

NEWS ALERT: INVESTMENT ADVISERS REGULATORY CHECKLIST

We are pleased to provide you a summary of the significant compliance and reporting requirements for investment advisers.

This coming year will have a revamped ADV with some new requirements. A significant new consideration is the challenges that new cryptocurrencies and other digital assets present for investment advisers and their compliance programs. Beyond the considerations for clients and the merits as an asset class, if a particular cryptocurrency or digital asset (such as an ICO, “securities” token or “utility” token) is a security, then trading in such asset by covered persons of an investment adviser are covered under an investment adviser’s personal securities trading policy.

Finally, a continued focus on cybersecurity will likely dominate operational professionals’ agenda for 2018. Risk and vulnerability assessments, employee education and vendor management and due diligence should be top of mind when putting together your cybersecurity to do list.

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Annual Compliance Reminders for Registered Investment Advisers and Exempt Reporting Advisers

Both Registered Investment Advisers (“RIAs”) and Exempt Reporting Advisers (“ERAs”) have numerous compliance and reporting requirements throughout the year. This is intended to serve as an important reminder of the various requirements. The below chart provides a short summary of the regulatory obligations for RIAs and ERAs for 2018.

Required Filings for 2018

Required Action	Date	Description
Form ADV	March 31, 2018	RIAs and ERAs need to finalize and submit their annual amendment of Form ADV Part 1 and, for RIAs, Form ADV Part 2. Winstead’s Investment Management and Private Funds Industry Group published a news alert summarizing recent amendments to the Form ADV , which will be implemented on March 31, 2018 for annual filings.
Form ADV— Brochure Delivery	April 30, 2018	RIAs must circulate Part 2A to clients within 120 days of the end of the fiscal year.
Form PF	April 30, 2018	<p>An investment adviser must file Form PF if:</p> <ul style="list-style-type: none"> • It is registered or required to be registered with the SEC as an investment adviser; AND • It manages one or more private funds (i.e. any issuer who, but for Section 3(c)(1) or 3(c)(7), would be an investment company under the Investment Company Act); AND • It, together with its related persons, collectively, manages at least \$150 million in private fund assets under management as of the last day of its most recently completed fiscal year. <p>Investment advisers required to file Form PF must update its Form PF within 120 days of the end of its fiscal year. Advisers to hedge funds with \$1.5 billion regulatory assets under management must file Form PF within 60 days of each fiscal quarter, and advisers to liquidity funds with \$1 billion in regulatory assets under management and registered money market accounts must file a Form PF within 15 days of each fiscal quarter.</p>

Distribution of Annual Audit	April 30, 2018	Registered investment advisers relying on the so-called “audit exemption” under the custody rule of the Advisers Act must provide audited financial statements to fund investors within 120 days of the end of the fiscal year. Even for exempt reporting advisers, the fund agreements may require delivery of the fund audit within 120 days of the fund’s fiscal year end.
SEC Form D	Anniversary of Initial Filing	Funds with ongoing offerings (e.g., hedge funds) must amend their Form D annually on or before the anniversary of the initial Form D filing. Certain changes during the year may also trigger an obligation to amend the Form D.
Schedule 13G/D	February 14, 2018	Advisers acting as beneficial owner of more than 5% of a class of equity securities registered under the Exchange Act must file a report under Schedule 13D or 13G within 10 days of acquiring 5%. An adviser must also amend the Schedule 13D or 13G filing to reflect changes in the information. For certain 13D filings, the adviser must amend its 13D within one business day. For certain 13G filings, the adviser must amend its 13G within 45 days of the end of the year.
Form 13F	February 14, 2018 for first time filers	Investment managers who exercise investment discretion over \$100 million in certain securities defined by Section 13(f) of the Securities and Exchange Act of 1934, as amended (“Exchange Act”), must file a 13F report within 45 days after the last day of the end of the fiscal year and each of the first three calendar quarters.
Form 13H	February 14, 2018	“Large Traders” (i.e. advisers who meet the threshold of trading (i) \$2 million shares or \$20 million FMV daily or (ii) \$20 million shares or \$200 million FMV monthly) must file with a Form 13H within 10 days of triggering the threshold. Once a Large Trader has triggered the threshold, they must amend the Form 13H annually within 45 days of year-end and make quarterly updates to the extent that information changes.
Commodity Pool Operator Exemption	March 1, 2018	Advisers relying on the “de minimis exemption” of CFTC Regulation 4.13(a)(3), must reaffirm their claim of exemption with the National Futures Association annually within 60 days of the end of the calendar year.
Section 16 of the Securities Exchange Act of 1934, as amended	When the adviser meets the specified threshold	Corporate insiders (i.e. officers, directors and any beneficial owners of more than 10% of a class of equity securities registered under Section 12 of the Exchange Act) must file either a Form 3 (initial filing must be complete within 10 days of becoming officer, director or beneficial owner), Form 4 (change of ownership must be reported in 2 business days) or Form 5 (report any transactions that should have been previously disclosed within 45 days of the end of the company’s fiscal year).

