Ropes & Gray's Private Investment Fund Update: June 2013

Highlights

- *SEC Updates Form PF "Frequently Asked Questions"* (pg. 3) The SEC recently released updated "Frequently Asked Questions" relating to Form PF that, among other things, clarified how Form PF filers should include information about relying advisers and SPVs.
- *UAE Market Regulator Revises Marketing Rules* (pg.5) The market regulator of the UAE recently posted amendments to its marketing rules that should make it easier for fund managers to solicit sovereign wealth funds and certain other investors in the UAE.
- *SEC Focuses on Fundraising Activity and Sponsor Receipt of Transaction Fees* (pg. 8) The SEC has become more focused on the use of unregistered finders in the private fund context and specifically, how private fund sponsors have liability if they use unregistered finders. Also, the Chief Counsel of the SEC's Division of Trading and Markets recently gave a speech highlighting areas of concern about broker-dealer registration affecting the private fund industry including whether the receipt of transaction-based compensation, on its own, is sufficient to require registration and whether firm personnel engaging in marketing activities would require the investment adviser employing such personnel to register as a broker-dealer.
- *FIRPTA Proposals Included in President Obama's Budget* (pg. 10) President Obama recently released his 2014 budget proposal, which contains an exemption from U.S. taxation on gains realized by foreign pension plans on U.S. real estate investments.
- *FBAR Filing Deadline Extended* (pg. 11) FinCEN recently extended the FBAR filing deadline to June 30, 2014, for certain categories of persons who have signatory authority over, but no financial interest in, a foreign account.

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- *California State Lobbying Registration: 2011-2012 Legislative Session Ends* (pg. 8) The 2011-2012 California state legislative session, which served as a registration period for lobbyists, recently came to a close.

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- *SEC Noting Early Trends in Presence Exams of Private Fund Advisers* (pg. 8) Based on its recent presence exams of newly registered investment advisers, the SEC has noted several trends with respect to the advisers' controls, compliance and risk management programs.
- *SEC Focuses on Fundraising Activity and Sponsor Receipt of Transaction Fees* (pg. 8) The SEC has become more focused on the use of unregistered finders in the private fund context and specifically, how private fund sponsors have liability if they use unregistered finders. Also, the Chief Counsel of the SEC's Division of Trading and Markets recently gave a speech highlighting areas of concern about broker-dealer registration affecting the private fund industry including whether the receipt of transaction-based compensation, on its own, is sufficient to require registration and whether firm personnel engaging in marketing activities would require the investment adviser employing such personnel to register as a broker-dealer.
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- *FIRPTA Proposals Included in President Obama's Budget* (pg. 10) President Obama recently released his 2014 budget proposal, which contains an exemption from U.S. taxation on gains realized by foreign pension plans on U.S. real estate investments.

- *IRS Eyes a Private-Equity Tax Move* (pg. 10) The IRS recently stated that it is examining the use of management-fee waivers by private equity firms.
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Regulatory Developments

SEC Updates Form PF "Frequently Asked Questions"

The Securities and Exchange Commission (the "SEC") staff recently released an updated set of questions and answers in its "Frequently Asked Questions" relating to Form, and several of these clarifications may be useful to private fund advisers.

Among the updates, the SEC clarified that related persons do not need to be identified in Question 1(b) of Form PF because Form PF does not require, but instead permits, related persons to report on a single Form PF as a matter of convenience. Generally, Question 1(b) of Form PF requires certain information about related persons of the Form PF filer, including such related person's CRD or SEC file number. The SEC further clarified that it is necessary to identify a related person in Question 1(b) only if a filer is reporting information on Form PF with respect to such related person.

The SEC also explained that if a master-feeder arrangement is reported in the aggregate for purposes of Section 7.B.1 of Form ADV and the adviser wishes to report private funds in the master-feeder arrangement separately on Form PF, then the adviser must first file an "other-than-annual amendment" to Form ADV to reflect such changes. This will ensure the reporting and treatment of master-feeder structures are consistent between Form ADV and Form PF.

