



Registration of Investment Advisory Affiliates

Posted by Paul N. Roth, Schulte Roth & Zabel LLP, on Friday February 24, 2012

Editor's Note: [Paul N. Roth](#) is a founding partner of Schulte Roth & Zabel LLP and chair of the firm's Investment Management Group. This post is based on a Schulte Roth & Zabel Client Alert by Mr. Roth, [Marc E. Elovitz](#), and [Brad L. Caswell](#).

On Jan. 18, 2012, the SEC's Division of Investment Management issued a [no-action letter](#)¹ permitting registered advisers to private funds ("filing advisers") to include general partners and similar SPVs of their affiliated funds on the filing adviser's Form ADV. In addition, U.S. filing advisers who have affiliated investment advisory firms which are controlled by, or under common control with, the filing adviser, may include such affiliates ("relying advisers") on their Form ADV, when they are considered part of a single advisory business. The staff set forth certain circumstances where a single advisory business would exist, absent facts suggesting otherwise. This *Alert* focuses on the practical implications for our clients of the Staff's no-action letter.

Fund General Partners, Managing Members and Similar SPVs

Fund general partners, managing members and other similar SPVs generally do not need to separately register provided that the SPV, its employees and persons acting on its behalf are subject to supervision and control by the registered adviser, and therefore are "persons associated with" the registered adviser. This position applies to registered advisers with single or multiple SPVs. An SPV with independent directors may also rely on this position provided that those independent directors are the only persons acting on the SPV's behalf that the registered adviser does not supervise and control.

Investment Advisory Affiliates — Single Registration

Many registered advisers have investment advisory affiliates formed to manage different funds, to permit different compensation structures or formed for tax liability or other purposes. The Staff's

¹ Copies of the Staff's no-action letter and the letter from the ABA Subcommittee on Hedge Funds, which requested the Staff's position, are available at <http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm>. Please refer to the Staff's response for the conditions to permit a filing adviser to include its investment advisory affiliates as relying advisers on its Form ADV.

response permits a registered adviser to file a single Form ADV — for the filing adviser and its relying advisers — provided that the filing adviser’s affiliates are controlled by or under common control with the filing adviser — and the filing adviser and each relying adviser collectively conduct a single advisory business as set forth in the no-action letter. Filing a single registration is permitted, but it is not required and advisers have the option to separately file if they otherwise qualify.

The Staff’s no-action letter is critical for U.S. advisers with international affiliates (in the U.K., Hong Kong or elsewhere). These international advisory affiliates may provide research, advice or trading services to the U.S. registered adviser and/or the private funds it advises. The Staff’s response permits the filing adviser to include these affiliates on the filing adviser’s Form ADV, rather than separately filing for each affiliate, subject to the conditions in the letter. The Staff’s response applies only in situations where the filing adviser has its principal office and place of business in the United States.

All of the substantive provisions and rules under the Advisers Act apply to the filing adviser and each relying adviser’s dealings with each of its clients, regardless of whether any client or adviser is a U.S. person. Another key condition is that the advisers operate under a single code of ethics and compliance policies in accordance with the Advisers Act and administered by a single chief compliance officer. The Staff noted, however, that a relying adviser operating in a different jurisdiction may have obligations that differ from the filing adviser or another relying adviser.

The filing adviser must state in the Miscellaneous Section of Schedule D of Part 1A of Form ADV that it and its relying advisers are together filing a single Form ADV in reliance on the guidance. The filing adviser must identify each relying adviser by completing a separate Section 1.B of Schedule D for each relying adviser, identifying it by including the notation “relying adviser,” and must include all information concerning the filing adviser and each relying adviser in the Form ADV.