Morgan Lewis

INVESTMENT ADVISER PERSPECTIVES: GETTING READY FOR THE NEW FORM ADV

February 27, 2018

© 2018 Morgan, Lewis & Bockius LLP

Speakers



Jen Klass
jennifer.klass@morganlewis.com
+1.212.309.7105



Christine Lombardo
christine.lombardo@morganlewis.com
+1.212.309.6629



Monica Parry
monica.parry@morganlewis.com
+1.202.373.6179



Eric Perelman
eric.perelman@morganlewis.com
+1.212.309.6735

Agenda

- New Information Regarding an Adviser’s Business
- New Information Regarding Separately Managed Accounts
- Umbrella Registration

New Information Regarding an Adviser's Business

- Amended Office Reporting
  - Item 1.F. – List the largest 25 offices in terms of number of employees as of the end of your most recently completed fiscal year.
  - What is the total number of offices, other than your principal office and place of business, at which you conduct investment advisory business as of the end of your most recently completed fiscal year?

New Information Regarding an Adviser's Business (continued)

- Social Media Disclosures
  - Item 1.I. – Do you have one or more websites or accounts on publicly available social media platforms (including, but not limited to, Twitter, Facebook, and LinkedIn)?
  - Disclose the address for each of the firm's accounts on publicly available social media platforms
  - Control requirement
  - Treatment of employee social media accounts
- Chief Compliance Officer (CCO) Disclosures
  - Item 1.J.(2) – "If your [CCO] is compensated or employed by any person other than you, a related person or a[n RIC] that you advise for providing [CCO] services to you, provide the person's name and IRS Employer Identification Number (if any):"

New Information Regarding an Adviser's Business (continued)

- More Granular (Balance Sheet) Asset Reporting
  - Item 1.O.
    - New Asset Tiers
    - Clarification on Balance Sheet vs. Regulatory Assets Under Management (RAUM)
- Clients with No Associated RAUM
  - Item 5.C.
    - "To approximately how many clients for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?"

New Information Regarding an Adviser's Business (continued)

- More Detailed Client Reporting
  - Item 5.D. – "Indicate the approximate **number** of your clients and amount of your total **regulatory assets under management** (reported in Item 5.F. below) attributable to each of the following **types** of client."
  - Reporting for Fewer Than Five Clients in Certain Categories
  - New Item 5.F.(3) – RAUM Attributable to Non-US Persons
- Enhanced Wrap-Fee Program Reporting
  - Item 5.I.
  - RAUM for Sponsoring Wrap Fee Program?
  - RAUM for Serving as Portfolio Manager?
  - RAUM for Serving as Sponsor and Portfolio Manager?

New Information Regarding an Adviser's Business (continued)

- Business Development Company and Registered Investment Company Parallel Managed Account RAUM
  - Item 5.G.(3) – An affirmative response requires completion of Section 5.G.(3) of Schedule D
    - "Provide the regulatory assets under management of all parallel managed accounts related to a registered investment company (or series thereof) or business development company that you advise."

New Information Regarding Separately Managed Accounts

- Separately Managed Accounts (SMAs) include any type of client other than Investment Companies, Business Development Companies, and Pooled Investment Vehicles
- Asset Category Reporting by RAUM
  - Advisers with RAUM of up to $500 million attributable to SMAs
    - Section 5.K.(1) of Schedule D – approximate percentage of RAUM attributable to SMAs across 12 categories on an annual basis
  - Advisers with RAUM of $500 million but less than $10 billion attributable to SMAs
    - Same as above, in addition to:
      - Section 5.K.(2) of Schedule D – Requires reporting of RAUM attributable to SMAs that correspond to three categories of **gross notional exposure** to derivatives, and the total dollar amount of borrowings according to the three categories. The three categories of gross notional exposure are less than 10%, 10%-149%, and 150% or more.

Calculating Gross Notional Exposure

Gross notional exposure of an account =

$$\frac{\text{the dollar amount of any borrowings + the gross notional value of all derivatives}}{\text{the RAUM of the account}}$$

Gross Notional Value: The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the reporting date. For options, use delta adjusted notional value.

Borrowings: Borrowings include secured borrowings and unsecured borrowings, collectively.

New Information Regarding Separately Managed Accounts

- Asset Category Reporting by RAUM
  - Advisers with RAUM of more than $10 billion attributable to SMAs
    - Same as advisers reporting with less than $10 billion, in addition to:
      - Being required to report both midyear (defined as six months before the end-of-year date) and end-of-year data in responding to Section 5.K.(1) of Schedule D.
      - Being required to also report midyear and end-of-year derivatives exposure corresponding to six categories of derivatives.
        - Categories: interest rate derivatives, equity derivatives, foreign exchange derivatives, credit derivatives, commodity derivatives, and others.
- Custodians for SMAs
  - Custodians that hold 10% or more of an adviser's RAUM attributable to SMAs must be reported on Section 5.K.(3) of Schedule D, including the location of the custodian's office responsible for custody of the assets.

