Preparing the Form ADV
Part 1 Annual Amendment
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Webinar Agenda

• Common items in the Form ADV that should be updated annually
• What’s new this year
• Calculating assets under management
• Common mistakes when updating the Form ADV
• Other than Annual Amendment Updates- Items that must be updated when inaccurate in any way vs. items that must be updated when materially inaccurate
Annual Update-When to File

• Item 4 of the Form ADV: General Instructions states:

  “4. When am I required to update my Form ADV?

  SEC- and State-Registered Advisers:
  o Annual updating amendments: You must amend your Form ADV each year by filing an *annual updating amendment* within 90 days after the end of your fiscal year.”
Annual Update-When to File

• All investment advisors are required to file an Annual Amendment within 90 days of the investment advisor’s fiscal year end.
Annual Update-What to Update

• Item 4 of the Form ADV General Instructions also states:

“...When you submit your annual updating amendment, you must update your responses to all items, including corresponding sections of Schedules A, B, C, and D. You must submit your summary of material changes required by Item 2 of Part 2A either in the brochure (cover page or the page immediately thereafter) or as an exhibit to your brochure.”
Annual Update-What to Update

• Although the entire Form ADV should be reviewed and updated on an annual basis, certain Items may require more frequent updates. The Form ADV General Instructions provide details regarding the items that must be updated “promptly” if the information becomes “inaccurate in any way” or in some cases if the information becomes “materially inaccurate.”
Annual Update—What to Update

- The instructions go on to state that if you are filing an other-than-annual amendment, you are not required to update your responses to the following Part 1 items, even if your responses to those items have become inaccurate:
  - Part 1A, Item 2
  - Part 1A, Item 5
  - Part 1A, Item 6
  - Part 1A, Item 7
  - Part 1A, Item 9.A.(2)
  - Part 1A, Item 9.B.(2)
  - Part 1A, Item 9.E.
  - Part 1A, Item 9.F.
  - Part 1A, Item 12
  - Part 1B, Item 2.H.
  - Part 1B, Item 2.J.
Annual Update-What to Update

• There will be several amendments to Form ADV Part 1A to reflect the new threshold for registration and the revisions made to related rules in response to the enactment of the Dodd-Frank Act.

• Since revisions were being made to Form ADV, SEC took opportunity to add or revise several other items in Form ADV.
Annual Update-Part 1A, Item 2

• Part 1A, Item 2.A. is for advisors registered or applying for registration with the SEC. This Item requires you to indicate why you are eligible to register with the SEC. You must update this Item each year confirming that you are still eligible or mark Item 2.A.(13) to indicate that you are no longer eligible to remain registered with the SEC.
Annual Update-Part 1A, Item 2

• Revisions made to Part 1A, Item 2.A. related to rule changes resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")
  – Item 2.A.- Under this Item an adviser has to indicate the reason it is eligible to register or remain registered. The following Items have changed or been added:
    (1) is a large adviser that has $100 million or more of regulatory assets under management (or $90 million or more if adviser is filling its most recent annual updating amendment and is already registered with the SEC);
Annual Update-Part 1A, Item 2

(2) is a mid-sized adviser that does not meet the criteria for state registration or is not subject to examination;
(6) Is an adviser to a business development company and has at least $25 million of regulatory assets under management.
(7) Is a pension consultant with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in Rule 203A-2(a);
(10) Is a multi-state adviser required to register in 15 or more states.
(12) Has received an SEC order exempting the adviser from the prohibition against registration with the SEC;
Annual Update-Part 1A, Item 2

• Part 1A, Item 2.C. should only be updated if you need to notice file in any additional states.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5 Information About Your Advisory Business – Employees, Clients, and Compensation – This Item provides general information about the advisor’s employees, the services provided by the employees, whether the firm has solicitors other than employees, the number of clients and types of clients, types of compensation, and the amount of assets under management.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.A.-“Approximately how many employees do you have? Include full- and part-time employees but do not include any clerical workers?”

• Part 1A, Item 5.B.(1)- “Approximately how many of the employees reported in 5.A. perform investment advisory functions (including research)?”

• Part 1A, Item 5.B.(2)- “Approximately how many of the employees reported in 5.A. are registered representatives of a broker-dealer?”
Annual Update-Part 1A, Item 5

- Item 5.B.(3)- “Approximately how many of the employees reported in 5.A. are registered with one or more state securities authorities as investment adviser representatives?” NEW ITEM

- Item 5.B.(4)- “Approximately how many of the employees reported in 5.A. are registered with one or more state securities authorities as investment adviser representatives for an investment adviser other than you?” NEW ITEM

- Item 5.B.(5)- “Approximately how many of the employees reported in 5.A. are licensed agents of an insurance company or agency?” NEW ITEM
• When determining the number of employees keep in mind that for the purpose of completing the Form ADV, independent contractors should be counted as employees.

