



Considerations for Mergers and Reorganizations

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Reasons for Fund Mergers/Reorganizations

- Reduce operating costs
- Increase AUM and market share
- Improve performance
- Eliminate poor performance history
- Eliminate duplicate/similar strategies
- Retire from the investment management business

Operational Considerations

- Fund Accounting
- Transfer Agency
- Custody
- Compliance

- SEC Rule 17a-8
 - Board approval
 - Shareholder approval
- Regulatory filings (Form N-14 and others)
- Accounting Survivor
 - Investment adviser
 - Portfolio composition
 - Investment objectives
 - Expense structure
 - Asset size

- For merger
 - Components of Form N-14
 - Combined proxy, prospectus, SAI
 - Pro-forma financial statements
- Post-merger
 - Financial statements (combined for assets and liabilities and acquiring fund for operations, changes in net assets, financial highlights)
 - Specific disclosure requirements

- Taxable Reorganizations
- Tax Free Reorganizations
 - Governed under IRC Section 368
 - General Requirements
 - Plan of reorganization
 - Continuity of shareholders' interest
 - Continuity of business enterprise (Asset or Business Test)

Pitfalls to Consider

- Failure to meet tax-free status
- RIC Qualification considerations
- Loss limitations – IRC Sections 381-383
- Tax survivor for loss limitation purposes may or may not be accounting or legal survivor

- Result from changes of control (typically in mergers, but can occur outside of mergers as well)
- Section 381 limits acquiring fund's capital gain income that can be offset by CLCFs from target fund in year of reorganization
- Sections 382 and 383 provide limitations on CLCFs. Unrealized gains and losses at time of reorganization may also impact calculation.
- Impact of RIC Modernization

Tax Related Steps in Reorganizations

- Consultation with administrator, attorneys, auditors, and other service providers
- Board resolution and plan of reorganization
- Tax opinion on tax-free reorganization
- Analysis of potential loss limitations
- Qualification testing on both funds prior to reorganization
- Final tax returns, F/S disclosures, and carryover of appropriate tax attributes

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Thank you

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