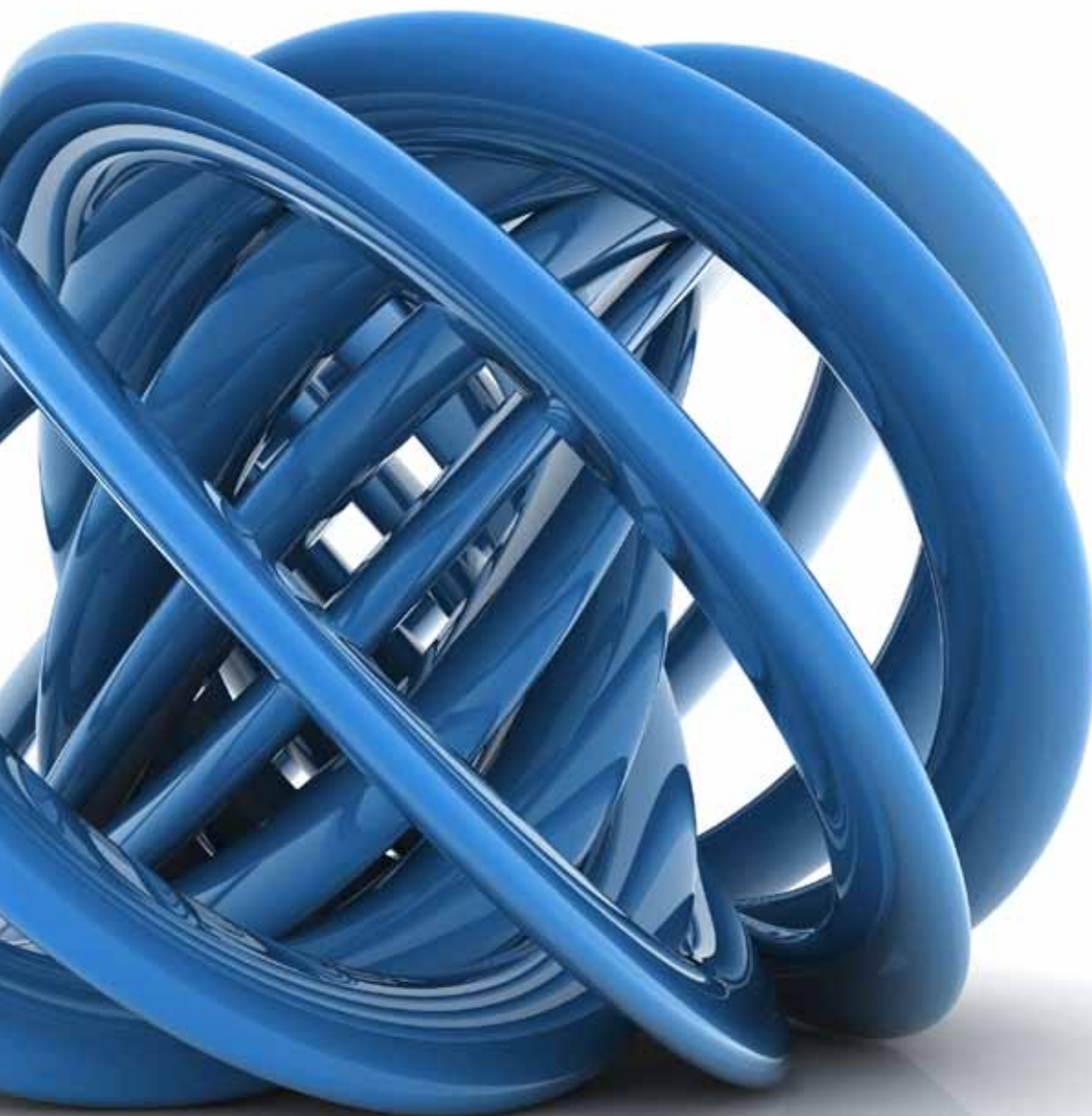


ALLEN & OVERY

Non-U.S. Investment Funds and Managers:

