



Annual Reminders: Securities Filings (Schedule 13G / Form 13F / Schedule 13D Filings, Form 13H Annual Update Filings), Privacy Notices and Policy Updates, Form ADV Updating Amendment Requirements

Insights

January 18, 2023

Valued Clients:

We are writing to remind you of several important deadlines that are approaching. The annual deadline for filing certain initial Schedules 13G, an amendment to a previously filed Schedule 13G, an initial Form 13F filing, and an annual update to a previously filed Form 13H with the Securities and Exchange Commission (the “SEC”) for the year ended December 31, 2022 is **Tuesday, February 14, 2023**. As you may remember from prior years, all Schedule 13G and Form 13F filings, including amendments, and Form 13H filings, including annual updates, must be filed electronically through EDGAR. In addition, if you are subject to the California Consumer Privacy Act, which was modified by the California Privacy Rights Act effective January 1, 2023 (as modified, the “CPRA”), then you are required to review and update your firm privacy policies and provide an annual privacy notice to your employees, contractors and investors that are California resident natural persons. Finally, if your firm has previously filed a Form ADV with the SEC, then you are required to file an annual updating amendment to such Form ADV by the deadline of **Friday, March 31, 2023**.

Does Your Firm Need to Make a Schedule 13G Filing?

In general, your firm may need to file an initial Schedule 13G if, on December 31, 2022, your firm (including, in the aggregate, shares owned by all funds, general partner entities, and by managers of such general partner entities) owned five percent or more of an issuer that went public in 2022. You will generally not need to file with respect to an issuer that went public in 2022 if on December 31, 2022 your firm owned less than five percent of such company (even if you owned five percent or more at any time during the year). You will need to file an amendment to a previously filed Schedule 13G if there has been any change in ownership since the date of such previously filed Schedule 13G or the last amendment thereto.

It should be noted that in some cases, a Schedule 13G or a Schedule 13D must be filed promptly following a transaction in which your firm acquires publicly traded shares (or shares convertible into then publicly traded shares) such as through purchase or a merger or other transaction.

Amendments to a previously filed Schedule 13D must be made promptly upon any material change in the facts reported on the previously filed Schedule 13D. A material change includes, *but is not limited to*, a material change in ownership percentage. With respect to ownership changes, the acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of such class of securities is deemed to be a material change, but acquisitions or dispositions of less than one percent may be material, depending upon the facts and circumstances. We encourage our clients to consult with us at the time of any transactions in publicly traded securities to determine if there are any immediate filing obligations under Section 13 as well as any reporting obligations under Section 16 (*i.e.*, Form 3 and Form 4 filing requirements).

Does Your Firm Need to Make a Form 13F Filing?

In general, your firm may need to file a Form 13F if, on the last trading day of any month in 2022, related funds in your firm held more than \$100,000,000 of "Section 13(f) Securities." An official list of Section 13(f) Securities is published by the SEC on a quarterly basis, but in general the list primarily includes U.S. exchange-traded stocks (*e.g.*, NYSE, AMEX, NASDAQ), shares of closed-end investment companies, and shares of exchange-traded funds (ETFs). Please note that the test of \$100,000,000 in public securities generally includes *all* public securities owned by related funds, not just any one public company security.

Does Your Firm Need to Make a Form 13H Filing?

In general, if your firm has previously filed a Form 13H with the SEC your firm is required to file an annual update by February 14, 2023. If your firm has not previously filed a Form 13H with the SEC, we would like to remind you that your firm is required to file an initial Form 13H if your firm had aggregate transactions in exchange-listed securities equal to or greater than: (i) 2 million shares or \$20 million during any calendar day, or (ii) 20 million shares or \$200 million during any calendar month. If your firm meets this “large trader” test, your firm needs to report such status with the SEC on a Form 13H ***promptly*** after reaching such trading level (under normal circumstances, within 10 days of such transaction) and may voluntarily file a Form 13H ahead of crossing such threshold. In addition, to the extent that your firm has previously filed a Form 13H with the SEC but has not effected any transactions meeting or exceeding the “large trader” test in the previous full calendar year and you do not expect to do so in the coming calendar year, you may consider filing for *inactive status*. After filing for *inactive status*, no further Form 13H filings are due unless and until your firm subsequently effects any transactions that reach or exceed the “large trader” test (at which point your firm would need to make a filing to reactivate your “large trader” status). Accordingly, you may want to use this opportunity to review your large trader status, but it is important that you continue to monitor such threshold test throughout the year.

CPRA Annual Privacy Notice

If you are subject to the CPRA, you are required to send an updated annual Privacy Notice to your employees, contractors and investors who are California resident natural persons. The annual Privacy Notice should be updated and go out at the same time each year. Due to the changes incorporated into the CPRA effective January 1, 2023, these annual notices now require more extensive disclosures than what was previously required under the California Consumer Privacy Act. Please be advised that electronic transmission of the annual Privacy Notice is acceptable if that is a standard form of correspondence with your employees, contractors or investors.

Businesses subject to the CPRA are also required to make available a “Notice at Collection,” which is, in effect, a shortened privacy policy identifying specific privacy practices. This Notice at Collection must be posted at or prior to the point of collection of any personal information, such as by pop-up when an individual accesses a website. Generally, most funds that have operations in California are subject to the CPRA, with some exceptions for small funds. If you do not know if you are subject to the CPRA or what changes to your privacy notices are required to meet the new CPRA requirements, please contact the Gunderson attorney with whom you regularly work on fund governance matters to determine this.

Form ADV Initial Filing and Annual Update

If your firm is raising or has raised its first fund, you are required to file your initial Form ADV with the SEC within sixty (60) days of your initial closing on investors in that fund. If your firm has previously filed a Form ADV with the SEC, please note that you are required to file an annual updating amendment to such Form ADV with the SEC within ninety (90) days after the end of your fiscal year. For clients with a traditional December 31 fiscal year-end, the annual updating amendment to your Form ADV must be filed **by Friday, March 31, 2023**, although we recommend that you make the filing in advance of the deadline.

Please contact the Gunderson Dettmer attorney with whom you regularly work on fund governance matters if you have any questions. If you would like us to prepare any initial or amended Schedules 13G or Forms 13F, or a Form 13H for you this year, **please let us know and provide information regarding your relevant holdings by Friday, January 27, 2023.**

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