

Investment Funds Alert

SEC Staff Provides Eleventh-Hour Guidance on Drafting ADV Part 2

March 23, 2011

On March 18, 2011, the staff of the Securities and Exchange Commission's Division of Investment Management (the "Staff") published "Staff Responses to Questions About Part 2 of Form ADV" (the "Responses"). The Responses clarify compliance and filing dates and provide guidance regarding drafting ADV Part 2. For a link to the Responses, click [here](#).

Among other things, the Responses clarify—

Drafting of Part 2A of Form ADV (the "Brochure")

- A registered investment adviser to a pooled investment vehicle may satisfy the obligation in Item 8.B of the Brochure to explain the material risks for each significant investment strategy by providing a brief explanation of the material risks for each strategy and referring clients to the relevant disclosure document that provides more detail, such as a private placement memorandum, previously provided to pool participants. [Question II.4].
- A registered investment adviser with multiple strategies must explain the risks for each significant investment strategy and method of analysis it uses. As above, an adviser may satisfy its obligations by summarizing each of the strategies and methods of analysis and the related material risks and referencing a disclosure document. [Question II.5].
- A registered investment adviser may choose not to complete the material changes section in connection with the first Brochure it files, but it may wish to discuss new material disclosure items, such as conflicts of interest or disciplinary information. [Question II.2].

Delivery and Filing of the Brochure

- A registered investment adviser must begin delivering its Brochure to its new and prospective clients after it files its Brochure and must deliver its Brochure to its existing clients within 60 days of when the adviser is required to file it.¹ [Question I.2].
- Registered investment advisers to hedge funds and other private investment funds are only required to deliver their Brochures to their funds. An adviser could satisfy its obligations by delivering its brochure to a "legal representative of the fund, such as the fund's general partner, manager or a person serving in a similar capacity."²

¹ This transition delivery period only applies on the first year of filing.

² As we stated in our August 12, 2010 alert relating to the adoption of Part 2 of Form ADV ("[SEC Adopts Amendments to Part 2 of Form ADV](#)"), many registered investment advisers will continue to deliver ADV Part 2 to its investors in order to ensure that they have received full disclosure of conflicts of interest to address fiduciary duty issues.



Registered investment advisers must, however, still file their Brochure even if they deliver the document to a related person. [Questions III.2 and 3].

- Non-U.S. registered investment advisers whose only clients are offshore funds are not required to prepare or file a Brochure. [Question II.6].

Drafting of Part 2B of Form ADV (the “Supplement”)

- A registered investment adviser must prepare a separate and distinct Supplement for each supervised person that contains separate responses to each of the required six items for each person included. An adviser may not provide disclosure on an aggregate basis. [Question V.1].
- A registered investment adviser may omit a supervised person from the Supplement if it temporarily provides advisory services for 30 or fewer days. [Question IV.1].
- If a supervised person begins to provide advisory services to a client as a result of another supervised person’s resignation or termination, the Staff allows the investment adviser a grace period of 30 days after the new supervised person begins to provide advisory services to deliver the relevant Supplement. [Question IV.2].

Delivery of the Supplement

As stated in a prior Securities and Exchange Commission (SEC) release, the delivery dates for Supplements were changed. Newly registering investment advisers that file their registration applications between January 1, 2011, and April 30, 2011, must deliver their Supplements to new and prospective clients by May 1, 2011, and must deliver to existing clients by July 1, 2011. Currently registered investment advisers with a fiscal year ending between December 31, 2010, and April 30, 2011, must begin delivering their Supplements to new and prospective clients by July 31, 2011, and must deliver their Supplements to existing clients by September 30, 2011. The SEC did not provide relief for registered investment advisers with a fiscal year ending after April 30, 2011, or for newly registering investment advisers filing their applications after April 30, 2011.

	Delivery date for ADV Part 2B for new and prospective clients	Delivery date for ADV Part 2B for existing clients
Newly registering adviser registering between January 1, 2011, and April 30, 2011	May 1, 2011	July 1, 2011
Currently registered investment adviser with a fiscal year ending between December 31, 2010, and April 30, 2011	July 31, 2011	September 30, 2011

[Question I.1].

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