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Alternative Investment Funds

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

Generally, Alternative Investment Funds are characterised (and distinguished from other investment funds) by their reliance on exemptions from the registration and/or other requirements of U.S. federal securities laws and are also often referred to as "private funds". The most common types of Alternative Investment Fund entities are limited liability companies ("LLCs") and limited partnerships ("LPs"), the formation of which must comply with state law in the jurisdiction where the entity is established. The most common jurisdiction for formation is Delaware.

The management and operation of investment funds in the United States is subject to certain federal regulations (or conditions relating to exceptions or exclusions from such regulation), including, without limitation, the Investment Company Act of 1940 (the "1940 Act"), the Securities Act of 1933 (the "Securities Act"), the Securities and Exchange Act of 1934 (the "Exchange Act"), and the Investment Advisers Act of 1940 (the "Advisers Act").

In addition to federal regulations in the United States, Alternative Investment Funds may be subject to state securities laws (also known as "blue sky" laws) in any state in which a participating investor is based. In addition, depending on the fund structure, a filing may be required to be made with the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") under the Corporate Transparency Act.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Yes, unless an exemption applies, investment managers and advisers ("advisers") of Alternative Investment Funds are subject to registration with (and regulation by) the U.S. Securities and Exchange Commission ("SEC") and/or securities regulators in the states in which they provide investment advice. Whether an adviser who is not exempt from registration must register at the federal level (*i.e.*, with the SEC) or at the state level depends on such adviser's level of assets under management ("AUM"). Generally, advisers with AUM of $100 million or less are required to register with their relevant state regulatory authority, and advisers with more than $100 million are required to register with the SEC. Managers organised outside of the United States, however, are not subject to these requirements and may register with the SEC regardless of AUM.

Non-U.S. advisers may be able to rely on the SEC's "foreign private adviser" exemption, which exempts advisers who: (i) have no place of business in the United States; (ii) have fewer than 15 total U.S. clients and U.S. investors in Private Funds (as defined in question 1.3 below) advised by such adviser; (iii) have aggregate AUM of less than $25 million to such clients and investors; and (iv) do not hold themselves out generally to the U.S. public as an adviser.

Advisers who advise only Private Funds (defined in the response to question 1.3 below) may also rely on the "private fund adviser" exemption, which is where they advise Private Funds with less than $150 million of AUM. Advisers with their principal office outside the United States are only required to count Private Fund assets managed from a place of business in the United States. Advisers relying on this exemption are still required to make certain SEC filings to be an "exempt reporting adviser" and remain subject to certain additional requirements of the Advisers Act and the rules thereunder, including obligation with respect to preventing the misuse of material non-public information and with respect to pay-to-play.

Finally, advisers solely to "venture capital funds" (as defined in Rule 203(l)-1 under the Advisers Act) are similarly eligible for "exempt reporting adviser" status under the Advisers Act. In general, a venture capital fund must hold itself out as pursuing a venture capital strategy, invest only in the securities of companies that do not issue public securities (subject to exceptions), incur only a limited amount of debt, and not allow its investors to redeem or repurchase their securities.

In addition, managers to Alternative Investment Funds that make significant investments in derivatives may also be required to register with the National Futures Association as commodity pool operators or commodity trading advisors.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Alternative Investment Funds themselves are not required to register with a regulatory body, so long as they can rely on an exemption. Generally, Alternative Investment Funds will rely on the exemptions found in Sections 3(c)(1) and/or 3(c)(7) of the 1940 Act (such funds, "Private Funds").

Under Section 3(c)(1) of the 1940 Act, a fund will not be considered an "investment company" if it is beneficially owned by no more than 100 persons (or, in the case of a "qualifying venture capital fund", 250 persons). However, certain entities will be "looked through" for the purpose of calculating the number of beneficial owners.

