

Morgan Lewis

Form ADV Part 2 Philadelphia Compliance Roundtable

Jennifer L. Klass
Morgan, Lewis & Bockius, LLP

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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