The SEC's Frequently Asked Questions relating to Form PF is available here.

SEC's IM Division Discusses Future Division Priorities

Norm Champ, the Director of the Division of Investment Management, recently discussed the future priorities of the Division of Investment Management of the SEC. In his remarks, Director Champ noted that he has asked the staff to review the Division's policy initiatives in order to prioritize them based on four factors: (1) identification of the risk to be mitigated, or the problem to be solved; (2) urgency associated with such initiative; (3) potential impact of such initiative on investors, registered advisers, the applicable markets and the SEC's operational efficiency; and (4) resources required for such initiative.

Director Champ also discussed a specific regulatory initiative related to private fund advisers. The first initiative relates to the application of the Investment Advisers Act of 1940 (the "Advisers Act") to private fund advisers going forward. Because advisers to certain private funds are now required to register under the Advisers Act, the SEC now faces a different registrant base than it has had in previous years. Approximately forty percent (40%) of advisers currently registered with the SEC serve private funds.

Director Champ further noted that the SEC has received a number of questions and comments from newly registered private fund advisers regarding the application of the Advisers Act to them, including the applicability of certain advertising and books and records provisions in the Advisers Act. Director Champ stated that as a result of these inquiries and comments, the SEC would review the regulatory framework and its relationship to private fund advisers.

The full text of Director Champ's speech is available here.

Bill Introduced to Fund SEC's Oversight of Investment Advisers Through User Fees

On April 19, the House Financial Services Committee Ranking Member Maxine Waters re-introduced a bill that would fund the SEC's investment adviser oversight through the implementation of industry user fees. Representative Waters introduced a similar bill in 2012 but it did not progress because, at that time, other bills were being presented to bring advisers under oversight by a self-regulatory organization (a "SRO").

The bill proposes to collect an annual fee from investment advisers that are subject to inspection or examination by the SEC to defray the costs of such inspections and examinations. The bill does not specify a mechanism for calculating the amount of such user fees. However, it includes several objective factors that will determine the amount of fees to be paid by an investment adviser, including assets under management, number of clients and other risk characteristics as the SEC may determine.

Representative Waters' bill has gained support from various industry groups, including the Investment Adviser Association and the North American Securities Administrators Association. These groups have deemed the proposed bill to be a cost-effective solution to ensuring the funding of enhanced oversight of investment advisers without the use of additional taxpayer dollars.

Because the precise form the proposed SRO would take has not been specified, it is unclear whether these developments will be welcomed by investment advisers. We will keep you apprised of new developments regarding the oversight of investment advisers as we learn more.

Federal Reserve Adopts Final Rule Relevant for Nonbank Systematically Important Financial Institutions

The Federal Reserve recently adopted a final rule that establishes requirements for determining when a company is predominately engaged in financial activities for purposes of identifying a nonbank financial company as a systematically important financial institution (a "SIFI"). The final rule also defines the terms significant nonbank financial company and significant bank holding company.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Financial Stability Oversight Council (the "FSOC") may only designate a company as a SIFI if it is a "nonbank financial company" whose material financial distress or whose scope, size and scale of activities could pose a threat to the financial stability of the United States. Firms designated as SIFIs will be subject to enhanced regulatory scrutiny by the Federal Reserve. As discussed in more detail in a previous Alert, the FSOC released a final rule in April 2012 regarding the three-part process for determining whether nonbank financial firms are SIFIs. Before applying this process, a nonbank financial firm must first qualify as a "nonbank financial company."