Under Section 3(c)(7) of the 1940 Act, an Alternative Investment Fund will not be considered an "investment

company" if all of its investors are "qualified purchasers" (as defined in the 1940 Act), regardless of how many investors are participating in the fund.

Other exemptions from the definition of "investment company" under the 1940 Act exist for funds, most of which are based on what types of assets a fund holds (*e.g.*, a fund primarily investing in mortgages and other real estate interests).

The above descriptions of Sections 3(c)(1) and 3(c)(7) of the 1940 Act are broad overviews of the primary exemptions applicable to Alternative Investment Funds, and there are additional rules that dictate whether a fund is exempt from registration under the 1940 Act (*e.g.*, charitable funds or funds that invest primarily in real estate).

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity *vs* hedge)) and, if so, how?

No; however, as discussed above, certain exemptions are available to certain types of funds (*e.g.*, venture capital funds or funds investing primarily in real estate). However, different types of reporting to the SEC are relevant depending on the type of fund, including under Form PF applicable to certain SEC registered advisers ("RIAs") to private funds.

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

RIAs and "exempt reporting advisers" (see question 1.2 above) must file Part 1A of Form ADV with the SEC. Certain other parts of Form ADV also apply to RIAs. For RIAs, the SEC has 45 days from the time of filing to review and approve or deny an adviser's application, but the entire registration process may take longer. For exempt reporting advisers, the form is effective immediately.

Advisers subject to registration with state securities authorities must also file Part 1B with the SEC and file with the relevant state regulators. State securities authorities typically take between 30 and 45 days to review and approve or deny an application.

As noted above, there is no authorisation process for Alternative Investment Funds.

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

There are no local residence or other local qualification requirements for advisers, and foreign advisers subject to registration with the SEC are not required to establish a physical presence in the United States. Alternative Investment Funds that are Delaware LPs or LLCs must appoint a registered agent for service of process in Delaware and make local tax filings. Advisers considering forming an Alternative Investment Fund in other jurisdictions should confirm any local requirements in the relevant state.

1.7 What service providers are required?

Alternative Investment Funds are required to engage custodians and auditors. Fund administrators are also typically engaged.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Foreign advisers advising clients in the United States must register with the SEC, unless they satisfy an exemption from registration, such as the "foreign private adviser" exemption. Foreign advisers exempted from registration with the SEC may still be subject to state regulations.

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

The SEC has signed memoranda of understanding with certain governments or regulators allowing information sharing. A listing of the specific jurisdictions is available at: https://www.sec.gov/about/offices/oia/oia-cooparrangements.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds (including reference where relevant to local asset holding companies)?

The principal legal structures used for Alternative Investment Funds are Delaware LPs and Delaware LLCs. Many Alternative Investment Funds formed to invest outside of the United States, or which anticipate investments by foreign investors, will be formed outside the United States in a jurisdiction's equivalent entity of an LP or LLC (*e.g.*, Cayman Islands exempted LPs).

2.2 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

Yes, it is possible for an Alternative Investment Fund to have sub-funds (as well as other funds operating in parallel ("parallel funds")), and the segregation of assets between these entities is recognised and allowed by both the Delaware Limited Partnership Act and the Delaware Limited Liability Company Act.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The limited partners of a Delaware LP and members of a Delaware LLC are generally not personally liable for the liabilities of the LP or LLC.

2.4 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

Common entity types for advisers based in the United States include Delaware corporations and Delaware LLCs. However, there is no requirement for advisers to be formed in the United States, and it is common for non-U.S. advisers to be organised under local laws.

2.5 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

No, provided the fund provides clear disclosure of such restrictions. In fact, Alternative Investment Funds in the United States often impose restrictions on redemptions.

2.6 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

Yes. Any transfer of such an interest usually must be to an investor who would have qualified to originally purchase the securities (*e.g.*, an "accredited investor" or a "qualified purchaser"). Further, it is not common practice in the United States for Alternative Investment Funds to permit investors to transfer their interests without the approval of the Alternative Investment Fund.

