

Morgan Lewis

together

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SMA: Wrapping Up Compliance Issues



Steven W. Stone
Morgan, Lewis & Bockius LLP

Institutional Investor Legal Forum Global Roundtable

Wrap/SMA Accounts

- Regulators' focus on SMAs
- Advertising and marketing issues for managers
- Suitability, individualization and rule 3a-4 issues
- Best execution, trading, and investment opportunities
- ERISA issues
- New SMA products
- Disclosure, Form ADV delivery
- Recordkeeping

Regulators' focus on SMAs

- Focus on Managers – Current SEC requests
 - *List of SMA programs in which clients participate*
 - *Name of custodian/sponsor/broker-dealer*
 - *Total fee charged by the sponsor*
 - *Terms of Registrant's compensation*
 - *Client assets in each program*
 - *A list of gifts & trips received for program participation*
 - *Access to due diligence on sponsors (initial & continuing)*
 - *Access to client suitability questionnaires*
 - *Access to procedures used to record client trades*
 - *Access to all complaint files and responses*
- Coming SMA Sweep?

Advertising and marketing issues for managers

- Manager responsibilities
- Thorny issues with
 - *Blended presentations*
 - *Backtested performance and projections*
 - *Related performance*
- GIPS and access to sponsor records
- Comparisons to mutual funds

Suitability, individualization and Rule 3a-4 issues

- Suitability
 - *SEC confusion re client specific info*
 - *Due diligence with ERISA accounts*
- Individualization and 3a-4
 - *Overselling issues*
 - *Reasonable restrictions*

Best execution, trading, and investment opportunities

- Nature of best execution obligations
- Sequencing issues
 - *Segregating SMA Trading*
 - *Rotation*
 - *Step Outs*
 - *Trading Last*
 - *Other types of tradeaways*
- Information leakage concerns
- Recent “paradigm shifts”

Polling Question: Sequencing of Orders

- How does your firm trade wrap accounts compared to traditional accounts?
 - *Trade wrap accounts after traditional accounts*
 - *Trade wrap accounts before traditional accounts*
 - *Rotate trading of wrap accounts and traditional accounts randomly by automation or manually*
 - *Block or batch wrap and traditional account trades together for execution through a single broker and allocate the shares post-trade across accounts on a pro rata basis*
 - *Trade wrap accounts and traditional accounts simultaneously through separate brokers*
 - *Other*

ERISA issues

- Due diligence
 - *Authority*
 - *Diversification*
- Affiliated sponsors

New SMA products

- ETF SMAs
- UMAs
- Model Programs
 - *Adviser-client relationship*
 - *Disclosure issues*
 - *Differences between Hands-On and Model Arrangements*
 - *Opportunity issues*
 - *Performance presentations & AUM calculations*

Disclosure, Form ADV delivery

- Form ADV delivery obligations
 - *Delegation to sponsor*
 - *Records*
- Special Conflicts/Disclosure issues
 - *Trading*
 - *Leakage of holdings & trading info*
 - *Net trades & embedded commissions*

Recordkeeping

- Access to sponsor records
- Performance backup

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