



California Corporate & Securities Law

DOC To Mandate Use of New Part 2 to Form ADV

Posted In [Department of Corporations, Investment Advisers](#)

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Yesterday, the Department of Corporations issued this [notice](#) to investment advisers registered with the it. The notice advises that the Department is adopting the new Part 2 to Form ADV effective October 12, 2010. The Department has announced the following compliance dates:

- As of January 1, 2011 all new investment adviser applicants will have to file, through the Investment Adviser Registration Depository, the new Part 2 of Form ADV as part of their applications.
- As of January 1, 2011 all licensed investment advisers will need to incorporate the new Part 2 of Form ADV with their next filing of an amendment to Form ADV, or their annual updating amendment to Form ADV.
- Between October 12, 2010 and January 1, 2011 applicants and current licensed investment advisers filing amendments to their Part II of Form ADV may use either the current Part II or the new Part 2.

By way of background, an investment adviser registered with the Securities and Exchange Commission or California must complete a Form ADV. Rule 203-1 and 10 CCR § 260.231. The Form ADV consists of two parts. Part 1 contains information about the adviser's business and whether it has had problems with regulators or clients. Part 2 describes the adviser's services, fees, and strategies. On July 28, 2010, the SEC adopted a new Part 2 pursuant to this [release](#). The October 12, 2010 date referenced in the Department's notice corresponds to the effective date of the SEC's rule changes.

While the Department's notice simply brings the state requirement into conformity with the recent changes by the SEC, I question whether the Department may effect this change simply by issuing a notice. Under California's Administrative Procedure Act, new rules or changes to existing rules must be adopted pursuant to a process of notice and comment. While cumbersome, this process ensures both public notice and the opportunity to provide input. In an emergency, regulations may be temporarily adopted as emergency rules. Although I recognize that the Department is facing workload issues exacerbated by "Friday Furloughs", these changes should be implemented in compliance with the APA.

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