Private Funds
Alert

Weil

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Annual Compliance Obligations

Applicable to Private Fund Sponsors

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Private equity fund sponsors are subject to a number of routine regulatory and compliance obligations, including, but not limited to: making and updating certain filings and reports with the U.S. Securities and Exchange Commission (SEC) and other U.S. federal and state regulators; reporting information to advisory clients and investors; causing clients to undergo a surprise examination or internal audit; and reviewing the sponsor's offering materials, compliance policies and procedures and employee activities. To assist our clients with these requirements, this memo summarizes important upcoming regulatory filings and compliance obligations in 2025.[1]

FORM ADV

(Annual Amendment due by March 31, 2025)

Investment advisers that are registered with the SEC under the Investment Advisers Act of 1940 (Advisers Act), and advisers filing as exempt reporting advisers with the SEC, must file an annual amendment to Form ADV within 90 days of the end of their fiscal year (*i.e.*, by March 31, 2025[2] for advisers with a fiscal year-end of December 31).[3] Given the number of advisers with December 31 fiscal year-ends and the usual Q1 rush to file on the date of the filing deadline, advisers are encouraged to file early if possible. Advisers are also reminded to fund their IARD accounts in advance of filing their Form ADV annual amendment so that there are sufficient funds on account with IARD to submit the amendment.

Registered investment advisers must file an updated Part 1 and Part 2A brochure of such adviser's Form ADV, while exempt reporting advisers must file an updated Part 1. Registered investment advisers are also required to update, but are not required to file with the SEC, Part 2B brochure supplements of their Form ADV. In addition, registered investment advisers are required to provide a copy of the updated Form ADV Part 2A brochure (or a summary of changes with an offer to provide the complete brochure) and, in certain cases, an updated Part 2B brochure supplement to each client.

1 Please note that certain deadlines shown herein are calculated based on the assumption that the adviser has a fiscal year-end of December 31.

2 Form ADV is submitted through FINRA's IARD electronic filing system.

3 In addition, an investment adviser must update its Form ADV promptly if certain information becomes inaccurate as indicated in the instructions to Form ADV.

FORM PF

(Annual Filing due by April 30, 2025, Quarterly Filings due 60 days after the end of each fiscal quarter during which a trigger event occurred, Current Reports for Large Hedge Fund Advisers due within 72 hours of a trigger event)

Private Equity Fund Advisers[4] are required to file Form PF with the SEC within 120 days after such adviser's fiscal year-end (*i.e.*, by April 30, 2025 for advisers with a fiscal year-end of December 31).[5] Among other things, Form PF requires disclosure of the adviser's assets under management and information on each private fund it advises.

In connection with the SEC's amendments to Form PF adopted on May 3, 2023:

- As of December 11, 2023, Private Equity Fund Advisers are required to file an "event report" upon the occurrence of one or more trigger events within 60 days of each fiscal quarter-end.[6] Such trigger events include the occurrence of an adviser-led secondary transaction, as well as the removal of a general partner and investor elections to terminate a fund or its investment period. Event reports will **not** be required for any quarters where trigger events did not occur.
- In addition to the new event reporting requirements applicable to all Private Equity Fund Advisers, as of June 11, 2024, Large Private Equity Fund Advisers[7] are required to file quarterly reports regarding (i) adviser-led secondary transactions, (ii) general partner removals and (iii) investor elections to terminate a fund or investment period.
- As of December 11, 2023, Large Hedge Fund Advisers[8] are required to file a "current report" as soon as practicable, but no later than 72 hours, upon the occurrence of one or more trigger events that may indicate significant stress at a qualifying hedge fund[9] they advise, including: extraordinary investment losses; significant margin and default events; prime broker relationship being terminated or materially restricted; operations events; and large withdrawal and redemption requests.

Additionally, among other things, in connection with the SEC's amendments to Form PF adopted on February 8, 2024, as of March 12, 2025 (Compliance Date):

- All reporting advisers will no longer have the option to report fund structures on an aggregate basis and instead will be required to separate reporting for each component fund of a master-feeder arrangement and parallel fund structure.

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[4] Form PF defines "Private Equity Fund Adviser" as any adviser with $150 million in private fund assets under management as of the last day of its most recently completed fiscal year.

[5] Please note that certain "Large Hedge Fund Advisers" (defined below) and "Large Liquidity Fund Advisers" (private fund advisers that manage at least $1 billion in combined liquidity fund and money market fund assets) are subject to more frequent and extensive reporting requirements and shorter deadlines.

[6] A previous alert discussing the SEC's amendments to Form PF can be found here.

[7] Form PF defines "Large Private Equity Fund Adviser" as any adviser that, together with its related persons, had at least $2 billion in private equity fund assets under management as of the last day of its most recently completed fiscal year.

