

Part 2B of Form ADV

Deborah Bielicke Eades

Joseph M. Mannon

Vedder Price P.C.
Friday, July 15, 2011

© 2011 Vedder Price P.C.

VEDDER PRICE

Deborah Bielicke Eades



Shareholder
312-609-7661
deades@vedderprice.com

Deborah Bielicke Eades joined Vedder Price P.C. as a shareholder and is a member of the firm's Investment Services Group.

Ms. Eades has extensive experience in all aspects of mutual fund and investment adviser regulation and compliance, including product design, federal and state registration, representation of fund boards, portfolio compliance, derivative instruments, affiliated transactions, electronic commerce and Web site design, privacy matters and general regulatory matters.

Prior to joining Vedder Price, she was employed by Janus Capital Corporation in Denver as Associate Counsel and Assistant Vice President. She has participated on various industry committees including the Investment Company Institute's Rules Committee and Electronic Commerce Working Group. Ms. Eades regularly speaks at industry conferences on mutual fund, investment adviser and hedge fund regulation.

Ms. Eades is a member of the American Bar Association and the Chicago Bar Association, for which she formerly served as the Chair of the Investment Company Subcommittee. Ms. Eades is a member of the CFA Institute.

Joseph M. Mannon



Of Counsel

312-609-7883

jmannon@vedderprice.com

Joseph M. Mannon is a member of Vedder Price P.C.'s Investment Services Group.

Mr. Mannon focuses his practice on legal and compliance matters for hedge funds, hedge funds of funds, investment advisors, mutual funds and other investment entities.

Prior to joining the firm, Mr. Mannon served as a Staff Attorney for the Division of Enforcement of the Securities and Exchange Commission from 2001 to 2004. At the Commission, he litigated federal district court actions and conducted numerous investigations, including complex financial fraud investigations. In addition, Mr. Mannon investigated mutual funds, investment advisers and broker-dealers for violations of the pricing, valuation and books and records requirements of the federal securities laws. Mr. Mannon was awarded the Securities and Exchange Commission Chairman's Award for Excellence in 2002.

In 2000, Mr. Mannon served as a judicial intern to the Honorable John W. Darrah, U.S. District Court for the Northern District of Illinois.

Introduction

- ✦ What is the brochure supplement?
 - Information about *Supervised Persons*, including their educational, business experience and disciplinary history
- ✦ Focus on Content Requirements of brochure supplement (Part 2B)
- ✦ Six items (seven for state registered advisers)
- ✦ Plain English
- ✦ Please consult the new Part 2B Form for the disclosures required under each item

Filing and Other Questions

- ✦ Do you need to file it?
 - Common misunderstanding—no, filing is not required (unless state registered)
- ✦ Who receives a supplement?
 - The firm must deliver to a client the brochure supplements for each *supervised person* who provides advisory services to that client
 - ▶ Investors in a private fund are not a “client” (best practice to deliver supplement to them)
- ✦ When are supplements delivered?
 - A supplement must be delivered before or at the time the *supervised person* begins to provide advisory services to the client.
 - ▶ Updated disciplinary information and/or any material information should be provided as it becomes available

Review of Timing

Existing Registrants	Deadline	Notes
Filing Part 2A via IARD	March 31, 2011	Assumes adviser FYE is December 31st
Deliver Part 2A to Existing Clients E-mail distribution is permissible	May 30, 2011 Each year thereafter, send Part 2A to clients within 120 days of FYE	Assumes adviser FYE is December 31st
Deliver Part 2B to New and Prospective Clients	July 31, 2011	Assumes FYE between December 31st and April 30th ¹
Deliver Part 2B to Existing Clients	September 30, 2011	Assumes FYE between December 31st and April 30th

New Registrants Between January 1st And April 30th	Deadline
Filing Part 2A via IARD	Upon Registration
Deliver Part 2A to Clients	Upon Registration
Deliver Part 2B to New and Prospective Clients	May 1, 2011 ²
Deliver Part 2B to Existing Clients	July 1, 2011

¹ Compliance dates for delivering Part 2B for an existing adviser with FYE after April 30, 2011 have not changed.

² Compliance dates for delivering Part 2B for newly registered investment advisers filing applications for registration after April 30, 2011 have not changed.