• Keep in mind that “you” in the Form ADV Part 1 is referring to the investment advisor firm. So the question wants to know how many employees the firm has. Make sure to include yourself, including when the firm is registered as a sole proprietor.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.B.(6)- “Approximately how many firms or other persons solicit advisory clients on your behalf?”
  – When determining the number of solicitors, the advisor’s employees should not be included. If the solicitation agreement is with another firm, the firm should only be counted once. The advisor should not count each of the employees of that firm.
Annual Update-Part 1A, Item 5

- Part 1A, Item 5- Information About Your adviser Business
  - Item 5.A. & 5.B now require a single numerical approximation (instead of a range).

**Example Old**
A. Approximately how many *employees* do you have? Include full and part-time *employees* but do not include any clerical workers.

  - 1-5
  - 6-10
  - 11-50
  - 51-250
  - 251-500
  - 501-1,000
  - More than 1,000

  If more than 1,000, how many? (round to the nearest 1,000)

**Example New**
A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers. _____________
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.C.(1)- “To approximately how many clients did you provide investment advisory services to during your most recently completed fiscal year?”
  – You will now have to provide an approximate number of clients if you have over 100.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.C.(2)- “Approximately what percentage of your clients are non-United States persons?” NEW ITEM
  – “United States person” has the same meaning as in Rule 203(m)-1 under the Investment Advisers Act of 1940 (“Advisers Act”), which includes any natural person that is a resident in the United States.
Annual Update-Part 1A, Item 5

– When responding make sure you are counting clients not accounts for these responses.

– “Client” is defined in Rule 203(b)(3)-1 under the Advisers Act.

➢ Generally, the following are deemed a single client:

1. A natural person and;
   a. Any minor child of the natural person
   b. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence
Annual Update-Part 1A, Item 5

2. (a) A corporation, general partnership, limited partnership, limited liability company, trust (other than referenced above), or other legal organization that receives advice based on its objectives rather than the individual objectives of its shareholders, partners, limited partners, members, or beneficiaries; and

(b) two or more legal organizations referred to in 2(a) that have identical owners.

c. All accounts of which the natural person and/or the persons referred to in this Item are the only primary beneficiaries; and

d. All trusts of which the natural person of the persons referred to in this Item are the only primary beneficiaries
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.D.(1)- “What types of clients do you have? Indicate the approximate percentage that each type of client comprises of your total number of clients.”
  – The following new categories of clients were added under this item:
    • Business Development Companies
    • Other Investment Advisers
    • Insurance Companies
  – A new box has been added to this item to check if 100% of your clients are a particular type
Annual Update-Part 1A, Item 5

– Individuals include trusts, estates, 401(k) plans and IRAs of individuals and their family members but does not include businesses organized as sole proprietorships.
– The category business development companies consists of companies that have made an election pursuant to Section 54 of the Investment Company Act of 1940.
– When indicating the advisor’s types of clients, make sure your response totals 100% and it is consistent with what is disclosed in Part 2.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.D.(2)- “Indicate the approximate amount of your regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of client. If a client fits into more than one category, check all that apply.” NEW ITEM
  – Response to this item are provided in ranges of none, up to 25%, up to 50%, up to 75%, or >75%
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.E.- “You are compensated for your investment advisory services by (check all that apply)”:  
  – When indicating the types of compensation, make sure it is consistent with Part 2.
Annual Update-Part 1A, Item 5F

- Part 1A, Item 5.F.(1)- “Do you provide continuous and regular supervisory or management services to securities portfolios?”
  - SEC provides instructions for determining an advisor’s asset under management and you must follow these instructions carefully when completing this item. THESE INSTRUCTIONS HAVE BEEN REVISED.
  - In determining the amount of “regulatory” assets under management, include an advisor should only include securities portfolios for which it provided “continuous and regular supervisory or management services” as of the date of filing the Form ADV.
Annual Update-Part 1A, Item 5F

(1) **Securities Portfolios.** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purposes of this 50% test, you may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities. You must include securities portfolios that are:

(a) your family or proprietary accounts;
(b) accounts for which you receive no compensation for your services; and
(c) accounts of clients who are not United States persons.

