

2019 Schedule 13G / Schedule 13F Filings

Insights

January 22, 2019

We are writing to our venture capital and private equity fund clients to remind you that the annual deadline for filing certain initial Schedules 13G, an amendment to a previously filed Schedule 13G, an initial Schedule 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, 2018 is **Thursday, February 14th**. As you may remember from prior years, all Schedule 13G and 13F filings, including amendments, and Form 13H filings, including annual updates, must be filed electronically through EDGAR. As a result, we will be working with a financial printer in connection with these Section 13 filings. Although we believe most of our venture capital and private equity fund clients are exempt from the obligation to send annual Privacy Notices under the Gramm-Leach-Bliley Act (“GLBA”) pursuant to an exemption added to the GLBA in December of 2015, we are offering a reminder of such annual obligation to those clients who do not qualify for the exemption. Finally, we would like to give our clients who have previously filed a Form ADV with the SEC a preliminary reminder that your firm will be required to file an annual updating amendment to such Form ADV by the deadline of Monday, April 1st.

Does Your Firm Need to Make a 2018 Schedule 13G Filing?

In general, your firm may need to file an initial Schedule 13G if, on December 31, 2018, 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 2018. You will generally not need to file with respect to an issuer that went public in 2018 if on December 31, 2018 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 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 2018 Schedule 13F Filing?

In general, your firm may need to file a Schedule 13F if on the last trading day of any month in 2018 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 14th. 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. 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.

Annual Privacy Notice Mailing Requirement

As you may be aware from our prior letters to clients, the annual Privacy Notice requirement of the GLBA was modified to provide that those financial institutions that (i) do not use the information of their customers in such a manner as to be obligated under the GLBA to offer their customers the opportunity to opt out of such use (such as selling customer information to non-affiliated third parties); and (ii) have previously sent a Privacy Notice to customers describing their policies and practices and have not changed such policies and practices described in such Privacy Notice, no longer need to send an annual Privacy Notice to customers.

We believe that this exception should offer relief to most if not all of our venture capital and private equity fund clients. If, however, your firm does not meet the criteria of the exception, then we remind you that the annual Privacy Notice mailing to investors who are natural persons should go out at the same time each year. Please be advised that electronic transmission of the annual Privacy Notice is acceptable if that is a standard form of correspondence with your investors. Otherwise, the annual Privacy Notice mailing should be sent by U.S. mail.

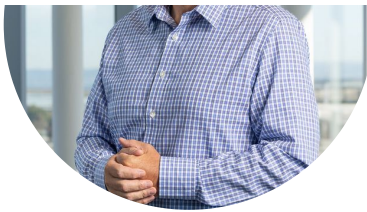
Form ADV Annual Update

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 by Monday, April 1, 2019. We will send our venture capital fund and private equity clients another reminder about the Form ADV annual updating amendment requirement with more detailed instructions in February.

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 initial or amended Schedules 13G or 13F, or a Form 13H for you this year, **please let us know and provide information regarding your relevant holdings by Thursday, January 31st.**

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