

Investment Funds Alert

SEC Significantly Expands Private Fund Reporting in Form ADV

July 29, 2011

The Securities and Exchange Commission (SEC) recently adopted amendments to Part 1A of Form ADV—the form for registration of investment advisers under the Investment Advisers Act of 1940 and for reporting by “exempt reporting advisers”¹—that will greatly increase public disclosure regarding private funds managed by registered investment advisers and “exempt reporting advisers.” This increased disclosure is designed to aid in the SEC’s oversight of private funds and to identify risks posed by an investment adviser’s business.

The SEC stated that it expects that the Investment Adviser Registration Depository will be ready to accept the revised Form ADV Part 1A by January 1, 2012. Registered investment advisers and exempt reporting advisers will be required to file revised Part 1A of Form ADV by March 30, 2012, regardless of when their fiscal year ends.

Amendments to Form ADV Part 1A in General

Registered investment advisers and exempt reporting advisers will be required to complete a separate Schedule D for each private fund that it (but not a related person) advises. Revised Schedule D contains additional questions that will require the following information—

- the state or country of organization of the private fund
- the directors, manager, trustee or general partner of the private fund
- the private fund identification number of the relevant private fund²
- the exclusions from the definition of “investment company” under the Investment Company Act of 1940 for which the private fund qualifies
- the name(s) of any foreign financial regulatory authority with which the private fund is registered
- whether the private fund is a master fund, and the name and private fund identification number of the feeder funds and vice versa
- all of the above information regarding the feeder funds

¹ An “exempt reporting adviser” is a term used by the SEC in its recently adopted regulations that refers to an investment adviser that is exempt from registration (either because it advises only private funds and has less than \$150 million in assets under management or because it advises only venture capital funds), but is required to file reports with the SEC.

² A private fund identification number is a unique identification number for each fund. Advisers must obtain an identification number for each private fund by logging onto the Investment Adviser Registration Depository (IARD) Web site and using the private fund identification number generator.



- whether the fund is a fund of funds and whether it invests in related private funds
- whether the private fund invests in securities of registered investment companies
- a description of the type of fund, e.g., hedge fund, liquidity fund, private equity fund
- the gross asset value of the private fund
- the minimum investment in the private fund
- the number of beneficial owners of the private fund
- the approximate percentage ownership by related persons, funds of funds and non-United States persons
- whether the investment adviser is a subadviser, the fund that it subadvises and the name and SEC file number of other subadvisers to the fund
- whether the adviser relies on Regulation D, and the private fund's Form D file number
- whether the private fund's financial statements are subject to audit, information regarding the private fund's auditor and registration status and whether audited financial statements are distributed to clients
- whether the private fund uses a prime broker, and the name, Central Registration Depository (CRD) number and office location of the prime broker
- whether the prime broker acts as a qualified custodian
- the names, office location, related person status and CRD number of each custodian
- whether the private fund uses an administrator, and its office location, name and related person status
- whether the administrator sends account statements, and the portion of investors sent statements by the administrator
- whether the private fund uses third parties to market the private fund's securities, and the name, location, related person status and CRD number of such marketer and any Web sites that the marketer uses.

In addition, the SEC will expand information required from all investment advisers. New information will include, among other things—

- identifying information regarding registered representatives and employees
- a breakdown of the types of investments for which an investment adviser provides advice
- additional information regarding related persons
- whether any broker-dealers the adviser recommends are related persons
- whether all soft dollar benefits received from a broker-dealer comply with the safe harbor under Section 28(e) of the Securities Exchange Act of 1934

- a check box indicating whether the investment adviser has more than \$1 billion in assets, for purposes of monitoring those investment advisers that may be subject to the excessive incentive compensation provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

A link to the revised Part 1A of Form ADV, is available [here](#).

A registered investment adviser or an exempt reporting adviser with its principal office and place of business outside the United States is not required to complete a Schedule D for any private fund that during the adviser's previous fiscal year (i) was not a United States person, as defined under Regulation S, (ii) did not offer securities in the United States and (iii) was not beneficially owned by any United States person.

Conclusion

The SEC will likely use the revised Form ADV to assess the risk posed by an investment adviser and to set the examination schedule for investment advisers. We encourage our investment advisory clients to review their current practices in light of the above-described amendments.

CONTACT INFORMATION

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