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August 11, 2015

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release No. IA-4091; File No. 57-09-15
Amendment to Form ADV and Investment Advisers Act Rules

Dear Mr. Fields:

We are responding to the request of the Securities and Exchange Commission (the "Commission") for comments about the proposed amendments to the Form ADV and the corresponding rules under the Investment Advisers Act (such act, the "Advisers Act" and the proposed amendments, the "Proposed Amendments").[1] We recognize the time and effort invested by the Commission and the Staff of the Division of Investment Management (the "Staff") in formulating the proposed amendments and appreciate the opportunity to comment.

Schulte Roth & Zabel LLP is an international law firm, with offices in New York, London and Washington, D.C. Our clients include advisers to private funds and separately managed accounts, both U.S. and non-U.S., that may be affected by the Proposed Amendments. These comments, while informed by our experience in representing these clients, represent our own views and are not intended to reflect the views of the clients of the firm.

I. Separately Managed Account Information

In the Proposed Amendments, the Commission proposes to amend the Form ADV to include detailed disclosures with respect to separately managed accounts ("SMAs"). The Proposed Amendments would require that registered investment advisers publicly disclose on Form ADV detailed information with respect to their strategies and investments. Included in

[1] Release No. IA-4091; File No. 57-09-15, *Amendments to Form ADV and Investment Advisers Act Rules* (the "Proposing Release").

such reporting would be, for example: (1) the percentage of an adviser's assets under management in SMAs that are invested in each of ten specific asset categories; (2) the number of accounts that correspond with certain categories of gross notional exposure and the weighted average amount of borrowings in those accounts; and (3) the weighted average gross notional value of derivatives in certain accounts with respect to each of six different categories or derivatives.

A. Confidentiality and Trade Secret Concerns

Investment advisers typically seek to use proprietary knowledge, insight and strategies to make profitable investments and produce returns for their investors. Such knowledge, insights and strategies are treated as highly confidential by advisers to protect the interests of their clients and themselves. In addition to the threats that publication poses to an adviser's proprietary trade secrets, there is also, for private fund managers seeking to deliver uncorrelated returns, an obvious danger to the adviser's clients in public disclosure of managed account data, even at an aggregated instrument level.[2]

The Commission specifically dealt with this type of proprietary information in the context of private fund systemic risk reporting on Form PF. The Dodd-Frank Wall Street Reform and Consumer Protection Act mandated the collection of certain private fund investment information to facilitate analyses of systemic risk and – in doing so – the sensitive and proprietary nature of such information was expressly acknowledged and protected. The Advisers Act was also amended to treat private funds' proprietary investment information as confidential and non-public to the same extent that information about examinations and investigations is protected pursuant to Section 210(b) of the Advisers Act.[3] In the context of requiring that private fund managers disclose information about their investments and strategies in Form PF, the Commission expressly acknowledged that "the public disclosure of [such information] could adversely affect the funds and their investors."[4]

The Commission's commitment to the confidentiality of this information is also exemplified by the controls and systems it has put in place to handle this data across the agency, including the establishment of a Steering Committee "tasked with developing a consistent and agency-wide approach to accessing, and the using, sharing and security of Form PF data."[5] In

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[2] For example, classic dangers of sharing portfolio information include front-running and "short squeezes;" where others can predict future transactions or otherwise take advantage of an existing position, they may be incented to trade ahead of the disclosed account in an effort to usurp any market opportunities or otherwise seek profits to the detriment of the disclosed account.

[3] Public Law 111–203, 124 Stat. 1572 (July 21, 2010) added the following language to the Advisers Act: "Any proprietary information of an investment adviser ascertained by the Commission from any report required to be filed with the Commission pursuant to this subsection shall be subject to the same limitations on public disclosure as any facts ascertained during an examination, as provided by section 210(b) of this title … proprietary information includes sensitive, nonpublic information regarding— (i) the investment or trading strategies of the investment adviser; (ii) analytical or research methodologies; (iii) trading data; (iv) computer hardware or software containing intellectual property; and (v) any additional information[.]"

