

# Memorandum

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## Tips and Tricks for Annual Form ADV Update Season

February 5, 2019

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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.<sup>1</sup> Accordingly, a registered investment adviser or ERA whose fiscal year ended on December 31, 2018 must submit an annual Form ADV update no later than March 31, 2019. Below are some practical suggestions that registered investment advisers and ERAs<sup>2</sup> should consider in connection with preparing to file their annual Form ADV updates.

### **Aim to File the Update by the Friday Before March 31, 2019**

This year, the filing deadline falls on a Sunday. The Investment Adviser Registration Depository (“IARD”), the system that advisory firms use to submit Form ADV filings with the SEC, is generally available on Sundays from 10 a.m. to 6 p.m. (ET).<sup>3</sup> Registered advisers and ERAs may therefore file annual Form ADV updates as late as 6 p.m. (ET) on Sunday, March 31, 2019.

Nonetheless, we suggest that registered advisers and ERAs aim to submit their filings no later than 8 p.m. (ET) on Friday, March 29, 2019. We make this suggestion based on the fact that the IARD Call Center, which provides advisory firms with IARD system support, is only available 8 a.m. to 8 p.m. (ET) Monday through

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<sup>1</sup> See Advisers Act Rule 204-1 and Rule 204-4; see also *Form ADV: General Instructions*, available at <https://www.sec.gov/about/forms/formadv-instructions.pdf>.

<sup>2</sup> 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 practical suggestions we make in this Memorandum relating to separately managed account reporting and Part 2A are not relevant to ERAs.

<sup>3</sup> See *IARD/PFRD Availability Schedule*, available at <https://www.iard.com/availability>. IARD is also typically available Monday through Friday from 5 a.m. to 11 p.m. (ET) and Saturday from 8 a.m. to 6 p.m. (ET).

Friday.<sup>4</sup> In the event an advisory firm encounters an IARD system technical issue after 8 p.m. (ET) that Friday, it would be unable to receive system support from the IARD Call Center.

### **Start Collecting Separately Managed Account Information as Soon as Possible**

Registered investment advisers must provide aggregate information regarding separately managed accounts (“SMAs”) they manage.<sup>5</sup> In particular, registered advisers must report information in Item 5 of Form ADV Part 1A relating to the types of assets held by SMAs, the use of derivatives and borrowings by SMAs, and the custodians that hold SMA assets.

Some registered advisers to private funds may have first started managing SMA clients after they filed their most recent annual Form ADV updates. Those firms may, for the first time, need to report information about SMA clients in their upcoming annual Form ADV updates. We recommend these firms start collecting this information as soon as possible, as this process could take some time and coordination.

### **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.<sup>6</sup> ERAs must pay a filing fee in the amount of \$150 in connection with their annual Form ADV updates.<sup>7</sup> The fees must be credited to the advisory firm’s IARD Flex-Funding Account before an annual update filing can be submitted.

We recommend that firms 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 there are insufficient funds, advisory firms will have enough time to arrange for the necessary check payments or wire transfers to fund their Flex-Funding Accounts.<sup>8</sup>

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<sup>4</sup> See *id.*

<sup>5</sup> This requirement became effective as part of a larger rulemaking in 2017. For a fuller discussion of the revisions made to Form ADV, please see our September 2017 Memorandum entitled *Form ADV Amendments Effective October 1, 2017*, available at [https://www.stblaw.com/docs/default-source/memos/firmmemo\\_09\\_26\\_2017.pdf](https://www.stblaw.com/docs/default-source/memos/firmmemo_09_26_2017.pdf).

<sup>6</sup> 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*, available at <https://www.sec.gov/divisions/investment/iard/iardfee.shtml>.

<sup>7</sup> No fee is charged to registered advisers or ERAs for filing an other-than-annual update to Form ADV. See *id.*

<sup>8</sup> 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 Payment Methods*, available at <https://www.iard.com/accounting>.

## **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 a draft Form ADV filing 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. 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 they plan to submit their Form ADV filings. Rather, advisory firms should be prudent to run a completeness check a few days before they expect to submit their filings. Taking this precautionary step will help ensure the advisory firm does not experience unanticipated delays or problems at the time they plan to submit their filings.

## **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 filing. According to the “General Instructions for Part 2 of Form ADV,”<sup>9</sup> a PDF of Part 2A must be text-searchable. In fact, as a practical matter, the IARD system will not 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 text-searchable format.

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<sup>9</sup> See <https://www.sec.gov/about/forms/formadv-part2.pdf>.

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