

Form ADV annual update 2025: resources and important considerations for investment advisers

For registered investment advisers and exempt reporting advisers with a December 31 fiscal year-end, the deadline to update Form ADV is approaching. This client briefing identifies relevant resources and substantive and practical considerations for investment advisers to private funds as they work on their updates.

All RIAs are required to file annual updates to their Form ADV part 1A and part 2A within 90 days after the end of their fiscal years. Similarly, all ERAs are required to submit annual updates to their reports on Form ADV part 1A within 90 days after the end of their fiscal years.¹ For RIAs and ERAs whose fiscal year ended December 31, 2024, the deadline to file their annual updates is **Monday, March 31, 2025**. This client briefing discusses some key substantive and logistical considerations for RIAs and ERAs preparing Form ADV updates.

Preliminary steps

Identify significant changes at the investment adviser

An initial step for RIAs and ERAs working on Form ADV updates is for the personnel responsible for preparing them, (which typically includes compliance and/or legal teams), to survey changes and new initiatives that occurred at the adviser over the past year. Such changes and developments could include:

- opening new offices;
- adding new funds, strategies or services;
- creating new entities involved in providing investment advisory services (i.e. fund general

partners) and other affiliated entities (i.e. a broker-dealer);

- new revenue streams or sources of income; and
- regulatory developments, such as SEC exams, compliance reviews, and measures implemented in response to developments.

This step is important to identify potential changes or updates to questions in Form ADV part 1A, and to identify potential new conflicts of interests and risks – which is crucial for RIAs to fulfill a core purpose of Form ADV part 2A. Investment advisers should keep a file of the sources and information used to complete the Form ADV in order to facilitate accuracy and consistency in reporting and filings from year-to-year.

Review regulatory guidance

There are publicly available regulatory resources concerning Form ADV updates that serve as references, address certain common recurring issues and can make the Form ADV update process less daunting.

Investment advisory personnel responsible for completing their organizations' Form ADV should consider reviewing the following resources, as needed:

- Form ADV [General Instructions](#) and blank versions of Form ADV [part 1A](#) and [part 2](#);
- [SEC Staff FAQs](#): These FAQs were last updated in October 2023; some of these updates are discussed herein;

¹ See Rule 204-1(a)(1)(i) under the Investment Advisers Act of 1940 ("Advisers Act") with respect to RIAs, and Rule 204-4(a) under the Advisers Act for ERAs. ERAs are only required to complete certain Items in Form ADV part 1A and are not required to complete Form ADV part 2. It should be noted that pursuant to Rule 204-5 under the Advisers Act, RIAs whose

clients include "retail investors" are required to file and deliver a Form CRS ("Form ADV part 3") to such clients. This client briefing focuses on RIAs to private funds that do not have retail investors as clients and ERAs, who are not subject to the Form CRS obligation.

- Investment Adviser Public Disclosure (IAPD) [website](#): The most recent Form ADV filing for all RIAs and ERAs are publicly available here;
- Investment Adviser Registration Depository (IARD) [website](#): IARD is the online system that investment advisers use to submit their Form ADV filings. It also provides technical information and helpdesk support for filing Form ADV.

Form ADV part 1

Responses to questions regarding the audits of private funds

Schedule D, Section 7.B(1) of Form ADV part 1A includes a series of questions that an investment adviser must complete for each private fund that it manages. Question 23 of Section 7.B(1) concerns the private fund's auditor and seeks details regarding the completion and delivery of audited financial statements to private fund investors. Because the deadline to submit the Form ADV annual update is earlier than the typical deadline to complete an audit and deliver financial statements to investors,² the audit may not be conducted, and the financial statements may not be delivered at the time of the annual Form ADV filing. This timing difference can result in challenges regarding how to answer Question 23. The SEC staff has issued FAQ regarding Question 23, including FAQ updates in the fall of 2023, intended to address them. Specifically:

- Question 23(a) asks whether a private fund's financial statements are subject to an annual audit. Question 23(g) asks whether the private fund's audited financial statements for the most recently completed fiscal year are distributed to the private fund's investors. An investment adviser should respond "Yes" to question 23(a) and 23(g) even if the audit has not been completed and/or audited financial statements have not been sent to investors, provided that: the deadline to complete the audit has not passed; the adviser has engaged an auditor to conduct the audit of the fund's financial statements; and the adviser believes that the audited financial statements will be distributed to the fund's investors by the applicable deadline.

