

Important Deadlines and Reminders for Investment Advisers, Exempt Reporting Advisers, Commodity Trading Advisers and Commodity Pool Operators

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Investment Advisers

Annual Compliance Reviews

All investment advisers registered with the Securities and Exchange Commission ("SEC") are required to review their compliance policies and procedures at least annually (and best practice is for any investment adviser, whether SEC registered or not, to engage in such a review). Many advisers traditionally conduct this review in March of each year. Registered advisers should commence their annual reviews promptly and document the review process and the outcomes of the review.

Form ADV – Annual Amendment Due by March 31st; Delivery of Updated ADVs to Clients

Form ADV for registered advisers (Parts 1 and 2) and Exempt Reporting Advisers (relevant portions of Part 1) with a December 31 fiscal year end must be updated by March 31, 2015 through the Investment Adviser Registration Depository (IARD) website. In order to get credit for the filing, please select "*annual amendment*" when updating the form. Failure to update Form ADV could lead to registration or status as an Exempt Reporting Adviser being revoked.

In addition, registered investment advisers must deliver updated brochures (Part 2A) and brochure supplements (Part 2B) to all clients within 120 days after the end of the adviser's fiscal year.

Exempt Reporting Advisers – Monitoring of "Regulatory Assets Under Management"

Exempt Reporting Advisers are reminded to review their "regulatory assets under management" on a regular basis to ensure that any increase in regulatory assets under management does not trigger additional requirements, such as full registration with the SEC, or for State Exempt Reporting Advisers, the need to become an SEC Exempt Reporting Adviser.

"Regulatory assets under management" should be calculated in accordance with Item 5.F of Form ADV and the accompanying instructions.

Form PF

Investment advisers registered with the SEC who manage private funds and have at least \$150 million in regulatory assets under management attributable to "private fund assets" (as defined in Form PF) are required to file Form PF through the IARD website.

Large Hedge Fund Advisers (advisers with over \$1.5 billion in "hedge fund assets under management") must file quarterly within 60 calendar days after the end of each quarter, or by March 2, 2015 (as March 1, 2015 falls on a Sunday) for the quarter ended December 31, 2014. All other advisers must file annually within 120 days of the end of their fiscal year, or by April 30, 2015 for advisers with a December 31 fiscal year end. Advisers are cautioned to carefully review the definitions and the instructions for Form PF when determining the amount of "private funds assets" and "hedge fund assets."

Advisers who have not yet started preparing their Form PF filings are encouraged to start this process promptly.

Registered Advisers to Funds - Delivery of Audited Financial Statements

Registered investment advisers relying on the “audited financials exception” to the account statement delivery and independent verification requirements of the Custody Rule must deliver such audited financial statements for their fund(s) to investors within 120 days of the end of the fund’s fiscal year. Please note that funds which are 4.7 pools for CFTC purposes have a 90 day deadline under CFTC rules (see below). The financial statements must be audited by an independent public accountant that is registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board. Advisers to funds of funds must deliver such statements within 180 days of the end of the fund’s fiscal year.

Exempt Reporting Advisers - Delivery of Audited Financial Statements

Exempt reporting advisers in Massachusetts who manage private funds which rely on the exclusion from the definition of “Investment Company” set forth in Section 3(c)(1) of the Investment Company Act of 1940, as amended, which funds are not “venture capital funds” (as defined by the Massachusetts Securities Division), must deliver annual audited financial statements for the fund to each beneficial owner of any such fund.

Exempt reporting advisers qualified in other states should consult their counsel to determine any annual requirements in such states.

Privacy Policy

All investment advisers must circulate a summary of their privacy policy to advisory clients who are natural persons each year.

Section 13(f) Filings

Investment advisers who are required to make quarterly Form 13F filings with the SEC must make such filings within 45 days after the end of each calendar quarter. The first of such filings for this year must be made by February 16, 2015 (as February 14, 2015 falls on a Saturday) via EDGAR. These filings are necessary if in the previous calendar year the adviser had under management at least \$100 million in securities traded on U.S. securities exchanges (including NASDAQ). Failure to file Form 13F in a timely manner could lead to an enforcement proceeding by the SEC.

