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# U.S. ERISA Generally

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## Generally

- What is ERISA?
  - United States Employee Retirement Income Security Act of 1974
  - Statutory provisions under Title 26 and Title 29 of United States Code.<sup>1</sup>
- Law Enacted to Regulate Employee Benefit Plans
  - Welfare Benefit Plan
  - Pension Benefit Plan

<sup>1</sup> There are a number of parallel (or nearly parallel) provisions in ERISA and the Internal Revenue Code. See U.S. ERISA Prohibited Transactions.

# Generally

- Pension Benefit Plan
  - Plan
  - Plan Assets (look-through vehicle)<sup>1</sup>

<sup>1</sup> Unless an exemption applies, a plan's investment in a private equity fund or a hedge fund will be considered a plan asset subject to ERISA.

## Generally

- Title I, Part 4 of ERISA – Fiduciary Responsibility<sup>1</sup>
  - Covers Fiduciary Rules that apply to ERISA plans<sup>2</sup>
  - Fiduciary Rules include the Prohibited Transactions Rules<sup>3</sup>
- These rules subject employee benefit plan fiduciaries to significant regulation which may conflict with ordinary commercial business practices for funds.

<sup>1</sup> Under Title I – Protection of Employee Benefit Rights, Subtitle B – Regulatory Provisions, Part 4 – Fiduciary Responsibility.

<sup>2</sup> See U.S. ERISA Fiduciary Duties Generally – Plan Assets.

<sup>3</sup> See U.S. ERISA on Prohibited Transactions.

## Generally

- If the fund is subject to ERISA:
  - Consider if there is an available exemption for transaction, such as using a QPAM?
  - Consider information which must be reported by benefit plan investor on annual Form 5500 report for value of its investment in the fund
  - Consider whether the investments generate unrelated business taxable income (UBTI) under the Internal Revenue Code

## Generally

- If the fund is not subject to ERISA:
  - On what basis is it not considered an ERISA plan asset?<sup>1</sup>

<sup>1</sup> See U.S. ERISA Significant Participation Rules and U.S. ERISA VCOC Exemption and REOC Exemption for examples of when a fund is not considered an ERISA plan asset.

## Generally

- All fund documents need to address ERISA and make a statement as to whether it applies to the fund.
- Benefit plan investors can be a significant source of assets for a private equity fund or hedge fund. However, accepting commitments requires significant preparation and ongoing monitoring.