² As discussed, the deadline for the Form ADV annual update for RIAs and ERAs is 90 days after the end of their fiscal year. However, the deadline to complete an audit and deliver audited financial statements is 120 days after the end of the fiscal year for RIAs relying on audited financial statements to satisfy their obligations under the Custody Rule (Rule 206(4)-2 under the Advisers Act) (SEC staff guidance extends that deadline for funds-of-funds), and ERAs are often required to deliver audited financial statements of funds on a similar

- On the other hand, for a private fund for which an auditor has not been engaged – such as a newly-created fund – the adviser should not report in Question 23(a) that the fund's financial statements are subject to audit. Rather, the investment adviser should respond "No" to Question 23(a). (An adviser that responds "No" to Question 23(a) should consider adding an explanatory note in the Miscellaneous Section of Schedule D to Form ADV part 1A). Similarly, with respect to Question 23(g), if the audit deadline has passed and the audited financial statements were not distributed to investors, the adviser should answer "No" to question 23(g).
- Question 23(h) asks whether all reports prepared by the auditing firm for the private fund since the adviser's last annual updating amendment contain unqualified opinions. An adviser's options to respond to this Question are "Yes," "No," or "Report Not Yet Received." If an adviser selects the "Report Not Yet Received" response when completing its annual update, the adviser must subsequently file an other-than-annual amendment to update this response promptly after the audit report becomes available.

The SEC has settled enforcement actions against investment advisers alleging, among other things, insufficiencies in their responses to these Form ADV questions.³

Schedule D Miscellaneous: an opportunity to clarify or explain responses

Form ADV part 1A is a structured document with limited opportunities to provide free-text narratives that explain nuances or caveats to responses. The Schedule D, Miscellaneous Section of Form ADV part 1A provides investment advisers with the opportunity to explain or clarify responses and to explain the reasonable assumptions and scoping decisions that they made in responding to the questions in Form ADV part 1A.

Generally, such explanatory notes benefit investment advisers because they facilitate transparency and clarity for the SEC staff (who review Form ADV part 1A

timeframe pursuant to terms in a fund's limited partnership agreement.

³ See, e.g. "SEC Charges Two Advisory Firms for Custody Rule Violations, One for Form ADV Violations, and Six for Both" (Sept. 9, 2022) (certain investment advisers responded "Report Not Yet Received" in response to question 23(h) but allegedly waited several months or longer to file an other-than-annual update to their Forms ADV to indicate that audit reports had been received); "SEC Charges Five Advisory Firms for Custody Rule Violations" (Sept. 5, 2023) (same).

for regulatory activities) and investors. For example, notes in the Miscellaneous Section of Schedule D are often useful to explain: audit status for newly created funds (as discussed above); how co-investment vehicles and general partners to these vehicles are reported and whether Alternative Investment Vehicles (AIVs) are reported; the roles of affiliated entities; and key assumptions, criteria, or cutoff dates that they used in determining the assets under management (AUM) or private fund values that the investment adviser reports.

Form ADV part 2A

Update risk factors

One time-consuming but important aspect of updating Form ADV part 2A involves reviewing and updating the risk factors discussed in Item 8. RIAs will typically use the risk factors from private placement memoranda (PPMs) for the private funds they manage as a starting point for drafting these risk factors, with some trimming for the sake of materiality and succinctness. This is a practical approach to drafting risk factors for Item 8 of Form ADV part 2A.

However, over time, certain risk factors may become stale and new risks may emerge as the RIA's operations evolve or as a result of market and other developments. RIAs need to assess such risks for disclosure in their Form ADV annual update even if these risks did not exist at the time the relevant PPM was prepared. For example, RIAs that now use AI technology for certain analytical or operational activities – but did not contemplate the use of AI technology at the time they drafted a PPM – need to assess the appropriateness of adding a risk factor related to their use of AI technology.