Other Compliance Recommendations

Rule 206(4)-7 of the Investment Advisers Act of 1940, as amended, requires each RIA to review, no less frequently than annually, the adequacy of its compliance policies and procedures. While this review is only required once a year, it is advisable for the chief compliance officer to review and update the firm's compliance policies and procedures throughout the year to account for changes to the adviser's business and operating model. After the adviser completes its annual review, the RIA should record the results and retain the documentation for five years under the Advisers Act's books and records requirements.

In addition, the following list includes certain important items that investment advisers should review at least annually.

- **Cybersecurity**. Review data security policies and data privacy infrastructure to ensure the protection of critical information, including investor information. Perform a risk and vulnerability assessment and review vendor and counterparty risks and vulnerabilities.
- **Antifraud**. Conduct periodic reviews of communications to ensure that false or misleading statements are not made to existing or prospective investors.
- **Placement Agent Disclosures**. Make necessary updates to placement agent fees disclosures (including under Form D) and distribute the disclosures to investors as applicable.
- **Investment Objectives**. Confirm that investments and potential investments are consistent with each fund's investment objective, fund documents and side letters.
- **Pay-to-Play and Political Contributions**. Review any political contributions reported by supervised persons and consider whether additional policies and procedures are appropriate. Review any relevant state and local lobbying rules to ensure compliance.
- **New Issue Status**. Confirm on an annual basis the eligibility of investors to participate in initial public offerings or new issues pursuant to FINRA Rules 5130 and 5131.
- **Offering Materials**. Private funds with ongoing offerings should document any necessary updates in its pitch book or private placement memorandum to provide the important information for an investor to make an informed decision.
- **Personal Securities Trading**. Review personal securities transaction and holdings reports for consistency with the code of ethics. This should be completed quarterly and annually. A new consideration is the application of an investment adviser's personal securities trading policies to its covered persons' trading of cryptocurrencies and digital assets. These new assets can be considered securities and may need to be reported as part of an investment adviser's personal securities trading policy (and if required by such trading policy, pre-approval).
- **Proxy Voting**. Administer any proxy voting and review the fund's proxy policy based on the governing documents.
- **Record Maintenance**. Create and maintain all books and records in compliance with Advisers Act books and records requirements and industry best practices. Confirm that books and records are being maintained in accordance with the firm's policies and procedures.
- **Subscription Agreements**. Private funds with ongoing offerings should update Subscription Agreements to reflect any regulatory or offering changes, including updates to the Department of Labor's fiduciary rule and updates to relevant investor thresholds under the securities laws.

- Side Letters. Review any and all side letters to ensure compliance with all terms set forth therein.
- Valuation Policy. Confirm valuations of investments are conducted in accordance with applicable firm policy and offering documents.
- Vendor and Service Providers Policies. Review principal vendors' policies with respect to business continuity, privacy, business interruption and confidential information protection, cybersecurity and document destruction.
- Whistleblower. Review whistleblower, employment agreements, confidentiality provisions and employment handbooks to ensure effectiveness and compliance with securities laws. The SEC expects that any confidentiality provisions applicable to employees do not discourage or "chill" such employees option to discuss improper behavior at an investment adviser with securities regulators.

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