The Devil is the Details Part 2: Form D and Blue Sky Filings Renewals and Amendments for Private Fund Managers

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Private fund managers routinely rely on Regulation D (“Reg D”) to avoid registering their offerings with the Securities and Exchange Commission (“SEC”) under the Securities Act of 1933. Rule 506 of Reg D is the most commonly relied upon exemption for hedge and private equity funds. Rule 506 offerings are exempt from state securities laws (a.k.a “blue sky laws”), but states can still require the filing of Form D, consent to service of process, and payment of a filing fee. We’ve described the process for making a Form D with the SEC in a prior blog post. In most states, failure to file on time, or at all, can result in late fees, fines, public condemnations or giving investors the right to get their money back. Generally, the filing must be made within 15 days of the first sale to comply with Reg D.

Each state has its own requirements for filing the initial Form D, and renewals and amendments can be a headache. Many state laws do not address renewals or amendments, but this does not mean that they are not required.

Many states allow electronic filing of Form D, using the North American Securities Administrators Association (NASAA) Electronic Filing Depository System, or EFD. The system allows issuers to file Form D and pay the applicable fees to various states at one time. While a majority of the states use the EFD filing website, not all states participate. For states that require or permit electronic Form D filings, the EFD indicates when a renewal is due. If a state does not require renewals, EFD will note that as well. For states that do not utilize the EFD, state law should be reviewed to confirm whether a renewal is required. Renewals must be proactively monitored by firms to ensure that applicable renewals are filed promptly.

Amendment requirements also vary by state and should be researched. States that require amendments focus on material changes that would also require an update to Form D. Examples of these types of amendments include an increase in the total offering amount or a name change of the fund or issuer.

Rather than spending the time and resources internally, let Hardin manage your Blue Sky Filings and pay one combined fee for the research and filing fees for each state. Our dedicated experts will monitor your renewals and proactively contact you monthly to monitor for new investors or any other changes that may require an amendment. For more information or to contact the Blue Sky Filing Team, check out this summary of Hardin’s Blue Sky Filing Service.
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Need help with state Blue Sky compliance and Form D filings? Hardin Compliance can help! Call us today at 1.724.935.6770, or visit our website at www.hardincompliance.com for more information.

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