A "nonbank financial company" is defined as a company that is "predominately engaged in financial activities." The Dodd Frank Act defines a company as "predominantly engaged in financial activities" if 85% or more of the company's annual gross revenues or consolidated assets are related to activities that are defined as financial in nature under Section 4(k) of the Bank Holding Company Act (the "BHC Act"). The final rule clarifies this definition in several respects:

- First, the final rule provides that the 85% threshold applies to either of the two most recent fiscal years. Furthermore, the Federal Reserve or the FSOC may determine, based on all facts and circumstances, that a company meets the 85% threshold under either the revenue or asset tests, without regard to the two-year limitation.
- Second, the final rule sets forth mechanics and rules to determine whether assets or revenues are related to financial activities. For instance, under these rules, cash is excluded from the financial assets because cash is not attributable to a particular activity. Cash equivalents would be included as assets related to financial activity because they represent investments and accounts receivable are presumed to be related to financial activity (by extension of credit) but may be excluded with evidence to the contrary.
- Finally, the rule clarifies the scope of "financial activities." "Financial activities" are defined by reference to Section 4(k) of the BHC Act. These activities include, among others, investing for others, leasing personal or real property, offering investment or financial advisory services, selling interests in asset pools and servicing loans. The final rule specifically notes that private equity funds (and their advisers and managers) are deemed to engage in financial activities.

The final rule also defines the terms significant nonbank financial company and significant bank holding company. A significant nonbank financial company is defined as any nonbank financial company (i) supervised by the Federal Reserve or (ii) that had $50 billion or more in total consolidated assets as of the end of its most recently completed fiscal year. A significant bank holding company is any bank holding company or company treated like a bank holding company in the United States that had $50 billion or more in total consolidated assets as of the end of the most recently completed calendar year. The FSOC will consider the extent and nature of a nonbank financial company's transactions and relationships with significant nonbank financial companies and significant bank holding companies when determining whether to designate the company as a SIFI.

The text of the final rule can be found here. The final rule became effective on May 6, 2013.

UAE Market Regulator Revises Marketing Rules

Recently the Securities and Commodities Authority (the "SCA"), the market regulator of the United Arab Emirates (the "UAE"), posted amendments to its marketing rules that should make it easier for private equity firms to solicit sovereign wealth fund commitments in the UAE and should simplify the marketing strategies of fund managers seeking to market their funds to investors in the UAE.

These amendments provide that private equity firms are not required to obtain SCA approval when soliciting investments from institutional investors in the UAE. According to local counsel, these amendments provide that private equity firms will no longer need to use an SCA licensed placement agent and are not required to obtain SCA approval when soliciting investments from sovereign wealth funds, financial managers and certain institutional investors in the UAE.

However, the UAE has taken a more restrictive view on reverse solicitation based on pre-existing relationships with an investor. The amendments also provide that even if a potential investor provides a fund manager with a letter stating that is taking the initiative in requesting marketing materials from a fund manager, the SCA will still have the power to determine whether the facts presented in the letter are consistent with the reality of the event.

Private equity firms marketing in the UAE should identify the types of investor that they wish to target in the UAE to determine whether they need to instruct a locally licensed placement agent and seek approval for a fund to be marketed. When soliciting investments from non-institutional investors, private equity firms should be careful if relying on the reverse solicitation exception.

SEC Issues Guidance Update on Compliance with Exemptive Orders

On May 6, 2013, the SEC's Division of Investment Management issued a guidance update for investment advisers that rely on exemptive orders emphasizing the importance of ensuring "compliance with the representations and conditions of such orders." The guidance update comes as part of the Division's response to a report issued by the SEC's Office of Inspector General ("OIG") in June, 2011, that noted significant deficiencies in the SEC's process to monitor compliance with the representations and conditions of exemptive orders and no-action letters.

SEC Guidance Update and OIG Report

In the guidance update, the SEC points to the requirements that advisers must adopt policies and procedures that are reasonably designed to prevent violations of securities law under the Advisers Act. The guidance goes on to say that "entities that receive and rely upon exemptive orders are at risk of violating the federal securities laws if they fail to comply with the representations and conditions of such orders." The guidance does not include specific examples of how the failure by an adviser to comply with representations or conditions in an exemptive order has resulted in harm to investors. However, the guidance refers to the examples cited in the Inspector General's report of violations of exemptive orders found by the SEC's Office of Compliance Inspections and Examinations.

Implications for Investment Advisers

The guidance update serves as a general reminder that firms should continue to monitor their ability to rely on exemptive orders but offers little concrete guidance on the types of compliance questions that advisers frequently face.

- Although the guidance update repeatedly references the need to comply with the "representations and conditions" in exemptive orders, it does not address the question of how to determine which representations are sufficiently material to jeopardize an entity's ability to rely on exemptive relief in the event that they become inaccurate amidst changed circumstances. The absence of any discussion of the materiality of representations may suggest that the SEC staff intends to take the position that the continued accuracy of all factual representations made in connection with an exemptive application is required for continued reliance on the exemptive order. While the nature and drafting of many exemptive orders contemplate the potential for certain changing circumstances, and it would seem unreasonable to expect slavish adherence to every factual representation in an order, investment advisers may wish to consider a principled review of the relative significance of representations that underlie the conditions to their exemptive orders.

- The guidance encourages advisers to build the representations and conditions made in exemptive orders into their compliance policies. However, care should be taken to avoid inadvertently making conduct that is permitted even without an exemptive order into a violation of overbroad compliance policies.
- The guidance update makes clear that exemptive order compliance is likely to be a focus of upcoming SEC examinations. To the extent advisers are conducting mock examinations or otherwise preparing for visits by regulators, they are encouraged to incorporate this topic into their preparations.
- Although the guidance update focuses on exemptive orders, advisers may benefit from a similarly structured approach to mapping what no-action guidance they rely upon and how they meet the various criteria laid out in the relevant no-action letters.

Proposed Bill Would Exempt Private Equity Fund Advisers from Investment Adviser Registration

Congressman Jim Himes (D-CT) and Congressman Robert Hurt (R-VA) recently introduced legislation (H.R. 1105) in the House of Representatives to amend the Advisers Act to create an exemption from registration and reporting requirements for advisers to private equity funds. Very generally, the legislation proposes to create an exemption to registration for advisers to private equity funds so long as any fund managed by the adviser does not have outstanding debt in excess of two times invested capital commitments. The legislation further provides for the SEC to issue final rules with respect to this exemption (including a definition of "private equity fund") within six months after the legislation is adopted.

While this legislation was passed by the full House Financial Services Committee, it still faces substantial hurdles before being passed, including passage by the Senate and Presidential veto. While we do not expect any changes in private equity fund adviser registration requirements in the near future, we will keep you apprised if this legislation moves forward.

United Kingdom's Treasury Proposes Amendments to the Draft Regulations for the Implementation of the Alternative Investment Fund Managers Directive

Following the circulation of guidance in the form of questions and answers on the implementation of the Alternative Investment Fund Manager's Directive ("AIFMD") in the United Kingdom, Her Majesty's Treasury confirmed through amendments to the draft Financial Services and Markets (AIFMD) Regulations 2013 that the transitional provisions which apply to UK managers ("AIFMs") will also apply to non-UK AIFMs who market alternative investment funds ("AIFs"). The amendments have the effect that any AIFM who immediately before July 22, 2013 manages an AIF or, in the case of a non-European AIFM, markets an AIF in an EEA State will not be required to comply with the AIFMD until, in the case of a European AIFM, the UK Financial Conduct Authority (FCA) authorizes the AIFM or, in the case of a non-European AIFM, it notifies the FCA. In either case, the authorization or notification will need to take place before July 22, 2014.

Therefore, a US adviser marketing a private fund in the UK prior to July 22, 2013 will have to comply with the UK financial promotion regime and limit its marketing to investment professionals or other eligible investors. However, it will not have to comply with the AIFMD disclosure or notification requirements until the applicable authorization or notification as described above or July 22, 2014, whichever comes first.

California State Lobbying Registration: 2011-2012 Legislative Session Ends

On December 31, 2012, the 2011-2012 legislative session, which served as the registration period for any lobbyists, lobbyist employers, or lobbying firms that registered with the California Secretary of State in 2011 or 2012, came to a close. Any registration statements or authorizations filed for that legislative session automatically terminated on December 31, 2012.

