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Securities Regulation of Private Funds (with No Futures Element)

Privately Offered Funds Relying on Regulation D Rule 506

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Law and Issue

1933 Securities Act (Securities Registration or Exemption); Filing Requirement

Securities Fund

Legal Requirements, Exemptions & Suggested Action

Regulation D Rule 506 Exemption from registration. File Form D with Securities & Exchange Commission to claim Private Offering exemption. Offering must comply with the restriction on general solicitation, which forbids advertising, cold-calling, marketing on websites or by emails, to people you don't previously know. Unlimited accredited investors, 35 nonaccredited investors. Audited financials and full disclosure book required for nonaccredited investors.

Futures Funds: 1933 Act applies, because fund is offering a pooled interest, which is deemed a security.

Disclosure Document: Offering Memo under the Securities 33 Act (Reg D) and Rule 10b-5

Offering Memo (Disclosure Document) Required, under 10b-5 (Antifraud) provisions of 1933 and 1934 Acts. Even private fund, exempt from SEC *registration*, is not exempt from *disclosure*. Therefore, fund must prepare a full Disclosure Document / Offering Memo, for investors, before they invest. Contents dictated by Reg D Rule 502.

Financial Statement Requirements

Unaudited Opening Balance Sheet. Unaudited Continuing Financials if all investors accredited. *Audited* Opening Balance Sheet Required for New Fund if nonaccredited investors. Audited Continuing Financials if nonaccredited investors.

Blue Sky (State Securities Law) – State Registration of Fund

Form D Notice Filing Required + Other Documents + Filing Fees in Each State (Filing Fees Range From \$75 to \$985, average is \$200-\$300 per state. Legal fees \$500 per state.

1940 Act (Investment Company Act – Registration of Exemption)

Exemptions:

- § 3(c)(1): Limit of 100 accredited investors, or
- §3(c)(7): Limit of 500 Qualified Purchasers, or
- §3(b)(1) exemption for Commodity Pools

Qualified Purchaser is an Investor who owns \$5 million in investments or manages \$25 million in investments for self and others.

State Investment Company – Blue Sky

None

1934 Exchange Act – Broker-Dealer Registration

- **Broker-Dealer Registration, or**
- **Issuer-Dealer Registration or Exemption**

- Use a registered broker-dealer to market or sell Fund Interests (including your prime broker), or
- If not using a registered broker, rely on federal Rule 3(a)(4)-1 for an exemption from broker-dealer registration for officers of the issuer. Officer cannot be involved in offerings of any other issuers; receives no commissions, has not been involved in the last 12 months in any other offering, or
- Register the officer with the NASD, if person will be receiving compensation, commissions, finders fees, stock for bringing investors into the Fund. Series 7 Exam, U-4, Fingerprint cards. No bonding or net capital required.

State Broker-Dealer , or Issuer- Dealer, Registrations or Exemptions

- Use registered broker-dealer,
- Register any employee of the Issuer as an “agent of the Issuer” (Series 7 and 63 Exams required), U-4, some states require fingerprint cards, or
- Rely on state Issuer-Dealer Exemptions for Officers or Directors of the Issuer, who are not taking any fees for brining in investors. A few states have such exemptions. States which do not have exemptions are CT, NH, VT, FL, among others. Illinois exemption at §2.

**Investment Adviser’s Act of 1940:
*Applies to entities, or fund managers, who manage more than 1 fund, or who advise investors in which fund to invest.***

Principals take Series 66 Exam (or has previous Series 65). Manager Files Form ADV with SEC on IARD electronic system, to register as investment adviser. SEC will audit Adviser once every 3 years, unless facts determine more frequent audit. Solid ADV disclosure, fund disclosure, trading compliance manual and AML compliance manual, will streamline the audit.

State Investment Adviser Registration

Simple electronic notifications (and small fees) required in states where Manager resides, and perhaps in states where fund clients reside (though not all states require notices where fund clients reside).

U.S. Patriot Act. *Applies to funds accepting \$ from non-U.S. investors.*

Fund manager must implement, and follow, Anti-Money Laundering Procedures, Compliance and Certifications by non-US investors, banks, brokers, others.