

Index

ACCESS PERSON

Investment Advisers Act of 1940, **9:53**

ACCOUNTANTS

Investment Advisers Act of 1940, exclusion, **6:9**

ACCREDITED INVESTORS

Securities Act of 1933, Regulation D, **13:6**

ACQUISITIONS OF PORTFOLIO COMPANIES

Generally, **17:1 to 17:18**

Antitrust, **17:6**

Bank Holding Company Act / Gramm - Leach - Bliley Act, **17:8**

Breakup fees, **17:13**

Committee on foreign investment in the U.S., **17:10**

Deal protection

Generally, **17:12**

Breakup fees, **17:13**

Financing outs, **17:14**

Go shop provisions, **17:16**

No shop provisions, **17:15**

Reverse breakup fees, **17:13**

Due diligence

Generally, **17:2**

Other considerations, **17:4**

Preliminary measures, **17:3**

Federal Communications Commission (FCC), **17:7**

Federal Deposit Insurance Corporation (FDIC), **17:9**

Financing

Closing, financing upon, **17:18**

Commitments, **17:17**

Deal protection, financing outs, **17:14**

Foreign investment in the U.S., committee on, **17:10**

Go shop provisions, **17:16**

Hart-Scott-Rodino Act, **17:6**

Investment Advisers Act of 1940, **17:11**

No shop provisions, **17:15**

Regulatory considerations

Generally, **17:5**

Antitrust, **17:6**

Bank Holding Company Act / Gramm - Leach - Bliley Act, **17:8**

Committee on foreign investment in the U.S., **17:10**

Federal Communications Commission (FCC), **17:7**

ACQUISITIONS OF PORTFOLIO COMPANIES—Cont'd

Regulatory considerations—Cont'd

Federal Deposit Insurance Corporation (FDIC), **17:9**

Foreign investment in the U.S., committee on, **17:10**

Hart - Scott - Rodino Act, **17:6**

Investment Advisers Act of 1940, **17:11**

Reverse breakup fees, **17:13**

ACTIVIST INVESTING

Generally, **23:1 to 23:13**

Antitrust, Hart - Scott - Rodino Antitrust Improvement Act, **23:9**

Beneficial ownership determination, **23:3 to 23:5**

Broker discretionary votes in proxy contests, **23:13**

Disclosure

Additional Section 16 requirements, **23:7**

Beneficial ownership determination, **23:3 to 23:5**

Empty voting, **23:5**

Exchange Act Sections 13 and 16, generally, **23:2 to 23:7**

Schedules 13D and 13G, **23:6**

Wolf-packing, **23:4**

Empty voting, disclosure, **23:5**

Exchange Act Section 13 and 16 disclosure, generally, **23:2 to 23:7**

Hart - Scott - Rodino Antitrust Improvement Act, **23:9**

Insider trading, **23:8**

Proxy contests

Generally, **23:11**

Broker discretionary votes, **23:13**

Proxy access, **23:12**

Regulatory framework

Disclosure requirements under Exchange Act Sections 13 and 16, **23:2**

Exchange Act Sections 13 and 16 disclosure, **23:2 to 23:7**

Schedules 13D and 13G, **23:6**

State law considerations, **23:10**

Wolf-packing, disclosure, **23:4**

ADMINISTRATIVE ACTIVITIES

Commodity Exchange Act, CPOs and CTAs, **4:17**

ADMISSION PERIOD

Common features of private equity funds, reallocations during, **16:10**

ADVANTAGES

Coinvesting and club deals, **18:11, 18:12**

ADVERSE MARKET CONDITIONS

Challenges for hedge funds, **2:9**

Challenges for private equity funds, **2:10**

ADVERTISING

Broker-dealers, institutional sales literature, **11:34**

Content of offering material, rules for registered investment advisers, **15:8**

Investment Advisers Act of 1940 (this index)

ADVICE OR ADVISORY OPINION

Investment Advisers Act of 1940, definition of investment adviser, **6:4**

SEC, private fund adviser rule, **9:94**

ADVISER REGISTRATION

Investment Advisers Act of 1940 (this index)

Investment Company Act of 1940, exemption, **3:56**

ADVISING PRIVATE FUNDS, EUROPEAN CHAPTER

Generally, **32:1 to 32:22**

AIFM directive, amendments, **32:19**

Alternative investment fund managers directive

Generally, **32:2 to 32:18**

AIFM directive, amendments, **32:19**

Amendments, AIFM directive, **32:19**

Authorization, **32:4**

Background, **32:2**

Competent authorities, **32:17**

Consequences of non-compliance with the AIFM directive, **32:18**

Delegation, **32:8**

Depository, **32:9**

Disclosure, **32:10**

Leverage or acquiring control of non-listed companies, **32:11**

Marketing by non-EU managers, **32:14**

Marketing to retail investors, **32:16**

Operating conditions, **32:5**

Organizational requirements, **32:7**

Remuneration, **32:6**

Reverse solicitation, **32:15**

Rights to manage and market, **32:12**

Scope, **32:3**

Specific rules in relation to third countries, **32:13**

Transparency, **32:10**

Amendments, AIFM directive, **32:19**

EU legislation

ESG Regulations, **32:24**

Financial instruments directive, **32:22**

Market abuse, **32:20**

Short selling, **32:21**

Undertakings for collective investments in transferable securities (UCITS), **32:23**

AFFILIATES

Broker-dealers, affiliation issues, **11:20 to 11:29**

Conflicts between fund and sponsor financial institution affiliates, **18:22**

Exit strategies, Rule 144, **19:13, 19:14**

Investment Company Act of 1940, transactions with affiliates, **3:53**

Privacy, Regulation S-AM, **12:11 to 12:13**

Real estate funds, transaction fees to affiliates, **24:14, 25:14**

AFTERMARKET

Initial public offering, Phase 4, aftermarket management, **19:9**

AGENTS

Blue sky laws, overview of state regulation, **14:4**

AGGREGATION

Beneficial ownership, Rule 13d-3, **25:4**

ALLOCATIONS

Common features of private equity funds, reallocations during admission period, **16:10**

ERISA fixed allocation multistrategy funds, **5:16**

Hedge funds operated as ERISA funds, **5:47**

Investment Advisers Act of 1940, investment opportunity, **8:3**

Mezzanine funds, **24:10**

Partnerships (this index)

Performance - based allocations. **Fees and Compensation** (this index)

Secondary funds, risk allocation, **24:25**

Venture capital funds, **24:4**

ALTERNATE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

Trends in private fund industry, **2:13**

AMENDMENTS

Investment Advisers Act of 1940, Form ADV, **7:11 to 7:13**

ANALYSIS

Investment Advisers Act of 1940, definition of investment adviser, **6:4**

ANNUAL HOLDINGS REPORTS

Investment Advisers Act of 1940, **9:54**

ANNUAL RETURN / FORM 5500 REPORTING

ERISA, **5:53**

ANTI-AVOIDANCE

Beneficial ownership, Rule 13d-3, **25:3**

ANTI-FRAUD PROVISIONS

Commodity Exchange Act, liability of CPOs and CTAs, **4:58**

Content of offering material, **15:4 to 15:7**

Exchange Act Section 10(b) and Rule 10b-5, content of offering material, **8:21 to 8:23, 15:5**

ANTIFRAUD PROVISIONS—Cont’d

Investment Advisers Act of 1940 (this index)
Securities Act Section 17(a), content of offering material, **15:5**

ANTIMONEY LAUNDERING

Generally, **12:1 to 12:55**
Broker-dealers, **11:39**
Compliance, **12:4**
Regulations, generally, **12:2**
Regulatory framework, **12:3**

ANTITRUST

Activist investing, **23:9**

APPLICANTS

Investment Advisers Act of 1940, registration, **7:1**

APPOINTMENT

Compliance examinations, visit coordinator, **10:19**

ASSETS UNDER MANAGEMENT

Investment Advisers Act registration, **7:5**

ASSIGNMENT

Investment Advisers Act of 1940, advisory contracts, **9:84**
Sales of investment advisers, definition of assignment, **30:17**

ATTORNEYS

Investment Advisers Act of 1940, exemption, **6:9**

ATTRIBUTION RULE LOOK - THROUGH REQUIREMENT

Investment Company Act of 1940, exemption, **3:6**

AUDIT EXCEPTION

Investment Advisers Act of 1940, reports to clients, **9:29, 9:30**

AUDIT REQUIREMENTS

Dodd-Frank Act of 2010, enhancement, **2:11**

BANK HOLDING COMPANY ACT

Acquisitions of portfolio companies, **17:8**
Volcker Rule, **2:12**

BANKRUPTCY FILING BY LEHMAN BROTHERS HOLDINGS, INC.

Challenges for hedge funds, **2:9**

BANKS AND BANK HOLDING COMPANIES

Commodity Exchange Act, exclusion of certain banking-related products, **4:11**
Conflicts between fund and sponsor financial institution affiliates, **18:22**
Dodd-Frank Act, restrictions in proprietary trading and operation/investment in private funds, **2:12**
Investment Advisers Act of 1940, exclusion, **6:6**
Report of Foreign Bank and Financial Accounts (an FBAR), **12:43 to 12:46**

BENEFICIAL OWNERSHIP

Generally, **25:1 to 25:62**
Acquiring and acquired person defined, **25:36**
Acquiring person defined, **25:62**
Acquisition of control share, Pennsylvania antitakeover laws, **25:57**
Activism, reporting under Sections 13(d) or 13(g), **25:19**
Activist investing, **23:3**
Aggregation, Rule 13d-3, **25:4**
Antiavoidance, Rule 13d-3, **25:5**
Antitakeovers. State antitakeover laws, below
Blockers, Rule 13d-3, **25:7**
Cash-out of control share, Pennsylvania antitakeover laws, **25:58**
Definitions
 Acquiring and acquired person, **25:36**
 Acquiring person, **25:62**
 Beneficial owner, **3:4**
 Beneficial ownership
 Derivatives and Section 13, **25:10**
 Rule 13d-3, **25:2 to 25:7**
 Rule 13d-5, **25:8**
Delaware antitakeover laws, **25:54**
“Deputization” of directors, Section 16 and insider trading, **25:25**
Exchange Act
 Activism and group formation, **25:19**
 Derivatives and Section 13, **25:10**
 Group formation, **25:19**
 Insider trading. Section 16 and insider trading, below in this heading
 Mechanics of filing, **25:18**
 Rule 13d-3
 Aggregation, **25:4**
 Antiavoidance, **25:5**
 Blockers, **25:7**
 Definition of beneficial ownership, **25:2 to 25:7**
 Investment control, **25:3 to 25:6**
 Right to acquire, **25:7**
 Voting, **25:3 to 25:6**
 Rule 13d-5
 Definition of beneficial ownership, **25:8, 25:9**
 Group formation, **25:8, 25:9**
 Section 13 and derivatives, **25:10**
 Section 13(d) reporting
 Generally, **25:11 to 25:19**
 Activism, **25:19**
 Group formation, **25:19**
 Mechanics of filing, **25:18**
 Other eligible investors, **25:17**
 Passive investors, **25:16**
 Qualified institutional investors, **25:15**
 Schedule 13D filing, **25:12, 25:14 to 25:17**

BENEFICIAL OWNERSHIP—Cont'd

Exchange Act—Cont'd

Section 13(g) reporting

Generally, **25:11 to 25:19**

Activism, **25:19**

Group formation, **25:19**

Mechanics of filing, **25:18**

Other eligible investors, **25:17**

Passive investors, **25:16**

Qualified institutional investors, **25:15**

Schedule 13G filing, **25:13 to 25:17**

Section 13 interaction with Section 16, insider trading, 25:26

Section 16 and insider trading

Generally, **25:20, 25:21**

“Deputization” of directors, **25:25**

Funds, application to, **25:27**

Partnerships, **25:27**

Rule 16c-4, prohibitions on short selling, **25:24**

Section 13 interaction, **25:26**

Section 16(a) reporting obligations, **25:22**

Section 16(b) short-swing profit disgorgement, **25:23**

Section 16(c) prohibitions on short selling, **25:24**

Section 16(a) reporting obligations, **25:22**

Short selling, Rule 16c-4, **25:24**

Short-swing profit disgorgement, Section 16(b), **25:23**

Freeze-out for five years with fair price, Pennsylvania antitakeover laws, **25:59**

Group formation

Exchange Act Sections 13(d) or 13(g) reporting, **25:19**

Rule 13d-5, **25:8, 25:9**

Hart - Scott - Rodino Antitrust Improvements Act of 1976 (this index)

Insider trading, regulation under Section 16, Exchange Act, above

Investment Advisers Act of 1940, **9:59**

Investment control and voting, Rule 13d-3, **25:3 to 25:6**

Mechanics of filing, reporting under Sections 13(d) or 13(g), **25:18**

New York antitakeover laws, **25:55**

100 beneficial owners. **Investment Company Act of 1940 (this index)**

Other eligible investors, filing Schedule 13D or 13G, **25:17**

Partnerships, Exchange Act Section 16 and insider trading, **25:27**

Passive investors, filing Schedule 13D or 13G, **25:16**

Pennsylvania antitakeover laws

Generally, **25:56**

Acquisition of control share, **25:57**

Cash-out of control share, **25:58**

BENEFICIAL OWNERSHIP—Cont'd

Pennsylvania antitakeover laws—Cont'd

Freeze-out for five years with fair price, **25:59**

Recapture of profits, **25:60**

Poison pills

Background, **25:61**

Defining “acquiring person,” **25:62**

Qualified institutional investors, filing Schedule 13D or 13G, **25:15**

Recapture of profits, Pennsylvania antitakeover laws, **25:60**

Reporting obligations

Exchange Act Sections 13(d) or 13(g), **25:11 to 25:19**

Hart - Scott - Rodino Antitrust Improvements Act of 1976 (this index)

Insider trading regulation under Exchange Act Section 16, **25:20 to 25:27**

Right to acquire, Rule 13d-3, **25:7**

Rule 13d-3, definition of beneficial ownership, **25:2 to 25:7**

Rule 13d-3. Exchange Act, above

Rule 13d-5. Exchange Act, above

Shareholders' rights. Poison pills, below

Short selling, Rule 16c-4, **25:24**

Short-swing profit disgorgement, Section 16(b), **25:23**

State antitakeover laws

Generally, **25:53**

Acquisition of control share, Pennsylvania antitakeover laws, **25:57**

Cash-out of control share, Pennsylvania antitakeover laws, **25:58**

Delaware, **25:54**

Freeze-out for five years with fair price, Pennsylvania antitakeover laws, **25:59**

New York, **25:55**

Pennsylvania, **25:56 to 25:60**

Recapture of profits, Pennsylvania antitakeover laws, **25:60**

Takeovers. State antitakeover laws, above

Voting and investment control, Rule 13d-3, **25:3 to 25:6**

Voting securities. **Hart - Scott - Rodino Antitrust Improvements Act of 1976 (this index)**

BENEFIT PLAN INVESTOR

ERISA, 25 percent exception, **5:9**

BERNARD MADOFF

Scandals in private fund industry, **2:14**

BLOCKERS

Beneficial ownership, Rule 13d-3, **25:7**

Tax Considerations (this index)

BLUE SKY LAWS

Broker-dealers and agents, overview of state regulation, **14:4**

Mechanics of notice filings, **14:3**

BLUE SKY LAWS—Cont'd

Private offerings, overview of state regulation, **14:2**

BOARD OF DIRECTORS

Investment Company Act of 1940, noncompliance with exemptions, **3:48**

BOOKS AND RECORDS

Retention of Books and Records (this index)

BREAKUP FEES

Acquisitions of portfolio companies, **17:13**

BROCHURE RULE

Registered investment advisers, delivery of offering materials, **15:13**

BROCHURE SUPPLEMENT

Investment Advisers Act of 1940, Part 2B of Form ADV, **7:9**

BROKER - DEALERS

Generally, **11:1 to 11:40**

Activities requiring registration as broker-dealer, **11:2 to 11:14**

Advertisements, institutional sales literature, **11:34**

Affiliation issues

Generally, **11:20 to 11:29**

Transactions in securities with affiliates, **11:22 to 11:26**

Antimoney laundering, **11:39**

Associated persons, registration

Broker or dealer, **11:7**

Issuers, **11:12 to 11:14**

Blue sky laws, overview of state regulation, **14:4**

Books and records, **11:29**

Communications rules, placement agents for private funds, **11:30 to 11:34**

Compliance for registered broker-dealers

Affiliation issues, above

Books and records, **11:29**

Control relationships, **11:21**

Disclosure of control relationships, **11:21**

Impact of control relationships, **11:21**

Initial public offerings, restrictions, **11:24**

NYSE members, **11:27**

Ongoing requirements, **11:19**

Compliance for registered broker - dealers

Private Placements (this index)

Compliance for registered broker-dealers

Public offerings of securities, **11:25**

Purchase and sale of initial public offerings, restrictions, **11:24**

Registration, generally, **11:18**

Reporting requirements, **11:28**

Trading limitations, **11:23**

Control relationships, **11:21**

Correspondence, **11:33**

Disclosure of control relationships, **11:21**

Exemptions from registration, **11:11**

BROKER - DEALERS—Cont'd

Finders, registration, **11:4**

FINRA Rule 2210, obligations under, **11:31 to 11:34**

FINRA Rule 2210(d)(1), standards for communications, **11:33**

FINRA Rule 2210(d)(2), standards for advertisements and sales literature, **11:34**

Impact of control relationships, **11:21**

Initial public offerings, restrictions, **11:24**

Institutional clients, suitability, **11:37**

Institutional sales literature, **11:33**

International issues, registration, **11:8 to 11:11**

Investment Advisers Act of 1940, exclusion of brokers and dealers, **6:7**

Issuers and associated persons, registration, **11:12 to 11:14**

Issuing/marketing activities, unregistered private funds, advisers, and associated persons, **11:16**

Large trader reporting, **21:42**

NYSE members, compliance for registered broker-dealers, **11:27**

Operations outside United States, registration, **11:9**

Operations within United States, registration, **11:10**

Persons associated with broker or dealer, registration, **11:7**

Placement agents for private funds

Antimoney laundering, **11:39**

Communications rules, **11:30 to 11:34**

Correspondence, **11:33**

Filing requirements, **11:35**

FINRA Rule 2210, obligations under, **11:31 to 11:34**

FINRA Rule 2210(d)(1), standards for communications, **11:33**

FINRA Rule 2210(d)(2), standards for advertisements and sales literature, **11:34**

Institutional clients, suitability, **11:37**

Institutional sales literature, **11:33**

Public, supervisory responsibility for communications with, **11:32**

Recordkeeping, **11:40**

Regulation Best Interest, **11:38**

Suitability, **11:36, 11:37**

Supervision and supervisory responsibility, below

Prime Brokerage (this index)

Private placements of securities, **11:26**

Private Placements (this index)

Public, supervisory responsibility for communications with, **11:32**

Public offerings of securities, **11:25**

Purchase and sale of initial public offerings, restrictions, **11:24**

Recordkeeping, placement agents for private funds, **11:40**

Records and books, **11:29**

BROKER - DEALERS—Cont'd

Registration

- Activities requiring registration as broker-dealer, **11:2 to 11:14**
- Associated persons, **11:7, 11:12 to 11:14**
- Brokers, generally, **11:3**
- Compliance for registered broker-dealers, **11:18 to 11:29**
- Dealers, generally, **11:5**
- Exemptions from registration, **11:11**
- Finders, **11:4**
- International issues, **11:8 to 11:11**
- Issuers and associated persons, **11:12 to 11:14**
- Operations outside United States, **11:9**
- Operations within United States, **11:10**
- Persons associated with broker or dealer, **11:7**
- Rule 3a4-1 safe harbor, issuers and associated persons, **11:13**
- Safe harbor, issuers and associated persons, **11:14**
- State requirements, issuers and associated persons, **11:14**
- Traders, **11:6**
- Unregistered broker-dealers, **11:17**
- Unregistered private funds, advisers, and associated persons, **11:15, 11:16**
- Regulation Best Interest, **11:38**
- Regulatory considerations, **11:1 to 11:40**
- Reporting requirements, **11:28**
- Rule 3a4-1 safe harbor, issuers and associated persons, **11:13**
- Safe harbor, registration of issuers and associated persons, **11:14**
- Sales literature, **11:33, 11:34**
- SEC enforcement risk, **11:17**
- SRO consequences, unregistered broker-dealers, **11:17**
- State laws
 - Registration, issuers and associated persons, **11:14**
 - Unregistered broker-dealers, **11:17**
- Suitability, placement agents for private funds, **11:36, 11:37**
- Supervision and supervisory responsibility
 - Public communications, **11:32**
 - Recordkeeping, **11:40**
- Traders, registration, **11:6**
- Trading activities
 - Compliance for registered broker-dealers, limitations, **11:23**
 - Unregistered private funds, advisers, and associated persons, **11:15**
- Unregistered broker-dealers
 - SEC enforcement risk, **11:17**
 - SRO consequences, **11:17**
 - State law consequences, **11:17**

BROKER - DEALERS—Cont'd

Unregistered private funds, advisers, and associated persons

- Issuing/marketing activities, **11:16**
- Trading activities, **11:15**

BUNDLING CONTRIBUTIONS

Pay-to-play arrangements and political contributions, 12:24

BUSINESS DEVELOPMENT COMPANIES

Tax considerations for offshore hedge fund vehicles, 28:21

BUSINESS RECORDS

Investment Advisers Act of 1940, 9:68

CALCULATION

ERISA, 25 percent limit, 5:12, 5:14 to 5:19

CALIFORNIA CONSUMER PRIVACY ACT OF 2018

Generally, 12:15, 12:16

CAPITAL CONTRIBUTIONS

Common features of private equity funds, distributions, 16:33

CAPITAL STRUCTURE

Investment Company Act of 1940, exemption, 3:50

CARE

Designated directors, fiduciary duty, 18:27, 18:34, 18:35

CASH AND CASH EQUIVALENTS

Investment Company Act of 1940, exemption, 3:25 **Prime brokerage, legal rights to cash in liquidation proceeding, 22:25 to 22:29**

CAUSATION

Insider trading, 21:9

CAUSE EXAMINATIONS AND INSPECTIONS

Compliance examinations, 10:5

CHARITABLE ORGANIZATIONS AND PLANS

Investment Advisers Act of 1940, exemption from registration, 6:26

CHARTS, GRAPHS, OR FORMULAS

Investment Advisers Act of 1940, advertising, 9:9

CLASS OF EQUITY INTERESTS

ERISA, 25 percent exception, 5:10, 5:11

CLEARING

Commodity Interests (this index)

CLIENT

Investment Advisers Act of 1940, 2:4

CLIENT AND INVESTOR CONSENT

Sales of Investment Advisers (this index)

CLIENT LISTS

Investment Advisers Act of 1940, advertising, **9:12**

CLIENT - RELATED RECORDS

Investment Advisers Act of 1940, **9:69**

CLOSE - OUT REQUIREMENTS

Short selling rules, **21:30**

CODE OF ETHICS

Investment Advisers Act of 1940 (this index)