*Regulatory Framework for Raising Capital
in the United States*

June 2015



Introduction

This note discusses the principal aspects of the U.S. regulatory regime applicable to non-U.S. asset managers and funds and sets out a framework for reducing or eliminating the full scope of U.S. regulation on a fund manager seeking to attract U.S. investor capital. We have also produced a [white paper](#) that discusses in greater detail U.S. regulation of non-U.S. asset managers and the framework for reducing or eliminating U.S. regulatory requirements, including additional U.S. regulatory issues that we do not discuss in this note, such as political law issues with respect to “pay-to-play” and lobbying laws, ERISA issues, Volcker Rule issues, and U.S. tax issues including FATCA.

As a general matter, non-U.S. asset managers seeking capital in the United States are subject to the same legal and regulatory issues that U.S. managers face, and can therefore structure their operations pursuant to the same framework of exemptions that U.S. managers use to minimize the full scope of U.S. regulation to which they would otherwise be subject. In many cases, however, U.S. managers, as a result of being located in the United States will be subject to stricter regulatory requirements than non-U.S. managers and will have fewer exemptions available.

U.S. regulation of money managers, including non-U.S. managers, and the funds they manage is a complex regime that has changed significantly since the implementation of the Dodd-Frank Reform and Consumer Protection Act of 2010 and continues to evolve as a result of, among other things, the Jumpstart Our Business (JOBS) Act enacted in 2012, the final Volcker Rule passed in December 2013, and U.S. regulatory agencies’ continued interpretation of the same. These changes and developments generally make more dramatic an already complex regulatory regime and provide an opportunity to revisit the scope of regulation a non-U.S. fund manager must consider in seeking to approach U.S. investors as a way to increase assets under management. That scope ranges from manager licensing requirements under multiple regulators to regulation of a manager as a broker-dealer/placement agent to fund structuring and offering restrictions.

Non-U.S. managers nonetheless can navigate these requirements by using a framework of exemptions designed to accommodate both U.S. and non-U.S. managers willing to limit some of their activities, including activities in the United States. This framework, which we describe in more detail below, can significantly reduce – and in some cases eliminate – the full scope of regulation imposed on asset managers, funds and broker-dealers/placement agents. This is critical, as the United States continues to be a significant source of investor capital for non-U.S. managers, and U.S. investors increasingly seek to diversify through exposure to non-U.S. asset classes and managers. Many non-U.S. managers, in fact, have recently undertaken a renewed interest in the United States markets, launching funds designed to accommodate U.S. investors looking to capitalize on emerging markets, European commercial real estate and global life sciences investments. Careful planning and structuring by non-U.S. managers can thus result in both business flexibility and consistent conformance with applicable laws.



Regulatory Triggers and Framework to Reduce Regulation

Non-U.S. fund managers will typically trigger U.S. regulatory and legal issues when conducting the activities below in the United States or with respect to U.S. investors. We have set out for each triggering activity a framework for avoiding or reducing, to the extent possible, U.S. regulation, and attach as Appendix A a diagram illustrating how these triggers lead to one or more U.S. legal requirements.

