

### WEBINAR: AMENDED FORM ADV

February 23, 2018

### Introduction

- Amended Form ADV Part 1A
  - Any Form ADV submitted on or after October 1, 2017 must use the amended form
    - An adviser with a December 31<sup>st</sup> fiscal year-end must submit its annual amendment by March 31, 2018
  - Completing the amended Form ADV will take more time
    - Start the process of collecting data as early as possible
      - Certain large advisers are required to provide mid-year and end of year data, starting with 2017
    - Amended Form ADV requires more precise data about clients
  - Certain new items are related to conflict of interest and risk areas identified by the SEC Staff and we believe will likely be considered when the SEC selects advisers for examination

## **Webinar Outline**

- I. Separately Managed Accounts ("SMAs")
- II. Umbrella Registration
- III. Other New or Amended Items
- IV. Questions

I. Separately Managed Accounts

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# Item 5.K.(1) Separately Managed Accounts

 Do you have regulatory assets under management ("RAUM") attributable to SMAs?

SMA RAUM =

Total RAUM minus

RAUM attributable to investment companies, BDCs, and pooled investment vehicles

- "Pooled investment vehicles"
  - Not limited to private funds
  - Includes certain offshore funds and "funds of one"

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# Item 5.D. Client Types

- Indicate the number of clients and RAUM in 14 client types, including:
  - Item 5.D.(a) Individuals
  - Item 5.D.(b) High net worth individuals
  - Item 5.D.(d) Investment companies
  - Item 5.D.(e) Business development companies
  - Item 5.D.(f) Pooled investment vehicles (other than ICs and BDCs)
  - Item 5.D.(I) Sovereign wealth funds and foreign official institutions
    - Notes:
      - "Fewer than 5 Clients"
      - Total RAUM in Item 5.D.(3) must equal total RAUM in Item 5.F.(2)(c)

# Item 5.D. Client Types

Type of Client	(1) Number of Client(s)	(2) Fewer than 5 Clients	(3) Amount of Regulatory Assets Under Management
(a) Individuals (other than high net worth individuals)			
(b) High net worth individuals			
(c) Banking or thrift institutions			
(d) Investment companies			
(e) Business development companies  (f) Pooled investment vehicles (other than investment companies and business development companies)			
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)			
(h) Charitable organizations			
(i) State or municipal government entities (including government pension plans)			
(j) Other investment advisers			
(k) Insurance companies			
(I) Sovereign wealth funds and foreign official institutions			
(m) Corporations or other businesses not listed above			
(n) Other:			

# Section 5.K.(1) SMA Asset Types

- CHART: Section 5.K.(1) of Schedule D
  - Indicate approximate percentage of SMA RAUM in 12 asset categories
  - Instructions
    - If your SMA RAUM is:
      - Less than \$10 billion, report end of year information
      - \$10 billion or more, report mid-year and end of year information
    - In categorizing assets, you may use your own internal methodologies and the conventions of your service providers
      - Do not double count assets
    - If you are a sub-adviser, report only the portion of the SMA that you subadvise
    - Do not report investments based on related or underlying portfolio assets

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# Section 5.K.(1) SMA Asset Types

Asset Type	Mid-year	End of Year
(i) Exchange-Traded Equity Securities	%	
(ii) Non Exchange-Traded Equity Securities		
(iii) U.S. Government/Agency Bonds		
(iv) U.S. State and Local Bonds		
(v) Sovereign Bonds		
(vi) Investment Grade Corporate Bonds		
(vii) Non-Investment Grade Corporate Bonds		
(viii) Derivatives		
(ix) Securities Issued by Registered Investment Companies or Business Development Companies		
(x) Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies or Business Development Companies)		
(xi) Cash and Cash Equivalents		
(xii) Other		