COINVESTING AND CLUB DEALS

Generally, **18:10**

Advantages, **18:11**

Common feature of private equity funds, **16:9**

Disadvantages, **18:12**

Evaluation of potential coinvestors, **18:13 to 18:15**

Future conflicts, **18:15**

Initial considerations, **18:14, 18:16**

Potential advantages and disadvantages, **18:11, 18:12**

Pre-signing considerations, **18:16**

Shareholders' agreements, **18:17**

COMMITMENT PERIOD

Private equity funds agreements, **16:16 to 16:18**

COMMODITIES

Commodity Exchange Act, scope of regulation, **4:1**

COMMODITIES FUTURES TRADE

COMMISSION

Privacy laws and regulations, proposed identity theft rules, **12:14**

COMMODITY EXCHANGE ACT

Generally, **4:1 to 4:58**

Administrative activities, CPOs and CTAs, **4:17**

Advertising rules, NFA registration requirements, CPOs and CTAs, **4:40**

Annual compliance review, NFA registration requirements, CPOs and CTAs, **4:42**

Antifraud liability of CPOs and CTAs, **4:58**

Associated persons, registration process, CPOs and CTAs, **4:23**

Banking-related products, exclusion of certain products, **4:11**

Branch offices, registration process, CPOs and CTAs, **4:24**

Bylaw 1101, NFA registration requirements, CPOs and CTAs, **4:38**

Certain banking-related products, exclusion under Act, **4:11**

Certain registered investment advisers, exemption from CTA registration, **4:50**

Certain securitization vehicles, recent CFTC registration relief for CPOs, **4:57**

Characteristic CPO activities, **4:14**

COMMODITY EXCHANGE ACT—Cont'd

Claiming CPO and CTA exemptions, **4:52**

Commodities, scope of regulation, **4:1**

Commodity Exchange Act of 1936, **4:4**

Commodity Futures Trading Commission Act of 1974, **4:4**

Commodity pool operators and commodity trading advisors

Administrative activities, **4:17**

Antifraud liability, **4:58**

Certain registered investment advisers, exemption from CTA registration, **4:50**

Certain types of entities, CPOs of, **4:15**

Characteristic CPO activities, **4:14**

Claiming CPO and CTA exemptions, **4:52**

Commodity pool and commodity pool operator

Administrative activities, **4:17**

Characteristic CPO activities, **4:14**

CPOs of certain types of entities, **4:15**

Definitions, **4:13 to 4:20**

Commodity trading advisor defined, **4:18**

CPOs of certain types of entities, **4:15**

Definitions

“Commodity pool” and “commodity pool operator,” **4:13 to 4:17**

“Commodity trading advisor,” **4:18**

Delegation of CPO responsibilities, **4:16**

Disclosure requirements, **4:28**

Exemptions from CPO registration, **4:43 to 4:58**

Exemptions from CTA registration, **4:47 to 4:50**

Family offices, **4:51**

Fifteen client exemption from CTA registration, **4:49**

Form CPO-PQR, registration, **4:30**

Form CTA-PR, registration, **4:30**

Form PF, registration, **4:30**

Limited trading exemption from CPO registration, **4:43**

NFA registration requirements, CPOs and CTAs, **4:36 to 4:42**

Non-U.S. pools exemption from registration, **4:46**

Partial exemptive relief under CFTC Rule 4.7, **4:27**

Recordkeeping requirements, **4:31**

Registered or exempt CPOs, exemption from CTA registration, **4:48**

Registered requirements, **4:26**

Registration of CPOs and CTAs, **4:21 to 4:42**

Registration requirements, **4:21 to 4:42**

Reporting requirements, **4:29, 4:46**

Small pool operator exemption from CPO registration, **4:44**

Uncompensated pool operators exemption from registration, **4:45**

Commodity trading advisors. Commodity pool operators and commodity trading advisors, above

COMMODITY EXCHANGE ACT—Cont'd

Compensation requirement, commodity trading advisor, **4:19**
 Definitional exclusions, commodity trading advisor, **4:20**
 Definitions
 Commodity interests, **4:3 to 4:12**
 “Commodity pool” and “commodity pool operator,” **4:13 to 4:17**
 “Commodity trading advisor,” **4:18**
 Delegation of CPO responsibilities, commodity pool operators and commodity trading advisors, **4:16**
 Disclosure requirements, CPOs and CTAs, **4:28**
 Ethics training, registration requirements, CPOs and CTAs, **4:33**
 Exchange-traded foreign currency options traded on national securities exchange, exclusion from regulation under Act, **4:10**
 Exclusions
 Generally, **4:9 to 4:12**
 Exemptions
 CPO registration, **4:43 to 4:58**
 CTA registration, **4:47 to 4:50, 6:23**
 Family offices, **4:51**
 Fifteen client exemption from CTA registration, **4:49**
 Foreign currency options traded on national securities exchange, exclusion from regulation under Act, **4:10**
 Form CPO-PQR, CPOs and CTAs, **4:30**
 Form CTA-PR, CPOs and CTAs, **4:30**
 Form PF, CPOs and CTAs, **4:30**
 Forward contracts, exclusions from act, **4:9**
 Futures contracts, scope of regulation, **4:5**
 History of commodity and futures regulation in U.S., **4:4**
 Futures Trading Practices Act of 1992, **4:5**
 Hybrid instruments, **4:12**
 Investment Advisers Act of 1940, exemption of CTAs from registration, **6:23**
 Investor suitability determination, NFA registration requirements, CPOs and CTAs, **4:39**
 Jurisdiction
 Shad-Johnson Jurisdictional Accord, **4:4**
 Leverage transactions, **4:8**
 Limited trading exemption from CPO registration, **4:43**
 Membership fees, NFA registration requirements, CPOs and CTAs, **4:36**
 Mixed swaps, **4:6**
 National Futures Association requirements, CPOs and CTAs, **4:36 to 4:42**
 NFA Compliance Rule 2-50, registered CPOs, **4:35**
 Non-U.S. pools exemption from registration, **4:46**
 Principals, registration process, CPOs and CTAs, **4:22**
 Private fund legal considerations, **1:2**

COMMODITY EXCHANGE ACT—Cont'd

Proficiency testing requirements, registration process, CPOs and CTAs, **4:25**
 Prohibition against loans, NFA registration requirements, CPOs and CTAs, **4:41**
 Real estate investment trusts, recent CFTC registration relief for CPOs, **4:56**
 Recent CFTC no-action relief for CPOs, **4:53**
 Funds of funds, **4:54**
 Recent CFTC registration relief for CPOs, **4:55**
 Certain securitization vehicles, **4:57**
 Real estate investment trusts, **4:56**
 Recordkeeping requirements, **4:31**
 Registered or exempt CPOs, exemption from CTA registration, **4:48**
 Registration, major swap participants, **4:6**
 Registration process, CPOs and CTAs
 Associated persons, **4:23**
 Branch offices, **4:24**
 Principals, **4:22**
 Proficiency testing requirements, **4:25**
 Registration requirements, CPOs and CTAs
 Generally, **4:21 to 4:25**
 Antifraud liability, **4:58**
 Claiming exemptions, **4:52**
 Definitions, **4:13 to 4:17**
 Disclosure, **4:28**
 Ethics training, **4:33**
 Exemptions from CPO registration, **4:43 to 4:58**
 Exemptions from CTA registration, **4:47 to 4:50, 6:23**
 Form CPO-PQR, **4:30**
 Form CTA-PR, **4:30**
 Form PF, **4:30**
 NFA requirements, **4:37**
 Recordkeeping, **4:31**
 Reporting, **4:29**
 Supervision, **4:32**
 Trade aggregation and allocations, **4:34**
 Regulation under Act
 Banking-related products, exclusion of certain products, **4:11**
 Certain banking-related products, exclusion under Act, **4:11**
 Foreign currency options traded on national securities exchange, exclusion, **4:10**
 Futures contracts, scope of regulation, **4:5**
 Hybrid instruments, **4:12**
 Mixed swaps, **4:6**
 Scope of regulation, **4:1**
 Swaps, **4:6**
 Reporting requirements
 CPOs and CTAs, **4:29**
 Major swap participants, **4:6**
 Retail foreign currency and commodity transactions, **4:7**
 Scope of regulation, **4:1**
 Shad-Johnson Jurisdictional Accord, **4:4**

COMMODITY EXCHANGE ACT—Cont'd

Small pool operator exemption from CPO registration, **4:44**
 Supervision, registration requirements, CPOs and CTAs, **4:32**
 Swaps, **4:6**
 Trade aggregation and allocations, registration requirements, CPOs and CTAs, **4:34**
 Treasury Amendment products, exclusion of certain products, **4:11**
 Uncompensated pool operators exemption from registration, **4:45**

COMMODITY EXCHANGE ACT OF 1936

History of commodity and futures regulation in United States, **4:4**

COMMODITY FUTURES TRADING COMMISSION ACT OF 1974

History of commodity and futures regulation in United States, **4:4**

COMMODITY INTERESTS

Investment Company Act of 1940, exemption, **3:23**
 Segregation requirements
 Customer margin, above
 Swaps
 Customer margin, above

COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

Commodity Exchange Act (this index)

COMMON FEATURES OF HEDGE FUNDS

Generally, **20:1 to 20:27**
 Convergence with private equity strategies
 Generally, **20:25**
 Hybrid funds, **20:26, 20:27**
Fees and Compensation (this index)
 Frequently negotiated terms
 Generally, **20:7**
 Gates, **20:12**
 Holdback amounts, **20:13**
 Lock-up periods, **20:10**
 Most favored nation, **20:8**
 Periodic withdrawals, **20:11**
 Portfolio transparency rights, **20:9**
 Gates, **20:12**
 Historical perspective, **20:2**
 Holdback amounts, **20:13**
 Investment strategies
 Common strategies, **20:5**
 Convergence with private equity strategies, above
 Side pocket investments, **20:6**
 Lock-up periods, **20:10**
 Managers, statutory framework for regulation, **20:4**
 Most favored nation, **20:8**
 Periodic withdrawals, **20:11**
 Portfolio transparency rights, **20:9**

COMMON FEATURES OF HEDGE FUNDS —Cont'd

Redemptions, **20:24**
 Regulation of funds and fund managers, **20:4**
 Side pocket investments, **20:6**
 Statutory framework, regulation of funds and fund managers, **20:4**
 Strategies. Investment strategies, above
 Structures in common, **20:3**
 Suspensions, **20:24**
 Transparency rights, **20:9**
 Valuation
 Generally, **20:22**
 Framework, **20:23**

COMMON FEATURES OF PRIVATE EQUITY FUNDS

Generally, **16:1 to 16:40**
 Admission period, reallocations during, **16:10**
 Alternative investment vehicles, **16:11**
 Capital contributions, distributions, **16:33**
 Coinvesting in parallel investment vehicles, **16:9**
 Common structures, **16:5**
 Distinguishing characteristics, **16:3**
Distributions (this index)
Fees and Compensation (this index)
 Historical perspective, **16:2**
 Management fees, **16:28, 16:29**
 Marketing, **16:6**
 Offsets, **16:29**
 Parallel investment vehicles, **16:8 to 16:10**
 Partnership, distributions
 General partner carried interest, **16:36**
 General partner catch-up, **16:35**
 General partner clawback, **16:39**
 Preferred return, distributions, **16:34**
 Reallocations during funds' admission period, **16:10**
 Recycling of amounts distributed, distributions, **16:38**
 Return of capital contributions, distributions, **16:33**
 Side letters, **16:40**
 Structures, **16:5**
 Structuring and governance, **16:8 to 16:26**
 Terms of fund agreements
 Admission period, reallocations during, **16:10**
 Alternative investment vehicles, **16:11**
 Capital commitments and capital contributions, **16:15**
 Closing, **16:14**
 Coinvesting in parallel investment vehicles, **16:9**
 Commitment period, **16:16 to 16:18**
 Common terms, generally, **16:7**
 Conflicts of interest, **16:25, 16:26**
 Defaults, **16:19**
 Distributions, **16:31 to 16:39**
 Exculpation, **16:22**

COMMON FEATURES OF PRIVATE EQUITY FUNDS—Cont'd

Terms of fund agreements—Cont'd

- Excuse and exclusion, **16:20**
- Fees and expenses, **16:27 to 16:30**
- Guarantees, **16:13**
- Indemnification, **16:22**
- Investment limitations and guidelines, **16:12**
- Investor advisory committee, **16:26**
- Key person event, **16:21**
- Leverage, **16:13**
- Parallel investment vehicles, **16:8 to 16:10**
- Post-commitment period, **16:18**
- Reallocations during funds' admission period, **16:10**
- Side letters, **16:40**
- Structuring and governance, **16:8 to 16:26**
- Termination of commitment period, **16:17**
- Valuation, **16:23**
- Withdrawal, **16:24**
- Transaction fees, **16:30**
- Types of funds, **16:4**
- Waivers of fees and expenses, **16:29**

COMMON FUNDS

- ERISA, calculation of 25 percent limit, **5:14 to 5:19**

COMMON INVESTMENT ISSUES

- Generally, **18:1 to 18:37**
- Coinvesting and Club Deals** (this index)
- Conflicts** (this index)
- Directors' fiduciary duties. **Directors** (this index)
- Employee Retirement Income Security Act of 1974** (this index)

COMMUNICATIONS RULES

- Broker-dealers, placement agents for private funds, **11:30 to 11:34**

COMPENSATION

- Fees and Compensation** (this index)

COMPETITORS

- Duty of loyalty, director serving as director of competitor, **18:33**

COMPLIANCE

- Anti-money laundering, **12:4**
- Economic sanctions, **12:33**
- Employee Retirement Income Security Act of 1974** (this index)
- Examinations. **Compliance Examinations** (this index)
- Foreign Corrupt Practices Act, **12:41**
- Investment Advisers Act of 1940** (this index)
- Investment Company Act of 1940** (this index)
- Pay-to-play arrangements and political contributions, **12:29**
- Privacy laws and regulations, **12:7 to 12:13**
- Regulation S, **13:21**

COMPLIANCE—Cont'd

- Report of Foreign Bank and Financial Accounts (an FBAR), **12:45**
- Sales of investment advisers, compliance program, **30:9**
- Sarbanes Oxley Act of 2002, administrative costs of compliance, **2:2**

COMPLIANCE EXAMINATIONS

- Generally, **10:1 to 10:27**
- After on-site examination, **10:14**
- Appointment of visit coordinator, **10:19**
- Avoidance of unnecessary delays, **10:26**
- Cause examinations and inspections, **10:5**
- Compliance testing during on-site examination, **10:12**
- Confidentiality request, **10:24**
- Coordinator for visit, **10:19**
- Core initial request lists, **10:8**
- Deficiency letters
 - Outcomes of examination, **10:16**
 - Prompt response, **10:27**
- Delays, avoidance, **10:26**
- Employees, preparation, **10:22**
- Enforcement referral, **10:17**
- Examination team, **10:10**
- Exit interview/exit conference calls
 - On-site examination, **10:13**
 - Request for, **10:25**
- Explanation of adviser's position, **10:23**
- Follow-up request lists, **10:9**
- Freedom of Information Act, request for confidentiality under, **10:24**
- Initiative and managing routine compliance examination, **10:20**
- Interviews
 - Exit interview/exit conference calls, above
 - Senior management, **10:11**
- Lists, preparation for examination, **10:8, 10:9**
- Managing routine compliance examination
 - Appoint visit coordinator, **10:19**
 - Avoid unnecessary delays, **10:26**
 - Confidentiality request, **10:24**
 - Coordinator for visit, **10:19**
 - Deficiency letter, prompt response, **10:27**
 - Employees, preparation, **10:22**
 - Exit interview request, **10:25**
 - Explanation of adviser's position, **10:23**
 - Freedom of Information Act, request for confidentiality under, **10:24**
 - Initiative, **10:20**
 - Planning, **10:18**
 - Preparation of employees, **10:22**
 - Request for exit interview, **10:25**
 - Respect for SEC staff, **10:21**
 - Respond promptly to deficiency letter, **10:27**
 - Take initiative, **10:20**
 - Timely planning, **10:18**

INDEX

COMPLIANCE EXAMINATIONS—Cont'd

Managing routine compliance examination—Cont'd
Visit coordinator, **10:19**
No findings letter, **10:15**
Office of Compliance Inspections and Examinations (OCIE), **10:2**
On-site examination
After the visit, **10:14**
Compliance testing, **10:12**
Examination team, **10:10**
Exit interview/exit conference calls, **10:13**
Interviews with senior management, **10:11**
Post-visit, **10:14**
Team, **10:10**
Outcomes of examination
Deficiency letter, **10:16**
Enforcement referral, **10:17**
No findings letter, **10:15**
Planning, managing routine compliance examination, **10:18**
Post on-site examination, **10:14**
Preparation for examination
Core initial request lists, **10:8**
Employees, preparation of, **10:22**
Examination team, **10:10**
Follow-up request lists, **10:9**
General steps, **10:7**
Lists, **10:8, 10:9**
Preparation of employees, **10:22**
Requests
Core initial request lists, **10:8**
Exit interview, **10:25**
Follow-up request lists, **10:9**
Respect for SEC staff, **10:21**
Respond promptly to deficiency letter, **10:27**
Routine examinations, **10:4**
Sweep examinations, **10:6**
Take initiative, **10:20**
Team, **10:10**
Timely planning, **10:18**
Types of examinations, **10:3 to 10:6**
Visit coordinator, **10:19**

COMPLIANCE - RELATED RECORDS

Investment Advisers Act of 1940, **9:70**

CONFIDENTIAL INFORMATION

Compliance examinations, request for confidentiality, **10:24**
Directors and duty of loyalty, **18:31**
Exchange Act, Section 13(f) reporting, **21:37**
Insider trading, **21:8**

CONFLICTS

Buy-side conflicts, **18:19**
Coinvesting and club deals, potential areas for future conflicts, **18:15**
Common investment issues, generally, **18:15, 18:18 to 18:22**

CONFLICTS—Cont'd

Portfolio company and fund, **18:21**
Sell-side conflicts, **18:20**
Sponsor financial institution affiliates and fund, **18:22**
Volcker Rule, conflicts of interest within financial institution, **2:12**

CONFLICTS OF INTEREST

Investment Advisers Act of 1940, **9:40**
Mezzanine funds, **24:11, 25:11**
Terms of fund agreements, **16:25, 16:26**

CONSENT

Sales of Investment Advisers (this index)
Secondary funds, general partner consent, **24:26, 25:26**

CONSUMER PROTECTION ACT

Challenges for private funds, **2:11**

CONTENT OF OFFERING MATERIAL

Generally, **15:1 to 15:14**
Advertising rules, registered investment advisers, **15:8**
Antifraud provisions
Exchange Act Section 10(b) and Rule 10b-5, **8:21 to 8:23, 15:5**
Investment Advisers Act Rule 206(4)-8, **15:7**
Investment Advisers Act Sections 206(1) and 206(2), **8:19, 15:6**
Investment Advisers Act Section 206(4)-8, **8:20**
Registered advisers, **15:4 to 15:7**
Securities Act Section 17(a), **15:5**
Unregistered advisers, **15:4 to 15:7**
“Brochure” rule for registered investment advisers, **15:13**
Delivery of offering materials, **15:13**
Documentation
Offering memoranda, **15:2**
Other marketing materials, **15:3**
FINRA rule, materials published or distributed by FINRA members
Advertisement and sales literature-related standards, **15:11**
Antifraud standards, **15:10**
Fund offerings, **15:9 to 15:12**
Performance information, inclusion in sales materials, **15:12**
Sales materials, **15:12**
Recordkeeping requirements for registered investment advisers, **15:14**
Regulation of content, generally, **15:1 to 15:14**

CONTINGENT FEES

Investment Advisers Act of 1940, **9:93**

CONTRACTUAL REQUIREMENTS

Investment Advisers Act of 1940 (this index)

CONTRIBUTIONS

Pay-to-play arrangements and political contributions, **12:24**

CONTROL RELATIONSHIPS

Beneficial Ownership (this index)

Broker-dealers, **11:21**

Hart - Scott - Rodino Antitrust Improvement Act, **25:37, 25:46**

Insider trading, controlling person liability, **21:16**

Pennsylvania antitakeover laws, **25:57, 25:58**

Sales of Investment Advisers (this index)

CONVERTIBLE SECURITIES

HSR Act exemption, **25:40**

COORDINATOR

Compliance examinations, **10:19**

CORPORATE GOVERNANCE

Investment Company Act of 1940, exemption, **3:47 to 3:49**

CORPORATE - OPPORTUNITY DOCTRINE

Directors and duty of loyalty, **18:30**

CORRESPONDENCE

Broker-dealers, **11:33**

Deficiency letters, **10:16, 10:27**

Investment Advisers Act, voluntary client asset confirmation letter, **9:34**

No findings letter, **10:15**

Prime brokerage, no-action letters, **22:10**

Sales of investment advisers, due diligence, **30:7**

Side letters, **16:40**

COUNTING U.S. PERSONS

Investment Company Act of 1940, exemption, **3:35**

COVERED TRANSACTIONS

Dodd-Frank Act, Volcker Rule for financial institutions, **2:12**

CREDIT AND LENDING

Employee Retirement Income Security Act of 1974, **18:9**

Prime Brokerage (this index)

Regulation T, credit by broker-dealers for securities transactions, **22:14**

Regulation U, credit by banks and persons other than broker-dealers, **22:15**

Regulation X, borrowers of securities credit, **22:16**

CROSS TRANSACTIONS

Investment Advisers Act of 1940 (this index)

CUSTODY

Investment Company Act of 1940, exemption, **3:57**
SEC, custody rule proposal, **9:96**

CUSTODY OF CLIENT ASSETS

Investment Advisers Act of 1940 (this index)

DEALERS

Broker - Dealers (this index)

Investment Advisers Act of 1940, exclusion from definition, **6:7**

DECEPTION

Short selling, **21:31**

DEFAULTS

Challenges for private equity funds, defaults on capital commitment obligations, **2:10**

Private equity funds agreements, **16:19**

DEFENSES

Foreign Corrupt Practices Act, **12:37**

DEFICIENCY LETTERS

Outcomes of compliance examinations, **10:16**

Prompt response, **10:27**

DEFINITIONS

Access person, **9:53**

Acquiring and acquired person, HSR Act, **25:36**

Acquiring person, poison pills, **25:62**

Advertisement, **9:4**

Assignment, **30:17**

Beneficial Ownership (this index)

Commodity interests, **4:3 to 4:12**

“Commodity pool” and “commodity pool operator,” **4:13 to 4:17**

“Commodity trading advisor,” **4:18**

Consent, **30:33**

Custody, **9:25**

Fiduciary, **5:29**

Investment adviser. **Investment Advisers Act of 1940** (this index)

Investment company, **3:1**

Investments, **3:20 to 3:25**

REOC, **5:27**

U.S. person, **3:34**

Venture capital investment, **5:22**

DELAWARE

Beneficial ownership, state antitakeover laws, **25:54**

DELAYS

Compliance examinations, **10:26**

DELIVERY

“Brochure” rule for registered investment advisers, **15:13**

Content of offering material, **15:13**

Investment Advisers Act of 1940 (this index)

