SEC Proposes Rules Imposing Additional Reporting and Recordkeeping Requirements for Investment Advisers

Written by Robert G. Sawyer, Kate Leonard

May 22, 2015

On May 20, 2015, the SEC announced proposals to modify and increase the amount of information that it collects from investment companies ("ICs") and investment advisers ("IAs") and to create new rules that impose additional recordkeeping and disclosure duties on IAs and ICs. The SEC notes that its goal with the proposals is to enhance the information available to investors in order to keep them better apprised of their investments and investment advisers, and to assist the SEC in its risk monitoring capacity. The proposed rules will be published in the Federal Register, and the comment period will remain open for 60 days after such publication date (see **here** for proposed IA rules and **here** for proposed IC rules). The proposals relating to investment advisers are summarized below.

Proposed Changes to Form ADV

The SEC's proposal would implement several changes to Part 1A of Form ADV, which would, if adopted, impose substantial additional disclosure requirements in areas that the SEC has identified as lacking sufficient data, implement amendments to incorporate "umbrella" registration for certain private fund advisers, and certain technical modifications and clarifications.

The areas of additional reporting in Form ADV would include more detailed disclosures regarding separately managed accounts of the adviser ("SMA"), including the regulatory assets under management ("RAUM") that are attributable to SMAs, as well as types of assets held and use of derivatives and borrowing by such accounts. IAs would be required to disclose the custodians that account for at least 10% of separately managed account RAUM. The scope of SMA reporting would vary according to the separately managed account RAUM of the adviser, with many requirements only applicable to those advisers that have separately managed account RAUM in excess of $150 million.

In addition to additional SMA disclosure requirements, proposed changes to Form 1A would seek reporting of information about the IAs social media pages, more information about IAs' branch offices, disclosures regarding the use of third party compliance providers, additional detail regarding the adviser's proprietary assets and its RAUM by category of client and information regarding the percentage of any private fund managed by the adviser that is held by "qualified clients" within the meaning of SEC Rule 205-3 (the performance fee rule).

The proposed changes allow for "umbrella" registration of investment advisers that are organized into multiple legal entities, which codifies prior guidance provided by the SEC that detailed instances in which separate registration would not be required for several related advisory entities. The SEC noted its view that "umbrella" reporting on Form ADV for groups of advisers that operate as a single business would both increase the consistency of information disclosed and provide a clearer picture of how adviser groups operate. The proposed rules would modify the General Instructions for Form ADV to include technical requirements for reporting as an "umbrella" private fund adviser, and would include a new Schedule R that includes reporting information for each separate private fund adviser.

Proposed Changes to Investment Advisers Act Rule 204-2

The SEC is also proposing changes to the Investment Advisers Act Rule 204-2 (the "books and records rule") to increase recordkeeping information, which will specifically focus on the maintenance of records that relate to how performance information is calculated and that is distributed to *any* person. Currently, IAs are required to maintain information that is distributed to 10 or more persons. In addition, the proposed rules require that IAs keep original copies of all written communications concerning rates of return or performance of any and

all managed accounts or securities recommendations.

RELATED INDUSTRIES

- Investment Advisers & Private Funds
- Professional Services

RELATED PRACTICES

- Business Counseling