[8] Form PF defines "Large Hedge Fund Adviser" as any adviser that, together with its related persons, had at least $1.5 billion in hedge fund assets under management as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter.

[9] Form PF defines "qualifying hedge fund" as any hedge fund that has a net asset value (individually or in combination with any feeder funds, parallel funds and/or dependent parallel managed accounts) of at least $500 million as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter.

- All reporting advisers will be required to identify any trading vehicles (*i.e.*, legal entities that hold assets, incur leverage or conduct trading or other activities as part of the private fund's investment activities, but do not operate a business) of a reporting fund, specify how the reporting fund uses the trading vehicle and report certain additional information including, in response to certain questions, the position sizes and counterparty exposures of the reporting fund that are attributable to the trading vehicle.
- All reporting advisers will be required to disclose additional identifying information about themselves and their related persons, private fund assets under management, and key details regarding their private funds' financing, assets, investor concentration and performance.
- All reporting advisers will be required to include the value of the investments in other private funds (both internal and external private funds) when determining whether (i) the adviser is required to file Form PF and/or (ii) certain reporting thresholds are met.
- Large Hedge Fund Advisers will be required to submit enhanced reporting regarding qualifying hedge funds. This includes insight as to how Large Hedge Fund Advisers report investment exposures, borrowing and counterparty exposure, market factor effects, currency exposure, turnover, country and industry exposure, central clearing counterparty reporting, risk metrics, investment performance by strategy, portfolio liquidity, financing and investor liquidity.
- All Hedge Fund Advisers will be required to report enhanced information and use of trading and clearing mechanisms.

Additionally, on October 4, 2024, the SEC released responses to frequently asked questions concerning the amendments to Form PF adopted on February 8, 2024.[10] The SEC clarified that any Form PF filing made on or after the Compliance Date must be on the amended version of the form. So, to the extent an annual filer with a calendar year-end—whose annual update would be due by April 30, 2025—submits the annual update on or after the Compliance Date, the filer would be required to use the amended form. However, a quarterly filer with a calendar year-end—whose quarterly filing for the quarter-ended December 31, 2024 would be due before the Compliance Date—would not be required to use the amended form until the filing for the quarter-ended March 31, 2025.

The SEC also clarified that all filers are required to transition to calendar quarterly reporting for the quarter-ended June 30, 2025, and a quarterly report on the amended form must be filed by August 29, 2025. Thus, for a quarterly filer whose fiscal year ends on January 31, 2025, such filer is required to file a quarterly report by April 1, 2025. If filed on or after the Compliance Date, the filing must be made on the amended Form PF. The filer would then transition to calendar quarter-end reporting, with the next report due by August 29, 2025.

Lastly, on December 20, 2024, the SEC released an additional set of responses to frequently asked questions addressing the amendments to Form PF adopted on February 8, 2024 and May 3, 2023 as well as amended Form PF generally. These questions provide further guidance on topics including:

- The expected availability of amended Form PF in various electronic formats (*e.g.*, fillable versions, XML submissions, etc.);
- How to amend or correct filings made on the previous version of Form PF before the Compliance Date;

[10] All frequently asked questions and related responses concerning the amendments to Form PF adopted on February 8, 2024 and May 3, 2023 can be found here.

- Amended Form PF's general instructions for reporting "trading vehicles" and the calculation of "gross reporting fund aggregate calculated value";
- Specific items related to Questions 12, 26, 27, 28, 32, 34, 36, 39, 41, 81 and 82; and
- Reporting requirements related to withdrawal and redemption requests (including the inability to pay redemption requests and suspended redemptions).

COMMODITY FUTURES TRADING COMMISSION (CFTC) FILINGS

(Annual Affirmation of De Minimis and Commodity Trading Advisor Exemptions due by March 1, 2025)

Many private equity fund sponsors are able to rely on the exemption from registration as a commodity pool operator with the National Futures Association (NFA) that is available under CFTC Rule 4.13(a)(3) (the *de minimis* exemption) and have claimed such exemption. The *de minimis* exemption is subject to an annual affirmation which must be completed within 60 days after the end of each calendar year. Failure to affirm the exemption is deemed a withdrawal of the exemption once the 60-day period has elapsed. The annual affirmation must include a representation that neither the sponsor nor any of its "principals" are subject to certain statutory disqualifications. Private fund sponsors that do not qualify for the *de minimis* exemption may be subject to registration with the NFA as commodity pool operators.

In addition, many fund managers rely on the "solely incidental" exemption from registering as a commodity trading advisor pursuant to CFTC Rule 4.14(a)(8). An annual affirmation of this exemption is also required to be filed within 60 days after the end of each calendar year.

