Cooley

Annual SEC Filing Deadline for Venture, Private Equity Funds Is February 14, 2024

January 4, 2024

Venture and private equity funds that own equity securities of public companies may have numerous Securities and Exchange Commission (SEC) filing requirements, including filings based on the size of the holdings of a particular portfolio company, aggregate holdings of securities across all public portfolio companies, and filings triggered by the volume of sales and purchases of portfolio company equity securities. These filing requirements may be annual or quarterly, and the filings are briefly described below.

Schedule 13G

Funds – including their general partners and, in some cases, managing principals – that hold in excess of 5% of a class of public equity as of December 31, 2023, generally must file a Schedule 13G within 45 days of year-end. Also, any fund that has previously filed a Schedule 13G with respect to a portfolio company must file an annual amendment to its Schedule 13G within 45 days of year-end if there have been any changes in ownership since the most recent filing – including an "exit" filing if the fund's ownership has declined below 5%.

Form 13F

Investment advisers who exercise investment discretion over "Section 13(f) securities" (generally equity securities of public companies) are required to file quarterly reports with the SEC on Form 13F within 45 days of each quarter-end. Subject to certain exceptions, if your funds collectively owned in excess of $100 million of Section 13(f) securities as of the last day of any month during the 2023 calendar year, you are obligated to file a Form 13F for the quarter ended December 31, 2023, within 45 days of calendar year-end. This filing obligation continues for a minimum of three consecutive calendar quarters (i.e., March 31, June 30 and September 30), with filings due within 45 days of the relevant quarter-end.

It is important to note that even if you do not exceed the $100 million threshold as of December 31, the obligation to file a Form 13F for the quarter ending December 31 remains if the threshold was met as of the last day of any single month during the calendar year.

Form 13H

Investment advisers who have previously filed a Form 13H to register as a "large trader" are required to file an annual update to the filing within 45 days of year-end. Large traders who have completed a full calendar year without exceeding any of the Form 13H triggering thresholds – measured across all portfolio companies – may be eligible to elect "inactive" status and thereby suspend certain ongoing large trader obligations. These triggering thresholds are daily trading of at least two million shares or $20 million in share value, or calendar month trading of at least 20 million shares or $200 million in share value, in each case aggregating purchases and sales of the securities of all portfolio companies during the relevant day or month.

In addition to the annual filing requirement, large traders have a quarterly obligation to promptly amend their Form 13H after any quarter during which any of the information in their Form 13H materially changes.

Looking ahead – Schedule 13G filing deadlines are changing

As described in this October 2023 Cooley client alert, the SEC recently adopted comprehensive amendments to the Schedule 13G filing requirements. Once effective, those rule changes will generally accelerate the filing deadlines for initial and amended Schedule 13Gs. Beginning September 30, 2024, funds will be required to start assessing their Schedule 13G filing requirements on a quarterly basis, with the first of such filings due on November 14, 2024. The recent rule changes do not in any way affect the filing requirements under Form 13F or Form 13H.

Action required

The determination of whether you have a Schedule 13G, Form 13F or Form 13H filing obligation is often complex. Reach out to the Cooley fund formation team early to allow sufficient time for us to assist you in undertaking the necessary analysis to enable a timely filing, if required.

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