

The New Normal for Emerging Managers

Presenters:

Karen Kerby-Prager Metis CPAs

Wayne H. Davis- Tannenbaum Helpern Syracuse & Hirschtritt LLP

Barbara Ann Bernard- Wincrest Capital

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POINTS TO BE DISCUSSED

1

Operational and financial reporting best practices during/ after a financial crisis

2

Regulatory and fund formation tips from a legal perspective

3

Insights from an experienced fund manager about investing, running a fund, raising capital during a crisis

FUND OPERATIONS

- Managers and their service providers have been able to convert to a remote environment using technology and communication tools
- This has been a true test of disaster recovery and business continuity plans.
- All managers but particularly smaller shops need to find ways to increase revenue and cut expenses

Can excess cash be invested in higher interest earning products?

Expense savings can be achieved by:

- Changes in staffing and office space needs.
- Outsourcing middle office, CFO and CCO roles
- Examining service provider relationships
- Less travel expenses due to digital methods of cap raising and researching investments

FUND OPERATIONS (cont.)

Financing, Cap Calls and Withdrawal requests:

- Wider use of margin if no excess cash to make investments
- Loans instead of calling capital
- Consider suspending withdrawals during this crisis
- Set up investor, fund or class level gates
- Distribute investments or slices of the portfolio instead of cash
- Set up a SPV or liquidating trust to hold distributed illiquid assets

FINANCIAL REPORTING

Valuation of private investments:

- SEC and auditors will expect changes to valuation policies and methodologies
- More weight on income approach (forward looking) rather than market approach

Communications with investors:

- More frequent and using various modes of communication based on investor preferences
- Consider reporting NAV and returns more often
- Set up calls or send out letters with information on the market and your strategies

CAPITAL RAISING

Allocators and potential investors, such as HNW individuals and institutions are looking for:

- Managers that differentiate themselves by having solid investment plans, risk management protocols, good technology and cybersecurity in place and a great team
- Above average returns compared to similar managers and benchmarks
- On-line meetings that are organized, on point and shorter

CAPITAL RAISING (cont.)

- Flexibility of offerings such as multiple share classes, more liquidity, better terms, co-investments and managed account options
- Consider the use of marketing consultants, cap intro firms, or placement agents
- Continue to cultivate relationships with family offices and their advisors
- Investors will be back and looking for great opportunities!

Karen Kerby - CPA, Partner

Prager Metis CPAs

Karen H. Kerby is a Partner in the Audit department of Prager Metis CPAs, a member of Prager Metis International Group. She is also the Financial Services Practice Leader and has been in the financial services industry for over 35 years, including 24 spent in public accounting.

Karen specializes in conducting audits of investment partnerships (including hedge funds, fund of funds, and private equity funds), and providing consulting and accounting services for fund managers. She is also experienced in conducting audits for broker-dealers, Registered Investment Advisors and various nonprofit organizations.

Prior to working in public accounting, Karen worked as an industry “insider” through positions at a major broker-dealer company and a notable commodity trading firm. This experience allows her to understand how her clients’ operations are structured, how the workflows, and what challenges and opportunities exist for them.

Karen enjoys working with her clients to keep the audit process moving smoothly with open lines of communication which allows them to remain informed and avoid surprises along the way. In her spare time, Karen likes to travel and is a frequent golfer.



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BS, Business Administration, Bucknell University,
Lewisburg, Pennsylvania

Contact:

T: 908.766.9800 / Ext. 11332

E: kkerby@pragermetis.com





REGULATORY OVERVIEW – COMPLIANCE DURING COVID-19



A. OPERATING IN A REMOTE ENVIRONMENT (Maintaining a Culture of Compliance)

1. Form ADV FAQ

- SEC has indicated it will not take enforcement action against advisers who do not update either Item 1F of Part 1A or Section 1F of Schedule D of their Form ADV to reflect remote work locations from which employees are temporarily working as additional offices “other than your principal office and place of business”
- This relief is intended for remote locations from which employees are “teleworking” as part of the firm’s business continuity plan due to COVID-19
- Advisers should update their Form ADV to include locations from which employees work due to arrangements unrelated to the firm’s business continuity plan