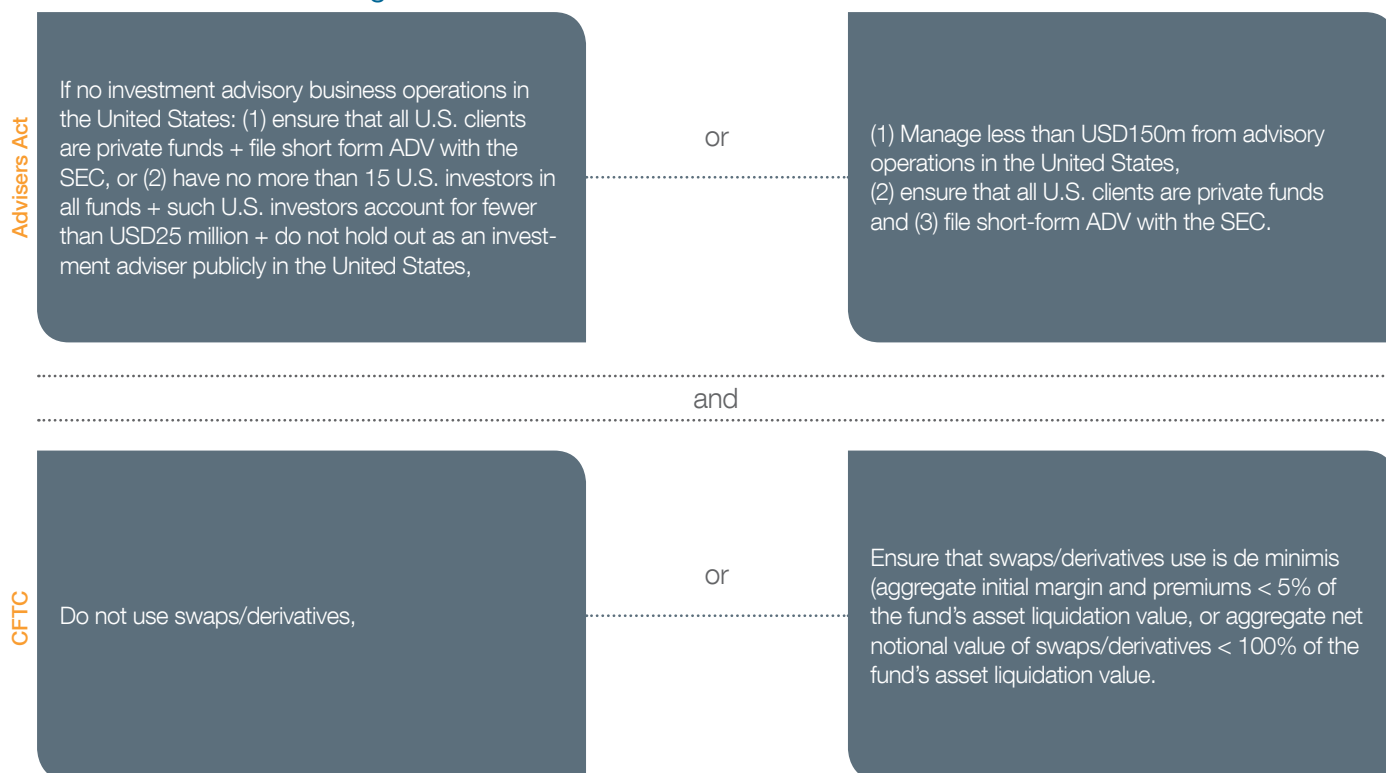
Each framework below represents the general approaches fund managers typically use to reduce the effects of U.S. regulation on their activities. The frameworks below are not a full analysis of the issues presented and should not be relied upon as legal advice.

Trigger: Managing Assets for U.S. Funds or Non-U.S. Funds with U.S. Investors

A non-U.S. manager that manages assets for a fund domiciled in the United States (e.g., a Delaware limited partnership), or for a non-U.S. domiciled fund that has or seeks U.S. investors, will be required to analyze whether it has the proper licensing (or an exemption

from licensing) with the U.S. Securities and Exchange Commission (**SEC**) under the U.S. Investment Advisers Act of 1940, as amended (the **Advisers Act**), and the U.S. Commodity Futures Trading Commission (**CFTC**) under the U.S. Commodity Exchange Act (**CEA**).¹

Framework to Reduce Regulation:



