

## **HOW TO REGISTER USING THE IARD**

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The SEC and the North American Securities Administration Association, Inc. (“NASAA”) contracted with the National Association of Securities Dealers Regulation, Inc. (“NASDR”) to create the Investment Adviser Registration Depository (“IARD”). SEC-registered and certain state-registered investment advisers file their Form ADVs through the IARD, unless they are eligible for a hardship exemption allowing paper filings.<sup>1</sup> Once an adviser’s Form ADV is filed on the IARD, it is available to the public over the Internet.

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### **OVERVIEW**

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The IARD contains the registration information for investment advisers and their associated persons. It allows new advisers to file their Form ADV and existing advisers to make their annual renewals with the SEC electronically. It also collects fees from the adviser filers. States can also utilize the IARD for state adviser filings and SEC-registered adviser notice filings.

The IARD has four primary functions:

1. Registration of investment advisers with the SEC and the states and notice filings of SEC-registered advisers with the states (currently in effect);
2. Provide public access via the Internet to investment adviser registration (future);

3. Registration of investment adviser representatives with the states (future); and
4. Provide public access via the Internet to information about investment adviser representatives (future).

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## **IARD REGISTRATION**

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Here's how a new investment adviser files its registration statement over the IARD.

1. An investment adviser mails or faxes a paper form with the NASDR requesting a user name and password.<sup>2</sup> Forms and other information about setting up an IARD account can be found at, or requested from:

- [www.iard.com](http://www.iard.com)
- [www.sec.gov/iard](http://www.sec.gov/iard)
- [iardlive@sec.gov](mailto:iardlive@sec.gov)
- 202-942-0691

Once the firm completes the forms described above, it must send the completed forms to the NASDR at one of the following addresses:

*Via Regular Mail:*

IARD Entitlement  
NASD Regulation, Inc.  
P.O. Box 9495  
Gaithersburg, MD 20898-9495

*Via Overnight Mail:*

*Via Regular Mail:*

IARD Entitlement  
NASD Regulation, Inc.  
P.O. Box 9495  
Gaithersburg, MD 20898-9495

After processing the registration package, the NASDR sets up the firm's IARD User Account and issue a user name (ID) and password. In addition, the NASDR registers the individuals of the firm identified as "Authorized Persons" (i.e., persons who are authorized to make IARD filings on behalf of the firm). The NASDR then sends the firm its user name (ID) and password, as well as instructions on how to make IARD filings.

2. An adviser opens up an account with the NASDR so that it may deposit funds to pay for the filing fees.<sup>3</sup> Advisers that are also broker-dealers can use existing Central Registration Depository (CRD) accounts for these purposes. Prior to making an electronic filing over the IARD, the firm must create and fund its IARD billing account. When the NASDR receives the firm's filing package described in the previous section, it sets up an IARD billing account in the firm's name. The firm funds the account by sending a check or making a wire transfer to the NASDR. When these funds are credited to the firm's account, the firm can make IARD filings. The funds in this account are used to pay the filing fees.

3. Once issued a user name and password, the adviser can log on to the Internet and type in the IARD's web address. When connected, the adviser enters its user name and password. The following options are displayed: "Application For Registration," "Amending Existing Registration," and "Withdrawing From Registration." A new adviser would select "Application for Registration."

4. The adviser is now ready to start filling out Parts 1A and 1B (if necessary) of Form ADV.<sup>4</sup> As explained below, Parts 2A and 2B will be prepared in a separate process. At this point, the adviser has several options -- it can complete Parts 1A and 1B online, print these Parts, or complete portions of these Parts and save them. The adviser can save a draft of these Parts for up to 60 days. Significantly, the IARD does not allow the adviser to download a draft of Parts 1A and 1B onto the adviser's own computer system.

