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Updating the Form ADV

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Today's Slides

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Today's Presenters

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Agenda

- When Updating Is Required
- How Is an Update Made
- Definition of a Material Change
- Examples of Required Updates
- Delivery Requirements

Common Questions About Updating the Form ADV



When Must an Investment Adviser Update Its Form ADV?

Form ADV Part 1 – Update Required

- Annual Amendment – Update Required
- Other-Than-Annual Amendment – Update Required
 - Adding/Removing a Relying Adviser Under Umbrella Registration;
 - If Items 1 (except 1.O. and Section 1.F. of Schedule D), 3, 9 (Except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B or Sections 1 or 3 of Schedule R Becomes ***Inaccurate in Any Way***;
 - If Items 4, 8, or 10 of Part 1A, or Item 2.G. of Part 1B, or Section 10 of Schedule R Becomes ***Materially Inaccurate***; or
 - If Information in Brochure Becomes ***Materially Inaccurate*** (see exceptions).

Updating Form ADV Part 1 (Not Required)

- Other-Than-Annual Amendment When Not Required
 - If Submitting an Other-than-Annual Amendment, **Not** Required to Update Response to Items 2, 5, 6, 7, 9.A.(2), 9.B.(2), 9.E., 9.F., or 12 of Part 1A, Items 2.H. or 2.J. of Part 1B, Section 1.F. of Schedule D or Section 2 of Schedule R Even if Responses Have Become Inaccurate

Form ADV Part 2A – Update Required

- At Time Filing Annual Amendment
- Promptly Whenever Any Info in Brochure Becomes Materially Inaccurate
- Not Required to Update Brochure Between Annual Amendments Solely Because Assets under Management or Fee Schedule Changed; However, If Updating Brochure for a Separate Reason in Between Annual Amendments and Assets Under Management or Fee Schedule Becomes Materially Inaccurate, Should Update as Part of Interim Amendment

Wrap Brochure – Update Required

- At Time Filing Annual Amendment
- Promptly Whenever Any Info in Brochure Becomes Materially Inaccurate
- Not Required to Update Brochure Between Annual Amendments Solely Because Fee Schedule Changed; However, If Updating Brochure for a Separate Reason in Between Annual Amendments and Fee Schedule Becomes Materially Inaccurate, Should Update as Part of Interim Amendment

Form ADV Part 3 – Update Required

- Promptly Whenever Any Info in Brochure Becomes Materially Inaccurate

Form ADV Part 2B – Update Required

- Not at the Annual Amendment
- Promptly Whenever Any Info in Brochure Becomes Materially Inaccurate

How Are Updates to Form ADV Made

- Via IARD System
 - Except for Form ADV Part 2B for an SEC Registered Firm
 - Annual Amendment – Every Investment Adviser Required to File within 90 Days of End of Fiscal Year
 - Other-Than-Annual Amendment – If Update Required, Then Promptly (Generally within 30 Days of Triggering Event)

Material Change

“The standard of materiality under the Advisers Act is whether there is a substantial likelihood that a reasonable investor (here, client) would have considered the information important. This is a facts and circumstances test, requiring an assessment of the “total mix of information,” in the characterization of the Supreme Court. Given that materiality depends on the factual situation, which may vary with each situation, we do not believe that it is appropriate to specifically define or provide any bright line tests for what is and is not material.”

What Are Some Examples of When an Investment Adviser Must Update Its Form ADV?

Examples of Material Changes Requiring Other-Than-Annual Amendments

- Contact Information
- Ownership Changes
- Disciplinary Events/Item 18 Financial (PPP Loan)
- Other Business Activities/Affiliations
- Custody
- Proxies
- Performance/Position Reports

Examples (Continued) of Material Changes Requiring Other-Than-Annual Amendments

- Solicitor Arrangements
- Qualified Custodian
- Block Trading
- Discretion vs. Non-Discretion
- Services
 - Asset Management Services
 - Financial Planning/Consulting Services
 - 3rd Party Money Managers/Sub-Adviser
 - Retirement Plan Services
 - Private Fund Changes/Additions

Examples of Material Changes to Form ADV Part 2B Requiring Other-Than-Annual Amendments

- Changes to Firm Name or Contact Information
- New Outside Business Activities
- Employment History Changes
- Education Changes
- Compensation Structure Changes - Item 5
- Disciplinary Events Including Bankruptcy
- Supervisory Changes – Name of Supervisor Changes

What Are Some Examples of Issues or Arrangements that Could Be Disclosed in the Form ADV Although Not Covered by the Instructions?

Disclosure Examples Not Included in Form ADV Instructions

- Investment Company Act of 1940
 - Examples from SEC’s Safe Harbor for Investment Advisory Programs
- ERISA
 - PTE 2020-02 Disclosures Related to IRA Rollover
 - Rule 408(b)(2) Disclosures Related to Fiduciary Status
- Investment Advisers Act of 1940/State Securities Act
 - Fiduciary Duty – Disclosures Related to Conflicts of Interest
 - Disclosure of Precarious Financial Condition – Example PPP Loan

When Does an Investment Adviser Need to Deliver the Updated Form ADV Part 2A?

Delivery of Updated Form ADV Part 2A to Clients

- New Clients – Required to Receive Updated Form ADV Part 2A
- Existing Clients Requesting Updated Version – Required to Receive
- Other Existing (Not Requesting) – Not Required to Send Updated ADV Part 2A for Every Material Change. However, Existing Clients Required to Receive an Updated Form ADV Part 2A or Summary of Material Changes No Later Than 120 Days After Fiscal Year End
 - Exception – Disciplinary Update Under Item 9 of Form ADV Part 2A Requires Delivery to All Existing Clients within 30 Days

When Does an Investment Adviser Need to Deliver the Updated ADV Part 2B?

Delivery of Updated Form ADV Part 2B to Clients

- New Clients – Required to Receive Before or at the Time the Rep Provides Advisory Services
- Existing Clients – Required to Received If Update to Item 3 (Disciplinary Event) of Form ADV Part 2B

When Does an Investment Adviser Need to Deliver the Updated Form ADV Part 3?

Delivery of Updated Form ADV Part 3 to Clients

- New Clients – Required to Receive Updated ADV Part 3 Before Entering Into Oral or Written Contract with Client
- Any New or Existing Client With One of These Triggering Events
 - Open a New Account that is Different from Retail Investor’s Existing Account(s);
 - Recommend Retail Investor Roll Over Assets from a Retirement Account into a New or Existing account or Investment; or
 - Recommend or Provide a New Investment Advisory Service or Investment that Does Not Necessarily Involve Opening of a New Account and Would Not Be Held in an Existing Account

Delivery of Updated Form ADV Part 3 to Clients

- Existing Clients
 - An Individual Client Which Make Request Is Required to Receive Within 30 Days
 - All Existing Clients Are Required to Receive Updated Within Essentially 90 Days (30 Days to File Update + 60 Days to Deliver) from Date of Underlying Event Requiring Change
 - Highlighting the Changes to Text or Summarizing Material Changes
- Post Current Version to Website

Questions?

Thank You



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