CUSTODY RULE

(Distribution of Audited Financial Statements due by April 30, 2025)

Registered investment advisers to private funds must comply with certain custody procedures, including generally maintaining client funds and securities with a qualified custodian and either (i) causing client assets to undergo an annual surprise examination conducted by an independent public accountant or (ii) obtaining an audit of each private fund by an independent public accountant and delivering the audited financial statements, prepared in accordance with generally accepted accounting principles, to fund investors within 120 days of the fund's fiscal year-end (*i.e.*, by April 30, 2025 for funds with a fiscal year-end of December 31). Private fund sponsors should review their custody procedures to ensure compliance with these rules.

FINCEN'S FINAL RULE TO COMBAT ILLICIT FINANCE AND NATIONAL SECURITY THREATS IN THE INVESTMENT ADVISER SECTOR

On August 28, 2024, FinCEN issued a final rule to help safeguard the investment adviser sector from illicit finance activity, including misuse by criminals, foreign adversaries and other money laundering and terrorist financing threats. The final rule adds to the definition of "financial institution" under the regulations that implement the Bank Secrecy Act (BSA) (i) investment advisers registered with or required to register with the SEC and (ii) investment advisers that report information to the SEC as exempt reporting advisers.

The final rule requires covered advisers to:

- implement a risk-based and reasonably designed AML/ CFT program;
- file certain reports, such as Suspicious Activity Reports, with FinCEN;
- keep certain records, such as those relating to the transmittal of funds; and
- fulfill certain other obligations applicable to financial institutions subject to the BSA and FinCEN's implementing regulations, such as special information sharing procedures.

The compliance date for the final rule is January 1, 2026. In advance of that date, it is important for advisers, particularly stand-alone advisers that do not have affiliated broker-dealers, to begin preparing for the new rules as soon as possible.

Developing a tailored program, including training staff, identifying red flags and filing Suspicious Activity Reports, will likely be a significant undertaking for advisers who historically have not had to deploy such a rigorous program. Please feel free to reach out to your regular Weil team member if you have any questions or need any assistance with this matter. In addition, while an enhanced anti-money laundering program will be new to investment advisers, FinCEN delegated authority to examine and enforce this anti-money laundering rule to the SEC. The SEC has decades of experience enforcing anti-money laundering requirements for broker-dealers, and it is unlikely that SEC examination staff will face the usual learning curve that typically accompanies new rules.[11]

ANNUAL REVIEW OF COMPLIANCE POLICIES AND PROCEDURES

Registered investment advisers are required to perform a review to assess the adequacy of their compliance policies and the effectiveness of their implementation and, if necessary, to update their compliance policies and procedures on an annual basis. In determining the adequacy of an annual review, the SEC has indicated that it will consider a number of factors, including the persons conducting the review, the scope and duration of the review and the adviser's findings and recommendations resulting from the review. In accordance with industry best practices (as well as SEC exam findings), written documentation evidencing the results of the annual review should be kept and reviewed by the adviser's chief compliance officer, senior management and, if applicable, outside counsel. Employee compliance training should also be conducted at least annually based on the results of the compliance review.

ACCESS PERSONS HOLDINGS REPORT

Registered investment advisers must require "access persons"[12] to submit reports of their current securities holdings (and those of their immediate family members) at the time they become an access person and at least once annually thereafter to the investment adviser's chief compliance officer. The information in such reports must be current as of a date no more than 45 days prior to the date the report was submitted.

ANNUAL ACKNOWLEDGEMENT OF RECEIPT OF CODE OF ETHICS

Registered investment advisers must require their supervised persons to provide the investment adviser with a written acknowledgement on an annual basis of their receipt of the adviser's Code of Ethics and any amendments.

[11] An SEC risk alert discussing the Staff's observations arising from conducting anti-money laundering compliance examinations of broker-dealers can be found here.

[12] Access persons are any of the adviser's supervised persons who (i) have access to nonpublic information regarding any advisory client's purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund, or (ii) are involved in making securities recommendations to clients, or have access to such recommendations that are nonpublic. An adviser's directors, officers and partners are generally presumed to be access persons.

REVIEW OF OFFERING MATERIALS

As a general disclosure matter, and for purposes of U.S. federal and state anti-fraud laws, an investment adviser must continually ensure that each of its fund offering documents is kept up to date, is consistent with its other fund offering documents and its Form ADV and contains all material disclosures that may be required in order for investors to be able to make an informed investment decision.

Accordingly, it may be an appropriate time for an investment adviser to review its offering materials (including investor newsletters and pitch books) and confirm whether any updates or amendments are necessary. In particular, an investment adviser should take into account the impact of recent market conditions on its funds and review its current disclosure regarding: investment objectives and strategies; valuation practices; performance and related disclaimers (including Advisers Act marketing rule compliance[13]); any mention of specific investments to confirm that there are no "cherry picking" issues; conflicts of interests; risk factors; personnel; service providers; "bad actor" disclosures; and any relevant legal or regulatory developments. In light of the SEC's continuing focus on the allocation of private fund fees and expenses and conflicts of interest, advisers must take special care in reviewing their practices and disclosure in these areas.

