

Managed Account Agreements: What You Need To Know

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Overview

- What will we discuss?
 - Business Considerations
 - Operational Considerations
 - Compliance Considerations
 - Liability Matters
- Client and program agreements
- It's a discussion, not a lecture!

Business Considerations

- Program/Product Coverage
 - Integration of programs/products into unified offering can create havoc
 - Suitability across programs
 - Fees
 - Description of services
 - Segregation of responsibilities

Business Considerations

- Manager Models in SMA/MSP Products
 - Manager concerns
 - Fiduciary/discretionary responsibility
 - Suitability responsibility
 - Proxy voting
 - Confidentiality and intellectual property
 - Indemnification and limitations on liability

Business Considerations

- Manager Models in SMA/MSP Products
 - Sponsor concerns
 - No delegation of duties
 - Accuracy of model
 - Fairness of trade allocation/rotation
 - Fees

Operational Considerations

- Account Set-Up and Processing
 - Minimum account size
 - Account acceptance (affirmative/negative)
 - Client communications
 - Client agreement delivery

Operational Considerations

- Rule 3a-4 Responsibilities
 - Information gathering and distribution
 - Account opening information
 - Quarterly notice to update information
 - Annual contact to update information
 - Individualized treatment
 - Reasonable restrictions

Operational Considerations

- Rule 3a-4 Responsibilities
 - Indicia of ownership
 - Proxy voting – aggregation of proxies
 - Availability for consultation
 - Quarterly statements and trade confirms

Operational Considerations

- Other Operational Considerations
 - Consistency of fee provisions
 - Consistency regarding best execution
 - Policies and practices
 - Client and program agreement language

Compliance Considerations

➤ Suitability Responsibilities

- SEC has not given guidance

- Suitability is a continuum

- Sponsor responsible for suitability of program for client

- Manager responsible for suitability of securities for strategy

- What about the middle?

Compliance Considerations

- Suitability Responsibilities

- Suitability of manager for client

- Split the duty

- Sponsor is responsible for suitability of manager for client

- Manager is responsible for suitability in light of any client-requested restrictions

Compliance Considerations

- Suitability Responsibilities

- Documenting suitability

- Sponsor questionnaire

- Manager's investment recommendations

- Manager's process for reviewing investment restriction requests

Compliance Considerations

- Due Diligence Provisions
 - Ongoing due diligence vs. certificates
- Ongoing Due Diligence
 - Quarterly calls
 - On-site visits
 - Operational reports
 - Exchanges of policies and procedures

Compliance Considerations

- What to Look For? – Managers
 - Manager process for reviewing investment restrictions
 - Manager reasonably available for client calls
 - Prompt trade error resolution
 - Follows documented investment process
 - Fair trade allocation policies/practices

Compliance Considerations

- What to Look For? – Sponsors
 - Rule 3a-4 compliance – e.g.:
 - Sponsor gives clients ability to impose reasonable investment restrictions
 - Sponsor reps meet annually with clients
 - Sponsor performs functions described in Schedule H
 - Rebalancing
 - Monitoring managers

Compliance Considerations

- Disclosure Document Delivery
 - What is delivered?
 - Initial disclosures
 - Sponsor – Schedule H, privacy policy
 - Manager – Form ADV Part II, Schedule F, privacy policy, proxy voting policy
 - Annual disclosures
 - Sponsor – Form ADV offer, privacy policy
 - Manager – Form ADV offer, privacy policy

Compliance Considerations

- Disclosure Document Delivery – Who Delivers?
 - SEC said parties can agree on who delivers disclosure documents
 - Practical problems
 - Some sponsors do not want to deliver
 - Timing
 - Clients may get profiles

Compliance Considerations

- Compliance Certifications

- Result of Rule 206(4)-7 (October 2004)

- Required IA's to "adopt and implement policies and procedures reasonably designed to prevent violations of federal securities laws"

Compliance Considerations

- Compliance Certifications
 - Annual questionnaire from sponsors to managers and managers to sponsors
 - Affirmative vs. negative response
 - Certification of reps/warranties/responsibilities
 - Information requests related to policies/procedures (and testing/violations of them), code of ethics, internal audit/regulatory reviews, information security, etc.

Liability Matters

- Indemnification Provisions
 - Key issues/considerations
 - Party vs. party (client, manager, sponsor)
 - Indemnification for third party actions
 - Directly by a party (e.g., sponsor)
 - Limited to amount recovered by party in contractual privity
 - Third-party beneficiaries

Liability Matters

- Limitations of Liability
 - Standards of care
 - Negligence
 - Prudent person
 - Gross negligence
 - No Guarantee of Future Performance
 - No Responsibility for Acts of Third Parties

Liability Matters

- Limitations of Liability

- Section 215 of Advisers Act

- No waivers of compliance or rights

- "Applicable securities laws may impose liability on persons who act in good faith. Nothing in this contract is intended as a waiver or limitation of any right, remedy or claim under applicable federal securities laws and ERISA."

Liability Matters

- Non-Solicitation Covenants
 - Sponsors/TAMPs include them to protect their client base/revenue stream
 - Key issues
 - Duration
 - While manager manages client's account
 - Post-termination period
 - From termination of management relationship
 - From termination of program agreement

Liability Matters

➤ Non-Solicitation Covenants

➤ Key issues

➤ Scope

- All clients vs. clients managed by manager only
- Restricted activity and territory
 - “Knowing” and “targeted” “solicitation”
 - Assisting others – “directly or indirectly”
 - Types of services
 - Territory – United States?
- Applicable to affiliates?

Liability Matters

➤ Non-Solicitation Covenants

➤ Key issues

➤ Exceptions – permissible activities

➤ Clients obtained through other programs

➤ Particular business lines/sectors (e.g., financial institutions)

➤ Existing clients/relationships

➤ New clients obtained without violating non-solicitation covenant

➤ General, non-targeted advertising

➤ Inadvertent violations – cure period

THANK YOU!

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