Pass the 65© Updates for 2011

As you probably know, the new passing score was raised to 72% starting January 1, 2010. The most current version of the Pass the 65© textbook is the “4th Edition, updated for 2011.”

Also, please don’t rely on any textbook by itself—please use our Pass the 65© ExamCram Online Test Prep and the Go No Go exams at http://www.examzone.com/MyExams. We continuously update the ExamCram Online Test Prep, and the “Go No Go” exams can help determine if you’re ready to schedule your exam.

Additions to Pass the 65© “Updated for 2011” 4th Edition

Form ADV

In the past Form ADV 2 has been presented in a check-box format. Now the SEC requires advisers to scrap the check-box format and use a narrative, “Plain English” style when creating the disclosure brochure. As the SEC explains, advisers must now:

1) Use Plain English
2) Use a narrative form as opposed to the former check-box approach
3) Add a table of contents with the disclosure items listed in the same order as the items in the form
4) Provide a supplement (ADV Part 2B) about advisory personnel on whom clients rely for investment advice
5) Provide a copy of the current (updated) brochure annually to existing clients that includes or is accompanied by the summary of material changes; or provide existing clients a summary of material changes that includes an offer to provide a copy of the current brochure
6) Attach a cover page to the adviser’s brochure (ADV Part 2) that states that the brochure has not been approved by the Commission or any state securities authority. Also, if an adviser refers to itself as a “registered investment adviser,” it also must include a disclaimer that registration does not imply a certain level of skill or training.

Concerning the New ADV Part 2B, let’s just let the SEC tell us what’s what in their own words:
Rule 204-3 also requires that each firm brochure be accompanied by brochure supplements providing information about the advisory personnel on whom the particular client receiving the brochure relies for investment advice. Among other things, the brochure supplements will contain information about the educational background, business experience, and disciplinary history (if any) of the supervised persons who provide advisory services to the client. The brochure supplement thus includes information that would not necessarily be included in the firm brochure about supervised persons of the adviser who actually provide the investment advice and interact with the client. We are requiring as proposed that a client be given a brochure supplement for each supervised person who: (i) formulates investment advice for that client and has direct client contact; or (ii) makes discretionary investment decisions for that client’s assets, even if the supervised person has no direct client contact. We believe that clients are most interested in learning about the background and experience of these individuals from whom they receive investment advice. We are adopting as proposed, the requirement that advisers deliver an updated supplement to clients only when there is new disclosure of a disciplinary event, or a material change to disciplinary information already disclosed.

Before this change, advisers only offered to provide a copy of the brochure to existing clients each year. Now, they either automatically send a copy of the brochure with a summary of material changes from last year, or they send the summary of material changes with an offer to provide a copy of the complete brochure.

Advisers will now File ADV Part 2A (not the supplement) electronically with the SEC. They will create it in Adobe PDF format, and then upload it electronically.

Exemptions, Registration Issues for Investment Advisers

Advisers to private funds (private equity, hedge funds) with less than $150 million of assets under management are now exempt from registration with the SEC, but are considered to be “exempt reporting advisers,” meaning they must submit reports to the SEC and maintain certain scaled-down books and records, even though they don’t have to register. Advisers to private funds (private equity, hedge funds) with $150 million of assets under management or more will be required to register with the SEC and will notice file with the states in which they have a place of business. Finally, advisers to VC (venture capital) funds are exempt. What is a VC fund, you might ask? Don’t ask the SEC. At least not yet, although they do plan to figure out the definition at their earliest convenience based on the commentary they receive from people in the industry.
Seriously.

For many years, an investment adviser was eligible to register with the SEC as a federal covered adviser if it had at least $25 million of assets under management. If it managed $30 million +, it had to register with the SEC. Now, an adviser needs at least $100 million to be eligible for SEC registration, and at $110 million they have to register with the SEC. That means that many advisers who used to or would have registered with the SEC will now register with the states. It doesn’t mean that an adviser with $100 million has to automatically withdraw from SEC registration if their assets under management (AUM) drop below $100 million. They only have to switch to state registration if the assets drop below $90 million, and then only when it’s time to file the annual updating amendment (updating ADV information).

To the extent that the exam might talk about SEC exemptions, know that the former exemption for advisers who did not hold themselves out to the public and had < 15 clients is gone. The exemptions now involve:

- Private fund advisers: advisers who only give advice to private funds with AUM of less than $150 million in the US.
- Foreign advisers with no place of business in the US and fewer than 15 US-based clients and AUM < $25 million
- Advisers to venture capital funds.

Various changes

- Accredited investor: value of residence is now excluded when calculating net worth for investors buying into a hedge fund or participating in a private placement.