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Form D Amendments Required for Multi-Year Offerings

If you operate a private fund, you should be aware of certain changes to the timing of required Form D filings with the Securities and Exchange Commission that may apply to your fund.

Previously, the SEC's rules required a Form D to be filed within 15 days of the first closing, with an amendment to the Form D required only when there was a material change in the offering information. There was no requirement of regular, periodic filings if an offering remained open for an extended period of time.

Under the revised regulations, annual filings are required in addition to initial and material change filings. Specifically, if a Regulation D offering is open for more than a year, then an amended Form D must be filed on or before the first anniversary of the initial Form D filing and annually thereafter as long as the offering remains open. If one or more amendments to the Form D are filed during an annual interval, then the annual amendment can be delayed until the first anniversary of the last amendment filed.

As an example, a hedge fund that conducts a continuous offering of limited partnership interests in the fund will be required to file an amended Form D annually with the SEC beginning 12 months after its initial Form D was filed. On the other hand, a private equity fund that has the right to conduct its offering for more than 12 months (and has an investment period that extends for an even longer period of time during which it calls capital) would not be required to file annual Form D amendments if it terminated its offering prior to the first anniversary of its initial Form D filing.

Failure to file timely annual Form D amendments could have significant consequences, including prohibition from using Regulation D to raise capital going forward or corrective action if the manager of the fund is an SEC-registered investment advisor. You may be aware that the SEC is believed to be currently conducting sweep exams of registered investment advisors offering alternative investments, including private funds and other pooled investment vehicles managed by investment advisors.

If the term of your fund's offering is greater than 12 months, please contact a member of our Securities Practice Group to ensure your annual amendments are being filed on a timely basis.