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FUSION/ PCM COMPLIANCE UPDATE 2018

The most exciting 45 minutes of your life.

Ps. If you fall asleep I will U5 you!!

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- Trader at Fidelity Investments
- Financial Advisor at UBS/PaineWebber
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Investment Advisors Act of 1940

Rule 206(4)-7 of the Advisers Act

- requires that investment advisers adopt and implement written policies and procedures reasonably designed to prevent violations of the federal securities laws by the investment adviser and its IARs and employees.

Read your Compliance Manual

- All IARs are required to immediately report to the CCO any event which would or could lead to an affirmative answer to any disclosure question on Form U-4. Similarly, all IARs and all other Associated Persons are required to immediately report to the CCO any circumstances that would or could otherwise lead to a statutory disqualification. Any material changes to the information contained on an IAR's Form U-4 must also be reported to the CCO in a timely fashion to facilitate the filing of an appropriate amendment to the Form U-4.

- This applies to your ADV2B

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Fusion/PCM ADV

To whom should you provide the ADV?

- Everyone.
- When a prospect meets with an IAR for the first time you must (by statute) provide a copy of Fusion/PCM (respectively) ADV and your ADV2B

Do I need to provide both the ADV Part2A Brochure and the Appendix?

- Not necessarily.
- If you do not use WRAP accounts providing the Appendix (WRAP Brochure) is not necessary. However, I suggest always providing both. This removes the onus from the IAR to supply the Appendix later if you do put the client in a WRAP account.
- Fusion/PCM will send out, at a minimum, annual updates to the ADV noting any material changes. Once you provide the first copy of the ADV no further action is required as I take care of that part of the regulations.

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Your ADV Part2B

Your ADV2B is the IAR's responsibility to keep current.

- I am not privy to all of your potential changes

You must update with any material change, similar to your U-4

How this process works-

- Upon a change, (e.g. I just received my insurance license or I have a new OBA) you contact the CCO and notify me of the change.
- I will update your ADV2B and provide you with a final copy
- You will send out your updated ADV2B to all current clients.

There is not an annual requirement for the ADV2B only the ADV2A. Material changes, as noted above, is the only requirement to update.

SEC and State Registration/Notice Filing

Fusion/PCM are SEC Registered Investment Advisors

IAR must register in every state that they have a physical place of business

RIA must notice file in every state where the IAR's of the RIA total more than 5 clients. (certain states have more stringent regulations)

If you sign up a new client in a state where you have never done business you must immediately email the CCO and give notice.

- e.g. Fusion has 5 clients in North Dakota and is not notice filled in that state. You sign up a new client in ND. CCO must notice file in ND within 30 days of the client coming on-board.

Record Keeping Requirements

SEC Rule 204-2

- You must preserve records for a period not less than six years, the first two years in an easily accessible place.
- 204-2 also provides for maintaining records in Electronic Format:
  - Egnyte- WORM Certified
  - Elements
  - VEO and other custodial portals

We provide you all the tools to comply with these regulations if you follow our operational and compliance procedures.

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Advertising

- Rule 206(4)-1 of the Advisers Act defines the term “advertisement” to include any “notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or to sell, or (2) any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other advisory service with regard to securities.” This broad definition generally encompasses business cards, letterhead, websites, publication reprints, materials prepared by a third party, any form letter, and any standardized written materials used by IARs for presentations to prospective clients.

- If you are using the material for clients or in any attempt to prospect or gain a client it must be reviewed.

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Testimonial Rule

- This comes from The SEC's National Examination Risk Alert Volume II, Issue 1, January 4,2012:

  - Testimonials. Whether a third-party statement is a testimonial depends upon all of the facts and circumstances relating to the statement. The term "testimonial" is not defined in Rule 206(4)-1(a)(1), but SEC staff consistently interprets that term to include a statement of a client's experience with, or endorsement of, an investment adviser.

  - Therefore, the staff believes that, depending on the facts and circumstances, the use of "social plug-ins" such as the "like" button could be a testimonial under the Advisers Act. Third-party use of the "like" feature on an investment adviser's social media site could be deemed to be a testimonial if it is an explicit or implicit statement of a client's or clients' experience with an investment adviser or IAR. If, for example, the public is invited to "like" an IAR's biography posted on a social media site, that election could be viewed as a type of testimonial prohibited by rule 206(4)- 1(a)(1).

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Testimonial Rule Cont.'

- "when the IAR has no ability to affect which public commentary is included or how the public commentary is presented on an independent social media site; where the commentator's ability to include the public commentary is not restricted; and where the independent social media site allows for the viewing of *all* public commentary and updating of new commentary on a real-time basis, the concerns underlying the testimonial prohibition may not be implicated."

- On the other hand, the SEC also notes that this rule only applies as long as the investment adviser does not provide their own commentary to be included on the site, and cannot impact the way the results are viewed or the order in which they're listed (although if social media users can adjust how commentary is displayed and sort by their own criteria, that's permissible

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Testimonial Rule Cont.'

- Investment advisers who direct clients to their social media accounts will not be deemed to be soliciting testimonials from clients. For instance, the SEC states that "an investment adviser or IAR could reference the fact that public commentary regarding the investment adviser or IAR may be found on an independent social media site, and may include the logo of the independent social media site on its non-social media advertisements, without implicating the testimonial rule."

