

New Rules for Investment Advisers: Have You Properly Calculated Your Assets Under Management?

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Under the [new rules](#) for investment advisers, one of the most important factors to take into consideration when determining whether a registered investment advisor should be registered with the SEC is assets under management or AUM. In general, calculating what is considered “assets under management” requires careful analysis.

General Rule Changes

As detailed in the new instructions to Part 1A of Form ADV, regulatory assets under management include the securities portfolios for which the adviser provides continuous and regular supervisory or management services as of the date of the Form ADV filing. An account is a securities portfolio if at least half of the total value of the account consists of securities, cash, and cash equivalents.

Under the new rules, the following must be included in the calculation:

- Proprietary assets;
- Assets managed without compensation;
- Accounts of clients who are not United States persons; and
- Uncalled capital commitments.

An adviser must determine the amount of its private fund assets based on the market value of those assets, or fair value of those assets where market value is unavailable. In addition, assets must be calculated on a gross basis, without deducting liabilities, such as accrued fees and expenses or the amount of any borrowing.

Rules for Private Funds

To determine eligibility for the Private Fund Adviser Exemption, advisers must annually aggregate the value of all its private fund assets to assess whether these asset values fall below the \$150 million threshold. Amended Form ADV outlines how advisers should calculate the value of their “regulatory assets under management.”

Specifically, an investment adviser must:

- Include the value of any private fund assets over which it exercises continuous and regular supervisory and management services, regardless of the nature of the asset held by the fund;
- Include the amount of any uncalled capital commitments made to the fund by investors;

- Use the market value of private fund assets, or the fair market value is the market value is unavailable. If the fund's governing documents provide for a specific process for calculating the fair value, for example if the general partner has discretion over the determination, then the adviser may rely on such process for purposes of the regulatory asset calculation, if it has done so consistently and in good faith. If the adviser uses GAAP or some other basis for financial reporting purposes, then the adviser must use the same basis.

How We Can Help Ensure Compliance

With the March 2012 deadline fast approaching, advisers to hedge and private equity funds should be beginning the registration process in earnest. If you are concerned about your company's progress, please contact us to find out how we can help.

Eckerle Law offers a highest-quality and cost-effective alternative to the traditional law firm model for a wide variety of transactional and regulatory matters serving all your business law needs. Our experienced attorneys also provide a full range of compliance services for investment advisers, offering compliance tools that are tailored to fit the ever changing regulatory landscape as well as your business needs.

If your company would like to strengthen its business practices, please [contact us](#) today so we can leverage our experience to create real-life business and legal solutions to help your business thrive.