## Item 5.K.(2)-(3) SMA Borrowings and Derivatives

- (2) Do you engage in borrowing transactions on behalf of SMA clients?
  - Definition of borrowings secured and unsecured
- (3) Do you engage in derivative transactions on behalf of SMA clients?
  - Definition of derivatives
- If you answer "yes" to either question, complete the chart in Section 5.(K)(2) of Schedule D
  - If your SMA RAUM is:
    - Less than \$500 million, you are not required to complete Section 5.K.(2) of Schedule D
    - \$500 million or more but less than \$10 billion, report end of year information on the use of borrowings only
    - \$10 billion or more, report <u>both mid-year and end of year information on the use</u> of borrowings and <u>derivatives</u>
  - Aggregate holdings in SMAs to calculate borrowings and derivatives
  - May exclude any SMA with RAUM of less than \$10 million
  - If you are a sub-adviser, report only the portion of the SMA that you sub-advise

# Section 5.K.(2) SMA Borrowings & Derivatives

- CHART: Section 5.K.(2) of Schedule D
  - Report SMA RAUM, borrowings and derivatives attributable to the following gross notional exposure levels:
    - Less than 10%
    - 0 10-149%
    - 150% or more
- Key Terms
  - Gross Notional Exposure percentage ("GNE%") of an account = Dollar amount of borrowings plus "Gross Notional Value" of all derivatives / RAUM of account
  - Gross Notional Value = Gross nominal or notional value of all transactions entered into but not settled

## Section 5.K.(2)(b) SMA Borrowings & Derivatives

 Complete for end of year if SMA RAUM is \$500 million or more but less than \$10 billion and "yes" to borrowings or derivatives

Gross Notional Exposure (GNE)	1 Regulatory Assets Under Management	2 Borrowings		
Less than 10%				
10-149%				
150% or more				

 Following the GNE calculation for each account, aggregate all SMAs in each GNE% row for reporting purposes

## Section 5.K.(2)(a) SMA Borrowings & Derivatives

 Complete for mid-year and end of year if SMA RAUM is at least \$10 billion and "yes" to borrowings or derivatives

Gross Notional Exposure (GNE)	1 Regulatory Assets Under Management	2 Borrowings	3 Derivative Exposures					
			(a) Interest Rate Derivative	(b) Foreign Exchange Derivative	(c) Credit Derivative	(d) Equity Derivative	(e) Commodity Derivative	(f) Other Derivative
Less than 10%								
10-149%								
150% or more								

- Follow the same process for completing Item 5(k)(3) of Schedule D (\$10 billion and over), but add derivative reporting
- Determine derivative exposure (%) by dividing the gross notional value (\$) of all interest rate derivatives into a GNE% range by the RAUM (\$) of the SMAs included that range

## Item 5.K.(4) 10% SMA RAUM Custodians

- Does any custodian hold 10% or more of your SMA RAUM?
  - If "yes," complete Section 5.K.(3) of Schedule D, which requires the reporting of:
    - Location(s) of the custodian's office(s) responsible for custody of the assets
    - Custodian's SEC registration number or legal entity identifier, if any
    - Amount of your SMA RAUM held at the custodian

# II. Umbrella Registration

## **Umbrella Registration**

#### Description

 Subject to certain conditions, a filing adviser and one or more relying advisers who collectively conduct a single advisory business may complete a single Form ADV

#### Considerations

- A single Form ADV reduces administrative burden
- The conditions to umbrella registration include additional requirements and limit the availability of umbrella registration

## Conditions to Umbrella Registration

- Umbrella registration is available subject to following conditions:
  - The filing adviser and each relying adviser advise only private funds and clients in separately managed accounts 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.
    - Only available to private fund advisers
  - 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 of the filing adviser or relying adviser providing the advice is a United States person.
    - Only available to U.S. filing advisers

# Conditions to Umbrella Registration

- Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are "persons associated with" the filing adviser (as defined in section 202(a)(17) of the Advisers Act).
  - Each relying adviser's employees must be subject to the filing adviser's supervision and control
- iv. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the SEC.
  - Each relying adviser is subject to the Advisers Act and SEC exams

# Conditions to Umbrella Registration

- v. The filing adviser and each relying adviser operate under a single code of ethics adopted in accordance with SEC rule 204A-1 and a single set of written policies and procedures adopted and implemented in accordance with SEC rule 206(4)-7 and administered by a single chief compliance officer in accordance with that rule.
  - Requires a single code of ethics, set of compliance policies and procedures, and CCO
- vi. Each relying adviser must be independently eligible to register or remain registered with the SEC.
  - Not available to Exempt Reporting Advisers

