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Financial Services Alert of Mark Barnes Law PC

HOOSIERS WILL SOON HAVE MORE (AND MORE READABLE)
INFORMATION ABOUT THEIR INVESTMENT ADVISERS

February 21, 2011 -- Indiana residents who look to an investment adviser to manage their money or advise on their investments for an advisory fee will soon be receiving an expanded disclosure document about their adviser and its business practices.

On July 28, 2010, the United States Securities and Exchange Commission changed the format of the required “brochure” that advisers must deliver (or make available) annually to their clients. This brochure for decades has been a “check the box” type of form that asked questions in obscure terminology. The SEC changed the form (known in the industry as the “ADV Part 2”) to a “plain English” model requiring narrative responses to questions that were designed to be more clear, concise and easily understandable.

The new ADV Part II asks similar questions, but in a more probing fashion, such as:

- more specific information about fees, including the receipt by the adviser of any separate or related fees as a result of referring business to a broker, mutual fund, annuity company, or other financial service provider;
- disclosure of the risks that each significant method of security analysis or investment strategy might have for each client, including risks arising if the “primary strategy” of the adviser is “frequent trading of securities” and if the strategy involves “primarily a particular type of security”; and
- highlighting to the clients of the conflicts of interest and possible additional costs of certain common practices by advisers as to how they allocate the brokerage for trades in managed accounts, such as any receipt by the adviser of so-called “soft-dollar” benefits, and of the use of any “directed brokerage” arrangements (where a client directs the adviser to use only a particular recommended broker without shopping trades for “best execution” including price).

Advisers that are SEC-only advisers (that is, who do not also register with the State of Indiana or other states) are required to comply with the new brochure rule in connection with the current round of “annual updates” to their ADV files, which for advisers with a December 31 fiscal year end are due by March 31.

Advisers that are registered with the State of Indiana are required to register with the State on a calendar year basis regardless of fiscal year, and the Indiana Secretary of State has given these Indiana-registered advisers a special grace period expiring February 28, 2011 to file their new brochures in the new ADV Part 2 format online.

Investors can check out their advisers and view their disclosures online (whether regulated at the federal or state level) at www.adviserinfo.sec.gov.