

2015-16 COMPLIANCE DEVELOPMENTS & CALENDAR FOR PRIVATE FUND ADVISERS



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Introduction

Registered investment advisers (RIAs) are required to review their policies and procedures on at least an annual basis. As an aid to the required review and to assist with timely completion of required compliance tasks, below is a summary of material developments during the past year and a compliance calendar for the coming 12-month period.

Developments

Although the Securities and Exchange Commission (SEC) has not adopted new rules targeted at investment advisers or typical private funds in 2015, other agencies, such as the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), have proposed significant new rules, and the SEC and its staff continue to send messages to investment advisers' compliance departments through enforcement actions and sweep examinations.

In reviewing their compliance manuals and disclosures for developments in 2015-16, investment advisers should consider adopting or revising policies relating to the following:

- **Addressing Whistleblower Rules in Confidentiality Agreement and Policies.** In early 2015, the SEC brought and settled an action against a public company for violation of a rule against impeding potential whistleblowers' communication with the SEC.¹ The SEC argued that a confidentiality agreement provided to an employee in connection with an internal investigation interview prevented the disclosure of information to the SEC. The public company subsequently revised its confidentiality agreements as part of its settlement with the SEC to carve out disclosures to government agencies, including the SEC and the Department of Justice (DOJ). Since the above rule applies equally to RIAs, RIAs should review any confidentiality obligations of employees, whether in policies or agreements, to ensure that they, at least, permit disclosures to government agencies.
- **Adapting Cybersecurity Measures to Newest Guidance.** The SEC recently brought its first cybersecurity enforcement action since 2009² soon after announcing a new round of cybersecurity sweep examinations. The SEC settled an enforcement action with an RIA for failure to adopt policies and safeguards to protect clients' personally identifiable information (PII) in violation of Rule 30 of Regulation S-P after a server containing PII was breached. In particular, the SEC focused on the adviser's failure to:
 - conduct periodic assessments
 - implement a firewall
 - encrypt the PII
 - adopt a cybersecurity incident response plan.³

The SEC's Office of Compliance Inspections and Examinations (OCIE) is also launching a second round of examinations of RIAs related to cybersecurity, which focuses on the following areas:

¹ See Release 34-74619 (Apr. 1, 2015) available [here](#).

² The SEC brought the previous action against an RIA and broker-dealer for failure to require antivirus software. See Release IA-2929 (Sept. 29, 2009) available [here](#).

³ See Release IA-4204 (Sept. 22, 2015) available [here](#). Our related blog entry is available [here](#).

- governance and risk assessment (including involvement of senior staff and tailoring to risks of firm)
- access rights and controls
- data loss prevention controls
- vendor management
- training programs
- incident response plans.⁴

In August 2015, the National Futures Association (NFA) also proposed interpretative advice relating to cybersecurity with respect to the privacy, records and supervision requirements of registered commodity pool operators, registered commodity trading advisors and other registered market. As with prior SEC staff guidance, the NFA's proposed interpretative advice is principles-based and would require the adoption of information systems security programs that would be tailored to the risks of the relevant registered entity.

Based on the above and previous cybersecurity actions, it appears that the SEC and NFA staff have certain minimum expectations for what should be in compliance policies related to cybersecurity, including (i) mapping of risks and mitigation efforts, (ii) an incident response plan and (iii) training. In addition, RIAs and NFA members should consider formalizing vendor diligence and management policies, which should include cybersecurity diligence and revising the business continuity plan to address cybersecurity incidents. Finally, advisers and NFA members should also test the system they implement, including incident response testing, penetration testing and cybersecurity risk assessments/gap analyses.

- **Outside Business Activities.** The SEC brought and settled an additional case against an RIA and its former CCO in 2015 relating to the RIA's approval of a senior portfolio manager's investment in an outside business managed by his sons and the outside business's subsequent formation of a joint venture with one of the RIA's clients.⁵ The enforcement action focused on the RIA's failure to (i) disclose a material conflict of interest from an outside business activity and (ii) have adequate policies and procedures to assess and monitor outside business activities. Advisers should ensure that they have developed policies for the approval of outside business activities that focus on conflicts of interest and that they monitor the development of those conflicts of interest over time. Also, RIAs should request questionnaires from employees, as outside business activities may need to be disclosed on the relevant employee's brochure supplement or otherwise.
- **Code of Ethics Monitoring.** In addition to the above action relating to outside business activities, the SEC also brought and settled an action against an RIA relating to violations of its code of ethics due to (i) undisclosed loans from a client (despite members of senior management knowing of the loan) and (ii) failure to enforce provisions restricting gifts and entertainment with respect to employees' trips on clients' jets.⁶ Investment advisers should consider monitoring for any undisclosed violations of the code of ethics and training their employees regarding their obligations, in addition to requiring reporting of loans, gifts and entertainment.