Supervised Persons

- ✦ A brochure supplement must be filed for each “*supervised person*”
- ✦ Who is a “*supervised person*”?
 - Any person who formulates investment advice for a client and has direct client contact
 - Any person who has discretionary authority over a client’s assets, even if the *supervised person* has no direct client contact

Supervised Persons

✦ Common Questions on *Supervised Persons*

- Does the CEO or CCO need one?
- Traders/analysts?
- Employees with signatory authority over client cash accounts?
- **Investment Committee/Team**
 - ▶ Does the team have more than five members?
 - If so, need only prepare for five most significant team members
 - ▶ Does the employee have client contact?
 - If no, no supplement
- Individual Brochure vs. Group Brochure
- Samples are out there

Item 1

✦ Item 1—Cover Page

- ***Supervised person's*** name and contact information
- Firm's name and contact information
- Date of Supplement
- Language identifying the document as a “brochure supplement”

- ▶ This brochure supplement provides information about [name of ***supervised person***] that supplements the [name of advisory firm] brochure. You should have received a copy of that brochure. Please contact [service center or name and/or title of your contact *person*] if you did not receive [name of advisory firm]'s brochure or if you have any questions about the contents of this supplement.

Additional information about [name of ***supervised person***] is available on the Internet at www.adviserinfo.sec.gov. [DON'T INCLUDE THIS UNLESS STATE REGISTERED]

Item 2

✦ Item 2—Educational Background and Business Experience

■ *Supervised Person's:*

- ▶ Name
- ▶ Age (year of birth)
- ▶ Formal education after high school
- ▶ Business background for the preceding five years
- ▶ Professional Designations (CPA, CFA, etc.)
 - Minimum qualifications required for designation
 - » FINRA website
 - » Don't necessarily need to use the ones published by the licensing authority

Item 3

◆ Item 3–Disciplinary Information

- Any legal or disciplinary event that is material to a client’s evaluation of the *supervised person’s* integrity
- List of events deemed material (if rebut presumption of materiality must prepare a memo summarizing why)
 - ▶ Must remain in supplement for 10 years following the final judgment of the event, possibly longer depending on the seriousness of the event
 - ▶ Broader than Part 1 of Form ADV
 - ▶ Consider updating DRP certification from employees
- Broker-Dealer may use cross reference to BrokerCheck to disclose disciplinary history
- Discuss potential disclosures with counsel

Item 4

◆ Item 4—Other Business Activities

- If the *supervised person* is actively engaged in any **investment-related** business or occupation:
 - ▶ Describe any conflicts between the *supervised person's* role and other financial industry activities
 - ▶ Disclose any compensation from sales of mutual funds, including the type of compensation and any incentive the *supervised person* has to recommend investment products
- If the *supervised person* is engaged in any other business activity that accounts for a substantial amount of time or income, then that information must be disclosed
 - ▶ *Common Mistakes*—including all charitable endeavors

Item 5

✦ Item 5—Additional Compensation

- Disclose any relationship between the *supervised person* and a nonclient that yields economic benefit to the *supervised person* for advisory services
 - ▶ Looking for conflicts of interest
 - ▶ General disclosure in firmwide brochure may not be sufficient

Item 6

✦ Item 6—Supervision

- Explain procedures for supervising and monitoring the *advice* provided by the *supervised person* to clients.
- Who supervises the advice?
 - ▶ Common Mistake: naming the CCO
 - ▶ Difference between compliance oversight and supervision of advisory activities
- Need to include contact info for the supervisor
- May identify a lead contact if more than one supervisor

Item 7

✦ Item 7—Requirements for State-Registered Advisers

■ Additional disclosures:

- ▶ An award or being found liable in an arbitration claim alleging damages in excess of \$2,500, or an award or otherwise being found liable in a civil, self-regulatory organization, or administrative proceeding involving any of the following:
 - (a) an investment or an *investment-related business or activity*;
 - (b) fraud, false statement(s), or omissions;
 - (c) theft, embezzlement, or other wrongful taking of property;
 - (d) bribery, forgery, counterfeiting, or extortion; or
 - (e) dishonest, unfair, or unethical practices.
- ▶ If the ***supervised person*** has been subject to a bankruptcy petition