[4] Release No. IA-3308; File No. S7-05-11, *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF* (July 1, 2011), at 168.

[5] *Annual Staff Report Relating to the Use of Data Collected from Private Fund Systemic Risk Reports*, prepared by the Staff of the Division of Investment Management of the U.S. Securities and Exchange Commission (July 25, 2013), at 7.

addition to the confidentiality requirements already mandated by Dodd-Frank with respect to this proprietary private fund information, the Commission also imposed additional safeguards, including a requirement that other government agencies that obtain such information represent they have adequate controls in place to protect it.

In light of the Commission's demonstrated sensitivity to the proprietary nature of investment information in the Form PF context, we are surprised that the Proposed Amendments would make similar information with respect to SMAs publicly available. The potential harm to investors applies in this context just as much as it does in the private fund context. Indeed, many of the large separately managed accounts that would be covered by the Proposed Amendments follow the investment strategies of private funds, which could lead to the anomalous result that investment information that is highly protected from disclosure in Form PF would be publicly available in Form ADV. Such a result would particularly impact those investors (including some large pension investors) that prefer[6] (or require[7]) a managed account over a pooled vehicle investment.

If investors and managers face public disclosure on the Form ADV with respect to the SMA investments, strategies and use of borrowings and derivatives, they may instead choose to invest in a fund structure to maintain the confidentiality afforded that data when reported in Form PF. Or such investors may forego altogether what would otherwise be beneficial investment opportunities with U.S.-registered investment advisers.

We also see the public disclosure of SMA data on Form ADV as a significant risk to many categories of advisers. The franchise value of many managers is predicated on seeing trends earlier than competitors or in establishing non-intuitive positions of material size. These advantages are reduced in direct proportion to the degree of public disclosure mandated.

We therefore recommend that any reporting with respect to the investments and strategies used by SMAs should be provided to the Commission on a non-public confidential basis and maintained that way by the Commission in a manner equivalent to the similar information reported in Form PF.

[6] SMAs may offer such investors title and control of investment accounts as well as customization and flexibility with respect to investment guidelines, reporting and choice of service providers.
[7] Some allocators are prohibited by policy or charter from investing in a commingled vehicle.

B. The CFTC's Approach with CTA-PR

We believe that the Commission should also consider the example of the Commodity Futures Trading Commission (the "CFTC") with the CTA-PR and CPO-PQR reports:

- The CPO-PQR, filed by "commodity pool operators," is analogous to the Form PF in that it seeks disclosures on collective "pools."

- An analogous form, the CTA-PR, is filed by "commodity trading advisors" ("CTAs") and collects information both on pools that the CTA may advise *as well as information on managed accounts advised by the CTA*.[8]

Like the Commission with Form PF, the CFTC acknowledged the industry's confidentiality concerns by designating certain CTA-PR information[9] as nonpublic;[10] the CFTC does not make the Form CTA-PR information generally available to the public.[11]

We believe that the CFTC's CTA-PR approach on non-disclosure of managed account data evidences a sensitivity to the legitimate confidentiality concerns of clients and managers. We would recommend that the Commission also act to safeguard SMA disclosures made by registered investment advisers.

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[8] CTA-PR information is gathered under the general powers set forth in Section 8(a) of the Commodity Exchange Act, which provides:

> For the efficient execution of the provisions of [the CEA] … the [CFTC] may make such investigations as it deems necessary to ascertain the facts regarding the operations of … persons subject to the provisions of this Act. The [CFTC] may publish from time to time the results of any such investigation … Provided, That except as otherwise specifically authorized in this Act, the [CFTC] may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers ...

While we should point out that the information gathering in the CFTC regime differs from the SEC system because of the role that the National Futures Association plays, we do not think that difference is germane to this conversation.

[9] The protected CTA-PR information does differ in some respects from the Proposing Release's SMA requests in that the CTA-PR focuses on "distribution and marketing channel" information (which includes account performance data and client identification information, rather than systemic risk exposures); it is important to note, however, that the CFTC was driven by a concern to protect managers' trade secrets, which we believe make the comparison to the SMA information requests quite relevant.