DEMAND FOR ALTERNATIVE INVESTMENT OPPORTUNITY

Trends in private fund industry, **2:5**

DEPARTMENT OF LABOR

ERISA plan annual Form 5500 reporting, **5:53**

DIRECTORS

- Care, duty of
 - Designated directors, **18:27, 18:34**
 - Implications, **18:34, 18:35**
 - Satisfaction, **18:35**
- Competitor, serving as director of, **18:33**
- Confidential information and duty of loyalty, **18:31**
- Corporate-opportunity doctrine and duty of loyalty, **18:30**
- Designated directors, challenges facing
 - Care, duty of, **18:27, 18:34, 18:35**
 - Competitor, serving as director of, **18:33**
 - Confidential information and duty of loyalty, **18:31**
 - Corporate-opportunity doctrine and duty of loyalty, **18:30**
 - Exercise of veto rights and duty of loyalty, **18:32**
 - Fiduciary duties, **18:25 to 18:37**
 - Implications of duty of care, **18:34, 18:35**
 - Implications of duty of loyalty, **18:28 to 18:33**
 - Loyalty, duty of, **18:26, 18:28 to 18:33**
 - Satisfaction of duty of care, **18:35**
 - Satisfaction of duty of loyalty, **18:29**
- Distributions, special duties, **18:36**
- Dividends, special duties, **18:36**
- Exercise of veto rights and duty of loyalty, **18:32**
- Fiduciary duties of designated directors, generally, **18:25 to 18:37**
- Investment Company Act of 1940, noncompliance by board of directors, **3:48**
- Loyalty, duty of
 - Competitor, serving as director of, **18:33**
 - Confidential information, **18:31**
 - Corporate-opportunity doctrine, **18:30**
 - Designated directors, **18:26**
 - Exercise of veto rights, **18:32**
 - Implications, **18:28 to 18:33**
 - Satisfaction, **18:29**
- Portfolio company, responsibilities
 - Generally, **18:23**
 - Board responsibilities, **18:24**
- Public companies, additional responsibilities, **18:37**
- Satisfaction of duty of care, **18:35**
- Satisfaction of duty of loyalty, **18:29**
- Stock repurchases, special duties, **18:36**

DISCIPLINARY INFORMATION

- Investment Advisers Act of 1940, disclosure, **9:80**

DISCLOSURE

- Activist Investing** (this index)
- Advising private funds, European chapter, alternative investment fund managers directive, **32:10**
- Broker-dealers, control relationships, **11:21**
- Commodity Exchange Act, requirement, **4:28**

DISCLOSURE—Cont'd

- Employee Retirement Income Security Act of 1974, expanded fee disclosure under Section 408(b)(2), **5:54**
- Form PF, Investment Advisers Act of 1940, **9:81 to 9:83**
- Investment Advisers Act of 1940** (this index)
- SEC, ESG disclosure proposal, **9:95**

DISCRETION

- Activist investing, broker discretionary votes, **23:13**

DISTRIBUTION IN KIND

- Exit strategies, **19:19, 19:20**
- Mechanics, **19:20**

DISTRIBUTION PERIOD

- ERISA, VCOC exception, **5:25**

DISTRIBUTIONS

- Generally, **16:31**
- Capital contributions, **16:33**
- Carried interest, general partner, **16:36**
- Catch-up, general partner, **16:35**
- Clawback, general partner, **16:39**
- Directors, special duties, **18:36**
- Distributions in kind, **19:19, 19:20**
- Distribution waterfall, **16:31**
- General partners, **16:35, 16:36, 16:39**
- Mezzanine funds, **24:10, 25:10**
- Other proceeds, **16:37**
- Partnerships** (this index)
- Preferred return, **16:34**
- Private equity funds common features, generally, **16:31 to 16:39**
- Proceeds from dispositions, **16:32 to 16:36**
- Recycling of amounts distributed, **16:38**
- Return of capital contributions, **16:33**
- Venture capital funds, **24:4, 25:4**

DIVERSIFICATION

- Demand for alternative investment opportunity, **2:5**
- ERISA, fiduciary duty, **5:33**
- Funds of funds, **2:6**

DIVIDENDS

- Deferred foreign income, **26:35**
- Directors, special duties, **18:36**
- Tax considerations, qualified dividend income, **26:31**

DOCUMENTATION

- Compliance, fiduciary duty to act in accordance with plan documents, **5:34**
- Hedge funds operated as ERISA funds, **5:52**
- Marketing materials in addition to offering materials, **15:3**
- Offering memoranda, **15:2**
- Prime brokerage, **22:21, 22:22**

DODD - FRANK ACT OF 2010

Advisory affiliates, impact of exemptions from Investment Advisers Act registration requirements, **6:22**
 Enhanced SEC scrutiny and audit requirements, **2:11**
 Exemptions from Investment Advisers Act registration requirements, impact on subadvisers and advisory affiliates, **6:22**
 Financial institutions, restrictions in proprietary trading and operation/investment in private funds, **2:12**
 Financial supervision, trends in private fund industry, **2:11**
 Historical private investment adviser exemption overturned, **2:4**
 Investment adviser recordkeeping requirements, **2:11**
 Investment Advisers Act of 1940, Dodd-Frank exemptions from registration requirements, impact on subadvisers and advisory affiliates, **6:22**
 Private investment adviser exemption overturned, **2:11**
 Recordkeeping and reporting requirements, **2:11**
 Registration
 Amendments to Form ADV Part 1, **7:5**
 Historical private investment adviser exemption overturned, **2:4**
 Private investment adviser exemption overturned, **2:11**
 Securities and Exchange Commission (SEC)
 Enhanced SEC scrutiny and audit requirements, **2:11**
 Historical private investment adviser exemption overturned, **2:4**
 Private investment adviser exemption overturned, **2:11**
 Systemic regulation regime, **2:11**
 States, regulatory burden for smaller advisers to, **2:11**
 Subadvisers, impact of exemptions from Investment Advisers Act registration requirements, **6:22**
 Systemic regulation regime, **2:11**
 Venture capital funds, exemption for advisers, **24:8, 25:8**
 Volcker Rule, **2:12**

DRAWDOWNS

Venture capital funds, **24:5, 25:5**

DUE DILIGENCE

Acquisitions of portfolio companies, **17:2 to 17:4**
 Funds of funds management, **2:6**
Sales of Investment Advisers (this index)

ECONOMIC SANCTIONS

Generally, **12:32**
 Compliance, **12:33**

EFFECTIVELY CONNECTED INCOME

Tax Considerations (this index)

ELECTRONIC RECORDKEEPING

Investment Advisers Act of 1940, **9:72**

ELIGIBLE CONTRACT PARTICIPANTS

Commodity Exchange Act (this index)

ELIGIBLE INVESTORS

Investment Company Act of 1940, exemption, **3:44**

EMERGENCY ECONOMIC STABILIZATION ACT

Deferred compensation plans, effect of Section 457A on tax issues, **29:13**

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Generally, **5:1 to 5:63, 14:5**
 Act in accordance with plan documents as fiduciary duty, **5:34**
 Annual return/Form 5500 reporting, **5:53**
 Appointment of fund manager as investment manager, **5:38**
 Asset location, hedge funds operated as ERISA funds, **5:51**
 Benefit plan investor, 25 percent exception, **5:9**
 Calculation of 25 percent limit, **5:12, 5:14 to 5:19**
 “Class” of equity interests, 25 percent exception, **5:10, 5:11**
 Common funds and calculation of 25 percent limit, **5:14 to 5:19**
 Common investment issues
 Generally, **18:2 to 18:9**
 “Business” or “trade,” **18:6**
 “Common control,” **18:5**
 Consequences of inclusion in controlled group, **18:8**
 Controlled group liability, **18:3 to 18:9**
 Credit issues, **18:9**
 Lending and credit issues, **18:9**
 Potential liabilities, **18:7**
 “Trade or business,” **18:4**
 “Trade” or “business,” **18:6**
 Venture capital operating companies, **18:2**
 Compliance for different funds
 Generally, **5:1**
 Act in accordance with plan documents as fiduciary duty, **5:34**
 Definition of fiduciary, **5:29**
 Diversification as fiduciary duty, **5:33**
 Failure of fund to comply, **5:7, 5:28 to 5:36**
 Fiduciary duties, **5:6, 5:30 to 5:34**
 Fiduciary liability, **5:35**
 Funds of funds, **5:5**
 Hedge funds and similar vehicles, **5:4**
 Look-through rule, **5:7**
 Loyalty as fiduciary duty, **5:31**
 Private equity funds, **5:2**

**EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974—Cont'd**

Compliance for different funds—Cont'd
 Prohibited transactions, **5:6, 5:36**
 Prudence as fiduciary duty, **5:32**
 Real estate investment funds, **5:3**
 Controlled group liability
 “Business” or “trade,” **18:6**
 “Common control,” **18:5**
 Common investment issues, **18:3 to 18:9**
 Consequences of inclusion in controlled group, **18:8**
 Credit issues, **18:9**
 Lending and credit issues, **18:9**
 Potential liabilities, **18:7**
 “Trade or business,” **18:4**
 “Trade” or “business,” **18:6**
 Definitions
 Fiduciary, **5:29**
 REOC, **5:27**
 Venture capital investment, **5:22**
 Disclosure of fees under Section 408(b)(2), **5:54**
 Distribution period, VCOC exception, **5:25**
 Diversification as fiduciary duty, **5:33**
 Documentation, hedge funds operated as ERISA funds, **5:52**
 Employer securities, fund investment in, **5:48**
 Entertainment and gifts, hedge funds operated as ERISA funds, **5:55**
 Exceptions
 Real estate operating companies (REOCs), **5:26, 5:27**
 25 percent exception, below
 Venture capital operating company (VCOC) exception, below
 Expenses, hedge funds operated as ERISA funds, **5:41, 5:42**
 Fees
 Expanded fee disclosure under Section 408(b)(2), **5:54**
 Hedge funds operated as ERISA funds, **5:41, 5:43 to 5:45**
 Fiduciary duties
 Generally, **5:30**
 Act in accordance with plan documents, **5:34**
 Compliance for different funds, **5:6, 5:30 to 5:34**
 Definition of fiduciary, **5:29**
 Diversification, **5:33**
 Expanded fee disclosure under Section 408(b)(2), **5:54**
 Hedge funds operated as ERISA funds, additional fiduciary issues, **5:46 to 5:55**
 Liability of fiduciary, **5:35**
 Loyalty, **5:31**
 Prudence, **5:32**
 Summary, **5:6**
 Fiduciary liability, **5:35**

**EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974—Cont'd**

50 percent of assets test, time of satisfaction, VCOC exception, **5:21**
 Fixed allocation multistrategy funds, calculation of 25 percent limit, **5:16**
 Form 5500 reporting to DOL and IRS, **5:53**
 Fund documentation, hedge funds operated as ERISA funds, **5:52**
 Funds of funds
 Generally, **5:5, 24:21, 25:21**
 Calculation of 25 percent limit, **5:18**
 Compliance, **5:5**
 Funds of hedge funds, **5:62**
 Private equity fund of funds, **5:58**
 Gifts and entertainment, hedge funds operated as ERISA funds, **5:55**
 Hedge funds
 Compliance for different funds, **5:4**
 Funds of hedge funds, **5:62**
 Hotspots for different funds, **5:60, 5:62**
 Operation as ERISA funds. Hedge funds operated as ERISA funds, below
 Sales and marketing, **5:63**
 Hedge funds operated as ERISA funds
 Generally, **5:37 to 5:55**
 Additional ERISA fiduciary issues, **5:46 to 5:55**
 Annual return, **5:53**
 Appointment of fund manager as investment manager, **5:38**
 Asset location, **5:51**
 Documentation of fund, **5:52**
 Employer securities, fund investment in, **5:48**
 Entertainment and gifts, **5:55**
 Form 5500 reporting, **5:53**
 Fund documentation, **5:52**
 Fund expenses, **5:41, 5:42**
 Fund fees, **5:41, 5:43 to 5:45**
 Fund investment in employer securities, **5:48**
 Gifts and entertainment, **5:55**
 Location of assets, **5:51**
 Management fees, **5:44**
 Performance fees, **5:45**
 Proxies and tenders, **5:50**
 Qualified professional asset manager (QPAM) exemption, **5:40**
 Reporting to DOL on Form 5500, **5:53**
 Soft dollar arrangements, **5:49**
 Tenders, **5:50**
 Trade allocations, **5:47**
 Withdrawal rights, **5:39**
 Hotspots for different funds
 Generally, **5:56**
 Funds of hedge funds, **5:62**
 Hedge funds, **5:60**
 Multistrategy funds, **5:61**
 Private equity funds, **5:57**

**EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974—Cont'd**

Hotspots for different funds—Cont'd
 Private equity funds of funds, **5:58**
 Real estate funds, **5:59**
 Sales and marketing, **5:63**
 Indirect investments, VCOC exception, **5:24**
 Investment in employer securities, hedge funds operated as ERISA funds, **5:48**
 Liability of fiduciary, **5:35**
 Location of assets, hedge funds operated as ERISA funds, **5:51**
 Look-through rule, **5:7**
 Loyalty as fiduciary duty, **5:31**
 Management fees, hedge funds operated as ERISA funds, **5:44**
 Management rights, venture capital operating company (VCOC) exception, **5:23**
 Master-feeder funds, calculation of 25 percent limit, **5:15**
 Monitoring compliance with 25 percent limit, **5:13**
 Multistrategy funds
 Calculation of 25 percent limit, managed strategy, **5:17**
 Hotspots for different funds, **5:61**
 25 percent exception, fixed allocation multistrategy funds, **5:16**
 Performance fees, hedge funds operated as ERISA funds, **5:45**
 Pooled ERISA vehicles, calculation of 25 percent limit, **5:19**
 Private equity funds
 Compliance for different funds, **5:2**
 Funds of funds, **5:58**
 Hotspots for different funds, **5:57, 5:58**
 Prohibited transactions
 Compliance for different funds, **5:6, 5:36**
 Summary of rules, **5:6**
 Proxies and tenders, hedge funds operated as ERISA funds, **5:50**
 Prudence as fiduciary duty, **5:32**
 Qualified professional asset manager (QPAM) exemption, **5:40**
 Rationale for 25 percent exception, **5:8**
 Real estate funds
 Generally, **24:17, 25:17**
 Compliance for different funds, real estate investment funds, **5:3**
 Hotspots for different funds, **5:59**
 Real estate operating companies (REOCs)
 Definition of REOC, **5:27**
 Operating as REOC, **5:27**
 Real estate VCOCs, **5:26**
 Reporting to DOL on Form 5500, hedge funds operated as ERISA funds, **5:53**
 Satisfaction of 50 percent of assets test, VCOC exception, **5:21**

**EMPLOYEE RETIREMENT INCOME
SECURITY ACT OF 1974—Cont'd**

Separate class of equity interests, 25 percent exception, **5:11**
 Soft dollar arrangements, hedge funds operated as ERISA funds, **5:49**
 Summary of hotspots for different funds, **5:56 to 5:63**
 Tenders, hedge funds operated as ERISA funds, **5:50**
 Trade allocations, hedge funds operated as ERISA funds, **5:47**
 25 percent exception
 Benefit plan investor, **5:9**
 Calculation of 25 percent limit, **5:12, 5:14 to 5:19**
 “Class” of equity interests, **5:10, 5:11**
 Common funds and calculation of limit, **5:14 to 5:19**
 Fixed allocation multistrategy funds, calculation of limit, **5:16**
 Funds of funds, calculation of limit, **5:18**
 Master-feeder funds, calculation of limit, **5:15**
 Monitoring compliance with limit, **5:13**
 Multistrategy fund with managed strategy, calculation of limit, **5:17**
 Pooled ERISA vehicles, calculation of limit, **5:19**
 Rationale, **5:8**
 Separate class of equity interests, **5:11**
 Venture capital funds, **24:7, 25:7**
 Venture capital investment defined, **5:22**
 Venture capital operating company (VCOC) exception
 Generally, **5:20**
 Common private equity fund investment issues, **18:2**
 Definition of venture capital investment, **5:22**
 Distribution period, **5:25**
 50 percent of assets test, time of satisfaction, **5:21**
 Indirect investments, **5:24**
 Management rights, **5:23**
 Satisfaction of 50 percent of assets test, **5:21**
 Venture capital investment defined, **5:22**
 Withdrawal rights, hedge funds operated as ERISA funds, **5:39**

EMPLOYEES

Compliance examinations, preparation of employees, **10:22**

Investment Advisers Act of 1940 (this index)

EMPLOYEES' SECURITIES COMPANIES

Investment Company Act of 1940 (this index)

EMPLOYER SECURITIES

Hedge funds operated as ERISA funds, investment in employer securities, **5:48**

INDEX

EMPTY VOTING

Activist investing, disclosure, **23:5**

ENFORCEMENT

Compliance examinations, enforcement referral, **10:17**

Foreign Corrupt Practices Act, **12:38**

Insider Trading (this index)

Prime brokerage, **22:9**

ENGINEERS

Investment Advisers Act of 1940, exclusion from definition, **6:9**

ENHANCED SCRUTINY

Dodd-Frank Act of 2010, SEC, **2:11**

ENTERTAINMENT AND GIFTS

Hedge funds operated as ERISA funds, **5:55**

ENVIRONMENTAL LIABILITY

Real estate funds, **24:16, 25:16**

ERISA

Employee Retirement Income Security Act of 1974 (this index)

ERROR OR MISTAKE

Investment Advisers Act of 1940, corrections of trade errors, **8:15**

EUROPE

Advising private funds, European chapter (this index)

EXAMINATIONS

Compliance Examinations (this index)

Investment Advisers Act of 1940, **9:31**

Investment Company Act of 1940, **3:54**

Prime brokerage, **22:9**

EXCEPTIONS

Employee Retirement Income Security Act of 1974 (this index)

Foreign Corrupt Practices Act, **12:37**

Investment Advisers Act of 1940, reports to clients, audit exception, **9:29, 9:30**

Investment Company Act of 1940, 100 person funds, knowledgeable employees exception, **3:5**

Privacy laws and regulations, **12:13**

EXCHANGE ACT

Antifraud provisions, content of offering material, **8:21 to 8:23, 15:5**

Antisham provisions, **14:8**

Avoiding public reporting company obligations

Antisham provisions, **14:8**

Calculating holders of record, **14:7**

Exemptive orders, **14:9**

Integration provisions, **14:8**

Section 12(g), 500 holders of record limit, **14:7**

Beneficial Ownership (this index)

EXCHANGE ACT—Cont'd

Broker-dealer registration and exemptions

Generally, **14:10**

Non-U.S. laws, **14:11**

Calculating holders of record, **14:7**

Content of offering materials, antifraud provisions of Section 10(b) and Rule 10b-5, **8:21 to 8:23, 15:5**

Derivatives and Section 13, **25:10**

Exemptive orders, **14:9**

500 beneficial owners, exemption from registration, **2:3**

Form CPO-PQR, registration, **4:30**

Form CTA-PR, registration, **4:30**

Form PF, registration, **4:30**

Insider Trading (this index)

Integration provisions, **14:8**

Partnerships, Section 16 and insider trading, **25:27**

Prime brokerage, **22:12**

Private fund legal considerations, **1:2**

Sales of investment advisers, control person liability, **30:14**

Section 10(b) and Rule 10b-5, antifraud provisions, **8:21 to 8:23, 15:5**

Section 12(g), 500 holders of record limit, **14:7**

Section 13 and derivatives, **25:10**

Section 13 interaction with Section 16, insider trading, **25:26**

Section 13(d). **Beneficial Ownership** (this index)

Section 13(d)-3. **Beneficial Ownership** (this index)

Section 13(d)-5, beneficial ownership, **25:8, 25:9**

Section 13(f) reporting

Generally, **21:34**

Confidential treatment, Form 13F, **21:37**

Form 13F, **21:36, 21:37**

Threshold requirements, **21:35**

Section 13(g). **Beneficial Ownership** (this index)

Section 16. **Insider Trading** (this index)

Section 28(e) safe harbor, prime brokerage, **22:12**

EXCLUSIONS

Definition of investment adviser. **Investment Advisers Act of 1940** (this index)

Investment Advisers Act of 1940 (this index)

Private equity funds agreements, **16:20**

EXCULPATION

Private equity funds agreements, **16:22**

EXEMPTIONS

Broker-dealers, exemption from registration, **11:11**

Commodity Exchange Act (this index)

Hart - Scott - Rodino Antitrust Improvements Act of 1976 (this index)

Investment Advisers Act of 1940 (this index)

Investment Company Act of 1940 (this index)

Securities Act of 1933, registration under, **1:1**

EXIT INTERVIEW / EXIT CONFERENCE CALLS

On-site compliance examination, **10:13**
Request for, **10:25**

EXIT STRATEGIES

Generally, **19:1 to 19:20**
Distribution in kind, **19:19, 19:20**
Initial public offering
 Generally, **19:5**
 Phase 1, pre-IPO issues and structure of offering, **19:6**
 Phase 2, filing and SEC review, **19:7**
 Phase 3, marketing, **19:8**
 Phase 4, pricing and aftermarket management, **19:9**
Other means of divesting securities, **19:10 to 19:20**
Registration rights, **19:18**
Regulation S, sale outside of the United States, **19:17**
Rule 144
 Determination that investor is affiliate, **19:14**
 Restricted securities, **19:12 to 19:14**
 Safe harbor for Section 4(1) exemption, **19:12 to 19:14**
 Sales by nonaffiliates and affiliates, **19:13**
Rule 144A, safe harbor for “qualified institutional buyers,” **19:16**
Sales
 Nonaffiliates and affiliates, Rule 144, **19:13**
 Outside of the United States, regulation S, **19:17**
 Private sale, **19:2 to 19:4**
 Safe harbor for resales, Rule 144, **19:12, 19:13**
Secondary sales
 Private sale, **19:4**
 “Section 4(10189),” **19:15**
Section 4(a)(1) of Securities Act, **19:11**
Strategic sales
 Private sale, **19:3**

EXPENSES

Funds of funds, **24:19, 25:19**
Hedge funds operated as ERISA funds, **5:41, 5:42**
Private equity funds, terms of fund agreements, **16:27 to 16:30**
Secondary funds, **24:24, 25:24**
Tax considerations, limitation on capitalization, **26:45**

EXPERT CONSULTING FIRMS

Insider trading, **21:17**

FAILURE TO COMPLY

Investment Company Act of 1940, exemption, **3:45 to 3:57**

FAMILY COMPANIES

Investment Company Act of 1940, exemption, **3:12**

FAMILY OFFICES

Commodity exchange Act, CFTC registration relief, **4:51**
Investment Advisers Act of 1940, exclusion from definition of investment adviser, **6:8**

FEDERAL COMMUNICATIONS COMMISSION (FCC)

Acquisitions of portfolio companies, **17:7**

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

Acquisitions of portfolio companies, **17:9**

FEDERAL GOVERNMENT

Investment Advisers Act of 1940, exclusion from definition, **6:13**
Pay-to-play arrangements and political contributions, **12:21 to 12:29**
Tax Considerations (this index)

FEES AND COMPENSATION

Generally, **20:14**
Acquisitions of portfolio companies, **17:13**
Breakup fees, **17:13**
Contingent fees, **9:93**
Deferred compensation plans, effect of Emergency Economic Stabilization Act Section 457A, **29:13**
Employee Retirement Income Security Act of 1974, expanded fee disclosure under Section 408(b)(2), **5:54**
Expenses, generally, **16:27**
Fulcrum fees, **9:87**
Funds of funds, **24:19, 25:19**
Hedge funds, generally, **20:14 to 20:21**
Hedge funds operated as ERISA funds, **5:41, 5:43 to 5:45**
High watermark measure of performance
 Challenges for hedge funds, **2:9**
 Common features of hedge funds, **20:18, 20:20**
 Reduced high watermarks, **20:20**
HRS Act filing fees, **25:51**
Incentive fees, tax considerations
 Generally, **29:11**
 Deferral arrangements, **29:12**
 Emergency Economic Stabilization Act Section 457A, effect on deferred compensation plans, **29:13**
Investment Advisers Act of 1940 (this index)
Investment Company Act of 1940, performance fees, **3:29**
Involuntary transfer to nonqualified client, **9:92**
Management fees
 Common features of private equity funds, **16:29**
 Hedge funds, **20:15**
 Hedge funds operated as ERISA funds, **5:44**
 Offset. **Tax Considerations** (this index)
 Private equity funds, **16:28, 16:29**
Nonqualified clients, **9:91, 9:92**

