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SEC Amendments to Form ADV

The SEC recently adopted amendments to Form ADV (the "**Amendments**") that modify the requirements of Part 1A of Form ADV to: (1) formalize an "umbrella" registration option for multiple advisers that operate a single advisory business; (2) require additional information about separately managed accounts ("**SMAs**") that is similar to information currently required for private funds; (3) require additional information about investment advisers and their personnel and operations; and (4) clarify certain technical questions and requirements of Form ADV. Because the Amendments do not become effective until October 1, 2017, most investment advisers that have a December 31 fiscal year will not have to complete the updated Form ADV until filing their annual Form ADV update during the first quarter of 2018.

Some of the material requirements of the Amendments are described in more detail below. The entire adopting release can be found at https://www.sec.gov/rules/final/2016/ia-4509.pdf.

(1) **Umbrella Registration**. The Amendments formalize the SEC's previous staff rulings that allow related investment advisers that operate a single advisory business and meet certain other requirements to register under a single Form ADV filing (an "**Umbrella Registration**"). To use an Umbrella Registration, one of the related advisers must register under Form ADV (the "**filing adviser**") and include its other related advisers ("**relying advisers**") on the same registration. The requirements to use the Umbrella Registration are that:

(a) The investment advisers in the group advise only (i) private funds, or (ii) "qualified clients" in SMAs, which clients are otherwise eligible to invest in private funds and whose accounts pursue investment objectives that are substantially similar to the investment advisers' private funds;

(b) The filing adviser's principal office and place of business is in the United States and all of the substantive provisions of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**") and the rules thereunder apply to the dealings of each relying adviser with its clients;

(c) Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control;

(d) The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to SEC examination; and

(e) The investment advisers in the group operate under a single code of ethics and written policies and procedures adopted and implemented in accordance with the Advisers Act Rule 206(4)-7 and administered by a single chief compliance officer.

If the requirements are met, the filing adviser must provide various information about each relying adviser in a new Schedule R to Part 1A of Form ADV.

An exempt reporting advisor ("**ERA**") cannot file an Umbrella Registration, since it is not registered. However, related ERAs that conduct an advisory fund business (even if affiliated with other ERAs or registered advisers) may qualify under the SEC's guidance related to ERAs and their affiliated special purpose vehicles.

(2) **New Information Related to SMAs**. The Amendments modify Item 5 and Schedule D of Form ADV to collect the following additional information about SMAs:

(a) SMA Assets Held Based on Specified Categories. Investment advisers must report the approximate percentage of assets held in SMAs that fall into each of twelve categories, such as exchange-traded equity securities, non-exchange-traded equity securities, corporate bonds (separated by grade), derivatives and securities issued by registered investment companies. The SEC has not defined which assets fall within each category and investment advisers may use their own methodologies to do so.

(b) Derivatives and Borrowings. Investment advisers must report varying degrees of information about derivatives and borrowings depending on the amount of SMA regulatory assets under management ("**RAUM**") they manage. Investment advisers with SMA RAUM:

(i) Between $500 million and $10 billion must report the amount of SMA RUAM and the dollar amount of borrowings attributable to those assets that fall into each of the following levels of gross notional exposure: (1) less than 10%; (2) 10% to 149%; and (3) 150% or more. For this purpose, "gross notional exposure" is the percentage obtained by dividing (x) the sum of (A) the dollar amount of any borrowings and (B) the gross notional value of all derivatives, by (y) the RAUM of the applicable account.

(ii) Above $10 billion must report all of the same information as investment advisers over the $500 million RAUM threshold, and also report derivatives exposure in the SMAs, broken out among the following types of derivatives: (1) interest rate; (2) foreign exchange; (3) credit; (4) equity; (5) commodity; and (5) "other."

(c) Other New SMA Information. Investment advisers must identify any custodian that holds at least 10% of the investment adviser's SMA RAUM and the amount of assets held by such custodian.

Investment advisers with more than $10 billion in SMA RAUM must report the new information on an annual basis, but with respect to both mid-year and year-end data. Investment advisers with less than $10 billion in SMA RAUM are only required to report year-end data.

(3) **Other Key ADV Changes.** In addition to the changes for SMAs and Umbrella Registrations, the Amendments require investment advisers to disclose new types of information, including:

(a) Investment Adviser Specific Information.

(i) Item 1.L - Online Presence. Investment advisers must now disclose all publicly available social media platforms (such as LinkedIn and Twitter) where the investment adviser has a presence and controls the content. Employees' social media accounts are not required to be disclosed unless the investment adviser controls content on those accounts.

(ii) Item 1.F - Physical Offices. Investment advisers must now report the total number of offices in which they conduct business and head-count and other information for each of their 25 largest offices.

(iii) Item 1.J - Chief Compliance Officer. Investment advisers must disclose whether their chief compliance officer is employed by someone other than the investment adviser (i.e., an outsourced chief compliance officer) and if so, identify the employer.

(iv) Item 1.O - Investment Adviser's Own Assets. Investment advisers with more than $1 billion in assets (note this is not assets under management, but the investment adviser's own assets) must now identify a range of their total assets.

(b) Client Specific Information (Item 5). Investment advisers must report:

(i) their specific number of advisory clients in certain categories and the RAUM attributable to each category;

(ii) approximate RAUM attributable to non-US clients;

(iii) number of clients for whom they have no RAUM; and

(iv) whether ownership of any 3(c)(1) private funds is limited to "qualified clients" as defined under Advisers Act Rule 205-3 (commonly known as the "Performance Fee Rule").

If you have any questions or comments, please contact one of the attorneys in the Investment Funds & Advisers Group at Shartsis Friese LLP: John Broadhurst, Geoff Haynes, Chris Rupright, Carolyn Reiser, Neil Koren, Jim Frolik, Christina Hamilton, Joan Grant, Lyn Roberts, Anthony Caldwell, David Suozzi or Kathryn Miller.

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