2.7 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

No, Alternative Investment Funds are not subject to regulatory limitations such as diversification requirements or asset stripping rules.

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

Alternative Investment Funds typically remunerate managers through a combination of both management fees and carried interest. A common fee structure is a 2% annual management fee and a 20% performance fee (subject to a specified hurdle).

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

RIAs are subject to specific requirements governing the marketing of Alternative Investment Funds under Rule 206(4)-1 under the Advisers Act (the "Marketing Rule"). The Marketing Rule contains provisions concerning the content of advertisements, including specific requirements on the presentation of performance, and the use of third-party agents for distribution purposes.

In addition, the sale of Alternative Investment Fund shares marketed by third parties must generally be conducted by entities registered as broker-dealers and in accordance with requirements set forth by the Financial Industry Regulatory Authority ("FINRA"). Finally, commodity pool operators/commodity trading advisors are subject to advertising requirements by the Commodities and Futures Trading Commission ("CFTC") applicable to commodity pool operators/commodity trading advisors.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

Under the Marketing Rule, there are seven principles-based general prohibitions that apply to marketing communications. In summary, these are that an adviser may not (i) include (or omit) any untrue statement of material fact, (ii) include a material statement of fact that the adviser does not have a reasonable basis for believing it will be able to substantiate upon demand by the SEC, (iii) include information that would be reasonably likely to cause an untrue or misleading inference with respect to a material fact relating to the adviser, (iv) discuss any benefit to an investor without providing fair and balanced treatment of any material risks or limitations associated with such benefits, (v) provide specific investment advice where it is not presented in a fair and balanced manner, (vi) include or exclude performance information, or present performance time periods, in a manner that is not fair and balanced, or (vii) otherwise be materially misleading.

In addition, the Marketing Rule requires that, if performance is presented, it is presented across specific time periods and that net performance information also be shown, and the presentation of hypothetical performance is subject to additional requirements. Additionally, the Marketing Rule includes certain provisions applicable to the use of third parties for distribution purposes.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

No, marketing and legal documents are not required to be registered with or approved by any local regulator under U.S. federal or state law.

3.4 What restrictions (and, if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

Interests in Alternative Investment Funds must be marketed to U.S. investors on a private placement basis. In order to ensure compliance with the applicable requirements, Alternative Investment Funds in the United States generally seek to comply with a safe harbour under Rule 506(b) of Regulation D. Rule 506(b) requires that (i) sales must be made only to "accredited investors" (discussed in question 3.7 below) (or to a limited number of non-"accredited investors", subject to specific requirements), (ii) there must be no general solicitation or advertising used to market the securities, and (iii) the investors must receive "restricted securities", being securities that are not freely tradable.

In addition, Alternative Investment Funds complying with Rule 506(b) may not be sold through general solicitation. As such, investors must be obtained through a pre-existing relationship or through alternative channels (such as through personal connections, referrals or meeting potential investors at industry events or conferences).

However, Rule 506(c) of Regulation D permits sponsors to engage in such activities (*e.g.*, social media advertisement). To benefit from Rule 506(c): (i) all purchasers of interests in the Alternative Investment Fund must be "accredited investors"; and (ii) the issuer must take reasonable steps to verify that purchasers of interests are in fact "accredited investors".

Finally, advisers are required to file a notice with the SEC on Form D within 15 days after the first sale of securities in the offering. There may also be additional state-level filings and fees depending on the jurisdiction of an Alternative Investment Fund's investors.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

There is no concept of "pre-marketing" in the United States.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

Alternative Investment Funds generally cannot be marketed to retail investors, except to accredited investors as described above.