⁴ See OCIE's 2015 Cybersecurity Examination Initiative (Sept. 15, 2015) available [here](#) and our related blog entry available [here](#).

⁵ See Release IA-4065 (Apr. 20, 2015) available [here](#).

⁶ See IA-4163 (Aug. 10, 2015) available [here](#).

- **Code of Ethics Policies for Externally Managed Accounts.** An “access person” of an RIA is exempt from the reporting requirements in the code of ethics rule if his or her personal trades are made in an account over which he or she had no direct or indirect influence or control (the “Independent Account Exemption”). The SEC Division of Investment Management published additional guidance in June of 2015 in which it expressed concern that access persons could have the ability to suggest purchases or sales of investments to, direct the purchases or sales of, or consult with the person controlling the account while claiming the Independent Account Exemption.⁷

Due to the above concerns, the Division of Investment Management published guidance that effectively presumes that an “access person” has influence over an external manager and cannot use the Independent Account Exemption unless the RIA conducts diligence to demonstrate that the account manager is independent. This diligence may be through certificates from the manager or access person as to (i) the lack of affiliation between the access person and the external manager and (ii) the absence of communication between the access person and the external manager (other than a summary of account activity). Advisers should consider adding a new diligence questionnaire relating to this new guidance into its policies and procedures.

- **Clarifying Disclosure of Conflicts Relating to Fees and Expenses.** The SEC staff continued to target the sufficiency of disclosure of conflicts of interest relating to fees and expenses in recent enforcement actions. The SEC and its staff tried two enforcement actions in front of the SEC’s administrative court against two RIAs with respect to their failure to disclose that they will (as opposed to “may”) receive special compensation with respect to investing client’s funds in certain securities, and the SEC was successful with respect to one of the actions.⁸ The SEC also continued its enforcement actions against private equity funds related to their conflicts of interest in connection with allocation of fees and expenses. In 2015, the SEC brought and settled enforcement actions against private equity fund managers for the failure to (i) have policies relating to the allocation of broken-deal expenses to its fund clients instead of to its proposed co-investor clients, (ii) disclose the acceleration of “monitoring” fees for portfolio companies and (iii) disclose differing legal fee rates between the adviser and its clients.⁹ Finally, the SEC brought and settled an enforcement action against an RIA and its CCO that disclosed that its fund client would bear all expenses “incurred by it or by others on its behalf or for its benefit,” but failed to disclose that the client would bear the adviser’s operating expenses.¹⁰

As a result of the above focus areas, we recommend that RIAs take inventory of all sources of compensation and special allocations of expenses at the fund and the portfolio company level and ensure that those fees and allocations, along with any related conflicts of interest, are fully disclosed to investors. These SEC actions show that the SEC will require strong disclosure of any conflict related to compensation. Furthermore managers should consider adopting specific policies relating to the allocation of each of the fees and expenses identified above.

- **Reviewing Pre-solicitation Process.** Issuers privately offering securities are restricted from conducting a general solicitation, but soliciting persons who have a substantive, pre-existing relationship with the issuer, however, is not viewed as general solicitation. The SEC’s Division of Corporation Finance recently published a no-action letter and “compliance and disclosure interpretations” that emphasize the requirement for a pre-existing

⁷ See Personal Securities Transactions Reports by Registered Investment Advisers: Securities Held in Accounts Over Which Reporting Persons Had No Influence or Control, *IM Guidance Update 2015-03* (June 2015) available [here](#).

⁸ See *In the Matter of Total Wealth Management, Inc. et al.*, *Initial Decision Release No. 860* (Aug. 17, 2015) available [here](#) and *In the Matter of The Robare Group, Ltd. et al.*, *Initial Decision Release No. 806* (June 4, 2015) available [here](#).

⁹ See Release IA-4131 (June 29, 2015) available [here](#) and Release IA-4219 (October 7, 2015) available [here](#).

¹⁰ IA-4073 (Apr. 29, 2015) available [here](#).

relationship to be substantive in order to satisfy the above requirements.¹¹ In particular, the SEC staff emphasized the requirement that the issuer have sufficient information regarding an offeree's sophistication and financial circumstances. Funds should review their intake questionnaires for prospective investors to potentially enhance the level of information solicited from them.

