

StayCurrent

A Client Alert from Paul Hastings

SEC Votes to Propose Amendments to Part 2 of Form ADV

From the Investment Management Practice Group

On February 13, 2008, the SEC announced that it has proposed amendments to Part 2 of Form ADV, the written disclosure document required to be delivered by SEC-registered investment advisers to clients and prospective clients. Currently, Part 2 of Form ADV utilizes a “check-the-box,” “fill-in-the blank” format and although advisers are required to maintain an updated copy in their files for review by the SEC, they are not required to file Part 2 with the SEC.

In order to provide improved disclosure to investors and additional information about advisory personnel, the SEC has proposed that advisers deliver a new type of narrative brochure to clients and prospective clients, replacing the often disjointed disclosures in Part 2 of the current Form ADV. As proposed, the new Part 2 of Form ADV would consist of a narrative brochure (similar to that currently required by Schedule H for wrap fee purposes) containing more detailed plain English descriptions of an investment adviser’s business, services, and conflicts of interest. The narrative would publicly disclose more detailed information about the following:

- the adviser’s business practices
- the adviser’s services
- the adviser’s fees

- any anticipated investor risks
- any conflicts of interest (such as use of affiliates to execute transactions; use of client brokerage to obtain “soft dollar benefits”; the adviser’s interests in certain transactions; the side-by-side management of portfolios for clients who pay performance fees and those who do not; and the adviser’s receipt of compensation from issuers of financials products the adviser recommends to clients)
- the disciplinary history of particular advisory personnel
- the qualifications of employees who provide advisory services.

In addition, the proposed amendments would require SEC-registered advisers to file Part 2 of Form ADV electronically, and the brochures would be available to the public through the SEC-sponsored Investment Adviser Public Disclosure Web site (IARD).¹

The SEC has not yet published the proposed amendments to Part 2 of Form ADV. We will keep you informed as to these amendments and their affect on current Form ADV disclosure.





If you have any questions or comments, need any forms or otherwise need assistance in satisfying any of the requirements and obligations summarized in this letter, please contact a member of our Investment Management Group.

Our Senior Management Team:

Chair – Investment Management Practice Group

Michael R. Rosella
212-318-6800
mikerosella@paulhastings.com

Vice Chair – Investment Management Practice Group

David A. Hearth
415-856-7007
davidhearth@paulhastings.com

Julie Allecta
415-856-7006
julieallecta@paulhastings.com

Robert E. Carlson
213-683-6299
robertcarlson@paulhastings.com

Wendell M. Faria
202-551-1758
wendellfaria@paulhastings.com

Michael Glazer
213-683-6207
michaelglazer@paulhastings.com

Jacqueline A. May
212-318-6282
jacquelinemay@paulhastings.com

Mitchell E. Nichter
415-856-7009
mitchellnichter@paulhastings.com

Domenick Pugliese
212-318-6295
domenickpugliese@paulhastings.com

Gary D. Rawitz
212-318-6877
garyrawitz@paulhastings.com

Arthur L. Zwickel
213-683-6161
arthurzwickel@paulhastings.com

¹ On April 23, 2007, the IARD began accepting electronic filing of Part 2 of the Form ADV (including Schedule F). State-registered advisers can now file Part 2 of the Form ADV electronically with the individual states via the IARD system.