

Considerations for Advisers in Preparing Form ADV Annual Updating Amendments

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AUTHORS

Benjamin B. Allensworth | James E. Anderson | Brian J. Baltz | Jennifer R. Porter
Jakob Edson | Haofei Liu

Investment advisers registered with the Securities and Exchange Commission (“SEC”) and investment advisers filing as exempt reporting advisers with the SEC are required to update the information on their Form ADVs annually within 90 days of their fiscal year-end. For advisers with a December fiscal year-end, this year’s annual updating amendment is due by March 31, 2026. In this Client Alert, we discuss timing and other filing considerations and include a discussion of some potential areas to consider in updating disclosure in advisory brochures as part of the annual updating amendment.

A. Key Timing and Filing Considerations

Investment advisers must amend their Form ADV Parts 1 and 2 each year by filing an annual updating amendment within 90 days after the end of their fiscal year. Advisers must update their responses to all items in Parts 1A, 2A (“Brochure”), and 2B (as applicable), including corresponding sections of Schedules A, B, C, and D, and all sections

of Schedule R for advisers that rely on umbrella registration.¹ Advisers must update Form ADV Part 3 (“Form CRS”) whenever any information in Form CRS becomes materially inaccurate. Although Form CRS does not need to be updated on an annual basis, advisers who are required to file Form CRS may consider reviewing their Form CRS for material updates in conjunction with the annual updating amendment.

Form ADV is filed electronically through the Investment Adviser Registration Depository (“IARD”) system. Advisers should confirm IARD login credentials and ensure adequate account funding prior to when Form ADV is filed. Fees must be credited to the adviser’s Flex-Funding Account on the IARD system for the filing to be submitted. SEC-registered investment advisers pay a fee determined by the amount of the particular adviser’s regulatory assets under management for the annual updating amendment, while exempt reporting advisers pay a flat fee of \$150.² An adviser may also be assessed jurisdiction-related fees for the firm, branches, and representatives. Investment advisers registered with or applying for registration with the SEC will continue to be subject to any applicable state notice filing fees. State notice-filing obligations generally apply in any state where the adviser has a place of business or more than five non-exempt clients, with certain state-specific exceptions.

B. Substantive Areas to Review and Update in Part 1A

Because many data points in the Form reflect point-in-time information that can change over the course of a year, advisers may benefit from prioritizing items that most commonly require updates or relate to areas of interest for the SEC and its staff, including the following:

- **Item 5 – Information About Your Advisory Business**

In Item 5 of Part 1A, advisers must indicate, among other things, the number of employees who perform advisory functions and certain information about clients, including the types and numbers of clients, and the amount of regulatory assets under management (“RAUM”) attributable to each client type. The Instructions to Form ADV state that RAUM includes securities portfolios for which the adviser provides continuous and regular supervisory or management services. Advisers should carefully consider responses to Item 5.L. regarding marketing activities because compliance with the Marketing Rule, including disclosures on Form ADV related to marketing, continues to be a focus for the SEC’s Division of Examinations.³

¹ The Form ADV instructions state that updates to Schedules A and B should be made on Schedule C. However, there is no separate Schedule C in IARD. The IARD system presents Schedule C together with Schedules A and B to permit changes to occur more easily. Schedules A and C are used to update the information about an adviser’s direct owners and executive officers, and Schedules B and C are used to update the information about an adviser’s indirect owners. See Division of Investment Management: Frequently Asked Questions on Form ADV and IARD (last updated Oct. 26, 2023), available at <https://www.sec.gov/about/divisions-offices/division-investment-management/electronic-filing-investment-advisers-iard/frequently-asked-questions-form-adv-iard> (“Form ADV FAQs”).

² Please see our recent client alert for more information on filing fees, available at <https://www.willkie.com/-/media/files/publications/2026/02/reminderannualupdateofformadvandannualrequirementtoconfirmstatusofinvestorsunderthenewissuerules.pdf>.

³ An April 2024 risk alert from the Division of Examinations included observations from examinations during which the staff observed advisers that inaccurately reported marketing practices in Item 5 of Part 1A or had other inaccurate references to marketing and solicitation activities in Item 14 of Part 2A. *Initial Observations Regarding Advisers Act Marketing Rule Compliance* (April 17, 2024), available at <https://www.sec.gov/files/exams-risk-alert-marketing-observation-2024.pdf>. For a discussion of the Initial Observations, please see the

- **Item 7 – Financial Industry Affiliations and Private Fund Reporting**

In Item 7 of Part 1A and Sections 7.A. and 7.B. of Schedule D, advisers must indicate financial industry affiliations, including affiliations with broker-dealers, investment advisers, general partners of private fund clients, commodity pool operators or commodity trading advisers, banks, insurance companies, and other financial services providers, and provide information about their private fund clients (if applicable). Advisers to private funds may consider double-checking that general partner entities are reported in Section 7.A. of Schedule D and reviewing each fund's information reported in Section 7.B.(1) carefully.