If activity requiring lobbyist registration with the California Secretary of State is continuing into 2013, the applicable parties will need to file new registration statements for the 2013-2014 legislative session.

Examination and Enforcement Action Developments

SEC Noting Early Trends in Presence Exams of Private Fund Advisers

At an SEC enforcement panel at the National Law Journal's Regulatory Summit in Washington, SEC Commissioner Elisse Walter indicated that the SEC, in proceeding with its "presence examinations" of newly registered private fund advisers, has already noted many instances of poor controls, often regarding fees and expenses. Commissioner Walter elaborated that the staff has noted instances where advisers miscalculate fees, improperly collect fees and inappropriately use fund assets to cover their own expenses. Commissioner Walter noted that SEC staff will continue to examine and question advisers income and fees.

At the same time, Commissioner Walter stated that the examiners have also found that many advisers, especially those with mature businesses, have developed good compliance procedures and risk management controls, despite being newly registered.

While it is still too early in the exam program to draw any overall conclusions, the SEC staff will continue to publicize information and helpful trends or issues as it continues with these presence exams.

In light of these ongoing presence examinations, registered investment advisers should carefully evaluate their compliance programs and ensure that their practices are consistent with their representations and the commitments they make to their clients.

SEC Focuses on Fundraising Activity and Sponsor Receipt of Transaction Fees

As reported in our Alert dated March 13, 2013, the SEC recently announced the settlement of enforcement proceedings against a private equity firm, Ranieri Partners, one of its senior executives, and an unregistered "finder" for the finder's solicitation of more than $500 million in capital commitments for two private funds in violation of the broker-dealer registration provisions of the Securities Exchange Act of 1934 (the "Exchange Act"). To settle the charges, the fund sponsor paid a penalty of $375,000, the partner paid a penalty of $75,000 and agreed to a nine-month suspension from acting in a supervisory capacity at an investment adviser or a broker-dealer, and the finder agreed to be barred from the securities industry.

According to the SEC's order against the finder, William Stephens, Stephens' role went far beyond that of a finder, in that he sent private placement memoranda and other materials to potential investors, urged at least one investor to consider adjusting portfolio allocations to accommodate an investment with Ranieri Partners, and provided potential investors with his analysis of the strategy and performance track record for Ranieri Partners' funds. The SEC's order against Ranieri Partners and executive Donald Phillips found that Phillips had aided and abetted Stephens' violations by providing key fund documents and information to Stephens while ignoring red flags indicating that Stephens had gone well beyond the limited role of a finder and was actively soliciting investments.

The case illustrates that using unregistered persons to solicit investors can be risky not only for the finder, but also for the sponsor and its personnel. These risks could extend to the use of in-house personnel engaged in the same conduct at issue in the Ranieri matter—namely, the direct solicitation of prospective investors and providing offering documents to those investors, in exchange for transaction-based compensation.

The SEC's order in the case does not mention the so-called finder's exemption from broker-dealer registration, and notes that the sponsor subsequently revised its policies to provide that it would not retain an unregistered third party finder to solicit investors. However, the order emphasizes that Stephens' solicitation efforts including sending offering documents and confidential information to potential investors, urging an investor to invest, and analyzing the funds' strategy and track record, activities which had been prohibited by the fund sponsor. Therefore, it is worth considering whether the case would have been brought if the finder had complied with those restrictions, or whether the sponsor and its partner would have been named as respondents in the case if they had taken action when the full scope of the finder's activity had come to their attention. In addition, a recent court opinion in an SEC enforcement case, SEC v. Kramer, 778 F. Supp. 2d 1320 (M.D. Fla. Apr. 1, 2011) casts some doubt on the SEC's long-standing position that the receipt of transaction-based compensation is itself sufficient to require a finder to register as a broker-dealer.

