

December 21, 2015

## Annual Privacy Policy Notice Requirement Eliminated for Many Investment Advisers and Private Funds under the FAST Act

The “Fixing America’s Surface Transportation Act” or “FAST Act,” signed into law by President Obama on December 4, 2015, contained an amendment to the privacy policy sections of the Gramm-Leach-Bliley Act (the “GLBA”).<sup>1</sup> Among other things, the GLBA and its various implementing rules and regulations require “financial institutions” – including registered investment advisers and private funds<sup>2</sup> – to provide notice to individuals<sup>3</sup> regarding the financial institution’s privacy policies and procedures on an annual basis (in addition to upon establishing a relationship with the individual).

The amendment provides an exception to the annual delivery requirement for any financial institution that satisfies the following two criteria:

- (i) the financial institution does not share nonpublic personal information with nonaffiliated third parties (other than as permitted under certain enumerated exceptions, *e.g.*, to service providers who perform services on behalf of the financial institution, or as necessary to administer a transaction requested or authorized by an individual); and
- (ii) the financial institution has not changed its privacy policies and practices from the policies and practices that were disclosed in the most recent privacy notice sent to individuals.

Investment advisers and private funds satisfying both criteria are no longer required to provide privacy notices to individual investors on an annual basis. Importantly, however, investment advisers and private funds must still provide an initial privacy policy notice to an individual investor at the time of establishing the relationship with the investor, *i.e.*, in subscription documents or other similar offering documents.

The amendment to the GLBA became effective on December 4, 2015.

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<sup>1</sup> [FAST ACT](#) (see, Title LXXV, Section 75001. Eliminate Privacy Notice Confusion).

<sup>2</sup> §505 of the [GLBA](#) charges various regulators with adopting rules and regulations implementing the privacy provisions contained in Title V of the GLBA. The Securities Exchange Commission adopted [Regulation S-P](#) applicable to registered investment advisers. The Federal Trade Commission adopted [Regulation Part 313](#) applicable to financial institutions that are not subject to the jurisdiction of a specific agency (thus, picking up private funds).

<sup>3</sup> Pursuant to §509 of the [GLBA](#), a “consumer” or a “customer” must be an individual. Therefore, an investor in a private fund that is not an individual, such as a pension plan, is neither a consumer nor a customer of the investment adviser or private fund. Neither the investment adviser nor the private fund is required to provide a privacy notice to any such investor, although in practice, many investment advisers and private funds provide privacy notices to all investors.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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