EisnerAmper LLP
Accountants and Advisors

www.eisneramper.com

November 2015

Asset Management Intelligence

A publication from The Financial Services Group

Cayman and Ireland — The Domiciles of Choice for U.S. Hedge Fund Managers

EisnerAmper Cayman recently joined the EisnerAmper Global Network as a founding member.

To mark this occasion we invited Ben Leung, Managing Partner of EisnerAmper Cayman, and Ray Kelly, Head of Funds in EisnerAmper Ireland, to discuss why U.S. hedge fund managers continue to view Ireland and Cayman as the domiciles of choice for their fund products.

They were joined in this discussion by John D'Agostino of DMS New York and Conor MacGuinness of DMS Dublin. For the last decade, DMS Offshore has been the recognized leader in fund governance. That expertise is now augmented by a comprehensive range of complementary services, making DMS an authentic one-stop shop for navigating the world of offshore investing and understanding the challenges faced by U.S. managers in choosing an appropriate domicile for their fund products.

Q1: It has been a difficult period for hedge funds since the financial crisis. How has this impacted the number of fund managers establishing funds in Cayman and Ireland?

Conor MacGuinness: Investor demand for European products and the strong brand image of these funds, particularly Undertakings for Collective Investment in Transferable Securities ("UCITS") and more recently Alternative Investment Funds ("AIFs"), has kept demand for Irish products growing in recent years. While performance of funds and outflows in the form of redemptions were an issue in Europe and elsewhere, investors continue to value the benefits of investor protection they obtain through the regulations in place on both the fund and the investment managers in the European context.

Ray Kelly: The statistics produced by the Central Bank of Ireland support Conor's view that Ireland, as a regulated fund domicile, has benefited from investors' increased focus on regulatory protection. Since the low of 2009 the total number of Irish domiciled funds, including both UCITS and AIFs, has increased from 4,627 to 5,999 as of July 2015, with a related increase in net assets from 748 billion to 1,896 billion.

Ben Leung: Despite the Cayman Islands being one of the leaders in the offshore mutual funds industry, it was not shielded from the effects of the financial crisis in 2008. During the period 2007 to 2015, Cayman Islands Monetary Authority ("CIMA") registered mutual funds moved from 9,231 (2008) to 7,795 (2015).

However activity is recovering in recent years with 1,891 registered master funds in 2012 increasing to 2,773 by June 30, 2015. The latest CIMA statistics show net asset values of regulated funds near the 2007 levels at $2,127 trillion.

John D'Agostino: Cayman will continue to benefit from its historical position as a globally respected offshore fund domicile, aided by its evolving oversight that is keeping up with the shift in global regulations. The number of fund managers setting up in Cayman will, by consequence, ebb and flow with the overall number of fund launches globally. Ireland's success appears to be a function of its strong competitive positioning relative to other EU domicile options. It is clear Dublin wants to be the

> "U.S. managers looking to access the global capital opportunities now emerging need to consider the requirements of their target investors. For some investors, an Irish AIF or UCITS will be the right fit given their distribution capabilities and regulatory wrapper while for other investors the Cayman Fund continues to work well."

location of choice for managers who have a focus on the EEA, and in that respect it is doing a great job.

Q2: What are the main reasons that Ireland and Cayman continue to be leading fund domiciles for U.S. Managers?

CMG: There are considerable commercial and cultural similarities between Ireland and the U.S. With a shared language and a shared service culture, along with many of the leading financial service providers operating on both sides of the Atlantic, operating an Irish domiciled fund is easily within reach for U.S. managers and Ireland offers a compelling domicile for this.

BL: The Cayman Islands has always been the jurisdiction of choice for U.S. investment managers because of the following reasons: speed and simplicity of establishing entities; a tax neutral jurisdiction; a significant number of international tax information exchange agreements; a fully developed business law based on the English legal system backed with a professional infrastructure and reputation; compliance with international anti-money laundering and other financial regulatory standards; geographical location and time zone; and multiple structures allowed backed by law, which allows the investment manager options to work with their strategy.