3.7 What qualification requirements must be met in relation to prospective investors?

Investors must typically meet the "accredited investor" definition under Rule 501(a) of the Securities Act. Generally, a person will meet this definition if they are: (i) an individual (a) with a net worth (excluding a person's primary residence) of $1 million (individually or with their spouse), (b) with an income of $200,000 individually or $300,000 with their spouse or partner in the prior two years, (c) who is a professional in good standard with a Series 7 or Series 65 or Series 82 licence, (d) who is a "knowledgeable employee" of the Alternative Investment Fund, or (e) who is a family client of a family office; or (ii) an entity (a) with assets in excess of $5 million, (b) whose owners are each "accredited investors", (c) that is an investment adviser or registered broker-dealer, or (d) that is a certain type of financial entity such a bank or insurance company.

If the Alternative Investment Fund is relying on the Section 3(c)(7) exemption under the 1940 Act (see question 1.3), investors must also meet the "qualified purchaser" standard. The qualified purchaser standard generally requires individuals to have at least $5 million in "investments" (as defined under the 1940 Act) or requires entities to own and invest on a discretionary basis at least $25 million in "investments".

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

In 2010, the SEC adopted Rule 206(4)-(5) in order to limit "pay-to-play" activities by advisers. Under the pay-to-play rules, political contributions to certain entities trigger a two-year period starting from the date on which the political contributions are made during which advisers are limited from receiving compensation from certain government entities.

In addition, individual states may have their own state equivalents of pay-to-play rules. It will be important for advisers to consider such requirement on a state-by-state basis.

3.9 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors (whether as sponsors or investors)?

Beyond the prohibition on retail investors discussed above (see question 3.6), there are no types of investors that are specifically excluded from investing in Alternative Investment Funds. However, certain types of investors such as insurance companies, pension plans, banking entities, and sovereign entities may trigger additional compliance burdens or restrictions on an Alternative Investment Fund's activities.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Yes. Intermediaries should generally be registered as broker-dealers by FINRA and their activities must generally comply with the requirements of the Marketing Rule.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

There are currently no legal or regulatory requirements that generally restrict the investment activities of Alternative Investment Funds under Delaware Law. Alternative Investment Funds may limit their investments in derivatives to rely on an exemption from CFTC regulation. In addition, if an Alternative Investment Fund has been designated as "plan assets" under the Employee Retirement Income Security Act of 1974 (by accepting retirement plan investors equal to or in excess of 25% of the fund's assets), there may be additional restrictions that apply to the Alternative Investment Fund's investment activities (such as restrictions on certain affiliate transactions).

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

Please see the response to question 4.1 above.

4.3 Are there any local regulatory requirements that apply to investing in particular investments (e.g. derivatives or loans)?

Derivatives

As noted above (see question 4.1), a U.S. domiciled fund or a non-U.S. fund with U.S. investors will need to comply with the CFTC rules. Generally, funds that have the authority to invest in commodity interests (which includes a broad range of derivatives such as foreign exchange swaps, interest rate swaps, currency swaps and other normal hedging activities) will be deemed to be engaging in commodity interests and therefore subject to the CFTC's jurisdiction. The registration status of an adviser may affect the amount and type of derivatives that an Alternative Investment Fund may engage in.

Loans

Certain states (*e.g.*, California) may impose licensing requirements on Alternative Investment Funds (or their subsidiaries) that engage in loan origination. There may also be tax consequences that arise from investing in certain types of investments (*e.g.*, loans), which may require additional restructuring and/or could limit the attractiveness of the Alternative Investment Fund to particular investors.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

There are no general restrictions on borrowings.

4.5 Are there are any restrictions on who holds the Alternative Investment Fund's assets?

While there are no Delaware requirements as to who may hold the assets of a Delaware LP or LLC, Rule 206(4)-2 under the Advisers Act effectively requires Alternative Investment Funds to maintain their assets with banks, registered broker-dealers, futures commission merchants or certain foreign financial institutions.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

Alternative Investment Funds are required to disclose all material information regarding their investment strategy and the risks of investing to prospective investors through an offering document.