[10] In its adopting release, the CFTC acknowledged the concern of commenters that certain information received from both reports is extremely confidential and could put the reporting entity at a competitive disadvantage if revealed to the general public. *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11253, 11271 (Feb 24, 2012).

[11] In its adopting release, the CFTC acknowledged the concern of commenters that certain information received from both reports is extremely confidential and could put the reporting entity at a competitive disadvantage if revealed to the general public. The CFTC addressed this by designating certain CPO-PQR *and CTA-PR* information concerning distribution and marketing channels as nonpublic. *Commodity Pool Operators and Commodity Trading Advisors: Compliance Obligations*, 77 Fed. Reg. 11253, 11271 (Feb 24, 2012).

II. Umbrella Registration

We fully support the Commission's efforts to incorporate "umbrella registration" into the Form ADV. The Form ADV is currently formatted to present information with respect to a single adviser; however, two Staff no-action letters addressed several consolidated filing issues relating to common structures for advisers with private fund clients:

- a 2005 letter[12] (the "2005 Letter") that permitted consolidated registration by an investment adviser to private funds and the special purpose vehicles ("SPVs") that act as general partners or managing members of those private funds; and

- a 2012 letter[13] (the "2012 Letter") that (i) reiterated support for the 2005 Letter with respect to consolidated filing treatment for SPVs, (ii) reiterated and clarified the four conditions underlying the 2005 Letter's SPV consolidated filing relief, and (iii) established a second, six-condition, consolidated filing regime for "relying advisers."

The Commission has proposed "umbrella registration" amendments to the Form ADV that will incorporate the current consolidated reporting scheme under the 2005 Letter and the 2012 Letter into the Form ADV. Doing so will offer numerous advantages to regulators as it "allow[s] for greater comparability across private fund advisers."[14] In particular, umbrella registration allows a convenient means for the staff of the Office of Compliance Inspections and Examinations to quickly understand the *entire* business of (and the material risks and conflicts associated with) an advisory complex; among other benefits, a review of a consolidated Form ADV allows OCIE staff to select registrants for examination in a more informed manner and to more effectively plan a subsequent examination.

In addition to the advantages enjoyed by regulators, umbrella registration also benefits registrants and private fund investors:

- registrants and, derivatively, investors enjoy reduced costs of compliance with an umbrella registration scheme in not having to prepare and file multiple Form ADVs and disaggregate their businesses for reporting purposes;

- private fund investors benefit because the alternatives to a consolidated filing scheme (e.g., having an advisory business' data and statistics spread across multiple Form ADVs) handicap the average investor seeking to better understand the full extent of an adviser's business and potential conflicts; and

- regulators and private fund investors benefit because consolidated filings aggregate disciplinary and regulatory disclosures across entities in a manner that is more readily accessible.

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[12] *American Bar Association Subcommittee on Private Investment Entities*, SEC Staff Letter (Dec. 8, 2005).
[13] *American Bar Association, Business Law Section*, SEC Staff Letter (Jan. 18, 2012).
[14] Proposing Release, at p. 7

Set forth below are our suggestions on how to refine the umbrella registration proposals and to assist the Commission in achieving its goals.

A. Including Non-U.S. Filing Advisers

We agree with the Commission that incorporating umbrella registration into the Form ADV will be beneficial to regulators, private fund investors and fund managers; we believe that these benefits are so significant that umbrella registration also should be accessible to non-U.S. based private fund managers.

1. Extraterritoriality Concerns

a. Overall Principles of Extraterritoriality

The Commission's historical and current view of extraterritoriality is set forth in Footnote 57 of the Proposing Release ("Footnote 57"), i.e.:

> As we have previously stated, we do not apply most of the substantive provisions of the Advisers Act to the non-U.S. clients of a non-U.S. adviser registered with the Commission.