A. OPERATING IN A REMOTE ENVIRONMENT (Maintaining a Culture of Compliance) (cont.)

**2. Regularly scheduled meetings among personnel with CCO in attendance;
Document ongoing compliance program, including necessary modifications**

3. Training sessions via video-conference

- Evidence attendance
- Retain training materials

A. OPERATING IN A REMOTE ENVIRONMENT (Maintaining a Culture of Compliance) (cont.)

4. Compliance policy updates and reminders regarding adherence

5. Electronic communication reviews

- Cyber-Security
- Data Privacy

6. Review of trade execution and trading practices

- Error detection and correction

B. NEW CUSTODY RULE FAQs – RULE 206(4)-2

1. Surprise examinations

- No enforcement resulting from inability to complete within 120 days from date chosen, if adviser reasonably believed the exam would be completed within 120 days after the date chosen by the independent public accountant but could not be due to disruptions related to COVID-19, provided accountant files Form ADV-E within 45 days after original due date

2. Privately offered (certificated) securities

- SEC will not recommend enforcement for failure to satisfy requirement that qualified custodian maintain possession, if:
 - A transfer or change in beneficial ownership of the security can only be effected with the prior consent of the issuer or holders of the outstanding securities of the issuer

B. NEW CUSTODY RULE FAQs – RULE 206(4)-2 (cont.)

- Ownership of the security is recorded on the books of the issuer or its transfer agent (or similar) in the name of the client;
 - There is a legend restricting transfer on the certificate;
 - The adviser appropriately safeguards the certificates and they can be replaced upon loss or destruction; and
 - The adviser makes and keeps a record of the custodian's closure
-
- Relief is only effective for so long as, due to COVID-19, the certificates are not able to be held by a qualified custodian or be converted to comply with the privately offered securities exemption

C. PPP (Paycheck Protection Program)

1. Recipient [“Hedge Fund and Private Equity Funds”] Ineligibility

2. Extension of Good Faith Certification Safe Harbor to May 14, 2020

D. CARES Act Tax Relief for Businesses

1. Relaxation of Net Operating Loss Rules

- Under the Tax Cuts and Jobs Act (“TCJA”), starting in 2018, NOLs could no longer be carried back, could be carried forward indefinitely, and were deductible only to the extent of 80% of a taxpayer’s taxable income
- The CARES Act provides taxpayers with the ability to carryback NOLs arising in 2018, 2019 and 2020 to the prior five tax years and continue to carry forward the NOLs indefinitely, with the ability to offset 100% of taxable income for the 2018, 2019 and 2020 tax years. (Review and consider amending previously filed 2018 tax returns)

D. CARES Act Tax Relief for Businesses (cont.)

2. Increased Business Interest Deductions

- The TCJA generally limited the deduction for business interest to 30% of “adjusted taxable income.”
- The CARES Act increases the interest expense limitation in two ways:
 - increases the 30% limitation amount for 2019 and 2020 to 50% of adjusted taxable income; and
 - in calculating this limitation for 2020, taxpayers can elect to use adjusted taxable income for 2019, thereby potentially allowing the taxpayer to deduct additional interest expense in the event its adjusted taxable income decreases from 2019 to 2020

D. CARES Act Tax Relief for Businesses (cont.)

- Special rules apply to interest deductions for partnerships. A partnership is not able to use the increased 50% limitation for 2019. Instead, any interest disallowed at the partnership level is passed out to the partners, and is suspended at the partner level under the existing rules. In 2020, 50% of this suspended interest will be fully deductible, while the other 50% will remain suspended until the partnership allocates excess taxable income to the partner (i.e., such remaining 50% will be subject to the general interest deduction rules implemented under the TCJA)
- See generally, “CARES Act Provides Tax Relief for Businesses” at <https://www.thsh.com/publications/cares-act-provides-tax-relief-for-businesses>

