



Associação Brasileira das Entidades  
dos Mercados Financeiro e de Capitais

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COUNSEL TO GREAT COMPANIES

# U.S. Regulatory Discussion for Funds and Investment Managers in Brazil

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# U.S. Four Main Federal Securities Laws



Securities Act

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Securities Exchange Act

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Investment Company Act

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Investment Advisers Act

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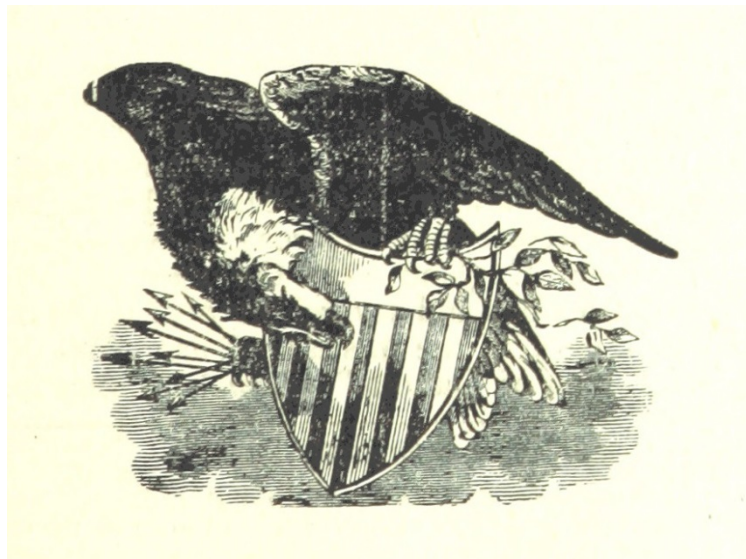


Plus:

- Tax
- CFTC



# Securities Act of 1933



## PRIVATE PLACEMENTS

- > Regulation D
  - > No public offering in the U.S. or directed at U.S. persons
  - > “Accredited Investor” standard

## NON-U.S. OFFERINGS

- > Regulation S
  - > No sales into the U.S.
  - > No sales to “U.S. persons” as defined
  - > Can be concurrent with Reg D

# Securities Exchange Act



## FINDING U.S. INVESTORS

- › Broker registration may apply

## EXCHANGE ACT REGISTRATION

- › Securities registration may be required at 300 or 2,000 holder of record thresholds

## REGULATION M, RULE 105

- › Short sales around time of IPO

## TRADING LIMITS AND REPORTING

- › Sections 13(d) and (g); 13(f)

Related: **NEW ISSUES (FINRA)**

# Investment Company Act



## SECTION 3(C)(1)

- > No public offering
- > Fewer than 100 beneficial owners

## SECTION 3(C)(7)

- > No public offering
- > Solely “qualified purchasers”

Look-through certain funds

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Full registration as an investment company (retail mutual fund)

# Investment Advisers Act



Applies to all who provide investment advice on securities or their valuations

with certain exceptions

## FOREIGN PRIVATE ADVISER

- > No public U.S. presence
- > Fewer than 15 U.S. clients plus U.S. investors in funds, and also
- > Less than \$25 million in U.S. funds plus \$ from U.S. investors

## EXEMPT REPORTING ADVISER

- > SEC filing of partial Form ADV
- > Adviser solely of private funds, up to \$150 million or without limit if managed from outside the U.S.
- > Adviser solely of venture capital funds, without limit

# SEC Registration as an Investment Adviser



## FULL SEC REGISTRATION

- > Form ADV Parts 1 and 2
- > Compliance Manual
- > Code of Ethics (including personal trading reports)
- > Advertising Rules
- > Form PF
- > Affiliated transactions
- > Investment management agreement's required terms

# Other Investment Adviser Considerations



## M&A (MERGERS & ACQUISITIONS)

- > Client consents
- > ERISA consents
- > Sale of affiliated broker (FINRA process)

## CFTC (COMMODITY FUTURES TRADING COMMISSION)

- > Derivatives
- > ISDAs
- > Rule 4.13(a)(3)



# Other Investment Adviser Considerations

## FUNDS AND SEPARATELY MANAGED ACCOUNTS

### > Investor eligibility standards

- “**accredited investor**” – Annual income of \$200,000 (or \$300,000 with spouse) or \$1 million net worth (excluding residence)
- “**qualified client**” if an SEC-registered investment adviser accepts performance-based compensation (incentive fee); \$2.1 million net worth (excluding residence)
- “**qualified purchaser**” for a Section 3(c)(7) fund
- etc.

### > **SMA:** Investment adviser representative, if individual clients

### > **Structuring:**

- > **U.S. Taxable**
- > **U.S. Tax-Exempt**
- > **Non-U.S. Persons**



# What to expect under the new Administration

President Donald J. Trump



**New SEC Chairman Jay Clayton:**

**“I believe in the regulatory architecture that has governed the securities markets since 1933. It is abundantly clear that wholesale changes to the Commission’s fundamental regulatory approach would not make sense.”**

# Next Developments: FinTech



## > Blockchain Technology

- > Bitcoin and other virtual currencies
- > Token sales

## > Automated Processes

- > Roboadvisors
- > Trading algorithms
- > Back office technology enhancements

Questions?

Thank you!  
*Obrigado!*