JD: Simplicity and clarity is a key requirement in any manager's assessment of a suitable domicile.
U.S. managers have built an understanding of the Cayman Islands' fund regime and the benefits outlined by Ben over many years of operating there.

From an Irish perspective, the Central Bank of Ireland's approach towards regulation is relatively streamlined; the recent ICAV innovation shows a commitment to creating and maintaining attractive fund structures; and communication with the industry around regulatory expectations and best practices (in the form of guidance notes) is frequent. All this removes a major risk factor – uncertainty – and makes Dublin a strong risk adjusted choice for domicile.

Q3: With the avalanche of regulatory changes since the financial crisis, what has been the single biggest challenge for U.S. managers establishing Cayman or Irish funds?

CMG: European funds have a different regulatory profile for those more used to the onshore U.S. or Cayman environment and U.S. managers need to familiarize themselves with the twin pillars of European funds, UCITS and AIFMD. For example, UCITS has comprehensive guidance on the structure and limits of the fund itself, while AIFMD has little or no limits on fund structure, but has considerable requirements on the governance of the manager. Relying on the expertise of local partners has been the common solution to such familiarity issues and has kept the Irish industry busy in recent years.

RK: Just picking up on Conor's point regarding AIFMD's impact on the manager, one of the more controversial aspects for our U.S. clients of the AIFMD is the extension of the remuneration requirements to delegates of the Alternative Investment Fund Manager ("AIFM"). Without getting too technical, the U.S. is not currently deemed to have in place equivalent regulatory requirements as to remuneration meaning that a U.S. manager appointed to provide investment advisory services to an AIF may be required to comply with the AIFMD's remuneration requirements. There are solutions available but it is certainly a point that we have seen exercising U.S. managers when establishing a presence in Ireland.

BL: As of 2010, United States federal law requires U.S. persons to have yearly reports of their accounts and their non-U.S. financial accounts. The law also requires all non-U.S. financial institutions to search records of suspected persons for reporting their assets and identities. The Cayman Islands has in place an intergovernmental agreement with the United States which requires Cayman funds to disclose information regarding investors whose accounts may be considered "reportable accounts" under the Foreign Account Tax Compliance Act ("FATCA"). Reportable accounts are financial accounts where the account holder is either a 'specified U.S. person' or is a non-U.S. entity that is the controlling persons of which include one or more specified U.S. persons. In 2015, the

Cayman and Ireland — The Domiciles of Choice for U.S. Hedge Fund Managers

(continued)

Cayman Islands opened the Automatic Exchange of Information Portal for funds to register and notify the Cayman Islands of their status.

JD: While the regulatory environment has become more complex, ultimately these are solvable problems. The barrier to adoption for U.S. managers is driven primarily from concern that these costs/efforts will not lead to a proportional increase in non-U.S. assets – or at least enough to warrant the increased disclosures, including remuneration as Ray mentioned earlier. There is evidence that EEA fund flows are increasing, and that these investors prefer investing in fully compliant structures. This will drive U.S. managers to look past the short term friction in setting up these offshore (Cayman/Ireland) funds and towards the long term benefits of having registered, compliant vehicles with which they can access a growing body of investor interest in the EEA and elsewhere.

Q4: What growth opportunities and challenges does the next 12 months hold for U.S. hedge fund managers considering establishing Cayman or Irish funds?

BL: The Cayman Islands is still the world leader as a hedge fund domicile and has been for some time. All the reasons for its success referred to earlier remain. It is a tried and tested jurisdiction and an easy sell for investors who do not need the "product" explained to them. As the world becomes more complicated, this may become more important to investors as a reliable option.

CMG: With investor appetite for various fund types improving in Europe compared to recent years, opportunities for capital raising continue to reveal themselves. Many U.S. managers are now emerging from the regulatory paralysis of recent years and looking to UCITS and AIFMD products to access these opportunities.

