

**ANNUAL FORM ADV UPDATING REQUIREMENT FOR FEDERALLY
REGISTERED INVESTMENT ADVISERS**

The Securities and Exchange Commission (the "SEC") requires an annual filing through the IARD¹ to update the information in a federally registered investment adviser's Form ADV. This filing must be made within 90 days of the adviser's fiscal year end and should update responses to all items on Form ADV.²

Except for the annual update, there are no fees charged to file amendments to Form ADV on the IARD. However, a fee is charged in connection with this annual updating amendment, the amount of which is determined by the adviser's assets under management.

<u>Assets under Management</u>	<u>Annual Updating Fee</u>
More than \$100 million	\$550
\$25 million to \$100 million	\$400
Less than \$25 million	\$100

The SEC advises filers to deposit funds in their IARD account at least 48 hours before submitting the filing. Advisers may submit the fees by wire transfer, check payable to NASD or electronic payment via WebCRD/IARD E-Pay.³

¹ The IARD is an Internet-based system that advisers access through computers in their offices, without the need for specialized hardware or software. Advisers use the IARD to apply for registration, amend their registration and withdraw from registration.

² In addition to this requirement to update all responses on Form ADV once a year, the instructions to Form ADV require that changes to the following items in Form ADV be reported by amendment promptly: (i) any changes to items 1, 3, 9 or 11 of Part 1A, and for state registered advisers, items 1, 2.A. through 2.F, or 2.I. of Part 1B of Form ADV; (ii) any material change to the information provided in response to items 4, 8 or 10 of Part 1A or item 2.G. of Part 1B (for state advisers) of Form ADV; and (iii) any material changes in Part II of Form ADV and any brochure.

³ For wire transfers, advisers should instruct their bank to contact "The Riggs National Bank in Washington, D.C." ABA Number 054-000030, Beneficiary: NASD, Account Number: 086-761-52, Reference Number should be the adviser firm's CRD number. Checks should be sent as follows: (1) For US Mail Delivery: NASD, CRD-IARD, P.O. Box 7777-W9995, Philadelphia, PA 19175-9995; (2) For Courier & Overnight Deliveries Only: NASD, CRD-IARD, W9995, c/o Mellon Bank, Room 3490, 701 Market Street, Philadelphia, PA 19106. WebCRD/IARD E-Pay allows a firm to authorize electronic payment directly from its designated bank account for the firm's Daily and/or Renewal Accounts. For questions concerning WebCRD/IARD E-Pay contact, the NASD Call Center (301) 869-6699.

As noted in our earlier Memoranda, the SEC has not yet adopted amendments to Part 2, formerly Part II of Form ADV. Until the SEC adopts revisions, advisers must continue to deliver “old” Part II to prospective clients, update the information in it, and annually offer it to clients under the “brochure rule,” (Rule 204-3 under the Investment Advisers Act of 1940, as amended).

At present, because it cannot yet be filed electronically, the SEC does not require Part II to be filed. However, Part II is deemed to be filed with the SEC. Because the SEC deems Part II “filed,” the state regulators may require SEC-registered advisers that make “notice filings” with them to continue to file paper copies of Part II even if the adviser files new Part 1A through the IARD. New York State regulations adopted last year require a filing of Part II with the New York State Dept. of Law.⁴

If you have any questions concerning the foregoing or would like further information, please call Martin R. Miller at (212) 728-8690.

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⁴ New York State Dept. of Law Bureau of Investor Protection and Securities, 120 Broadway, 23rd Floor, New York, NY 10271. Very few other states require such filings. The North American Securities Administrators Association (“NASAA”), which is an organization of the various state regulators, has on its website, www.nasaa.org, a chart listing among other things state filing requirements for Part II of Form ADV. The chart is found by clicking on the dropdown “main menu” at the top of the NASAA website page, choosing “investment adviser” and then “IARD Mandating Table.” Currently, the Website indicates Louisiana, New Jersey, New Mexico and Puerto Rico in addition to New York request a paper copy filing of Part II for federally registered advisers that file a notice in those states. If your firm “notice files” in states, then the state fees are paid in November of each year.