

Revised Form ADV, Part 2: A New Plain English Requirement and Additional Disclosures

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Yesterday, the SEC voted unanimously to adopt changes to Form ADV, Part 2 - the Investment Adviser "brochure"- whereby the adviser explains to investors its qualifications, investment strategies, and practices. Touted by SEC Chairman Mary Schapiro as a move to make required disclosures "truly accessible" to investors, the amendments will "transform" the brochure from its current "check-the-box" format to a plain English narrative describing the adviser's conflicts, compensation, business activities, and disciplinary history in a consistent, uniform manner that will allow investors to compare information between brochures and advisers. In addition to the new format, its public availability on the SEC's website, and the requirement that the adviser will have to deliver the brochure to a client before or at the time the adviser enters into the advisory contract, the adviser will be required to provide the following additional information on Part 2:

- a description of the advisory business, including types of services offered, specialization in a particular type of advisory service, and the amount of client assets managed;
- how the adviser is compensated for advisory services, including providing a fee schedule and disclosing whether fees are negotiable;
- describing what types of other fees or expenses clients must pay for services;
- disclosure of receipt of performance-based or side-by-side management fees, including an explanation of conflicts of interests from managing accounts that are not charged a performance fee and how they are addressed;
- a description of methods of analysis, investment strategies, and general risk of loss and, if recommending particular method of analysis, strategy, or securities, an explanation of material risks involved and detailed discussion of unusual risks;
- any material disciplinary and legal events and any information on new disclosures or material changes to existing disclosures must be delivered to clients promptly;
- a description of the adviser's code of ethics and statement that copies are available upon request;
- disclosure of securities the adviser or an affiliate may recommend and have a material, financial interest in and the conflicts of interest associated with that practice;

- investments or trades at or around the same time as the client by the adviser or an affiliate in the same securities recommended, the conflicts of interest involved, and how those are addressed;
- a description of factors considered in selecting or recommending broker-dealers for client transactions and determining the reasonableness of the brokers' compensation;
- disclosure of soft dollar practices, client referrals related to broker compensation, asking or permitting clients to send trades to a specific broker for execution, bundling trades for volume discounts on execution costs, and how the adviser addresses conflicts of interests with these practices;
- resume information to new and prospective clients on specific individuals providing services to clients (provided to investors as supplements), including educational background, business experience, other business activities, the individuals' disciplinary history, and the person's supervisor's contact information; and
- an annual summary of material changes to the brochure.

The SEC has delayed the publication of revised Form ADV, Part 2 for five business days to create a uniform SEC-state form that will incorporate technical, state-specific changes to the Form's items and instructions. The amended rules and Form will be effective 60 days after publication in the Federal Register, and, according to the SEC, most advisers will begin distributing and publicly posting new brochures in the first quarter of 2011.

To access the SEC's press release announcing the approval of changes to the form, go to www.sec.gov/news/press/2010/2010-127.htm. To access SEC Chairman Mary Schapiro's Opening Statement at the SEC Open Meeting regarding Form ADV Amendments, go to www.sec.gov/news/speech/2010/spch072110mls-adv.htm. To access SEC Commissioner Troy Paredes' Statement at the SEC Open Meeting to adopt amendments regarding Part 2 of Form ADV, go to www.sec.gov/news/speech/2010/spch072110tap-adv.htm. To access the SEC's proposed rule and form amendments, go to <http://www.sec.gov/rules/proposed/2008/ia-2711.pdf>.

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