Some regulatory uncertainty remains in relation to the European Securities and Markets Authority's ("ESMA") work on the availability of the marketing passport to non-EU AIFMS and non-EU AIFs. Currently the pan-European marketing passport is only available to EU AIFs and EU AIFMS and ESMA are assessing the suitability of certain non-EU countries obtaining such a passport. With no clear date for such a marketing passport to many countries, particularly to U.S. managers with Cayman funds, managers are choosing between the waiting game or proceeding with setting up a European fund for European distribution.

JD: Managers hoping for a rollback in global regulation, or at least definitive clarity, in the next 12 months will be disappointed. Ultimately, expansion decisions will need to be made in somewhat of an information void. Managers will need to assess their strategy's attractiveness to global investors and make a decision to create a compliant structure for them to invest as well the appropriate marketing outreach in order to access global capital. Given the diminished supply of U.S. managers offering funds globally due to the regulatory restrictions, managers that take this decisive action may find a more interested market than they remember from years back.

RK: U.S. managers looking to access the global capital opportunities now emerging need to consider the requirements of their target investors. For some investors, an Irish AIF or UCITS will be the right fit given their distribution capabilities and regulatory wrapper while for other investors the Cayman Fund continues to work well. For larger managers who can support the costs involved I expect that we will continue to see the development of parallel Cayman and Irish funds to satisfy the different requirements within their investor base. ■

For more information, please contact:
Ray Kelly at +353.1.293.3449 or ray.kelly@eisneramper.ie
Ben Leung at 345.945.5889 or bleung@eisneramper.ky
John D'Agostino at 212.257.5051 or jdagostino@dmsoffshore.com
Conor MacGuinness at +353.1.619.2312 or cmacguinnessdmsoffshore.com

The Good Client

By Ted O'Connor, Director, Prime Clearing Services, Société Générale

With all the regulatory change that has impacted the banking industry, it's become increasingly difficult for hedge funds and alternative managers to fund their portfolios and borrow securities. Everyone has heard of the alphabet soup of regulations: BASEL III, Supplementary Leverage Ratio ("SLR"), Liquidity Coverage Ratio ("LCR"), High Quality Liquid Assets ("HQLA") .... What does it mean? Unfortunately, it means that balance sheet is becoming more of a scarce resource. Economics 101 tells us that as a resource becomes harder to come by, it becomes more expensive. What is a manager to do?

> "Liquid, balanced portfolios are still in demand at prime brokers. Managers that have broad-based relationships with their providers are very much in demand."

All hope is not lost. Liquid, balanced portfolios are still in demand at prime brokers. Managers that have broad-based relationships with their providers are very much in demand. Return on assets ("ROA") matters. Balance sheet discipline matters. Tenor of your trades matters. Clients who understand the notion of a "good client" will always have a home.

So what matters to a prime broker? First, the asset being funded or borrowed is assessed. Treasuries and equities are the most desirable assets. Prime brokers have clients looking to borrow those securities. Funding markets for those assets are liquid and deep. Regulators are driving the funding of those assets to centrally cleared facilities. Believe it or not, this could be one very good outcome from all the regulatory change. Less liquid assets will be more difficult to finance. Convertible bonds and corporate credit have less demand to short and finance. Funding of those assets consumes more balance sheet. Understanding the risk-weighted asset ("RWA") levels of illiquid assets (and the RWAs on your funding partner's balance sheet) is critical to ensure that consistent funding is available for those assets.

Second, a prime broker likes the self-funding portion of a portfolio. Portfolios where short balances are greater than or equal to debit balances can self-fund. The balance sheet footprint of this portion of a book is manageable. Basel III rules are generally kind to well-balanced books. Directional portfolios that utilize leverage or securities lending will use more balance sheet. Managers will need to have an open dialogue with their providers about the cost to fund that portion of the book and ways to manage the balance sheet impact.