FEES AND COMPENSATION—Cont'd

- Offsets, private equity funds, **16:29**
- Performance-based compensation for nonqualified clients, **9:91**
- Performance-based fees/allocations
 - Generally, **20:16**
 - Benchmarks, **20:17**
 - Exemptions, **3:29**
 - Hedge funds, **20:16 to 20:20**
 - Hedge funds operated as ERISA funds, **5:45**
 - High watermark, **20:18**
 - Hurdles/benchmarks, **20:17**
 - Investment Company Act of 1940, **3:29**
 - Limited look backs, **20:19**
 - Reduced high watermarks, **20:20**
- Performance fee rule, **20:21**
- Private equity funds, common terms of fund agreements, **16:27 to 16:30**
- Qualified purchaser funds, **9:88**
- Real estate funds, transaction fees, **24:14, 25:14**
- Registered investment advisers, **9:86 to 9:93**
- Reverse breakup fees, **17:13**
- Secondary funds, **24:24, 25:24**
- Section 3(c)(1) funds, **9:90**
- Sophisticated clients, **9:89 to 9:92**
- Tax Considerations** (this index)
- Transaction fees, **16:30, 24:14, 25:14**
- Waivers, private equity funds, **16:29**

FIDUCIARY DUTIES AND LIABILITIES

- Designated directors, challenges facing, **18:25 to 18:37**
- Employee Retirement Income Security Act of 1974** (this index)
- Investment Advisers Act of 1940** (this index)

FIFTEEN CLIENT EXEMPTION

- Commodity Exchange Act, CTA registration, **4:49**

FINANCIAL CONTRACTS

- Investment Company Act of 1940, exemption, **3:23**

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

- Broker-dealers, placement agents for private funds
 - FINRA Rule 2210, obligations under, **11:31 to 11:34**
 - FINRA Rule 2210(d)(1), standards for communications, **11:33**
 - FINRA Rule 2210(d)(2)-(d)(7), standards for advertisements and sales literature, **11:34**
- Content of offering material, materials published or distributed by FINRA members
 - Advertisement and sales literature-related standards, **15:11**
 - Antifraud standards, **15:10**
 - Fund offerings, **15:9 to 15:12**
 - Performance information, inclusion in sales materials, **15:12**

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)—Cont'd

- Content of offering material, materials published or distributed by FINRA members—Cont'd
 - Sales materials, **15:12**
- Investment Advisers Act of 1940, FINRA regulation of performance advertising, **9:23**
- Prime brokerage, FINRA Rule 4210, **22:17**
- Rumormongering, regulation, **21:24**

FINANCIAL SUPERVISION

- Dodd-Frank Act of 2010, trends in private fund industry, **2:11**

FINANCING AND MORTGAGE COMPANIES

- Investment Company Act of 1940** (this index)

FINDERS

- Registration, **11:4**

FIRM BROCHURE

- Investment Advisers Act of 1940, Part 2A of Form ADV, **7:8**

500 BENEFICIAL OWNERS

- Investment Company Act of 1940, exemption, **2:3**

FIXED ALLOCATION MULTISTRATEGY FUNDS

- ERISA, calculation of 25 percent limit, **5:16**

FOREIGN ASSETS

- HSR Act exemption, **25:41**

FOREIGN CORRUPT PRACTICES ACT (FCPA)

- Generally, **12:34**
- Compliance, **12:41**
- Corporate Enforcement Policy, **12:39**
- Defenses, **12:37**
- Enforcement, **12:38**
- Exceptions, **12:37**
- FCPA Guide, second edition, **12:40**
- FCPA Resource Guide, **12:39**
- Penalties, **12:38**
- Pilot Program, 2016, **12:39**
- Prohibition, elements of, **12:36**
- Regulatory framework, **12:35**
- Yates Memo, 2015, **12:42**

FOREIGN CURRENCY OPTIONS TRADED ON NATIONAL SECURITIES EXCHANGE

- Commodity Exchange Act, exclusion from regulation under Act, **4:10**

FOREIGN CURRENCY RESERVES

- Alternative investment opportunity, **2:5**

FOREIGN GOVERNMENTS

- Assets, alternative investment opportunity, **2:5**

**FOREIGN INVESTMENT IN REAL
PROPERTY TAX ACT (FIRPTA)**

Partnerships, effectively connected income, **26:50**

FOREIGN PRIVATE ADVISERS

Investment Advisers Act of 1940, registration, **6:19**

FORM 13H

Large trader reporting, **21:38, 21:41**

FORM 5500 REPORTING

ERISA, reporting to DOL and IRS, **5:53**

FORM ADV

Generally, **7:3**

Amending, **7:11 to 7:13**

Annual delivery of Part 2 to clients, **7:10**

Annual updating, **7:13**

Delivery of Part 2 to clients, **7:10**

Disciplinary information disclosure, **9:80**

Electronic delivery of Part 2 to clients, **7:10**

Financial information disclosure, **9:79**

Initial delivery of Part 2 to clients, **7:10**

Interim delivery of Part 2 to clients, **7:10**

Part 1, **7:4, 9:76**

Part 2, **7:7 to 7:10, 9:77**

Part 2A, **7:8**

Part 2B, **7:9**

Part 3, **9:78**

Prompt amendment obligation, **7:12**

Updating, **7:11 to 7:13**

FORM ADV - E

Investment Advisers Act, surprise audits, **7:14**

FORM CPO - PQR

Commodity Exchange Act, requirement, **4:30**

Securities Exchange Act registration, **4:30**

FORM CTA - PR

Commodity Exchange Act, requirement, **4:30**

Securities Exchange Act registration, **4:30**

FORMED FOR THE PURPOSE

Look-through requirements, exemptions under
Investment Company Act of 1940, **3:7**

FORM PF

Commodity Exchange Act, requirement, **4:30**

Disclosure obligations under Investment Advisers
Act of 1940, **9:81 to 9:83**

Frequency and format of reporting, **9:83**

Investment Advisers Act of 1940, disclosure obli-
gations, **9:81 to 9:83**

Reporting, **9:82, 9:83**

Securities and Exchange Act registration, **4:30**

FORMULAS, CHARTS, OR GRAPHS

Investment Advisers Act of 1940, advertising, **9:9**

FREEDOM OF INFORMATION ACT

Compliance examinations, request for confidential-
ity under FOIA, **10:24**

FREE SERVICE

Investment Advisers Act of 1940, advertising, **9:10**

FROZEN ASSETS

Lehman Brothers Holdings, Inc., bankruptcy filing
in 2008, **2:9**

FULCRUM FEES

Investment Advisers Act of 1940, **9:87**

FUNDS OF FUNDS

Characteristics, **24:18, 25:18**

Commodity Exchange Act, limited trading exemp-
tion from CPO registration, **4:43**

Common features of private equity funds, **16:4**

**Employee Retirement Income Security Act of
1974** (this index)

Fees and expenses, **24:19, 25:19**

Investment strategies, **24:18, 25:18**

Liquidity, **24:22, 25:22**

Management fees, **16:28**

Recent growth of private fund industry, **2:2, 2:6**

Securities law, **24:20, 25:20**

Structuring of hedge funds, **28:15**

FUTURES CONTRACTS

Commodity Exchange Act, scope of regulation, **4:5**

**FUTURES TRADING PRACTICES ACT OF
1992**

History of commodity and futures regulation in
United States, **4:5**

GATES

Frequently negotiated terms, **20:12**

Halting redemptions, challenges for hedge funds,
2:9

GIFTS AND ENTERTAINMENT

Hedge funds operated as ERISA funds, **5:55**

GOLDSTEIN v SEC

Overthrow of SEC Hedge Fund Rule, **2:4**

**GOODS OR REALTY ACQUIRED IN
ORDINARY COURSE OF BUSINESS**

HSR Act exemption, **25:43**

GO SHOP PROVISIONS

Acquisitions of portfolio companies, **17:16**

GOVERNMENT SECURITIES ADVISERS

Investment Advisers Act of 1940, exclusion from
definition, **6:11**

GRAMM - LEACH - BLILEY ACT

Acquisitions of portfolio companies, **17:8**

GRANDFATHERED FUNDS

Investment Company Act of 1940, exemption, **3:30**

GRAPHS, CHARTS, OR FORMULAS

Investment Advisers Act of 1940, advertising, **9:9**

GROSS PERFORMANCE

Performance advertising, **9:16**

GROUP FORMATION

Beneficial Ownership (this index)

GUARANTEES

Private equity funds agreements, **16:13**

HACKING

Insider trading, **21:20**

HART - SCOTT - RODINO ACT

Acquisitions of portfolio companies, **17:6**

HART - SCOTT - RODINO ANTITRUST IMPROVEMENT ACT

Generally, **25:28**

Acquiring and acquired person defined, **25:36**

Activist investing, **23:9**

Assets, **25:31, 25:32**

Assuming control during waiting period, prohibition, **25:46**

Basic regulatory scheme, **25:29**

Beneficial ownership considerations, **25:28 to 25:52**

Control, **25:37, 25:46**

Convertible securities, exemption, **25:40**

Defining acquiring and acquired person, **25:36**

Exemptions

Generally, **25:38**

Convertible securities, **25:40**

Foreign assets, **25:41**

Goods or realty acquired in ordinary course of business, **25:43**

Investment exemption, **25:39**

Non-U.S. issuer, acquisition of voting securities, **25:42**

Ordinary course of business, goods or realty acquired in, **25:43**

Realty acquired in ordinary course of business, **25:43**

Voting securities of non-U.S. issuer, **25:42**

Filing fees, **25:51**

Foreign assets, **25:41**

Goods or realty acquired in ordinary course of business, **25:43**

Incremental acquisitions, special considerations, **25:48**

Investment exemption, **25:39**

Jurisdictional requirements

Application of Act to transaction, generally, **25:30**

Assets, **25:31, 25:32**

Control, **25:37**

Defining acquiring and acquired person, **25:36**

“Size-of-the-parties” test, **25:35 to 25:37**

“Size-of-the-transaction” test, **25:34**

HART - SCOTT - RODINO ANTITRUST IMPROVEMENT ACT—Cont’d

Jurisdictional requirements—Cont’d

Voting securities, **25:31, 25:33**

Nature of transaction

Application of Act to transaction, **25:30 to 25:37**

Exemptions, **25:38 to 25:43**

Special considerations, **25:44 to 25:48**

Non-U.S. issuer, acquisition of voting securities, **25:42**

Notification form, **25:50**

Ordinary course of business, goods or realty acquired in, **25:43**

Parties. “Size-of-the-parties” test, below

Penalties, **25:52**

Realty acquired in ordinary course of business, **25:43**

“Size-of-the-parties” test

Generally, **25:35**

Concept of control, **25:37**

Defining acquiring and acquired person, **25:36**

“Size-of-the-transaction” test, **25:34**

Special considerations for private funds

Generally, **25:44**

Assuming control during waiting period, prohibition, **25:46**

Formation of private funds, **25:45**

Incremental acquisitions, **25:48**

Transfers between investment vehicles, **25:47**

Substantive antitrust concerns, **25:49**

Transfers between investment vehicles, **25:47**

Voting securities

Exemption, non-U.S. issuer, **25:42**

Jurisdictional requirements, **25:31, 25:33**

HEDGE FUND RULE

SEC Rule 203(b)(3)-2, **2:4**

HIGH - RISK ASSETS OR HIGH - RISK TRADING STRATEGIES

Volcker Rule, banking entity, **2:12**

HIGH WATER MARK MEASURE OF PERFORMANCE

Challenges for hedge funds, **2:9**

HISTORICAL PERSPECTIVE

Generally, **2:1**

Commodity and futures regulation in U.S. **Commodity Exchange Act** (this index)

Common features of private equity funds, **16:2**

Hedge funds, **20:2**

Venture capital funds, **24:3, 25:3**

HOLDBACK AMOUNTS

Frequently negotiated terms, **20:13**

HOTSPOTS FOR DIFFERENT FUNDS

Employee Retirement Income Security Act of 1974 (this index)

HYBRID FUNDS

Commodity Exchange Act, **4:12**

Hedge funds, convergence with private equity strategies, **20:26, 20:27**

HYPOTHETICAL PERFORMANCE

Performance advertising, **9:21**

IDENTITY THEFT RULES

CFTC and SEC proposal, **12:14**

INCOME TAX CONSIDERATIONS

Tax Considerations (this index)

INCREMENTAL ACQUISITIONS

HSR Act, **25:48**

INDEMNIFICATION

Private equity funds agreements, **16:22**

INDIRECT INVESTMENTS

ERISA, VCOC exception, **5:24**

INDIRECT OFFERINGS

Initial Public Offerings (this index)

INDIVIDUAL INVESTORS

Alternative investment opportunity, **2:5**

Tax Considerations (this index)

INITIAL HOLDINGS REPORTS

Investment Advisers Act of 1940, **9:54**

INITIAL PUBLIC OFFERINGS

Broker-dealers, restrictions, **11:24**

Challenges for private equity funds, **2:10**

Exit strategies

Generally, **19:5**

Phase 1, pre-IPO issues and structuring offering, **19:6**

Phase 2, filing and SEC review, **19:7**

Phase 3, marketing, **19:8**

Phase 4, pricing and aftermarket management, **19:9**

Indirect offerings

Generally, **31:13**

Investment Company Act Section 48(a), **31:15**

Securities Act Rule 140, **31:14**

Investment advisers

Generally, **31:1 to 31:15**

Managers of private funds, below

Investment Advisers Act of 1940, pre-approval of purchases, **9:58**

Investment Company Act

Indirect offerings, Section 48(a), **31:15**

Section 3(b)(1) safe harbor, **31:5, 31:11**

INITIAL PUBLIC OFFERINGS—Cont'd

Managers of private funds

Classification of investment company, **31:2 to 31:5**

Indirect offerings, above

Investment company status

Determination, generally, **31:6 to 31:10**

Investment securities, objective test, **31:9**

Objective test, **31:8 to 31:10**

Section 3(b)(1) safe harbor, **31:11**

Subjective test, **31:7**

Valuation, objective test, **31:10**

Objective tests

Classification, **31:4**

Investment company status, **31:8 to 31:10**

SEC's defense of its investment company analysis, **31:12**

Section 3(b)(1) safe harbor, **31:5, 31:11**

Statutory framework for classification, **31:2**

Subjective tests

Classification, **31:3**

Investment company status, **31:7**

Safe harbor. Section 3(b)(1) safe harbor, below

Section 3(b)(1) safe harbor

Classification of investment company, **31:5**

Status of investment company, **31:11**

Securities Act Rule 140, indirect offering, **31:14**

Securities and Exchange Commission

Defense of own investment company analysis of private fund managers, **31:12**

Exit strategies, SEC review during Phase 2, **19:7**

INITIAL REGISTRATION

Initial public offering, filing initial registration statement in Phase 2, **19:7**

Investment Company Act of 1940, exemption, **3:46**

INITIAL REQUESTS

Compliance examinations, **10:8**

INSIDER TRADING

Generally, **21:2**

Activist investing, **23:8**

Alternative data, **21:18**

Antifraud provisions, Exchange Act Section 10(b) and Rule 10b-5, **8:23**

Beneficial Ownership (this index)

Causation, **21:9**

Confidentiality, **21:8**

Controlling person liability, **21:16**

“Deputization” of directors, **25:25**

Enforcement of insider trading laws and regulations

Controlling person liability, **21:16**

Expert consulting firms, **21:17**

Government enforcement, **21:13, 21:14**

Private rights of action, **21:15**

Exchange Act

Antifraud, Section 10(b) and Rule 10b-5, **8:23**

INSIDER TRADING—Cont'd

- Exchange Act—Cont'd
 - “Deputization” of directors, **25:25**
 - Funds, application to, **25:27**
 - Partnerships, **25:27**
 - Rule 14e-3 and tender offers, **21:11**
 - Rule 16c-4, prohibitions on short selling, **25:24**
 - Section 13 interaction with Section 16, **25:26**
 - Section 16 and insider trading. **Beneficial Ownership** (this index)
 - Section 16(a) reporting obligations, **25:22**
 - Section 16(b) short-swing profit disgorgement, **25:23**
 - Section 16(c) prohibitions on short selling, **25:24**
- Expert consulting firms, **21:17**
- Hacking, **21:20**
- Increasing use of Title 18, **21:19**
- Investment Advisers Act of 1940
 - Antifraud provisions, Exchange Act Section 10(b) and Rule 10b-5, **8:23**
 - Registered investment advisers, **9:64**
- Materiality, **21:8**
- Material nonpublic information, use vs. possession, **21:9**
- Misappropriation theory, **21:4, 21:6**
- Partnerships and Section 16, **25:27**
- Policies and procedures, **21:21**
- Possession of material nonpublic information, **21:9**
- Private rights of action, **21:15**
- Rule 10b-5
 - Generally, **21:3**
 - Antifraud provisions, **8:23**
 - Causation, **21:9**
 - Classical theory of duty, **21:4, 21:5**
 - Confidentiality, **21:8**
 - Materiality, **21:8**
 - Material nonpublic information, use vs. possession, **21:9**
 - Misappropriation theory, **21:4, 21:6**
 - Possession of material nonpublic information, **21:9**
 - Questions of duty, **21:4 to 21:7**
 - Scienter, **21:10**
 - Tipping, **21:7**
 - Use of material nonpublic information, **21:9**
- Rule 14e-3 and tender offers, **21:11**
- Rule 16c-4, prohibitions on short selling, **25:24**
- Scandals in private fund industry, **2:14**
- Scienter, **21:10**
- Tender offers and Rule 14e-3, **21:11**
- Tipping, **21:7**
- Use of material nonpublic information, **21:9**

INSTITUTIONAL CLIENTS

- Broker-dealers, suitability, **11:37**

INSTITUTIONAL INVESTMENT MANAGERS

- Section 13(f) reporting. **Exchange Act** (this index)

INSTITUTIONAL SALES LITERATURE

- Broker-dealers acting as placement agents for private funds, **11:33**

INSURANCE COMPANY ADVISERS

- Investment Advisers Act of 1940, exemption, **6:25**

INTEGRATION DOCTRINE

- Investment Company Act of 1940, exemption, **3:9**

INTEGRATION OF U.S. PRIVATE PLACEMENTS AND REGULATION S OFFERINGS

- Investment Company Act of 1940, exemption, **3:36**

INTERNAL REVENUE SERVICE

- ERISA plan annual Form 5500 reporting, **5:53**

INTERNATIONAL MATTERS

- Broker-dealers, registration, **11:8 to 11:11**
- Commodity Exchange Act, exclusion of exchange-traded foreign currency options traded on national securities exchange, **4:10**
- Economic sanctions, **12:32 to 12:34**
- Foreign Corrupt Practices Act** (this index)
- Investment Advisers Act of 1940, offshore investment advisers, **6:29**
- Investment Company Act of 1940** (this index)
- Regulation S** (this index)

INTERVIEWS

- Compliance Examinations** (this index)

IN THE BUSINESS

- Investment Advisers Act of 1940, definition of investment adviser, **6:3**

INTRASTATE ADVISERS

- Investment Advisers Act of 1940, exemption, **6:24**

INVESTMENT ADVISERS ACT OF 1940

- Generally, **6:1 to 6:28**
- Access person defined, **9:53**
- Accountants, exclusion from definition, **6:9**
- Acquisitions of portfolio companies, **17:11**
- Advertising
 - Generally, **9:3**
 - Charts, **9:9**
 - Client lists, **9:12**
 - Definition of advertisement, **9:4**
 - Formulas, **9:9**
 - “Free service” reference, **9:10**
 - General prohibitions, **9:11**
 - Graphs, **9:9**
 - Marketing rule, **9:11**
 - Misleading advertisements, **9:12**
 - Partial client lists, **9:12**
 - Past specific recommendations, **9:8**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Advertising—Cont'd

- Prohibition on misleading advertisements, **9:12**
- Recommendations, **9:8**
- Recordkeeping, **9:13**
- Reference to “free service,” **9:10**
- Registered investment advisers, **9:2 to 9:14**
- Section 208 of Act, **9:14**
- Social media, **9:7**
- Specific restrictions, **9:5 to 9:10**
- Testimonials, **9:6, 9:7**
- Use of graphs, charts, or formulas, **9:9**

Advice about securities, **6:4**

Advisory affiliates, impact of Dodd-Franks exemptions from registration requirements, **6:22**

Aggregation of client trades, **8:28**

Allocation of investment opportunity, **8:3**

Amending Form ADV, **7:11 to 7:13**

Analyses about securities, **6:4**

Annual compliance review, **9:47**

Annual delivery of Form ADV Part 2 to clients, **7:10**

Annual holdings reports, **9:54**

Annual updating of Form ADV, **7:13**

Antifraud provisions

Applicable statutes, **8:18**

Compliance for investment advisers, **8:18 to 8:23**

Content of offering material, **15:6, 15:7**

Exchange Act Section 10(b) and Rule 10b-5, **8:21 to 8:23, 15:5**

Insider trading, Exchange Act Section 10(b) and Rule 10b-5, **8:23**

Rule 206(4)-8, **15:7**

Sections 206(1) and 206(2) of Advisers Act, **8:19, 15:6**

Applicant for registration, **7:1**

Approval of performance results, **9:18**

Assets under management, **7:5**

Assignment of advisory contracts, **9:84**

Audit exception, reports to clients, **9:29, 9:30**

Banks and bank holding companies, exclusion from definition, **6:6**

Beneficial ownership, code of ethics, **9:59**

Best execution, fiduciary duties of all investment advisers, **8:4 to 8:14**

Brochure, Part 2A of Form ADV, **7:8**

Brochure supplement, Part 2B of Form ADV, **7:9**

Brokerage services. Eligible brokerage and research services, below

Brokers and dealers, exclusion from definition, **6:7**

In the business, **6:3**

Business records, **9:68**

Calculation of assets under management, Form ADV, **7:5**

Charitable organizations and plans, exemption from registration, **6:26**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Charts, use in advertising, **9:9**

Chief compliance officer, **9:45**

“Client,” **2:4**

Client lists, use in advertising, **9:12**

Client-related records, **9:69**

Code of ethics

Generally, **9:50**

Access person defined, **9:53**

Annual holdings reports, **9:54**

Beneficial ownership, **9:59**

Common policies not required, **9:61**

Definition of access person, **9:53**

Employee personal trading procedures, **9:52 to 9:58, 9:60**

Exemptions from reporting requirements, **9:57**

Form ADV, **9:63**

Initial holdings reports, **9:54**

Initial public offerings, pre-approval of purchases, **9:58**

Minimum requirements, **9:51**

Pre-approval of certain purchases or placements, **9:58**

Private placements, pre-approval, **9:58**

Quarterly transaction reports, **9:55**

Recordkeeping, **9:62**

Registered investment advisers, **9:50 to 9:63**

Reportable securities, **9:56**

Reports, **9:54, 9:55**

Commodity trading advisors, exemption from registration, **6:23**

Compensation, **6:2**

Compliance-related records, **9:70**

Compliance with Act

Aggregation of client trades, **8:28**

All investment advisers, **8:1 to 8:29**

Annual review, **9:47**

Antifraud provisions, **8:18 to 8:23**

Chief compliance officer, **9:45**

Control environment, **9:49**

Fiduciary duties, **8:2 to 8:17**

Forensic test, **9:48**

Policies and procedures, **9:46**

Principal and agency cross transactions, **8:24 to 8:27**

Registered investment advisers, **9:1 to 9:97**

SEC's recent private fund adviser proposal, **8:29**

Confirmation letter, voluntary client asset confirmation letter, **9:34**

Conflicts of interest

Form ADV, **9:75 to 9:80**

Proxy voting, **9:40**

Contingent fees, **9:93**

Contractual requirements

Assignment of advisory contracts, **9:84**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

