

February 13, 2019

### **Reminder: Annual Compliance Filing and Reporting Deadlines**

Investment advisers and private investment fund managers must meet a number of annual filing and/or reporting deadlines and other obligations in order to comply with federal securities laws. This *Client Alert* provides a summary of key compliance considerations for 2019. Note that the deadlines provided below are based upon an investment adviser or fund manager with a fiscal year-end of December 31. Any investment adviser or fund manager whose fiscal year-end falls on a date other than December 31 should carefully calculate their filing and/or reporting deadlines based on that date.

The regulation and compliance obligations discussed below are not exhaustive. A thorough review of the compliance obligations of any particular investment adviser or fund manager is beyond the scope of this *Client Alert*, given the unique operational characteristics of most investment advisers and fund managers. Please consult with the attorneys in our Investment Management Practice Group (IM Practice Group) regarding any additional obligations or filing and/or reporting deadlines that would apply.

#### **Annual Compliance Reviews**

Investment advisers registered under the Investment Advisers Act of 1940, as amended (the “Advisers Act”), are required to conduct an annual review of their compliance programs for adequacy and the effectiveness of their implementation. This annual review should take into consideration whether your compliance program sufficiently addresses the applicable compliance requirements, as well as the risks associated with operations, investment strategy and securities offerings.<sup>1</sup> At a minimum, your compliance program should include the following annual tasks:

#### ***General Annual Compliance Obligations***

- Collect annual compliance certifications from all “supervised persons” and “access persons” certifying that each has read and understood the compliance policies and procedures.
- Obtain an annual personal securities holding report from each “access person”.<sup>2</sup>
- Obtain annual “bad actor” re-certifications pursuant to Rule 506(d) of Regulation D.

---

<sup>1</sup> Several of the requirements found in this Client Alert may be applicable only to advisers that manage private investment funds.

<sup>2</sup> “Access persons” are any supervised persons who (1) have access to nonpublic information regarding any clients’ purchase or sale of securities or nonpublic information regarding the portfolio holdings of any reportable fund, or (2) are involved in making securities recommendations to clients or have access to such recommendations that are nonpublic. If providing investment advice is your primary business, all of your directors, officers and partners are presumed to be access persons. (See Rule 204A-1(e)(1) of the Investment Advisers Act of 1940, as amended.)

- Distribute an annual privacy notice to investors.
- Review any compliance violations or incidents that occurred in the prior year and determine the effectiveness of your compliance policies and procedures in discovering and addressing each violation or incident. Revise your policies and procedures to the extent reasonably necessary to prevent such incidents in the future.
- Review any compliance matters that the SEC or other regulatory authorities have highlighted as areas of concern for the upcoming year (i.e., cybersecurity preparedness and anti-money laundering programs), or any changes in the laws or regulations that may require a revision to your compliance policies and procedures, such as the changes to Form ADV disclosure requirements.
- Review and comply with any annual certification, opinion requirements or other contractual obligations in counterparty agreements, side letters, credit facilities and other documents that require periodic reporting or notice.
- Complete the required Department of Labor filings for ERISA benefit-plan clients or investors, as applicable.
- Verify the eligibility of clients to participate in “new issues” of publicly offered securities, and identify “restricted persons” in order to properly restrict their participation.
- Complete third-party annual audit of anti-money laundering (AML) programs under the Financial Crimes Enforcement Network (FinCEN) AML rules that became effective on July 11, 2016. The new customer due diligence requirements took effect on May 11, 2018.

### ***Annually on or Before Anniversary of Previously Completed/ Filed Form***

- File a Form D with the SEC for private offerings claiming a securities exemption under Rule 504 or Rule 506.<sup>3</sup>
- Complete state blue sky renewal filings, as applicable.
- File an Annual Questionnaire for each category of registration to provide the National Futures Association (NFA) with information about the composition of its members and pay the annual NFA dues on the anniversary of the NFA membership date (for all NFA Members, including Commodity Pool Operators (CPOs) and Commodity Trading Advisors (CTAs)).

---

<sup>3</sup> Filing a termination notice is not currently required under Regulation D. However, the SEC proposed changes to Regulation D that would require the filing of a termination Form D with the SEC within 30 days of the termination of the offering. See SEC Release No. 33-9416, July 10, 2013, available at <http://www.sec.gov/rules/proposed/2013/33-9416.pdf>. We believe this rule will eventually be adopted by the SEC and that filing a Form D notice upon termination of an offering is best practice.

