

SEC Amends Adviser Registration Forms and Performance-Related Recordkeeping; 2016 Election Reminder

The SEC recently adopted rules increasing the amount of information required to be disclosed in Form ADV, as well as enhancing requirements regarding registered advisers' performance-related records.

Amendments to Form ADV

The SEC's changes to Form ADV include new Schedule R for managers using "umbrella registration,"¹ which is intended to codify rather than expand prior guidance. Schedule R will require the basis for each affiliated advisory entity's SEC registration, as well as disclosure of direct and indirect ownership information in excess of specified percentages, and determined on a capital contributed or liquidation test basis. Managers with affiliated advisory entities covered by Schedule R should expect increased transparency with respect to these entities.

Other new or enhanced disclosures required by Form ADV will include: reporting whether the manager's CCO is compensated or employed outside of the manager, as is the case for outsourced CCOs; social media pages controlled by the manager (but generally not social media pages of employees); and additional disclosures for managers of separately managed accounts.

Managers will need to begin complying with the amendments in Form ADV filings made on or after October 1, 2017.

Enhanced Performance Recordkeeping

The books and records rule will now require registered managers to maintain records supporting performance information sent to any person. The rule historically has required only materials sent to ten or more persons to be retained, although in examinations the SEC has regularly requested copies of materials sent to fewer recipients. Registered managers also will be required to maintain records of performance-related communications sent and received. As a result, managers should continue to expect to provide copies of DDQs and other customized performance presentations to the SEC in response to examination requests.

The revised rule will apply to communications sent after October 1, 2017, although managers should retain supporting materials for distributed performance information prior to that date.

Reminder: SEC's "Pay-to-Play" Rule and the 2016 Election

With the 2016 presidential election drawing near, managers should be mindful of the potential impact of the SEC's "pay-to-play"² rule on political contributions made by the manager or its personnel. The rule most notably prohibits a manager from receiving compensation (e.g., management fees or carried interest) from a state or local pension or similar plan for two years after the manager or certain personnel have made a political contribution to a state or local government official or candidate who could influence the plan to invest. Because Republican Vice Presidential candidate Mike Pence remains the sitting Governor of Indiana, and in that capacity has authority over certain Indiana pension plans, direct or indirect contributions (other than de minimis contributions permitted by the rule) to the Trump/Pence campaign would have "pay-to-play" implications for managers advising Indiana plans such as Indiana Public Retirement System, directly or through investment funds, including potential loss of compensation.

1 In connection with the Dodd-Frank Act's 2012 investment adviser registration date for most private fund managers, the SEC issued [No-Action Letter](#) guidance permitting "umbrella registration" for complex private fund manager structures meeting certain specified conditions. Umbrella registration permits eligible managers to register with the SEC under a single Form ADV, rather than filing separately for each entity.

The SEC declined to extend umbrella registration to managers whose principal offices are all outside of the United States, citing concerns over the SEC Staff's lack of access to and inability to examine those entities, although it left in place [previous guidance](#) that permitted an exempt reporting adviser to include information regarding private fund general partner, managing member and similar special purpose entities on its Form ADV.

2 Discussed more fully in a [KirklandPEN](#), July 7, 2010.

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- 5 Available here: www.hyperlink.com
 - 6 Footnote
 - 7 Footnote
 - 8 Footnote

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