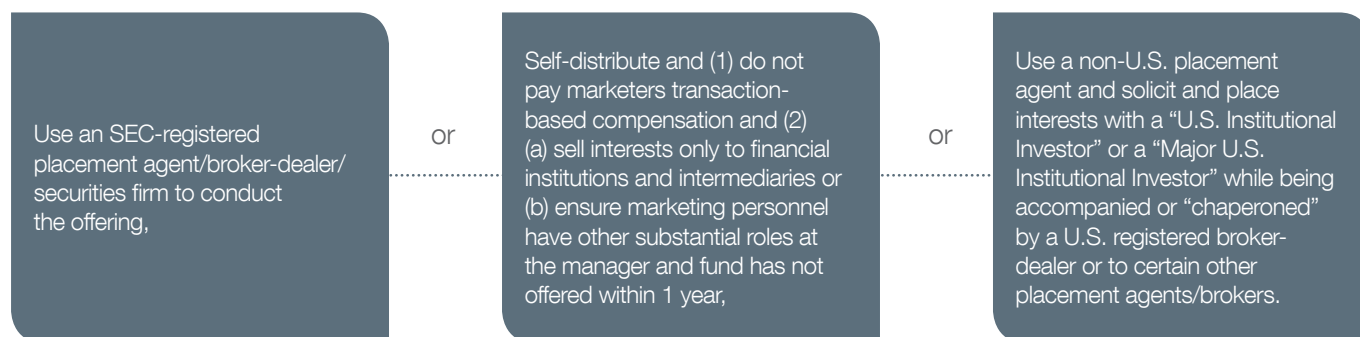
1. Any non-U.S. manager affiliated with a bank that is a "banking entity" for purposes of the Volcker Rule must also consider the effects the Volcker Rule may have on sponsoring certain types of private funds offered to U.S. investors, while all managers must consider whether a bank can invest in the funds they manage subject to Volcker Rule limitations on banks as investors. We discuss these aspects of the Volcker Rule in the [white paper](#).

Trigger: Fundraising for U.S. Funds, from the United States, or from U.S. Investors

A non-U.S. manager that engages in fundraising, marketing or solicitation activity (a) for funds domiciled in the United States; (b) from the United States; or (c) in pursuit of U.S. investors for non-U.S. funds must

determine whether it should seek a license from the SEC and the Financial Industry Regulatory Authority (**FINRA**), under the U.S. Securities Exchange Act of 1934 (the **Exchange Act**).

Framework to Reduce Regulation:

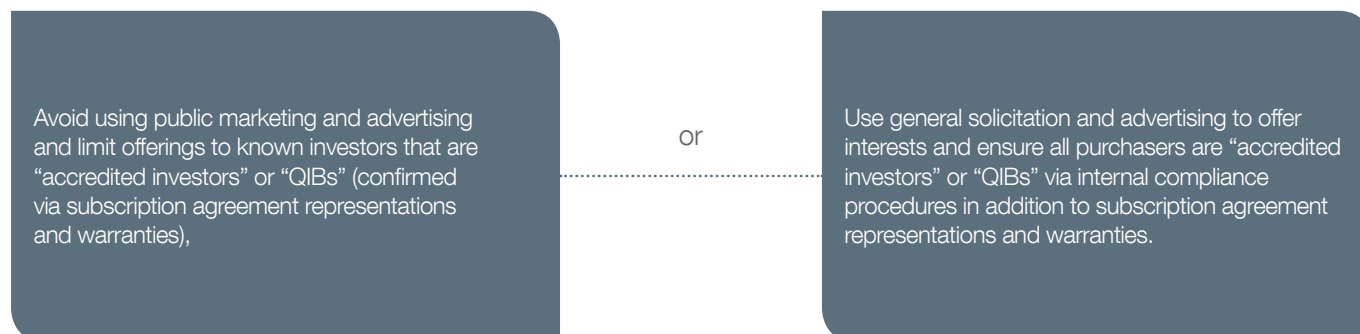


Trigger: Offering Interests of U.S. Funds or Offering Non-U.S. Funds to U.S. Investors

If a non-U.S. manager offers interests in its funds to U.S. investors, the manager is required to analyze the offering under the securities registration requirements of

the U.S. Securities Act of 1933, as amended (**Securities Act**), and often under the class registration requirements under the Exchange Act.

