

March 9, 2021

Form ADV annual amendment deadline

This serves to remind SEC-registered investment advisers (“Registered Advisers”) and exempt reporting advisers (“ERAs”) to file their annual amendment to their Form ADV.

Rule 204-1 of the US Investment Advisers Act of 1940 (the “Advisers Act”) requires annual amendments to Form ADVs to be filed with the US Securities and Exchange Commission (the “SEC”) within 90 calendar days of the fiscal year-end. For many Registered Advisers and ERAs, the end of the fiscal year is December 31. For these Registered Advisers and ERAs, the deadline to file is swiftly approaching and must be made by the end of this month (March 31, 2021).

Filing Fees

As part of the filing of the annual amendment, a filing fee must be paid. The fees differ between Registered Advisers and ERAs. For Registered Advisers, the amount of regulatory assets under management (“AUM”) dictates the level of fees payable to file these annual amendments. For ERAs, there is one set fee.

	AUM	Annual Updating Amendment Fee
Registered Advisers	More than \$100 million	\$225
	\$25 million to \$100 million	\$150
	Less than \$25 million	\$40
ERAs	Under \$150 million	\$150

How the SEC views foreign (non-US) advisers

In general, each person or entity that, for compensation, is engaged in the business of providing advice to others, or issuing reports or analyses, regarding securities is deemed an “investment adviser” by the SEC, and required to register with the SEC absent an exemption. The entity that makes or executes investment decisions for an investment fund will typically fall under this definition. This applies with equal regard to both US and non-US persons and entities.

For non-US persons and entities, there is a general exemption for advisers that (i) have no place of business in the United States; (ii) advise, in total, fewer than 15 clients and investors in private funds in the United States; (iii) have aggregate assets under management attributable to such clients and investors of less than \$25 million; and (iv) do not hold themselves out generally to the public in the United States as an investment adviser. Please note that under

certain circumstances, look-through rules apply requiring an adviser to count not only the investors in the funds they advise, but also the beneficial owners of such investors. Non-US advisers meeting the criteria of this exemption are not required to register as a Registered Adviser nor file as an ERA.

Non-US funds are nevertheless able to allow investments by US investors without subjecting their investment adviser entity to full SEC registration. For example, the Private Fund Adviser Exemption applies where the adviser: (1) has no client that is a US person except for one or more qualifying private funds; and (2) manages assets at a place of business in the United States solely attributable to private fund assets, the total value of which is less than \$150 million. Advisers that fall within this exemption are not required to fully register as a Registered Adviser but only report as an ERA. For venture capital focused fund advisers, there is also the Venture Capital Adviser Exemption.

If you discover that your advisory business ceases to satisfy the applicable criteria of the exemption upon which you are relying, then you may need to either file as a Registered Adviser or as an ERA by the coming deadline.

We recommend you consult with your legal advisers as to whether and which exemption may apply to you.

Recent developments

Last year, the SEC issued an order to extend the filing deadline by 45 days, providing temporary relief for advisers affected by COVID-19. However, the SEC has not implemented (and likely will not implement) a COVID-19 related extension this year.

On December 22, 2020, the SEC amended Rule 206(4)-1 of the Advisers Act to “modernize” the regulation of investment advisers’ advertising practices. The SEC added a “Marketing Activities” subsection to Item 5 of Form ADV, which requires investment advisers to answer a series of “Yes/No” questions. The compliance date is 18 months after the effective date.

Should you need any assistance on your Form ADV annual amendment filing, or if you have any questions regarding your status as an investment adviser, please do not hesitate to reach out to us.

Special thanks to Martin Back for contributing to the preparation and German translation of the German version of this article (which can be accessed here).

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