

# Memorandum

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## Form ADV Amendments Effective October 1, 2017

September 26, 2017

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As a reminder, beginning October 1, 2017, any investment adviser registering or reporting on Form ADV (including an exempt reporting adviser (“ERA”)) pursuant to the Investment Advisers Act of 1940, as amended (the “Advisers Act”) must use a revised version of Form ADV incorporating certain amendments to Form ADV (and its related instructions) adopted by the U.S. Securities and Exchange Commission (the “SEC”) on October 31, 2016 (the “Form ADV Amendments”).<sup>1</sup> Investment advisers with a fiscal year ending on December 31st will be required to use the amended Form ADV for their annual amendment filing due before the end of the first quarter of 2018 (unless required to make an other-than-annual amendment filing prior to that date<sup>2</sup>).

Among other clarifying and technical amendments, the Form ADV Amendments are designed to: (1) provide the SEC with additional information regarding “separately managed accounts”; (2) incorporate a method for registration on a single Form ADV for multiple private fund adviser entities operating a single advisory business (“Umbrella Registration”); and (3) provide additional information regarding the investment adviser and its advisory business. An amended version of Form ADV can be found at:

<https://www.sec.gov/rules/final/2016/ia-4509-appendix-d.pdf>. A comparison of the previous version of Form ADV against the amended Form ADV can be found at: <https://www.sec.gov/rules/final/2016/ia-4509-form-adv-summary-of-changes.pdf>.<sup>3</sup> Below is a brief summary of selected Form ADV Amendments.

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<sup>1</sup> See <https://www.federalregister.gov/documents/2016/09/01/2016-20832/form-adv-and-investment-advisers-act-rules>.

<sup>2</sup> An investment adviser (including an ERA) must file an amendment to its Form ADV promptly for *any* changes in Part 1A (Items 1, 3, 9 and 11) or Part 1B (Items 1, 2.A through 2.F or 2.I) and for *material* changes in Part 1A (Items 4, 8 and 10), Part 1B (Item 2.G) or Part 2, subject to certain exceptions.

<sup>3</sup> See also the “Frequently Asked Questions on Form ADV and IARD” prepared by the Staff of the Division of Investment Management which can be found at <https://www.sec.gov/divisions/investment/iard/iardfaq.shtml>.

## Form ADV Amendments

### Information Regarding Separately Managed Accounts (“SMAs”)

The Form ADV Amendments require investment advisers to provide information on an aggregate basis regarding SMAs they manage. In particular, investment advisers managing SMAs will need to provide information regarding: (1) the type of asset(s) held by the SMAs; (2) the use of derivatives and borrowings; and (3) custodians that account for at least 10% of SMA regulatory assets under management (“RAUM”), and the amount of the investment adviser’s RAUM attributable to SMAs held at such custodians. The amount of information required to be reported will vary depending on an investment adviser’s total RAUM attributable to SMAs.

### Additional Information Regarding Investment Advisers

The Form ADV Amendments also require the disclosure of additional information about the investment adviser and its advisory business, including:

1. more comprehensive information regarding the existence of one or more websites used by the investment adviser as well as the use of social media platforms;
2. additional information with respect to the investment adviser’s offices other than its principal office and place of business, including the total number of offices at which the investment adviser conducts its investment advisory business, information about the investment adviser’s 25 largest offices in terms of number of employees, and detailed reporting regarding the type of business conducted at each office;
3. in addition to the name and contact information for the investment adviser’s Chief Compliance Officer (“CCO”), information regarding whether such CCO is compensated or employed by any person other than the investment adviser (*i.e.* an “outsourced CCO”) and, if so, the name and IRS Employer ID number (if any) of that person;
4. categorization of balance sheet assets into asset ranges for investment advisers with assets of \$1 billion or more;
5. additional information regarding an investment adviser’s number of clients and the amount of RAUM attributable to each category of client;
6. additional information related to reporting RAUM and client assets, including, among other things, the approximate amount of total RAUM attributable to clients that are non-U.S. persons, RAUM of all parallel managed accounts related to a registered investment company or business development company advised by the investment adviser, as well as the total RAUM attributable to acting as a sponsor to or portfolio manager of a “wrap fee program”; and

7. additional information regarding an investment adviser’s financial industry affiliations and private funds.

### **Umbrella Registration**

Additionally, the Form ADV Amendments codify “umbrella registration” for private fund advisers that are registered<sup>4</sup> with the SEC and operate a single advisory business through multiple legal entities. The amended General Instructions to Form ADV establish the relevant conditions for umbrella registration (which are the same as those previously set forth in a 2012 no-action letter issued by the SEC<sup>5</sup>). The amended General Instructions also provide more comprehensive directions for completing an umbrella registration, including details regarding the timing and filing of Form ADV amendments in connection with an umbrella registration. The revisions to the General Instructions further specify those questions that should be answered solely with respect to the filing adviser, and those that require the filing adviser to answer on behalf of itself and the relying advisers. In addition, the amended Form ADV now includes and requires the completion of a new schedule, Schedule R to Part 1A, for each relying adviser. Schedule R requires identifying information, basis for SEC registration, and ownership information for each relying adviser. This new schedule consolidates information about each relying adviser in a single place and allows for consistent reporting across all investment advisers. In addition, Schedule D contains a new question requiring investment advisers to identify the filing and relying advisers that manage or sponsor private funds reported on Form ADV.

### **Recordkeeping Amendments**

In addition to the Form ADV Amendments described above, the SEC also adopted two amendments (the “Recordkeeping Amendments”) to Rule 204-2 under the Advisers Act. In particular, after October 1, 2017, the Recordkeeping Amendments require investment advisers to maintain records supporting performance claims in communications distributed to *any* person instead of ten or more persons and require investment advisers to maintain originals of all written communications received and copies of written communications sent by an investment adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations.

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<sup>4</sup> Please note that the SEC has not expanded the concept of umbrella registration to include “umbrella reporting” by ERAs at this time.

<sup>5</sup> See American Bar Association, Business Law Section, SEC Staff Letter (Jan. 18, 2012), available at <http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm>.

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