5. In Part 1A of the Form ADV, the adviser types in answers to a series of questions, as well as click the appropriate answer to a number of Yes/No and multiple choice questions. The adviser also types in answers to questions on several schedules that require additional information related to the questions. Part 1A resembles Part I of the current Form ADV. In Part 1B, an adviser applying to be a state-registered adviser types in answers to a series of questions required by the applicable state securities authority (assuming that the applicable state permits electronic registration). The IARD is designed to present the adviser only those questions relevant to its status (i.e., state- or SEC-registered adviser). If the adviser is also registered as a broker-dealer, it can respond to certain questions by linking its responses to items on its Form BD (the registration form for broker-dealers) that is maintained on the CRD. In effect, it can "lift" schedules and other information from its Form BD and place them in its Form ADV. This relieves a dually-registered adviser from having to enter certain data twice.

6. Now, the adviser is ready to tackle Part 2A of Form ADV. Presently, the adviser still uses Part II of old Form ADV. When the SEC adopts Part 2A, the adviser will be required to prepare a narrative brochure that responds to 19 items of required disclosure. Initially, the adviser need only prepare a paper copy of the narrative brochure. Eventually, the adviser will file the brochure with Part 1A (and Part 1B) over the IARD system. The Proposing Release provided few details on how this will be accomplished.<sup>5</sup>

7. The adviser will also have to prepare one or more brochure supplements, when the SEC adopts Part 2B. As explained below, these documents provide disclosure about the adviser's investment management personnel. The adviser will not have to file Part 2B brochure supplements with the NASDR or SEC.

8. When all of the applicable parts of Part IA and, for state-registered advisers, Part 1B, of Form ADV are completed, the authorized filing person of the adviser electronically "signs" the form by typing in his or her name and click the appropriate box to transmit it to the IARD. The IARD automatically debits the adviser's fee account (discussed in Step 1) by an amount equal to the filing fee.

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## **AMENDMENTS**

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An existing registered adviser must re-submit an amended Form ADV over the IARD to comply with the new Form ADV requirements in accordance to a phase-in

schedule discussed below. New and existing advisers file their amendments through the IARD.

### **Parts 1A and 1B - Amendments**

The adviser has to electronically file an amendment to Parts 1A (and 1B) of the Form ADV over the IARD at the beginning of each year to satisfy the annual updating requirements of the Advisers Act.<sup>6</sup> If the information in these parts has become materially inaccurate between annual filings, the adviser must update the information by making an interim amendment filing over the IARD. To make this filing, the adviser clicks “amending registration” as described in Step 2 above and its current Form ADV will appear.<sup>7</sup> It then types in the new information over the old information in Parts 1A (and 1B). When the amendment is completed, the authorized filing person electronically signs and files the amendment as described in Step 7.

### **Part 2A - Amendments**

As noted, the SEC has not adopted Parts 2A and 2B. However, when the SEC adopts these parts, the adviser, when filing its annual updating amendment to its Form ADV, will have to include a revised firm brochure (Part 2A). As noted, advisers initially will only have to create firm brochures in paper form and will not have to file the form with the SEC.<sup>8</sup> In between annual updates, if any information in the firm brochure becomes materially inaccurate, the adviser will have to amend its brochure by either reprinting it in its entirety or preparing a paper supplement (i.e., “sticker”) to accompany

the old brochure. The adviser then would have to deliver the new information to its clients promptly. The adviser will not have to file the revised brochure or stickers with the SEC. Rather, it will incorporate all of the stickers into the brochure at its next annual update filing.

### **Part 2B - Amendments**

Amendments to Part 2B would not have to be filed with the SEC. However, copies would have to be maintained and available for inspection by the SEC.

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## **ELECTRONIC FORM ADV**

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The new electronic Form ADV is divided into four parts: the registration form (Part 1A), the state registration form (Part 1B), the firm brochure (Part 2A), and the brochure supplement (Part 2B). Currently, only Parts 1A and 1B are required to be used. Advisers use the old Part II of Form ADV until Parts 2A and 2B are adopted.

### **Part 1A – Electronic Form ADV**

SEC and state-registered advisers file Part 1A. Part 1A consists of a series of fill-in-the-blank, multiple-choice, and check-the-box questions. Part 1A is designed to provide information that assists the SEC (or state securities commission) in determining

whether to grant the application for registration or revoke an existing registration. Part 1A therefore is not required to be delivered to clients or prospective clients.

