

Crypto Risk Disclosure Considerations

FEBRUARY 7, 2019

Item 8 of Part 2A of Securities and Exchange Commission (SEC) Form ADV, entitled “Methods of Analysis, Investment Strategies and Risk of Loss,” requires an SEC-registered investment adviser to:

- Describe the methods of analysis and investment strategies it uses in formulating investment advice or managing assets.
- Explain that investing in securities involves risk of loss that their clients should be prepared to bear.
- Explain the material risks associated with each “significant investment strategy or method of analysis” it uses—in **detail** if the investment strategy or method of analysis involves “significant or unusual risks.”
- Explain how frequent trading can affect investment performance, particularly through increased brokerage and other transaction costs and taxes, if its “primary strategy” involves frequent trading of securities.
- Explain the material risks involved if the adviser recommends “primarily a particular type of security”—in **detail** if the type of security involves “significant or unusual risks.”

So, registered investment advisers that invest/trade in crypto assets on behalf of their clients need to determine—in light of the nature and scope of their involvement in the crypto space—the extent to which they must explain the risks associated with such investing/trading, in response to Item 8 of Part 2A of SEC Form ADV.

Providing Crypto Risk Disclosure to Clients

In light of:

- the SEC’s recent focus on the crypto space,
- the various “Investor Alerts” and other warnings the SEC and other regulators have published cautioning investors about the many significant risks associated with crypto asset investing/trading (catalogued [here](#)), and
- the reference in the Blass Letter to an adviser’s fiduciary obligations as they relate to crypto assets (see our January 14 post [here](#)),

it would seem prudent that, even if an adviser concludes (in light of the nature and scope of its involvement in this space) that Item 8 of Part 2A of Form SEC does not technically require it to provide **detailed** risk disclosure relating to its crypto activities, it should provide such disclosure nonetheless in order to avoid any claim that it has breached its fiduciary duty by failing to make such disclosure.

An adviser who concludes that Item 8 of Part 2A of Form SEC does not technically require it to provide detailed risk disclosure relating to its crypto activities could provide such disclosure:

- in a separate document; or
- in response to Item 8, perhaps with an appropriate explanation (to the extent true) that: (i) investing/trading in crypto assets is not one of the adviser’s “significant investment strategies” and does not involve one of the adviser’s “significant methods of analysis;” (ii) the adviser does not “primarily” invest/trade in crypto assets, or any particular type of crypto asset, on behalf of clients; and/or (iii) its “primary strategy” does not involve frequent trading of crypto assets on behalf of clients.

What Specific Risks Should an Adviser Disclose?

The answer to this question depends on the types of crypto assets in which the adviser trades/invests on behalf of clients and other surrounding facts and circumstances.

To get a flavor for the types of risks that regulators view as significant risks in the crypto space, please consult the various regulatory alerts and other documents catalogued [here](#).

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