The Proposing Release, like the 2005 Letter and the 2012 Letter, addresses the Commission's technical implementation of rules and policies into the means for reporting (i.e., the Form ADV). In this context, we do not see a reason to change the Commission's substantive historical and current extraterritoriality principles.

b. Conflict between Condition 2 and Extraterritoriality Principles

The non-U.S. adviser issues come to the forefront in the Proposing Release's second condition to umbrella registration ("Condition 2"):

> The filing adviser has its principal office and place of business in the United States and, therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the filing adviser's and each relying adviser's dealings with each of its clients, regardless of whether any client or the filing adviser or relying adviser providing the advice is a United States person[.][15]

Condition 2 would reverse, for non-U.S. registered investment advisers that avail themselves of umbrella registration, the Commission's current and historical limiting principles on extraterritoriality. Non-U.S. registered investment advisers that make multiple separate filings, however, could maintain their relationships with their non-U.S. clients in compliance with local laws but without imposing the substantive provisions of the Advisers Act.

Condition 2 was included in the 2012 letter to address the Staff's concern that a U.S. adviser could designate a non-U.S. affiliate as the "filing" adviser in a consolidated filing and then argue that the substantive provisions of the Advisers Act do not apply to the U.S. relying adviser's dealings with its non-U.S. clients. That concern, however, can be addressed by requiring that (i) any affiliated non-U.S. adviser seeking not to apply the substantive provisions

[15] We note that the first clause of Condition 4 ("[t]he advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder") presents similar concerns, but for the sake of simplicity we will simply address Condition 2 in this letter.

of the Advisers Act to its non-U.S. clients be operationally independent of the U.S. adviser and (ii) all dealings with clients – whether U.S. clients or non-U.S. clients – by the U.S. adviser and all operationally integrated non-U.S. adviser affiliates be afforded the full protection of the Advisers Act.

In our experience, non-U.S. registered investment advisers frequently have a sizable non-U.S. person client base, and those clients often do not expect or desire the protections of the Advisers Act. For example, in the application of the Custody Rule, many non-U.S. clients, such as large institutions or sovereign investors, often do not want to pay for full audits (especially U.S. GAAP audits) or are comfortable with custody arrangements that do not necessarily satisfy the "qualified custodian" requirements.

Under the Commission's approach to extraterritoriality, as acknowledged in Footnote 57, these non-U.S. advisers *are* permitted to engage in activities with non-U.S. clients outside of most of the substantive safeguards and constraints of the Advisers Act system. We do not believe that a ministerial decision to make a single filing (instead of multiple filings) on Form ADV – which is an action that benefits both the Commission and private fund investors – should require an effective global extension of the Advisers Act to all clients and to all transactions.

If the Commission determines to preserve Condition 2, non-U.S. registered investment advisers will have two choices:

1. Avail themselves of the advantages of umbrella registration but accept a requirement to apply "*all* of the substantive provisions of the Advisers Act and the rules [to each and every one of] the filing adviser's and each relying adviser's … clients, regardless of whether any client … is a United States person;" or

2. Preserve their ability to deal with their non-U.S. clients pursuant to local laws and regulations (and not be required to apply all of the substantive provisions of the Advisers Act to non-U.S. clients) but forego the advantages of umbrella registration (and thereby deprive the Commission, the Staff, and investors of the benefits of a consolidated set of disclosures and increase these advisers' costs of compliance).

We believe that if the Proposed Amendments are not revised to allow non-U.S. advisers to utilize umbrella registration without imposing the substantive provisions of the Advisers Act on their non-U.S. client relationships, non-U.S. advisers may forego the benefits of umbrella registration because of the impact to their non-U.S. client relationships. We are not alone in this concern:

> [For] non-U.S. managers filing to the SEC, the situation appears the toughest. They will have to decide whether to avail of the umbrella registration regime, which will save them the time and effort of reporting each fund but also means they will have to make the US their principal office

> and fall fully under the Investment Advisers Act. *Many are likely to balk at this idea and take on the option, and extra burden, of reporting each fund instead.*[16]

