

Robinson+Cole

Corporate Law

Private Equity + Hedge Funds



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SEC-Registered Investment Advisers – Annual Compliance Requirements

As a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), most private equity and hedge fund managers are required to register as investment advisers with the U.S. Securities and Exchange Commission (SEC). By becoming registered-investment advisers, these managers become subject to ongoing compliance obligations and examination by the SEC.

The following is a summary of certain key annual filing deadlines and other annual compliance requirements for SEC-registered investment advisers who manage private investment funds. This summary is merely a general roadmap and not intended to be a comprehensive review of all compliance and filing obligations for advisers or to address any registration thresholds, each of which should be discussed with counsel. Investment advisers registered with states should also consider state requirements, which are not necessarily coordinated with SEC requirements.

CALENDAR-RELATED SELECTED FILING DATES

The SEC requires that these filings be made within 45 days after the end of each calendar year:

- Institutional investment managers that exercise investment discretion over \$100 million or more in Section 13(f) securities are required to file Form 13F for the year ending December 31.[1]
- Large traders (whose transactions in NMS securities[2] equal or exceed 2 million shares or \$20 million during any calendar day or 20 million shares or \$200 million during any calendar month) are required to file Form 13H for the year ending December 31.[3]
- Advisers whose accounts are beneficial owners of more than 5 percent of a registered voting equity security and are eligible to file Schedule 13G instead of Schedule 13D are required to file an amendment to Schedule 13G. Investment advisers required to file Schedule 13D instead of Schedule 13G are required to “promptly” amend their filings for any material changes.
- Registered commodity trading advisers (CTAs) are required to file Form CTA-PR. This filing also satisfies the National Futures Association (NFA) Form PR requirement for the fourth quarter.[4]

The SEC requires that these filings be made within 60 days after the end of each calendar year:

- Commodity pool operators (CPOs) that claim an exemption or exclusion under U.S. Commodities Futures Trading Commission (CFTC) Regulation 4.5, 4.13(a)(1), 4.13(a)(2), 4.13(a)(3), or 4.13(a)(5) or CTAs that claim an exemption under 4.14(a)(8) are required to reaffirm their applicable notice of exemption.
- Large hedge fund advisers (with at least \$1.5 billion regulatory assets under management (RAUM)[5] attributable to hedge funds) are required to file Form PF within 60 days after the end of the adviser's fiscal year.[6]
- Large CPOs (with at least \$1.5 billion or more assets under management attributable to commodity pools) are required to file CFTC Form CPO-PQR. This filing also satisfies NFA Form CPO-PQR for the fourth quarter.

The SEC requires that these filings be made within 90 days after the end of each calendar year:

- Advisers with a calendar-year fiscal year are required to file their “annual updating amendment” to Form ADV, which includes state notice filings and amendments to Form ADV Part 2, if any.
- Small and midsize CPOs are required to file portions of CFTC Form CPO-PQR.[7] Form PF filers that file CFTC Form CPO-PQR (Schedule A plus Schedule of Investments) by February 29 or March 30, depending on AUM, can satisfy this requirement.[8] This filing also satisfies NFA Form CPO-PQR for the fourth quarter.[9]
- With respect to pools with a calendar-year fiscal year, registered CPOs are required to file audited financial statements (a pool's annual report), certified by an independent public accountant with the NFA. Extensions may be granted for a CPO that is a fund-of-funds.

The SEC requires that these filings be made within 120 days after the end of each calendar year:

- Advisers with a calendar-year filing deadline are required to deliver to clients a current brochure (Form ADV Part 2A) with a summary of material changes or a summary of material changes with an offer to provide the brochure.
- Most private funds with calendar-year fiscal years deliver annual audited financial statements to alleviate certain requirements of the custody rule (such as a surprise exam).[10]
- Private equity fund advisers and smaller private fund advisers with a calendar-year fiscal year are required to file Form PF.
- Advisers are required to provide a copy of their privacy policy to clients and fund investors who are natural persons at the beginning of the relationship and then annually. Many advisers satisfy this obligation by providing their privacy policy with the annual ADV delivery.
- Rule 206(4)-7 of the Investment Advisers Act of 1940 requires advisers to conduct an annual compliance review by reviewing their policies and procedures to ensure their adequacy and effective implementation. In connection with this review, advisers may want to consider the [SEC's 2016 exam priorities](#) (2016 Priorities) and [recent risk alerts](#) on topics such as cybersecurity and the use of outsourced chief compliance officers.
- Advisers are required to collect a personal securities holdings report from each “access person” containing certain required information regarding securities holdings and securities

accounts at the time the person becomes an access person and then annually.

