

February 15, 2018

SEC Amendments to Form ADV: What's New?

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On August 25, 2016, the Securities and Exchange Commission (SEC) adopted various amendments to Part 1A of the Form ADV ("Form ADV") filed by investment advisers registered with the SEC under the Investment Advisers Act of 1940 (the "Advisers Act"). These amendments became effective on October 1, 2017, and investment advisers will likely notice a few changes to Form ADV as they conduct their updates this year. Among other things, the updated Form ADV requires additional disclosures relating to social media accounts and separately managed accounts (SMAs), and also codifies the "umbrella registration" option for certain related advisers. These changes are summarized below.

Additional SMA Disclosures

Form ADV now requires investment advisers to disclose whether any portion of their regulatory assets under management (RAUM) are attributable to SMAs. Depending on the amount of an adviser's RAUM attributable to SMAs, Form ADV may require disclosing detailed information about the type of assets held in SMAs, the use of borrowing and derivatives in SMAs, and the custodian(s) for SMAs. Advisers with \$10 billion or more of RAUM in SMAs are required to calculate certain information as of mid-year and year-end.

Social Media Disclosures

Under the new amendments, Form ADV requires that investment advisers disclose the identity and digital location of any publicly available social media account for which they control the content, for example, on Facebook, Twitter and LinkedIn. Advisers are also required to promptly update Form ADV if any social media disclosure becomes inaccurate. Advisers are not, however, required to disclose social media accounts that are used solely to promote the business of unregistered affiliate(s) or that are controlled by employees.

Codification of the "Umbrella Registration" Option

Since issuing a no-action letter in 2012, the SEC has allowed certain related investment advisers to jointly file a single Form ADV on behalf of one of the advisers (the "Filing Adviser") and all other affiliated entities (the "Relying Advisers"). The new Form ADV codifies this "umbrella registration" option and sets out the specific requirements that Filing and Relying Advisers

must satisfy to file under a single Form ADV. These requirements are:

- The Filing Adviser and each Relying Adviser must advise only private funds and qualified clients in SMAs that are otherwise eligible to invest in the private funds advised by the Filing Adviser or a Relying Adviser, and whose accounts pursue investment objectives and strategies substantially similar or otherwise related to the private funds
- The Filing Adviser's principal office and place of business must be located in the United States and each Filing and Relying Adviser's dealings with clients must be subject to the Advisers Act, regardless of whether the client is a United States person.
- Each Relying Adviser and its agents must be subject to the Filing Adviser's supervision or control and, therefore, must be "persons associated with" the Filing Adviser.
- The advisory activities of each Relying Adviser must be subject to the Advisers Act and each Relying Adviser must be subject to 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 that are implemented in accordance with the Advisers Act and administered by a single chief compliance officer.

If you have any questions or concerns, please contact your regular Drinker Biddle lawyer. We would be happy to assist you.

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