

As 2016 gets underway, it is a good time for investment advisers to review their compliance “to do” lists. With that in mind, we are providing this update to remind investment advisers about their annual compliance obligations and to highlight certain examination priorities, recently announced by the SEC’s Office of Compliance Inspections and Examinations (OCIE), which are likely to have an impact on advisers to private funds.

Annual Reminders

Regulatory Filings

Form ADV: All registered investment advisers (RIAs) and exempt reporting advisers (ERAs) must file an amendment to Form ADV with the SEC annually within 90 days of the end of their fiscal year (i.e., March 31 for those that have a December 31 fiscal year end). A few additional points to consider regarding Form ADV:

- If RIAs and ERAs have multiple relying adviser entities, make sure to include a statement to the effect that the relying advisers are collectively filing a single Form ADV in reliance on the position expressed in the SEC No-Action Letter to the American Bar Association, Business Law Section, dated January 18, 2012.
- Each client of an RIA must receive on an annual basis (i) a copy of Form ADV Part 2 or (ii) a summary of any material changes to the brochure that also includes information on how the client may obtain a copy of the updated brochure and where to get more information through the Investment Adviser Registration Depository.

Form PF: Certain RIAs must also file annually with the SEC an updated Form PF for each of their funds within 120 days of the end of their fiscal year (i.e., April 30 for those that have a December 31 fiscal year end). Depending on the size of AUM or the types of funds being advised, more frequent filing may be required (e.g., on a quarterly basis).

Form D: Advisers to funds with continuing non-registered offerings in reliance on Regulation D (e.g., hedge funds and any closed-end funds raising capital for longer than a year) must file, on behalf of any such fund, an amended Form D on an annual basis on or before the first anniversary of the initial filing or the filing of the most recent amendment. In addition to the annual Form D amendment, we recommend reviewing applicable state Blue Sky laws to determine if there are any annual amendment requirements to such state filings.

CFTC Exemption: Advisers that rely on the exemption from registration with the US Commodity Futures Trading Commission (CFTC) pursuant to Rule 4.13(a)(3), the *de minimis* exemption, must resubmit their claim of exemption annually within 60 days of the end of the calendar year, or by March 1.

Internal Compliance

Custody Rule Audit: To satisfy the SEC’s Custody Rule, some RIAs obtain an annual audit for their funds under management by an independent public accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board, and send such audited financial statements to clients within 120 days after the fund’s fiscal year end (i.e., April 30 for those that have a December 31 fiscal year end).

Privacy Policy: Provide each client with an updated copy of the adviser’s Privacy Notice.

Pay-to-Play: Obtain an annual certification from each employee attesting to his or her state and local political contributions, solicitations, or related payments to third-parties during the prior year.

Annual Compliance Review: RIAs must conduct an annual review of their policies and procedures to determine their adequacy and the effectiveness of their implementation.

Annual Securities Holdings’ Report: RIAs must obtain annual personal securities holdings reports for each “access person.”

Highlights of Certain OCIE 2016 Examination Priorities

Private Placements, Never-Before Examined Investment Advisers, and Private Fund Advisers

Private placements: OCIE will review private placements, including offerings under Regulation D, to evaluate whether legal requirements are being met in the areas of due diligence, disclosure, and suitability.

Never-before-examined investment advisers and investment companies: OCIE will continue conducting examinations of selected registered investment advisers and investment company complexes that it has not previously examined.

Private fund advisers: OCIE will examine private fund advisers, maintaining a focus on fees and expenses. It will also evaluate, among other things, the controls and disclosure associated with side-by-side management of performance-based and purely asset-based fee accounts.

Using Data Analytics to Identify Signals of Potential Illegal Activity

Antimoney laundering (AML): OCIE will continue to:

- examine the AML programs of clearing brokers and introducing broker-dealers, with a focus on firms that have not filed the number of suspicious activity reports (SARs) that would be consistent with their business models, or that have filed incomplete or late SARs; and
- assess broker-dealers' AML programs, with an emphasis on the adequacy of the independent testing obligation and the extent to which firms consider and adapt, as appropriate, their programs to current money laundering and terrorist financing risks.

Product promotion: Another area of focus will be on detecting the promotion of new, complex, and high-risk products, and related sales practice issues, to identify potential suitability issues and potential breaches of fiduciary obligations.

Assessing Market-Wide Risks

Cybersecurity: In keeping with its September 2015 launch of a second initiative to examine investment adviser cybersecurity compliance, [which we discussed in a previous update](#), OCIE will test and assess advisers' implementation of cybersecurity procedures and controls. (In another [cybersecurity update](#), we also discussed the importance of mitigating cybersecurity risks and preventative measures that funds and advisers should consider implementing.)

Liquidity controls: OCIE will examine advisers to mutual funds and private funds that have exposure to potentially illiquid fixed income securities and registered broker-dealers that have become new or expanding liquidity providers in the marketplace. These examinations will include a review of various controls in these firms' expanded business areas, such as controls over market risk management, valuation, liquidity management, trading activity, and regulatory capital.

The foregoing is intended only to provide an overview of the primary recurring compliance requirements for RIAs and ERAs and some of OCIE's 2016 examination priorities as they relate to advisers to private investment funds. For more information regarding such compliance requirements and related regulatory obligations, please contact your principal Squire Patton Boggs lawyer or one of the lawyers listed in this publication.

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