- Advisers may also want to consider adopting cybersecurity policies and procedures to protect the personally identifiable information (PII) of its clients. Failure to implement and follow appropriate guidelines for protecting client PII (and other information susceptible to cyber-attack) could lead to an enforcement action under Rule 30(a) of Regulation S-P, referred to as the Safeguards Rule. A recent violation of the Safeguards Rule resulted in a [cease-and-desist order](#) and a \$75,000 penalty.

ONGOING OBLIGATIONS

Advisers to private investment funds engaged in open or continuous offerings may wish to consider their ongoing obligations, including the following:

- Annual amendments to SEC Form D on or before the anniversary of the initial Form D filing or most recent amendment. In addition, the SEC requires that Form D be amended as soon as practicable if there are any material mistakes of fact or error or to reflect a change in the information provided in the previously filed notice.
- Many states require annual renewal of state blue sky notice filings (typically Form D). In addition, updates to a blue sky filing may be required if there are material changes to information in the filing (for example, name or address).
- Funds, their general partners, investment advisers, and placement agents should obtain updated certifications and review their obligations under the Bad Actor Rule (Rule 506(d) of Regulation D) at least annually if not more frequently.

ADDITIONAL ANNUAL CONSIDERATIONS

The following are some practices that may be suitable for private fund advisers to consider at least annually:

- Review disclosures in marketing materials, partnership agreements, offering memoranda, and side letters for any certifications, notices, and reporting obligations. Ensure that disclosures in Form ADV, Form PF, and the offering documents are consistent and representative of your business. Confirm that fee and expense allocations conform with your offering documents, internal policies and procedures, and investor communications.
 - Confirm ongoing monitoring of the ERISA plan asset threshold and ensure that any necessary VCOC or REOC certifications have been delivered.
 - Consider seeking an annual representation from all fund investors as to any changes in their eligibility to participate in profits and losses from new issues.
 - Review state and local lobbyist filings and monitor required obligations.
 - Review recent guidance issued by the SEC concerning activities that do and do not qualify as “general solicitation” for purposes of offerings under [Regulation D](#). Review fundraising and marketing activities to ensure they are in line with the recent guidance and take appropriate steps to comply moving forward.
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[1] Quarterly filings are due throughout the year, 45 days after the end of each of the first three calendar quarters.

[2] An NMS security is “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan or an effective national market system plan for reporting transactions in listed options.” 17 CFR 242.600(b)(46). Generally, these are equity securities listed on an exchange or standardized options.

[3] Large traders must amend Form 13H promptly following the end of any calendar quarter in which any of the information contained in their Form 13H becomes inaccurate for any reason.

[4] Registered CTAs are required to file a quarterly NFA Form CTA-PR within 45 days of the end of each calendar quarter.

[5] RAUM is calculated on a gross basis, without deduction of any outstanding indebtedness or other accrued but unpaid liabilities. Instructions for calculating RAUM are provided in Instruction 5.b. of Form ADV: Instructions for Part IA.

[6] Large hedge fund advisers must also file Form PF60 days after the end of each fiscal quarter.

[7] Large registered CPOs are required to file a quarterly NFA Form CPO-PQR within 60 days of the end of each calendar quarter.

[8] Entities registered as CPOs that did not operate a pool, or only operated pools that would not have required registration as a CPO, during the applicable reporting period are not required to file CFTC Form CPO-PQR but are required to file NFA Form CPO-PQR.

[9] Small and midsize-registered CPOs are required to file a quarterly NFA Form CPO-PQR within 60 days of the end of each calendar quarter.

[10] Advisers to fund-of-funds have 180 days from the end of the funds' fiscal year end to deliver financial statements to investors.

This summary is merely a general roadmap and not intended to be a comprehensive review of all compliance and filing obligations for advisers or to address any registration thresholds, each of which you may wish to discuss with counsel.

If you have any questions, please contact the author, [Shant H. Chalian](#), or another member of Robinson+Cole's [Corporate Law Group](#).

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