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**Sent:** Sunday, February 20, 2011 4:41 PM  
**To:** kenneth.hojnacki@dfi.wisconsin.gov  
**Cc:** Kelvin Blake; Hugo Mayer; dfinnigan@ilsos.net; derosial@michigan.gov; Paul Schwartz; David Smith; Jackie Walter; Joseph Brady  
**Subject:** Comments Proposed Model Brochure Rule for Investment Advisers

Dear Mr. Hojnacki and members of the NASAA IA Regulatory Policy and Review Project Group:

RE: Comments Proposed Model Brochure Rule for Investment Advisers

Thank you for the opportunity to comment on the proposed rule. The Project Group is attempting to bring state rules (by way of its model rules) in closer harmony with the corresponding rules of the SEC. This should be a goal that the Project Group should seek with its full circumspection. The Project Group has also retained provisions from the existing NASAA custody rule, which it considers optional safeguards that may be adopted as desired by Administrators. These retained provisions may divert from the newly adopted SEC rules.

1. In the Notice of Request for Public Comment it was noted that NASAA's current model brochure rule is based on the old Part II format and only requires an annual offer of the brochure and not an annual delivery as contemplated by the new ADV Part 2. Thus, the Project Group has now revised the proposed rule to be consistent with the SEC. I am in agreement.
2. Within the pages of the proposed rule text, the drafter included italicized language to reflect comments that the SEC's instructions for Part 2A of Form ADV exclude a change in advisory fee from its interpretation of "material change." The commenter states that Administrators may wish to include such fee changes as material changes.

We have to consider if such a divergence is of benefit. New/prospective clients do not need to see a Summary of Material Changes, and do not need to be aware if current fees disclosed in the ADV are higher than before. Existing clients may be grandfathered in under an old fee schedule. If advisory fees will be raised for existing clients, they will be made aware by execution of a new Advisory Agreement, or an Addendum to the existing Agreement, or by notice of negative consent. Thus, informed disclosure and client acceptance will be made. If the fee is the only change, then requiring an ADV update and client mailing would be a burden on the advisor, and unnecessary paperwork dumped on the client. I recommend that state rules be in harmony with the instructions printed on the Form ADV.

3. The proposed rule text regarding initial delivery maintains the old SEC language and does not even make note that the SEC has updated the language in this regard. Existing text as follows:  
(1) INITIAL DELIVERY. An investment adviser, except as provided in subsection (b)(3), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:  
(A) Not less than 48 hours prior to entering into any advisory contract with such client or prospective client; or  
(B) At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

SEC has taken away the 5-day termination clause. The initial delivery requirement now simply states that the advisor must give a firm brochure to each client before or at the time the advisor enters into an advisory agreement with that client.

While I understand the investor-oriented motivation behind the termination clause, the SEC did not feel it was necessary. I do not believe this was an area of abuse by advisors and the number of investors who relied on the clause was probably miniscule. In the name of harmonization for advisors who may be subject to multiple state jurisdictions and/or those that will cross back and forth between SEC and state jurisdiction, I recommend that the proposed model rule reconcile with the SEC rule.

Sincerely,  
Nancy Lininger  
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The Consortium  
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