Third, term matters. Overnight funding is the most desirable and the most readily available from a prime broker. Overnight funding works for most portfolio managers. Know the liquidity of your asset. If you can unwind your portfolio in a few trading days, term funding is expensive and might not be necessary to maintain your positions through all market environments. Likewise, books of liquid equities in developed markets rarely need term financing. LCR considerations increase when a manager requires term financing of 30 days or more. Banks need to match fund their books on longer duration trades. The quality of the asset will be a significant consideration in funding those assets. Clearly, long duration funding of illiquid assets can be expensive. A manager will need to have a firm grasp of the return on investment ("ROI") of adding financing to a longer duration trade.

Last, and maybe most importantly, banks will look to the overall ROA of a relationship as they allocate balance sheet. Shareholders are demanding increased ROA and return on equity ("ROE") from their banks. Regulators ask questions about terms and pricing of funding. Disciplined product managers and sales people know their clients

> "A manager will need to have a firm grasp of the return on investment ("ROI") of adding financing to a longer duration trade."

The Good Client

(continued)

ROA to the basis point. A manager needs to be sensitive to their ROA with their banks. Several tools are available from service providers to help a manager understand their ROA. A phone call to your coverage people will likely get you the answer as well.

A fund manager needs to understand what they need from the banking universe and who is most adept at servicing those needs. Not all managers are the right fit for all providers. Not all banks are the right fit for all managers. Choose your providers with the same diligence that you use to select securities for your portfolio. Be important to a few institutions. Ensure that you have access to all the resources necessary to manage your fund and your business. Have an open dialogue with your providers about your needs and their ability to service you. Banks want to work with their good clients to ensure healthy, long-term relationships. Know what it means to be the "good client." ■

Ted O'Connor is a Director in the Prime Clearing Services Group at Société Générale. Questions? You can contact Ted at 212.278.6658 or ted.o'connor@sgcib.com.

New York State and New York City Issue New Guidance Regarding Investment Capital Identification Procedures

By Stephen J. Bercovitch, J.D.

In April 2014, New York State enacted sweeping changes to the existing corporate income tax laws, effective January 1, 2015. In April of 2015, New York City followed suit with conforming changes enacted in a new Article 3-A (federal S corporations remain subject to the City's existing general corporation tax and are not affected by these new requirements). Many of these changes specifically impact the financial services industry. This article will compare the pre-and post-New York corporate reform tax changes, specifically the transformation in the treatment of investment capital that impacts funds and fund managers that may currently, or in the future, have one or more corporate partners that are subject to the State or City corporation income tax. Although much remains to be implemented by regulations and policy pronouncements, there are a number of significant aspects of the new laws that are of immediate interest.

THE BACKGROUND

The New York State and City corporation income tax was historically structured so that a corporation's capital and income were divided into subsidiary capital and income, investment capital and income, and business capital and income. Each of these elements of capital and income were then accorded specific treatment in determining overall tax liability. Under these provisions, net income from subsidiary capital was excluded from entire net income ("ENI"). In essence, the "trade-off" for this exemption was a separate subsidiary capital tax that was imposed based on the ratio of total capital employed in New York by that subsidiary. Income from investment capital was allocated according to the issuer's allocation percentage ("IAP") — the New York State presence of the issuer's stocks, bonds or other securities. In brief, the favorable treatment of corporate investment in subsidiaries and in the treasury function incentivized companies to choose New York State and City as a corporate headquarters location.

> "There is no longer special treatment of subsidiary capital. Investment income (that is, income from investment capital) is no longer subject to tax. However, the new law drastically restricts what qualifies as investment capital to investments in stock held for more than one year and not held for sale to customers in the regular course of business."

NEW YORK STATE AND CITY TAX REFORM

The new law replaces ENI with the business income base. There is no longer special treatment of subsidiary capital. Investment income (that is, income from investment capital) is no longer subject to tax. However, the new law drastically restricts what qualifies as investment capital to investments in stock held for more than one year and not held for sale to customers in the regular course of business. The new law also places a cap of 8% of ENI on a corporation's exempt investment income.

