



July 21, 2015

CLIENT ALERT

SEC Proposes Amendments to Form ADV and Certain Investment Adviser Act Rules

The SEC has requested comments by August 11, 2015 on its proposed amendments to Form ADV and certain rules under the Investment Advisers Act of 1940, as amended (the “Advisers Act”) (the “Proposed Amendments”).* The Proposed Amendments would (a) require an investment adviser (“IA”) to provide additional information with respect to its separately managed accounts (“SMAs”); (b) enable a private fund IA to file a so-called “umbrella registration” for separate related IAs that operate as a single investment advisory business; and (c) make certain identifying/clarifying, technical and other amendments. The SEC also is proposing amendments to Advisers Act rule 204-2 (the “books and records” rule) that would require IAs to maintain additional materials related to the calculation and distribution of performance information.

1. Proposed Amendments to Form ADV

A. Separately Managed Accounts

The Proposed Amendments to Form ADV are designed to collect more specific information about SMAs and to enhance the SEC’s ability to carry out risk-based examinations and other risk assessment and monitoring activities with respect to SMAs. IAs would be required to submit more detailed information including the breakdown of SMAs’ regulatory assets under management (“RAUM”) invested in 10 broad asset categories, and to report information on the use of borrowings and derivatives in those accounts. IAs would be required to provide such information annually at year-end (and IAs with \$10 billion or more in SMA RAUM would be required to provide such information both at mid-year and at year-end).

* *Amendments to Form ADV and Investment Advisers Act Rules*, Investment Advisers Act Release No. 4091 (May 20, 2015) is available [here](#).

Finally, IAs would be required to identify any custodians that account for at least 10% of SMAs' RAUM, and the amount of the IA's RAUM attributable to SMAs held at the custodian.

B. Umbrella Registration

For a variety of tax, legal and regulatory reasons, IAs to private funds may be organized as a group of related IAs that are separate legal entities, but effectively operate as a single advisory business. Form ADV is designed to accommodate the registration requirements of a single legal entity. To enable a private fund IA to register multiple affiliated legal entities using a single form ADV, the SEC issued a 2012 no-action letter to the American Bar Association (the "2012 ABA Letter").** The Proposed Amendments would codify the no-action relief granted in the 2012 ABA Letter and permit "umbrella registration" for the filing IA and the multiple affiliated IAs. The conditions for umbrella registration set forth in the Proposed Amendments, are essentially the same as those in the 2012 ABA Letter. Under the Proposed Amendments, umbrella registration would be available when "a filing adviser and one or more relying advisers conduct a single private fund adviser business and each relying adviser is controlled by or under common control with the filing adviser."

The Proposed Amendments to Form ADV's General Instructions would establish conditions for an IA to assess whether umbrella registration is available. The conditions are:

1. The filing IA and each relying adviser advises only private funds and SMAs that are qualified clients (as defined in rule 205-3 under the Advisers Act) and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds;
 2. The filing IA has its principal office and place of business in the U.S. and, therefore, all of the substantive provisions of the Advisers Act and rules apply to the filing IA's and each relying adviser's dealings with each of its clients;
 3. Each relying adviser, its employees and the persons acting on its behalf are subject to the filing IA's supervision and control;
 4. The advisory activities of each relying adviser are subject to the Advisers Act and rules, and each relying adviser is subject to examination by the SEC; and
1. The filing IA and each relying adviser operates under a single code of ethics adopted in accordance with rule 204A-1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with rule 206(4)-(7) under the Advisers Act and is administered by a single chief compliance officer ("CCO").

In addition, the SEC is proposing a new schedule to Part IA – Schedule R – that would have to be filed for each relying adviser and would require certain basic information about the relying adviser.

** American Bar Association, Business Law Section, SEC Staff Letter (Jan. 18, 2012) is available [here](#).

C. Additional Identifying and Clarifying Advisory Business Information

The SEC has proposed several other amendments to Form ADV to elicit additional identifying and clarifying information about the IA and its business, including (i) its social media website addresses; (ii) its total number of offices and information about its 25 largest offices; (iii) number of employees who perform investment advisory functions from each office and the nature of the investment related business conducted from each of those offices; (iv) whether the CCO is compensated or employed by any person other than the IA and the identity of such other person; and (v) the assets of the IA, itself (*not* the assets it manages), within certain ranges, (i.e., less than \$1 billion, \$1 billion to less than \$10 billion, \$10 billion to less than \$50 billion, or \$50 billion or more).

The SEC also has proposed other amendments to Form ADV concerning an IA's business, including the number of clients and amount of RAUM attributable to each category of client as of the date the IA determines its RAUM, as well as other identifying, clarifying and technical amendments.

2. Proposed Amendments to Books and Records Rule

The Proposed Amendments to Advisers Act rule 204-2 (the "books and records" rule) would require IAs to maintain the records supporting performance claims in communications sent to "any person." This greatly would expand the current requirement that an IA maintain such records with respect to communications sent to "10 or more persons." The SEC also is proposing to expand the categories of written communication sent or received by an IA, to include all written communications sent and received by the IA "relating to the performance or rate of return of any or all managed accounts or securities recommendations."

If you would like us to consider filing comments with the SEC concerning the Proposed Amendments, please contact Meryl Wiener, any of the undersigned or your regular Warsaw Burstein attorney.

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