Section 13(g) Filings

The SEC permits “qualified institutional investors” (such as registered advisers) and “passive investors” (which may include non-registered advisers) who have five percent or greater beneficial ownership (a broadly defined concept that goes beyond just who owns the shares) of a class of registered equity securities to report this ownership on Schedule 13G, instead of the more demanding Schedule 13D. For “qualified institutional investors,” an initial Schedule 13G must be filed via EDGAR within 45 days after the end of the calendar year if as of the end of the calendar year its beneficial ownership exceeds 5% (i.e. by February 16, 2015 (as February 14, 2015 falls on a Saturday) with respect to positions from calendar year 2014). In addition, a registered adviser who files Schedule 13G as a qualified institutional investor must notify any person (such as a client) on whose behalf it holds 5% beneficial ownership of any transaction that such person may be required to report (for example, the acquisition of that 5%). For “passive investors,” the initial Form 13G filing must be submitted within 10 days of the event which triggers the filing requirement.

With respect to both “qualified institutional investors” and “passive investors” an annual amendment is required to be filed within 45 days after the end of each calendar year to report any change in holdings for that year (i.e. by February 16, 2015, as February 14, 2015 falls on a Saturday). The annual amendment should report holdings as of December 31. A copy of such filing should also be sent to the issuer.

Please note that both qualified institutional investors and passive investors must make additional filings upon certain changes in ownership or changes in investment purpose.

Form 13H Filings

Form 13H filings are required to be made by “large traders,” which is defined under Rule 13h-1(a)(1) as a person or entity who directly or indirectly exercises investment discretion over one or more accounts and effects transactions in an aggregate amount equal to or greater than the “identifying activity level.” The identifying activity level is defined as aggregate transactions in “NMS securities” that equal or

exceed two million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month. The term “NMS securities” refers generally to exchange-listed securities, including equities and options.

Large traders must submit an initial Form 13H within 10 days of reaching the identifying activity level. An amended filing must be submitted no later than the end of the calendar quarter if it becomes necessary to correct any information in the Form. Otherwise, large traders must make annual filings no later than 45 days after the calendar year end.

“New Issues Rules” – Annual Eligibility Verification

The New Issues Rules require FINRA members or their associated persons (“Members”) to obtain within the twelve months prior to a sale of a new issue to an account holder, either from the account holder or its authorized representative, an affirmative written statement that the account is eligible to purchase new issues in compliance with the New Issues Rules. Members are required to verify this status on an annual basis. The initial verification of an account holder’s status under the New Issues Rules must be a positive affirmation of the account holder’s non-restricted status. However, the New Issues Rules allow Members to follow a “negative consent” process for annual verification of an account holder’s status by sending a notice asking the account holder if there has been any change in its status. Unless an account holder affirmatively reports a change in status, the Member is permitted to rely on its existing information regarding a particular account holder. In many cases, Members rely on representations from investment managers who must, in turn, determine the eligibility status of separate account clients and investors in hedge funds. Investment managers investing in new issues should remember to undertake the annual verification as to new issues eligibility with their clients and investors.

Commodity Trading Advisors and Commodity Pool Operators

Form PQR

Registered Commodity Pool Operators (“CPOs”) must file NFA Form PQR through the EasyFile system on the National Futures Association (“NFA”) website within 60 days after the end of the quarters ending March, June and September, and a year-end report within 90 days of the calendar year end.

CPOs to 4.7 Pools - Delivery of annual audited financials and quarterly account statements

CPOs managing 4.7 pools must deliver to pool participants and file with the NFA certified (per the certification guidelines in Rule 4.7) annual reports that include audited financial statements within 90 days of the end of the fiscal year, or by March 31, 2015 for advisers with a December 31 fiscal year end. CPOs of fund of funds can request an extension to up to 180 days after the end of the fiscal year to deliver and file these reports. CPOs to 4.7 pools must also deliver quarterly account statements to participants.