Since stock purchased during the year would not have been held for more than one year by the end of the tax year, the tax law provides a presumption that stock acquired during the year that otherwise would qualify as investment capital will eventually be held for more than 12 consecutive months and thus qualify as investment capital at year-end.

One issue that has been addressed by the State is the strict identification requirements that apply to investment capital. These identification requirements impact investment partnerships with existing (direct and indirect) and future corporate partners as well as corporations that have a New York filing obligation. For this purpose, investment partnerships include hedge funds, private equity funds, family partnerships, funds of funds and other partnerships that make investments. As for partnerships with existing and future corporate

New York State and New York City Issue New Guidance Regarding Investment Capital Identification Procedures

(continued)

partners that have a New York filing obligation, the partnership would need to meet the investment capital requirements (most importantly the identification requirements) so that the corporation's share of long-term capital gains from the partnership qualifies as exempt income for New York purposes.

NEW IDENTIFICATION REQUIREMENTS

The New York State Department of Taxation and Finance guidance (TSB-M-15(4)C, (5)I), July 7, 2015), is found here. The City's analogous guidance (see, NYC Department of Finance Memorandum 15-3, July 17, 2015, is here.

In brief, a five-part test must be met to qualify a stock as exempt "investment capital." The rules require that before the close of the day on which the eligible stock was acquired, it must be clearly identified in the taxpayer's books and records as stock held for investment in the same manner as required of a dealer in securities under Internal Revenue Code ("IRC") Section 1236(a)(1) for the stock to be eligible for capital gain treatment.

> "...a fund's identification of investment capital can benefit a corporate partner up the chain that is either domiciled in New York or is domiciled outside of New York, yet could be filing in New York because of its corporate tax nexus."

Identification procedures under section 475 of the IRC are not sufficient. This enables exemption of the income where there is a C corporation in the fund or in a tier above further up the ownership chain.

If a corporation is a partner in a partnership and the corporation uses the aggregate method to compute its New York tax, then it may treat its proportionate share of the stock owned by the partnership as investment capital only if the investment capital requirements (most importantly the identification requirements) are met at the partnership level. Thus a fund's identification of investment capital can benefit a corporate partner up the chain that is either domiciled in New York or is domiciled outside of New York, yet could be filing in New York because of its corporate tax nexus.

There remains much to be formulated and resolved. From the corporate standpoint, certain merger and acquisition events may trigger the identification requirement, such as stock purchased in an IRC Section 338(h)(10) transaction. From the fund standpoint, the reporting changes on the New York State corporate K-1 remain to be established. Where the 12-month holding period straddles 2 tax periods, there are complexities that will likely be addressed by future guidance. Despite these uncertainties and the added compliance burdens, the new identification rules provide an avenue to tax exemption of investment income that is clearly advantageous. ■

Stephen Bercovitch is a Tax Director with EisnerAmper LLP. If you'd like more information, you can contact him at 347.735.4611 or stephen.bercovitch@eisneramper.com.

Alternative Investment Industry Outlook for the Remainder of 2015 and Next Year

By Elana Margulies Snyderman

Despite the fact that hedge funds are expected to face the worst year since the 2008 global financial crisis, institutional investors are still interested in the alternative asset class. Looking ahead, they are reshuffling their portfolios given their concerns about interest rate risks and tight credit spreads and because they are likely overweight equities. As a result, in order to get appropriate protection in their portfolio, they are shifting toward relative value low beta types of strategies such as equity market neutral offerings because they provide diversification. On the non-strategy front, allocators continue to look at deploying capital to smaller managers, often capacity constrained given they have a unique investment edge and on the premise they often perform better than their larger peers. Finally, with respect to launch activity, hedge fund debuts are expected to continue to subside on the heels of underperformance while new offerings in the private equity and venture capital space are slated to keep increasing.

