



Risk Management Update September 2015

IMPORTANT REGULATORY FILINGS THAT AFFECT INVESTMENT ADVISERS

In the financial services industry, there are many regulatory filings that must be made and keeping track can be a daunting task for firms. A number of these filings are required by investment advisers, so it is crucial for a Chief Compliance Officer (“CCO”) to know which filings are applicable to their firm and when they are required to be made. This Risk Management Update outlines a few of the more common filings affecting most advisory firms and provides a summary of each, along with some helpful compliance tips.

Form ADV – Registration and Disclosure Document

Both SEC and state registered investment advisers must file amendments to Form ADV promptly (*i.e.*, within 30 days) after certain material changes, and annually within 90 days of the firm’s fiscal year end¹. Advisers with a fiscal year-end of December 31, 2015 will need to file their annual amendment to Form ADV between **January 1, 2016 and March 31, 2016**.

Listed below are some important regulatory obligations regarding Form ADV updates:

- *Form ADV Part 1:* Annually, all sections must be updated to reflect current information, but during each year only the information in Items 1, 3, 9 (except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B must be updated if it becomes inaccurate.
- *Form ADV Part 2A:* An adviser has 120 days after its fiscal year end to deliver a copy of Item 2 – Material Changes page, which outlines all material amendments made to the form since the last amendment, along with an offer to deliver a copy of the fully amended Form ADV Part 2A.
- *Form ADV Part 2B:* The ADV Part 2B is only required to be filed by state registered advisers, but both SEC and state registered advisers must amend the document any time there is a material change to the information contained within.

Compliance Tip: In advance of the annual filing of Form ADV, advisers should make sure to deposit the necessary filing fees in their IARD™ account².

¹ See Form ADV Instructions for complete details at <http://www.sec.gov/about/forms/formadv-instructions.pdf>.

² More information regarding renewal fees can be found at <http://www.iard.com/renewals.asp>.

Form 13-F Filings – Aggregate Holdings Report

Institutional investment managers³ are required to file a Form 13-F report with the SEC if the firm exercises investment discretion over client assets that are invested in certain exchanged traded or NASDAQ quoted securities that in the aggregate have a market value of \$100 million or more. These securities are commonly known as Section 13(f) securities and include equities, certain options, warrants, convertible debt securities, and exchange-traded funds⁴. A list of all Section 13(f) securities can be found at www.sec.gov/divisions/investment/13flists.htm. Form 13-F must be initially filed within forty-five (45) days after the end of the first calendar year (no later than February 14th) in which the firm reaches the \$100 million threshold and quarterly thereafter (within 45 days after the end of the calendar quarter) as long as the firm continues to exercise investment discretion over such accounts and the market value of your 13(f) securities is \$100 million or more.

The [Form 13-F](#) consists of a Cover page that includes information about the filer and type of filing being made, a Summary page that contains a summary of the 13(f) securities assets, and an Information Table. The Information Table requires inclusion of the following information for each Section 13(f) security listed:

- the issuer name for each Section 13(f) security on the list (which should be listed in alphabetical order);
- a description of the class of each Section 13(f) security listed (*e.g.*, common stock, put/call option, class A shares, convertible debenture);
- the number of shares owned for each; and
- the fair market value of the securities listed.

Form 13-F filings are required to be made electronically through [EDGAR \(the Electronic Data Gathering, Analysis, and Retrieval\) System and are available to the public.](#)

Schedule 13-G Filings – Percentage of Outstanding Shares Report

Generally, a Schedule 13D “beneficial ownership report” must be filed by an investment adviser electronically with the SEC within 10 days of any client, control person, and/or proprietary account acquiring beneficial ownership of more than 5% of any class of publically traded securities in a public company, unless the investment adviser is otherwise eligible to file such ownership information using Schedule 13G. After the initial filing of Schedule 13D, amendments to Form 13-D must be promptly made to reflect the occurrence of a material change to the information disclosed therein.

