

A PRACTICAL GUIDE FOR CHANGES TO FORM ADV

By **Bettina Eckerle** | July 30, 2011

In SEC Release No. IA 3221 entitled “Rules Implementing Amendments to the Investment Advisers Act of 1940”, the SEC amended Form ADV to require, among other things, all registered investment advisers to provide more detailed information about:

- Their advisory business, including the type of clients they have, their employees and their advisory activities;
- Their business practices that may present significant conflicts of interests, including the use of affiliated brokers, soft dollar arrangements and compensation for referrals; and
- Their non-advisory activities and their financial industry affiliations.

The release also amends Part 2 to require advisers to provide information regarding five categories of “gate keepers” that perform critical functions for the advisers and the private funds they manage, specifically

auditors, prime brokers; custodians, administrators and marketers.

Note: The new Form ADV will be operational on the SEC website via IARD by late 2011. We will keep you apprised as to when it goes live.

Advisers to Private Funds

Advisers to private funds are required to provide additional information about each fund they manage. Specifically, the SEC has amended Section 7B of Schedule D to require investment advisers to private funds to provide expanded information about each fund they manage, including:

- Name of fund;
- State or country of organization;
- Names of general partner, directors, trustees or persons with similar positions;
- Structure (whether it is a feeder or master fund);

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- Regulatory status, including the exemption from the 1940 Act on which it relies;
- Whether the fund relies on an exemption from registration of its securities under the Securities Act of 1933;
- Whether the fund is subject to regulation by a foreign regulatory authority;
- Whether the adviser is a sub-adviser to the fund;
- Identity of any other investment adviser to the fund;
- Gross asset value of the fund;
- Type of investment strategy;
- Number and types of investors in the fund;
- Minimum amounts required to be invested;
- Whether clients of the adviser are solicited to invest.

The release also adopted the following additional amendments:

- The SEC modified the scope of Item 7 by requiring completion of Section 7B for any private fund the adviser advises, not just funds that are organized as limited partnerships or limited liability companies.
- Investment advisers will no longer be required to report funds that are advised by affiliates.
- Sub-advisers are no longer required to report funds that another adviser is reporting on Schedule D.
- Advisers sponsoring a master-feeder arrangement may submit one single Schedule D for the master and all feeder funds.
- An adviser with its principal place of business outside the U.S. may omit Schedule D for any private fund that is not organized in the U.S. and not offered to or owned by a U.S. person.

In addition, the new disclosure rules for Part 1A of Form ADV require the adviser to indicate whether or not the adviser had \$1 billion or more in total assets as of the last day of its most recent fiscal year as determined on the adviser's balance sheet as of that date.

See: <http://www.sec.gov/rules/final/2011/ia-3221.pdf>

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Please place questions concerning the topics discussed in this memorandum to Bettina Eckerle at bettina.Eckerle@eckerlelawyers.com.

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