

INSIGHTS

SEC Proposes Changes to Various Reporting Requirements for Investment Advisers

May 29, 2015

On May 20, 2015, the Securities and Exchange Commission (SEC) unanimously approved a proposal of additional amendments to the Investment Advisers Act of 1940 (Advisers Act)¹: specifically, three changes to Form ADV 1A, and one revision to the books and records rule, Rule 204-2. The purpose of the proposed additions is to provide enhanced SEC monitoring and review capabilities for portfolio composition and risk exposure for advisers' funds and separately managed account (SMA) business. Upon publication in the Federal Register, the comment period for the proposed rules will be open for sixty days.

Form ADV is the registration tool that enables the SEC to maintain its regulatory overview and risk-based examinations of registered advisers. The three amendments proposed include impositions of supplementary reporting requirements to "fill certain gaps" identified by the SEC, incorporation of "umbrella registration" for private fund advisers, and specific technical revisions to existing instructions and requirements.

The supplementary reporting requirements increase data aggregation regarding SMAs and add information about regulatory assets under management, investment and use of derivatives and borrowings that are attributable to such accounts. Among other points, advisers would be required to disclose the approximate percentage of SMA regulatory assets invested in ten broad categories, the custodians that hold at least 10% of SMA regulatory assets and the amount of the adviser's regulatory assets under management attributable to SMAs held by those custodians, information on the use of borrowings and derivatives in accounts with at least \$150 million in regulatory assets, and a mid-year and year-end report for advisers with at least \$10 billion in SMA regulatory assets.

Additionally, Form ADV 1A would now require disclosures regarding an adviser's use of social media, their associated branch offices, the use of third party compliance providers, and additional information about the proprietary assets and percentage of any private fund managed by the adviser that is held by "qualified clients," under SEC Rule 205-3.

The uniform "umbrella registration" amendment would permit multiple private fund adviser entities operating in a single advisory business to register under a single Form ADV. Originally, the form was only designed to accommodate a single adviser as a legal entity, but it has become more common for advisers of private funds to organize as multiple entities. Under this proposed amendment, the SEC will have more consistent data to understand the groups of advisers who operate as a single business by grouping the data for each entity registered under the umbrella.

The final significant revision, which relates to Rule 204-2, would require advisers to maintain all written communications received or sent by an adviser to *any* person in regards to performance calculations or rates of return in order to better protect investors from fraudulent performance claims. This demonstrates an increase from the current obligation to maintain records of material distributed to ten or more persons.

The SEC's decision to implement new changes and additional reporting requirements to the Advisers Act signals that the SEC has increased its scrutiny of SMAs, Form ADV registrations, and performance calculations provided to the public by its registered advisers. All registered advisers should review their policies in order to best prepare for the implementations of these proposed amendments.

Should you require additional information regarding SEC compliance, please contact [Cheri L. Hoff](#) at (212) 508-6175.

¹ Amendments to Form ADV and Investment Advisers Act Rules (May 20, 2015), available [here](#).