E. FUND STRUCTURE/FORMATION RELATED ISSUES

1. Who are the targeted investors?
 - a. U.S. -- Non-U.S.
 - b. U.S. taxable -- U.S tax exempt
2. Pass-through vs. tax blocker
3. Full master – feeder (parallel U.S. and non-U.S. domiciled feeders)
4. Mini-master (non-U.S. domiciled feeder/U.S. domiciled master)
5. Miscellaneous issues
 - a. Investment adviser registration
 - b. Broker-dealer activities
 - c. Form D and Blue sky filings
 - d. ERISA “plan asset” rules

Wayne H. Davis- Partner

Wayne H. Davis is co-chair of Tannenbaum Helpert's Investment Management practice and a member of the firm's Executive Committee. Wayne advises U.S. and non-U.S domiciled venture capital, private equity and hedge funds, as well as family offices, on all aspects of their business, including structuring and formation, governing regulation, seed capital and financing arrangements, and the implementation of select investment strategies. Wayne has represented numerous investment funds, financial institutions and investors in connection with counter-party defaults and liquidations, including in the context of the Lehman Brothers and MF Global-related insolvency proceedings in both the U.S. and the U.K., as well as in numerous investment fund insolvency-related matters.

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Fund-related financing transactions
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Corporate restructurings
Creditor representations
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Contact:

T: 212-508-6705

E: davis@thsh.com



**Tannenbaum Helpern
Syracuse & Hirschtritt** LLP

Disclaimer

The information presented in this presentation does not represent legal advice, which should come from a legal adviser with knowledge of specific facts and circumstances.

About Tannenbaum Helpern Syracuse & Hirschtritt LLP

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WINCREST CAPITAL

COVID-19 IS ACCELERATING DISRUPTION AND EXACERBATING INEQUALITY

What Are the Implications in Terms of Operations & Distribution?

- Crises shake confidence, meaning bigger managers tend to get bigger

How do managers survive an extended fundraising horizon?

- Focus on performance
- Slash nonessential costs
- You can't recover if you don't survive

Do platforms make more sense today than pre-COVID-19?

CAN DUE DILIGENCE OCCUR WITHOUT ONSITE VISITS?

People are buying a lot more online today...

- Will they rely more upon independent consultant research?
- Will virtual meetings replace physical meetings?
- Will there be a better balance between physical and virtual meetings post COVID-19?

WHAT ARE WE LEARNING TODAY THAT WILL MAKE US BETTER STEWARDS OF CAPITAL TOMORROW?

- Risk management
 - ESG & “C” for "creditworthiness"
- Active vs. passive management
 - Will having been indexed to a recession seem as smart as it did in January?
- Will Governments use bailout leverage to incentivize sustainability?
 - Let's not waste a crisis

Barbara Ann Bernard- Founder & CIO Wincrest Capital

Barbara Ann Bernard is the Founder & CIO of Wincrest Capital. Barbara Ann was named one of the top 50 Women in Hedge Funds globally by Ernst & Young and the Hedge Fund Journal in 2019. She co-founded the Variant Perspectives: Women in Value Investing Conference and was honored as a Young Global Leader by the World Economic Forum in 2018.

She has a passion for investing that goes back to her days of growing up in The Bahamas. It was there that as a 15-year-old Barbara Ann persuaded legendary value investor Sir John Templeton, a fellow Bahamian resident, to take her on board for the first of what would become a series of summer jobs at Templeton Global Advisors, instilling a fundamental value-oriented investment approach to the public markets. She then worked in investment banking at Goldman Sachs, followed by alternative asset management at Deutsche Bank, and as an investment analyst at Holowesko Partners. Today, she is the portfolio manager of the Wincrest Contraria Fund, which is a global long/short equity fund.

Barbara Ann is a graduate of Li Po Chun United World Colleges in Hong Kong and the London School of Economics, where she Chaired the LSE Business Society. She currently serves on the Finance Committee of the Lyford Cay Foundation and Chairs the United World Colleges Bahamian National Committee.



AREAS OF EXPERTISE

Long & Short Equity Funds

SERVICE EXPERTISE

Investment Banking
Alternative Asset Management

EDUCATION

Li Po Chun United World Colleges
Hong Kong
School of Economics- London

Contact:

T: + 242 603 2015

E: BB@wincrest.capital

Thank You!

