

Investment Adviser Important Dates and Reminders

Written by Jeffrey D. Collins, Meredith A. Haviland

January 30, 2009

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. Many advisers traditionally conduct this review in March of each year. Registered advisers should commence their annual reviews promptly and document the review process.

Form ADV – Annual Amendment Due by March 31st

Form ADV must be updated by March 31, 2009 through the Investment Adviser Registration Depository website (www.iard.com). 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 being revoked.

In addition, either an updated Part II of the Form ADV, or a written offer to provide the updated Part II, must be circulated to advisory clients at some point during the year.

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 14, 2009 using 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. Failure to file Form 13F in a timely manner could lead to an enforcement proceeding by the SEC.

Form SH Filings

Investment advisers who are required to make Form 13F filings with the SEC are also required to make weekly Form SH filings. Form SH requires institutional investment managers (i.e., those required to file a Form 13F) to report information concerning daily short sales of 13(f) securities. This filing needs to be made each week unless either (i) no short sales of 13(f) securities were effected during the applicable week or (ii) on each calendar day during the applicable week the start of day short position, (a) the gross number of securities sold short during the day and the end of day short position each constitutes less than one-quarter of one percent (0.25%) of that class of the issuer’s Section 13(f) securities issued and outstanding; and (b) the fair market value of the start of day short position, the gross number of securities sold short during the day, and the end of day short position each are less than \$10 million. Form SH filings are required to be filed every Friday by 5:30 p.m. EST via EDGAR.

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 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 using 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%, or by [February 14, 2009](#) with respect to positions from calendar year 2008. 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 five percent beneficial ownership of any transaction that person may be required to report (for example, the acquisition of that five percent). 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 forty-five days after the end of each calendar year to report any change in holdings for that year, or by February 14, 2009. The annual amendment should report holdings as of December 31.

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

“New Issues Rule” – Annual Eligibility Verification

The New Issues Rule requires 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 Rule. Members are required to verify this status on an annual basis. The initial verification of an account holder’s status under the New Issues Rule must be a positive affirmation of the account holder’s non-restricted status. However, the New Issues Rule allows 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.

RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)
- [Professional Services](#)

RELATED PRACTICES

- [Business Counseling](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.