For purposes of this definition, treat all of the assets of a *private fund* as a securities portfolio, regardless of the nature of such assets. For accounts of *private funds*, moreover, include in the securities portfolio any uncalled commitment pursuant to which a *person* is obligated to acquire an interest in, or make a capital contribution to, the *private fund*. 
(2) **Value of Portfolio.** Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services. If you provide continuous and regular supervisory or management services for only a portion of a securities portfolio, include as regulatory assets under management only that portion of the securities portfolio for which you provide such services. Exclude, for example, the portion of an account:

(a) under management by another *person*; or
(b) that consists of real estate or businesses whose operations you “manage” on behalf of a *client* but not as an investment.

Do not deduct any outstanding indebtedness or other accrued but unpaid liabilities.
Annual Update-Part 1A, Item 5F

(3) Continuous and Regular Supervisory or Management Services.

**General Criteria.** You provide continuous and regular supervisory or management services with respect to an account if:

(a) you have *discretionary authority* over and provide ongoing supervisory or management services with respect to the account; or

(b) you do not have *discretionary authority* over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the client, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, you are responsible for arranging or effecting the purchase or sale.
Factors. You should consider the following factors in evaluating whether you provide continuous and regular supervisory or management services to an account.

(a) Terms of the advisory contract. If you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services for the account. Other provisions in the contract, or your actual management practices, however, may suggest otherwise.
(b) **Form of compensation.** If you are compensated based on the average value of the *client’s* assets you manage over a specified period of time, that suggests that you provide continuous and regular supervisory or management services for the account. If you receive compensation in a manner similar to either of the following, that suggests you do not provide continuous and regular supervisory or management services for the account --

(i) you are compensated based upon the time spent with a *client* during a *client* visit; or
(ii) you are paid a retainer based on a percentage of assets covered by a financial plan.
Management practices. The extent to which you actively manage assets or provide advice bears on whether the services you provide are continuous and regular supervisory or management services. The fact that you make infrequent trades (e.g., based on a “buy and hold” strategy) does not mean your services are not “continuous and regular.”
Examples. You may provide continuous and regular supervisory or management services for an account if you:

(a) have *discretionary authority* to allocate *client* assets among various mutual funds;

(b) do not have *discretionary authority*, but provide the same allocation services, and satisfy the criteria set forth in Instruction 5.b.(3);

(c) allocate assets among other managers (a “manager of managers”), but only if you have *discretionary authority* to hire and fire managers and reallocate assets among them; or

(d) you are a broker-dealer and treat the account as a brokerage account, but only if you have *discretionary authority* over the account.
You do not provide continuous and regular supervisory or management services for an account if you:

(a) provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;

(b) provide only *impersonal investment advice* (e.g., market newsletters);

(c) make an initial asset allocation, without continuous and regular monitoring and reallocation; or

(d) provide advice on an intermittent or periodic basis (such as upon *client* request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).
Example. This is an example of the method of determining whether an account of a client other than a private fund may be included as regulatory assets under management.

The client’s portfolio consists of the following:
- $6,000,000 stocks and bonds
- $1,000,000 cash and cash equivalents
- $3,000,000 non-securities (collectibles, commodities, real estate, etc.)
- $10,000,000 Total Assets

First, is the account a securities portfolio? The account is a securities portfolio because securities as well as cash and cash equivalents (which you have chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 5.b(1)).

Second, does the account receive continuous and regular supervisory or management services? The entire account is managed on a discretionary basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 5.b.(3)).

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser’s total regulatory assets under management.
Annual Update-Part 1A, Item 5F

• According to the SEC, the instructions have been revised to implement a uniform method for advisors to calculate AUM that will be used under the Advisers Act for regulatory purposes in addition to assessing whether an advisor is eligible to register with the SEC. Changes to these instructions include:
  – Will now be referred to as “regulatory assets under management” to acknowledge the “regulatory” purposes of this reporting requirement and to distinguish for AUM disclosure in ADV Part 2.
Annual Update-Part 1A, Item 5F

- Advisors must include in their regulatory AUM securities portfolios for which they provide continuous and regular supervisory or management services, asset managed without receiving compensation or assets of foreign clients, regardless of whether these assets are family or proprietary assets.