> **"Everyone is overweight equities. We like strategies that you can diversify within really well and equity neutral is a good example, not just because you don't have beta properties, but because you can get a lot of diversification."**

Commonfund, an over $25 billion institutional investment manager based in Connecticut focused on not-for-profit investors, is one example of a firm that is migrating toward equity market neutral strategies given their concerns about interest rate risks and tight credit spreads.

> **"On the private equity side, new funds are forming due to interest from high net worth individuals and family offices, along with institutional investors."**

"Everyone is overweight equities," said Kristofer Kwait, managing director, head of hedge fund research for Commonfund. "We like strategies that you can diversify within really well and equity neutral is a good example, not just because you don't have beta properties, but because you can get a lot of diversification."

He added, "If you have a neutral portfolio in the U.S. and you pair that with a neutral portfolio in Europe and in Asia, you are getting diversification. You can play on different types of styles, such as traders vs. long-term holders. You can play growth vs. value, different types of idea generation such as catalyst-driven vs. quantitative idea generation, to gain diversification.."

On the non-strategy front, institutional investors are eyeing smaller managers given they often have a unique investment edge along with their ability to outperform their larger peers. Teachers College, Columbia University Endowment is one allocator who prefers smaller managers.

"There are certainly some excellent large managers, but I have a bias toward smaller managers that have a very tight, maybe idiosyncratic portfolio management style," said Bruce Wilcox, who sits on the college's investment committee. "Small, very focused, often closed, are going to make it on their performance, rather than their management fee structure."

Finally, with respect to launch activity, hedge fund debuts have tapered off slightly beginning in September while new offerings in private equity and venture capital continue to increase.

Alternative Investment Industry Outlook for the Remainder of 2015 and Next Year

(continued)

"Long/short equity hedge funds have been one of the most popular strategies to launch this year, but that trend has subsided since September," said Frank Napolitani, a Director in EisnerAmper's Financial Services Group. "Going forward this year, we anticipate seeing an uptick in credit/distressed/macro funds given the volatility in the stock market."

On the private equity side, new funds are forming due to interest from high net worth individuals and family offices, along with institutional investors.

"We are seeing a lot of crossover in terms of asset class — pure play private equity or venture capital funds are losing favor to hybrid funds that invest in early-stage companies (traditional venture capital territory) and retain flexibility to also invest in later-stage rounds (traditional private equity territory)," said Todd Hankin, a Partner in EisnerAmper's Financial Services Group based in San Francisco. "We are also seeing a tremendous uptick in activity in the real estate private equity space as well as continued growth in funds that invest in online marketplace platforms that offer peer-to-peer lending with asset classes as varied as small loans to individuals, commercial and multi-family real estate loans and merchant cash advance."

With less than one quarter remaining for 2015, it will be interesting to see what allocators decide to do with their alternative investment portfolios for the following year — whether they shift them on the hedge fund side to become less equity-centric and more diversified — and if they continue to boost their private equity and venture capital exposure. Further, if the launch activity experienced during this quarter continues into 2016, the alternative investment universe should expect a big uptick in more types of private equity and venture capital offerings debut on a faster pace than hedge funds. ■

Elana Margulies Snyderman is a senior manager in EisnerAmper's Financial Services Group. Questions? Contact Elana at elana.margulies@eisneramper.com or 212.891.6977.

Is Your Annual Compliance Program Review Becoming Too Routine?

by Carmine Angone

All federally registered investment advisers are required to address actual and potential conflicts of interest inherent in the operations of their advisory business, in accordance with the SEC's compliance program rule ("Program"). The adviser must also conduct an annual review of the Program to assess its adequacy, accuracy and effectiveness of implementation. This process is intended to help make sure that the procedures and controls underlying the Program have been designed to reasonably ensure compliance with all applicable federal, state, and other laws and regulations, based on the types of advisory services provided to clients and the associated conflicts of interests.