In October 2023, the SEC staff published two FAQs on Section 7.B.(1) that address common issues to keep in mind. In the first FAQ, the SEC staff stated that if you advise a newly created private fund, you should not report that the private fund's financial statements are subject to an annual audit if an auditing firm has not been engaged to conduct an audit for the applicable fiscal year.⁴ In the second FAQ, regarding question 23(g) of Schedule D, Section 7.B.(1), the SEC staff stated that if the applicable deadline for the distribution of the private fund's audited financial statements for the most recently completed fiscal year has not yet passed, an adviser may answer "Yes" to question 23(g) if the adviser has engaged an auditor and the audited financial statements will be distributed as required.⁵ The SEC staff stated that an adviser should answer "No" to question 23(g) if the applicable deadline for distribution has passed and audited financial statements were not delivered to clients for the most recently completed fiscal year.

Regarding question 23(h) of Schedule D, Section 7.B.(1), advisers should remember that the instructions require that you promptly file an amendment to your Form ADV to update the response when the audit report becomes available if, at the time of filing, you indicated that audited financial statements had not yet been received. The SEC has brought enforcement actions involving advisers that failed to promptly file amended Form ADVs to reflect that they had received audited financial statements after having initially reported that they had not yet received the audit reports.⁶

- **Item 8 – Participation or Interest in Client Transactions**

In Item 8 of Part 1A, advisers must disclose participation or interest in client transactions. The annual updating amendment is a good time for advisers to review their conflicts of interest and ensure consistency across disclosures

Willkie Farr & Gallagher LLP Client Alert, available at <https://www.willkie.com/-/media/files/publications/2024/04/secdivisionofexaminationsissuesriskalertoninitialobservationsregardingadvisersactmarketingrulecompliance.pdf>. The SEC staff recently published another risk alert regarding additional observations related to compliance with the Marketing Rule. That risk alert focused on testimonials and endorsements as well as the use of third-party ratings, both of which need to be reported in Item 5.L. of Part 1A. *Additional Observations Regarding Advisers' Compliance with the Advisers Act Marketing Rule* (Dec. 16, 2025), available at <https://www.sec.gov/files/exams-riskalert-mrkt-rule-2512-508.pdf>. For a discussion of the Additional Observations, please see the Willkie Farr & Gallagher LLP Client Alert, available at <https://www.willkie.com/-/media/files/publications/2026/01/sec-division-of-examinations-issues-risk-alert-regarding-advisers-act-marketing-rule-compliance.pdf>.

⁴ See Form ADV FAQs. Question 23(g) of Schedule D, Section 7.B.(1) asks whether a private fund's audited financial statements for the most recently completed fiscal year are distributed to the private fund's investors.

⁵ See Form ADV FAQs.

⁶ See SEC Press Release, available at <https://www.sec.gov/newsroom/press-releases/2022-156>.

in Item 8 of Part 1A and conflicts disclosures in the Brochure. We include a broader discussion of conflicts of interest issues below.

- **Item 9 – Custody**

In Item 9 of Part 1A, advisers must disclose information regarding custody of client assets and custodial practices. Situations that typically result in custody include having the authority to instruct a custodian to pay advisory fees from client accounts, having a general power of attorney on behalf of clients, having the ability to withdraw funds or securities or transfer them to an account not in the client's name at a qualified custodian, and serving as trustee to an advisory client. Advisers may consider reassessing custody implications across the firm and related disclosure in Item 9 of Part 1A.

- **Schedules A and B – Ownership Information**

In Schedules A and B of Part 1A, advisers must disclose information about direct and indirect ownership of the firm and executive officers. The instructions to Form ADV state that an investment adviser must update Schedules A and B as part of an annual updating amendment. Advisers should consider reviewing Schedules A and B to ensure that information about direct and indirect owners and executive officers is current, including reviewing for any changes to executive officers' titles and whether any new executive officers should be listed. If an executive officer's title has evolved over time, the SEC staff has stated that advisers have two options when responding to Schedule A for that officer: (i) you can make multiple entries for the executive officer, listing the officer's titles, and the dates they were acquired, as the title evolved over time, or (ii) you can list the executive officer once, using his or her current title and the date the officer first acquired a title that required him or her to be listed on Schedule A.⁷ Advisers may consider confirming that ownership information reported in Schedules A and B is consistent with the firm's organizational charts and any other ownership information disclosed or reported to regulators, as applicable.

