Form ADV Amendments:

Ready to Go?

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As summer recedes and we head into the autumn, investment advisers are in the home stretch of preparations for Form ADV reporting and disclosure changes that become effective October 1, 2017. The amendments, which were adopted in August 2016, require registered investment advisers to provide additional information regarding separately managed accounts ("SMAs") and impose new disclosure obligations on private fund advisers that file a single registration for multiple private fund advisers that collectively conduct a single advisory business ("umbrella registrations").[1]

Although the compliance date for the amendments is October 1, 2017, many advisers will first transition to the new Form ADV in connection with their annual updating amendment for fiscal year 2017, which is generally due in March 2018. Set forth below is a summary of the upcoming changes and some checklists to facilitate implementation. Advisers that have not yet considered how the amendments will affect their upcoming annual filing should do so now.

Advisers to SMAs – New Reporting Requirements

Amended Form ADV requires significantly increased reporting regarding the details of an adviser's "SMA" business. An SMA is defined as any advisory account other than a registered investment company, a business development company, or a private fund (that is, an unregistered investment company relying on the exemption in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940, as amended).

New Item 5.K. requires certain SMA advisers to provide detailed information about the type of assets, derivative positions, and borrowings associated with its SMAs. Details about certain custodian relationships may also be required. The amount and type of information required to be disclosed will vary depending primarily upon an adviser's regulatory assets under management ("RAUM") attributable to SMAs.

Type of Assets. New Item 5.K.(1) requires an SMA adviser to disclose on Schedule D the percentage of its SMA assets attributable to each of 13 identified categories (see Table One below). SMA advisers can use their discretion in allocating assets that may fall into more than one category, as long as the allocation methodology is consistently applied across all external and internal reporting. SMA advisers with $10 billion or more in SMA assets must annually disclose these percentages as of year-end (i.e., the date at which RAUM is calculated) and the date six months before year-end ("mid-year"). SMA advisers with less than $10 billion in SMA assets are required to make this disclosure only as of year-end.

Borrowings and Derivatives. Item 5.K.(2) requires an SMA adviser to disclose if it uses any borrowings or derivatives in its SMAs. If so, an SMA adviser with $10 billion or more in SMA assets must annually disclose the amount of its SMA RAUM that corresponds to each of three identified ranges of gross notional exposure (i.e., the sum of SMA borrowings and the gross notional value of all derivatives in an SMA divided by the account's RAUM). The SMA adviser must also include the corresponding dollar amount of borrowings and the total dollar amount of derivatives in six identified categories as of year-end and mid-year (see Table One). An SMA adviser with SMA assets of at least $500 million but less than $10 billion must annually disclose the amount of its year-end SMA RAUM that corresponds to each of the three identified ranges of gross notional exposure. SMA advisers with less than $500 million of SMA RAUM are not required to disclose the use of borrowings and derivatives. Moreover, an SMA adviser may choose not to make this disclosure with respect to any individual SMA that contributes less than $10 million to the adviser's RAUM.

The chart is designed to help advisers determine what information will need to be provided in Part 1A, Item 5.K. and Schedule D, Section 5.K. by any SMA adviser. Table One includes additional information about the disclosure requirements contained in Schedule D, Section 5.K.