CERTAIN FILINGS REQUIRED UNDER THE SECURITIES EXCHANGE ACT OF 1934

Form 13F
The Securities Exchange Act of 1934 (Exchange Act) requires investment advisers (whether or not registered) to submit a report on Form 13F to the SEC, within 45 days after the last day of any calendar year and within 45 days after the last day of each of the next three calendar quarters following such calendar year, if on the last day of any month of such calendar year the investment adviser exercised discretion with respect to accounts holding Section 13(f) securities (generally, publicly traded securities) having an aggregate fair market value of at least $100 million (institutional investment managers). Note that the SEC has proposed, but not yet adopted, an amendment increasing this threshold to $3.5 billion.

Form 13H
An investment adviser that is a "large trader" (*i.e.*, it engages in transactions in National Market System securities equal to or in excess of two million shares or $20 million during any calendar day, or 20 million shares or $200 million during any calendar month) must promptly (within 10 days) file an initial Form 13H after effecting aggregate transactions equal to, or greater than, the applicable activity level. Following this initial filing, all large traders must make an amended filing to update any previously-disclosed information that becomes inaccurate no later than promptly (within 10 days) following calendar quarter-end and must separately file an annual amendment within 45 days after calendar year-end.

[13] As a reminder, any use of "hypothetical performance" (*i.e.*, performance results that were not actually achieved by any portfolio of the adviser) requires, among other things, the adoption and implementation of compliance policies and procedures reasonably designed to ensure that the hypothetical performance is relevant to the likely financial situation and investment objectives of the intended audience of the advertisement.

Form N-PX

Exchange Act Rule 14Ad-1 requires institutional investment managers that file Form 13F to report their votes on executive compensation matters (*i.e.*, "say-on-pay" votes), including votes on the approval of executive compensation and on the frequency of such executive compensation approval votes, as well as votes to approve "golden parachute" compensation in connection with a merger or acquisition, on Form N-PX when they exercise their voting power with respect to a security. Advisers are required to file reports on Form N-PX annually, no later than August 31 of each year, for the most recent 12-month period ended June 30. Because August 31, 2025 is a Sunday and Monday, September 1, 2025 is a holiday[14], advisers have until Tuesday, September 2, 2025 (the next business day) to file reports.[15] This year's reports will cover the period from July 1, 2024 to June 30, 2025.

PRIVACY POLICY NOTICE

Investment advisers and private funds are subject to SEC, CFTC, Federal Trade Commission and, in certain circumstances, state regulations governing the privacy of certain confidential information of individual investors. Under such privacy rules, investment advisers and private funds are required to provide notice to individual investors regarding their privacy policies and procedures at the start of the relationship with such individual investor (although they are generally no longer required to provide an annual privacy notice to such investors unless material changes have been made to the policy).

REGULATION S-P

On May 16, 2024, the SEC adopted amendments to Regulation S-P, which regulates how certain financial institutions handle nonpublic personal information about consumers. Among other things, these amendments require registered investment advisers with $1.5 billion or more in assets under management to take several steps, including (i) developing and implementing an incident response program to detect, respond to, and recover from unauthorized access to or use of customer information and (ii) providing timely notifications to individuals affected by such unauthorized access.[16] Covered advisers must comply with these new requirements by December 3, 2025. Please feel free to reach out to your regular Weil team member if you have any questions or need any assistance with this matter.

FORM D AND BLUE SKY FILINGS

Form D filings for private funds with ongoing offerings lasting longer than one year need to be amended on an annual basis, on or before the first anniversary of the initial Form D filing. Potential investors can obtain copies of Form D via the SEC's website. Recently, the SEC announced several enforcement settlements involving firms that failed to file Form D in connection with unregistered securities offerings. These settlements highlight the SEC's focus on Form D compliance and the critical importance of timely Form D amendments.

Additionally, on an annual basis, private fund sponsors should review their blue sky filings for each state to make sure they meet any renewal requirements. In some states, fees apply for late blue sky filings.

[14] In observance of Labor Day on Monday, September 1, 2025, the SEC's EDGAR system will be closed and will not receive, process, or accept filings. The SEC's EDGAR system is available to accept filings from 6 a.m. to 10 p.m. ET on weekdays (except federal holidays).

[15] Under Rule 0-3 of the Exchange Act, when the due date of a report falls on a Saturday, Sunday or holiday, the report will be considered timely filed on the first business day following the due date.

[16] The adopting release of the amendments to Regulation S-P can be found here.

BAD ACTOR RULES

Rule 506(d) of Regulation D under the Securities Act of 1933 prohibits a private fund from relying on the safe harbor private placement exemption contained in Regulation D if the fund, or certain specified persons or entities associated with the fund, are subject to disqualifying events as a result of bad acts. It is imperative for private fund sponsors that intend to rely on Regulation D to identify all persons and entities subject to the rule and conduct appropriate due diligence (including receiving written certifications) to ensure that none are subject to disqualification. In addition, for funds that are engaging in continuous and/or long-term offerings, the diligence should be periodically refreshed.

STATE LOBBYIST REGISTRATIONS

Private fund sponsors should look at each state in which a public entity or a public employee retirement plan is an investor or a potential investor to determine if the investment adviser or its personnel are required to register as lobbyists. This may require engaging local counsel with knowledge of state and municipal laws and regulations.

PAY TO PLAY RULE

Rule 206(4)-5 under the Advisers Act, known as the “Pay to Play Rule”, addresses practices under which direct or indirect payments by investment advisers and certain of their personnel (*e.g.*, senior executives, solicitors, supervisors) (Covered Associates) to state and local government officials are perceived to improperly influence the award of government investment business. The rule is applicable to registered investment advisers, exempt reporting advisers and “foreign private advisers” not registered with the SEC in reliance on Section 203(b)(3) of the Advisers Act. The rule prohibits (subject to certain limited exceptions) an investment adviser from (i) providing advisory services for compensation to a government entity client (or investor in a pooled investment vehicle) for two years after the adviser or certain of its executives or employees make a contribution to certain elected officials or candidates related to that government entity, (ii) providing direct or indirect payments to any third party that solicits government entities for advisory business unless the third party is a registered broker-dealer, municipal advisor or investment adviser itself subject to “pay to play” restrictions, and (iii) soliciting from others, or coordinating, contributions to certain elected officials or candidates or payments to political parties where the adviser is providing or seeking government business.

In connection with these requirements, advisers should ensure their policies, procedures and employee trainings related to political contributions are comprehensive and effectively implemented. They should also maintain accurate records of all government-affiliated investors, such as state or local pension plans, to track potential compliance risks. Additionally, advisers must keep up-to-date rosters of Covered Associates, and review and pre-clear such individuals’ political contributions to confirm that no contributions are made that would trigger a two-year fee ban. Lastly, advisers should maintain clear and detailed records of all political contributions made to officials or candidates, as well as any payments to state or local political parties or PACs.

ANNUAL VCOC/PLAN ASSETS CERTIFICATIONS

Many private equity funds limit "benefit plan investors" to less than 25% of any class of equity interest in a fund (the 25% test) so that such fund's assets are not deemed "plan assets" subject to the U.S. Employee Retirement Income Security Act of 1974 (ERISA), and some private equity fund sponsors have agreed to provide an annual certification to that effect. Such certification generally can be made at any time during the year, but typically investors wish to have a certification made as of a specified annual date, often as of the end of the year, for convenience. Such certifications must take into account the impact of transfers and withdrawals of fund interests during the applicable period, as well as the impact of different ownership percentages of any alternative investment vehicle, or investments, due to excuse and exclusion.

Other private equity funds operate as "venture capital operating companies" (VCOCs), and may have agreed to deliver an initial opinion and annual certification as to the fund's VCOC status. Such certification requires a determination as to whether at least 50% (based on cost) of the fund's total investments (excluding cash and other temporary investments) constitute "good" venture capital investments during the 90-day valuation period applicable to the fund. Information regarding the cost of each investment held by the fund on one day during the applicable 90-day period, and confirmation of the management rights required for any "good" investment, should be gathered in preparation for such certification or opinion. The 90-day valuation period should be established by the fund in connection with its initial investment. The timing of providing the certification is usually tied to the end of the 90-day period, often 60 days following the end of such period. Fund sponsors should conduct the VCOC or 25% test analysis, as applicable, and deliver the applicable certification to their limited partners.

If a "feeder fund" for investors with a particular tax profile was established to invest in a "master fund," it is possible that the feeder fund might be designed to hold plan assets of ERISA investors. In such case, it may be necessary to update any mandatory disclosure pursuant to Section 408(b)(2) of ERISA (if applicable) regarding direct and indirect compensation for services, if any, relating to the feeder fund. In the case of a new master fund that intends to operate as a VCOC but has not yet made its first investment, updated disclosure to comply with Section 408(b)(2) of ERISA (and possibly other reporting requirements applicable to ERISA investors) may be required, particularly if expenses or management fees were paid by any ERISA investors before the first investment has been made. The circumstances pertaining to each master and feeder fund differ, and counsel should be consulted regarding compliance with any applicable disclosure requirements.

