connection with its activities as a CTA for five years from the date of preparation (and maintain such books in a readily accessible place for the first two years of such period). There are also additional requirements with respect to the notice that a CTA must file with NFA to claim its exemption from registration.

Applications for registration are filed with and approved by NFA under authority granted to it by the CFTC and the registration documents are generally public except for fingerprint cards, although confidentiality may be requested for

		certain information relating to the principals.
17.	*Form 3-R*	Form used to report any changes to information contained in the basic registration Form 7-R. The requirement to file this form is triggered by changes in the information provided in Form 7-R. The form is filed with the NFA and is public, though confidentiality may be requested for certain information relating to principals.
18.	*Form 8-T Associated Person Termination*	Form that must be filed within 20 days of the termination of an Associated Person, principal or branch manager. The form is filed with the NFA and is generally public.
19.	*Annual Report*	Annual report of a fund must be filed under Reg. §4.22(c) by that fund's CPO (unless the fund is exempt under §4.7). The Annual Report must contain certain information, such as actual performance information and fees, and must be distributed to each participant in the fund. The annual report must be filed by a registered CPO with the CFTC within 60 days of the fund's fiscal year-end and is generally publicly available. However, the CFTC is prohibited from disclosing information that would separately disclose the business transactions or market positions of any person or trade secrets or names of any investors.
20.	*CPO/CTA Questionnaire*	Annual compliance questionnaire concerning its business activities for applicants registered as CPOs or CTAs. The questionnaire is filed with the NFA and is not public.
21.	*NFA Self-Audits*	To satisfy their continuing supervisory responsibilities, NFA members must review their operations annually using a self¬examination checklist. The checklist focuses on a member's regulatory responsibilities and solicits information on whether themember's internal procedures are adequate for meeting those responsibilities. Registered CPOs and CTAs as members of the NFA are required to conduct the self-audit annually. A written attestation affirming completion of the self-audit must be signed and dated bysupervisory personnel. The attestation must be retained by the member for five years and provided to NFA upon request.
22.	*Claims for*	To claim the exemptions provided for in Regs. §4.13(a)(3) and exemption (4), and 4.13(a)(8), the CPO or CTA must file a notice of exemption with the NFA stating the exemption claimed and representing that the pool will be operated, or that it will provide advice to clients, as the case may be, in accordance with the criteria of that exemption.

Reg. §4.12(b)(3) (notice of claim for exemption from certain requirements by a CPO that manages a fund with limited trading in commodity futures and options) and Reg. §4.7(d) (notice of claim for exemption by a CPO or CTA with "qualified persons" as investors) provide exemptions for qualifying registered CPOs and CTAs from many of the disclosure, recordkeeping and reporting requirements applicable to registered CPOs and CTAs.

These statements are filed with the CFTC and NFA and are public.

23. *Disclosure Document*

CPOs and CTAs are generally required to prepare detailed disclosure documents containing specified information. Such documents are filed with the CFTC and NFA and provided to investors but are not publicly available.

CPOs and CTAs operating under Reg. §4.7, however, are exempt from the disclosure document requirement and are required only to provide all material disclosures (and include specified legends on their materials). In addition, under the exemption provided in Reg. §4.8, funds (which would otherwise be treated as commodity pools) with exemptions under Reg. §4.12(b) (compliance with the requirements of the Securities Act and certain limits on the trading of commodity futures and options) or which sell interests solely to "accredited investors" and rely on the safe harbor provisions of Rule 506 or 507 of Regulation D under the Securities Act may begin soliciting, accepting and receiving money upon providing the CFTC and the participants with disclosure documents for the fund. This requirement may be met by a private placement memorandum.

24. *Year-End Financial Reports for §4.7 Funds*

Annual reports for §4.7 funds (i.e., funds that are limited to qualified eligible persons and are exempt from the normal disclosure requirements applicable to commodity pools) must contain a Statement of Financial Condition, a Statement of Income (Loss), appropriate footnote disclosure and other material information, as well as a legend as to any claim made for exemption. The Annual Report must be presented and computed in accordance with GAAP consistently applied and, if it is certified by an independent public accountant, it must be certified in accordance with Rule 1.16.