- **Exception for Audit Requirement for Related-Person Clients.** The SEC staff provided guidance to an RIA as to whether affiliated entity clients are required to be audited under the custody rule. The staff permitted the RIA to omit an audit of the financial statements of an entity that was wholly owned by (i) control persons of the adviser with full access to information regarding the adviser and its clients and material ownership in the adviser and (ii) those control persons' spouses and minor children.¹²
- **Proposed AML Rule Affecting RIAs.** FinCEN has released a proposed rule that would significantly increase the regulatory burden on RIAs by (i) including those entities within the definition of a "financial institution," which would subject such entities to the Bank Secrecy Act (BSA); (ii) requiring RIAs to develop and implement a written anti-money laundering (AML) program, which must cover all of its advisory activity;¹³ and (iii) requiring RIAs to report on suspicious activity (e.g., file suspicious activity reports (SARs) and file currency transaction reports (CTRs)).¹⁴ Under the proposed rule, RIAs would be required to comply with the BSA's filing and recordkeeping rules and the special information sharing procedures under Sections 314(a) and 314(b) of the USA PATRIOT Act. FinCEN will expect RIAs to have an AML program in place on or before six months after the rule's effective date. FinCEN requests comments from the industry, by November 2, 2015, on a range of issues, including the proposed definition of "investment advisor" (e.g., what classes of advisers to include/exclude), advantages or disadvantages relating to a shift to requiring CTRs instead of the Form 8300 filings, whether it is reasonable to include advisory services in the AML program, risks posed by sub-advisers, and whether to include them in the AML program and sharing of SARs within corporate organizational structures.
- **Swap Reporting.** The SEC adopted final rules for the reporting and dissemination of security-based swap data, subject to a six-month phase-in period once security-based swap data repositories become operational. Except for certain cleared security-based swaps, security-based swaps executed on an exchange or swaps execution facility, and certain cross-border swaps, the rules require the swap dealer (or the exchange or clearing organization, if applicable, or one of the counterparties if there is no dealer) to report information about the transactions, including the identities of counterparties. Although the rules are still coming into effect, the disclosure will apply retroactively even if the mechanics for swap reporting have not yet been finalized at the time of entering into each swap. Under the relevant rules, reporting of the identity of the swap participants and of information regarding historical swaps is not permitted to be made public. Persons entering into security-based swaps should identify who will report the swap and retain all relevant records in preparation for the effectiveness of this regime.

¹¹ SEC No-Action Letter, Citizen VC, Inc. (Aug. 6, 2015) available [here](#) and SEC Division of Corporation Finance interpretations: Securities Act Rules, 256.28.

¹² SEC No-Action Letter, 16th Amendment Advisors LLC (Mar. 23, 2015) available [here](#).

¹³ FinCEN's proposed rule would not require RIAs to institute a Customer Identification Program (CIP) as has been proposed for a subset of financial institutions in recent proposals released by FinCEN.

¹⁴ FinCEN, Press Release, "FinCEN Proposes AML Regulations for Investment Advisers" (available [here](#)); 80 Fed. Reg. 169, 52680 (Sept. 2015) (available [here](#)).

Compliance Calendar

Following is a list of common fixed compliance dates for U.S. laws and regulations applicable to investment managers to private investment funds for the period from September 2015 to September 2016. Following the compliance calendar is a list of floating compliance dates, a list of form filing dates that are triggered by the trading or other activity of fund clients, a list of forms that will be required in future years and a list of defined terms used in the compliance calendar. Note that certain of the due dates for forms are set through the person's (the manager or the fund, as relevant) fiscal year or fiscal quarter. The calendar assumes that the manager's fiscal year is a calendar year, but obligations that are linked to the fiscal year or quarter are highlighted with an asterisk (*).

We have also omitted the filing requirements for (i) liquidity fund advisers in Form PF, (ii) tax returns generally, and (iii) filings that generally apply to public companies under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") that may be tangentially applicable to funds. Finally, we have assumed that all RIAs registered with the SEC will use the audited financial statement exception for custody rule compliance and therefore have omitted requirements for surprise verification and quarterly statement delivery.

September 2015

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|----------------|--|---|----------|--------|----------|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 Labor Day | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 | | | |

October 2015

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|---------------------------|--|-----------|---|---|-----------|
| | | | | 1 (A) BE-180 "encouraged" due date for all BE-180 Filers, (B) Amendment to Form 13H due promptly ¹⁵ if any changes to information for Form 13H Filers. | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 Columbus Day | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 |
| 18 | 19 | 20 (A) TIC Form BQ-1 for TIC BQ-1 Filers, (B) TIC Form BQ-2 for TIC BQ-2 Filers, (C) TIC Form BQ-3 for TIC BQ-3 Filers. | 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 (A) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs*, (B) Due date for quarterly transaction reports from access persons of RIAs, unless exception or alternate reporting method is used, (C) Due date for Form BE- 577 for all BE-577 Filers* (D) Due date for Form BE- 605 for all BE-605 Filers*. | 31 |

¹⁵ The Form 13H amendment is due promptly if there are any changes. Some have interpreted "promptly" as up to 10 days under certain other filing regimes, but neither the SEC nor its staff has provided guidance on the definition of "promptly" for Form 13H.