TIC REPORTING

U.S. private fund sponsors (and non-U.S. private fund sponsors that manage U.S.-domiciled funds) that have portfolio investments in foreign issuers, have issued interests in their funds to foreign residents or have claims on or liabilities to foreign residents may be required to report those transactions to the Federal Reserve Bank of New York on the Treasury International Capital (TIC) system through the filing of one or more of the following forms:

- TIC Form SLT – requires U.S. resident entities to report investments in foreign long-term securities (*i.e.*, securities with a maturity of more than one year) and long-term securities issued by such U.S. resident entities to foreign persons equal to $1 billion or more.
- TIC Form B – requires (subject to certain thresholds) the reporting of information on certain claims and liabilities (including loans and short-term debt instruments) of U.S. financial institutions with non-U.S. persons.
- TIC Form S – requires U.S. resident entities to report purchases and sales of long-term securities with foreign entities if, during any month, such transactions equaled $350 million or more in the aggregate.

BEA FILINGS

(BE-10 Benchmark Survey due by May 31, 2025 (or by June 30, 2025 for reports submitted via the BEA's e-filing system.))

The U.S. Bureau of Economic Analysis (BEA) requires a U.S. entity, including a private fund domiciled in the U.S., to make a filing on Form BE-13 if a non-U.S. person acquires ownership of 10% or more of its voting securities and the cost of acquiring such securities is more than $3 million.[17] The BEA generally does not consider limited partner interests or non-managing member limited liability company interests to be voting securities, so most U.S. funds with foreign investors would not have to file. However, general partner/managing member interests generally are considered voting securities for purposes of Form BE-13. Therefore, a fund domiciled in the U.S. that has a general partner domiciled outside the U.S. generally would be required to file. In addition, if a non-U.S. fund owns 10% or more of the voting securities of a U.S.-domiciled portfolio company, the portfolio company generally would have to file. Reports are required to be filed within 45 days of a reportable transaction. A U.S. person must file a Form BE-13 for a reportable transaction even if not directly requested to do so by the BEA. After an initial BE-13 filing is made, the BEA requires quarterly, annual, and five-year benchmark filings. The next five-year benchmark filing is the BE-10 Benchmark Survey, which covers the fiscal year ending in 2024, and the filing will be due by May 31, 2025 (or by June 30, 2025 for reporters using the BEA's e-filing system). All entities subject to the reporting requirements must file, even if they are not contacted by the BEA.[18]

EUROPEAN UNION AND UNITED KINGDOM REGULATION OF THE PRIVATE EQUITY INDUSTRY

Directive 2011/61/EU on Alternative Investment Fund Managers (AIFM Directive) has been implemented into the national laws of all key European Economic Area (EEA) member states and similar provisions apply in the United Kingdom (UK) following Brexit under the Alternative Investment Fund Managers Regulations (AIFMR). Managers bringing funds to the market in the EEA and/or the UK have to comply with the AIFM Directive and/or AIFMR (as applicable) and their varied implementation across the different jurisdictions. The AIFM Directive and/or AIFMR (as applicable) subject EEA and UK private fund managers and private fund managers using EEA and UK fund vehicles to certain operational and organizational requirements.

The AIFM Directive and AIFMR also impact U.S. (and other non-EEA) private fund managers that market fund interests to investors in the EEA and/or the UK by imposing a subset of the full AIFM Directive rules upon them. In particular, such managers become subject to certain ongoing compliance requirements including disclosure and reporting obligations, restrictions on extracting capital from EEA/UK portfolio companies and other measures designed to improve transparency when acquiring EEA/UK portfolio companies. In each jurisdiction which has implemented the AIFM Directive there is a separate private placement regime governing the registration requirements for that particular jurisdiction - some require a straightforward notification, while others require an application to be submitted, with approvals from regulators being necessary prior to marketing to investors in the relevant jurisdiction. Some EEA jurisdictions have supplemented the AIFM Directive's minimum requirements for non-EEA private fund managers with additional obligations such as, in the case of Denmark and Germany, the appointment of a depositary to monitor the fund's investments and cash flows and to carry out certain general oversight functions. In the case of other jurisdictions, such as Austria and France, workable private placement regimes have not yet been implemented and therefore the only way for U.S. (and other non-EEA) private fund managers to admit investors from such jurisdictions is following a genuine reverse solicitation fact

[17] If the 10% threshold, but not the $3 million threshold, is crossed, a BE-13 Claim for Exemption must be filed.

[18] More information on the BE-10 survey can be found here.

pattern or in certain other limited circumstances such as if a country-specific exemption applies. Private fund managers will have to carefully plan their marketing campaigns and register for marketing (by way of notification or application, as applicable) in any relevant EEA jurisdictions and/or the UK in good time. For those jurisdictions where an approval is required, the applications should be submitted well in advance of anticipated marketing efforts commencing since regulators in some EEA jurisdictions have been taking several months to approve marketing, while in others the process can be completed in a matter of days or weeks. In addition, fund managers will be required to carry out a short form compliance process to ensure they are ready to meet the European reporting requirements. We are currently assisting a significant number of U.S.-based and global private fund managers in making applications to EEA/UK regulators for approval under the AIFM Directive's private placement regimes in a variety of EEA jurisdictions and the UK.