The Ranieri case was recently discussed by David Blass, the Chief Counsel of the SEC's Division of Trading and Markets (which regulates broker-dealers), in an important speech highlighting two "significant areas of concern" about broker-dealer registration. As discussed in more detail in our Alert dated April 9, 2013, Blass's speech focused on (1) issues that arise when private fund personnel engage in marketing activities (such as soliciting or negotiating transactions) with respect to such private fund interests and when these activities would require such personnel to register as a broker-dealer, and (2) when private equity fund managers may receive transaction fees in connection with their advisory services. Blass's speech further indicates that broker-dealer issues will continue to be raised by the SEC staff in "presence examinations" of registered investment advisers, and will be the subject of further public discussion and analysis.

Private equity firms that charge transaction-based fees to their portfolio companies or rely on internal marketing personnel to sell fund interests would be well advised to examine their historical practices in light of applicable broker-dealer regulations.

Two Investment Advisory Firms Settle Claims for Allegedly Blocking SEC Staff Examinations

Recently, two investment advisory firms settled claims with the SEC on charges that they impeded SEC staff examinations. In the case In re EM Capital Management, LLC, SEC, Admin. Proc. File No. 3-15101, 11/20/12, the SEC alleged that the firm and a principal delayed in producing books and records, including financial statements, emails, and other documents related to the firm's mutual fund advisory business for nearly a year and half. In the case In re Barthelemy, SEC, Admin. Proc. File No. 3-15102, 11/20/12, the SEC asserted that the firm and its owner/manager misled staff examiners by inflating the firm's claimed assets under management in an apparent attempt to show that the firm was eligible for SEC registration.

Both firms settled the allegations without admitting or denying wrongdoing and agreed to cease and desist from future violations, among other sanctions including monetary fines.

Tax Developments

FIRPTA Proposals Included in President Obama's Budget

President Obama recently released his 2014 budget proposal, and the budget proposes an exemption from U.S. taxation on gains realized by foreign pension plans on U.S. real estate investments. This proposal is projected to reduce tax revenue, and as a result, it will be challenging to enact at a time when there is considerable pressure to reduce budget deficits. However, if enacted, this proposal would make investing in U.S. real estate much more attractive for non-U.S. pension funds.

The United States generally requires foreign investors (under the Foreign Investment in Real Property Tax Act, or FIRPTA, regime) to pay taxes on, and file tax returns reporting, gains from the sale of U.S. real estate--in the case of a foreign corporation, the applicable effective federal tax rate on such gain may be as high as 54.5%. The President's budget proposes to exempt foreign pension plans from the FIRPTA regime, which it describes as an effort to establish tax parity between U.S. and foreign pension plans. In spite of this general description, however, the proposal seems to suggest an even more favorable tax treatment for foreign pension plans than the current law treatment of U.S. pension plans (e.g., it does not mention the tax currently imposed on U.S. pension funds for gains realized from debt-financed real estate). Moreover, although sovereign wealth funds benefit currently from another favorable exception under FIRPTA, the proposal as drafted does not contemplate extending the newly proposed exemption for sovereign wealth funds, except possibly for foreign governmental pension plans. As a result of these issues (and the general nature of the budget description), it is very unclear whether or in what form any exemption from the FIRPTA regime will be enacted.

The proposed exemption would be effective for sales of U.S. real estate occurring after December 31, 2013. Any such exemption could of course significantly increase the potential after-tax returns for investments in U.S. real estate by certain foreign investors. We will continue to monitor this issue and update you as we learn more.

IRS Eyes a Private-Equity Tax Move

The IRS recently stated that it is examining the use of management-fee waivers by private equity firms. This practice typically involves a private equity firm voluntarily waiving the management fees due to it from the fund and instead, requiring investors to contribute an amount equal to those waived fees to satisfy the sponsor's own capital commitment to the funds they manage. This strategy is typically followed to achieve deferral and obtain a more favorable capital-gains tax treatment for items that would otherwise be taxable as ordinary income.

