



COMPLIANCE UPDATE

Release Date: October 11, 2010

Compliance Issues Surrounding the Purchase, Sale, or Merger of Registered Investment Advisers

We have seen a recent increase in interest and activity relating to the purchase, sale, and merging of RIAs. Further, once a deal comes to fruition, we have also seen that participating firms often fail to consider the compliance implications until it is too late. Firms should be aware that when considering such activity, there is a multitude of compliance issues that need to be addressed well ahead of the event.

Here are a few of the areas you will want to consider:

Contractual Considerations -

- Will advisory contracts be assigned? If so, the assignment language of each original contract needs to be reviewed since there can be variations of standard advisory contract language throughout the life of a firm. Keep in mind that “negative consent” may not be permitted when assigning contracts and anyone refusing must either continue to be managed or be terminated, each according to the terms of their existing agreement.
- Are there provisions in the sale contract that might require additional actions under current cash solicitation rules? This is frequently overlooked and should be evaluated thoroughly during the planning and negotiation phase between the firms, as it can potentially result in additional ongoing compliance responsibilities for both firms in a purchase or sale of an RIA.

Filings and Amendments -

- Amendments to both parts of each firm’s Form ADV will be necessary reflecting the new ownership structure, any changes to the portfolio managers, new conflicts of interest, and other relevant information.
- Form U4 amendments would be necessary for all Investment Adviser Representatives that assume management of accounts of the new firm.
- Form ADV-W and Forms U5 would also need to be filed to terminate the registrations of the closing firm and its IARs.

Service Providers -

- You will need to work with all third parties to manage the transition. These include but are not limited to: custodians, platform providers, IT, consultants, legal, etc.

Policy Considerations -

- Any acts of sharing nonpublic information between firms would need to comply with applicable securities laws and rules, and each firm’s stated privacy policies.
- Amended or enhanced policies, procedures, and controls may become necessary, as would demonstrating effective supervision of any newly established “branch offices.” Documents affected would likely include policies & procedures, codes of ethics, and business continuity plans.
- Supervised Persons would need to be trained on any new or revised policies and procedures, as appropriate.

It is best to consider these issues before a deal is finalized. To discuss potential implications, please contact:

Advisor Solutions Group, Inc.

949.250.1855

info@advisorsolutionsgroup.com

1300 Bristol Street North • Suite 100 • Newport Beach, CA 92660 • 949.250.1855

www.advisorsolutionsgroup.com