The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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SEC Adopts Final Amendments to Form ADV and Investment Advisers Act Rules

[30181]

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TO: ACCOUNTING/TREASURERS MEMBERS No. 23-16
CHIEF RISK OFFICER COMMITTEE No. 24-16
COMPLIANCE MEMBERS No. 26-16
INVESTMENT ADVISER MEMBERS No. 15-16
SEC RULES MEMBERS No. 47-16
SMALL FUNDS MEMBERS No. 37-16 RE: SEC ADOPTS FINAL AMENDMENTS TO FORM ADV AND INVESTMENT ADVISERS ACT RULES

The Securities and Exchange Commission adopted final amendments last week to several rules under the Investment Advisers Act of 1940 and Form ADV, the investment adviser registration and reporting form. [1] Among other things, the amendments will require investment advisers to report on Form ADV additional information about their separately managed account ("SMA") business as well as additional identifying information, and information about their advisory business and affiliations. The SEC also amended the books and records rule under the Advisers Act to require advisers to maintain records of performance information that is distributed to any person, rather than only to 10 or more persons, as previously was required.

The SEC originally proposed these amendments in May 2015. [2] The final amendments have not changed significantly from the proposal. We summarize below some of the key differences between the proposal and final amendments.

1. Amendments to Form ADV Regarding Reporting of SMA Information

- Categories of regulatory assets under management. The final amendments require reporting of SMA regulatory assets under management ("RAUM") by twelve broad asset categories of investment. The SEC increased the number of categories from ten to twelve in response to comments. The amendments also clarify that advisers should not look through investments in funds or ETFs to report the underlying asset type.
- Custodian reporting. The final amendments require advisers to identify any custodians that account for at least ten percent of SMA RAUM. The reporting also includes the amount of the adviser's RAUM attributable to SMAs held at each reported custodian.
- Borrowings and derivatives. The final amendments require advisers with at least

$500 million in RAUM attributable to SMAs to report certain information on the use of borrowings and derivatives for those SMAs that each have an NAV of at least $10 million. The SEC raised the threshold from $150 million to $500 million in response to comments. The amendments require advisers to update derivatives and borrowings information annually, when filing their update amendment to Form ADV. Advisers with at least $10 billion in RAUM attributable to SMAs will be required to report both mid-year and year-end data as part of that annual update.

- Advisers with at least $500 million but less than $10 billion in RAUM. The final amendments require advisers with at least $500 million but less than $1 billion in RAUM attributable to SMAs to report the amount of SMA RAUM (rather than the number of accounts as proposed), as well as the dollar amount (rather than the proposed average amount) of borrowings attributable to those assets that correspond to three levels of gross notional exposures (rather than the four levels proposed). In response to comments, the SEC is now basing reporting on RAUM in SMAs rather than NAV.
- Advisers with at least $10 billion. The final amendments require advisers with at least $10 billion in RAUM attributable to SMAs to report the gross notional exposure and borrowing information described above, as well as derivative exposures across six different categories of derivatives.

2. Amendments to Form ADV Requiring Additional Information about Investment Advisers

- Social media account reporting. In response to comments, the final amendments limit adviser social media reporting to accounts on publicly available social media platforms where the adviser controls the content. Advisers will not need to disclose on Form ADV social media accounts used solely to promote an unregistered affiliate business.
- Adviser's largest 25 offices. The final amendments require advisers to report various information on an adviser's largest 25 offices in terms of number of employees. In response to comments, the final amendments allow offices for firms that are dually registered as advisers with the SEC and as broker-dealers with FINRA to cross-reference information filed with FINRA.
- CCO outside compensation or employment. The final amendments require an adviser to report whether its chief compliance officer is compensated or employed by any third party. In response to comments, advisers will not be required to disclose the third party's identity if the third party is an investment company registered under the Investment Company Act of 1940 ("registered fund") that the adviser advises.
- Advisory client information. The final amendments require an adviser to report the number of advisory clients, the types of advisory clients, and RAUM attributable to client types. In response to comments, the final amendments allow advisers with fewer than five clients in a particular category (other than registered funds, business development companies ("BDCs"), and other pooled investment vehicles) to avoid reporting the actual number of clients. In response to comments, the final amendments clarify how subadvisers to registered funds, BDCs, and other pooled investment vehicles should report those assets, and explain that advisers should place each client into the most applicable category type to avoid double-counting.
- RAUM attributable to non-U.S. clients. The final amendments require disclosure of the approximate amount of an adviser's total RAUM that is attributable to non-U.S. persons.
- RAUM of all parallel managed accounts. The final amendments require an adviser to report the RAUM of all parallel managed accounts related to a registered fund (or

series thereof) or BDC that the adviser advises. [3]
- Wrap fee program participation. The final amendments require advisers to disclose whether they participate in a wrap fee program and the total amount of RAUM attributable to acting as a sponsor or portfolio manager for a wrap fee program.

3. Amendments to Advisers Act Books and Records Rule (Rule 204-2)

- Recordkeeping of performance calculations. The final amendments require advisers to maintain records of the calculation of performance information in any communication that the adviser distributes to any person. The SEC explains that this provision will apply to all adviser communications distributed after the compliance date, including performance information that predates the amendments' effective date. [4]
- Recordkeeping of communications relating to performance. The final amendments require advisers to maintain originals of all written communications received and copies of written communications sent by an adviser relating to the performance of any managed accounts or securities recommendations.

The amendments will be effective 60 days after publication in the Federal Register. The compliance date for the final amendments to Form ADV and the Advisers Act rules is October 1, 2017. Any adviser filing an initial Form ADV or an amendment to an existing Form ADV on or after October 1, 2017 will be required to use the amended Form ADV. The SEC notes that most advisers will not be filing their Form ADV annual updating amendments until the first quarter of 2018. The SEC's amendments to the books and records rule will apply to communications circulated or distributed after October 1, 2017.

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endnotes

[1] See Form ADV and Investment Advisers Act Rules, Sec. Rel. IA-4509 (Aug. 25, 2016), available at https://www.sec.gov/rules/final/2016/ia-4509.pdf ("Adopting Release").

[2] See ICI Memorandum No. 29036 (May 28, 2015), available at http://www.ici.org/my_ici/memorandum/memo29036.

[3] The SEC explains that, in determining whether a parallel managed account pursues "substantially the same investment objective and strategy" as the relevant registered fund or BDC, an adviser should use its "best judgment and make a good faith determination as to whether the investment objectives and strategies in question are 'substantially the same.'" Adopting Release, supra note 1, at 56.

[4] Adopting Release, supra note 1, at 90.

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