A Schedule 13-G must be filed electronically no later than 45 days after the end of each calendar year **if**, as of December 31st of each year, the firm's clients, control persons, and/or proprietary

³ The definition of an institutional investment manager can be found at [Securities Exchange Act Section 3\(a\)\(9\)](#) and [Section 13\(f\)\(6\)\(A\)](#).

⁴ A full list of Section 13(f) securities can be found at www.sec.gov/divisions/investments/13flists.htm.

accounts own, in the aggregate, more than 5% of the outstanding shares of any exchange-traded or NASDAQ listed security. A Schedule 13-G must also be filed within 10 days of each month end that a firm's clients, control persons and/or proprietary accounts own any security, in the aggregate, that exceeds 10% of the shares outstanding at any month end. In addition, an amended Schedule 13-G must be filed by the firm within the same time periods whenever the ownership percentage falls below 5% or 10%, as applicable.

In general, Schedule 13G is only available to filers that fall within one of the following three categories: (1) qualified institutional investor ("QII"); (2) exempt investor ("Exempt Investor"); or (3) passive investor ("Passive Investor"). Each of these categories is fully defined in Section 13 of the Securities Exchange Act of 1934⁵.

Form 13H - Large Trader Reporting

Rule 13h-1 of the Securities Exchange Act of 1934 requires a "large trader," defined as a person or firm (including IAs) whose discretionary client transactions in National Market System ("NMS") securities, in the aggregate, equal or exceed 2 million shares or \$20 million during any calendar day, or 20 million shares or \$200 million during any calendar month, to identify itself and make certain disclosures to the SEC on Form 13H. Upon this initial filing, the SEC provides each large trader with an identification number that must be provided to all the broker-dealers that execute transactions for the accounts of the large trader.

After the initial filing, the firm must file Form 13H electronically, as follows:

- (i) Within 45 days after the end of each full calendar year;
- (ii) Promptly following the end of a calendar quarter in the event that any of the information contained in a Form 13H filing becomes inaccurate for any reason; and
- (iii) To report "inactive" status (*i.e.*, has not affected aggregate transactions at any time during the previous full calendar year in the amounts outlined in the paragraph above). Please note that after such filing, the RIA is still required to monitor its trading activity and would need to file an amended Form 13H if it meets the definition of "large trader."

Compliance Tip: Prior to your first Section 13 filing, advisers must complete a Form ID⁶ to obtain required filer identification codes for access to the EDGAR filing system.

Form PF – Private Fund Report

Rule 204(b)-1 under the Investment Advisers Act of 1940 requires all SEC-registered investment advisers with at least \$150 million in *private fund assets*⁷ under management to report detailed information on Form PF. Under the Form PF reporting requirements, private

⁵ See <https://www.sec.gov/about/laws/sea34.pdf>.

⁶ See <http://www.sec.gov/about/forms/formid.pdf>.

⁷ See definition in Form PF Instructions at <https://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf>.

fund advisers are divided into two groups. The first group is “large private fund advisers,” which are defined as:

- (i) advisers with at least \$1.5 billion in assets under management attributable to hedge funds;
- (ii) advisers with at least \$2 billion in assets under management attributable to private equity funds; and
- (iii) advisers with at least \$1 billion in combined assets under management attributable to liquidity funds (*i.e.*, unregistered money market funds) and registered money market funds. The second group is “smaller private fund advisers,” which are advisers to private funds that have assets under management of greater than \$150 million and less than a “large private fund adviser.”

Compliance Tip: If a filing firm no longer meets the asset threshold for filing Form PF, a final Form PF must be filed electronically no later than the last day on which the firm’s next Form PF filing would be required.

Conclusion

The regulatory filings reflected above are only a few of the many required. The SEC assesses the information provided in these filings in a number of ways, including but not limited to looking for certain risks specific to the filing firms, investors, and the financial industry as a whole. CCOs should consider doing the same by not only implementing a monitoring system to ensure timely filings, but also reviewing the information being submitted.

For more information on any of these filings, or to learn how CCLS may be of assistance to your firm, please do not hesitate to contact us at (619) 278-0020.

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