

What Lies Ahead? Q1 2018 Investment Management Regulatory Updates and Reminders

As we start the New Year, we would like to remind our clients of certain regulatory developments and upcoming deadlines for Q1 2018.

New Form ADV

The new Form ADV takes a deeper dive by requiring additional information for some familiar items but also asks for information on brand new items.

- ***Social Media Presence*** – Advisers are required to disclose in Item 1.I whether they have one or more accounts on social media platforms, such as Twitter, Facebook or LinkedIn. Advisers need only provide the address of accounts on publicly available social media platforms where the adviser controls the content.
- ***Outsourced Chief Compliance Officers*** – Advisers that utilize an outsourced Chief Compliance Officer (“CCO”) for compliance services will now be required to disclose in Item 1.J.2 whether their CCO is compensated or employed by any person other than the adviser or a related person.
- ***Regulatory Assets Under Management*** – Advisers with assets of \$1 billion or more will be required to report their assets within three ranges in Item 1.O: (a) \$1 billion to less than \$10 billion; (b) \$10 billion to less than \$50 billion; and (c) \$50 billion or more. Item 1.O requires an adviser to indicate whether it had \$1 billion or more in total assets shown on the adviser’s balance sheet as of the last day of the adviser’s most recent fiscal year end. Non-proprietary assets, such as client assets under management, should be excluded when responding to Item 1.O, regardless of whether they appear on an investment adviser’s balance sheet.
- ***Reporting the Number and Type of Clients*** – Item 5.D requires advisers to report the approximate number of clients and the amount of total regulatory assets under management attributable to certain categories of clients. For purposes of Item 5.D, “pooled investment vehicles” include but are not limited to private funds, which are defined in the Form ADV Glossary. Whether a fund (other than an investment company or business development company) should be considered to be a “pooled investment vehicle” will depend on its particular facts and circumstances.
- ***Separately Managed Accounts*** – Advisers must report in Item 5.K. regulatory assets under management attributable to clients “other than those listed in Item 5.D(3)(d)-(f).” For purposes of Item 5.K and Schedule D, advisers to private funds that report

Related Capabilities

- Investment Management
- Financial Services Regulatory

information about parallel managed accounts to those private funds on Form PF should treat those parallel managed accounts as SMA clients for purposes of answering Item 5.K and Schedule D.

- ***Umbrella Registration and Schedule R*** – By completing the new Schedule R, the new Form ADV better accommodates the method of filing a single umbrella registration for multiple private fund advisers under common control with the filing adviser, as established in the SEC staff 2012 no-action letter (the “[2012 ABA Letter](#)”).

For a more in-depth discussion regarding these and other amendments to the Form ADV, please feel free to visit our [August 29, 2016](#) and [September 11, 2017](#) client alerts.

Recertification Process for FINRA Entitlements due by February 8, 2018

Annually, FINRA requires the Super Account Administrator (“SAA”) of an adviser’s Investment Adviser Registration Depository (“IARD”) account to review the access of each user account, known as “Entitlements User Accounts Certification”. This year’s Entitlement User Accounts Certification period runs from January 8, 2018 through February 8, 2018. This process should not be confused with the IARD Renewal Program where FINRA collects and disburses system processing and state filing renewal fees from investment advisers at the end of each year.

As part of the Entitlement User Accounts Certification, SAA’s must log into the firm’s IARD account to determine whether: (a) each user account has a continued need to access the firm’s FINRA applications, (b) each user account is entitled only to the applications and privileges required for their specific job function, and (c) only the user accounts that are required to access sensitive data (e.g., criminal history information, social security or tax identification numbers, dates of birth, etc.) are entitled to access this type of data.

Failure by an adviser to complete the Entitlement User Accounts Certification by February 8, 2018 will result in FINRA disabling the firm’s IARD account until the certification process is completed. Firms that fail to certify their user accounts will be referred to the appropriate regulator for follow up and a suspension of all the firm’s FINRA entitlement program accounts.

New Partnership Tax Audit Rules Effective January 1, 2018

Title XI of the Revenue Provisions Related to Tax Compliance of the Bipartisan Budget Agreement takes effect for tax years beginning January 1, 2018 and thereafter. There are a few notable changes under these new rules that investment advisers to private funds should be aware of as they will likely require amendments to current fund documents. Under the new rules, the IRS will deal only with the designated “partnership representative” of a partnership, and partners will not be entitled to receive notice of partnership audits or participate in a partnership judicial proceeding or audit unless covenants in the fund agreement expressly provide the partners with rights to be notified of and participate in audits. The new rules also provide the IRS with the ability to collect imputed tax underpayments and penalties directly from the partnership at the highest individual or corporate rate instead of from the individual partners based on what each

partner owes, unless the partnership representative elects to “push out” adjustments through to the partners. Complexities may arise if the partners during the tax year for which an imputed tax underpayment is imposed are no longer partners of the fund during the year in which the underpayment amount is collected.

Advisers to private funds should speak with their counsel to determine whether amendments to fund documents are necessary or advisable.

Additional Resources

Be on the lookout for FINRA’s Annual Regulatory and Examination Priorities Letter for 2018, which is expected to be released this month. To stay informed of more investment management and developments, we invite you to join Dorsey & Whitney LLP’s event [Partnering with an OCIO: Opportunities and Risks](#) on January 23, 2018. For more information, please contact Genna Garver.