The annual report is filed with the CFTC, NFA and distributed to each investor, and the report is not public.

Position Reports

25. *Form 40*

"Statement of Reporting Trader" for persons who own or control reportable positions in futures. A hedge fund or hedge fund manager will be required to file a Form 40 if it holds reportable

positions (upon special call by the CFTC or its designee). The form must be filed within ten business days following the day that a hedge fund's or its managers' position equals or exceeds specified levels. The specified levels are set separately for each type of contract. For example, the reportable level for S&P 500 futures is 1,000 contracts. The Form 40 requires the disclosure of information about ownership and control of futures and option positions held by the reporting trader as well as the trader's use of the markets for hedging. Hedging exemptions from speculative position limits must be reported.

The form is filed with the CFTC and is not publicly available.

26. *Form 102* — Form filed by clearing members, futures commission merchants(FCMs), and foreign brokers, which identifies persons, including hedge funds, having financial interest in, or trading control of, special accounts in futures and options, informs the CFTC of the type of account that is being reported and gives preliminary information regarding whether positions and transactions are commercial or non-commercial in nature. The form must be filed when the account first becomes "reportable" (i.e. when it first contains reportable futures or options positions), and updated when information concerning financial interest in, or control of, the special account changes. In addition, the form is used by exchanges to identify accounts reported through their large trader reporting systems for both futures and options.

The form is filed with the CFTC and is non-public.

Selected Stock and Futures Exchange Reports

Application for Exemption from Speculative Position Limits

27. *Speculative Position Limit Exemption* — Application filed for exemption from speculative position limits. Exchanges generally have speculative position limits for physical commodities and stock index contracts, and the CFTC has speculative position limits for agricultural commodities. Exemptions from such limits are generally available for hedging transactions. Financial contracts, such as interest rate contracts, do not have such position limits.

Generally, an application for any speculative position limit exemption must show that the position is a bona fide hedging, risk management, arbitrage or spread position.

The filing is made with the appropriate exchange in the case of physical commodities and stock index contracts and with the CFTC in the case of agricultural commodities.

Federal Trade Commission ("FTC")

Filings Made Before Mergers and Acquisitions

28. *Hart-Scott-Rodino Notice*

Notification filed before completing certain mergers, acquisitions and joint ventures. After notification is filed there is a waiting period while the FTC and Department of Justice review the competitive effects of the transaction. The notification includes information about the transaction and the participants in the transaction.

Generally, both the acquiring person and the acquired person must file notifications when either the acquiring person or the acquired person is engaged in U.S. commerce or an activity affecting U.S. commerce, and either of the following tests is met:

(1) (A) one person has total assets or annual net sales of $119.6 million or more (threshold adjusted annually) and the other person has total assets or annual net sales of $12 million or more (threshold adjusted annually), and (B) as a result of the transaction, the acquiring person will hold an aggregate total amount of more than $59.8 million (threshold adjusted annually) of the voting securities and/or assets of the acquired person, or

(2) as a result of the transaction, the acquiring person will hold an aggregate total amount of more than $239.2 million (threshold adjusted annually) of the voting securities and/or assets of the acquired person, regardless of the sales or assets of the acquiring and acquired persons.

Acquisitions of voting securities are exempt from filing if they are made "solely for the purpose of investment" and if, as a result of the acquisition, the securities held do not exceed 10% of the outstanding voting securities of the issuer. Securities are acquired "solely for investment purposes" if the person acquiring the securities has no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer.

The Hart-Scott-Rodino Act and rules thereunder contain various other exemptions, which are complex and require familiarity with the concepts and terminology of this legislation. The formation of partnerships and limited liability companies is potentially subject to notification under Hart-Scott-Rodino, as the result of changes to the Hart-Scott-Rodino rules that became effective on April 7, 2005.

The notice is filed with the FTC and the Department of Justice and is not public.