- An advisor must calculate its regulatory AUM on a gross basis without deduction of any outstanding indebtedness or other accrued but unpaid liabilities.
Annual Update-Part 1A, Item 5F

- Do not deduct securities purchased on margin when determining the value.
- You must provide “continuous and regular supervisory or management services” in order to count the securities portfolio as assets under management.
- You must determine discretionary from non-discretionary assets.
- This Item requests the number of “accounts” not clients.
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.G.- “What type(s) of advisory services do you provide? Check all that apply.”
  – The following categories have been added to this item:
    • Portfolio management for pooled investment vehicles (other than investment companies)
    • Educational seminars/workshops
  – Educational seminars or workshops would not include episodic meetings at which the advisors educate existing clients about issues related to the ongoing management of their accounts
Annual Update-Part 1A, Item 5

- This response should generally be consistent with what is disclosed in Part 2
- If changes are made to the services disclosed in this Item 5.G., it is highly likely that you will have other changes to make to the Form ADV, such as, ADV Part 2 description of services provided
- If the advisor selects “portfolio management for an investment company”, the advisor must complete Section 5.G.(3) of Schedule D and provide the SEC file number for the registered investment company, as well as business development companies that have made an election pursuant to section 54 of the Investment Company Act of 1940 NEW ITEM
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.H.- “If you provided financial planning services, to how many clients did you provide these services to during your last fiscal year?”
  – Count the number of clients financial planning services were provided to during last year regardless of whether a fee was charged or not
Annual Update-Part 1A, Item 5

• Part 1A, Item 5.J.- “In response to Item 4.B. of Part 2A of Form ADV, do you indicate that you provide investment advice only with respect to limited types of investments?” NEW ITEM
Annual Update-Part 1A, Item 6

• Part 1A, Item 6.A.- “You are actively engaged in business as a (check all that apply):”
  – The following new categories have been added to this item:
    • Trust Company
    • Registered Municipal Advisor
    • Registered Security-Based Swap Dealer
    • Major Security-Based Swap Participant
    • Accountant or accounting firm
    • Lawyer or law firm
Annual Update-Part 1A, Item 7

• Part 1A, Item 7.A.- “This part of Item 7 requires you to provide information about you and your related persons, including foreign affiliates. Your related persons are all of your advisory affiliates and any person that is under common control with you. You have a related person that is a (check all that apply):”
  – This item has been updated to clarify that advisors’ responses must include related persons that are foreign affiliates, regardless of whether they are registered or required to be registered in the United States
Annual Update-Part 1A, Item 7

- The following categories have been added to this item:
  - Registered Municipal Advisor
  - Registered Security-Based Swap Dealer
  - Major Security-Based Swap Participant
  - Trust Company
  - Sponsor, General Partner, Managing Member (or equivalent) of pooled investment vehicles
Annual Update-ADV Part 1, Item 9

• This item asks whether you or a related person has custody of client (other than clients that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

• If you answer “Yes” to Items 9.A.(1)(a) or (b) or 9.B.(1)(a) or (b) indicating that you or a related person has custody of advisory clients cash, bank accounts, or securities, you have to provide additional information relating to this custody.
Annual Update-Item 9

• Items 9.A.(2) and 9.B.(2) require you to provide the amount of client funds or securities and the total number of clients for which you or your related persons have custody.
Annual Update-Item 9

• If you or a related persons have custody of client funds or securities in connection with advisory services you provide to clients, Item 9.C.(1)-(4) require you to indicate if:

1. A qualified custodian(s) send account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage.

2. An independent public accountant audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to investors in the pools.

3. An independent public accountant conducts an annual surprise examination of client funds and securities.

4. An independent public accountant prepares an internal control report with respect to custodial services when you or your related persons are qualified custodians for client funds and securities.
Annual Update-Item 9

- If you mark Item 9.C.(2), (3), or (4), you have to complete Section 9.C. of Schedule D to list the accountants that are engaged to perform the audit or examination or prepare an internal control report.

- Item 9.D. asks if you or your related person(s) act as qualified custodians for your clients in connection with advisory services provided to clients?
  - If you indicate that a related person acts as a qualified custodian (other than a mutual fund transfer agent pursuant to Rule 206(4)-2(b)(1)), the related persons must be identified in Section 7.A. of Schedule D regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.
Annual Update-Item 9

• When filing your annual updating amendment, if you were subject to a surprise examination by an independent public accountant during your last fiscal year, you must provide the date the examination commenced in Item 9.E.

