

COMPLIANCE SUMMARY

Electronic Delivery of Information

The SEC, in several interpretive letters has provided general positions regarding how investment advisers may fulfill various disclosure and delivery of information requirements through the use of electronic media. In general, the SEC views information distributed through electronic means as satisfying the delivery or transmission requirements of federal securities laws if such distribution results in the delivery to the intended recipient of substantially equivalent information as they would have received if the information were delivered to them in paper form.

Outlined below are the general guidelines advisers must follow in compliance with federal securities laws when delivering or receiving information electronically. The substantive requirements and liability provisions of the federal securities laws (e.g. Section 206 of the Adviser's Act and rules thereunder) apply equally to electronic and paper-based media. Advisers also continue to be subject to the recordkeeping requirements under Rule 204-2. Furthermore, advisers must reasonably supervise personnel with a view to prevent violations of federal securities laws.

- What information may be delivered or received electronically?
 - Delivery of the written disclosure statement (or Part 2 of Form ADV or "Brochure") to clients under Rule 204-3;
 - Client's consent to assignment of an investment advisory contract under Section 205(a)(2);
 - Notification of clients, if adviser is organized as a partnership and there is a change in members of the partnership under Section 205(a)(3);
 - Disclosure regarding advisory arrangements involving performance fees under Rule 205-3(d);
 - Disclosure to clients, and client consent, for principal transactions under Section 206(3);
 - Disclosure to clients, and client consent, for agency cross transactions under Rule 206(3)-2
 - Disclosure of custody arrangements and required quarterly account statements under Rule 206(4)-2;
 - Disclosure required for cash solicitation arrangements and client acknowledgement under Rule 206(4)-3.
- When is paper delivery required?
 - The SEC believes that, as a matter of policy, a person who has a right to receive a document under the federal securities laws and chooses to receive it electronically, should be provided with the information in paper form whenever specifically requesting paper.
- Three Basic Conditions of electronic delivery of information that must be met:
 - Notice: Advisers must take steps to ensure that the recipients know that the information is available electronically, which may require supplemental communication via other means. For example, advisers who make information available via their website would need to make separate notice to satisfy the delivery requirements.
 - Access: Recipients of electronically disseminated information should have access to that information comparable to that of information in paper form. The recipients should have the ability to retain and have access to, which is not burdensome, the information. For Example, documents may be delivered using PDF if:
 - the adviser informs the recipient of the requirements necessary to download PDF when obtaining content to electronic delivery; and
 - provides the recipient with any necessary software and technical assistance at no cost.
 - Evidence of Delivery: Advisers should have reason to believe that electronically delivered information meets

the delivery requirements under federal securities laws, which can be evidenced by:

- Obtaining the intended recipient's informed consent. The informed consent must include:
 - the information to be delivered,
 - the specific electronic medium through which the information will be delivered,
 - the period covered by the consent, and
 - the potential costs;
 - obtaining evidence of actual receipt (e.g., electronic-mail return receipt or confirmation that the information was accessed, downloaded, or printed); or
 - facsimile delivery with sent confirmation.
- Delivery of Personal Financial Information.
 - o Advisers transmitting personal financial information must:
 - take reasonable precautions to ensure the integrity, confidentiality, and security of that information; and
 - obtain the client's consent, either electronically or by manual signature, to receive this information electronically.
 - Electronic Transmission of Non-Required Disclosures
 - o Advisers are not required (but, of course, are permitted) to follow the above guidance when electronically delivering non-required information.
 - o Advisers must take into consideration the need to implement security measures when using electronic media to provide personal financial information.
 - o Advisers may disseminate advertisements via electronic media, subject to the same requirements and restrictions that apply to such communications in paper (e.g. such communications may not be misleading).
 - o Materials concerning an adviser that are potentially available to ten or more persons through an electronic system are subject to the recordkeeping requirements.

To discuss further, please contact:

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