

Funds Regulatory and Investigations Update

Tips and Tricks for Annual Form ADV Update Season

February 22, 2022

Registered investment advisers and exempt reporting advisers (“**ERAs**”) are required to file an annual update to Form ADV with the Securities and Exchange Commission (“**SEC**”) within 90 days after the end of their fiscal years.¹ Accordingly, a registered adviser or ERA whose fiscal year ended on December 31, 2021 must submit an annual Form ADV update no later than Thursday, March 31, 2022. Below are some practical suggestions that registered advisers and ERAs² should consider when preparing to file their annual Form ADV updates.

Aim to File the Update by 8 p.m. (ET) on March 31, 2022

Registered advisers and ERAs should aim to submit their filings no later than 8 p.m. (ET) on the filing deadline, March 31, 2022. The Investment Adviser Registration Depository (“**IARD**”), the system that advisory firms use to submit Form ADV filings with the SEC, is generally available until 11 p.m. (ET) on weekdays.³ However, the IARD Call Center, which provides advisory firms with IARD system support, is only available 8 a.m. to 8 p.m. (ET) from Monday to Friday. In the event that an advisory firm encounters an IARD system technical issue after 8 p.m. (ET) on the filing deadline, it would be unable to receive system support from the IARD Call Center.

Start Collecting Private Fund and SMA Client Information as Soon as Possible

Registered advisers (and ERAs with private fund clients) must continue to provide individual reporting regarding their private fund clients and, as applicable, aggregate information regarding separately managed accounts (“**SMAs**”) they manage. In particular, advisers must report information about private funds in Section 7.B of Schedule D and information about SMA clients in Item 5.K of Part 1A, as applicable. Firms should start collecting this information as soon as possible, as this process often takes some time and coordination.

Advisers should continue to review newly formed advisory relationships (*e.g.*, funds that have closed throughout the year or where they have entered into new advisory agreements with SMAs) to collect necessary reporting information for their annual Form ADV updates. More generally, advisers should review any changes to their businesses or other practices over the past year to ensure they are capturing necessary updates for Part 1 and

¹ See Advisers Act Rule 204-1 and Rule 204-4; see also [Form ADV: General Instructions](#).

² ERAs are only required to complete some of the items in Form ADV Part 1A and are not required to complete Form ADV Part 2A. As such, the suggestions in this update relating to separately managed account reporting and Part 2A are not relevant to ERAs.

³ See [IARD/PERD Availability Schedule](#). IARD is typically available Monday through Friday from 5 a.m. to 11 p.m. (ET), Saturday from 8 a.m. to 6 p.m. (ET), and Sunday from 10 a.m. to 6 p.m. (ET).

Part 2. Advisers should also continue to retain back-up documentation for the information they use to populate their Form ADV and any assumptions or internal practices supporting their responses.

Confirm That the IARD Flex-Funding Account Has Sufficient Funds

Registered advisers must pay a filing fee in the amount of either \$40, \$150, or \$225, depending on the amount of their regulatory assets under management (“**RAUM**”), in connection with their annual Form ADV updates.⁴ ERAs must pay a filing fee in the amount of \$150 in connection with their annual Form ADV updates.⁵ The fees must be credited to the advisory firm’s IARD Flex-Funding Account *before* an annual update filing can be submitted.

Firms should check their Flex-Funding Accounts well in advance of when they expect to submit their Form ADV filings and confirm there are sufficient funds to cover the applicable filing fee. In the event that there are insufficient funds, advisory firms will need to have enough time to arrange for the necessary check payments or wire transfers to fund their Flex-Funding Accounts.⁶

Run a Completeness Check a Few Days Before the Filing Will Be Submitted

The IARD system has a “completeness check” feature that enables advisory firms to identify any required fields in draft Form ADV filings that have not yet been completed. Running a completeness check will also highlight the lack of sufficient funds in a Flex-Funding Account to cover filing fees and also helps to identify any technical issues that may require assistance from the IARD Call Center. An advisory firm will be unable to submit its Form ADV filing until all completeness check errors have been resolved.

We caution advisory firms against waiting to run a completeness check until the date that they plan to submit their Form ADV filings in order to avoid unanticipated delays or problems when they do submit their filings. A completeness check is also not a substitute for careful review of the draft Form ADV, so we recommend advisers allow sufficient time between entering information and submission in order to perform a quality control check prior to filing.

Verify That the PDF of Part 2A Is Text-Searchable

Registered advisers that are required to complete a Form ADV Part 2A need to upload a PDF of their updated Part 2A to the IARD system before submitting their Form ADV filings. According to the “General Instructions for Part 2 of Form ADV,”⁷ a PDF of Part 2A must be text-searchable. As a practical matter, the IARD system will not

⁴ The annual update filing fee is \$40 for registered advisers with less than \$25 million in RAUM, \$150 for those with between \$25 million and \$100 million in RAUM, and \$225 for those with \$100 million or more in RAUM. See [Electronic Filing for Investment Advisers on IARD: IARD Filing Fees](#).

⁵ No fee is charged to registered advisers or ERAs for filing an other-than-annual update to Form ADV. See *id.*

⁶ It may take up to two business days for a firm’s check payment or wire transfer to be processed and posted in the firm’s Flex-Funding Account. See [Investment Adviser Accounting and Payments Methods](#).

⁷ See [General Instructions for Part 2 of Form ADV](#).

permit advisory firms to upload a PDF of Part 2A that is not text-searchable. We, therefore, recommend that registered advisers ensure in advance that the PDF of Part 2A they plan to upload is in a text-searchable format.

Confirm That the Adviser Does Not Have a Form CRS Requirement

Registered advisers should confirm whether they offer any services to “retail investors.”⁸ Under Advisers Act Rule 204-5, registered investment advisers must prepare, file (through the IARD system) and provide to “retail investors” a brief relationship summary, referred to as Form CRS, before or at the time the adviser enters into an investment advisory contract with a retail investor. A registered investment adviser, or a supervised person acting on its behalf, must deliver its current Form CRS to each “retail investor”: (i) before or at the time it enters into an investment advisory contract with that “retail investor”; and (ii) who is an existing client upon the occurrence of certain triggering events (*e.g.*, where the adviser opens a new account for its “retail investor” client). If applicable, Form CRS should be filed through IARD as Form ADV Part 3.

Advisers to private funds are generally **not** required to prepare, file or deliver a Form CRS, so long as they do not have any SMA advisory clients who are “retail investors,” *i.e.*, a natural person, or a legal representative thereof, receiving investment advisory services primarily for personal, family, or household purposes.

⁸ Advisers Act Rule 204-5 defines a “retail investor” as “a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family or household purposes.” See also [General Instructions for Part 3 of Form ADV](#).

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