Annual Certification - 4.13(a)(3)

Fund managers relying on the exemption from registration as a commodity pool operator with the CFTC set forth in Rule 4.13(a)(3), the so-called “de minimis exemption”, and those relying on the exemption from registration as a commodity trading adviser with the CFTC set forth in Rule 4.14(a)(8) must reaffirm their claim of exemption or exclusion from registration each year. The annual affirmation may be made through the NFA’s Exemption System and must be made within 60 days of the end of the calendar year, or by March 2, 2015 (as March 1, 2015 falls on a Sunday). Failure to submit an affirmation by this deadline will result in a withdrawal of the exemption from registration.

Form PR

All registered Commodity Trading Advisers (“CTAs”) must file NFA Form PR through the EasyFile system on the NFA website within 60 days after the end of the quarters ending March, June and September, and a year-end report within 90 days of the calendar year end.

Additional NFA/CFTC Requirements

On at least an annual basis, registered CPOs and CTAs must also:

- Complete an NFA Annual Questionnaire on the NFA website
- Complete the electronic Annual Registration Update

- Pay NFA dues on the anniversary date of the firm's registration
- Complete NFA's annual Self-Examination Questionnaire and affirmation
- Send the firm's Privacy Policy to every participant in a pool
- Test the firm's Disaster Recovery Plan and make any necessary adjustments
- Provide Ethics Training to firm employees

Other Reminders

Cybersecurity

Cybersecurity is arguably the current greatest focal point of the SEC and state regulators. Managers that have not yet conducted a cybersecurity review should do so. For more information, see our alerts dated April 24, 2014 and June 18, 2014.

Rule 506 - "Covered Person" (or "Bad Actor") Questionnaires

Investment advisers relying on Rule 506 of Regulation D in connection with the offering of private fund interests are reminded to collect updated "covered person" (or "bad actor") questionnaires from each of their covered persons on a regular basis. While no specific regulations have been issued indicating how frequently this information should be refreshed, industry guidance suggests that advisers should consider doing this as frequently as quarterly. "Covered persons" include, among others, the private fund, all directors, executive officers, general partners and managing members of the private fund, the investment manager of the private fund, placement agents, and any beneficial owner of 20% or more of the private fund's outstanding voting equity securities calculated on the basis of voting power, even if not a control person of the private fund.

For additional information regarding who qualifies as a "covered person" and the "bad actor" requirements, please refer to our July 23, 2013 Securities Alert.

Annual Amendment to Form D

Investment advisers conducting ongoing offerings of securities in reliance on Rule 506 of Regulation D are reminded that an amendment to Form D is required to be filed with the SEC at least annually. In addition, various states require that a filing (sometimes together with a filing fee) be submitted annually or upon closure of any open offering.

FATCA

As detailed in our December 3, 2014 Foley Adviser, FATCA went into effect in 2014 and will be phased-in through January 2017. During this period, numerous deadlines have gone into effect (some of which occurred in December 2014) or will go into effect (as early as the first calendar quarter of 2015). Managers of funds who have not yet taken any action with respect to these FATCA deadlines should consult with counsel and/or accountants immediately to determine what actions are required.

Pay-to-Play

Advisers who manage assets of one or more government entities (whether as separate clients or investors in an investment fund managed by the adviser), or who engage placement agents to market to government entities are required to comply with the provisions of SEC Rule 206(4)-3, also known as the Pay-to-Play Rule. The Pay-to-Play Rule, which applies whether the Adviser is registered with the SEC or an exempt reporting adviser for SEC purposes, places certain restrictions on the type and amount of political contributions and/or services to political candidates, campaigns or PACs that may be made by an adviser or its affiliates (in certain circumstances including contributions made prior to becoming affiliated with the adviser), as well as placing restrictions on who an adviser may engage to solicit government entities on the Adviser's behalf.