• If you or your related persons have custody of client funds or securities, you will have to indicate in Item 9.F. how many persons, including but not limited to, you and your related persons, act as qualified custodians for your clients in connection with advisory services you provide to your clients. NEW ITEM
Annual Update-Part 1B, Item 2

• Part 1B, Item 2.H.- “If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:”
  – Part 1B for state registered firms only
  – Not just investment in an account managed by advisor
Annual Update- Part 2

• When submitting your Form ADV annual amendment, you must submit your summary of material changes required by Item 2 of Part 2A either in the brochure (cover page or immediately thereafter) or as an exhibit to your brochure.
Annual Update- Part 2

• You must amend your Form ADV Part 2A and Part 2B “promptly” if any information becomes “materially” inaccurate, this may require you to file an other-than-annual amendment throughout the year. If you are submitting an other-than-annual amendment, you are not required to update your summary of material changes.
• **Reminder:** Within 120 days of your fiscal year end, you must deliver to each client (i) your updated brochure (Part 2A or Appendix 1-Wrap Fee Brochure) that includes a summary of material changes or is accompanied by a summary of material changes or (ii) a summary of material changes that includes an offer to provide a copy of the updated brochure and information on how the client can obtain a copy of the brochure.
Annual Update - Common Mistakes

- Not filing annual update
- Not reviewing entire Form ADV for consistency
- Estimating amount of assets under management
- Not maintaining supporting documentation for asset under management calculation
- Including portfolios that do not meet the “provide continuous and regular supervisory or management services” qualification in the assets under management calculation
- Only including asset management clients in the response to Part 1, Item 5C
- Reporting discretionary vs. non-discretionary clients
Other Than Annual Updates

• The following Items in the Form ADV must be updated promptly if they become inaccurate in any way:
  – Part 1A
    • Item 1
    • Item 3
    • Item 9 (except 9.A.(2), 9.B.(2) and 9.E.)
    • Item 11
  – Part 1B
    • Item 1
    • Item 2.A. through 2.F.
    • Item 2.I.
New or Revised Form ADV Items

• Other revisions made to Form ADV:
  – Part 1A, Item 1 Identifying Information
    □ Item 1.J.- Updated to require an adviser to provide contact information for its CCO to give regulators direct access to the person designated to be in charge of its compliance program.
    □ Item 1.K.- Updated to provide an additional regulatory contact for the Form ADV.
    □ Item 1.N.- Updated to require an adviser to indicate whether it or any of its control persons is a public reporting company under the Exchange Act.
New or Revised Form ADV Items

- Item 1.0.- This is a new item being added to require each adviser to indicate whether it had $1 billion or more in total assets shown on the adviser’s balance sheet as of the last day of the most recent fiscal year.

- Item 1.P.- This is a new item that requires an adviser to provide a “legal entity identifier” if it has one.
New or Revised Form ADV Items

• Part 1A, Item 11- 3 technical changes have been adopted with respect to the reporting of disciplinary events:

  1. Adding a box to Item 11 for advisers to check if any disciplinary information reported in that item and the corresponding disclosure reporting pages is being reported about the adviser or any of its supervised persons.
New or Revised Form ADV Items

2. A third reason is being added to each disclosure reporting page (“DRP”) that permits an adviser to remove the DRP from its filing by adding a box the adviser can check if it was filed in error.

3. Item 3.D. of Part 2B is being amended to correct a drafting error regarding when the brochure supplement would need to include disclosure regarding the revocation or suspension of a profession attainment, designation, or license.
Other Than Annual Updates

• The following Items must be updated promptly if information provided becomes **materially** inaccurate:
  – Part 1A
    • Item 4
    • Item 8
    • Item 10
  – Part 1B
    • Item 2.G.
New or Revised Form ADV Items

• Part 1A, Item 8- Requires an advisor to report information about its transactions, if any, with clients, including whether the advisor or a related person engages in transactions with clients as a principal, otherwise sells securities to clients, or has discretionary authority over client assets.
New or Revised Form ADV Items

• Three amendments are being adopted to this Item:
  1. If an advisor indicates that it has discretionary authority to determine the brokers or dealers for client transactions or that it recommends broker or dealers to clients, it must additionally report whether any of such brokers or dealers are related persons of the advisor.
  2. If an advisor indicates that it receives “soft dollar benefits”, it must also report whether all of those benefits qualify for the safe harbor under Section 28(e) of the Exchange Act for eligible research or brokerage.
3. An advisor must report whether it or its related person(s) receives direct or indirect compensation for client referrals.
Form ADV Updates

• From the Form ADV: General Instructions:

“Failure to update your Form ADV, as required by this instruction, is a violation of SEC rules or similar state rules and could lead to your registration being revoked.”
About Us

✓ Serve Over 500 Investment Advisor Firms
✓ Principals Are Industry Experienced Working in Compliance or Law Departments & Hold Professional Credentials
✓ Consult with Retail & Institutional Firms
✓ Offer Full Array of IA Compliance Services
✓ Reasonably Priced at Midwest Rates

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