In addition to the above, Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on the cross-border distribution of collective investment undertakings, which has applied from August 2021, makes various changes to the AIFM Directive, including requiring EEA fund managers marketing funds to EEA investors to make notifications to local regulators within 2 weeks of beginning "pre-marketing" (*i.e.*, engagement with investors in order to test their interest in a fund which is not yet established, or which is established, but not yet notified for marketing) to such investors. Although Directive (EU) 2019/1160 is silent on whether non-EEA fund managers are required to make such pre-marketing notifications, certain EEA jurisdictions (currently Germany, Finland, the Netherlands and Luxembourg) have taken a gold-plating approach, requiring non-EEA managers marketing funds in these jurisdictions to submit pre-marketing notifications.

Upon submission of such pre-marketing notifications in any of Germany, Finland, the Netherlands or Luxembourg, non-EEA managers will not be able to rely on reverse solicitation to admit investors from these jurisdictions for a period of 18 months from submission. This rule applies to the fund that has been notified for pre-marketing and any fund with a similar strategy (*i.e.,* the rules capture parallel fund sleeves as well).

On November 10, 2023, the text of an amending directive that will make amendments to the AIFM Directive was published, referred to as "AIFMD II". Most of the changes apply to all EEA managers but currently, only the proposed changes with respect to pre-contractual disclosures and ongoing reporting will be relevant for non-EEA managers marketing funds under national private placement regimes. The European Commission's final proposal was formally adopted by the European Parliament on 7 February 2024. AIFMD II was published in the Official Journal of the European Union (EU) on 26 March 2024 and applies from 15 April 2024. The EEA member states now have a two-year transition period to transpose the new provisions under AIFMD II into their respective national law, which will conclude in April of 2026. The implementation of AIFMD II and its effect on non-EEA AIFMs remains to be seen.

We are seeing an increasing interest from U.S. (and other non-EEA) private fund managers and their investors in establishing parallel fund structures based in the EEA that can access the AIFM Directive's single market passporting regime. We would be happy to discuss options with you on a case-by-case basis in due course.

The UK left the EU and the EEA on January 31, 2020 under the terms of a withdrawal agreement (which established an implementation period within which aspects of EU law would continue to apply in the UK until December 31, 2020). While the terms of the withdrawal agreement did not include a deal regarding the trade of goods and services between the UK and the EU, the UK reached a separate agreement with the EU regarding such matters on December 24, 2020. Nonetheless, the Brexit deal is limited for financial services and therefore the future application of EU-based legislation to the private fund industry in the UK and the EU will ultimately depend on how the UK renegotiates its financial services relationship with the EU.

There are currently a series of initiatives at the EU level to implement the EU's Action Plan on Financing Sustainable Growth. Regulation (EU) 2019/2088 on Sustainability-related disclosures in the financial services sector (SFDR) was published on December 9, 2019 and entered into force on December 29, 2019. The purpose of the SFDR is to achieve more transparency around how financial market participants incorporate consideration of sustainability risks (defined as any environmental, social or governance event or condition that, if it occurs, could cause a negative material impact on the value of the investment) into their investment decision-making processes. Under the SFDR, fund managers may be required to provide certain disclosures in pre-contractual documentation and on their websites on the manner in which such sustainability risks are accounted for and integrated into their investment decision-making process and the potential impact of sustainability risks on the returns of their funds. The practical implementation of the SFDR requires Regulatory Technical Standards which came into force on 1 January 2023.

On June 18, 2024, the European Supervisory Authorities published a Joint Opinion to the European Commission on the assessment of SFDR, and proposed changes including new "Sustainable" and "Transition" categories for financial products. On July 24, 2024, the European Securities and Markets Authority (ESMA) published an Opinion on the EU's Sustainable Finance Regulatory Framework, which made a series of recommendations for the European Commission's consideration, which target a more consistent framework, including that the EU Taxonomy (referenced below) should become the sole, common reference point for the assessment of sustainability, the introduction of a distinct classification system for "transition investments" and products, and developing minimum sustainability disclosures for all financial products consisting of a small number of simple sustainability key performance indicators. SFDR is currently under review by the European Commission and further amendments are expected.