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Testimonial Rule Cont.'

Basically:

- *"We won't give you enough specifics to make an informed decision regarding your business practices, but we'd be happy to let you know how you screwed it up during an enforcement action."* - NOT THE SEC…

Best Practice:

- Don't use Testimonials. Do NOT claim your YELP site. Turn off endorsements on LinkedIn… and so forth.

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Testimonial Rule Cont.'

Examples/ Fines

- Fines generally range from $10,000-$35,000 for testimonial rule violations.
- One action referenced testimonials via Yelp.com whereby the RIA claimed its webpage on the site. Claiming the Yelp.com webpage enabled the RIA to post a link to its public website and include additional information about its business. It also enabled the RIA to post responses to the testimonials that appeared on the webpage. For example, the RIA posted "thank you," in response to a favorable testimonial and the RIA's co-founder responded to unfavorable reviews by stating that they were false.
- The RIA put out a YouTube video about the firm's anniversary party. The video contained statements by 27 investment advisory clients about their experiences with the firm. Among other things, certain of the clients stated that they had profited from the RIA's services and that the RIA's services had provided them with income, security and peace of mind.

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DOL & New SEC Fiduciary Rule

U.S. Court of Appeals for the 5th Circuit struck down the DOL Fiduciary Rule on March 15th, 2018. On June 14th, 2018, the DOL failed to ask for a writ of Certiorari (a request for Supreme court review) and that deadline passed. **Thus endeth the DOL fiduciary rule.**

New SEC Rule:

- The rule would not create a uniform fiduciary standard for brokers and investment advisers — meaning the two-tiered approach to investment-advice standards would be preserved. "An investment adviser's fiduciary duty is similar to, but not the same as, the proposed obligations of broker-dealers under Regulation Best Interest…We are not proposing a uniform standard of conduct for broker-dealers and investment advisers in light of their different relationship types and models for providing advice."- SEC

Changes for RIA's and IAR's:

- In the proposal, the SEC offers its interpretation of advisers' existing fiduciary obligations and also seeks comments on three "potential enhancements to their legal obligations." It is considering "areas where the current broker-dealer framework provides investor protections that may not have counterparts in the investment adviser context."

Comment Period ended August 7th, 2018. Awaiting final rule.

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Third Party Rankings

- Are you “Best of” in your city, county, or state?
- Did XXX publication vote you best Advisor in your area?
- I prefer you do not use these third-party rankings. However, if you would like to you must ask.

  1) Go to page 17 of the Compliance Manual and review the criteria.

  2) If it falls within that criteria, place a request for my review in Elements

  3) If you are approved you will use this disclaimer in addition to your standard disclaimer for anything with that ranking:

Third-party rankings and recognition from rating services and publications do not guarantee future investment success. Working with a highly-rated adviser also does not ensure that a client or prospect will experience a higher level of performance. These ratings should not be viewed as an endorsement of the adviser by any client and do not represent any specific client’s evaluation. Generally, ratings, rankings and recognition are based on information provided by the adviser. Please contact the adviser for more information regarding how these rankings and ratings were formulated.

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Public Appearances and Media

You are forbidden to speak with the media; local, state, or national, in any form or fashion with out the CCO's prior written approval.

You are forbidden from making public appearances and speaking without the CCO's prior written approval.

- Approval will be based upon the content being discussed.
- E.G. You are speaking at a charitable event that I have approved. No investment related material can be discussed and you can not directly market your Advisory business.
    - To be allowed to do this appropriate disclaimers must be made.
    - In situations where an IAR is asked his/her opinion on the investment merits of a particular security, the IAR may respond provided it is made clear that the opinion offered is his/her own, is not necessarily that of Fusion/PCM, and does not constitute investment advice.
- This does not apply to client and prospect seminars that have been pre-approved.

You are forbidden, period, from speaking with any media if it is not pre-scripted.

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Complaints

- All written and verbal complaints of any nature from clients or from anyone else must be immediately brought to the attention of the CCO. The CCO is responsible for investigating every complaint received by the Company and for determining what action, if any, should be taken. The CCO will maintain a record of each complaint, the investigation conducted, and its resolution. The CCO will promptly respond to each complaint and retain copies of all correspondence exchanged with the person submitting the complaint.

- The Company defines "complaint" very broadly. As such, IARs and other Associated Persons should notify the CCO of any written or verbal communications received that express any dissatisfaction with the Company, with the services provided by the Company, or with any IAR or other Associated Person.

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Custody of Funds or Securities

- Any arrangement, including trustee arrangements and general powers of attorney under which an Associated Person is authorized or permitted to withdraw client funds or securities maintained with a custodian

- An Associated Person functioning in any capacity on behalf of an entity that gives the Associated Person legal ownership of or access to funds or securities of a client (for example, functioning as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle.)

- If you have a login to your clients account. That also constitutes custody

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IAR Responsibilities

It is the IAR's responsibility to:

- Provide the appropriate ADV's
- Update the CCO on any change to ADV2B or U-4
- Read the Compliance Manual
- Adhere to the Compliance Manual
- Complete the Annual Compliance Documents

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Q&A

Thank You