- Contractual requirements—Cont'd
 - Change of partners of partnership, **9:85**
 - Registered investment advisers, **9:84, 9:85**
- Control environment, compliance with Act, **9:49**
- Corrections of trade errors, **8:15**
- Cross transactions. Principal and agency cross transactions, below
- Custody of client assets
 - Generally, **9:24 to 9:35**
 - Audit exception, reports to clients, **9:29, 9:30**
 - Definition of custody, **9:25**
 - Delivery to independent representative or related persons, **9:33**
 - Independent representative, delivery to, **9:33**
 - Internal control report, **9:32**
 - Maintenance of assets, **9:26, 9:27**
 - Notification, maintenance of assets, **9:27**
 - Qualified custodians, **9:26**
 - Quarterly account statements, **9:29**
 - Registered investment advisers, **9:24 to 9:35**
 - Related persons, delivery to, **9:33**
 - Reports to clients, **9:28 to 9:30**
 - Surprise examinations, **9:31**
 - Voluntary client asset confirmation letter, **9:34**
- Dealers, exclusion from definition, **6:7**
- Definition of investment adviser
 - Generally, **6:1**
 - Accountants, exclusion, **6:9**
 - Advice about securities, **6:4**
 - Analyses about securities, **6:4**
 - Banks and bank holding companies, exclusion, **6:6**
 - Brokers and dealers, exclusion, **6:7**
 - In the business, **6:3**
 - Compensation, **6:2**
 - Engineers, exclusion, **6:9**
 - Exclusions from definition, **6:5 to 6:13**
 - Family offices, exclusion, **6:8**
 - Federal government, exclusion, **6:13**
 - Government securities advisers, exclusion, **6:11**
 - Lawyers, exclusion, **6:9**
 - Nationally recognized statistical rating organizations (NRSROs), exclusion, **6:12**
 - Political subdivisions, exclusion, **6:13**
 - Publishers, exclusion, **6:10**
 - Reports about securities, **6:4**
 - State governments, exclusion, **6:13**
 - Teachers, exclusion, **6:9**
- Definitions
 - Access person, **9:53**
 - Advertisement, **9:4**
 - Custody, **9:25**
 - Investment adviser. Definition of investment adviser, above

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

- Delivery
 - Client assets to independent representative or related persons, **9:33**
 - Form ADV Part 2, delivery to clients, **7:10**
- Disciplinary information, disclosure, **9:80**
- Disclosure
 - Disciplinary information, **9:80**
 - Financial information, **9:79**
 - Form ADV, **9:75 to 9:80**
 - Form PF, **9:81 to 9:83**
 - Part 1 of Form ADV, **9:76**
 - Part 2 of Form ADV, **9:77**
 - Part 3 of Form ADV, **9:78**
 - Proxy voting, **9:42**
 - Registered investment advisers, obligations, **9:75 to 9:83**
- Disclosure, private fund reporting, **7:6**
- Dodd-Frank Act amendments to Form ADV Part 1, **7:5**
- Dodd-Franks exemptions from registration requirements, impact on subadvisers and advisory affiliates, **6:22**
- “Effecting” as fiduciary duty of all investment advisers, **8:11, 8:13**
- Electronic delivery of Form ADV Part 2 to clients, **7:10**
- Electronic recordkeeping, **9:72**
- Eligible brokerage and research services, generally, **8:5 to 8:10**
- Employee personal trading procedures
 - Generally, **9:52**
 - Access person defined, **9:53**
 - Code of ethics, **9:52 to 9:58, 9:60**
 - Exceptions from reporting requirements, **9:57**
 - Initial and annual holdings reports, **9:54**
 - Initial public offerings, pre-approval of purchases, **9:58**
 - Private placements, pre-approval, **9:58**
 - Quarterly transaction reports, **9:55**
 - Reportable securities, **9:56**
- Engineers, exclusion from definition, **6:9**
- Examinations, **9:31**
- Exceptions for certain securities, custody of client assets, **9:35**
- Exchange Act Section 10(b) and Rule 10b-5, antifraud provisions, **8:21 to 8:23**
- Exclusion from definition of investment adviser
 - Generally, **6:5**
 - Accountants, **6:9**
 - Banks and bank holding companies, **6:6**
 - Brokers and dealers, **6:7**
 - Engineers, **6:9**
 - Family offices, **6:8**
 - Federal government, **6:13**
 - Government securities advisers, **6:11**
 - Lawyers, **6:9**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

- Exclusion from definition of investment adviser
 - Cont'd
 - Nationally recognized statistical rating organizations (NRSROs), **6:12**
 - Political subdivisions, **6:13**
 - Publishers, **6:10**
 - State governments, **6:13**
 - Teachers, **6:9**
- Exemption from registration requirements
 - Generally, **6:18**
 - Charitable organizations and plans, **6:26**
 - Commodity trading advisers, **6:23**
 - Dodd-Frank Act, adviser exemptions overturned, **2:11**
 - Dodd-Frank Act, historical adviser exemptions overturned, **2:4**
 - Dodd-Frank exemptions, impact on subadvisers and advisory affiliates, **6:22**
 - Foreign private advisers, **6:19**
 - Insurance company advisers, **6:25**
 - Intrastate advisers, **6:24**
 - Private fund advisers, **6:21**
 - Reporting requirements of exempt advisers, **7:16**
 - Rural business investment companies, **6:28**
 - Small business investment companies, **6:27**
 - Venture capital fund advisers, **6:20**
- Exemptions from code of ethics, **9:57**
- Extracted performance, **9:20**
- Family offices, exclusion from definition of investment adviser, **6:8**
- Federal government, exclusion from definition, **6:13**
- Fees
 - Generally, **9:86**
 - Compensation, **6:2**
 - Contingent fees, **9:93**
 - Fulcrum fees, **9:87**
 - Involuntary transfer to nonqualified client, **9:92**
 - Nonqualified clients, **9:91, 9:92**
 - Performance-based compensation for nonqualified clients, **9:91**
 - Qualified purchaser funds, **9:88**
 - Registered investment advisers, **9:86 to 9:93**
 - Section 3(c)(1) funds, **9:90**
 - Sophisticated clients, **9:89 to 9:92**
- Fiduciary duties of all investment advisers
 - Generally, **8:2**
 - Allocation of investment opportunity, **8:3**
 - Best execution and soft dollars, **8:4 to 8:14**
 - Compliance, **8:14**
 - Corrections of trade errors, **8:15**
 - “Effecting,” **8:11, 8:13**
 - Eligible brokerage, **8:7**
 - Eligible brokerage and research services, generally, **8:5 to 8:10**
 - Eligible research, **8:6**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

- Fiduciary duties of all investment advisers—Cont'd
 - Good faith determination, **8:10**
 - Hedge clauses use, **8:16**
 - Investment opportunity allocation, **8:3**
 - Lawful and appropriate assistance, **8:9**
 - Mixed-use items, **8:8**
 - “Provided by,” **8:11, 8:12**
 - Soft dollar arrangements, **8:4 to 8:14**
 - Suitability of investments, **8:17**
 - Trade error corrections, **8:15**
- Financial information, disclosure, **9:79**
- FINRA regulation, performance advertising, **9:23**
- Foreign private advisers, exemptions from requirements, **6:19**
- Forensic test, compliance with Act, **9:48**
- Form ADV
 - Generally, **7:3**
 - Amending, **7:11 to 7:13**
 - Annual delivery of Part 2 to clients, **7:10**
 - Annual updates, **7:12, 7:13**
 - Brochure, Part 2A, **7:8**
 - Brochure supplement, Part 2B, **7:9**
 - Calculation of assets under management, **7:5**
 - Code of ethics, **9:63**
 - Delivery of Part 2 to clients, **7:10**
 - Disclosure, **7:6**
 - Disclosure, generally, **9:75 to 9:83**
 - Dodd-Frank Act amendments to Part 1, **7:5**
 - Electronic delivery of Part 2 to clients, **7:10**
 - Initial delivery of Part 2 to clients, **7:10**
 - Interim delivery of Part 2 to clients, **7:10**
 - Part 1, **7:4, 9:76**
 - Part 2, **7:7 to 7:10, 9:77**
 - Part 2A, **7:8**
 - Part 2B, **7:9**
 - Part 3, **9:77**
 - Part II, **9:63**
 - Private fund reporting, **7:6**
 - Prompt amendment obligation, **7:12**
 - Regulatory assets under management, **7:5**
 - Updating, **7:11, 7:12, 7:13**
- Form ADV-E, **7:14**
- Form PF, disclosure obligations, **9:81 to 9:83**
- Formulas, use in advertising, **9:9**
- “Free service” reference in advertising, **9:10**
- Fulcrum fees, **9:87**
- General prohibitions, **9:11**
- Good faith determination, **8:10**
- Government securities advisers, exclusion from definition, **6:11**
- Graphs, use in advertising, **9:9**
- Hedge clauses use, fiduciary duty, **8:16**
- Hypothetical performance, **9:21**
- Identification of applicant, **7:1**
- Independent proxy-voting service, **9:41**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Independent representative, delivery of client assets to, **9:33**
 Initial delivery of Form ADV Part 2 to clients, **7:10**
 Initial holdings reports, **9:54**
 Initial public offerings, pre-approval of purchases, **9:58**
Insider Trading (this index)
 Insurance company advisers, exemption from registration, **6:25**
 Interim delivery of Form ADV Part 2 to clients, **7:10**
 Internal control report, **9:32**
 Intrastate advisers, exemption from registration, **6:24**
 Investment opportunity allocation, fiduciary duty, **8:3**
 Involuntary transfer to nonqualified client, **9:92**
 Lawful and appropriate assistance, fiduciary duty, **8:9**
 Lawyers, exclusion from definition, **6:9**
 Limitations and restrictions, advertising, **9:5 to 9:10**
 Maintenance of assets, **9:26, 9:27**
 Marketing rule, **9:11**
 Performance advertising, **9:15**
 Misleading advertisements, **9:12**
 Mixed-use items, fiduciary duty, **8:8**
 Nationally recognized statistical rating organizations (NRSROs), **6:12**
 Nonqualified clients, fees, **9:91, 9:92**
 Non-U.S. advisers, recordkeeping, **9:73**
 Notification, maintenance of client's assets, **9:27**
 Offshore investment advisers, **6:29**
 Partial client lists, use in advertising, **9:12**
 Partnership, change of partners, **9:85**
 Past specific recommendations, use in advertising, **9:8**
 Performance advertising
 Generally, **9:15 to 9:22**
 Approval of performance results, **9:18**
 Extracted performance, **9:20**
 FINRA regulation, **9:23**
 In general, **9:15**
 Hypothetical performance, **9:21**
 Predecessor performance, **9:22**
 Prescribed time periods, **9:17**
 Presentation of gross and net performance, **9:16**
 Related performance, **9:19**
 Statements, SEC review, **9:18**
 Performance-based compensation for nonqualified clients, **9:91**
 Permissible registration, **6:16**
 Political subdivisions, exclusion from definition, **6:13**
 Pre-approval of certain purchases, **9:58**
 Predecessor performance, **9:22**
 Prescribed time periods, **9:17**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Presentation of gross and net performance, **9:16**
 Principal and agency cross transactions
 Generally, **8:24**
 Compliance for investment advisers, **8:24 to 8:27**
 Section 206(3)-2 of Advisers Act, **8:26**
 Section 206(3) Advisers Act, **8:25**
 Private fund advisers, exemption from registration, **6:21**
 Private fund legal considerations, **1:2**
 Private fund reporting, **7:6**
 Private placements, pre-approval, **9:58**
 Prohibition on misleading advertisements, **9:12**
 Prompt amendment obligation, updating Form ADV, **7:12**
 "Provided by" as fiduciary duty of all investment advisers, **8:11, 8:12**
 Proxy voting
 Generally, **9:36**
 Applicability of rule, **9:37**
 Conflicts of interest, **9:40**
 Disclosure to clients, **9:42**
 Independent proxy-voting service, **9:41**
 Policies and procedures, **9:38 to 9:41**
 Recordkeeping, **9:43**
 Registered investment advisers, **9:36 to 9:43**
 Voting-client proxies, **9:39**
 Publishers, exclusion from definition, **6:10**
 Qualified custodians, **9:26**
 Qualified purchaser funds, fees, **9:88**
 Quarterly account statements, **9:29**
 Quarterly transaction reports, **9:55**
 Recent proposals
 Custody rule, SEC, **9:96**
 ESG disclosure, SEC, **9:95**
 Outsourcing, SEC, **9:97**
 Private fund adviser rule, SEC, **9:94**
 Recommendations, use in advertising, **9:8**
 Recordkeeping
 Generally, **9:66**
 Advertising, **9:13**
 Business records, **9:68**
 Client-related records, **9:69**
 Code of ethics, **9:62**
 Compliance-related records, **9:70**
 Dodd-Frank Act, recordkeeping requirements, **2:11**
 Electronic recordkeeping, **9:72**
 Non-U.S. advisers, **9:73**
 Proxy voting, **9:43**
 Records to be maintained, **9:67 to 9:70**
 Registered investment advisers, **9:66 to 9:74**
 Retention of books and records, **9:71**
 Third parties, records maintained by, **9:74**
 Reference to "free service" in advertising, **9:10**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Registered investment advisers
 Advertising, **9:3 to 9:14**
 Code of ethics, **9:50 to 9:63**
 Compliance program, **9:44 to 9:49**
 Compliance with Act, **9:1 to 9:97**
 Contractual requirements, **9:84, 9:85**
 Custody of client assets, **9:24 to 9:35**
 Disclosure obligations, **9:75 to 9:83**
 Fees, **9:86 to 9:93**
 Insider trading policies and procedures, **9:64**
 Proxy voting, **9:36 to 9:43**
 Recent developments, **9:2**
 Recordkeeping requirements, **9:66 to 9:74**
 Substantive requirements, **9:3 to 9:63**
 Supervisory procedures, **9:65**

Registration with SEC
 Generally, **6:14, 6:15, 7:1 to 7:16**
 Amending Form ADV, **7:11 to 7:13**
 Annual updating of Form ADV, **7:12, 7:13**
 Applicant, **7:1**
 Assets under management, **7:5**
 Brochure, Part 2A of Form ADV, **7:8**
 Brochure supplement, Part 2B of Form ADV, **7:9**
 Charitable organizations and plans, exemption, **6:26**
 Commodity trading advisors, exemption, **6:23**
 Dodd-Frank Act amendments to Form ADV
 Part 1, **7:5**
 Exemptions from requirements, **6:18 to 6:27**
 Foreign private advisers, **6:19**
 Form ADV, **7:3 to 7:13**
 Identification of applicant, **7:1**
 Insurance company advisers, exemption, **6:25**
 Intrastate advisers, exemption, **6:24**
 Part 1 of Form ADV, **7:4, 7:5**
 Part 2A of Form ADV, **7:8**
 Part 2B of Form ADV, **7:9**
 Part 2 of Form ADV, **7:7 to 7:10**
 Permissible registration, **6:16**
 Private fund advisers, **6:21**
 Process, overview, **7:2**
 Prompt amendment of Form ADV, **7:12**
 Regulatory assets under management, **7:5**
 Reporting requirements for exempt advisers, **7:16**
 Required registration, **6:15**
 Rural business investment companies, exemption, **6:28**
 Small business investment companies, exemption, **6:27**
 State law registration, **6:17**
 Updating Form ADV, **7:11, 7:13**
 Venture capital fund advisers, **6:20**
 Withdrawal from registration, **7:15**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

Regulatory assets under management, **7:5**
 Related performance, **9:19**
 Related persons, delivery of assets to, **9:33**
 Reportable securities, **9:56**
 Reports
 Annual holdings reports, **9:54**
 Audit exception, **9:29, 9:30**
 Clients, reports to, **9:28 to 9:30**
 Code of ethics, **9:54, 9:55**
 Exempt advisers, **7:16**
 Form PF, **9:82, 9:83**
 Internal control report, **9:32**
 Securities, **6:4**
 Required registration, **6:15**
 Research services. Eligible brokerage and research services, above
 Restrictions, advertising, **9:5 to 9:10**
 Retention of books and records, **9:71**
 Rule 206(4)-8, antifraud provisions, **15:7**
 Rural business investment companies, exemption from registration, **6:28**
 Sales of investment advisers, restrictions on principal transactions, **30:13**
 Section 3(c)(1) funds, fees, **9:90**
 Section 206(1), antifraud provisions, **8:19, 15:6**
 Section 206(2), antifraud provisions, **8:19, 15:6**
 Section 206(3)-2, principal and agency cross transactions, **8:26**
 Section 206(3), principal and agency cross transactions, **8:25**
 Section 206(4)-8, antifraud provisions, **8:20**
 Section 208, advertising, **9:14**
 Securities and Exchange Commission
 Proposal to amend Form ADV, **7:16**
 Registration with SEC, above
 Small business investment companies, exemption from registration, **6:27**
 Social media, advertising, **9:7**
 Soft dollar arrangements, fiduciary duties, **8:4 to 8:14**
 Sophisticated clients, fees, **9:89 to 9:92**
 State governments, exclusion from definition, **6:13**
 State law registration, **6:17**
 Statements, SEC review, **9:18**
 Statutes
 Antifraud provisions, **8:18 to 8:23**
 Exchange Act Section 10(b) and Rule 10b-5, **8:21 to 8:23**
 Subadvisers and advisory affiliates, impact of Dodd-Franks exemptions from registration requirements, **6:20**
 Suitability of investments, fiduciary duties of all investment advisers, **8:17**
 Supervision, registered investment advisers, **9:65**
 Surprise audits, Form ADV-E required filings, **7:14**
 Surprise examinations, **9:31**

INVESTMENT ADVISERS ACT OF 1940

—Cont'd

- Teachers, exclusion from definition, **6:9**
- Testimonials, use in advertising, **9:6, 9:7**
- Third parties, records maintained by, **9:74**
- Trade error corrections, **8:15**
- Updating Form ADV, **7:11, 7:13**
- Use of graphs, charts, or formulas in advertising, **9:9**
- Use of hedge clauses, fiduciary duty, **8:16**
- Venture capital fund advisers, exemption from registration, **6:20**
- Voluntary client asset confirmation letter, **9:34**
- Voting-client proxies, **9:39**
- Withdrawal from SEC registration, **7:15**

INVESTMENT COMPANY

- Defined, Investment Company Act of 1940, **3:1**

INVESTMENT COMPANY ACT

- Exemption from registration under Investment Company Act, **2:3**

INVESTMENT COMPANY ACT OF 1940

- Generally, **3:2 to 3:57**
- Adviser registration following noncompliance, **3:56**
- “Attribution rule” look-through requirement, **3:6**
- Beneficial owner defined, **3:4**
- Beneficial owners. 100 person funds, below
- Board of directors, noncompliance with exemption, **3:48**
- Capital structure, noncompliance with exemption, **3:50**
- Cash and cash equivalents, qualified purchaser companies, **3:25**
- Commodity interests, qualified purchaser companies, **3:23**
- Consequences of failure to comply with exemption, **3:45 to 3:57**
- Corporate governance, noncompliance with exemption, **3:47 to 3:49**
- Counting U.S. persons, non-U.S. investment companies, **3:35**
- Custody, exemption, **3:57**
- Definitions
 - Beneficial owner, **3:4**
 - Investment company, **3:1**
 - Investments, **3:20 to 3:25**
 - U.S. person, **3:34**
- Determination as qualified purchaser, **3:19**
- Eligible investors, employees’ securities companies, **3:44**
- Employees’ securities companies
 - Generally, **3:42**
 - Eligible investors, **3:44**
 - Exemption from definition of investment company, generally, **3:42 to 3:44**
 - Section 6(b) exemption, **3:43**
 - Section 6(e) exemption, **3:43**

INVESTMENT COMPANY ACT OF 1940

—Cont'd

- Examinations, noncompliance with exemption, **3:54**
- Exemptions from registration
 - Generally, **1:1**
 - Recent growth of private fund industry, **2:3**
 - Section 3(c)(1), 100 person funds, **3:2 to 3:9**
 - Section 3(c)(5), financing and mortgage companies, **3:38 to 3:41**
 - Section 3(c)(7), qualified purchaser companies, **3:10 to 3:30**
 - Section 6(b), employee’s securities companies, **3:42 to 3:44**
 - Section 7(d), non-U.S. investment companies, **3:31 to 3:37**
- Family companies, qualified purchaser companies, **3:12**
- Fees and compensation
 - Exemption, **3:29**
 - Qualified purchaser companies, **3:29**
- Financial contracts, qualified purchaser companies, **3:23**
- Financing and mortgage companies
 - Generally, **3:38**
 - Exemption from definition of investment company, generally, **3:38 to 3:41**
 - Section 3(c)(5) securities, **3:39**
 - Section 3(c)(5)(A), **3:40**
 - Section 3(c)(5)(B), **3:40**
 - Section 3(c)(5)(C), **3:41**
- “Formed for the purpose” look-through requirements, **3:7**
- Grandfathered funds, qualified purchaser companies, **3:30**
- Initial Public Offerings** (this index)
- Initial registration, noncompliance with exemption, **3:46**
- Integration doctrine, **3:9**
- Integration of U.S. private placements and Regulation S offerings, **3:36**
- International issues
 - Non-U.S. investment companies, below
 - Web site restrictions for offshore funds, **3:37**
- Investment company defined, **3:1**
- Investments defined, **3:20 to 3:25**
- Involuntary transferees, qualified purchaser companies, **3:17**
- Knowledgeable employees
 - 100 person funds, **3:5**
 - Qualified purchaser companies, **3:16**
- Look-through requirements, 100 person funds, **3:6, 3:7**
- Noncompliance with exemption
 - Adviser registration, **3:56**
 - Board of directors, **3:48**
 - Capital structure, **3:50**
 - Consequences of failure to comply, **3:45 to 3:57**
 - Corporate governance, **3:47 to 3:49**

INVESTMENT COMPANY ACT OF 1940

—Cont'd

Noncompliance with exemption—Cont'd

- Custody, **3:57**
- Examinations, **3:54**
- Initial registration, **3:46**
- Public reports, **3:55**
- Purchase of investment company securities, restrictions, **3:52**
- Recordkeeping, **3:54**
- Redemptions, **3:51**
- Registration, **3:46, 3:56**
- Reports, **3:55**
- Repurchases and sales, **3:51**
- Restrictions on purchase of investment company securities, **3:52**
- Restrictions on transactions with affiliates, **3:53**
- Sales, **3:51**
- Shareholder voting, **3:49**
- Transactions with affiliates, **3:53**
- Voting by shareholders, **3:49**

