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SEC Issues FAQs for Exempt Reporting Advisers Regarding Form ADV Disclosures for General Partners or Similar Special Purpose Entities

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On March 19, the Securities and Exchange Commission (the "SEC") provided additional guidance ("FAQs") to exempt reporting advisers under section 203(l) and 203(m) of the Investment Advisers Act ("ERAs") for completing Form ADV Part 1A. The FAQs address those situations in which a general partner, managing member or similar special purpose entity ("SPE") retains oversight and termination authority over an ERA's management of a private fund. According to the new guidelines, such SPE: (i) is not required to file a report on Form ADV separately from the ERA for its advisory activities; but (ii) must disclose its ownership structure and information pertaining to its executive officers. This information must be disclosed on Schedules A and B of Form ADV.

The new FAQs identify when and which disclosures ERAs must make on Form ADV regarding SPEs. Specifically, they address the circumstance where, although an ERA has discretionary authority over a private fund's assets, an SPE may terminate the ERA's management of the private fund.

The FAQs explain that in this scenario an ERA and an SPE may satisfy their reporting obligations by including the SPE's information on the ERA's Form ADV. This reporting option is available as long as the SPE: (i) does not engage in any activities that would cause the SPE to be an investment adviser (other than the hiring or firing of the ERA); and (ii) acts as the SPE only for funds or other pooled investment vehicles advised by the ERA or its related persons.

The FAQs state that ERAs must include on Form ADV all of the information that would be included if each SPE filed a separate report on Form ADV. Therefore, a Form ADV submitted by an ERA must include: (i) executive officer and ownership information of each SPE on Schedules A and B; (ii) information in the "Title or Status" column of Schedule A that identifies the SPE to which each officer or owner relates; and (iii) responses to questions in Form ADV that provide information pertaining to each SPE included in the Form ADV, in addition to information pertaining to the ERA.

These guidelines may require ERAs to amend their recently filed Form ADV submissions, depending on the information they previously included on Schedules A and B.

If you have any questions regarding the SEC's FAQs or your Form ADV, please contact the authors of this Client Alert or your O'Melveny & Myers advisor.

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