Be mindful of the use of the word “may”

Where certain practices by an investment adviser are permissible or possible but have not yet occurred, the use of the word “may” is helpful to alert investors to the possibility of such practices or occurrences in the future. However, the use of the word “may” can be problematic where the adviser has already engaged in the practice, or such developments have already occurred. Similarly, language suggesting that an occurrence is infrequent or occasional can be

⁴ See, e.g. “Commission Interpretation Regarding Standard of Conduct for Investment Advisers,” IA Rel. No. 5248 (June 5, 2019), at 25 (“[D]isclosure that an adviser ‘may’ have a particular conflict, without more, is not adequate when the conflict actually exists ... In addition, the use of ‘may’ would be inappropriate if it simply precedes a list of all possible or potential conflicts regardless of likelihood and obfuscates actual conflicts to the point that a client cannot provide

problematic if that conduct is frequent and/or expected to occur in the future.

The SEC and SEC staff have emphasized that the use of the word “may,” or similar language, to describe something that has already occurred can be inconsistent with the investment adviser’s fiduciary duty⁴ or otherwise constitute a regulatory violation. Such risks are heightened where “may” is used to describe fees and other sources of income to the adviser and/or its affiliates, conflicts of interest, or practices that relate to a significant risk factor.

Thus, RIAs should continue to review their use of the word “may” in Form ADV part 2A and assess whether particular uses remain appropriate in light of developments that have occurred over the past year and/or that it expects to occur in the future.

Assess descriptions of valuation practices and risks

The SEC has focused on the valuation practices and disclosures of investment advisers to private funds that invest in illiquid or difficult-to-value assets, as reflected by a settled enforcement action against a private fund adviser in 2023 and the 2025 Division of Exams Priorities.⁵ RIAs typically describe their valuation practices in one or more Items of Form ADV part 2A. This description must be consistent with, and must not overstate, the RIA’s actual policies, procedures and practices.

An RIA should also disclose in Item 8 of its Form ADV part 2A, as applicable, the potential conflicts of interest and relevant risks and limitations posed by its valuation policies, procedures and practices. Thus, an RIA should disclose incentives that it may have to assign higher valuations to investments held by its funds and/or to delay writing down the value of certain of these investments, i.e. that management and/or performance fees are based on valuations, and that higher valuations can result in a better performance track record for the investment adviser. Moreover, an RIA should also disclose in Form ADV part 2A, as applicable, whether valuation determinations are typically made by the RIA and/or its affiliate or an unaffiliated third party. For assets that are not publicly traded or are difficult to value (which is often the case for private funds’ holdings), the Form ADV part 2A should disclose (as

informed consent. On the other hand, the word ‘may’ could be appropriately used to disclose to a client a potential conflict that does not currently exist but might reasonably present itself in the future.”)

⁵ See, e.g. *Insight Venture Management, LLC*, IA Rel. No. 6332 (June 20, 2023); SEC Exams Priorities, <https://www.sec.gov/files/2025-exam-priorities.pdf>.

applicable) that valuation determinations often include discretion and subjective judgments by the investment adviser/person making the valuation determinations.

Material changes must be “identified and discussed,” not just listed

Item 2 of Form ADV part 2A instructs RIAs that, when filing an annual update, they must “identify and discuss” any material changes from the last annual update. An SEC Staff FAQ from October 2023 stated that merely “providing a list of material changes is not sufficient.” Accordingly, based on this FAQ, RIAs that report material changes must include some detail describing the material change.

Provide consistent responses to conceptually-related items in Form ADV part 1A and part 2A

Certain Items in Form ADV part 1A concern substantially similar topics and seek similar information as Items in Form ADV part 2A. RIAs should check that responses to such Items in Form ADV part 1A are consistent with the narrative information provided in corresponding Items in Form ADV part 2A, and that changes made to information in Form ADV part 1A are also reflected in corresponding Items of Form ADV part 2A. For example:

- Fees: Item 5.E of Form ADV part 1A requires investment advisers to identify all of their sources of compensation, including a fee based on the percentage of AUM, performance-based fees, and an “Other” category to identify fees such as fees for monitoring portfolio companies. Similarly, Items 5 and 6 of Form ADV part 2A require an RIA to describe its fees and compensation, including performance-based fees. Any fees reported in Item 5.E of Form ADV part 1A should be described in Item 5 or 6 of Form ADV part 2A;
- Financial industry affiliates: Item 7.A of Form ADV part 1A requires an investment adviser to identify all of its financial industry affiliates and the financial industries in which these affiliates are engaged (i.e. broker-dealer). Similarly, Item 10 of Form ADV part 2A requires an RIA to describe its financial industry activities and affiliates, including any relationship that is material to the RIA’s advisory business or its clients. Thus, the types of financial affiliates identified in Item 7.A of Form ADV part 1A should be described in item 10 of Form ADV part 2A;
- Principal transactions, agency cross-transactions, and participation in client transactions: Item 8 of Form ADV part 1A includes a series of questions regarding whether an RIA engages in principal transactions and/or agency cross-transactions, or recommends securities to clients that the adviser or

its related persons also invest in or in which they have an interest. Items 11.B, 11.C, and 11.D of Form ADV part 2A address similar practices. Because these practices can constitute conflicts of interest, they should be fully and accurately described in Form ADV part 2A; and

- Broker-dealer selection and broker-dealer practices: Items 8.C through 8.H of Form ADV part 1A entail a series of questions regarding an RIA’s selection or recommendation of broker-dealers to clients, and whether the investment adviser or a related person receives soft-dollar benefits (i.e. research or other non-execution services) from broker-dealers. Item 12 of Form ADV part 2A requires a description of similar broker-dealer-related practices, including payment of soft dollars. Because brokerage practices can pose conflicts of interest, an RIA’s responses to these Items must be accurate and (for Form ADV part 2A) sufficiently descriptive.

An other-than-annual update does not replace the requirement for an annual update

As clarified by an updated SEC staff FAQ, if an investment adviser whose fiscal year ended on December 31, 2024, files an other-than-annual (e.g. as a result of material changes) before March 31, 2025, that other-than-annual update does not obviate the need for the investment adviser to also submit an annual update by March 31, 2025. This is the case even if all of the information contained in the other-than-annual update is up-to-date.

Logistical, operational and practical considerations

In addition to the substantive matters described above, investment advisers should consider logistical matters and take practical steps in connection with submitting their Form ADV updates, including:

- Be prepared to file early if possible: If an investment adviser with a December 31, fiscal year end files its annual update after March 31, 2025, that filing will be deemed untimely and there could be regulatory ramifications. The IARD system may operate more slowly on or approaching March 31 as a result of increased filing volume. Similarly, the IARD Helpdesk, which responds to questions about technical issues with Form ADV filings, is typically busier on the filing deadline and the days leading up to it, which can increase wait times. Thus, investment advisers should aim for their Form ADV updates to be accurately completed and ready to file prior to the March 31, 2025, deadline, and to file before the deadline if possible to mitigate the risk of unforeseen filing complications on the deadline.

- Ensure that the investment adviser's IARD Flex-Funding Account has sufficient funds to pay all associated filing fees. While the filing fees for Form ADV annual updates are not significant in magnitude (up to \$225 depending on the adviser's AUM), investment advisers should check well in advance of the intended filing date that their Account has sufficient funds or add funds as needed. Deposits take time to clear, especially as the filing deadline is approaching. Moreover, investment advisers that have notice filing obligations with one or more US states should confirm that their accounts contain sufficient funds to pay such state notice-filing fees.
- Perform a "completeness check" before the intended filing date: The IARD system permits an investment adviser to conduct a "completeness check" that identifies any Form ADV part 1A questions that have not been completed. This is a useful check to confirm that all answers are filled out but does not check for accuracy of the information entered and thus is not a substitute for rigorous review of the substance of the responses.
- Proper format: The Form ADV part 2A filing must be in text-searchable PDF format. Investment advisers should ensure that the final Form ADV part 2A that they seek to file satisfies this formatting criterion. If the IARD system does not accept a document for download/filing, the document may not be formatted as a text-searchable PDF as required.

Please contact the Freshfields team for questions or assistance related to your Form ADV updates.

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