Non-U.S. investment companies

- Generally, **3:31**
- Counting U.S. persons, **3:35**
- Definition of U.S. person, **3:34**
- Exemptions from registration, **3:31 to 3:37**
- Integration of U.S. private placements and Regulation S offerings, **3:36**
- Private offerings inside United States, **3:33 to 3:35**
- Public offerings outside United States, **3:32**
- Qualifying U.S. persons, **3:35**
- Regulation S offerings, **3:36**
- Section 7(d) exemption from definition of investment company, generally, **3:31 to 3:37**
- U.S. private placements, integration with Regulation S offerings, **3:36**
- Web site restrictions for offshore funds, **3:37**

100 person funds

- Generally, **3:2**
- “Attribution rule” look-through requirement, **3:6**
- Definition of beneficial owner, **3:4**
- Exemption from definition of investment company, generally, **3:2 to 3:9**
- “Formed for the purpose” look-through requirements, **3:7**
- Integration doctrine, **3:9**
- Knowledgeable employees exception, **3:5**
- Look-through requirements, **3:6, 3:7**
- One hundred beneficial owners limitation, generally, **2:3, 3:3 to 3:7**
- Public offering prohibition, **3:2**
- Purchase of investment company securities, restrictions, **3:8**
- Restrictions on purchase of investment company securities, **3:8**

INVESTMENT COMPANY ACT OF 1940

—Cont'd

100 person funds—Cont'd

- Section 3(c)(1) exemption from definition of investment company, generally, **3:2 to 3:9**
- One hundred beneficial owners limitation. 100 person funds, above
- Other eligible investors, qualified purchaser companies, **3:15 to 3:18**
- Performance fees, **3:29**
- Persons who own and invest \$25 million, **3:14**
- Physical commodities, qualified purchaser companies, **3:23**
- Private fund legal considerations, **1:2**
- Private offerings inside United States, non-U.S. investment companies, **3:33 to 3:35**
- Public offering prohibition
 - 100 person funds, **3:2**
 - Qualified purchaser companies, **3:27**
- Public offerings outside United States, non-U.S. investment companies, **3:32**
- Public reports, noncompliance with exemption, **3:55**
- Purchase of investment company securities, restrictions
 - Noncompliance with exemption, **3:52**
 - 100 person funds, **3:8**
 - Qualified purchaser companies, **3:28**
- Qualified institutional investors, **3:18**
- Qualified purchaser companies
 - Generally, **3:10**
 - Cash and cash equivalents, **3:25**
 - Commodity interests, **3:23**
 - Determination as qualified purchaser, **3:19**
 - Exemptions from registration, **3:10 to 3:30**
 - Family companies, **3:12**
 - Fees, **3:29**
 - Financial contracts, **3:23**
 - Grandfathered funds, **3:30**
 - Investments defined, **3:20 to 3:25**
 - Involuntary transferees, **3:17**
 - Knowledgeable employees, **3:16**
 - Other eligible investors, **3:15 to 3:18**
 - Performance fees, **3:29**
 - Persons who own and invest \$25 million, **3:14**
 - Physical commodities, **3:23**
 - Public offering prohibition, **3:27**
 - Purchase of investment company securities, restrictions, **3:28**
 - Qualified institutional investors, **3:18**
 - Qualified purchasers, **3:11 to 3:14**
 - Real estate, **3:22**
 - Recent growth in private fund industry, **2:3**
 - Restrictions on purchase of investment company securities, **3:28**
 - Section 3(c)(7) exemption from definition of investment company, generally, **3:10 to 3:30**
 - Securities, **3:21**

INVESTMENT COMPANY ACT OF 1940

—Cont'd

Qualified purchaser companies—Cont'd

Trusts, **3:13**

§ D25 million, persons who own and invest, **3:14**

Unfunded capital commitments, **3:24**

Valuation of investments, **3:26**

Qualified purchasers, **3:11 to 3:14**

Qualifying U.S. persons, non-U.S. investment companies, **3:35**

Real estate, qualified purchaser companies, **3:22**

Recent growth in private fund industry, **2:3**

Recordkeeping, noncompliance with exemption, **3:54**

Redemptions, noncompliance with exemption, **3:51**

Regulation S offerings, non-U.S. investment companies, **3:36**

Reports, noncompliance with exemption, **3:55**

Repurchases and sales, noncompliance with exemption, **3:51**

Restrictions on purchase of investment company securities

Noncompliance with exemption, **3:52**

100 person funds, **3:8**

Qualified purchaser companies, **3:28**

Restrictions on transactions with affiliates, **3:53**

Sales, noncompliance with exemption, **3:51**

Section 3(b)(1) safe harbor. **Initial Public Offerings** (this index)

Section 3(c)(1) exemption. 100 person funds, above

Section 3(c)(5) securities, financing and mortgage companies, **3:39**

Section 3(c)(5)(A), financing and mortgage companies, **3:40**

Section 3(c)(5)(B), financing and mortgage companies, **3:40**

Section 3(c)(5)(C), financing and mortgage companies, **3:41**

Section 3(c)(7) exemption. Qualified purchaser companies, above

Section 6(b). Employees' securities companies, above

Section 6(e) exemption, employees' securities companies, **3:43**

Section 7(c)(5) exemption. Financing and mortgage companies, above

Section 7(d) exemption. Non-U.S. investment companies, above

Securities, definition of investments, **3:21**

Securities Act of 1933, **13:22**

Shareholder voting, noncompliance with exemption, **3:49**

Transactions with affiliates, noncompliance with exemption, **3:53**

Trusts, qualified purchaser companies, **3:13**

§ D25 million, persons who own and invest, **3:14**

Unfunded capital commitments, **3:24**

INVESTMENT COMPANY ACT OF 1940

—Cont'd

U.S. person, definition, **3:34**

U.S. private placements, integration with Regulation S offerings, **3:36**

Valuation of investments, qualified purchaser companies, **3:26**

Voting by shareholders, noncompliance with exemption, **3:49**

Web site restrictions for offshore funds, **3:37**

INVESTMENT COMPANY SECURITIES

Restrictions on purchase, Investment Company Act of 1940

Noncompliance with exemption, **3:52**

100 person funds, **3:8**

Qualified purchaser companies, **3:28**

INVESTMENTS

Defined, Investment Company Act of 1940, **3:20 to 3:25**

INVESTMENT STRATEGIES

Funds of funds, **24:18, 25:18**

Hedge funds. **Common Features of Hedge Funds** (this index)

Mezzanine funds, **24:9, 25:9**

Real estate funds, **24:12, 25:12**

Secondary funds, **24:23, 25:23**

Venture capital funds, **25:2**

Volcker Rule, high-risk assets or high-risk trading strategies, **2:12**

INVOLUNTARY TRANSFEREES

Investment Company Act of 1940, exemption, **3:17**

ISSUERS AND ASSOCIATED PERSONS

Registration, **11:12 to 11:14**

JUMPSTART OUR BUSINESS STARTUPS (JOBS) ACT

Trends in private fund industry, **2:7**

JURISDICTION

Commodity Exchange Act (this index)

Hart - Scott - Rodino Antitrust Improvement Act (this index)

Hedge fund entities, **28:10 to 28:15**

Tax Considerations (this index)

KEY PERSON EVENT

Private equity funds agreements, **16:21**

KNOWLEDGEABLE EMPLOYEES

Investment Company Act of 1940, **3:5, 3:16**

100 person funds, **3:5**

Qualified purchaser companies, **3:16**

LARGE TRADER REPORTING

Generally, **21:38 to 21:43**

Broker-dealers, obligation to provide large trader ID to, **21:42**

LARGE TRADER REPORTING—Cont'd

Filing Form 13H, **21:41**
 Foreign entities, **21:43**
 Form 13H, **21:38, 21:41**
 Identification, **21:39**
 Monitoring broker-dealers, **21:42**
 Obligation to provide large trader ID, **21:42**
 Recordkeeping, **21:42**
 Registration, **21:40**
 Reporting, generally, **21:42**

LAWYERS

Investment Advisers Act of 1940, exemption, **6:9**

LEHMAN BROTHERS HOLDINGS, INC.

Bankruptcy filing in 2008, **2:9**

LENDING

Credit and Lending (this index)

LEVERAGE

Private equity funds agreements, **16:13**

LIMITATIONS AND RESTRICTIONS

Broker-dealer trading activities, **11:23**
 100 beneficial owners. **Investment Company Act of 1940** (this index)
 Private equity fund agreement terms, investment limitations and guidelines, **16:12**
 Tax considerations, limitations on losses and deductions, **26:37 to 26:46**

LIQUIDATION PROCEEDINGS

Prime brokerage, legal rights to cash and securities, **22:25 to 22:29**

LISTS

Investment Advisers Act of 1940, use of client lists in advertising, **9:12**
 Preparation for compliance examinations, **10:8, 10:9**

LOCATE REQUIREMENTS

Short selling rules, **21:30**

LOCATION OF ASSETS

Hedge funds operated as ERISA funds, **5:51**

LOCK - UP PERIODS

Frequently negotiated terms, **20:10**

LOOK - THROUGH REQUIREMENTS

ERISA, **5:7**
 Investment Company Act of 1940, exemption, **3:6, 3:7**

LOYALTY

Designated directors, fiduciary duty, **18:26, 18:28 to 18:33**
 ERISA, fiduciary duty, **5:31**

MADOFF, BERNARD

Scandals in private fund industry, **2:14**

MANAGEMENT COMPANIES

Grant of interests in, **29:20**
 Ongoing operating businesses, **29:18 to 29:22**
 Public offering of, **29:22**
 Reasons for separate management companies, **29:16**
 Sale of, **29:21**
 Structures, **29:17, 29:19**
 Tax considerations, generally, **29:15 to 29:22**

MANAGEMENT FEES

Common features of private equity funds, **16:29**
 Hedge funds, **20:15**
 Hedge funds operated as ERISA funds, **5:44**
 Offset. **Tax Considerations** (this index)
 Private equity funds, **16:28, 16:29**

MANAGERS

Compliance examinations, interviews with senior management, **10:11**
 ERISA, VCOC exception, management rights, **5:23**
 Hedge funds operated as ERISA funds
 Appointment of fund manager as investment manager, **5:38**
 Qualified professional asset manager (QPAM) exemption, **5:40**

Initial Public Offerings (this index)

Institutional investment managers, Section 13(f) reporting. **Exchange Act** (this index)

Partnerships (this index)

Performance Manager (this index)

Statutory framework for regulation of hedge funds, **20:4**

Tax Considerations (this index)

MARGIN REGULATION

Prime Brokerage (this index)

MARKETING

Common features of private equity funds, **16:6**
 Initial public offering, Phase 3, **19:8**
 Marketing rule, general prohibitions, **9:11**

MASTER - FEEDER FUNDS

Direct investments, **28:8**
 ERISA, calculation of 25 percent limit, **5:15**
 Structuring hedge fund vehicles, **28:7, 28:8**

MASTER FUNDS

Structuring of hedge funds, **28:11**

MATERIAL CONFLICT OF INTEREST

Volcker Rule, banking entity, **2:12**

MATERIALITY

Insider trading, **21:8**

MATERIAL NONPUBLIC INFORMATION

Insider trading, **21:9**

MERGERS AND ACQUISITIONS

Beneficial Ownership (this index)

INDEX

MERGERS AND ACQUISITIONS—Cont'd

Portfolio companies. **Acquisitions of Portfolio Companies** (this index)

Recent growth in private fund industry, **2:2**

Sales of investment advisers, client and investor consent, **30:19**

MEZZANINE FUNDS

Allocations, **24:10, 25:10**

Characteristics, **24:9, 25:9**

Conflicts of interest, **24:11, 25:11**

Distribution, **24:10, 25:10**

Investment strategies, **24:9, 25:9**

Tax issues, partnership allocations, **26:22**

MINI - MASTERS

Parallel funds with mini-master, **28:9**

Structuring hedge fund vehicles, **28:9**

Structuring of hedge funds, **28:12**

MISAPPROPRIATION THEORY

Insider trading, **21:4, 21:6**

MISTAKE OR ERROR

Investment Advisers Act of 1940, corrections of trade errors, **8:15**

MIXED SWAPS

Commodity Exchange Act, scope of regulation, **4:6**

MOST FAVORED NATION

Frequently negotiated terms, **20:8**

MULTISTRATEGY FUNDS

Employee Retirement Income Security Act of 1974 (this index)

MUNICIPAL ADVISORS

Generally, **12:30, 12:31**

Placement agents, **12:31**

Private funds, **12:31**

NATIONAL FUTURES ASSOCIATION

Commodity Exchange Act, registration of CPOs and CTAs, **4:36 to 4:42**

Compliance Rule 2-50, registered CPOs, **4:35**

NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS (NRSROs)

Investment Advisers Act of 1940, exemption, **6:12**

NEGOTIATIONS

Frequently negotiated terms. **Common Features of Hedge Funds** (this index)

NET PERFORMANCE

Performance advertising, **9:16**

NEW YORK

Beneficial ownership, state antitakeover laws, **25:55**

NEW YORK SHIELD ACT

Generally, **12:17, 12:18**

NEW YORK STOCK EXCHANGE

Compliance for registered broker-dealers, NYSE members, **11:27**

NO - ACTION LETTERS

Prime brokerage, **22:10**

NO FINDINGS LETTER

Compliance examinations, **10:15**

NONCOMPLIANCE WITH EXEMPTION

Compliance (this index)

NONQUALIFIED CLIENTS

Investment Advisers Act of 1940, **9:91, 9:92**

NON - U.S. ADVISERS

Investment Advisers Act of 1940, recordkeeping, **9:73**

NON - U.S. INVESTMENT COMPANIES

Investment Company Act of 1940 (this index)

NON - U.S. INVESTORS

Tax Considerations (this index)

NON - U.S. ISSUER

HSR Act exemption, acquisition of voting securities, **25:42**

NON - U.S. POOLS

Commodity Exchange Act, exemption from registration, **4:46**

NO SHOP PROVISIONS

Acquisitions of portfolio companies, **17:15**

NOT EFFECTIVELY CONNECTED INCOME

Tax Considerations (this index)

NOTIFICATION

Blue sky laws, mechanics of notice filings, **14:3**

HSR notification form, **25:50**

Investment Advisers Act of 1940, maintenance of client's assets, **9:27**

Privacy laws and regulations, **12:9, 12:12**

OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS (OCIE)

Generally, **10:2**

OFFSETS

Common features of private equity funds, **16:29**

Tax Considerations (this index)

OFFSHORE FUNDS

Investment Company Act of 1940, web site restrictions, **3:37**

Structuring of hedge funds, **28:14**

Tax Considerations (this index)

OFFSHORE INVESTMENT ADVISERS

Investment Advisers Act of 1940, **6:29**

ONE HUNDRED BENEFICIAL OWNERS
Investment Company Act of 1940 (this index)

100 PERSON FUNDS
Investment Company Act of 1940 (this index)

ONSHORE FUNDS
Structuring of hedge funds, **28:13**

ON - SITE EXAMINATIONS
Compliance Examinations (this index)

OPT - OUT RIGHTS
Privacy laws and regulations, **12:10, 12:12**

ORDINARY COURSE OF BUSINESS
HSR Act exemption, goods or realty acquired in, **25:43**

OUTSOURCING PROPOSAL
SEC, recent proposals, **9:97**

PARALLEL FUNDS
Mini-master, **28:9**
Structuring of hedge fund vehicles, **28:6, 28:9**

PARALLEL INVESTMENT VEHICLES
Common features of private equity funds, **16:8 to 16:10**

PARTNERSHIPS
Allocations
 Basic principles, **26:16**
 Hedge fund agreement provisions, **26:23**
 Maintenance of capital account, **26:17**
 Mezzanine fund agreement provisions, **26:22**
 Private equity fund agreement provisions, **26:20**
 Private fund agreement provisions, **26:19 to 26:23**
 Real estate fund agreement provisions, **26:21**
 Shifts in capital, **26:18**
 Taxable year of transfer, allocations of partnership items, **26:26**
 U.S. Federal income tax, generally, **26:16 to 26:23**
 Venture capital fund agreement provisions, **26:22**
Beneficial ownership, Section 16 and insider trading, **25:27**
Classification of entity
 Generally, **26:2**
 Check-the-box structuring, **26:3**
 U.S. Federal income tax, **26:2, 26:3**
Distributions
 Generally, **26:12**
 Adjustments on basis of partnership assets, **26:15**
 Common features of private equity funds, **16:35, 16:36, 16:39**
 “Hot assets,” **26:13**
 Marketable securities, **26:14**

PARTNERSHIPS—Cont’d
Distributions—Cont’d
 U.S. Federal income tax, generally, **26:12 to 26:15**
GP entity, tax issues, **29:14**
Income tax. Tax considerations, below
Investment Advisers Act of 1940, contractual requirements, **9:85**
Managers of private funds
 Capital interest distinguished from profits interest, **29:6**
 Carried interest, profits interest, **29:3 to 29:10**
 General partner entity, **29:14**
 Issuance of partnership interests for services, proposed regulations, **29:10**
 Long-term capital gain treatment on carried interest allocations, **29:8**
 Management Companies (this index)
 Profits interest, **29:3 to 29:10**
 Provision of services to or for partnership in partner capacity, **29:5**
 Receipt of profits interest, **29:4 to 29:7**
 Regulations proposed on issuance of partnership interests for services, **29:10**
 Replacing management fees with profits interest, **29:9**
 Tax issues, generally, **29:3 to 29:10**
 Three-year holding period, long-term capital gain treatment on carried interest allocations, **29:8**
 Transfer of profits interest to estate planning vehicles, **29:7**
Publicly traded partnerships (PTPs)
 Generally, **26:4**
 Exempted transactions, **26:5**
 Hedge funds, **26:8**
 Private equity funds, **26:7**
 Qualifying income exemption, **26:6**
 Safe harbors, **26:5**
 Transfers of interests, **26:28**
 U.S. Federal income tax, generally, **26:4 to 26:8**
Real estate funds, strategic partners, **24:13, 25:13**
Secondary funds, general partner consent, **25:26**
Tax considerations
 Allocations, above
 Audit procedures, Bipartisan Budget Act of 2015, **26:68**
 Basis of partner’s interest in partnership, **26:11**
 Classification of entity, **26:2, 26:3**
 Contributions to partnership, **26:10**
 Distributions by partnership. Distributions, above
 Fiscal transparency, **26:9**
 Managers of private funds, above
 Publicly traded partnerships (PTPs), above
 Transfers of interest, below
 U.S. Federal income tax, generally, **26:2 to 26:29**

PARTNERSHIPS—Cont'd

Transfers of interests

- Adjustments to basis of partnership interests, **26:25**
- Effective date of transfer, **26:27**
- Gain or loss recognized by transferor partner, **26:24**
- Provisions of partnership agreement, **26:29**
- PTP issues, **26:28**
- Taxable year of transfer, allocations of partnership items, **26:26**
- U.S. Federal income tax, generally, **26:24 to 26:29**

- U.S. Federal income tax. Income tax, above
- Volcker Rule, banking entity, **2:12**

PASSIVE ACTIVITY LOSSES

- U.S. individual investors, limitation on deductibility, **26:41**

PASSIVE INVESTORS

- Beneficial ownership, filing Schedule 13D or 13G, **25:16**

PAY - TO - PLAY ARRANGEMENTS AND POLITICAL CONTRIBUTIONS

- Generally, **12:19 et seq.**
- Ban on bundling of contributions, **12:24**
- Bundling of contributions, federal ban, **12:24**
- Compliance, **12:29**
- Contributions, ban on bundling, **12:24**
- Covered investment pools, **12:26**
- Exceptions to two-year time out, **12:23**
- Federal regulation, generally, **12:21 to 12:29**
- Indirect contributions, federal restrictions, **12:27**
- Investment pools, **12:26**
- Recordkeeping, federal regulation, **12:28**
- Scandals in private fund industry, **2:14**
- Solicitations, **12:25, 12:27**
- State regulation, **12:20**
- Third parties soliciting business, **12:25**
- Two-year time out, federal regulation, **12:22, 12:23**

PENALTIES

- Foreign Corrupt Practices Act, **12:38**
- HSR Act, **25:52**
- Sales of investment advisers, failure to obtain consent, **30:25**

PENNSYLVANIA

- Beneficial ownership, state antitakeover laws, **25:56 to 25:60**

PERFORMANCE ADVERTISING

- Investment Advisers Act of 1940 (this index)

PERFORMANCE - BASED COMPENSATION

- Investment Advisers Act of 1940, nonqualified clients, **9:91**

PERFORMANCE FEES

- Hedge funds operated as ERISA funds, **5:45**
- Investment Company Act of 1940, exemption, **3:29**

PERFORMANCE MANAGER

- ERISA, appointment of fund manager as investment manager, **5:38**
- Hedge funds operated as ERISA funds
 - Appointment of fund manager as investment manager, **5:38**
 - Qualified professional asset manager (QPAM) exemption, **5:40**
- High watermark measure of performance
 - Challenges for hedge funds, **2:9**
 - Common features of hedge funds, **20:18, 20:20**
- Management fees, hedge funds operated at ERISA funds, **5:44**
- Management rights, venture capital operating company (VCOC) exception, **5:23**
- Performance fees
 - Hedge funds operated as ERISA funds, **5:45**
 - Investment Company Act of 1940, **3:29**
 - Qualified purchaser companies, **3:29**

PERIODIC WITHDRAWALS

- Frequently negotiated term, **20:11**

PERSONS WHO OWN AND INVEST \$ D25 MILLION

- Investment Company Act of 1940, exemption, **3:14**

PHYSICAL COMMODITIES

- Investment Company Act of 1940, exemption, **3:23**

PLACEMENT AGENTS

- Broker - Dealers** (this index)
- Municipal advisors, **12:31**

PLACE OR LOCATION

- Hedge funds operated as ERISA funds, asset location, **5:51**
- Investment Company Act of 1940, integration of U.S. private placements and Regulation S offerings, **3:36**
- Private Placement** (this index)
 - Short selling rules, "locate" requirements, **21:30**
 - Tax considerations, placement of blockers in private equity fund structuring, **27:12 to 27:15**

PLANS AND PLANNING

- Managing routine compliance examination, **10:18**

POLITICAL CONTRIBUTIONS

- Pay - to - Play Arrangements and Political Contributions** (this index)

POLITICAL SUBDIVISIONS

- Investment Advisers Act of 1940, exclusion from definition, **6:13**
- Municipal Advisors** (this index)

PONZI SCHEME

Scandals in private fund industry, **2:14**

POOLED ERISA VEHICLES

Calculation of 25 percent limit, **5:19**

PORTFOLIO COMPANIES

Acquisitions of Portfolio Companies (this index)

Board responsibilities, generally, **18:24**

Conflicts between fund and portfolio company, **18:21**

Director responsibilities, **18:23, 18:24**

Tax considerations, interest as not effectively connected income, **26:56**

Transparency rights, frequently negotiated terms, **20:9**

PORTFOLIO MARGINING RULES

Prime brokerage, **22:18**

POSITION LIMITS AND REPORTING

Commodity Interests (this index)

PREFERRED RETURN

Common features of private equity funds, distributions, **16:34**

PREPARATION

Compliance Examinations (this index)