In addition, advisers subject to the Pay-to-Play Rule are required to maintain books and records to document their compliance with the rule. Any adviser that currently manages assets of any government entity, or that is or intends to market its services to any government entity, should consult with counsel to ensure adequate policies and procedures are in place for purposes of compliance with the Pay-to-Play Rule.

International Swaps and Derivatives Association Standard Documentation (ISDAs)

Advisers who use swaps are reminded of the various Dodd-Frank and European Market Infrastructure Regulation (EMIR) requirements. Every party to a swap must have a CICI/LEI number and should enter into the August DF Protocol, the March DF Protocol and, if an EU counterparty is involved, potentially several EMIR related protocols. Advisers with EU counterparties are also reminded to monitor the status of each fund they manage for NFC- or NFC+ Status and to update their EMIR NFC filing as needed. Finally, advisers should be mindful of whether particular swaps they are trading fall within the clearing requirements.

EU Alternative Investment Fund Managers Directive (AIFMD)

As a reminder, the AIFMD went into full effect in July 2014. Managers who currently market or are looking to market a fund in the EU should consult EU counsel to determine what actions are required. Such consultation should occur well in advance of any anticipated marketing of a fund in the EU as registration under the AIFMD requires a few months to complete.

Form SLT

Treasury International Capital (TIC) Form SLT is required to be filed by certain custodians, investment advisers and investors. Reporting entities include an investment adviser that has \$1 billion or more of "reportable securities" as of the last business day of the reporting month. Form SLT must be submitted by the reporting entity with at least \$1 billion in reportable securities to the Federal Reserve Bank, no later than the 23rd calendar day of the month following the month of reporting. The Form may be submitted electronically, by mail or fax. Determining whether an adviser must submit this form is complex, and advisers with \$1 billion or more in AUM are urged to consult with counsel if they are uncertain whether they should be making this filing.

Bureau of Economic Analysis (BEA) Reporting

All investment advisers, whether or not registered, should review their obligations for reporting to the Department of Commerce's Bureau of Economic Analysis. In particular, U.S. entities are required to report on any direct investment abroad through the BE-10, Benchmark Survey of U.S. Direct Investment Abroad. Benchmark surveys are conducted every five years and a response will be due in the middle of 2015. The BEA has indicated that it may provide additional guidance to hedge fund filers possibly in the form of Frequently Asked Questions (FAQs).

In addition, in late 2014 the BEA reinstated the reporting requirements for the BE-13 Survey of New Foreign Direct Investments in the U.S. More detailed information on these BEA requirements will be provided shortly in a separate Foley Adviser.

Massachusetts Data Privacy Requirements

All investment advisers with offices in Massachusetts, whether or not registered as an investment adviser with The Commonwealth of Massachusetts, are reminded that they are required to comply with the Massachusetts data security law and the regulations thereunder (the "Regulations"). The Regulations require, among other things, that the adviser have a written Comprehensive Information Security Program and that the adviser provides training to its employees with respect to such policies. The most burdensome requirement of the Regulations is likely the requirement of encryption of all personal information stored on laptops or other portable devices and the encryption of all transmitted records and files containing personal information that will travel across public networks and encryption of all data containing personal information to be transmitted wirelessly.

For more information regarding the requirements under the Regulations, please refer to our February 3, 2010 alert.

General Updates to Fund Documents and Compliance Manuals

All investment advisers, whether or not registered, are reminded that reviews of compliance manuals and all fund documents should be undertaken on a periodic basis. Registered investment advisers may undertake this review as part of their annual compliance review. To the extent that such a review has not been undertaken during the last two years, it is recommended that such a review be undertaken at this time.

Annual Massachusetts Corporate Filings

Limited partnerships and limited liability companies formed in Massachusetts and non-Massachusetts limited partnerships and limited liability companies which are qualified to do business in Massachusetts must file an annual report on or about the anniversary date of such entity's formation or qualification, as applicable. There is a \$500 fee associated with such annual filing.

Annual Delaware Tax

Limited partnerships and limited liability companies formed in Delaware are required to pay an annual tax in the amount of \$250 by June 1 of each year.

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