Cooley

Upcoming Regulatory Deadlines for VC and PE Firms

January 29, 2018

This alert highlights annual regulatory deadlines that commonly apply to venture capital and private equity firms.

February 14, 2018. Firms that hold or have traded in significant positions in public company securities may have filings due with the SEC.

- **Schedule 13G** – reporting 5% or more beneficial ownership (on a combined basis,including funds, general partners and, in some cases, managing principals) of a US publicly registered company as of December 31, 2017, or changes in ownership during 2017 if a Schedule 13G is already on file.
- **Schedule 13F** – annual update for firms reporting investment discretion over more than $100 million in US publicly traded securities.
- **Schedule 13H** – annual update for firms reporting high volume US public trading activity (*daily* trading of at least 2 million shares or $20 million in share value, or *monthly* trading of at least 20 million shares or $200 million in share value).
- **Form 5** – Reporting for 10% shareholders, officers and directors of US public companies. Form 5 is primarily used to report certain transactions that occurred during 2017 that are exempt from reporting on a current basis on Form 4.

March 31, 2018. Both exempt reporting advisers and SEC-registered investment advisers must file annual amendments to their Form ADV filing with the SEC and/or applicable states via the IARD filing system administered by FINRA. IARD will be available from 8 am to 6 pm ET on Saturday, March 31, 2018.

Form ADV has been revised since the 2017 annual filing, so firms may expect some extra time will be required to complete the filing this year. Importantly, some VC firms and other exempt reporting advisers that had reported affiliated advisory entities on a single Form ADV as "relying advisers" will no longer be able to report on this basis. SEC registered investment advisers may continue to report relying adviser entities on a single Form ADV, however much more detailed information regarding any relying adviser will be required on new Schedule R of Form ADV.

Privacy Notices. Fund managers are generally required to provide notice of their privacy policies on an annual basis to their funds' individual investors. This is typically accomplished by including a copy of the privacy policy with year-end investor communications. However, this annual notice requirement does not apply if the privacy policy (a) only permits limited disclosure of an investor's personal information (and accordingly does not trigger an investor's right to "opt out" from such disclosures) and (b) has not been modified since the last required disclosure to investors.

The following deadlines are only applicable to SEC registered investment advisers (most PE firms and fund of funds managers):

April 30, 2018. Registered investment advisers must deliver annually update to Form ADV Part 2A (or a summary of material changes accompanied by an offer to provide the full Part 2A) to each client. The SEC acknowledges that delivery to a fund's general partner (or similar representative) will meet this requirement. Firms may elect to circulate Form ADV Part 2A to their fund investors.

April 30, 2018. Registered investment advisers with December 31 fiscal year-ends that have at least $150 million in regulatory assets under management attributable to private funds must file Form PF with the SEC via the IARD filing system.

April 30, 2018. SEC Registered investment advisers that rely on the audited pooled vehicle exception to the SEC Custody Rule's delivery and verification requirements must deliver to their fund investors annual audited financial statements for each fund with a December 31 fiscal year end. The deadline for fund of funds managers

relying on this exception to the Custody Rule is **June 29, 2018**.

Please contact your Cooley client team or a member of the Cooley fund formation practice group if you have any questions or would like assistance in preparing to meet any of these upcoming deadlines. This alert serves as a reminder of those regulatory deadlines that commonly apply to venture capital or private equity firms, but it is not intended as an exhaustive list of all regulatory requirements.

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