> **"The annual review ... at the end of the year includes a look back to see if errors identified during the year have been addressed and whether the controls and additional procedures developed to address the error are achieving their intended purpose, as well as changes in operations, regulations and regulatory initiatives."**

During the year, most advisers perform risk-based periodic forensic testing and monitoring of policies and procedures based on the original assessment and identification of the firm's actual and potential conflicts of interest. The annual review part at the end of the year includes a look back to see if errors identified during the year have been addressed and whether the controls and additional procedures developed to address the error are achieving their intended purpose, as well as changes in operations, regulations and regulatory initiatives. While advisers that take this approach are technically meeting their annual SEC Program review requirement, the process, more times than not, becomes very routine and anticipatory. It also is somewhat out-of-sync with the purpose for which the annual review was designed.

At the speed with which new regulations are being adopted by the SEC and other standard-setting bodies, what can management do differently to make the review process less routine and predictable?

MANAGING THE ANNUAL REVIEW PROCESS

For investment advisers, managing the annual review process can be challenging. That said, changing the annual Program review process from basically reviewing what had been tested over the year to truly assessing your firm's advisory business for compliance with all applicable rules, regulations and unearthing never-before identified conflicts of interest will add value to the review. This is best accomplished by performing a deep-dive review of all investment advisory and operational activities. All activities can be mapped to a pre-populated list of all corresponding rules and regulations (SEC, CFTC, ERISA, FINRA, State, etc.). Adding columns to assign a risk ranking, based on your firm's internally developed risk metrics, procedures and controls associated with the risk, as well as whether the control is meeting its intended design objective(s) is the best way of identifying new conflicts. If you find there are gaps, then you will have to address the gaps in a timely manner, based on its assigned risk ranking. It is best to address all new gaps in consultation with senior management to demonstrate a strong culture of compliance from the top of the firm down.

In addition to meeting the annual review requirement, this process will also go a long way in sending the right message to a regulator when they appear on site for a routine inspection.

REGULATORY INITIATIVES IMPACTING ALL COMPLIANCE PROGRAMS

There are a few initiatives from the SEC and recent developments that will impact all registered investment advisers' reviews this year. Advisers, if they have not already done so, will want to make changes that are applicable to their program to address the following:

- The firm should stay in front of the contemplated changes to the Form ADV amendment to avoid being caught off-guard. This will involve, in most instances, enhancements to most advisers' procedures in the areas of
    - branch location review process,
    - vendor management due diligence,
    - coordination with operations to capture information required relating to separately managed accounts (percent of SMA regulatory assets under management), number of accounts that correspond to certain categories of gross notional exposure and weighted average amount of borrowing as a percent of net assets, plus weighted average gross notional value of derivatives percent of NAV, in 6 categories of derivatives, for advisers with $10 billion and more in regulatory assets under management. These are just some of the new proposed ADV requirements.
- The SEC issued a new risk alert on cybersecurity examinations that may require an update to the firm's information security program under the direction of a dedicated CTO. Key focus areas include governance, risk assessment, access rights and associated controls, data loss prevention, vendor management, training and incident response, and any other areas uncovered during an examination.
- FinCEN's proposed anti-money laundering ("AML") rule would require advisers to establish a dedicated AML program and report suspicious activity through the filing of SARs. The proposal, however, excludes the requirement to adopt a customer identification program, which is being reserved for separate rule making by the SEC.
- The Second Circuit Court of Appeals has ruled that a whistleblower is entitled to protection from job retaliation whether the whistleblower reports wrongdoing internally or to the SEC. Firms may need to modify procedures and training materials to accommodate what appears to be a caveat with a potential monumental impact.
- The above is not an exhaustive list of regulatory matters, both prospective and current, that are unfolding as of the date of this publication. ■

Carmine Angone is a Director with EisnerAmper Compliance and Regulatory Services ("CARS"). To discuss this article and other new regulatory initiatives, you can reach Carmine at 212.891.6095 or carmine.angone@eisneramper.com.

EISNERAMPER
ACCOUNTANTS & ADVISORS