

**REMINDER: FORM ADV CODE OF ETHICS DISCLOSURE AND ANNUAL  
UPDATING REQUIREMENT****Code of Ethics Disclosure**

The Securities and Exchange Commission (the “SEC”) in its new Code of Ethics Rule 204A-1 requires SEC registered investment advisers to have adopted a Code of Ethics by February 1, 2005.<sup>1</sup> The SEC also requires that registered advisers amend Part II of Form ADV to summarize the contents of their Code of Ethics on Schedule F under item 9 and include a statement offering to send clients and prospective clients a copy of the Code of Ethics upon request. Part II is not filed with the SEC, but should be so amended and kept in the records of the adviser. Some states, as described below, require copies of Part II to be filed for SEC registered advisers that “notice file” with the state.

**Annual Update**

The requirement to describe the Code of Ethics is separate from the annual filing through the IARD<sup>2</sup> to update the information in a federally registered investment adviser’s Form ADV. As was the case in past years, the annual update filing must be made within 90 days of the adviser’s fiscal year-end and should update responses to all items on Form ADV.<sup>3</sup>

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.

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<sup>1</sup> Rule 204A-1 sets out required provisions for a firm’s Code of Ethics. Rule 204A-1 originally had a compliance date of January 7, 2005 but that date was extended in the SEC Release adopting the Hedge Fund Adviser registration provisions. See Release No. IA-2333, footnote 274.

<sup>2</sup> 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, amend and withdraw from registration.

<sup>3</sup> 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.

<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 accounts 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.<sup>4</sup>

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 the “old” Part II to prospective clients, update the information in it, (including the requirement to describe the Code of Ethics discussed above) 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 require that advisers that “notice file” with New York file a copy of Part II with the New York State Department of Law.<sup>5</sup>

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<sup>4</sup> For wire transfers, advisers should instruct their bank to contact “Mellon Financial, Philadelphia, PA” ABA Number 031-000-037, Beneficiary: NASD, Account Number: 8-234-353 and the Reference Number should be the adviser firm’s CRD number. Checks should be sent as follows: (1) US Mail delivery: NASD, CRD-IARD, P.O. Box 7777-W9995, Philadelphia, PA 19175-9995; (2) courier and 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 at (240) 386-4848. Funds to cover the annual update fee should go to the firm’s Daily Account. The Renewal Account is a separate account to hold funds to pay for any state notice filing or registration renewals which are due in early December of each year.

<sup>5</sup> New York State Dept. of Law, Bureau of Investor Protection and Securities, 120 Broadway, 23<sup>rd</sup> 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](http://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 “Industry & Regulatory Resources” at the top of the NASAA website page, choosing “CRD & IARD” and then scrolling down and clicking on “IARD Mandating Table.” Currently, the website indicates that Louisiana, New Jersey, New Mexico and Puerto Rico in addition to New York, request that federally registered advisers filing a notice in those states also file a paper copy of Part II.

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

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