The EU has also implemented the Sustainable Finance Taxonomy Regulation (Taxonomy Regulation), which is designed to create a benchmark and framework for green products and to standardize the concept of environmentally sustainable investment across the EU in order to provide investors with more transparency regarding a financial product's environmental sustainability. The regime began to apply in practice from January 1, 2022. The Taxonomy Regulation amends the SFDR to require fund managers to disclose either: (i) information on how and to what extent the investments that underlie their products support economic activities that meet the four criteria for environmental sustainability under the Taxonomy Regulation; or (ii) for financial products that do not invest in taxonomy-compliant activities, a statement that they do not take the Taxonomy Regulation into account. In order to comply with the four tests for environmental sustainability, an economic activity must: (i) contribute substantially to at least one of the environmental objectives listed in the Taxonomy Regulation; (ii) "do no significant harm" to any of the other environmental objectives listed in the Taxonomy Regulation; (iii) be carried out in compliance with minimum social and governance safeguards; and (iv) comply with technical screening criteria to be adopted under the Taxonomy Regulation.

On November 28, 2023, the Financial Conduct Authority published its Policy Statement (PS23/16) setting out its final rules on UK Sustainability Disclosure Requirements (SDR) and investment labels, the implementation of which will be phased. The SDR is widely seen as the UK's answer to the EU's SFDR, however the scope of the UK's SDR is less broad in that, at present, the requirements will only apply to UK managers that manage UK-domiciled funds. On 17th December 2024, the Platform on Sustainable Finance, which is an advisory body to the European Commission, published a briefing note for the European Commission outlining a new categorisation system for sustainable finance products, which takes into account the approach taken under the UK SDR, and will likely inform the European Commission's amendments to SFDR, as mentioned above.

On 25 April 2024, the EU formally adopted a regulation aimed at enhancing the transparency and integrity of environmental, social and governance (ESG) rating activities. This regulation is expected to apply from late 2025/early 2026. The trigger for falling within scope of this regulation is the provision of an ESG rating by an ESG rating provider operating in the EU (regardless of whether such provider is established inside or outside the EU). The broad definition of "ESG ratings" could include any sort of ESG scoring system. As such, any fund or asset manager that uses a proprietary methodology to generate ESG scores could fall within the definition of an "ESG rating provider". Certain exemptions will mean that not all ESG rating providers are subject to substantive obligations.

On May 14, 2024, following consultation, ESMA published its Final Report on funds' names using ESG or sustainability-related terms. Broadly, sponsors with funds that include one or more specified words in their name will have to ensure that their portfolios align with a new quantitative threshold, and must exclude certain types of investment from their portfolio. Specified words include, for example, "sustainability," "green," "climate," "environmental," "impact" and "transition" or words with similar meanings. The most stringent requirements apply to fund names with any term derived from the word "sustainable" – they are required to have at least 80% of their portfolio in investments that match the sustainability characteristics promoted by the fund, to exclude certain investments and to "invest meaningfully" in "sustainable investments" as defined by the SFDR. These Guidelines will start to apply from November 21, 2024 but are not mandatory and national authorities need to decide if and how to implement them.

On July 5, 2024, the Corporate Sustainability Due Diligence Directive (CSDDD) was published in the Official Journal of the EU and became effective on July 25, 2024. Member States have two years (until July 26, 2026) to transpose the CSDDD into national law. The CSDDD will apply to the largest in-scope companies on July 26, 2027. The CSDDD will apply to (among others) EU companies and parent companies with over 1,000 employees and annual worldwide turnover of more €450 million, non-EU companies and parent companies with annual turnover in the EU of more than €450 million, and companies with certain licensing or franchising arrangements. The CSDDD will require companies to integrate risk-based due diligence processes into policies and risk management systems, to prevent, end or mitigate adverse impacts from their activities on the environment (including biodiversity loss, pollution and destruction of natural heritage) and human rights (including slavery, child labor and labor exploitation). The CSDDD will also impact companies' upstream partners working in design, manufacture, transport and supply, and downstream partners, including those dealing with distribution, transport and storage. The CSDDD will also require in-scope companies to adopt a transition plan for climate change mitigation to ensure through best efforts that the company's business model and strategy are compatible with limiting global warming to 1.5°C in line with the Paris Agreement and the EU's objective of achieving climate neutrality by 2050. Companies will also be required to set targets for Scopes 1, 2 and 3 emissions where appropriate for 2030 and up to 2050.

CAYMAN ISLANDS PRIVATE FUNDS ACT

All private funds registered under the Cayman Islands Private Funds Act must (i) pay an annual registration fee of CI$3,675 (US$4,482) by January 15 of each year and (ii)(A) have their accounts audited annually by a Cayman Islands-based auditor approved by the Cayman Islands Monetary Authority (the Authority) and (B) submit its audited accounts, along with the Fund Annual Return, to the Authority within six months of the end of each fiscal year. In addition, effective October 14, 2023, all private funds are required to adopt a corporate governance framework and convene a meeting of the private fund's governing body at least once a year with appropriately documented agendas and minutes of decisions reached.

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