November 2015

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--|---|-----------|----------------------------|---|-----------|-----------|
| 1 Due date for BE-180 with automatic extensions for most filers. | 2 | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 Veteran's Day | 12 | 13 | 14 |
| 15 | 16 <u>TIC Filings</u> (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers <u>Other Filings</u> (A) Form 13F due date for Form 13F Filers (B) Form CTA-PR due for all registered CTAs, (C) BE-185 due for BE-185 Filers*. | 17 | 18 | 19 TIC D report submission due date for TIC D Filers. | 20 | 21 |
| 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 Thanksgiving Day | 27 | 28 |
| 29 | 30 (A) Form PF due date for Large Hedge Fund Advisers *, (B) NFA Form CPO-PQR for all but Large CPOs, and (C) CFTC Form CPO-PQR due date for Large CPOs*. | | | | | |

December 2015

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--|--|---|----------|---------------------|----------|
| | | 1 | 2 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 Form SLT due date for TIC SLT Filers. | 24 | 25 Christmas Day | 26 |
| 27 | 28 If adviser is an RIA, ensure that independent public auditor that is registered with and subject to inspection by the PCAOB is engaged for next year for audited financial statements. | 29 | 30 | 31 | | |

January 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|--|-----------|---|-----------|---|--|
| | | | | | 1 New Year's Day | 2 |
| 3 | 4 Amendment to Form 13H due promptly if any changes to information for Form 13H Filers ¹⁶ . | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 |
| 17 | 18 Martin Luther King, Jr. Day | 19 | 20 (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers. | 21 | 22 | 23 |
| 24 | 25 TIC Form SLT due date for TIC SLT Filers. | 26 | 27 | 28 | 29 | 30 (A) Due date for quarterly transaction reports from access persons of an RIA, unless exception or alternate reporting method is used (B) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPO*. |
| 31 | | | | | | |

¹⁶ According to Response 2.5 to the SEC's "Frequently Asked Questions Concerning Large Trader Reporting," Form 13H Filers may file an amendment and an annual amendment together if any changes occurred during the fourth quarter to the information contained in Form 13H.

February 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|---|--|-----------|-----------|---|-----------|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 Presidents' Day | 16 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers; (E) Due date for amendments to Schedule 13G if any changes have occurred (F) Due date for Form 13F, (G) Due date for Form 5 (unlikely applicable) (H) Due date for annual amendment to Form 13H, (I) Form CTA-PR due for all registered CTAs (J) Due date for Form BE-577 for BE-577 Filers*, (L) Due date for Form BE-605 for all BE-605 Filers*. | 17 | 18 | 19 TIC D report submission due date for TIC D Filers. | 20 |
| 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 | 27 |
| 28 | 29 (A) Form PF due date for Large Hedge Fund Advisers* (but may file for only hedge funds and file for other funds by amendment 120 days after the fiscal year); (B) CFTC Form CPO-PQR (all schedules) due date for all Large CPOs*; (C) deadline to reaffirm exemptions under 4.13(a)(3) and 4.14(a)(8). | | | | | |

March 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|-----------|---|--|-----------|--|-----------|
| | | 1 | 2 | 3 | 4 Form SHCA due date (if requested). | 5 |
| 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 | 18 | 19 |
| 20 | 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 |
| 27 | 28 | 29 | 30 (A) Form ADV annual updates due date for RIAs and ERAs*, (B) CFTC Form CPO-PQR Schedule A due date for all registered CPOs other than Large CPOs* , (C) CFTC Form CPO-PQR Schedule B* due date for Mid-Sized CPOs according to the CFTC* (D) NFA Form CPO-PQR for all other NFA members (other than Large CPOs), (E) 4.7 Exempt CPOs must electronically file audited annual reports, including statements of financial condition, statements of operations and appropriate footnotes, for their pools with the NFA and distribute them to their investors*, (F) BE-185 due date for BE-185 Filers*. | 31 | | |

April 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|--|-----------|---|-----------|--|-----------|
| | | | | | 1 Amendment to Form 13H due promptly if any changes to information for Form 13H Filers. | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 |
| 17 | 18 | 19 | 20 (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers. | 21 | 22 | 23 |
| 24 | 25 Form SLT due date for TIC SLT Filers. | 26 | 27 | 28 | 29 | 30 |
| | | | | | (A) Form PF due date for all RIAs with more than \$150 million in AUM attributable to private funds (including Large Private Equity Fund Advisers)*. (B) Required delivery date for RIAs for brochure or the summary of material changes if a material change has been made since the last annual updating amendment*. (C) Required date for RIAs who are not registered CPOs of funds to have delivered annual audited financial statements (other than funds of funds). ^{*17} (D) Due date for quarterly transaction reports from access persons of RIAs, unless exception applies or alternate reporting method is used (E) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs.* | |

¹⁷ If annual audited financial statements are not prepared and distributed to investors or if the client is not a limited partnership, limited liability company or other pooled investment vehicle, an RIA with custody over the client's account must (A) arrange for surprise inspection by an independent public accountant, (B) take reasonable steps at least each quarter to ensure that statements are delivered and (C) notify clients/investors of the opening of new accounts.

