

Points of Emphasis/Best Practice Summary

The SEC is adopting changes to Part 2 of the Form ADV. Under the amendments, advisers are required to prepare a narrative brochure written in plain English and presented in a uniform manner to make it easier for clients to compare different advisers' disclosures. The brochure must be delivered to a client before or at the time the adviser and client enter into an advisory contract. Annually, advisers must provide clients an annual summary of material changes to the brochure and either provide, or offer to provide, the updated brochure to the client. In addition, SEC registered advisers will now be required to file Part 2 electronically.

Information that must be described in the new Part 2 format are the firm's advisory business, including the types of advisory services offered, whether it holds itself out as specializing in a particular type of advisory service, and the

amount of client assets that it manages; provide a fee schedule and disclose whether fees are negotiable, as well as any other fees that clients may pay in connection with the services provided; methods of analysis and investment strategies and explain that investing in securities involves risk of loss; material facts about any legal or disciplinary event; its code of ethics and state that a copy is available upon request; and the factors considered in selecting or recommending broker-dealers and determining the reasonableness of brokers' compensation. In addition, advisers will be required to deliver "brochure supplements" which contain brief resume-like disclosure about the educational background, business experience, other business activities, and disciplinary

history of the individual. The brochure supplements will also contain contact information for the person's supervisor in case the client has a concern about the person.



Most advisers will begin distributing and posting the new brochures in the first quarter of 2011.

Advisers currently registered whose fiscal year ends on or after December 31, 2010 will be required to file its brochure that meets the new requirements in its next annual updating amendment no later than March 31, 2011. Within 60 days of filing such amendment, advisers must deliver its new brochure and brochure supplement to its existing

clients. Each new client and prospective client must receive the adviser's new brochure and brochure supplement after the initial filing of the new brochure.

Regulatory Corner

The SEC's new "pay to play" rule becomes effective on September 13, 2010. According to the SEC, pay to play is the practice of making campaign contributions and related payments to elected officials in order to influence the awarding of lucrative contracts for the management of public pension plan assets and similar government investment accounts. The rule will, among other things, prohibit investment advisers from providing advisory services for compensation, either directly or through a pooled investment vehicle, for two

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years, if the adviser or certain executives or employees make a political contribution to an elected official who is in a position to influence the selection of the adviser. This rule applies to both candidates as well as political incumbents for a position that can influence the selection of an adviser. The rule also prohibits advisers from paying a third party, such as solicitors, to solicit a government client on its behalf, unless the third party is an SEC registered investment adviser or broker-

dealer that is subject to similar pay to play restrictions. In addition, advisers may not direct or fund political contributions through third parties such as spouses, lawyers or affiliated companies to circumvent the rule.

Under the rule's de minimus provision, advisers are permitted to make contributions of up to \$350 per election per candidate if the contributor is entitled to vote for the candidate. If the contributor is not entitled to vote for the candidate, up to \$150 per election per candidate may be contributed without triggering the pay to play rule prohibitions.

Word on the Street

Following the H1N1 Influenza outbreak of 2009, we have seen regulators looking more closely at firms' pandemic preparedness. While the SEC has not issued any guidance on this issue directly, all firms should conduct a risk analysis to determine vulnerability to various types of business disruptions, such as a pandemic, hurricane, earthquake, flood or cyber event. While most firms have already covered events such as earthquakes, regional power outages, or terrorist attacks in their business continuity plans, some firms may not have even thought about implementing a plan in the case of a pandemic, until last year's swine flu outbreak.

Certain practices that you may consider implementing as part of your business continuity plan

are to monitor warnings of a pandemic from the World Health Organization (WHO), Centers for Disease Control (CDC), and local health departments, and disseminate that information to employees; distribute hand sanitizers and other hygiene products in an effort to prevent the spread of infection; implement social distancing policies and capabilities; implement travel restrictions and quarantines based on CDC recommendations; minimization or elimination of group meetings. These examples are merely suggestions and your firm should evaluate its risk and set practices in place that work best for your firm. Capital Markets Compliance, LLC can assist your firm in updating its business conti-

nity plan to include pandemic preparedness.

All firms must review their business continuity plan on an annual basis and make any changes that may be necessary. Firms should also test their BCP to ensure its effectiveness, such as testing IT, remote access, and performing backup readiness drills. Testing the firm's BCP will identify any holes in the plan, providing the firm the opportunity to correct the problems prior to any significant business disruption taking place.



Firms should be prepared for pandemics, such as the H1N1 pandemic of 2009.