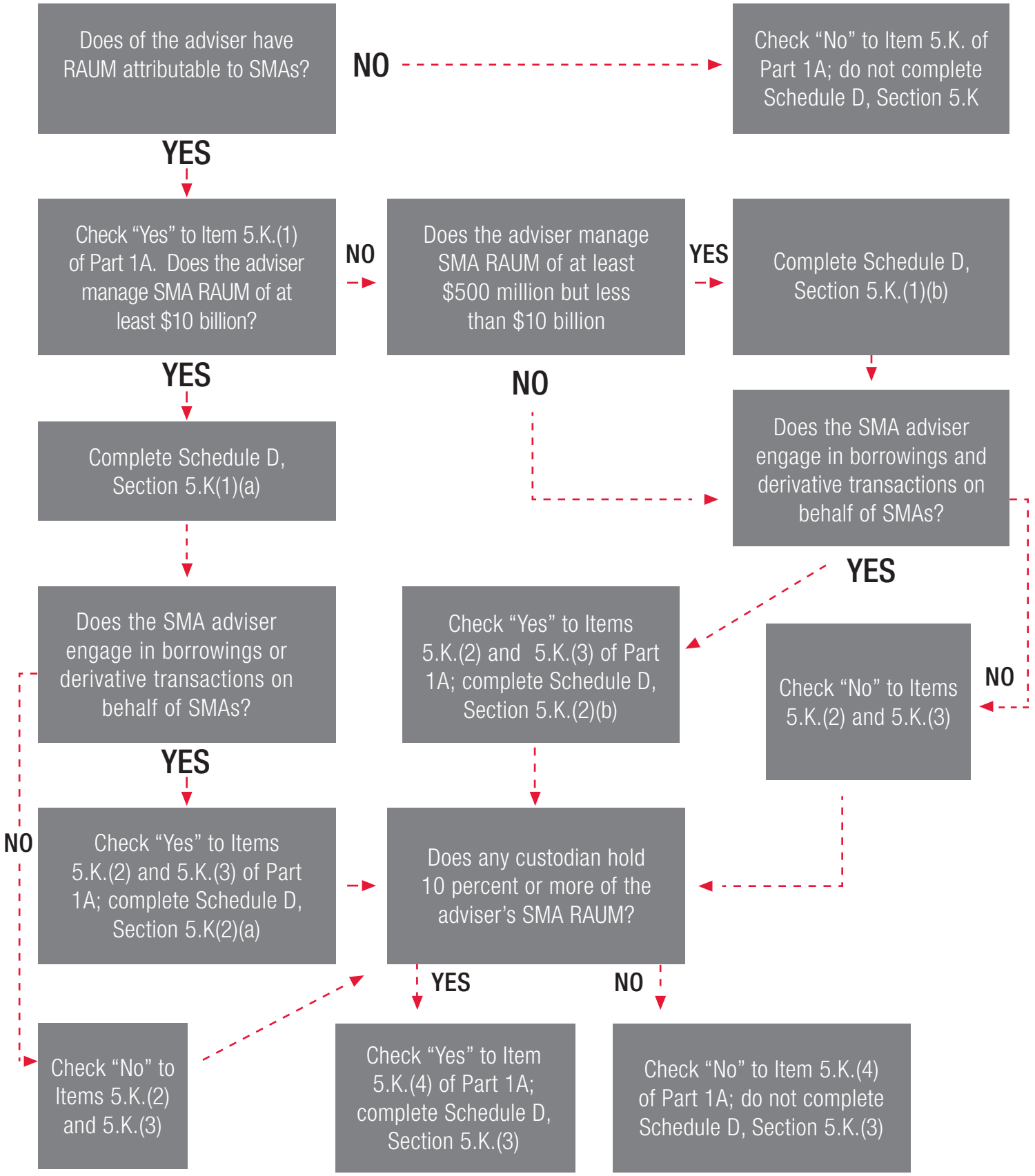

Table One:

Schedule D, Section 5.K.(1)	Schedule D, Section 5.K.(2)	Schedule D, Section 5.K.(3)
– Requires an SMA adviser to report the percentage of SMA RAUM invested in each of the following categories: o Exchange-traded equity securities o Non-exchange-traded equity securities o U.S. government/agency bonds o U.S. state and local bonds o Sovereign bonds o Investment grade corporate bonds o Non-investment grade corporate bonds o Derivatives o Securities issued by registered investment companies (RICs) or business development companies (BDCs) o Securities issued by pooled investment companies that are not RICs or BDCs o Cash and cash equivalents o Other – Advisers with at least $10 billion in SMA RAUM complete Section 5.K.(1)(a) (mid-year and year-end data). – Advisers with less than $10 billion of SMA RAUM complete Section 5.K.(1)(b) (year-end data).	– Requires SMA advisers with at least $500 million of SMA RAUM to report the amount of SMA RAUM and the dollar amount of borrowings for such SMAs that correspond to three levels of gross notional exposure (year-end data): o Less than 10 percent o 10 – 149 percent o 150 percent or more – SMA advisers with SMA RAUM of at least $10 billion must also report aggregate gross notional value of derivatives divided by SMA RAUM across six categories of derivatives (mid-year and year end data): o Interest rate derivatives o Foreign exchange derivatives o Credit derivatives o Equity derivatives o Commodity derivatives o Other derivatives – SMA advisers can choose not to provide this information for each SMA that contributes less than $10 million to the adviser's RAUM	– If any custodian holds 10 percent or more of the SMA adviser's aggregate SMA RAUM, the SMA adviser must provide the following information (for each such custodian): o Custodian's name o Custodian's primary business name o The locations of the custodian's office(s) responsible for custody of the assets o Whether the custodian is a related person of the SMA adviser o SEC registration number if the custodian is a broker-dealer o The custodian's legal entity identifier (if any) if it is not a broker-dealer o The amount of SMA RAUM held by that custodian

Umbrella Registrations – New Disclosure Requirements

The revisions to Form ADV essentially codify existing guidance provided to private fund advisers that are organized as a group of related legal entities (for tax or similar reasons) but effectively operate as a single advisory business. As revised, Form ADV for the first time contemplates that a single adviser (the "Filing Adviser") may file an "umbrella registration" on behalf of itself and other advisers that are controlled by or under common control with the Filing Adviser (each, a "Relying Adviser").