May 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|--|---|-----------|-----------|---|-----------|
| 1 | 2 (A) Due date for Form BE-577 for all BE-577 Filers* (B) Due date for Form BE-605 for all BE-605 Filers*. | 3 | 4 | 5 | 6 | 7 |
| 8 | 9 | 10 | 11 | 12 | 13 | 14 |
| 15 | 16 (A) Form 13F due date for Form 13F Filers (B) TIC Form S due date for TIC S Filers (C) Form CTA-PR due for all registered CTAs (D) TIC Form BC due for TIC BC Filers (E) TIC Form BL-1 due for TIC BL-1 Filers (F) TIC Form BL-2 due for TIC BL-2 Filers (G) BE-185 due for BE-185 Filers*. | 17 | 18 | 19 | 20 TIC D report submission due date for TIC D Filers. | 21 |
| 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 | 27 | 28 |
| 29 | 30 Memorial Day | 31 (A) Due date for Form BE-15 for all BE-15 Filers (B) Form PF due date for Large Hedge Fund Advisers* (C) NFA Form CPO-PQR for all but Large CPOs and (D) CFTC Form CPO-PQR due date for Large CPOs* (E) Due date for Form BE-11 for all BE-11 Filers. | | | | |

June 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|--------|---|--|---|--------|----------|
| | | | 1 | 2 | 3 | 4 |
| 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| 12 | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 | 18 |
| 19 | 20 | 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 | 25 |
| 26 | 27 | 28 (A) Required date for RIAs to have delivered audited financial statements to fund of funds clients* (B) Required date for 4.7 Exempt CPOs to fund of funds that have filed for an extension to electronically file and distribute audited annual reports to their investors*. | 29 | 30 FBAR must be filed with FinCEN by FBAR Filers by June 30 following the year being reported. | | |

July 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|--|-----------|---|-----------|---|---|
| | | | | | 1 Amendment to Form 13H due promptly if any changes to information for Form 13H Filers. | 2 |
| 3 | 4 Independence Day | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 |
| 17 | 18 | 19 | 20 (A) TIC Form BQ-1 for TIC BQ-1 Filers (B) TIC Form BQ-2 for TIC BQ-2 Filers (C) TIC Form BQ-3 for TIC BQ-3 Filers. | 21 | 22 | 23 |
| 24 | 25 TIC Form SLT due date for TIC SLT Filers. | 26 | 27 | 28 | 29 | 30 (A) Due date for distribution of quarterly report of NAV for 4.7 Exempt CPOs (B) Due date for quarterly transaction reports from access persons, unless exception applies or alternate reporting is used. |
| 31 | | | | | | |

August 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|-----------|--|--|---|-----------|---|-----------|
| | 1 (A) Due date for Form BE-577 for all BE-577 Filers* (B) Due date for Form BE-605 for all BE-605 Filers. | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 | 12 | 13 |
| 14 | 15 (A) Form 13F due date for Form 13F Filers (B) Form CTA-PR due for all registered CTAs (C) TIC Form S due date for TIC S Filers (D) TIC Form BC due for TIC BC Filers (E) TIC Form BL-1 due for TIC BL-1 Filers (F) TIC Form BL-2 due for TIC BL-2 Filers (G) BE-185 due for BE-185 Filers*. | 16 | 17 | 18 | 19 TIC D report submission due date for TIC D Filers. | 20 |
| 21 | 22 | 23 Form SLT due date for TIC SLT Filers. | 24 | 25 | 26 | 27 |
| 28 | 29 (A) Form PF due date for Large Hedge Fund Advisers* (B) NFA Form CPO-PQR for all but Large CPOs (C) CFTC Form CPO-PQR due date for Large CPOs*. | 30 | 31 Form SHLA due date (if requested). | | | |

September 2016

| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
|--------|----------------|---------|-----------|--|---|----------|
| | | | | 1 | 2 | 3 |
| 4 | 5 Labor Day | 6 | 7 | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 (A) TIC Form S due date for TIC S Filers (B) TIC Form BC due for TIC BC Filers (C) TIC Form BL-1 due for TIC BL-1 Filers (D) TIC Form BL-2 due for TIC BL-2 Filers. | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 | 23 TIC Form SLT due date for TIC SLT Filers. | 24 |
| 25 | 26 | 27 | 28 | 29 | 30 | |