C. Part 2A

The Brochure is a required disclosure document that must be delivered to clients and includes information about an adviser's business practices, fees, conflicts of interest, and disciplinary information. Advisers must deliver an updated Brochure to clients each year. The annual updating amendment is an opportune time for advisers to holistically review the Brochure in light of business changes and regulatory developments. Below we include a discussion of some potential areas to consider in updating disclosures in Brochures as part of the annual updating amendment.

1. **Disclosure of Conflicts of Interest**

The General Instructions for Part 2 of Form ADV state that, as a fiduciary, an investment adviser must "at a minimum, make full disclosure of all material conflicts of interest between you and your clients that could affect the advisory relationship." To help in identifying and addressing conflicts of interest, some investment advisers find it useful to

⁷ See Form ADV FAQs.

maintain a conflicts of interest inventory. A conflicts inventory often identifies conflicts of interest in an adviser's business, describes the nature of the conflict (e.g., whether the conflict is between the adviser and its financial advisors, between the adviser or its financial advisors and clients, or between clients), and identifies where disclosures about the conflict are made. Investment advisers may also maintain a disclosure catalogue that includes disclosures of conflicts of interest and other material facts about an advisory relationship across client-facing documents (e.g., Brochure, client agreement, marketing materials, websites). Maintaining a disclosure catalogue can be useful to ensure that disclosures are consistent across documents.⁸ Dual registrants might also consider incorporating conflicts of interest in their brokerage businesses.

2. Observations on Disclosure Updates During 2025

As advisers update their ADVs this season, we reviewed Brochure updates made by larger investment advisers since their last annual updating amendment. We share some observations based on those reviews below.

- *Single Advisory Agreements:* An increasing number of investment advisers are pursuing a single advisory agreement construct under which clients enter into a single advisory agreement that includes a range of programs offered by the advisor. A single advisory agreement can offer various benefits, including a more streamlined process for clients to change from one advisory offering to another, as well as an opportunity to consolidate Brochures and thereby reduce the operational burdens in updating disclosures.
- *Risk Disclosures:* We have observed investment advisers updating their risk disclosures to disclose material risks about new investment product offerings, including digital assets, structured products, and alternative investments. The annual updating amendment is an opportune time to reassess risk disclosures in the Brochure to ensure that disclosures address material risks of current investment strategies and products. For example, we have observed investment advisers offering exposure to digital assets including risk disclosures regarding volatility, regulatory uncertainty, custody, liquidity, and counterparty considerations.
- *Digital Assets:* The SEC expects Form ADV disclosures to address digital asset investment strategies, methods of analysis, risks, fee structures reflecting operational complexity, and conflicts of interest from adviser or affiliate participation in digital asset ecosystems. If applicable, advisers may consider how to address any conflicts in Item 10 of the Brochure related to adviser/affiliate staking, validator operations, protocol governance, DeFi participation, and related-party service providers.
- *Account and Product Choices:* The SEC continues to focus on conflicts of interest where firms are able to offer customers both brokerage and investment advisory relationships. We have observed firms enhancing disclosures about when they will act in a brokerage or investment advisory capacity, conflicts of interest in

⁸ The SEC has cited inconsistent disclosures across documents in recent enforcement actions against investment advisers. See Administrative Proceeding File No. 3-22517 (Aug. 29, 2025), available at <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-103809-s>.

making account type recommendations, and financial incentives for financial advisors to recommend certain account or product types over others.

D. Conclusion

The Form ADV filing deadline for advisers with a December fiscal year-end is fast approaching. Advisers are encouraged to treat the Form ADV annual updating amendment as a comprehensive refresh that updates and verifies all responses to Parts 1A and 2A, while also prioritizing areas that typically see the most significant changes from prior years, or for which the SEC and its staff have indicated a particular interest through guidance, enforcement or examination. In conjunction with these updates, advisers should consider whether other documents need to be updated to ensure consistency across all disclosure materials. Willkie has a dedicated team of attorneys with extensive knowledge and experience in all aspects of Form ADV and other regulatory matters. We would be pleased to assist on your matters.

If you have questions regarding this client alert, please contact one of the authors, any member of our team listed below, or the Willkie attorney with whom you regularly work.

Benjamin B. Allensworth	James E. Anderson	Brian J. Baltz	Jennifer R. Porter
202 303 1273	202 303 1114	202 303 1094	202 303 1223
ballensworth@willkie.com	janderson@willkie.com	bbaltz@willkie.com	jporter@willkie.com
Jakob Edson	Haofei Liu		
202 303 1163	202 303 1170		
jedson@willkie.com	hliu@willkie.com		



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