

Morgan Lewis

Form ADV Part 2  
Philadelphia Compliance Roundtable

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# Overview

- New Form ADV Part 2
  - Structure of Part 2
  - Timing of Implementation
  - Delivery and Updating Obligations
  - Substantive Content

# Structure of Part 2

- Narrative Brochure
  - Part 2A – Firm Brochure
    - Old Schedule F
    - 18 disclosure Items for SEC registered investment advisers
  - Appendix 1A – Wrap Program Brochure
    - Old Schedule H
    - No significant changes
  - Part 2B – Brochure Supplement
    - New Requirement
    - Disclosure of supervised persons responsible for:
      - Formulating investment advice with direct client contact; and
      - Make discretionary investment decisions for client, even if no direct client contact
    - For a team of more than 5 supervised persons, brochure supplements are only required for the 5 supervised persons with the most significant responsibility for the day-to-day advice provided to the client
- Form ADV disclosure items are not comprehensive
  - To satisfy its fiduciary duty, an adviser “may have to disclose to clients information not specifically required by Part 2 of Form ADV or in more detail than the brochure items might otherwise require.”

# Timing of Implementation

- Advisers with fiscal year of December 31, 2010 or later must transition to the new form with their next annual updating amendment
- Within 90 days of fiscal year
  - File Part 2A electronically with the SEC
  - Begin distributing Part 2A and Part 2B to new clients
- Within next 60 days
  - Deliver Part 2A and Part 2B to existing clients

# Delivery and Updating Requirements

## Part 2A

- Initial delivery – Before or at the time of entering into the advisory contract
- Annual update – Update annually and file with the SEC within 90 days of fiscal year end (unless no material changes)
- Annual delivery – Deliver updated Part 2A or summary of material changes annually within 120 days of fiscal year end (unless no material changes)
- Interim updates – Must update and file with SEC whenever disciplinary information (Item 9) changes or whenever other information in brochure becomes materially inaccurate
- Interim delivery – Must deliver updated brochure to clients promptly in the event of a change to the disciplinary events\*

## Part 2B

- Initial delivery – Before or at the time the supervised person begins to provide advice to the client
- Annual update – None
- Annual delivery – None
- Interim updates – Must update whenever disciplinary information (Item 3) changes or whenever other information in brochure becomes materially inaccurate
- Interim delivery – Must deliver updated brochure supplement to clients promptly in the event of a change to the disciplinary events\*

# Delivery and Updating Requirements

- *\* As fiduciaries, “advisers have an ongoing obligation to inform their clients of any material information that could affect the advisory relationship.”*
- **Electronic delivery**
  - Permitted, consistent with SEC electronic media releases
  - No access equals delivery by posting on website

# Substantive Content – Part 2A

- Item 1 – Cover Page
- **Item 2 – Material Changes**
- **Item 3 – Table of Contents**
- **Item 4 – Advisory Business**
- **Item 5 – Fees and Compensation**
- Item 6 – Performance-Based Fees and Side-by-Side Management
- Item 7 – Types of Clients
- **Item 8 – Methods of Analysis, Investment Strategies and Risk Factors**
- **Item 9 – Disciplinary Information**
- **Item 10 – Other Financial Industry Activities and Affiliations**
- Item 11 – Code of Ethics, Participation or Interest in Client Transactions and Personal Trading
- Item 12 – Brokerage Practices
- Item 13 – Review of Accounts
- Item 14 – Client Referrals and Other Compensation
- Item 15 – Custody
- Item 16 – Investment Discretion
- Item 17 – Voting Client Securities
- Item 18 – Financial Information

# Substantive Content – Part 2B

- Item 1 – Name, address, date of supplement, required regulatory legends
- Item 2 – Educational background and business experience
  - Professional designations – sufficient explanation of minimum qualifications
- Item 3 – Disciplinary Information
- Item 4 – Other Business Activities
  - Investment-related
    - Commissions, bonuses or other compensation based on the sale of securities or other investment products
  - Other business or occupation for compensation
    - Disclose if represents substantial source of income or involves a substantial amount of time
    - Less than 10% of time and income is not substantial
- Item 5 – Additional Compensation
  - Economic benefits include sales awards and other prizes, but not regular salary
  - Bonuses based, at least in part, on the number or amount of sales, client referrals or new accounts
- Item 6 – Supervision
  - Identify supervisor