List of Floating Compliance Dates

| Requirement | Timing |
|---|--|
| Review the adequacy of the policies and procedures and the effectiveness of their implementation (including, but not limited to, Regulation S-ID) and make a written record of the review and any actions taken as a result | No less frequently than annually. |
| Annual Amendment to Form D | Annually on or before the first anniversary of the last filed Form D or amendment. |
| Annual holdings requirement from “access persons” of RIA | Once every 12-month period. |
| Request new “covered associates” to report prior political contributions | Prior to hiring. |
| Retain PCAOB registered and inspected independent auditor to prepare internal control report within six months and once per calendar year | If related person serves as qualified custodian for an RIA. |
| Distribution of annual privacy notice | RIAs must distribute a clear and conspicuous notice to customers, not less frequently than annually, that accurately reflects the RIA’s policies and practices. RIAs may determine when they will distribute the notice, but must apply to the customer on a consistent basis. Similar requirements apply to registered CPOs and CTAs under Part 160 of the CFTC’s regulations and to exempt investment advisers under the Federal Trade Commission’s regulations. |
| New issue certification under Financial Industry Regulatory Authority (FINRA) Rules 5130 and 5131 | A person wishing to receive an allocation of an initial public offering that is a “new issue,” as defined under FINRA rules, from a broker-dealer must be able to represent to the broker-dealer that it is not (i) a “restricted person,” consisting of financial industry insiders; (ii) a “covered person,” consisting of persons that are executive officers or directors of public companies or covered nonpublic companies that are or may be investment banking clients of the “broker-dealer”, or (iii) an entity with direct or indirect ownership by persons described in (i) or (ii) above the limits described in the FINRA Rules. A fund manager must receive a certification at least every 12 months from the relevant fund’s investors that they do not fall into the above restricted categories. The certification may be by “negative consent.” |
| NFA Self-Examination Checklist | NFA members must complete a self-examination checklist at least once per year and retain it in their records. |
| NFA Annual Update of Registration Information and Payment of Dues | NFA members must update their NFA registration information via NFA’s online registration system and pay annual NFA dues on or before the anniversary date that the CPO’s or CTA’s registration became effective. |
| Follow-Up Confirmation of Bad-Actor Status | Staff interpretations require that issuers conducting long-term offerings periodically confirm that persons that could cause a “bad-actor” disqualification have not committed a bad act. This confirmation may be by “negative consent” or, depending on the potential bad actor, by database searches. |

| Requirement | Timing |
|---|--|
| Initial filing of partial Form ADV Part 1A for ERAs | Sixty days after relying on the exemption for private fund advisers in Section 203(m) or venture capital advisers in Section 203(l) of the Advisers Act. |
| Transition from ERA to RIA status | Mid-sized fund advisers generally must apply for registration within 90 days after filing first annual ERA update showing fund RAUM in excess of \$150 million, but must be fully registered prior to accepting any client that is not a private fund. Venture capital advisers must be registered prior to accepting any client that is not a venture capital fund. |
| State Blue Sky Filings | Within 15 days of sale, depending on requirements of state of residence of investor. |

List of Forms Without Fixed Filing Dates

| Filings Not Included on Calendar or Above List | Timing |
|---|--|
| Exchange Act Forms | |
| Form 3 | Either (i) within 10 days after a person becomes (a) a 10 percent beneficial owner of a class of voting equity securities that is registered under Section 12 of the Exchange Act or (b) a director or executive officer of the issuer of such securities or (ii) in the case of an issuer that is registering securities for the first time under the Exchange Act, no later than the effectiveness of the registration statement under the Exchange Act. |
| Form 4 | By the end of the second business day following a reportable transaction. |
| Initial Form 13D | Within 10 days after a direct or indirect acquisition of a voting equity security of a class that is registered under the Exchange Act that results in the beneficial ownership of more than 5 percent of the class. |
| Schedule 13D Amendment | Promptly ¹⁸ after a material change. |
| Initial Form 13G | Varies, depending on type of filer, from 45 days after calendar year to 10 days after date of acquisition. |
| Interim Schedule 13G Amendment | Depending on type of filer, amendment is required either 10 days following the end of the month or promptly after a reporting person's beneficial ownership exceeds 10 percent, and subsequently for any increase or decrease in beneficial ownership by 5 percent. |
| Initial Form 13H | Promptly after being a Form 13H Filer. |
| Form BE-13 | Within 45 days of establishment of position or increase in investment to \$3 million. |
| Securities Act Forms | |
| Initial Form D | Within 15 days after sale to SEC and many states. |
| Form 144 | Filed with the SEC on the trade date if selling as an affiliate under Rule 144 under the Securities Act. |
| Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR) | |
| HSR Filings | Prior to purchasing securities in excess of filing threshold. |

¹⁸ The materiality of the change dictates the required promptness of the amendment.