Initial public offering, Phase 1, **19:6**

PRICING

Initial public offering, Phase 4, **19:9**

PRIME BROKERAGE

Generally, **22:1 to 22:30**

Basic prime broker relationship, **22:2**

Benefits of relationship, **22:4**

Credit and lending

Additional arrangements, **22:30**

Chapter 7 bankruptcy proceedings, **22:27**

Credit risk, generally, **22:23 to 22:30**

Liquidation proceeding, legal rights to cash and securities, **22:25 to 22:30**

Margin regulation, **22:14 to 22:16**

Non-U.S. liquidation proceedings, **22:28**

Orderly liquidation authority, **22:29**

Other arrangements, **22:30**

Regulation T, credit by broker-dealers for securities transactions, **22:14**

Regulation U, credit by banks and persons other than broker-dealers, **22:15**

Regulation X, borrowers of securities credit, **22:16**

SEC customer protection rules, **22:24**

Securities Investor Protection Corporation (SIPC) liquidations, **22:26**

Documentation, **22:21, 22:22**

Enhanced financing, **22:20**

Examination and enforcement, **22:9**

Exchange Act, Section 28(e) safe harbor, **22:12**

PRIME BROKERAGE—Cont'd

FINRA, **22:7**

FINRA Rule 4210, **22:17**

International prime brokerage, **22:11**

Key terms of prime brokerage agreements, **22:22**

Liquidation proceedings, legal rights to cash and securities, **22:25 to 22:30**

Margin regulation

Generally, **22:13**

Enhanced financing, **22:20**

FINRA Rule 4210, **22:17**

Participation in selling syndicates, **22:19**

Portfolio margining rules, **22:18**

Regulation T, credit by broker-dealers for securities transactions, **22:14**

Regulation U, credit by banks and persons other than broker-dealers, **22:15**

Regulation X, borrowers of securities credit, **22:16**

No-action letters, **22:10**

Portfolio margining rules, **22:18**

Prime brokerage letter, **22:10**

Records and documentation, **22:21, 22:22**

Regulation T, credit by broker-dealers for securities transactions, **22:14**

Regulation U, credit by banks and persons other than broker-dealers, **22:15**

Regulation X, borrowers of securities credit, **22:16**

Regulatory oversight

Examination and enforcement, **22:9**

FINRA, **22:7**

International prime brokerage, **22:11**

No-action letters, **22:10**

Prime brokerage letter, **22:10**

SEC role, **22:6**

SROs, **22:7**

States, **22:8**

Statutory framework, **22:5**

Safe harbor under Section 28(e) of Exchange Act, **22:12**

SEC customer protection rules, **22:24**

SEC role, **22:6**

Securities Investor Protection Corporation (SIPC) liquidations, **22:26**

Selling syndicates, participation, **22:19**

Services offered, **22:3**

Soft dollar arrangements, **22:12**

SROs, **22:7**

State regulation, **22:8**

Statutory framework, **22:5**

PRINCIPAL AND AGENCY CROSS TRANSACTIONS

Investment Advisers Act of 1940 (this index)

PRIVACY LAWS AND REGULATIONS

Generally, **12:5**

**PRIVACY LAWS AND REGULATIONS
—Cont’d**

Affiliates, restrictions on using information from, **12:11 to 12:13**
 California Consumer Privacy Act of 2018, **12:15, 12:16**
 CFTC and SEC proposed identity theft rules, **12:14**
 Compliance, **12:7 to 12:10**
 Exceptions, Regulation S-AM, **12:13**
 Exemptions, state laws and regulations, **12:16, 12:18**
 Model notice safe harbor, **12:9**
 New York SHIELD Act, **12:17, 12:18**
 Notice, **12:9, 12:12**
 Opt-out requirements, Regulation S-AM, **12:12**
 Opt-out rights, **12:10, 12:12**
 Regulation S-AM
 Affiliates, restrictions on using information from, **12:11 to 12:13**
 Exceptions, **12:13**
 Notice, **12:12**
 Opt-out requirements, **12:12**
 Regulatory framework, **12:6**
 Safeguards, **12:8**

PRIVATE FUND ADVISERS

Investment Advisers Act of 1940, exemption from registration, **6:21**
 Municipal advisors, **12:31**

**PRIVATE INVESTMENT ADVISER
EXEMPTION**

Dodd-Frank Act of 2010, **2:4, 2:11**

PRIVATE INVESTMENT FUNDS

Generally, **24:1 to 24:27**
 Allocation, **24:4, 24:10**
 Carried interest, **24:24**
 Characteristics, **24:2, 24:9, 24:12, 24:18, 24:23**
 Conflicts of interest, **24:11**
 Consent issues, **24:26**
 Distribution mechanics, **24:4, 24:10**
 Dodd-Frank exemption, advisers, **24:8**
 Drawdowns, **24:5**
 Environmental liability, **24:16**
 ERISA issues, **24:7, 24:17, 24:21**
 Expenses, **24:19, 24:24**
 Fees, **24:19, 24:24**
 Financing, **24:6, 24:15**
 Funds of funds
 Generally, **24:18 to 24:22**
 Characteristics, **24:18**
 ERISA issues, **24:21**
 Expenses, **24:19**
 Fees, **24:19**
 Investment strategies, **24:18**
 Liquidity, **24:22**
 Securities law, **24:20**
 History, **24:3**

PRIVATE INVESTMENT FUNDS—Cont’d

Investment strategies, **24:2, 24:9, 24:12, 24:18, 24:23**
 Liquidity, **24:22**
 Mezzanine funds
 Generally, **24:9 to 24:11**
 Allocation, **24:10**
 Characteristics, **24:9**
 Conflicts of interest, **24:11**
 Distribution mechanics, **24:10**
 Investment strategies, **24:9**
 Real estate funds
 Generally, **24:12 to 24:17**
 Characteristics, **24:12**
 Environmental liability, **24:16**
 ERISA issues, **24:17**
 Financing, **24:15**
 Investment strategies, **24:12**
 Strategic partners, **24:13**
 Transaction fees, affiliates, **24:14**
 Regulatory issues, **24:27**
 Risk allocation, **24:25**
 Secondary funds
 Generally, **24:23 to 24:27**
 Carried interest, **24:24**
 Characteristics, **24:23**
 Consent issues, **24:26**
 Expenses, **24:24**
 Fees, **24:24**
 Investment strategies, **24:23**
 Regulatory issues, **24:27**
 Risk allocation, **24:25**
 Securities law, **24:20**
 Strategic partners, **24:13**
 Transaction fees, affiliates, **24:14**
 Venture capital funds
 Generally, **24:2 to 24:8**
 Allocation, **24:4**
 Characteristics, **24:2**
 Distribution mechanics, **24:4**
 Dodd-Frank exemption, advisers, **24:8**
 Drawdowns, **24:5**
 ERISA issues, **24:7**
 Financing, **24:6**
 History, **24:3**
 Investment strategies, **24:2**

PRIVATE OFFERINGS INSIDE UNITED STATES

Investment Company Act of 1940, exemption, **3:33 to 3:35**

PRIVATE PLACEMENTS

Broker-dealers
 Generally, **11:26**
 Filing requirements, **11:35**
 Integration with Regulation S offerings, Investment Company Act of 1940, **3:36**

PRIVATE PLACEMENTS—Cont'd

Investment Advisers Act of 1940, pre-approval, **9:58**

Securities Act of 1933, “old style” private placements under Section 4(2), **13:4**

PRIVATE RIGHTS OF ACTION

Insider trading, **21:15**

PROHIBITIONS

Employee Retirement Income Security Act of 1974 (this index)

Exchange Act Section 16(c) prohibitions on short selling, **25:24**

General, marketing rule, **9:11**

Hart - Scott - Rodino Antitrust Improvement Act, assuming control during waiting period, **25:46**

Investment Advisers Act of 1940, misleading advertisements, **9:12**

Investment Company Act of 1940 (this index)
Regulation D, general solicitation prohibition, **13:7, 13:8**

PROTECTIVE TAX RETURNS

Tax considerations for offshore hedge fund vehicles, **28:22**

PROXIES

Hedge funds operated as ERISA funds, **5:50**

PROXY CONTESTS

Activist Investing (this index)

PROXY VOTING

Investment Advisers Act of 1940 (this index)

PRUDENCE

ERISA, fiduciary duty, **5:32**

PUBLIC COMPANIES

Directors, additional responsibilities, **18:37**

PUBLIC OFFERINGS

Broker-dealers, securities, **11:25**

PUBLIC PENSION FUND INVESTMENT

Scandals in private fund industry, **2:14**

PUBLIC REPORTS

Investment Company Act of 1940, exemption, **3:55**

PUBLISHERS

Investment Advisers Act of 1940, exclusion from definition, **6:10**

QUALIFIED INSTITUTIONAL INVESTORS

Beneficial ownership, filing Schedule 13D or 13G, **25:15**

Investment Company Act of 1940, exemption, **3:18**

QUALIFIED PROFESSIONAL ASSET MANAGER (QPAM)

ERISA, exemption, **5:40**

QUALIFIED PURCHASER COMPANIES

Investment Company Act of 1940 (this index)

QUALIFIED PURCHASERS

Investment Company Act of 1940, exemption, **2:3, 3:11 to 3:14**

QUALIFYING U.S. PERSONS

Investment Company Act of 1940, exemption, **3:35**

QUARTERLY TRANSACTION REPORTS

Investment Advisers Act of 1940, **9:55**

RATING ORGANIZATIONS

Investment Advisers Act of 1940, exemption of nationally recognized statistical rating organizations (NRSROs), **6:12**

REAL ESTATE FUNDS

Characteristics, **24:12, 25:12**

Employee Retirement Income Security Act of 1974 (this index)

Environmental liability, **24:16, 25:16**

ERISA issues, **24:17, 25:17**

Financing, **25:15**

Investment Company Act of 1940, exemption, **3:22**

Investment strategies, **24:12, 25:12**

Strategic partners, **24:13, 25:13**

Tax considerations, **27:19, 27:20**

Transaction fees to affiliates, **24:14, 25:14**

REAL ESTATE OPERATING COMPANIES (REOCs)

Employee Retirement Income Security Act of 1974 (this index)

REAL PROPERTY

HSR Act exemption, acquisition in ordinary course of business, **25:43**

Tax Considerations (this index)

RECOMMENDATIONS

Investment Advisers Act of 1940, advertising, **9:8**

RECORDKEEPING

Broker-dealers, placement agents for private funds, **11:40**

Commodity Exchange Act, CPOs and CTAs, **4:31**

Content of Offering Material (this index)

Documentation (this index)

Dodd - Frank Act of 2010 (this index)

Investment Advisers Act of 1940 (this index)

Investment Company Act of 1940, **3:54**

Large trader reporting, **21:42**

RECYCLING OF AMOUNTS

Common features of private equity funds, distributions, **16:38**

REDEMPTIONS

“Gate” provision, challenges for hedge funds, **2:9**

Investment Company Act of 1940, exemption, **3:51**

REFERRALS

Compliance examinations, enforcement referral, **10:17**

REGISTRATION

Adviser registration exemptions overturned, **2:11**
CPOs and CTAs. **Commodity Exchange Act** (this index)

Dodd - Frank Act of 2010 (this index)

Exit strategies, registration rights, **19:18**

Historical adviser registration exemptions overturned, **2:4**

Investment Advisers Act of 1940 (this index)

Investment Company Act of 1940, exemption from registration under, **1:1, 2:3**

Large trader reporting, **21:40**

SEC Hedge Fund Rule overturned, **2:4**

Securities Act of 1933, exemption from registration under, **1:1**

Securities and Exchange Commission (SEC), **2:4**

REGULATION BEST INTEREST

Generally, **11:38**

REGULATION D

Generally, **13:5**

Accredited investors, **13:6**

Amend Rule 156, **13:9**

“Bad actor” disqualification from Rule 506 offerings, **13:12**

Electronic filing, **13:11**

Form D filing, **13:11**

General solicitation prohibition, **13:7**

Integration, **13:10**

Lifting ban on general solicitation, **13:8**

Mandatory electronic filing, **13:11**

Rule 504, **13:5**

Rule 505, **13:5**

Rule 506, **13:5**

SEC proposal for disqualification of “bad actors” from Rule 506 offerings, **13:12**

REGULATION M

Short selling rules, **21:33**

REGULATION S

Additional requirements, **13:16 to 13:20**

Category 1 offerings, **13:17**

Category 2 offerings, **13:18**

Category 3 offerings, **13:19**

Compliance, **13:21**

Exemptions from registration, **13:13 to 13:22**

Investment Company Act of 1940, exemption of offerings, **3:36**

No directed selling efforts in United States, **13:15**

Offshore transactions, **13:14**

Safe harbors for offers and sales outside United States, **13:13**

Simultaneous offering in U.S. and Regulation S offering, **13:20**

REGULATION S - AM

Exceptions, **12:13**

Notice and opt-out requirements, **12:12**

Privacy, using information from affiliates, **12:11 to 12:13**

REGULATION T

Prime brokerage, credit by broker-dealers for securities transactions, **22:14**

REGULATION U

Prime brokerage, credit by banks and persons other than broker-dealers, **22:15**

REGULATION X

Prime brokerage, borrowers of securities credit, **22:16**

REGULATORY ASSETS UNDER MANAGEMENT

Investment Advisers Act registration, **7:5**

REPORTING

Broker-dealers, **11:28**

Commodity Exchange Act, CPOs and CTAs, **4:29**

Hedge funds operated as ERISA funds, reporting to DOL on Form 5500, **5:53**

Investment Advisers Act of 1940, definition of investment adviser, **6:4**

Investment Company Act of 1940, **3:55**

Large Trader Reporting (this index)

Section 13(f) reporting. **Exchange Act** (this index)

Treasury Forms (this index)

REPORT OF FOREIGN BANK AND FINANCIAL ACCOUNTS (an FBAR)

Generally, **12:43**

Compliance, **12:45**

Regulatory framework, **12:44**

REPURCHASES

Directors, special duties, **18:36**

Investment Company Act of 1940, exemption, **3:51**

REQUESTS

Compliance Examinations (this index)

RESPONSES

Compliance examinations, prompt response to deficiency letter, **10:27**

RESTRICTED SECURITIES

Exit strategy using Rule 144, **19:12 to 19:14**

RESULTS

Approval of performance results, **9:18**

RETAIL INVESTORS

Alternative investment opportunity, **2:5**

RETENTION OF BOOKS AND RECORDS

Broker-dealers, **11:29**

Investment Advisers Act of 1940, **9:71**

RETENTION OF BOOKS AND RECORDS

—Cont'd

Offering materials, **15:14**

REVERSE BREAKUP FEES

Acquisitions of portfolio companies, **17:13**

RIGHT TO ACQUIRE

Beneficial ownership, Rule 13d-3, **25:7**

RISK ALLOCATION

Consent risks. **Sales of Investment Advisers** (this index)

Secondary funds, **24:25, 25:25**

RISK DIVERSIFICATION

Demand for alternative investment opportunity, **2:5**

Funds of funds, **2:6**

RISK MANAGEMENT

Dodd-Frank Act, systemic regulation regime, **2:11**

Volcker Rule, risk weighings by financial institutions, **2:12**

RUMORMONGERING

Generally, **21:22**

FINRA regulation, **21:24**

Policies, **21:25**

SEC regulation, **21:23**

RURAL BUSINESS INVESTMENT COMPANIES

Investment Advisers Act of 1940, exemption, **6:28**

SAFEGUARDS

Privacy laws and regulations, **12:8**

SAFE HARBOR

Broker-dealers, Rule 3a4-1 safe harbor, issuers and associated persons, **11:13**

Exit strategies, Section 4(1) exemption, Rule 144, **19:12 to 19:14**

Initial Public Offerings (this index)

Prime brokerage, Section 28(e) of Exchange Act, **22:12**

Privacy, model notice safe harbor, **12:9**

Publicly traded partnerships (PTPs), **26:5**

Regulation S, **13:13**

Resales of restricted securities, exit strategy using Rule 144, **19:12**

Tax Considerations (this index)

SALES

Exit Strategies (this index)

Investment advisers. **Sales of Investment Advisers** (this index)

Investment Company Act of 1940, exemption, **3:51**

Management company as ongoing operating business, **29:21**

Regulation S, safe harbors for sales outside United States, **13:13**

SALES OF INVESTMENT ADVISERS

Generally, **30:1 to 30:35**

Adviser Act and restrictions on principal transactions, **30:13**

Assignment defined, **30:17**

Client and investor consent

Assignment defined, **30:17**

Change of control, **30:27**

Independent funds, obtaining consent, **30:23**

Manager-controlled funds, obtaining consent, **30:22**

Negative consent process, **30:24**

Obtaining consent, **30:1 to 30:25**

Penalties for failure to obtain consent, **30:25**

Public company mergers of equals, **30:19**

Regulatory issues, **30:17 to 30:34**

Regulatory issues as to requirement, **30:17 to 30:34**

Risks of client consent requirement

Allocation, generally, **30:28**

Closing condition, **30:30**

Combination provisions, **30:32**

Defining consent, **30:33**

Improper consents, liability, **30:34**

Loss of revenue, **30:28 to 30:34**

Purchase price adjustment, **30:31**

SEC staff interpretations

Obtaining consent, **30:24**

Requirement for consent, **30:18 to 30:20**

Seller considerations, **30:26**

Spin-offs of adviser subsidiaries to public shareholders, **30:20**

Terms of transaction

Implications, generally, **30:27 to 30:34**

Compliance program, **30:9**

Consent requirements. Client and investor consent, above

Control relationships. Economic and liability implications of control, below

Definitions

Assignment, **30:17**

Consent, **30:33**

Documents of fund, due diligence, **30:10**

Due diligence

Generally, **30:2**

Compliance program, **30:9**

Correspondence with regulators, **30:7**

Filings with regulators, **30:7**

Focus areas, **30:5 to 30:10**

Fund documents, **30:10**

Government investigations, **30:6**

Internal compliance reports, **30:8**

Material litigation, **30:6**

Regulatory due diligence, **30:3 to 30:10**

Relevant regulatory regimes, **30:4**

Reports of consultants, **30:8**

Terms of transaction, **30:11**

SALES OF INVESTMENT ADVISERS

—Cont’d

- Economic and liability implications of control
 - Generally, **30:12**
 - Adviser Act and restrictions on principal transactions, **30:13**
 - Determination of control, **30:15**
 - Exchange Act and control person liability, **30:14**
 - Regulatory issues, **30:12 to 30:16**
 - Terms of transactions, **30:16**
- Government investigations, **30:6**
- Independent funds, obtaining consent, **30:23**
- Internal compliance reports, **30:8**
- Manager-controlled funds, obtaining consent, **30:22**
- Material litigation and due diligence, **30:6**
- Negative consent, **30:24**
- Penalties for failure to obtain consent, **30:25**
- Post-closing items, **30:35**
- Regulatory issues
 - Client and investor consent requirements, **30:17 to 30:34**
 - Due diligence, **30:3 to 30:10**
 - Economic and liability implications of control, **30:12 to 30:16**
- Reports of consultants as to due diligence, **30:8**
- Risks of client consent. Client and investor consent, above
- SEC staff interpretations. Client and investor consent, above
- Spin-offs of adviser subsidiaries to public shareholders, **30:20**
- Terms of transaction
 - Client and investor consent, above
 - Due diligence, **30:11**
 - Economic and liability implications of control, **30:16**

SARBANES OXLEY ACT OF 2002

- Administrative costs of compliance, **2:2**

SCANDALS IN PRIVATE FUND INDUSTRY

- Bernard Madoff Ponzi scheme, **2:14**
- Insider trading, **2:14**
- Pay-to-play, **2:14**
- Public pension fund investment, “pay-to-play,” **2:14**

SCHEDULES 13D AND 13G

- Activist investing, **23:6**
- Beneficial ownership, **25:13 to 25:17**

SCIENTER

- Insider trading, **21:10**

SEASON AND SELL ARRANGEMENTS

- Tax considerations for offshore hedge fund vehicles, **28:20**

SECONDARY FUNDS

- Carried interest, **24:24, 25:24**
- Characteristics, **24:23, 25:23**
- Expenses, **24:24, 25:24**
- Fees, **24:24, 25:24**
- General partner consent, **25:26**
- Investment strategies, **24:23, 25:23**
- Regulations, **24:27, 25:27**
- Risk allocation, **24:25, 25:25**

SECTION 3(c)(1) EXEMPTION

- 100 person funds. **Investment Company Act of 1940** (this index)

SECTION 3(c)(7) EXEMPTION

- Qualified purchaser companies. **Investment Company Act of 1940** (this index)

SECTION 4(1) OF SECURITIES ACT

- Exit strategies, **19:11**

SECTION 6(b)

- Employees’ securities companies. **Investment Company Act of 1940** (this index)

SECTION 7(c)(5) EXEMPTION

- Financing and mortgage companies. **Investment Company Act of 1940** (this index)

SECTION 7(d) EXEMPTION

- Non - U.S. investment companies. **Investment Company Act of 1940** (this index)

SECTION 13(f) REPORTING

- Exchange Act** (this index)

SECURITIES

- Definition of investments, **Investment Company Act of 1940, 3:21**
- Prime brokerage, legal rights to securities in liquidation proceeding, **22:25 to 22:29**

SECURITIES ACT OF 1933

- Generally, **13:1 to 13:21**
- Antifraud provisions, content of offering material, **15:5**
- Exemptions from registration
 - Generally, **1:1, 13:3**
 - “Old style” private placements under Section 4(2), **13:4**
 - Regulation D, below
 - Rule 144 safe harbor for Section 4(1) exemption, **19:12 to 19:14**
 - “Section 4(10189),” **19:15**
 - Section 4(a)(1) of Act, **19:11**
 - Section 4(2), **13:4**
 - Transactional exemption, **19:11**
- Exit strategies
 - Rule 144
 - Determination that investor is affiliate, **19:14**
 - Safe harbor for resales, **19:12**

SECURITIES ACT OF 1933—Cont'd

Exit strategies—Cont'd

Rule 144—Cont'd

Sales by nonaffiliates and affiliates, **19:13**

Rule 144A, safe harbor for “qualified institutional buyers,” **19:16**

“Section 4(10189),” **19:15**

Section 4(a)(1) of Securities Act, **19:11**

Transactional exemption, **19:11**

Initial public offerings, indirect offering, Rule 140, **31:14**

Investment Company Act of 1940, **13:22**

Private fund offerings regulation, generally, **13:1 to 13:21**

Regulation D

Generally, **13:5**

Accredited investors, **13:6**

Amend rule 156, **13:9**

“Bad actor” disqualification from Rule 506 offerings, **13:12**

Electronic filing, **13:11**

Form D filing, **13:11**

General solicitation prohibition, **13:7**

Integration, **13:10**

Lifting ban on general solicitation, **13:8**

Mandatory electronic filing, **13:11**

Rule 504, **13:5**

Rule 505, **13:5**

Rule 506, **13:5**

SEC proposal for disqualification of “bad actors” from Rule 506 offerings, **13:12**

Regulation S

Additional requirements, **13:16 to 13:20**

Category 1 offerings, **13:17**

Category 2 offerings, **13:18**

Category 3 offerings, **13:19**

Compliance, **13:21**

Exemptions from registration, **13:13 to 13:22**

No directed selling efforts in United States, **13:15**

Offshore transactions, **13:14**

Safe harbors for offers and sales outside United States, **13:13**

Simultaneous offering in U.S. and Regulation S offering, **13:20**

Regulatory framework, **13:2**

Restricted securities, exit strategy using Rule 144, **19:12 to 19:14**

Rule 144. Exit strategies, above

Safe harbor

Exit strategies, Section 4(1) exemption, Rule 144, **19:12 to 19:14**

Regulation S, **13:13**

Section 4(1) of Act, exit strategies, **19:11**

Section 17(a) antifraud provisions, content of offering material, **15:5**

SECURITIES AND EXCHANGE

COMMISSION (SEC)

