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SEC's Donohue: New Form ADV Part II on the Way

Article published on Mar 26, 2007

By Marc Hogan

The SEC is looking to revamp the second part of the form investment advisors use to register with the regulator, says Andrew "Buddy" Donohue, director of the SEC's Division of Investment Management.

In a presentation during the recent *IA Week* and the Investment Adviser Association 9th Annual IA Compliance Best Practices Summit 2007 in Washington, D.C., Donohue indicated the Commission will likely seek "fresh" feedback on Form ADV Part II. This portion of the registration form contains facts about an advisor's services, fees and investment strategies.

Donohue also reiterated his earlier remarks that the SEC's Division of Investment Management is undertaking a long-awaited review of an update to the books and records regulations, including rules for e-mail retention.

Improvements to Form ADV Part II would be welcome, compliance consultants and fund industry attorneys say. Regulators could streamline the language of the document or mandate the form be filed and made available electronically. While the SEC requires firms to file Form ADV Part I electronically, there is no such requirement for Form ADV Part II.

In 2000, the SEC adopted revisions to Form ADV Part I, which includes information about an advisor's education and disciplinary history. At the same time, the regulator delayed making proposed changes to Part II of the form in order to focus on establishing the Investment Adviser Registration Depository (IARD). This system allows advisor reps to file their registrations electronically.

The advisory business and its regulatory environment have changed significantly in the time since the amendments to Form ADV were originally proposed, Donohue says. "As a result, the Division expects to recommend that the Commission re-propose Form ADV Part II so that we can receive a fresh set of comments on its form and content," he explains in his [speech](#)¹. "The Division is also currently working on a re-proposal recommendation for the Commission, and, as with all proposed rules, I encourage your input, in the form of comment letters, when the re-proposal is issued," he said.

The industry would largely embrace a new Form ADV Part II as a way to bring regulations in line with current practices, suggests Theodore Eichenlaub, partner with **Adviser Compliance Associates**. Some of the questions on the present form are outdated and the overall format can be unwieldy, he notes. "I think the goal of the Commission is to make the form more reader-friendly and to make it read more like a mutual fund prospectus overall," he says.

The form could also use a revamp to clean up redundancies, adds Todd Cipperman, an investment management lawyer at **Cipperman & Company**. "There's a lot of weird duplication between ADV Part I and Part II that they just need to reconcile," Cipperman explains. "It really needs a rework, and they just sort of punted on it because they were busy with the IARD system."

One key outcome of new Form ADV Part II rules, observers say, should be to make the filing available electronically to investors. "[SEC Chairman Christopher] Cox and Donohue are really into the idea that you can compare and contrast similar providers or funds," Cipperman says, pointing toward the Commission's recent push behind XBRL data tags. "Today, ADV Part II isn't really laid out in a way so you can do that. At least let's get it electronic, and let's have the sections be comparative."

Still, it will be difficult to evaluate the SEC's initiatives until the regulator makes specific proposals, others point out. Niels Holch, executive director of the **Coalition of Mutual Fund Investors**, says changes to the books and records regulations are particularly essential. "Books and records requirements that were put together in a paper environment in the '60s really do need to be updated to reflect the fact that we're in an electronic world," Holch observes.

The SEC's Donohue says the regulator is looking at technologies that could help firms cost-effectively meet any new recordkeeping requirements, including those for e-mail retention. "I don't want to rush this initiative," he explains.

The investment-management chief recently voiced his support for other initiatives aimed at simplifying disclosure, as well. Earlier this month, Donohue said the SEC is considering creating a streamlined, two-page disclosure document that could replace lengthy prospectuses.

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