

INSIGHTS

## SEC's New Rule Requires Additional Disclosures on Form ADV

September 21, 2016

On August 25, 2016, the SEC adopted Release No. IA-4509 (the “New Rule” or the “amendments”) that amends Form ADV to increase the amount of information that registered investment advisors (“Advisors”) must disclose to the Securities and Exchange Commission (“SEC”).<sup>1</sup> Notably, among other requirements, the New Rule (1) increases disclosure obligations for Advisors with separately managed accounts; (2) codifies umbrella registration; and (3) requires that Advisors disclose information regarding social media accounts. In addition, Advisors must maintain additional records related to the calculation and distribution of performance information, in order for the SEC’s exam staff to determine if the Advisor’s performance is accurately advertised to clients. The New Rule takes effect on October 31, 2016, though Advisors have until October 1, 2017 to come into compliance with its requirements.

### **Separately Managed Accounts (“SMAs”)**

The amendments include several new disclosure obligations that relate to SMAs. Specifically, Advisors must report the approximate percentage of SMA regulatory assets under management that are invested in twelve asset categories. These categories include: exchange-traded equity securities; non-exchange traded equity securities; U.S. government bonds; U.S. state and local bonds; sovereign bonds; corporate bonds – investment grade; corporate bonds – non-investment grade; derivatives; securities issued by registered investment companies and business development companies; securities issued by other pooled investment vehicles; cash and cash equivalents; and “other.”

Under the New Rule, Advisors with at least \$10 billion in total regulatory assets under management in SMAs will be required to report this information at mid-year and year-end. Advisors with less than \$10 billion in total regulatory assets under management attributable to SMAs will be required to report this information only as of year-end.

### **Umbrella Registration**

Subject to certain restrictions, the New Rule amends Form ADV to allow umbrella registration for Advisors that consist of multiple entities but operate a single advisory business.<sup>2</sup> In order to qualify for umbrella registration, the Advisor must meet five preconditions:

1. The filing adviser and relying advisers must advise only private funds and separately managed accounts whose investors are qualified clients that are otherwise eligible to invest in the advisers’ private funds. The accounts must pursue investment objectives and strategies that are substantially similar or otherwise related to the advisers’ private

funds;

2. The filing adviser must have its principal office and place of business in the United States;
3. Each of the relying advisers and its employees must be subject to the supervision and control of the filing adviser;
4. The filing adviser and each relying adviser must be subject to the Advisers Act and examination by the SEC; and
5. The advisers must operate under a single code of ethics and single set of written compliance policies and procedures administered by a single compliance officer.

### **Social Media Disclosure**

Prior to the New Rule, Advisors were required to provide only their website address. The amendments now require that Advisors identify their accounts on social media platforms (e.g., Twitter, Facebook and LinkedIn). Advisors must disclose both domestic social media accounts and those targeted to foreign clients. This requirement does not include, however, the social media accounts of Advisors' employees.

Should you require additional information please contact [Glen Kopp](#) at (212) 508-6123.

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<sup>1</sup> The Final Rule is available [here](#). The SEC also released a redline version of Form ADV to highlight the changes. The redline version is available [here](#).

<sup>2</sup> This approach is not available for non-U.S. investment advisors or exempt reporting advisors.