

SEC Votes to Propose Amendments to Part 2 of Form ADV (Finally)

February 14, 2008

At an open meeting yesterday, the Securities and Exchange Commission (SEC) voted unanimously to seek public comment on proposed amendments to Part 2 of Form ADV, the investment adviser registration form. The amendments are designed to provide clients with narrative brochures containing plain English descriptions of an investment adviser's business, services, and conflicts of interest. The proposed changes also would require advisers to file their brochures electronically, and the brochures would be available to the public through the SEC's website.

The SEC had originally proposed amendments to Part 2 of Form ADV on April 5, 2000. However, those amendments were never adopted, and the industry has long been anticipating the SEC's new proposal. Among the highlights discussed at yesterday's open meeting include:

- **Movement away from the current "check-the-box" format and related disclosure schedules** to a free-form, plain English, narrative brochure. The SEC believes this approach, which is similar to that currently used for Schedule H, will enhance a client's understanding of the information contained in the brochure by providing investment advisers with the flexibility to use charts, graphs, and other user-friendly methods of relaying the required information.
- **Enhanced conflicts of interest disclosure.** The brochure will require enhanced disclosure about potential conflicts of interest such as the use of affiliated brokers, soft dollars, side-by-side management of accounts that pay performance fees, and receipt of compensation from issuers of financial products the adviser recommends to clients.
- **Distribution of a "brochure supplement"** that would include information about the educational background, business experience, and disciplinary history of particular advisory personnel. The SEC appears to have retained the requirement—one of the most controversial of the 2000 release—to provide each client with a brochure supplement that outlines the qualifications of the personnel who provide advisory services to that particular client. In response to comments on the 2000 release, the staff noted they have limited the types of advisory personnel covered by the brochure supplement and the types of advisory clients that must receive it.
- **Electronic filing of annual updates to Part 2 of Form ADV.** The proposed rules would reinstate the requirement that investment advisers file Part 2 of Form ADV with the SEC, a practice that was discontinued after the 2000 release. The brochures would be filed electronically and would be publicly available through the Investment Adviser Public Disclosure website. In addition, it appears that investment advisers would be required to deliver Part 2 of their Form ADV annually, rather than simply make an offer to deliver as is currently required.

The SEC has not yet published the proposed amendments to Part 2 of Form ADV. However, investment adviser clients may wish to begin reviewing the adequacy and clarity of their current Form ADV disclosure, particularly as it relates to potential conflicts of interest. The upcoming revisions to Form ADV also may provide investment advisers with an opportunity to review and update other disclosure documents, including prospectuses and offering memoranda.

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