

Private Equity Alert

SEC Proposes Amendments to Form ADV Regarding Separately Managed Accounts and Umbrella Registrations

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On May 20, 2015, the SEC proposed amendments to Form ADV that, if adopted, will require registered investment advisers (but not exempt reporting advisers) to provide additional information regarding any separately managed accounts (“SMAs”) they advise. The proposal would also codify a method for private fund adviser entities operating a single advisory business to register using a single Form ADV (“Umbrella Registration”) and would make certain clarifying, technical and other amendments to Form ADV. The SEC also is proposing amendments to the Investment Advisers Act of 1940 (the “Advisers Act”) recordkeeping rule.

Proposed Amendments Regarding Separately Managed Accounts

Under the proposed amendments, SMAs are any advisory accounts other than pooled investment vehicles (such as private funds and registered investment companies). The SEC proposed to increase the amount of reportable information related to SMAs in three broad categories:

- **Type of Assets:** Advisers would be required to report the approximate percentage of SMA assets invested in 10 broad asset categories, including exchange-traded equity securities, derivatives and U.S. government securities. For advisers with at least \$10 billion in assets attributable to SMAs, the information would be reported in the adviser’s annual Form ADV amendment as of the middle and end of the past year. Advisers with less than \$10 billion in SMA assets would only report the information as of the end of the year.
- **Use of Borrowings and Derivatives:** Advisers with at least \$150 million attributable to SMAs would be required to provide information with respect to the amount of borrowings and derivatives exposure in various categories (based on asset size) of those accounts. No reporting would be required for SMAs with less than \$10 million of assets. Advisers with \$10 billion or more of assets attributable to SMAs would be required to report additional information regarding the categories of derivatives used and the information would be required to be reported in an adviser’s annual Form ADV amendment as of the middle and end of the past year. Advisers with less than \$10 billion in SMA assets would only report the information as of the end of the year.
- **Custodians:** Advisers would be required to identify and provide information regarding any custodian that holds at least 10% of its total SMA assets.

Umbrella Registration

The proposed amendments would codify a 2012 SEC no-action letter permitting “relying advisers” to be part of, and rely on, an affiliated “filing adviser’s” SEC registration as long as the relying and filing advisers conduct a single advisory business. The proposed amendments would clarify and expand the disclosure required with respect to the advisers covered by the Umbrella Registration (including adding a new Schedule R for each relying adviser). In its release, the SEC stated that exempt reporting advisers may not make use of Umbrella Registration.

Under the proposal, and consistent with the 2012 no-action letter, five conditions must be met in order to rely on Umbrella Registration:

- The advisers must advise only private funds and clients in SMAs that are qualified clients (as defined in Rule 205-3 under the Advisers Act) and are otherwise eligible to invest in the advisers’ private funds.
- The filing adviser must have its principal office and place of business in the United States (and therefore the filing adviser and all relying advisers will be subject to the substantive provisions of the Advisers Act).
- Each relying adviser and its employees must be subject to the filing adviser’s supervision and control.
- The advisory activities of each relying adviser must be subject to the Advisers Act and examination by the SEC.
- The filing adviser and each relying adviser must operate under a single code of ethics and a single set of written policies and procedures administered by a single chief compliance officer.

Clarifying, Technical and Other Amendments to Form ADV

The SEC proposed to add or revise a number of questions on Form ADV, including disclosures related to social media, shared compliance officers, assets under management and private fund ownership. Under the proposed amendments:

- An adviser with accounts on social media platforms (including Twitter, Facebook, and LinkedIn) would be required to report such accounts on Form ADV. The SEC intends to compare information that advisers disseminate across different social media platforms.
- An adviser would be required to disclose if its chief compliance officer is compensated or employed by any other person and the identity of such person.
- An adviser would be required to report the number of clients and amount of assets under management attributable to each category of clients as of the date it determines its assets under management. Currently, the number of clients, the types of clients and assets under management attributable to client types are reported as a range.
- An adviser would be required to respond to a new question requiring it to report the percentage of a private fund owned by qualified clients.

Proposed Amendments to the Recordkeeping Rule

The SEC proposed to amend Advisers Act Rule 204-2 to require registered advisers to maintain additional records regarding the calculation and distribution of performance information. Currently, an adviser is required to maintain supporting documentation for performance information that is distributed to 10 or more persons. The proposed amendment eliminates the 10-person threshold, such that an adviser would be required to maintain supporting documentation for performance information that the adviser distributes (directly or indirectly) to any person. In addition, the proposal would require an adviser to maintain originals of all written communications received and copies of written communications sent by the adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations.

We will monitor these proposals as the rulemaking process progresses and keep you informed of any developments.

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