Even more complicating will be scenarios where the U.S. affiliates of SEC-registered non-U.S. advisers are not subject to (or eligible for) SEC registration. Consider scenarios where these U.S. entities become state-level registrants, or where they fall out of the registration regime entirely.[17] In addition, in certain situations, advisory personnel of a state registrant will be required to take and pass a licensing examination, which is – at best – a delay in registration and could be a disincentive for foreign advisers to establish operations in the United States.[18]

For all of these reasons, we recommend that the requirement to extraterritorially apply the substantive provisions of the Advisers Act to non-U.S. registered investment advisers' relationships with non-U.S. clients should be removed from Condition 2.

2. Non-U.S. Advisers Without a Place of Business in the United States

In addition to the extraterritoriality concerns, there is also a more basic issue of eligibility for non-U.S. managers: Condition 2 expressly limits umbrella registration to an adviser that "has its principal office and place of business in the United States[.]"

Many non-U.S. registered investment advisers managing funds with U.S. person investors operate through multiple management entities and non-U.S. offices. Under the language of Condition 2, unless these managers have a U.S. office or affiliate, they cannot claim (for themselves, for regulators, and for their fund investors) the advantages of the umbrella registration system. Given the geographic remoteness of these managers and the fact that non-U.S. regulatory and tax regimes often mitigate towards unfamiliar (to U.S. investors) organizational structures, disallowing umbrella registration for these kinds of advisers can present fund investors with an especially burdensome diligence effort.

For these reasons, we believe that Commission should confirm that the umbrella registration system is not limited to advisers with a U.S. office or place of business.

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[16] Paul McMillan, "Editor's View," *HFM Week* (16-22 July 2015) at 3 (italics added). On another page in that same UK-focused publication, the editorial staff refers to the ADV proposals as "costly and burdensome reforms, which particularly hit managers outside of the US."

[17] For example, where a U.S. affiliate does not have regulatory assets under management sufficient to allow for SEC registration and does not have enough clients to merit state registration. In addition, if the U.S. affiliate was located in a state like Florida and had only a few clients of its own, it could find itself *excluded* from the definition of "investment adviser" under state law:

> The term “investment adviser” does not include … [a]ny person who does not hold herself or himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state[.]

Florida Statutes, Chapter 517.021(13)(b).

[18] See, e.g., Connecticut Department of Banking, *Common Questions and Answers on Testing Requirements for Securities Industry Personnel*, at http://ct.gov/dob/cwp/view.asp?a=2251&q=299200&dobNAV_GID=1662 (discussing the requirement for investment adviser agents to pass the Series 65 or the Series 66 examination).

B. Permitting ERA Umbrella Filings

The Proposed Amendments would not permit consolidated Form ADV filings by advisers relying on the "private fund adviser" exemption. The Staff has expressly permitted umbrella filings by exempt reporting advisers (which may be private fund advisers managing less than $150 million in assets from the United States or venture capital firms) and this Staff guidance has been relied on by many non-U.S.-based advisers; it provides the same types of benefits to regulators, investors and advisers that the umbrella registration provides, such as:

- clear information about the firm's business and operations; and
- simplified disclosure obligations.

Many non-U.S. private fund managers claim the exemption from registration available for private fund advisers and report on Form ADV as exempt reporting advisers. For example, for a variety of tax, legal and regulatory reasons, U.K. based managers often will have an offshore (e.g., the Cayman Islands or a Crown territory) manager as well as a London-based investment manager. (These entities are in addition to general partners and other entities that would be classified as special purpose vehicles in the current SEC consolidated reporting scheme.) Many of these U.K.-based fund managers have made a single exempt reporting adviser filing on behalf of several entities based on the 2012 Staff guidance.

We are not aware of any issues or concerns that have arisen as a result of these consolidated ERA filings and the benefits for the filers, regulators and investors are clear. We therefore believe that the Proposed Amendments should maintain consistency with the Staff guidance and permit umbrella filings for exempt reporting advisers.