# Completing an Umbrella Registration

- When completing an umbrella registration:
  - References to "you" in Form ADV refer to both the filing adviser and each relying adviser
    - Except that Items 1, 2, 3 and 10 refer to the filing adviser only
- Complete Schedule R for each relying adviser
  - Do not check Item 7.A.(2) and do not complete Section 7.A. of Schedule D for your relying advisers

## III. Other New or Amended Items

### Item 1.F. Other Offices

- **Item 1.F.** List any office, other than your principal office and place of business, at which you conduct investment advisory business
  - List your top 25 offices by number of employees
  - Determination of what is an "office"
  - SEC OCIE Multi-Branch Adviser Initiative

### Item 1.I. Social Media Accounts

- Item 1.I. Report websites or accounts on publicly available social media platforms
  - Includes, but is not limited to, Twitter, Facebook and LinkedIn
  - Only include websites or accounts where you control the content
  - Do not include employee social media accounts

### Item 1.J. Outsourced CCO

- Item 1.J. If your CCO is compensated or employed by any person other than you, a related person or a registered investment company that you advise for providing CCO services to you, provide the person's name and IRS Employer Identification Number
  - Previously the subject of an SEC OCIE Risk Alert

### Item 5 Information About Your Advisory Business

- Item 5.C.(1) To how many clients for whom you do not have RAUM did you
  provide investment advisory services
  - Refers to certain non-discretionary clients
- Item 5.F.(3) What amount of your RAUM is attributable to clients who are non-U.S. persons

• Item 5.I. – What amount of your RAUM is attributable to acting as a wrap fee program sponsor; portfolio manager; or sponsor and portfolio manager

## Item 5 Information About Your Advisory Business

- Item 5.G.(3) If you provide portfolio management for registered investment companies or certain business development companies, you must complete Section 5.G.(3) of Schedule D
  - Section 5.G.(3) of Schedule D requires you to provide the RAUM of all "parallel managed accounts" related to a registered investment company (or series thereof) or business development company that you advise.

# Section 7.B.(1).A. Private Fund Reporting

- Question 15.(b) If the private fund is a 3(c)(1) fund, are sales of the fund limited to qualified clients?
- Questions 23.(g) and 23.(h) New language in italics:
  - Are the private fund's audited financial statements for the most recently completed fiscal year distributed to the private fund's investors?
  - Do all of the reports prepared by the auditing firm for the private fund since your last annual updating amendment contain unqualified opinions?

### Item 8.H. Client Referrals

- Item 8.H. Do you or any related person, directly or indirectly:
  - (1) Compensate any person that is not employee for client referrals?
  - (2) Provide any employee compensation that is specifically related to obtaining clients for the firm?

"Client" refers to a fund and not to fund investors

# IV. Questions

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# Patricia A. Poglinco

### Partner | 212-574-1247 | poglinco@sewkis.com



#### Education

- J.D., Albany Law School of Union University, 1986
- A.B., Mount Holyoke College, magna cum laude, 1981

#### **Bar Admissions**

New York

#### **Summary**

Patricia A. Poglinco is a partner in and co-head of Seward & Kissel's Investment Management group. Pat joined Seward & Kissel in 1986 and has been a partner since 1994.

Pat's practice specialties include the representation of investment advisers and related regulatory compliance; the formation and representation of private investment partnerships, group trusts and various offshore investment vehicles; the formation and CFTC registration of commodity pools, commodity pool operators and commodity trading advisors; the formation and ongoing representation of registered investment companies (open-end and closed-end funds) and their managers, distributors, underwriters and other service providers; and general securities and general corporate matters.

### Robert B. Van Grover

#### Partner | 212-574-1205 | vangrover@sewkis.com



#### Education

- J.D., St. John's University School of Law, 1983
- LL.M., Tax, New York University School of Law, 1989
- B.S., SUNY Albany, 1980

#### **Bar Admissions**

New York

#### **Summary**

Robert B. Van Grover is a partner in and co-head of Seward & Kissel's Investment Management Group. He joined the Firm in 1997.