New Information Regarding Separately Managed Accounts (continued)

- Interpretive Guidance
  - Frequently Asked Questions on Forms ADV and IARD
    - Parallel Managed Accounts of Private Funds
    - Clarification on Borrowing Transactions
  - IM Information Update (August 2017)
    - Interim Amendments After October 1, 2017
  - Other Common Issues That Have Been Raised
    - Account Used as Collateral
    - Definition of "Derivative"
    - Manager of Manager or Sub-Adviser Relationships

Umbrella Registration

- Form ADV amendments codify the guidance provided under 2012 American Bar Association, Business Law Section, SEC no-action letter.
  - American Bar Association, Business Law Section, SEC Staff Letter (Jan. 18, 2012)
  - FAQ Withdraws Prior Guidance
- Amended Form ADV now includes Schedule R, which is the mechanism to report information regarding an adviser's *relying advisers*.
  - Disclosure regarding each relying adviser's
    - Basis for registration
    - Form of organization
    - Direct owners, executive officers, indirect owners, and control persons

Umbrella Registration (continued)

- Five General Requirements to Rely on Umbrella Registration
    1. The filing adviser and each relying adviser advise only private funds and clients in SMAs that are *qualified clients* and are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are *substantially similar* or otherwise related to those private funds.
    2. The filing adviser's principal office and place of business is 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 the client is a US person.
    3. Each relying adviser, its employees, and the persons acting on its behalf are subject to the filing adviser's supervision and control, and therefore each relying adviser, its employees, and the persons acting on its behalf are "persons associated with" the filing adviser.
    4. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and to examination by the SEC.
    5. The filing adviser and each relying adviser operate under a single code of ethics, and a single set of written policies and procedures administered by a single CCO.

Umbrella Registration (continued)

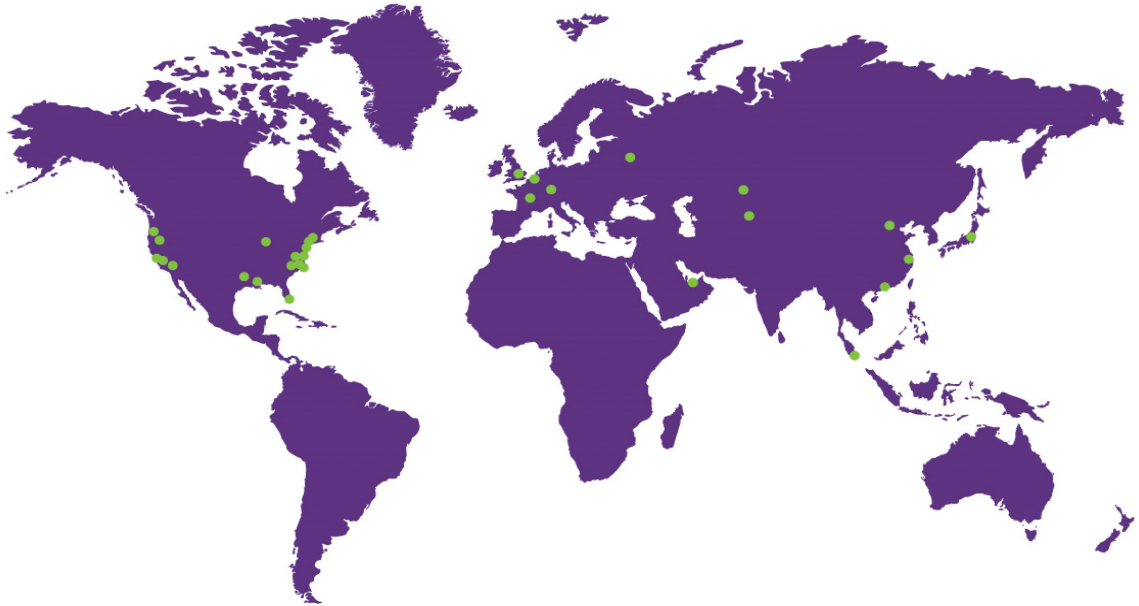
- Important to note that Umbrella Registration is NOT available for exempt reporting advisers.
- Considerations for advisers with non-US offices/advisory affiliates.
- Advisers should consider prior positions taken with respect to "relying advisers" in assessing reporting obligations going forward.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty
Astana
Beijing*
Boston
Brussels
Century City
Chicago
Dallas
Dubai
Frankfurt
Hartford
Hong Kong*
Houston
London
Los Angeles
Miami
Moscow
New York
Orange County
Paris
Philadelphia
Pittsburgh
Princeton
San Francisco
Shanghai*
Silicon Valley
Singapore
Tokyo
Washington, DC
Wilmington



Morgan Lewis

*Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners.

THANK YOU

© 2018 Morgan, Lewis & Bockius LLP
© 2018 Morgan Lewis Stamford LLC
© 2018 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan Lewis operates through Morgan, Lewis & Bockius, which is a separate Hong Kong general partnership registered with The Law Society of Hong Kong as a registered foreign law firm operating in Association with Luk & Partners.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.