C. Clarifying the Status and Filing Requirements for SPVs

The Proposed Amendments would incorporate umbrella registration into the Form ADV in part by adding a new "Schedule R" on which to disclose information specific to each relying adviser. While we believe this will be a useful change, as described above, we do not believe the proposed amendment clearly addresses reporting with respect to private funds' general partners and managing members.

The question presented to the Staff in the 2005 Letter was described by the Staff as "whether it would be sufficient for the investment adviser to the private fund to register … *and for the SPV to remain unregistered.*"[19] The 2005 Letter's response contains language that can be read to indicate that SPVs are not subject to any obligation to register because they are not investment advisers (and are merely associated persons)[20] as well as language that indicates that

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[19] 2005 Letter, at G., Question 1. (Emphasis added.)

[20] The Staff response, for example, contained the following statements:

- "The staff would not recommend enforcement action … if the SPV does not register as an investment adviser with the Commission[.]"
- "[T]he registered investment adviser [must] subject the SPV, its employees and persons acting on its behalf to the adviser's supervision and control. Thus, the SPV … would be [a] "person[ ] associated with" the registered investment adviser[.]"

the SPV is obligated to register and is registering by reliance.[21] The 2012 Letter reiterates both the 2005 Letter's "associated person" SPV analysis[22] *and* its registration-by-reliance concept. We believe that the status of such special purpose vehicles/SPVs should be clarified to provide a clear understanding as to how to reflect them in the Form ADV.

As a practical matter, in addressing this question the Commission could also resolve some filing matters on which there is a diversity of market practice, including the following:

- Whether to tick (or leave blank) Item 7.A.(2) ("other investment adviser") and Schedule D, Section 7.A.5(b) ("other investment adviser") for an SPV;

- Whether (and how) an SPV should respond to Schedule D, Section 7.A.9(a) ("If the *related person* is an investment adviser, is it exempt from registration?"); and

- Whether to include in Schedules A and B (or Schedule R) information on the owners and control persons of the SPV.

1. Option 1: Treat the SPV as an Associated Person

Under this approach, the general partner or managing member of a fund would be treated as an "associated person" of the investment manager and not as a "relying adviser" (and therefore would not be reflected on a Schedule R). Sample language and suggested changes to effectuate this position follow:

- *A new term, "SPV" could be added to the Glossary as follows:*

> **SPV**: A special purpose vehicle established by a ***filing adviser*** or another ***relying adviser*** to act as a ***private fund***'s general partner or managing member where: (i) the special purpose vehicle's formation documents designate such ***filing adviser*** or ***relying adviser*** as the investment adviser to manage the ***private fund***'s assets; (ii) all of the investment advisory activities of the special purpose vehicle are subject to the Advisers Act and the rules thereunder; (iii) the special purpose vehicle is subject to examination by the SEC; and (iv) such ***filing adviser*** or ***relying adviser*** subjects the special purpose vehicle, its employees and persons acting on its behalf to the supervision and control of such ***filing adviser*** or ***relying adviser*** and, therefore, the special purpose vehicle, all of its employees and the persons acting on its behalf are "persons associated with" (as defined in section 202(a)(17) of the Advisers Act) the ***filing adviser*** or ***relying adviser***.

[21] "[T]he SPV would look to and essentially rely upon the investment adviser's registration with the Commission in not registering itself."

[22] "The 2005 Staff Letter was, by its terms, limited to situations in which, among other things, the SPV, its employees and persons acting on its behalf are subject to supervision and control by the registered adviser and, therefore, *the SPV, all of its employees and the persons acting on its behalf are "persons associated with" the registered adviser*[.]" (Emphasis added.)