Many of the largest private equity firms have taken advantage of this strategy, employing various positions along the spectrum from conservative to more aggressive approaches from a tax standpoint. Tax experts have noted that the IRS's examination into this practice suggests the IRS may be considering the legalities and nuances of the management-fee waivers.

At this time, however, it does not appear that the IRS has actively engaged with tax attorneys, private equity firms, or other experts within the industry on this issue. Private equity firms that employ management fee-waivers may want to consider engaging their tax counsel to discuss the aggressiveness of their position and potential consequences. We will continue to monitor this issue and update you as we learn more.

FBAR Filing Deadline Further Extended to June 30, 2014 for Certain Employees and Officers with Signature Authority Over Foreign Financial Accounts

On December 26, 2012, FinCEN issued Notice 2012-2, further extending the Report of Foreign Bank and Financial Accounts" ("FBAR") filing deadline until June 30, 2014 for two groups of individuals with signature authority over, but no financial interest in, a foreign financial account, including employees and officers of investment advisers registered with the SEC who have signature authority over, but no financial interest in, foreign financial accounts of one or more persons that are not registered investment companies. The FBAR filing deadlines for these individuals had previously been extended to June 30, 2013 under FinCEN Notices 2012-1, 2011-2 and 2011-1. The filing deadline for all other U.S. persons with an FBAR filing obligation remains unchanged—i.e., for the calendar year 2012, the deadline is June 30, 2013.

To read more about these FBAR extensions under the FinCEN notices, see our Alert from January 9, 2013.

Treasury Department and IRS Issue Final FATCA Regulations

On January 17, 2013, the Treasury Department and the IRS issued long-awaited final regulations implementing the information reporting and withholding tax provisions of the set of statutory rules commonly referred to as the "Foreign Account Tax Compliance Act" (FATCA). Please refer to our previously issue Alert from February 22, 2013 for a summary of the most significant components of the final regulations, including an analysis of key issues under FATCA relevant to different types of U.S. and non-U.S. investment funds.

Previously Issued Alerts

Since the last issue of our Private Investments Funds Update we have also published the following separate Client Alerts of interest to the private funds industry:

New San Francisco Gross Receipt's Tax May Hit Investment Managers / Fund Sponsors
November 20, 2012

Treasury Department Issues Final Determination Exempting Foreign Exchange Swaps and Certain Foreign Exchange Forwards from the Definition of "Swap"
November 21, 2012

CFTC Issues Final Clearing Determination for Certain Interest Rate Swaps and Credit Default Index Swaps
November 29, 2012

SEC's Charges Against China-Based Accounting Firms Have Broad Implications
December 5, 2012

New UK Distribution Rules Effective December 31 – the Impact on Fund Managers
December 13, 2012

Highlights of the American Taxpayer Relief Act of 2012
January 3, 2013

New State Laws Prohibit Employers and Academic Institutions from Requesting Usernames and Passwords to Monitor Social Media Activity, Creating Complications for Compliance with Federal Securities Regulations
January 22, 2013

SEC Warns: "The number of cases involving private equity will increase."
January 30, 2013

Two Recent Decisions Provide Rare Guidance on the FCPA's Reach over Foreign Nationals
February 26, 2013

Supreme Court Adopts Strict Interpretation of the Statute of Limitations for SEC Civil Penalty Enforcement Actions
February 28, 2013

SEC Announces 2013 Examination Priorities for the Investment Management Industry
February 28, 2013

AIFMD Implementation – What Should Non-EU Private Fund Advisers be Doing?
March 6, 2013

SEC Adviser Examinations Focus on Custody Rule Compliance
March 8, 2013

SEC Staffer Highlights Private Fund and Private Equity Broker-Dealer Issues
April 9, 2013

Secured Lender's Large "Makewhole" Claim Upheld by Delaware Bankruptcy Court
April 25, 2013

CFTC Adopts Final Rules Requiring Execution of Swaps Organized Facilities
June 4, 2013

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