- Internally review supervisory procedures and complete an annual Self-Examination Questionnaire to evaluate procedures on or before the anniversary date of the previously completed Self-Examination Questionnaire (for NFA members, including CPOs and CTAs). An appropriate CPO/CTA representative must sign a written attestation stating that the firm's operations have been reviewed using the Self-Examination Questionnaire, which should be retained in the event that it is requested during an NFA exam.

### Compliance Calendars and Checklists

The IM Practice Group highly recommends that each investment adviser and fund manager prepare a compliance calendar and checklist with the appropriate reporting and filing deadlines and compliance obligations applicable to their operations, investment strategy and securities offerings. The table below is provided for your convenience as an example of a typical compliance calendar / checklist for an investment manager or fund manager with a fiscal year-end of December 31.

| <b>Due Date</b>  | <b>Requirement</b>  | <b>Complete</b> |
|--|---|-----------------|
| <b>January 10, 2019</b><br>(within 10 days of fourth calendar quarter-end if any information has become stale)     | File Form 13H (Large Trader) amendment promptly with SEC if any information from previous filing has become stale during the quarter ending December 31, 2018.<br><br>An "annual filing" may be submitted and also designated as an "amended filing" to satisfy both the fourth quarter amendment filing requirement (if applicable) and the mandatory annual update filing requirement, as long as the submission is made by the due date for the fourth amendment (i.e., 10 days after the fourth quarter-end). |                 |
| <b>January 15, 2019</b><br>(within 15 days of fourth fiscal quarter-end for <i>Large Liquidity Fund Advisers</i> ) | File Form PF quarterly update with SEC (for quarter ending December 31, 2018).  |                 |
| <b>January 21, 2019</b>  | Final Statement payment due date for any unpaid balance of IARD Final Statement for Registration Renewal with IARD in preparation for investment adviser/exempt reporting adviser registration renewal.   |                 |
| <b>January 31, 2019</b>  | Recommended due date for collection of annual "access person" personal holdings reports.  |                 |
| <b>February 14, 2019</b><br>(within 45 days of the calendar year-end and quarterly thereafter)                     | File Form 13F (Institutional Investment Manager Holdings Report) amendment with SEC (for institutional investment managers that exercise investment discretion over \$100 million or more in Section 13(f) securities).   |                 |
| <b>February 14, 2019</b><br>(within 45 days of the calendar year-end and quarterly thereafter)                     | File Form 13H (Large Trader) mandatory annual amendment with SEC (for "large traders" whose activity exceeds certain thresholds).   |                 |

| <i>Due Date</i>   | <i>Requirement</i>   | <i>Complete</i> |
|---|--|-----------------|
| thereafter if any information has changed)  |  |                 |
| <b>February 14, 2019</b><br>(within 45 days of the calendar year-end)   | File Schedule 13G mandatory annual amendment to update beneficial ownership of more than 5% of a class of equity securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, with SEC.  |                 |
| <b>March 1, 2019</b><br>(within 60 days of the calendar year-end)   | Affirm CFTC exemption(s) for Commodity Pool Operators and/or Commodity Trading Advisers with the NFA (annually).   |                 |
| <b>March 1, 2019</b><br>(within 60 days of the fourth fiscal quarter-end for <i>Large Hedge Fund Advisers</i> )   | File Form PF quarterly update with SEC (for quarter ending December 31, 2018).   |                 |
| <b>March 31, 2019</b><br>(within 90 days of the fiscal year-end for <i>Registered Investment Advisers</i> and <i>Exempt Reporting Advisers</i> )  | File Form ADV annual update (and state notice filings, if required by any states) with SEC through IARD system for investment advisers and exempt reporting advisers.  |                 |
| <b>April 10, 2019</b><br>(within 10 days of first calendar quarter-end if any information has become stale)   | File Form 13H (Large Trader) amendment promptly with SEC if any information from previous filing has become stale during quarter ending March 31.  |                 |
| <b>April 15, 2019</b><br>(within 15 days of first fiscal quarter-end for <i>Large Liquidity Fund Advisers</i> )   | File Form PF quarterly update with SEC (for quarter ending March 31).  |                 |
| <b>April 30, 2019</b><br>(within 120 days of the fiscal year-end)   | Deliver updated Form ADV Part 2A ( <i>firm brochure</i> ), Appendix 1 ( <i>wrap fee brochure supplement</i> ), and Part 2B ( <i>supervised persons brochure supplement</i> ) and a summary of material changes to the brochure and supplements to applicable clients and fund investors. |                 |
| <b>April 30, 2019</b><br>(within 120 days of the fiscal year-end for <i>Large Private Equity Fund Advisers</i> and <i>Smaller Private Fund Advisers / Registered Investment Advisers</i> that are <u>not</u> <i>Large Hedge Fund Advisers</i> or <i>Large Liquidity Fund Advisers</i> ) | File annual Form PF with SEC.  |                 |
| <b>April 30, 2019</b><br>(within 120 days of the fiscal year-end for <i>Private Fund Advisers</i> <u>other than</u> <i>Funds of Funds</i> )   | Deliver audited financial statements to fund investors (if relying on the “audit exception” to requirements under Rule 206(4)-2 relating to reporting and surprise custody examinations).  |                 |