- *The heading and the first full paragraph under Section 6 of the Instructions for Part 1A could be amended and restated to add the following:*

> **6. Item 7: Financial Industry Affiliations and Private Fund Reporting**
>
> Item 7.A. and Section 7.A. of Schedule D ask questions about you and your *related persons*' financial industry affiliation.
>
> If you are filing an *umbrella registration*, you should not check Item 7.A.(2) with respect to your *relying advisers*, and you do not have to complete Section 7.A. in Schedule D for your *relying advisers*. You should complete Schedule R with respect to your *relying advisers*.
>
> With respect to your *SPVs*: you should not check Item 7.A.(2), you should check Item 7.A.(6) if applicable, you should check Item 7.A.(16), and you must complete Section 7.A. in Schedule D for your *SPVs* (although you should not check Section 7.A.5.(b) for your *SPVs* and you should leave Section 7.A.9. blank). You should not complete Schedule R with respect to your *SPVs*.
>
> Item 7.B. and Section 7.B. of Schedule D ask questions about the *private funds* that you advise. You are required to complete a Section 7.B.(1) of Schedule D for each *private fund* that you advise, except in certain circumstances described under Item 7.B. and below.

- *The heading and the first full paragraph under Section 7 of the Instructions for Part 1A could be amended and restated as follows:*

> **7. Item 10: Control Persons**
>
> You may omit from Schedules A, B, and C information about owners and control persons of SPVs.
>
> If you are a "separately identifiable department or division" (SID) of a bank, identify on Schedule A your bank's executive officers who are directly engaged in managing, directing, or supervising your investment advisory activities, and list any other persons designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities, including supervising employees performing investment advisory activities

2. Option 2: Determine that SPVs are Relying Advisers

Under this approach, general partners and managing members of funds would be deemed "relying advisers" in all senses for umbrella registration purposes (including the requirement to file a Schedule R), which would warrant the following mechanical changes:

- *In the Glossary, the definition of "Relying Adviser" could read as follows:*

> "An investment adviser eligible to register with the SEC that relies on a filing adviser to file (and amend) a single umbrella registration on its behalf. For purposes of the Form ADV, the term ***relying adviser*** also includes a special purpose vehicle established by a ***filing adviser*** or another ***relying adviser*** to act as a ***private fund***'s general partner or managing member where: (i) the special purpose vehicle's formation documents designate such ***filing adviser*** or ***relying***

> ***adviser*** as the investment adviser to manage the ***private fund***'s assets; (ii) all of the investment advisory activities of the special purpose vehicle are subject to the Advisers Act and the rules thereunder; (iii) the special purpose vehicle is subject to examination by the SEC; and (iv) such ***filing adviser*** or ***relying adviser*** subjects the special purpose vehicle, its employees and persons acting on its behalf to the supervision and control of such ***filing adviser*** or ***relying adviser*** and, therefore, the special purpose vehicle, all of its employees and the persons acting on its behalf are "persons associated with" (as defined in section 202(a)(17) of the Advisers Act) the ***filing adviser*** or ***relying adviser***."

- *In Schedule R, Section 2.A. add a new option (9) (and renumber the existing option (9) as option (10)) that reads as follows:*

> "[ ] (9) are a special purpose vehicle established by a *filing adviser* or another *relying adviser* to act as a *private fund*'s general partner or managing member where: (i) your formation documents designate such *filing adviser* or *relying adviser* as the investment adviser to manage the *private fund*'s assets; (ii) all of your investment advisory activities are subject to the Advisers Act and the rules thereunder; (iii) you are subject to examination by the SEC; and (iv) such *filing adviser* or *relying adviser* subjects you, your employees and persons acting on your behalf to the supervision and control of such *filing adviser* or *relying adviser* and, therefore, you, all of your employees and the persons acting on your behalf are "persons associated with" (as defined in section 202(a)(17) of the Advisers Act) the *filing adviser* or *relying adviser*."

We do not recommend either of these options over the other but do see this as an area that could benefit from clarity and suggest that the Commission clearly choose one option for firms to follow.

* * *

We would be pleased to respond to any inquiries you may have regarding our letter or our views on the Proposed Amendments more generally. Please feel free to direct any inquiries to Brian Daly or Marc Elovitz at +1 (212) 756-2000.

Very truly yours,

SCHULTE ROTH & ZABEL LLP