

Funds Regulatory and Investigations Update

Tips and Tricks for Annual Form ADV Update Season

February 3, 2020

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, 2019 must submit an annual Form ADV update no later than March 30, 2020. 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 30, 2020

Registered advisers and ERAs should aim to submit their filings no later than 8 p.m. (ET) on the filing deadline, March 30, 2020. 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. 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) on weekdays. 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.

Registered advisers and ERAs should note that while March 31st is the filing deadline in most years, March 30th is the filing deadline this year because 2020 is a leap year.

Start Collecting Separately Managed Account Information as Soon as Possible

Registered advisers must provide aggregate information regarding separately managed accounts (“**SMAs**”) they manage. 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 advising 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

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 memorandum relating to separately managed account reporting and Part 2A are not relevant to ERAs.

³ See [IARD/PRD 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).

clients in their upcoming annual Form ADV updates. Such firms should 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.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. 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. Rather, advisory firms should run a completeness check a few days before they expect to submit their filings to avoid unanticipated delays or problems when they do 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 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 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.

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](#).

For further information about this Alert, please contact one of the following attorneys or your regular Simpson Thacher contact.

NEW YORK CITY

Barrie B. Covit
+1-212-455-3141
bcovit@stblaw.com

Brooke E. Cucinella
+1-212-455-3070
brooke.cucinella@stblaw.com

Stephen M. Cutler
+1-212-455-2773
stephen.cutler@stblaw.com

Nicholas S. Goldin
+1-212-455-3685
ngoldin@stblaw.com

Jason A. Herman
+1-212-455-3697
jherman@stblaw.com

Steven R. Klar
+1-212-455-2988
steven.klar@stblaw.com

Michael J. Osnato, Jr.
+1-212-455-3252
michael.osnato@stblaw.com

Glenn R. Sarno
+1-212-455-2706
gsarno@stblaw.com

Benjamin Wells
+1-212-455-2516
bwells@stblaw.com

Michael W. Wolitzer
+1-212-455-7440
mwolitzer@stblaw.com

Allison Scher Bernbach
+1-212-455-3833
allison.bernbach@stblaw.com

Steven Homan
+1-212-455-3225
steven.homan@stblaw.com

Amanda H. McGovern
+1-212-455-2167
amcgovern@stblaw.com

Anar Rathod Patel
+1-212-455-2206
apatel@stblaw.com

Manny M. Halberstam
+1-212-455-2388
manny.halberstam@stblaw.com

HONG KONG

LONDON

PALO ALTO

Adam Goldberg
+852-2514-7552
adam.goldberg@stblaw.com

Paul Dodd
+44-(0)20-7275-6488
paul.dodd@stblaw.com

Stephen P. Blake
+1-650-251-5153
sblake@stblaw.com

WASHINGTON, D.C.

David W. Blass
+1-202-636-5863
david.blass@stblaw.com

Rajib Chanda
+1-202-636-5543
rajib.chanda@stblaw.com

Ryan Brizek
+1-202-636-5806
ryan.brizek@stblaw.com

Meaghan A. Kelly
+1-202-636-5542
mkelly@stblaw.com

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, www.simpsonthacher.com.