| <i>Due Date</i>   | <i>Requirement</i>  | <i>Complete</i> |
|---|---|-----------------|
| <b>May 15, 2019</b><br>(within 45 days of first calendar quarter-end)   | File Form 13F (Institutional Investment Manager Holdings Report) quarterly update with SEC (for quarter ending March 31).   |                 |
| <b>May 30, 2019</b><br>(within 60 days of first fiscal quarter-end for <i>Large Hedge Fund Advisers</i> )         | File Form PF quarterly update with SEC (for quarter ending March 31).   |                 |
| <b>June 29, 2019</b><br>(within 180 days of the fiscal year-end for <i>Funds of Funds</i> )                       | Deliver audited financial statements to fund investors (if relying on the "audit exception" to requirements under Rule 206(4)-2 relating to reporting and surprise custody examinations). |                 |
| <b>July 10, 2019</b><br>(within 10 days of second calendar quarter-end if any information has become stale)       | File Form 13H (Large Trader) amendment promptly with SEC if any information from previous filing has become stale during quarter ending June 30.  |                 |
| <b>July 15, 2019</b><br>(within 15 days of second fiscal quarter-end for <i>Large Liquidity Fund Advisers</i> )   | File Form PF quarterly update with SEC (for quarter ending June 30).  |                 |
| <b>August 14, 2019</b><br>(within 45 days of second calendar quarter-end)   | File Form 13F (Institutional Investment Manager Holdings Report) quarterly update with SEC (for quarter ending June 30).  |                 |
| <b>August 29, 2019</b><br>(within 60 days of the second fiscal quarter-end for <i>Large Hedge Fund Advisers</i> ) | File Form PF quarterly update with SEC (for quarter ending June 30).  |                 |
| <b>October 10, 2019</b><br>(within 10 days of third calendar quarter-end if any information has become stale)     | File Form 13H (Large Trader) amendment promptly with SEC if any information from previous filing has become stale during quarter ending September 30.                                     |                 |
| <b>October 15, 2019</b><br>(within 15 days of third fiscal quarter-end for <i>Large Liquidity Fund Advisers</i> ) | File Form PF quarterly update with SEC (for quarter ending September 30).   |                 |
| <b>November 14, 2019</b><br>(within 45 days of third calendar quarter-end)  | File Form 13F (Institutional Investment Manager Holdings Report) quarterly update with SEC (for quarter ending September 30).   |                 |
| <b>November 29, 2019</b><br>(within 60 days of third fiscal quarter-end for <i>Large Hedge Fund Advisers</i> )    | File Form PF quarterly update with SEC (for quarter ending September 30).   |                 |
| <b>December 16, 2019</b>  | Payment due for IARD Preliminary Statement for Registration Renewal with IARD in preparation for investment adviser/exempt reporting adviser registration renewal for the next year.      |                 |

### Contacts

**S. Brian Farmer**

Partner

804.771.9504

[bfarmer@hirschlerlaw.com](mailto:bfarmer@hirschlerlaw.com)

**Edward H. Klees**

Partner

804.771.9511

[eklees@hirschlerlaw.com](mailto:eklees@hirschlerlaw.com)

**James W. Van Horn, Jr.**

Partner

804.771.9541

[jvanhorn@hirschlerlaw.com](mailto:jvanhorn@hirschlerlaw.com)