List of Forms in Future Years

| | Due | Description |
|--|--------------|---|
| TIC SHC | March 2017 | Report of U.S. Ownership of Foreign Securities (as of December 31, 2016) |
| TIC SHL | August 2019 | Foreign Residents' Holdings of U.S. Securities (as of June 2019) |
| BE-10 | May 2020 | Benchmark Survey of U.S. Direct Investment Abroad |
| BE-12 | May 2018 | Benchmark Survey of Foreign Direct Investment in the United States |
| BE-180 (also due in Oct./Nov. 2015) | October 2020 | Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons |

List of Defined Terms

“**4.7 Exempt CPO**” means a registered CPO that has filed for reporting disclosure and recordkeeping relief under Regulation 4.7.

“**4.13 Exempt CPO**” means any person who claims an exemption from registration under Commodity Futures Trading Commission Regulation 4.13 and has made the appropriate notice filing with the NFA.

“**BE-11 Filer**” means any person contacted by the Bureau of Economic Analysis (BEA) and informed that it is required to file an “Annual Survey of U.S. Direct Investment Abroad (Form BE-11).”

“**BE-13 Filer**” means a U.S. person that either (i) has a non-U.S. person acquire a more than 10 percent interest or (ii) such foreign person makes a new investment, in each case, resulting in a value of \$3 million.

“**BE-15 Filer**” means any person contacted by the BEA and informed that it is required to file an “Annual Survey of Foreign Direct Investment in the United States (Form BE-15).”

“**BE-180 Filer**” means a U.S. person that sold or “purchased” more than \$3 million in financial services to or from a non-U.S. person.

“**BE-185 Filer**” means any person contacted by the BEA and informed that it is required to file a “Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons”

“**BE-577 Filer**” means any person contacted by the BEA and informed that it is required to file a “Quarterly Survey of U.S. Direct Investment Abroad (Form BE-577).”

“**BE-605 Filer**” means any person contacted by the BEA and informed that it is required to file a “Quarterly Survey of Foreign Direct Investment in the United States (Form BE-605).”

“**ERA**” or “**Exempt Reporting Adviser**” means an investment adviser that qualifies for exemption from registration as an investment adviser with the SEC under either (i) Section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, as defined in Rule 203(l)-1 under the Advisers Act or (ii) Rule 203m-1 under the Advisers Act because it is an adviser solely to private funds and has regulatory AUM in the United States of less than \$150 million.

“**FBAR Filer**” means any U.S. person having certain financial interests in, or signatory or other authority over, a bank, securities or other type of financial account in a foreign country that must electronically file a FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

“**Form 13F Filer**” means any entity with investment discretion over at least \$100 million in Section 13(f) securities (set forth on list) on the last trading day of any month in the prior year.

“**Form 13H Filer**” means any person with investment discretion over accounts with transactions of (i) 2 million shares, or \$20 million in fair market value in NMS securities or (ii) 20 million shares, or \$200 million in fair market value in NMS securities.

“**Hedge Fund**” means any private fund that: (i) has a performance fee or allocation calculated by taking into account unrealized gains (other than unrealized gains taken into account for only the purpose of reducing fees or allocations to reflect unrealized losses) that is paid to an investment adviser (or its related person); (ii) may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or (iii) may sell securities or other assets short, other than short-selling,

that hedges currency exposure or manages duration of investments. Vehicles established for the purpose of issuing asset-backed securities are explicitly excluded from the above definition, but commodity pools are included if they are also private funds.

“**Large CPOs**” means any registered CPO that had at least \$1.5 billion in aggregated pool AUM as of the close of business on any day during the calendar quarter.

“**Large Hedge Fund Advisers**” means RIAs that have \$1.5 billion¹⁹ or more in regulatory AUM attributable to hedge funds (including private fund commodity pools) as of the end of any month in the fiscal quarter immediately preceding the most recently completed fiscal quarter.

“**Large Private Equity Fund Advisers**” means RIAs that have \$2 billion or more in regulatory AUM attributable to private equity funds as of the last day of the most recent fiscal year.

“**Liquidity Fund**” means any private fund that seeks to generate income by investing in a portfolio of short-term obligations to maintain a stable net asset value per unit or minimize volatility.

“**MSP**” means a major swap participant that is registered with the CFTC.

“**Mid-Sized CPOs**” means any registered CPO that had at least \$150 million in aggregated pool AUM as of the close of business on any day during the calendar year.

“**Private Equity Fund**” means any fund that does not provide redemption rights in the ordinary course and is not a hedge fund, liquidity fund, venture capital fund, real estate fund or securitized asset fund.

“**SD**” means a swap dealer that is registered with the CFTC.

“**TIC BC Filers**” means any U.S. resident financial institution that has either \$25 million or more in U.S. dollar denominated claims against persons in any one foreign country or \$50 million in total claims against all foreign residents. The FRBNY has provided guidance that the claims reportable on Form BC for investment managers to private funds are the claims of the investment managers themselves. The claims may include, among others, loans and loan participations, foreign brokerage accounts, and short-term securities.