Adviser exemptions overturned, **2:4, 2:11**

Compliance Examinations (this index)

Custody rule, recent proposals, **9:96**

Dodd - Frank Act of 2010 (this index)

ESG disclosure, recent proposals, **9:95**

Goldstein v SEC, overthrow of Hedge Fund Rule, **2:4**

Hedge Fund Rule overturned, **2:4**

Initial public offerings

Defense of own investment company analysis of private fund managers, **31:12**

Phase 2, SEC review, **19:7**

Investment Advisers Act of 1940 (this index)

Outsourcing, recent proposals, **9:97**

Prime brokerage, **22:6, 22:24**

Privacy laws and regulations, proposed identity theft rules, **12:14**

Private fund adviser rule, recent proposals, **9:94**

Private fund legal considerations, **1:2**

Private investment adviser exemption overturned, **2:4, 2:11**

Recent proposals

Custody rule, **9:96**

ESG disclosure, **9:95**

Outsourcing, **9:97**

Private fund adviser rule, **9:94**

Registration

Adviser exemptions overturned, **2:11**

Hedge Fund Rule overturned, **2:4**

Historical adviser exemptions overturned, **2:4**

Investment Advisers Act of 1940 (this index)

Rumormongering, regulation, **21:23**

Sales of Investment Advisers (this index)

Statements, SEC review, **9:18**

SECURITIES EXCHANGE ACT OF 1934

Exchange Act (this index)

SECURITIES INVESTOR PROTECTION

CORPORATION (SIPC) LIQUIDATIONS

Prime brokerage, **22:26**

SELF REGULATED ORGANIZATIONS

(SROs)

Prime brokerage, **22:7**

SEPARATE CLASS OF EQUITY INTERESTS

ERISA, 25 percent exception, **5:11**

SHAD - JOHNSON JURISDICTIONAL

ACCORD

Commodity Exchange Act, **4:4**

SHAREHOLDER AGREEMENTS

Coinvesting and club deals, pre-signing considerations, **18:17**

SHAREHOLDER RIGHTS

Poison Pills (this index)

SHAREHOLDER VOTING

Investment Company Act of 1940, exemption, **3:49**

SHORT SELLING RULES

Generally, **21:26**

“Close-out” requirements, **21:30**

Controversy, **21:27**

Deceptive short selling, **21:31**

“Locate” requirements, **21:30**

Order marking requirements, **21:29**

Proposed rules, **21:32**

Regulation, **21:28 to 21:33**

Regulation M, **21:33**

Reporting, **21:32**

Securities lending transactions, reporting, **21:32**

Short positions, reporting, **21:32**

SIDE LETTERS

Common features of private equity funds, **16:40**

SIDE POCKET INVESTMENTS

Common strategies, **20:6**

SIGNATURES

Coinvesting and club deals, initial considerations, **18:16**

SMALL BUSINESS INVESTMENT COMPANIES

Investment Advisers Act of 1940, exemption, **6:27**

SMALL POOL OPERATOR

Commodity Exchange Act registration, exemption, **4:44**

SOFT DOLLAR ARRANGEMENTS

Hedge funds operated as ERISA funds, **5:49**

Investment Advisers Act of 1940, fiduciary duties, **8:4 to 8:14**

Prime brokerage, **22:12**

SOLICITORS AND SOLICITATION

Investment Advisers Act of 1940 (this index)

Regulation D, general solicitation prohibition, **13:7, 13:8**

SOPHISTICATED INVESTOR

Investment Advisers Act of 1940, fees, **9:89 to 9:92**

SOVEREIGN WEALTH FUNDS

Demand for alternative investment opportunity, **2:5**

SPONSORSHIP

Volcker Rule, banking entity, **2:12**

STATE GOVERNMENTS

Investment Advisers Act of 1940, exclusion, **6:13**

STATE LAWS AND REGULATIONS

Activist investing, **23:10**

Antitakeover laws tied to beneficial ownership.

Beneficial Ownership (this index)

Blue Sky Laws (this index)

STATE LAWS AND REGULATIONS—Cont’d

Broker - Dealers (this index)

Dodd-Frank Act, regulatory burden for smaller advisers to states, **2:11**

Investment Advisers Act of 1940, registration, **6:17**

Pay-to-play arrangements and political contributions, **12:20**

Privacy laws and regulations

Generally, **12:15 to 12:19**

California Consumer Privacy Act of 2018, **12:15, 12:16**

Exemptions, **12:16, 12:18**

New York SHIELD Act, **12:17, 12:18**

STATEMENTS

Quarterly account, reports to clients, **9:29**

SEC review, performance advertising, **9:18**

STATUTES

Bank Holding Company Act / Gramm - Leach - Bliley Act, **17:8**

Commodity Exchange Act of 1936, **4:4**

Commodity Exchange Act (this index)

Commodity Futures Trading Commission Act of 1974, **4:4**

Dodd - Frank Act of 2010 (this index)

Employee Retirement Income Security Act of 1974 (this index)

Exchange Act (this index)

Foreign Corrupt Practices Act (this index)

Foreign Investment in Real Property Tax Act (FIRPTA), **26:50**

Freedom of Information Act, compliance examinations, **10:24**

Futures Trading Practices Act of 1992, **4:5**

Hart - Scott - Rodino Act, **17:6**

Hart - Scott - Rodino Antitrust Improvements Act of 1976 (this index)

Hedge funds, statutory framework for regulation of funds and fund managers, **20:4**

Investment Advisers Act of 1940 (this index)

Investment Company Act of 1940 (this index)

Prime brokerage, **22:5**

Securities Act of 1933 (this index)

STRATEGIES

Common Features of Hedge Funds (this index)

Exit Strategies (this index)

Investment Strategies (this index)

Multistrategy funds. **Employee Retirement Income Security Act of 1974** (this index)

STRUCTURING OF FUND

Funds of funds, **28:15**

Hedge funds

Generally, **28:1 to 28:24**

Common features, **20:3**

Funds of funds, **28:15**

Master fund, **28:11**

STRUCTURING OF FUND—Cont'd

Hedge funds—Cont'd

- Mini-master, **28:12**
- Non-U.S. investors, **28:5**
- Offshore fund, **28:14**
- Onshore fund, **28:13**
- Organization of fund entities, **28:10 to 28:15**
- Tax Considerations** (this index)
- Types of investors, **28:2 to 28:5**
- U.S. taxable investors, **28:3**
- U.S. tax exempt investors, **28:4**

Hedge fund vehicles

- Master-feeder fund structure, **28:7**
- Master-feeder structure with direct investments, **28:8**
- Offshore vehicles. **Tax Considerations** (this index)
- Parallel fund structure, **28:6**
- Parallel funds with mini-master, **28:9**

Jurisdiction and form of organization of hedge fund entities, **28:10 to 28:15**

Master-feeder fund structure, **28:7**

Master-feeder structure with direct investments, **28:8**

Master fund, **28:11**

Mini-master, **28:12**

Non-U.S. investors, hedge fund, **28:5**

Offshore funds

- Hedge funds, **28:14**
- Tax Considerations** (this index)

Onshore hedge funds, **28:13**

Organization of hedge fund entities

- Generally, **28:10**
- Funds of funds, **28:15**
- Hedge funds, **28:10 to 28:15**
- Master fund, **28:11**
- Mini-master, **28:12**
- Offshore fund, **28:14**
- Onshore fund, **28:13**

Parallel fund structure, hedge fund vehicles, **28:6**

Parallel funds with mini-master, hedge fund vehicles, **28:9**

Private equity funds

- Common features, **16:5**
- Tax Considerations** (this index)

Tax Considerations (this index)

Types of investors, **28:2 to 28:5**

U.S. taxable investors, **28:3**

U.S. tax exempt investors, **28:4**

SUPERVISION AND SUPERVISORY RESPONSIBILITY

Broker - Dealers (this index)

Dodd-Frank Act of 2010, financial supervision trends in private fund industry, **2:11**

Investment Advisers Act of 1940, registered investment advisers, **9:65**

SUPPLEMENTARY MATERIAL

Investment Advisers Act of 1940, Part 2B of Form ADV, **7:9**

SWAPS

Commodity Exchange Act (this index)

Commodity Interests (this index)

Not effectively connected income, **26:60**

Offshore hedge fund vehicles, **28:19**

SWEEP EXAMINATIONS

Compliance examinations, **10:6**

SYSTEMIC REGULATION REGIME

Dodd-Frank Act of 2010, **2:11**

TAKEOVERS

Antitakeover laws tied to beneficial ownership.

Beneficial Ownership (this index)

TAX CONSIDERATIONS

Generally, **26:1 to 26:69**

At-risk rules, **26:39**

Audit procedures, partnerships, Bipartisan Budget Act of 2015, **26:68**

Basic limitation and at-risk rules, U.S. individual investors, **26:39**

Blockers

Offshore hedge fund vehicles, **28:19**

Private equity fund structuring, below

Business development companies, **28:21**

Business interest, limitation on deductibility, **26:44**

Capital losses, limitation on deductibility, **26:38**

Common reporting standard, **26:66**

Conduct of trade or business, **26:30**

Controlled foreign corporations, investments in, **26:34**

Deferral or capitalization of losses and deductions, **26:46**

Dividends-received deduction, **26:35**

Effectively connected income

Distressed debt, **26:54**

FIRPTA, **26:50**

Loan origination issues, **26:53**

Non-U.S. partners conducting U.S. trade or business, **26:51**

Not effectively connected income, below

Private equity fund structuring, use of special-purpose entities as blockers, **27:11**

Trade or business in U.S., generally, **26:49**

Trading safe harbor, **26:52**

Excess business losses, limitation on deductibility, **26:42**

FATCA

Generally, **26:63**

Intergovernmental agreements, **26:64**

Payments subject to FATC withholding, **26:65**

U.S. persons using offshore investments to evade federal income tax, **26:63 to 26:67**

TAX CONSIDERATIONS—Cont'd

Fixed or determinable annual or periodical income,
not effectively connected, **26:55, 26:59**
Foreign government investments, **26:67**
Foreign income, transition tax, **26:35**
Foreign Investment in Real Property Tax Act,
effectively connected income, **26:50**
Hedge fund structuring
Offshore hedge fund vehicles, below
U.S. taxable investors, **28:3**
U.S. tax exempt investors, **28:4**
Income tax, U.S. persons using offshore invest-
ments to evade (FATCA), **26:63 to 26:67**
Individual investors. U.S. individual investors,
below
Investment interest, limitation on deductibility,
26:43
Jurisdiction and organization
Non-tax structuring considerations, **26:69**
Private equity fund structuring, blocker's juris-
diction of organization, **27:16 to 27:18**
Legislation, offshore hedge fund vehicles, **28:24**
Limitations on losses and deductions, **26:37 to**
26:46
Long-term capital gains, **26:31**
Management Companies (this index)
Management fee offsets
U.S. tax-exempt investors and UBTI, **27:8**
Managers of private funds
Generally, **29:1 to 29:22**
Compensation, generally, **29:2**
Deferred compensation plans, Section 457A,
29:13
Fee deferral arrangements, **29:12**
Incentive fees, **29:11 to 29:13**
Management Companies (this index)
Partnerships (this index)
Non-tax structuring considerations, **26:69**
Non-U.S. investors
Generally, **26:48**
Private equity fund structuring, below
Not effectively connected income
Assets other than real property, **26:57**
Disposition of assets other than real property,
26:57
FDAP income, **26:55, 26:59**
Gain from disposition of assets other than real
property, **26:57**
Income derived from real property, elections,
26:58
Portfolio interest, **26:56**
Real property, **26:58**
Source of FDAP income, **26:59**
Swaps, **26:60**
Treaties, reduction of withholding tax, **26:62**
Withholding agent, **26:61**
Offset of management fees
U.S. tax-exempt investors and UBTI, **27:8**

TAX CONSIDERATIONS—Cont'd

Offshore hedge fund vehicles
Avoiding effectively connected income, **28:17**
to 28:21
Blockers, **28:19**
Business development companies, **28:21**
Income avoidance, **28:17 to 28:21**
Legislation proposed, **28:24**
Offshore hedge fund vehicles, generally, **28:16**
to 28:24
"Protective" tax returns, **28:22**
Season and sell arrangements, **28:20**
Swaps, **28:19**
Trading safe harbor, **28:18**
Withholding tax on U.S. source FDAP income,
28:23
Organization expenses, limitation on capitalization,
26:45
Partnerships (this index)
Passive activity losses, limitation on deductibility,
26:41
Phantom income, **26:33**
Private equity fund structuring
Generally, **27:1 to 27:23**
Blockers
Above structure placement, **27:14**
Below structure placement, **27:13**
Effectively connected income, use of
special-purpose entities, **27:11**
Jurisdiction of organization, **27:16 to 27:18**
Organization in U.S., jurisdiction, **27:16**
Organization outside U.S., jurisdiction,
27:17
Placement in fund structure, **27:12 to 27:15**
Unrelated business taxable income (UBTI),
use of special-purpose entities, **27:11**
USRPHC investments, jurisdiction, **27:18**
VCOs, **27:15**
Controlled foreign corporations, investments by
U.S. persons in CFCs, **27:3**
Effectively connected income, use of special-
purpose entities as blockers, **27:11**
Fund vehicles, **27:2**
Management fee offsets
U.S. tax-exempt investors and UBTI, **27:8**
Non-U.S. investors
Generally, **27:9**
Operating partnerships, investments in,
27:10
Real estate funds, **27:20**
Real estate funds
Non-U.S. investors, **27:20**
U.S. tax-exempt investors, **27:19**
Real property holding companies
Blockers for investments in USRPHCs,
27:18
Undertakings in fund agreements
Generally, **27:21**

TAX CONSIDERATIONS—Cont'd

Private equity fund structuring—Cont'd

Undertakings in fund agreements—Cont'd

Effectively connected income, **27:22**

Investments outside U.S., **27:23**

UBTI, **27:22**

Unrelated business taxable income (UBTI), **27:22**

Unrelated business taxable income (UBTI)

Blockers, use of special-purpose entities, **27:11**

Undertakings in fund agreements, **27:22**

U.S. tax-exempt investors, **27:4 to 27:8**

U.S. persons in CFCs, minimizing effect of rules on investments, **27:3**

U.S. tax-exempt investors

Avoiding recognition of UBTI

Generally, **27:4**

Borrowings, **27:7**

Guarantees, **27:7**

Management fee offsets, **27:8**

Operating partnerships, investments in, **27:5**

Subpart F insurance income, **27:6**

Real estate funds, **27:19**

“Protective” tax returns, offshore hedge fund vehicles, **28:22**

Qualified business income, **26:32**

Qualified dividend income, **26:31**

Real estate funds, private equity fund structuring, **27:19, 27:20**

Real property

Foreign Investment in Real Property Tax Act, effectively connected income, **26:50**

Not effectively connected income, **26:58**

Safe harbor

Offshore hedge fund vehicles, **28:18**

Publicly traded partnerships (PTPs), **26:5**

Season and sell arrangements, offshore hedge fund vehicles, **28:20**

Structuring

Hedge fund structuring, above

Income tax, non-tax structuring considerations, **26:69**

Partnerships, check-the-box structuring, **26:3**

Private equity fund structuring, above

Swaps

Not effectively connected income, **26:60**

Offshore hedge fund vehicles, **28:19**

Syndication expenses, limitation on capitalization, **26:45**

Trade or business

Conduct, **26:30**

Effectively connected income, above

Not effectively connected income, above

Transition tax, **26:35**

Unrelated business taxable income (UBTI). Private equity fund structuring, above

TAX CONSIDERATIONS—Cont'd

U.S. individual investors

Generally, **26:31 to 26:46**

At-risk rules, **26:39**

Basic limitation and at-risk rules, **26:39**

Business interest, limitation on deductibility, **26:44**

Capital losses, limitation on deductibility, **26:38**

Controlled foreign corporations, investments in, **26:34**

Deferral or capitalization of losses and deductions, **26:46**

Dividends-received deduction, **26:35**

Excess business losses, limitation on deductibility, **26:42**

Foreign income, transition tax, **26:35**

Investment interest, limitation on deductibility, **26:43**

Limitations on losses and deductions, **26:37 to 26:46**

Long-term capital gains, **26:31**

Miscellaneous itemized deductions, limitations, **26:40**

Organization expenses, limitation on capitalization, **26:45**

Partnership losses, limitations, **26:39**

Passive activity losses, limitation on deductibility, **26:41**

Passive foreign investment companies, investments in, **26:36**

Phantom income, **26:33**

Qualified business income, **26:32**

Qualified dividend income, **26:31**

Syndication expenses, limitation on capitalization, **26:45**

Transition tax, **26:35**

U.S. tax-exempt investors

Generally, **26:47**

Private equity fund structuring, above

Withholding tax

Not effectively connected income, treaty-based reduction of tax, **26:62**

Offshore hedge fund vehicles, U.S. source FDAP income, **28:23**

TEACHERS

Investment Advisers Act of 1940, exclusion, **6:9**

TEAMS

Compliance examination team, **10:10**

TENDER OFFERS

Hedge funds operated as ERISA funds, **5:50**

Insider trading, **21:11**

TERMS OF AGREEMENTS

Common Features of Private Equity Funds (this index)

TERMS OF TRANSACTION

Sales of Investment Advisers (this index)

TESTIMONIALS

Investment Advisers Act of 1940, advertising, **9:6, 9:7**

Social media, advertising, **9:7**

THIRD PARTIES

Investment Advisers Act of 1940, recordkeeping, **9:74**

TIMING

Compliance examinations, **10:18, 10:26, 10:27**

ERISA VCOC exception, satisfaction of 50 percent of assets test, **5:21**

Insider Trading (this index)

Prescribed time periods, performance advertising, **9:17**

Waiting period. **Hart - Scott - Rodino Antitrust Improvements Act of 1976** (this index)

TIPPING

Insider trading, **21:7**

TRADE ALLOCATIONS

Hedge funds operated as ERISA funds, **5:47**

TRADERS

Registration, **11:6**

TRADING ACTIVITIES

Broker - Dealers (this index)

Commodity Interests (this index)

Commodity trading advisors. **Commodity Exchange Act** (this index)

Corrections of trade errors, Investment Advisers Act of 1940, **8:15**

Employee personal trading procedures. **Investment Advisers Act of 1940** (this index)

Hedge funds, common trading considerations
Generally, **21:1**

Commodity Interests (this index)

Insider Trading (this index)

Section 13(f) reporting. **Exchange Act** (this index)

Insider Trading (this index)

Rumormongering (this index)

Section 13(f) reporting. **Exchange Act** (this index)

Short Selling Rules (this index)

TRANSACTION FEES

Common features of private equity funds, **16:30**

Real estate funds, transaction fees to affiliates, **24:14, 25:14**

TRANSFERS OF INTERESTS

Partnerships (this index)

TRANSPARENCY

Advising private funds, European chapter, alternative investment fund managers directive, **32:10**

TRANSPARENCY RIGHTS

Frequently negotiated terms, **20:9**

TREASURY AMENDMENT PRODUCTS

Commodity Exchange Act, exclusion of certain banking-related products, **4:11**

TREASURY FORMS

Generally, **12:46 to 12:55**

BEA Forms, reporting on

Form BE-10, **12:53**

Form BE-13, **12:54**

TFC Forms, reporting on

Form FC-1, **12:52**

Form FC-2, **12:52**

Form FC-3, **12:52**

TIC Forms, reporting on

Form B, **12:47**

Form C, **12:47**

Form D, **12:48**

Form S, **12:49**

Form SHC/SHCA, **12:50**

Form SHL/SHLA, **12:50**

Form SLT, **12:51**

TRENDS IN PRIVATE FUND INDUSTRY

Generally, **2:1 to 2:18**

Alternate investment fund managers directive (AIFMD), **2:13**

Challenges, **2:8 to 2:13, 2:15**

Current prospects, **2:18**

Dodd - Frank Act of 2010 (this index)

Hedge funds, **2:9, 2:16**

Hedge funds, regulatory scrutiny, **2:16**

Historical perspective, **2:1**

JOBS Act, **2:7**

Private equity funds, **2:10, 2:17**

Private funds, **2:15, 2:17**

Recent growth, **2:2 to 2:6**

Scandals, **2:14**

TRUSTS

Investment Company Act of 1940, exemption, **3:13**

25 MILLION DOLLARS

Persons who own and invest, exemptions under Investment Company Act of 1940, **3:14**

25 PERCENT EXCEPTION

Employee Retirement Income Security Act of 1974 (this index)

TWO - YEAR TIME OUT

Pay-to-play arrangements and political contributions, **12:22, 12:23**

UNCOMPENSATED POOL OPERATORS

Commodity Exchange Act registration, exemption, **4:45**

UNFUNDED CAPITAL COMMITMENTS

Investment Company Act of 1940, exemption, **3:24**

UNRELATED BUSINESS TAXABLE INCOME (UBTI)

Tax Considerations (this index)

UPDATES AND UPDATING

Form ADV, **7:11, 7:13**

U.S. PERSON

Defined, Investment Company Act of 1940, **3:34**

VALUATION OF INVESTMENTS

Hedge funds, generally, **20:22, 20:23**

Investment Company Act of 1940, qualified purchaser companies, **3:26**

Private equity funds, valuation as fund agreement term, **16:23**

VENTURE CAPITAL FUND ADVISERS

Investment Advisers Act of 1940, exemption from registration requirements, **6:20**

VENTURE CAPITAL FUNDS

Allocation, **25:4**

Characteristics, **25:2**

Distribution, **25:4**

Dodd-Frank exemption for advisers, **25:8**

Drawdowns, **25:5**

ERISA issues, **25:7**

Financing, **25:6**

Historical perspective, **25:3**

Investment strategies, **25:2**

Private Investment Funds (this index)

VENTURE CAPITAL INVESTMENT

Defined, **5:22**

VENTURE CAPITAL OPERATING COMPANY (VCOC)

Employee Retirement Income Security Act of 1974 (this index)

VENTURE CAPITAL OPERATING COMPANY (VCOC)—Cont'd

Tax considerations in private equity fund structuring, blockers, **27:15**

VETO RIGHTS

Directors and duty of loyalty, **18:32**

VISIT COORDINATOR

Compliance examinations, **10:19**

VOLCKER RULE

Dodd-Frank Act of 2010, **2:12**

Trends in private fund industry, **2:12**

VOTING

Beneficial ownership, Rule 13d-3, **25:3 to 25:6**

Investment Company Act of 1940, exemption, voting by shareholder, **3:49**

Proxy voting. **Investment Advisers Act of 1940** (this index)

VOTING SECURITIES

HSR Act, **25:31, 25:33, 25:42**

WAIVERS

Common features of private equity funds, waivers of fees and expenses, **16:29**

WEB SITE

Restrictions for offshore funds, Investment Company Act of 1940, **3:37**

WITHDRAWALS

Hedge funds operated as ERISA funds, **5:39**

Periodic withdrawals as frequently negotiated term, **20:11**

Private equity funds agreements, **16:24**

WITHHOLDING TAX

Not effectively connected income, treaty-based reduction of tax, **26:62**

Offshore hedge fund vehicles, U.S. source FDAP income, **28:23**

WOLF - PACKING

Activist investing, disclosure, **23:4**