

SEC Issues Amendments to Form ADV

Under the Investment Advisers Act of 1940 (the "Advisers Act"), an investment adviser that manages \$25 million or more in client assets must register with the Securities and Exchange Commission ("SEC") by filing a Form ADV with the SEC. Once registered, advisers are required under Rule 204-3 of the Advisers Act to deliver to all current advisory clients and all prospective clients thereafter a brochure in which the advisers disclose certain information required by Part 2 of Form ADV ("Part 2").

On July 28, 2010, the SEC released amendments to Part 2 that will apply to every investment adviser who is currently registered or who plans to register with the SEC or a similar state regulatory entity. The amendments to Part 2 include two sub-parts, Part 2A and Part 2B. Part 2A requires advisers to disclose specifically outlined information in their brochures. Part 2B requires advisers to submit to clients a "brochure supplement" that will include information about certain advisory personnel on whom clients rely for investment advice.

Previously allowing disclosures in a check-the-box format, Part 2A will now require advisers to draft their disclosures in a narrative format and to present disclosed information in "plain-English," e.g. using short sentences, definite, concrete, everyday words, and the active voice. In order to provide investors with uniform, easily comparable brochures, the SEC is also requiring advisers (i) to respond to every item listed in Part 2A, (ii) to present the items in the order listed in Part 2A, and (iii) to use the specific headings provided in Part 2A.

Part 2A: Narrative Disclosures

Although most of the disclosure items contained in Part 2A were required under the previous Part 2, the SEC has removed, added, and amended a number of the items. The following is a brief description of the information that advisers are now required to disclose pursuant to Part 2A:

- General business information, in the form of a Cover Page, including certain contact information as well as statements about the status of the brochure and disclaimers as to the advisers use of certain terminology.
- Any Material Changes since an adviser's last annual brochure update.
- A Table of Contents to help clients locate information and easily compare one brochure to another.
- Advisory Business information, including types of services offered, any areas of specialization, and the amount of client assets managed.
- Fees and Compensation, including how the adviser is compensated, a schedule of the adviser's fees, whether fees are negotiable, whether it bills clients or deducts fees directly from client accounts, and any other costs associated with the advisory services.
- Whether the adviser charges Performance-Based Fees, and in the event the adviser charges performance-based fees on some accounts and not on others, how the adviser deals with those conflicts.
- The Types of Clients that the firm generally has and the requirements for opening

and maintaining an account with the adviser.

- The Methods of Analysis and Investment Strategies employed by the adviser, including the specific material risks of certain investments as well as a general statement as to the risks of investing in securities.
- Disciplinary Information, including any material facts about legal or disciplinary events involving the adviser or its personnel.
- Other Financial Industry Activities and Affiliations, including material relationships or arrangements that the adviser has with related financial industry participants.
- An adviser's Code of Ethics, including a brief description and a statement that a copy is available upon request; and an adviser's Participation or Interest in Client Transactions and Personal Trading, including whether the adviser recommends securities in which the adviser has a material financial interest and whether personnel invest in the same securities as clients.
- Brokerage Practices, including how the adviser selects brokers and determines the reasonableness of a broker's compensation.
- Review of Client Accounts, including whether and how often an adviser reviews clients' accounts or financial plans, and who conducts any such review.
- Client Referrals and Other Compensation, including any arrangements under which the adviser or its personnel compensate a third party for client referrals and the compensation offered.
- Custody, including whether a custodian for the clients' accounts will send the clients statements, and a declaration that the clients should review these statements carefully.
- Investment Discretion, including whether the adviser has discretionary authority over client accounts and whether clients may, or customarily do, place limitations on this authority.
- Voting Client Securities, including the adviser's proxy voting practices, such as the method for clients to direct how the adviser votes, how any conflicts of interest are addressed, and how clients can obtain information on how the adviser voted.
- Financial Information, including, under certain circumstances, the adviser's audited balance sheet as of the most recent fiscal year and any financial condition that may impair the adviser's ability to meet contractual commitments to clients.

In addition to the above disclosures, Part 2 will still require advisers that sponsor wrap fee programs to prepare a separate, specialized firm brochure, in lieu of the standard brochure, for clients of the wrap fee program.

Part 2B: Brochure Supplement

New Part 2B will require each firm brochure to be accompanied by a brochure supplement, which supplement will provide information about the advisory personnel on whom the particular client receiving the brochure relies on for investment ("Supervised Persons"). The supplement must contain information about the Supervised Persons' educational background, business experience, other business activities and disciplinary history, if any. The firm must also disclose whether any third party gives a Supervised Person an economic benefit for providing advisory services and how the firm monitors the Supervised Persons.

Delivery and Updating of Brochures and Brochure Supplements

- Advisers must file their brochures with the SEC electronically through the IARD system. While advisers are required to maintain copies of their brochure supplements, they are not required to file the supplements with the SEC.
- Advisers must deliver a current brochure before or at the time they enter into an advisory contract with a client. Advisers must provide clients annually with either (i) an updated, current copy of the brochure that summarizes any material changes or (ii) a summary of the material changes and an offer to provide a current copy of the brochure upon request. This annual delivery must be made no later than 120 days after the end of the adviser's fiscal year.

- Advisers must give clients brochure supplements for each supervised person who (i) formulates investment advice for that client and has direct client contact or (ii) makes discretionary investment decisions for that client's assets, even if the supervised person has no direct client contact. If investment advice is provided by a team of more than five supervised persons, the brochure supplement need only provide information with regard to the five persons with the most significant responsibility for providing day-to-day advice to the client.

Timing for Compliance

The amendments will become effective 60 days after their publication in the Federal Register, which should result in an effective date on or around September 21, 2010. Unregistered advisers who submit their initial Form ADV to register with the SEC after January 1, 2011 will be required to comply with the new disclosure requirements. Registered advisers with a fiscal year ending December 31, 2010, or later, must (i) file with the SEC a brochure meeting the new requirements within 90 days of their fiscal year end and (ii) distribute an updated, filed brochure to their clients within 60 days of filing.

If you have any questions regarding this alert, please contact any member of [Miller & Martin's Securities Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

THIS IS AN ADVERTISEMENT.

FOLLOW US ON 

Atlanta | Chattanooga | Nashville
www.millermartin.com

ATLANTA

1170 Peachtree Street,
N.E., Suite 800
Atlanta, GA 30309-
7706

CHATTANOOGA

832 Georgia Avenue,
Suite 1000,
Volunteer Building
Chattanooga, TN 37402-
2289

NASHVILLE

150 Fourth Avenue North,
Suite 1200, One Nashville Place
Nashville, TN 37219

[Subscribe](#) to our email list