“**TIC BL-1 Filers**” means any U.S. resident financial institution (including, but not limited to, private equity funds, hedge funds, investment advisers, broker-dealers and banks) that has either \$25 million or more in U.S. dollar denominated liabilities to persons in any one foreign country or \$50 million in total liabilities to all foreign residents. The FRBNY has provided guidance that the liabilities reportable on Form BL-1 for investment managers to private funds are the liabilities of the investment managers themselves. Liabilities may include, among others, loans and loan participations from a foreign resident person and issuance of short-term securities.

¹⁹ The monetary value of the above thresholds must be calculated in accordance with the aggregation rules in Form PF. Under those rules, (1) assets attributable to funds with a similar strategy, (2) assets managed by related persons that are not separately operated, (3) any parallel managed accounts (unless greater in value than the relevant fund assets individually or in the aggregate) and (4) private funds in a master-feeder arrangement must be combined with the fund assets being determined. Investments in other private funds, however, may be excluded. For further information relating to aggregation, see Form PF Frequently Asked Questions (available [here](#)).

“TIC BL-2 Filers” means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either \$25 million or more in U.S. dollar denominated liabilities to persons in any one foreign country or \$50 million in total liabilities to all foreign residents. Liabilities may include, among others, (i) short-term securities and negotiable certificates of deposit, which are liabilities of U.S. resident customers to a foreign resident and which are held by the reporting person as custodian, (ii) liabilities of U.S. residents to foreign managed offices of the reporting person, (iii) liabilities to U.S. residents pursuant to loans serviced by the reporting person and (iv) short-term negotiable securities issued by the reporter directly into a foreign market. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a “managed foreign office” of the manager.

“TIC BQ-1 Filers” means any U.S. resident financial institution with customer accounts or managed foreign branches (including, but not limited to, investment advisers, broker-dealers and banks) that have either \$25 million or more in U.S. dollar denominated claims against persons in any one foreign country or \$50 million in total claims against all foreign residents. Claims may include, among others, (i) short-term securities and negotiable certificates of deposit, which are liabilities of foreign residents to U.S. residents and which are held by the reporting person as custodian, (ii) claims of U.S. residents against managed foreign offices of the reporting person, (iii) claims of U.S. residents against foreign offices of the reporting person due to sweep accounts and (iv) brokerage balances of U.S. residents placed abroad through the reporting person. The FRBNY has provided guidance that a foreign fund managed by a U.S. manager is a “managed foreign office” of the manager.

“TIC BQ-2 Filers” means any U.S. resident financial institution with direct claims or liabilities or customer accounts with claims or liabilities (including, but not limited to, investment advisers, broker-dealers and banks) that has either \$25 million or more in foreign currency denominated claims or liabilities to persons in any one foreign country or \$50 million in total claims or liabilities against all foreign residents. Claims and liabilities are as defined above and include those for the investment manager itself and for its client funds.

“TIC BQ-3 Filers” means any U.S. resident financial institution with \$4 billion in amounts reported on Forms BC, BL-1 and BQ-2.

“TIC D Filers” means all entities resident in the United States that have derivative contracts that exceed the following exemption levels: (i) the total notional value of worldwide holdings of derivatives (including contracts with U.S. and foreign residents, measured on a consolidated-worldwide basis) for the reporter’s own account exceeds \$400 billion; or (ii) the amount reported by a TIC D reporter for grand net total settlements (as defined in the form) exceeds \$400 million (either a positive or negative value).

“TIC S Filers” means U.S. entities who, during the reporting month, (i) conduct transactions in U.S. long-term securities directly from or to foreign residents and/or (ii) conduct transactions in foreign long-term securities directly from or to foreign residents or have foreign-resident agents conduct transactions in these securities on their own behalf or on behalf of customers, if the total reportable transactions in purchases or sales of long-term securities amount to \$350 million or more during the respective month.²⁰ If a reporting person’s repayable transactions exceed the \$350 million threshold for any month, it must report for the remainder of the year.

²⁰ U.S. resident entities should consolidate all of their subsidiaries, except for foreign-resident offices and subsidiaries, in accordance with U.S. GAAP. If the level of transactions meets or exceeds the exemption level in any month, reporting is required for the remainder of the calendar year, regardless of the level of transactions in subsequent months, and for both purchases and sales even if only one meets or exceeds the exemption level. For further information, see Instructions for the Monthly TIC Form S (available [here](#)).

“TIC SLT Filer” means any person, when consolidated with any U.S. parts of its organization and any U.S. persons that it advises, that has \$1 billion in (i) foreign long-term securities (including equity securities) that it owns, (ii) foreign long-term securities that it holds for others and (iii) long-term securities that it has issued to other persons.

Contact Information

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