In addition, RIAs and "exempt reporting advisers" must make filings with the SEC on Form ADV (see also question 1.5), which requires disclosure of information such as the fees and costs associated with the adviser's services, compensation received from third parties, information on an adviser's personnel, an adviser's outside activities, and potential conflicts of interest. Alternative Investment Funds generally also make filings on Form D (see question 3.4), which includes information regarding the total amount of securities sold and the number of participating investors. RIAs with AUM of more than $150 million must also file a Form PF with the SEC.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example, for the purposes of a public (or non-public) register of beneficial owners?

No, there are no such requirements.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

See question 5.1 above.

5.4 Is the use of side letters restricted?

No, the use of side letters is not restricted. Note that the use of side letters was to be subject to new regulations from the SEC, but those regulations have been vacated by a U.S. Court of Appeals and, as of the date of this writing, will not come into effect.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds and local asset holding companies identified in question 2.1?

Delaware domiciled Alternative Investment Funds are typically classified as partnerships for U.S. income tax purposes. Such partnerships are typically not subject to income tax themselves and, instead, the investors are subject to income tax on the fund's income and gains on a pass-through basis. Non-U.S. funds can elect to be treated as either partnerships or corporations for U.S. income tax purposes, and most choose to be treated as corporations. Such corporate funds are generally not subject to U.S. income tax on their U.S. investments, due to a securities and commodities trading safe harbour, but certain U.S.-source income is subject to a 30% U.S. withholding tax (or withholding tax at a lower rate if the Alternative Investment Fund is established in a jurisdiction having a tax treaty with the United States).

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.4?

An adviser can choose to conduct business in an entity that is classified as a partnership for U.S. income tax purposes, in which case the owners of the entity are subject to tax on the entity's income, or in an entity that is classified as a corporation, in which case the entity is subject to corporate income tax on its income.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

An investor's cash investment in an Alternative Investment Fund is generally tax-free. Partial withdrawals from a Delaware domiciled Alternative Investment Fund may be free of tax, but complete withdrawals are generally taxable to U.S. investors, as are transfers of fund interests. Complete withdrawals from, and transfers of interests in, a U.S. Alternative Investment Fund by non-U.S. investors will generally be free of U.S. income tax, unless the Alternative Investment Fund is one that invests in assets that produce income that does not qualify for the trading safe harbour described above. Withdrawals from a non-U.S. corporate Alternative Investment Fund are generally taxable events for a U.S. investor, as are transfers of fund interests. For non-U.S. investors, the tax treatment of withdrawals and transfers with respect to non-U.S. Alternative Investment Funds generally will not be subject to U.S. income tax.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

U.S. citizens and residents will be subject to U.S. income tax each year on their allocable shares of the income and gains of an Alternative Investment Fund that is classified as a partnership for U.S. income tax purposes. A U.S. investor investing in a non-U.S. Alternative Investment Fund that is classified as a corporation is subject to a special tax regime applicable to "passive foreign investment companies", under which the investor can elect to be taxed each year on its allocable share of fund income and gain (whether or not distributed) or, if such an election is not made, the investor will be subject to an interest charge on taxes paid when such income and gain are distributed. U.S. tax-exempt entities, such as pension plans, are not subject to U.S. income tax with respect to either type of Alternative Investment Fund, unless the income from the fund is income from a trade or business (or real estate investment) unrelated to the entity's exempt purpose or the income and gain from the fund is debt-financed income (together, "unrelated

business taxable income" or "UBTI"). Non-U.S. funds that are corporate entities generally do not produce such UBTI. Non-U.S. investors will be subject to U.S. income tax on income and gain from a partnership fund if such income and gain is "effectively connected with a U.S. trade or business" (and not eligible for the trading safe harbour) or if gain arises from the disposition of a U.S. real property interest. Otherwise, non-U.S. investors will not be subject to U.S. income tax on capital gain from their investments. Some types of U.S.-source income, such as corporate dividends, are subject to U.S. withholding tax.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund or local asset holding company?