Rob specializes in the formation and representation of private funds (U.S., offshore, single and multi-strategy, fund of funds and private equity), investment advisers (federal or state registered and non-registered), broker-dealers, commodity pool operators and commodity trading advisers. Rob advises clients on a wide variety of securities, tax and business law matters relating to the investment management business, including compliance and regulatory matters, fund and management company structuring, counseling on mergers and acquisitions, buy-sell agreements, employment matters, non-compete and confidentiality agreements, marketing and distribution arrangements and presentation materials, joint ventures, seed capital arrangements, soft dollar and other brokerage arrangements, and general organizational matters.

Rob is a contributing author to Hedge Funds: Law and Regulation (Sweet & Maxwell 2001) (chapter entitled, "U.S. Legal and Regulatory Issues Faced by Offshore Funds and Their Sponsors") and has authored articles on various investment management topics. Rob is a frequent speaker on "hedge fund" and investment management related issues.

Rob is a member of the American Bar Association (Business Section) and the International Bar Association.

### Paul M. Miller

#### Partner | 202-737-8833 | millerp@sewkis.com



#### Education

- J.D., Syracuse University College of Law, cum laude, 1998
- B.S., University of North Carolina at Chapel Hill, Kenan
   Flagler Business School, 1994

#### **Bar Admissions**

- District of Columbia
- Virginia

#### Summary

Paul M. Miller is a partner in Seward & Kissel's Investment Management Group and is located in Seward & Kissel's Washington D.C. office. Paul joined Seward & Kissel in 1998 and became a partner in 2008.

Paul's practice focuses primarily on registered investment companies, registered investment advisers and broker-dealers. He has worked extensively on the full range of matters affecting registered funds, including their formation, their registration with the Securities and Exchange Commission under the Investment Company Act of 1940, their service provider arrangements with investment advisers, distributors, transfer agents and custodians and their ongoing regulatory reporting and compliance obligations. He has also worked on the full range of matters affecting registered investment advisers, including their formation, their registration with the Securities and Exchange Commission under the Investment Advisers Act of 1940, their participation in managed account and wrap programs and their ongoing regulatory reporting and compliance obligations. He regularly advises registered funds and registered advisers on matters relating to their periodic examination by the staff of the Securities and Exchange Commission. He has advised broker-dealers on their ongoing regulatory and compliance obligations and on brokering deposit products and deposit account sweep products.

Paul is a member of the Federal Bar Association and the Virginia Bar Association.

# **David Tang**

### Counsel | 212-574-1260 | tang@sewkis.com



#### Education

- J.D., University of California, Los Angeles School of Law, 2002
- B.A., SUNY Binghamton, magna cum laude, 1996

#### **Bar Admissions**

New York

#### **Summary**

David Tang is Counsel in Seward & Kissel's Investment Management Group.

David specializes in providing regulatory compliance consulting to registered investment advisers. In particular, he advises investment managers on the design and implementation of compliance policies and procedures, including the code of ethics, personal trading, gifts and entertainment, insider trading, expert networks, best execution, soft dollars, investment allocation, valuation, expense allocation, conflicts of interest, business continuity, cybersecurity and recordkeeping. He also advises on SEC registration requirements and available exemptions.

David regularly represents investment advisers through the SEC examination process. He conducts mock audits, risk assessments and compliance testing on an attorney-client privileged and confidential basis. David advises managers on Form ADV and other regulatory filings, and provides on-site compliance and insider trading training. He also counsels advisers on the impact of regulatory developments, such as recent SEC enforcement actions as well as new and proposed rules.

David is also well experienced in the formation and representation of private funds, advising on offering documentation, investment management agreements, separate account agreements, solicitation agreements, seed capital arrangements, side letters, employment matters, non-compete and non-solicit agreements, non-disclosure agreements, brokerage agreements and service provider agreements.

David's advice draws from a wealth of in-house experience, having served as Chief Compliance Officer and senior counsel to multiple SEC registered investment management firms. David began his career as an associate in Seward & Kissel's Investment Management Group in 2002.



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