Proposed Part 1A requests much of the same information as Part I of the old Form ADV. Some key differences include a new section that covers whether an adviser should be registered with the SEC or a state (which replaces current Schedule I). The disciplinary sections were overhauled to track similar sections found in Form BD. An adviser fills out a Disciplinary Reporting Page (DRP) for each affirmative answer to a disciplinary question (instead of a schedule, which is the case with the current form).

### **Part 1B – Electronic Form ADV**

Only state-registered advisers file Part 1B, a form that has been drafted by NASAA. This form requires such advisers to provide information about bonding, arbitration actions, other civil and regulatory actions, and other areas of interest to state regulators. Whether a particular state adviser (i.e., an adviser with less than \$25 million of assets under management) has to register with Form ADV or a state-specific form depends on the applicable state's securities law. Most states have or are planning to convert to the IARD system.

## **Part 2A – Electronic Form ADV**

The most noteworthy change to Form ADV proposed by the SEC is Part 2A, which requires the adviser to prepare a firm brochure.<sup>9</sup> Unlike current Part II of Form ADV, the firm brochure would not be a cumbersome, fill-in-the-blank form with attached schedules containing narrative disclosure. Rather, the adviser would create a narrative document written in plain English that would resemble a mutual fund prospectus or private placement memorandum.

Part 2A would require the adviser's narrative brochure to address and disclose information about 19 items. Many of these items are the same items that appear in Part II of the current Form ADV. Set forth below is a discussion of new items and the significant changes to existing items as proposed by the SEC. (References in the parenthesis are to items in the new Part 2B). The common thread in most of the changes is the SEC's belief that the advisers need to more fully disclose their conflicts of interests with clients.

Since Part 2A calls for a separate brochure, it would have a cover page (Item 1) and table of contents (Item 3). Certain required information would have to appear on the cover, including the adviser's name, address, number, date of brochure and certain disclaimers. It must also have an index (Item 19) that allows the SEC to find pages that contain the adviser's response to each item. The index need not be provided to clients.

An adviser would have to include a section (Item 2) summarizing the material changes to the brochure since its last annual update.<sup>10</sup> This is a somewhat surprising requirement in light of the fact that the SEC does not require mutual fund prospectuses and many other security disclosure documents to have such sections. It may be difficult for advisers to explain changes succinctly and to differentiate between material and non-material changes.

The SEC has expanded the fee and compensation section (Item 5) to incorporate previous SEC positions on deducting fees from client accounts and advanced payment of fees (and refunds of such advancements).<sup>11</sup> Item 5 also now calls for extensive disclosure about trail fee arrangements with mutual fund distributors.

New Item 7 would require narrative disclosure about the adviser's investment strategies and risks associated with the strategies. This section replaces the "check-the-box" sections in the current Form ADV, which elicited only general information about how an adviser invests its clients' money. New Item 7 apparently seeks a more pointed discussion about the investment strategies and risks related to those strategies, similar to that found in the private placement memorandum of a private investment company or a mutual fund prospectus.

A key change would be new Item 8, which, for the first time, would require the adviser to disclose disciplinary information in its brochure. Under the current approach, clients typically are unaware of the adviser's disciplinary history since such disclosure in

Part I of the Form ADV (which is not required to be delivered to clients). The adviser would be required to disclose any “material” disciplinary action involving the adviser or a “management person” that occurred within the past ten years. The SEC is at the same time proposing to rescind Rule 206(4)-4. An investment adviser must presume that any disciplinary action is material, although the SEC offers four factors that might rebut this presumption, in which case disclosure would not be required.

Under new Item 10, an adviser will have to discuss the conflicts of interest raised by it trading in the same securities as its clients or if it co-invests with its clients in the same securities. It will be required to set forth procedures it has in place to minimize such conflicts.

