

# ARE REGIONAL CENTERS ACTING AS UNREGISTERED INVESTMENT ADVISORS?



**Lori Patterson**  
Baker Donelson



**Catherine DeBono Holmes**  
JMBM



**Christopher Gabbard**  
Greenberg Traurig



**Robert Cornish**  
Phillips Lytle



**Kurt Reuss**  
Primary Capital

# Who is Advising the Investment Vehicle?

- Managing member or general partner
- Should get a written registration opinion from a law firm
- As you do more funds, requirements may change

# Considerations

- “Regular and Continuous Supervision”
- Notification requirement
- Who is the client of the managing member (investment advisor)?

# Federal or State Registration

- Depends on the amount of funds under management.
- Specific state regulations.
- States where issuer's principal office and states doing business in.
- Number of investors living in a state.
  
- Burden is on issuer to prove exempt from registration.

# RIA Registration (US and non-US investors)

<i>Principal Office</i>	<i>Type of Acct Managed</i>	<i>Aggregate RAUM</i>	<i>Reporting</i>	<i>Registration requirements</i>
<i>U.S.</i>	<i>Private funds</i>	<i>greater than \$150m*</i>	<i>Exempt reporting</i>	<i>SEC registration</i>
<i>U.S.</i>	<i>Private funds</i>	<i>less than \$150m*</i>	<i>Exempt reporting</i>	<i>Potential state registration</i>
<i>U.S. (not WY or NY)</i>	<i>Managed accounts or private funds</i>	<i>\$25m-\$100m</i>		<i>State if min. threshold met. Otherwise SEC registration</i>
<i>U.S. (not WY or NY)</i>	<i>Managed accounts or private funds</i>	<i>less than \$100m</i>		<i>SEC registration permitted</i>
<i>WY or NY</i>	<i>Managed accounts or private funds</i>	<i>greater than \$25m</i>		<i>SEC registration</i>

## Form ADV (46-page form)

- Background checks on all control people
- Education background
- Business background
- Affiliated businesses and conflicts of interest
- Products offered
- Custody of assets can trigger full or custody audit
- Details regarding referral fees paid
- Annual audit

# Integrated Offerings

- Same control people
- Same or similar deal terms
- “Look-through”

# Supervisory Procedures

- Policies and procedures
- How money is handled (custody)
- Corporate governance
- Marketing material review
- Conflicts of interest
- Code of ethics



# Consequences of not registering

- Fines (tier 1, tier 2, tier 3)
- Requirement to get registered / bared from the industry
- Disgorgment of profits

## To-do's

- Confirm your registration status
- Designate compliance officer
- Hire a broker dealer
- Provide up to date laws / regulations
  - Consultant / Counsel - “I relied on counsel” is a good response
- Audited Financials