

NASAA Brochure Rule Requirements for Investment Advisers

Model Rule 203(b)-1

Adopted 9/3/87; Amended 9/11/2011

Rule 203(b)-1 Investment Adviser Brochure Rule

- (a) GENERAL REQUIREMENTS. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to Section 403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:
- (1) a brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;
 - (2) a copy of its Part 2B brochure supplement for each individual
 - (A) providing investment advice and having direct contact with clients in this state; or
 - (B) exercising discretion over assets of clients in this state, even if no direct contact is involved;
 - (3) a copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;
 - (4) a summary of material changes, which may be included in FORM ADV Part 2 or given as a separate document; and
 - (5) such other information as the [Administrator] may require.
 - (6) The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.

Administrators should note that the SEC's Instructions for Part 2A of Form ADV exclude a change in advisory fee from its interpretation of "material change" such that it would not trigger an other than annual amendment of Form ADV Part 2A. The Administrator may wish to include a note or additional rule subsection to clarify fee changes constitute material changes requiring an update to all parts of Form ADV.

- (b) DELIVERY.
- (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.

(2) ANNUAL DELIVERY. An investment adviser, except as provided in subsection (b)(3), must:

- (A) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or
- (B) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

Advisers do not have to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.

(3) Delivery of the brochure and related brochure supplements required by subsections (b)(1) and (2) need not be made to:

- (A) clients who receive only impersonal advice and who pay less than \$500 in fees per year; or
- (B) An investment company registered under the Investment Company Act of 1940; or
- (C) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

(4) Delivery of the brochure and related supplements may be made electronically if the investment adviser:

- (A) in the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;
- (B) in the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;
- (C) prepares the electronically delivered brochure and supplements in the format prescribed in sub. (a) and instructions to Form ADV Part 2;
- (D) delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form;
- (E) establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this rule.

(c) OTHER DISCLOSURES. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

(d) DEFINITIONS. For the purpose of this rule:

- (1) "contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

- (A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;
 - (B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
 - (C) any combination of the foregoing services.
- (2) “entering into,” in reference to an advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.