In Item 11, the adviser will be required to disclose its soft dollar practices. The SEC calls disclosure that is “specific enough for clients to understand the types of [research] products or services the adviser is acquiring.”<sup>12</sup> In addition, disclosure must be “more detailed for products or services not used in the adviser’s investment decision-making process.”<sup>13</sup> The adviser also would have to disclose the use of brokerage to compensate brokers for client referrals, bunching trades, directed brokerage, and commission recapture. The genesis for this detailed disclosure was the SEC’s recent examination of investment adviser soft dollar practices, which concluded that disclosure was one of the best regulatory approaches to address conflicts of interests raised by such practices.<sup>14</sup> However, one fall-out is that the required detail will result in a lengthy

section in the brochure that is far more extensive than similar disclosure in a mutual fund prospectus.

New Item 13 requires disclosure regarding client referral arrangements. Such arrangements are governed by the cash solicitation rule (Rule 206(4)-3) under the Advisers Act. It also requires disclosure of any “benefit” to the adviser from a non-client for providing advisory services to client. It may be necessary for the SEC to clarify what it means by “benefit,” which is a very broad term.

The SEC has proposed new disclosure in new Item 16 about the adviser’s proxy voting practices, including whether the client can direct the proxy vote and find out how the adviser voted.

Advisers that advertise their performance will be required in new Item 17 to disclose the standards used to calculate the performance. The SEC at this time is not mandating particular standards. However, this may be a prelude to new SEC rules mandating standardized disclosure.<sup>15</sup> It also would require the adviser to disclose any third-party review of the adviser’s performance information with industry standards.

Items of Form ADV that the SEC did not significantly change include the advisory firm description (Item 4), client types (Item 6), affiliations and other relations with various financial institutions (Item 9), how the advisers reviews accounts (Item 12),

payment for custody practices (Item 14), whether it has discretion over client assets (Item 15), and any condition that would impair their ability to deliver services (Item 18).

### **Item 2B – Electronic Form ADV**

Revised Form ADV, as currently proposed by the SEC, would introduce a new disclosure document -- the brochure supplement. Item 2B would require an adviser to prepare brochures for each of its advisory personnel containing information about their background, including their disciplinary history.<sup>16</sup> The adviser would deliver these “resume-type” documents to those clients that such employee rendered advice to. Specifically, the client would have to receive a brochure supplement with certain limited exceptions for each adviser employee who regularly communicates advice to the client, formulates investment advice for the client (even if such employee has not contact with the client), and has discretionary authority over the client’s investment assets. The SEC envisions that the supplement would be only about one or two pages in length. As noted, the brochure supplement would not have to be filed with the SEC. However, copies would have to be maintained and available for inspection by the SEC.

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### **NOTICE FILINGS**

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Advisers make notice filings with various states through the IARD.<sup>17</sup> Like Part I of the old Form ADV, Item 2.B. of Part IA lists all of the states. To make a notice filing,

the adviser merely has to check the box of each appropriate state in the list of states and the IARD automatically makes the notice filing in the state. Each state's notice filing fee is deducted from the adviser's IARD account. The adviser is responsible for determining on its own the states where it is required to make notice filings with.

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## **FIRM BROCHURE DELIVERY REQUIREMENTS**

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If the SEC adopts Part 2A, advisers will have to deliver firm brochures to each client before or at the time the adviser enters into an advisory agreement with that client.<sup>18</sup> In addition, an adviser will be required annually to deliver or offer to deliver to each client a free update of the brochure.<sup>19</sup> If a client accepts the offer, the adviser must send the brochure to the client within seven days after you are notified.<sup>20</sup> Currently, these rules are in place with respect to Part II of the Form ADV. One new change is that if the adviser is a general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then it must treat each limited partner, member, or beneficial owner as a client for purposes of delivering brochures and brochure supplements.

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## **IARD FEES**

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The IARD assesses two types of filing fees:

- **Initial Set-Up Fee:** the filing fee charged to set up an IARD account. An adviser with a fiscal year ending December 31 should select "Annual Amendment" in its first IARD filing, since it will be charged only the initial set-up fee (and not the annual amendment fee).
- **Annual Amendment Fee:** the filing fee charged when an adviser makes its annual filing within 90 days of its fiscal year end.

