

Corporate & Financial Weekly Digest

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SEC Provides Guidance on Umbrella Registration of Investment Advisers

On January 18, the Securities and Exchange Commission issued a no-action letter (the 2012 Letter) in response to a number of questions relating to the registration requirements of certain entities that are affiliated with registered investment advisers.

First, the 2012 Letter reiterates the continued validity of the position taken in a 2005 no-action letter (the 2005 Letter) regarding the registration requirement of certain special purpose vehicles (SPVs) created by registered investment advisers to private funds. The 2005 Letter provided that an SPV need not separately register so long as (i) the registered adviser to the private funds establishes the SPV to act as the private funds' general partner or managing member; (ii) the SPV's formation documents designate the investment adviser to manage the private funds' assets; (iii) all of the investment advisory activities of the SPV are subject to the Investment Advisers Act and the rules thereunder, and the SPV is subject to examination by the SEC; and (iv) the registered adviser subjects the SPV, its employees and persons acting on its behalf to the registered adviser's supervision and control.

Second, the 2012 Letter makes clear that the position taken in the 2005 Letter was not intended to be limited to a registered adviser with a single SPV.

Third, the 2012 Letter provides that the position taken in the 2005 Letter would apply to SPVs with independent directors that the registered adviser does not supervise and control, so long as the only persons acting on an SPV's behalf that the registered adviser does not supervise and control are the SPV's independent directors.

Finally, the 2012 Letter provides that an investment adviser (a filing adviser) may file a single Form ADV on behalf of itself and each other adviser that is controlled by or under common control with the filing adviser (each, a relying adviser) where the filing adviser and each relying adviser collectively conduct a single advisory business, so long as the following conditions are met:

- The filing adviser and each relying adviser advise only private funds and separate account clients 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.

- Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control.
- The filing adviser has its principal office and place of business in the United States.
- The advisory activities of each relying adviser are subject to the Investment Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the SEC.
- 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 chief compliance officer.
- The filing adviser discloses in its Form ADV that it and its relying advisers are together filing a single Form ADV and identifies each relying adviser.

To read the 2012 Letter, click [here](#).

To read the 2005 Letter, click [here](#).

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC