

Investment Funds Alert

Fund Manager Annual Update

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The SEC brought a record number of enforcement actions against investment advisers in 2015, resulting in approximately \$4.2 billion in sanctions.¹ This alert highlights current issues for private equity, venture capital and hedge fund managers and also summarizes certain key required annual filings.

Current Issues

1. **Marketing to European Investors.** Managers cannot market their funds to residents in the European Union without first checking with their lawyers on a country-by-country basis. This is due to the Alternative Investment Fund Managers Directive (AIFMD). Managers face a cost-benefit analysis of whether marketing in Europe is worthwhile, although more and more managers are now marketing in Europe and learning to live with AIFMD. Those relying on “reverse solicitation” are subject to regulatory risk.
2. **Fees and Expenses.** In 2015 The Blackstone Group agreed to pay nearly \$39 million to settle charges that it failed to fully inform investors about benefits obtained from accelerated monitoring fees and discounts on legal fees.² Managers should disclose all fees and expenses they charge to their funds and portfolio companies. Current disclosures must be accurate. Also, managers should have written internal expense allocation policies.
3. **Cybersecurity.** The SEC recently levied a \$75,000 fine against a manager that suffered a cybersecurity breach.³ [See our blog post on this here.](#) We expect the SEC’s focus on cybersecurity to increase from its current record level. The SEC has provided a sample cybersecurity request list that managers should review.
4. **Conflicts of Interest.** As fiduciaries, managers have a legal duty to identify conflicts of interest in their business and, if any exist, eliminate or disclose them. Managers should pay particular attention to valuations, investment allocation practices, co-investments, marketing documents, performance disclosures, side letters and affiliated transactions. Identifying and resolving conflicts of interest should be at the top of every manager’s compliance list.⁴
5. **Annual Review.** Registered investment advisers are required at least annually to review the adequacy of their policies and procedures and the effectiveness of their implementation. Exempt reporting advisers (e.g., venture capital advisers) are not off the hook. Because they are subject to federal anti-fraud provisions, they should maintain reasonable compliance policies and procedures to avoid violations of the federal securities laws. Managers should also review their offering documents to ensure they are accurate (e.g., has someone left the firm, or have terms of the offering changed).

Key Filings Checklist

Below are certain key filings for most fund managers. Managers should understand the SEC’s most recent guidance in these areas.

- **Form ADV.** Registered investment advisers and exempt reporting advisers must amend their Form ADV filing with the SEC and/or state securities authorities by March 30, 2016. Registered investment advisers must also update Part 2A (the Brochure) and Part 2B (the Supplement) by April 30, 2016.



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- **Form D/"Blue Sky" Filings.** Form D filings for funds with ongoing offerings must be amended annually. And certain states require their "blue sky" filings to be amended annually.
- **Form PF.** Form PF must be updated by April 30, 2016. Investment advisers are required to file Form PF if they have "regulatory assets under management" of \$150 million or more attributable to private funds as of the end of their most recently completed fiscal year.

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Endnotes

¹ SEC Announces Enforcement Results For FY 2015: <https://www.sec.gov/news/pressrelease/2015-245.html>

² Blackstone Charged With Disclosure Failures: <https://www.sec.gov/news/pressrelease/2015-235.html>

³ SEC Cybersecurity Enforcement Action: <https://www.sec.gov/news/pressrelease/2015-202.html>

⁴ Conflicts, Conflicts Everywhere: <https://www.sec.gov/news/speech/conflicts-everywhere-full-360-view.html>

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