Framework to Reduce Regulation:

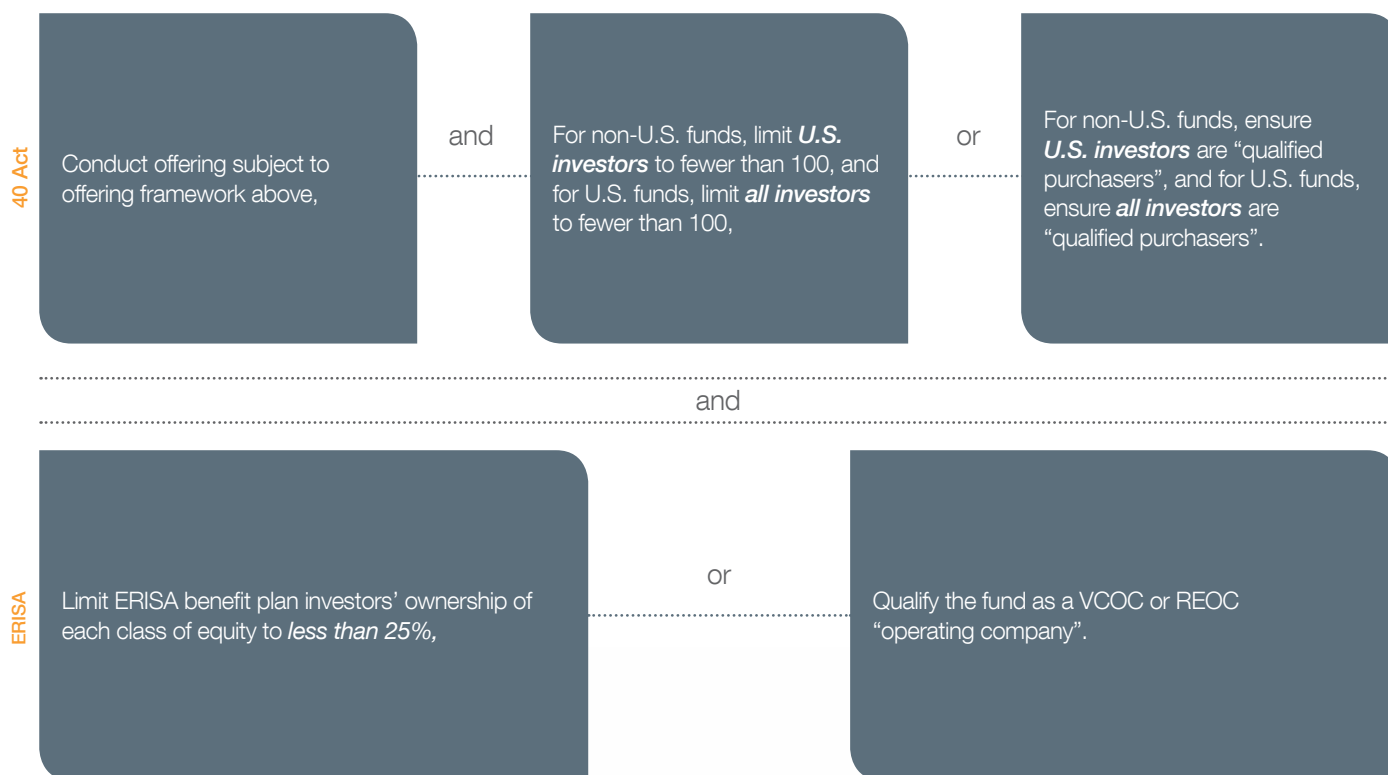


Trigger: Fund Formation and Structuring

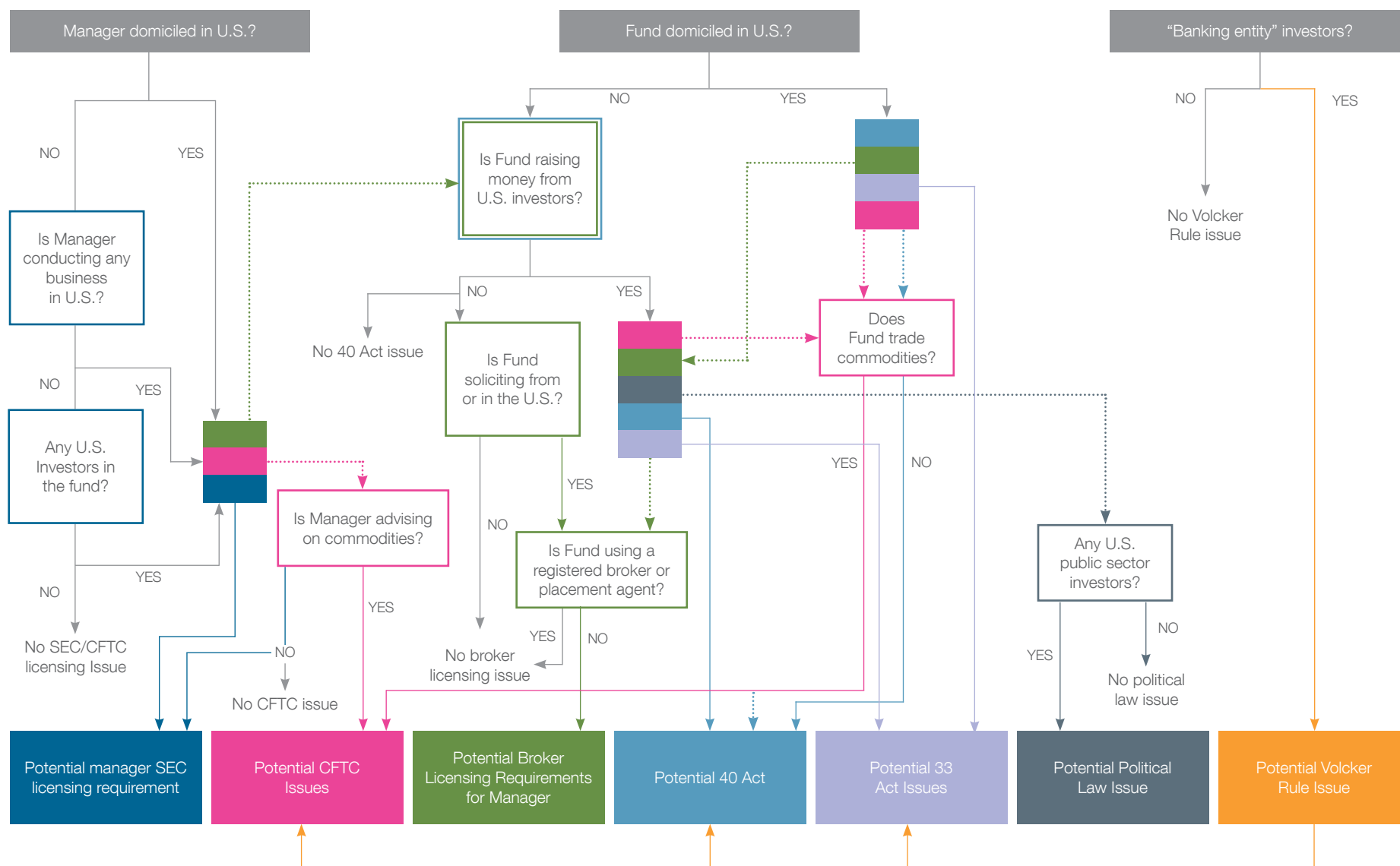
Finally, a non-U.S. manager must consider the structure, investment objective and potential U.S. investor base for any of its managed funds under the U.S. Investment Company Act of 1940, as amended (the **Investment Company Act**) and the Employee Retirement Income Security Act (**ERISA**). One or more additional

approaches may be available under the Investment Company Act, depending on the nature of the fund's business, and certain fund strategies and types of investors also will raise issues with the CFTC and under the Volcker Rule. Please see the [white paper](#) for a discussion of these issues.

Framework to Reduce Regulation:



Schematic of Potential U.S. Issues



*All U.S. or non-U.S. funds will need to consider U.S. tax and ERISA issues when raising money from U.S. investors

Key contacts

This note is intended only as a general discussion of U.S. legal issues that asset managers face and should not be regarded as legal advice. If you require advice on any of the matters raised in this note, please contact one of the individuals listed below or your usual contact at Allen & Overy.



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