Single Advisory Business. In order to file an umbrella registration, the Filing Adviser and its Relying Advisers must operate a single advisory business, demonstrated by meeting the following conditions:

- The Filing Adviser and each Relying Adviser advise only private funds and clients in SMAs that are "qualified clients" (as defined in Rule 205-3 under the Investment Advisers Act of 1940, as amended (the "Advisers Act")) and that are otherwise eligible to invest in private funds advised by the Filing Adviser or a Relying Adviser. Each SMA must have an investment strategy substantially similar to or otherwise related to the private funds advised by the Filing Adviser or a Relying Adviser.
- The Filing Adviser's principal place of business is in the United States, and the Advisers Act and its related regulations apply to the Filing Adviser and its Relying Advisers (regardless of where the Relying Adviser is established and whether or not its clients are U.S. persons).
- Each Relying Adviser and its employees are treated as "persons associated with" the Filing Adviser (as defined in Section 202(a)(17) of the Advisers Act).
- The advisory activities of each Relying Adviser are subject to the Advisers Act and examination by the SEC.
- The Filing Adviser and the Relying Advisers operate under a single code of ethics and compliance program, which are administered by a single chief compliance officer ("CCO").

Schedule R. Form ADV now includes Schedule R, which must be completed with respect to each Relying Adviser. Among other things, Schedule R includes certain identifying information, the basis upon which the Relying Adviser is registering with the SEC and ownership information. While Filing Advisers have previously been required to report the information now included on Schedule R with respect to their Relying Advisers under relevant SEC no-action guidance, Schedule R imposes uniformity on how that information is reported, which will enable the SEC to more closely monitor the use of umbrella registrations.

Additional Disclosure Amendments[2]

In addition to the disclosure changes outlined above, the amendments to Form ADV include new and amended disclosure obligations related to a variety of matters:

- **CCO Outsourcing.** If an adviser's CCO is compensated or employed by a person other than the adviser, the adviser must include the name and IRS Employer Identification Number of that other person unless the third party employing the CCO is a related person of the adviser (including a registered investment company advised by the adviser).
- **Social Media.** Advisers are required to disclose if they maintain a social media presence on platforms such as Facebook, LinkedIn, or Twitter and to identify their websites and social media pages.
- **Office Locations and Activities.** Advisers need to complete Item 1.F. of Part 1A which requires disclosure of the total number of offices from which they offer investment advisory services, as well as the location and contact information for their largest 25 locations (by number of employees). Schedule D, Section 1.F. will require an adviser to disclose the CRD branch number for each such office, the number of employees performing advisory services at each such office, the type of investment-related business conducted from each such office, and any other investment-related business conducted from each such office.

- **Assets.** Advisers with at least $1 billion of balance sheet assets (not RAUM) are required to report their assets within the following three ranges:
  - $1 billion to less than $10 billion;
  - $10 billion to less than $50 billion; and
  - $50 billion or more.
- **Clients.** Advisers have to disclose the number of advisory clients, and the RAUM attributable to each of the following categories of client, except that, if an adviser has fewer than five clients in any category, it need only disclose that fact:
  - Individuals other than high net worth individuals (including trusts, estates, and 401(k) plans and IRAs of individuals and their family members);
  - High net worth individuals;
  - Banking or thrift institutions;
  - Investment companies;
  - BDCs;
  - Pooled investment vehicles that are not investment companies or BDCs;
  - Pension and profit sharing plans (that are not government plans);
  - Charitable organizations;
  - State or municipal government entities (including government pension plans);
  - Other investment advisers;
  - Insurance companies;
  - Sovereign wealth funds and foreign official institutions;
  - Corporations or other businesses; and
  - Other.
- **Wrap Fee Program Disclosure.** Advisers that act as a sponsor of or a portfolio manager in a wrap fee program have to disclose the RAUM attributable to such activities and identifying information related to the wrap fee programs to which they provide services.
- **RAUM.** Advisers are required to report the amount of RAUM attributable to non–U.S. persons and the amount of RAUM in any parallel accounts related to a RIC or a BDC.

Given the breadth of the changes included in the most recent Form ADV amendments, registered investment advisers and exempt reporting advisers should avoid waiting until the last minute to complete the revised form in plenty of time to make their annual updating amendment. Advisers should also update their disclosure policies and procedures and test those procedures well before the filing deadline.

1. The adopting release also included expanded recordkeeping obligations regarding performance calculations and performance related communications by advisers. These requirements are not addressed in this handbook.
2. Revised Form ADV also includes certain clarifying and technical amendments that are beyond the scope of this article. Advisers are cautioned to carefully review the new form and to consult with compliance or legal professionals to ensure that they are appropriately addressing these technical changes (if applicable).

If you wish to receive more information on the topics covered in this handbook, please contact your regular Morrison & Foerster contact or any of the following members of our Investment Management or Private Equity Funds Groups.

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