Generally, tax rulings from the Internal Revenue Service or taxing authorities are not needed. The tax treatment of various types of entities, including those relying on entity classification elections, is well established.

6.6 What steps have been or are being taken to implement the US Foreign Account Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

U.S. Alternative Investment Funds determine the FATCA status of their investors, and any applicable withholding tax requirement, based upon the Forms W-9 submitted by U.S. investors and applicable Forms W-8 submitted by non-U.S. investors. The United States is not a participant in the OECD Common Reporting Standard.

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example, ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

Although the U.S. taxing authorities share the same concerns that have given rise to BEPS, and legislation has been enacted to address profit shifting, base erosion and taxation of U.S. multinational corporations, there have not been any significant developments in the United States regarding the operations of Alternative Investment Funds. Alternative Investment Funds and their advisers are aware, however, of the developments in OECD jurisdictions in which they invest.

6.8 What steps have been or are being taken to implement the OECD's Global Anti-Base Erosion (GloBE) rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations? Do the domestic rules depart significantly from the OECD's model rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

The Biden administration has supported the Pillar Two model rules and worked with the OECD to develop the framework. Congress, however, has not yet enacted the necessary enabling legislation, and the plan continues to face pushback. The 2017 Tax Cuts and Jobs Act levies a 10.5% minimum tax on foreign earnings, increasing to 13.125% in 2026. This is below the new 15% minimum tax on multinational companies established by the OECD's GloBE rules. The basic U.S. corporate income tax rate is 21%.

6.9 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

Reduced tax rates apply to individual U.S. taxpayers with respect to long-term capital gains and corporate dividends. Alternative Investment Funds that are structured as partnerships, regulated investment companies (mutual funds and exchange-traded funds) and real estate investment trusts avoid entity-level taxation. Such structures are widely used.

6.10 Are there any other material tax issues for investors, managers, advisers or AIFs?

U.S. Alternative Investment Funds that are established as LLCs might not be eligible for benefits under certain income tax treaties, and advisers should take that into account in choosing an entity for a fund.

6.11 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

No significant changes in U.S. income taxation are currently expected.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

Advisers had been focused on the implementation of the new Private Fund Advisers Rule that the SEC adopted in August 2023 (see Sec. Rel. No. IA. 6383), which, if implemented, would have materially increased the regulatory compliance burden for advisers of Alternative Investment Funds. However, on June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the Private Fund Advisers Rule in its entirety. Notwithstanding the foregoing, there has been, and continues to be, significant SEC focus on the activities of private fund advisers, and there have been a number of enforcement actions relating to fee disclosure, inappropriate controls around conflicts of interest, Marketing Rule violations and valuation concerns.

More generally, the fundraising market picked up slightly in 2024. As such, sponsors are generally optimistic, though there is a noticeable lack of exit opportunities.

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

The SEC is considering recommending proposed amendments to Regulation D, including the "accredited investor" definition, and Form D. The timing of this proposed rulemaking remains unclear.

Lance Dial is a partner in the Asset Management and Investment Funds practice and has experience advising asset managers and broker-dealers in all areas of the business. He has worked with all product types, including mutual funds, ETFs, money market funds, private funds, and bank-maintained collective pools and advises clients on compliance and regulatory matters under the Investment Company Act of 1940, the Investment Advisers Act of 1940, ERISA, and other related federal securities laws. Lance has significant experience with the regulation of marketing and advertising of investment products, integration and marketing of Environmental, Social and Governance (ESG) investment products and trading and market structure issues. He has worked extensively on regulatory policy matters with various financial services regulators, including the U.S. Securities and Exchange Commission, U.S. Department of Labor, Internal Revenue Service, and U.S. Department of the Treasury. Prior to joining K&L Gates, Lance served as senior in-house counsel with global investment managers for almost 15 years. He received his B.A. from the University of Georgia, M.B.A. from Boston University and J.D. from Boston University School of Law.

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