Set forth below is the fee schedule:

1. For an adviser with over \$100 million of assets under management, the initial fee is \$1100 and the annual fee is \$550;
2. For an adviser with assets under management between \$25 million to \$100 million, the initial fee is \$800 and the annual fee is \$400; and
3. For an adviser with less than \$25 million of assets under management, the initial fee is \$150 and the annual fee is \$100.

For more information about the filing fees, see

<http://www.sec.gov/offices/invmgmt/iard/iardfee.htm>

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## IARD FILING QUESTIONS

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If an adviser has questions regarding IARD filings, it should consult the Firm User's Manual, which can be found at: [http://www.iard.com/pdf/firm\\_users\\_man.pdf](http://www.iard.com/pdf/firm_users_man.pdf)

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<sup>1</sup> Two hardship exemptions from the electronic filing requirement are available. A temporary hardship exemption is available if an adviser files electronically, but it encounters unexpected difficulties that prevent it from making a timely filing with the IARD. This exemption does not permit a paper filing; instead, it extends the deadline for

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an electronic filing for seven business days. See proposed Rule 203-3(a) under the Investment Advisers Act of 1940 (“Advisers Act”). A continuing hardship exemption may be granted to a small adviser that can demonstrate that filing electronically would impose an undue hardship. See Rule 0-7 under the Advisers Act.

<sup>2</sup> An adviser will file a Form ADV-ID with the NASDR. Form ADV-ID will be available at <[www.sec.gov](http://www.sec.gov)>, <[www.nasaa.org](http://www.nasaa.org)>, and <[www.nasdr.org](http://www.nasdr.org)>.

<sup>3</sup> The new fee will be used to maintain and improve the IARD system.

<sup>4</sup> Advisers generally with \$25 million or more assets under management register with the SEC; other advisers register with the appropriate state(s).

<sup>5</sup> Until the IARD begins to accept Part 2A of Form ADV (the brochure), an adviser will not be required to submit Part 2A to the SEC. Instead, the adviser must maintain a copy of each firm brochure that it uses and provide it to SEC staff upon request. The brochure the adviser maintains is deemed filed with the Commission. The SEC will notify advisers when the IARD begins to accept Part 2A, and advisers will have a grace period before they are required to file Part 2A with the IARD.

<sup>6</sup> See Section 204 of the Advisers Act and Rule 204-1 under the Advisers Act as proposed to be amended. These provisions will continue to require an adviser to amend its Form ADV within 90 days of the end of its fiscal year.

<sup>7</sup> Certain items, such as assets under management, will be blank so that the adviser will have to affirmatively update this information.

<sup>8</sup> See supra n. 6.

<sup>9</sup> Investment advisers currently are permitted to send clients a narrative brochure document that contains the information in Part II. See Rule 204-3(a).

<sup>10</sup> Alternatively, the summary may be put in a separate letter accompanying the brochure.

<sup>11</sup> See, e.g., Jason Baker Tuttle, Sr., Initial Decision Release No. 13 (Jan. 8, 1990).

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Inspection report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998) (Soft Dollar Report).

<sup>15</sup> See Speech by Paul F. Roye, Director, Division of Investment Management U.S. Securities & Exchange Commission, Investment Counsel Association of America, April 6, 2000 (<http://www.sec.gov/news/speeches/spch364.htm>).

<sup>16</sup> Specifically, a brochure would have to be prepared for each “supervised person,” which means any of the adviser’s officers, partners, directors or employees, or any other person who provides investment advice on the adviser’s behalf.

<sup>17</sup> Many states require an SEC-registered adviser doing business in their state to provide them with copies of the adviser’s SEC filings and to pay fees. These are usually referred to as “notice filings.”

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<sup>18</sup> See Rule 204-3(a) under the Advisers Act.

<sup>19</sup> See Rule 204-3(b)(2).

<sup>20</sup> Id.