



# Funds in Focus 2019

## Private Funds Annual Review Conference

Hedge Funds: Year-end Updates  
and What to look out for in 2020

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Proskauer»

# Key Trends

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- Side Pockets: Are they back?
  - Optional side pockets (investors choose up front whether or not to participate)
  - How is any % limit calculated?
- Private equity style terms
  - Hurdle rates, multi-year performance periods, realized gains only
- Slow pay / quasi-side pocket / segregation of illiquid assets
- SPV / liquidating trust / shares of master fund
  - using existing distribution in kind provision

# SPVs / Co-Investment Vehicles

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- Single investment / special purpose / co-invest / excess capacity / side-car vehicles
- Can have private equity, hedge or hybrid terms:
  - can be funded up front, draw down capital, and/or permit new investors
  - can be either closed-end or longer lock-up
  - can have private equity style waterfall (carried interest) or performance allocation payable only at end of lock-up or only on realized gains
  - generally lower fees
  - onshore (Delaware series LLC) or offshore (Cayman SPC)

# Key Risks in 2020

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- SEC exams: same pace, same issues
- Pay-to-Play: New election cycle, SEC focus
  - Provide more training? Require employee certifications?
- Communications with insiders: Continued SEC focus
  - Keep a log? Monitor calls? Review trading records and match with contacts with insiders?
- Cybersecurity

# Key Risks in 2020 (cont'd)

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- Alternative (Big) Data
  - Increased SEC scrutiny
  - Importance of due diligence on providers, contractual provisions
- Marketing materials:
  - Use of past performance
  - See guidance in proposed new advertising rule
- New business lines / investment strategies / strategic arrangements
  - Separate SEC registrations?
  - Managing compliance, regulatory and legal risks

# Top Five Tax Conversation Starters

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- 1) Do you charge a fee or an allocation?
- 2) How do you reinvest your incentive allocation?
- 3) Thinking of moving? Have you checked out a qualified opportunity zone?
- 4) Is cryptocurrency still cryptic post IRS guidance?
- 5) Are your interest deductions limited and how are you dealing with it?

# Key Year End Tasks

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- Annual Compliance Review
  - Do a written report; review with management
- Consider preparing risk matrices identifying key risks:
  - MNPI, cybersecurity, custody, side letters, etc.
- Employee Training
  - MNPI, cybersecurity/privacy, code of ethics, compliance manual (and/or specific sections where issues have arisen), anti-harassment, etc.
- Review PPMs: Risk factors, conflicts, expenses

# Key Year End Regulatory Filings and Obligations

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- Form ADV Parts 1 and 2 (March 30 if Dec 31 fiscal year)
- Form D and State Blue Sky Filings
- Form PF (Feb 29 for Large Hedge Fund Advisers)
- Schedule 13D/13G (Feb 14 for 13G)
- Form 13F and 13H (Feb 14)
- Form CFTC 4.13(a)(3) Reaffirmation (Feb 29)
- CFTC Form CTA-PR (Feb 14) and CPO-PQR (Feb 29)
- ERISA Section 408(b)(2) notice



# Contacts

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