

RIA Compliance Consultants



Disaster Recovery and Working Remotely & Succession Planning

Strategic Alliance Members



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2021 RIA Compliance Connection

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Why is this Important?

§ 275.206(4)-7 Compliance procedures and practices.

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 - (a) Policies and procedures. Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;
 - (b) Annual review. Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and
 - (c) Chief compliance officer. Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under [paragraph \(a\)](#) of this section.

SEC Comment:

We believe that an adviser's fiduciary obligation to its clients includes the obligation to take steps to protect the clients' interests from being placed at risk as a result of the adviser's inability to provide advisory services after, for example, a natural disaster or, in the case of some smaller firms, the death of the owner or key personnel. The clients of an adviser that is engaged in the active management of their assets would ordinarily be placed at risk if the adviser ceased operations.

Business Continuity Plans need to address continuity of service and/or transition of accounts in the event of:

- Natural disaster
- Man-made disaster (terrorism)
- Cyberattack
- Technology failure
- Personnel departure from the firm (Expected and Unexpected)
- Principal, Advisor or personnel death or disability
- Winding down or stopping services

Types of RIA Firm Interruptions

Examples of Interruptions:

- **Temporary Interruption** – *short term disruption to service*
- **Extended Interruption** – *long term disruption to service*
- **Permanent Interruption** – *firm no longer exists in current form*

Temporary Interruption

A temporary business interruption includes incidents such as a power outage, internet outage, computer problems, equipment theft or phone lines going down.

- What to consider:
 - a. Recovery and backup of books and records
 - b. Alternate means of communicating internally with employees and externally with clients, vendors, service providers and regulators
 - c. How will you continue operations, monitoring client portfolios and entering trades?

Extended Interruption

An extended interruption occurs when a firm is required to relocate or replace office property or records due to destruction or theft. An extended interruption could occur in the event of a fire, flood, or other man made or natural disaster. Your firm's BCP should address an extended interruption with all of the previous steps with a few additional considerations.

- What to consider:
 - a. Replacement of:
 1. communications equipment such as phones and computers
 2. books and records
 - b. Do your employees have the equipment and access to the systems required to effectively work from home?
 - c. Do all of your critical system vendors have a BCP?
 - d. Does your custodian have back up systems?
 - e. Are you able to securely connect to all required databases and/or systems remotely?
 - f. Are you able to communicate with all of your employees?

Permanent Interruption

In the event of retirement, disability, or death of a firm owner, a BCP or succession plan should be set in place.

Some considerations if:

1. The firm continues to service clients:
 1. Who takes over the firm?
 2. How will advisory responsibilities be transferred?
 3. Does the successor have access to the investment adviser registration depository ("IARD") system?
2. The firm closes down:
 1. Who will communicate the dissolution of the firm?
 2. Who will file the form ADV-W?
 3. Who will store books and records?
 4. Do clients know how to contact their custodians or other relevant parties?
 5. How will unearned fees be refunded?
 6. How will the firm's books and records be stored for the required 5-year time period

Group Discussion

Disaster Recovery

- Any real-life experiences you would like to share with dealing with any type of natural disaster that resulted in not being able to access the principal office location for an extended period of time?
- How did you deal with the problems encountered what changes were made to your plan?
- What steps do you take to test your disaster recovery plan?
 - How frequently do you test?
 - How is the testing documented?

Group Discussion

Business Continuity

- In dealing with the pandemic what was your experience:
 - What systems, programs, services worked for you?
 - What systems failed and what problems did you encounter?
- How did you deal with the problems encountered what changes were made to your plan?
- What steps do you take to test your disaster recovery plan?
 - How frequently do you test?
 - How is the testing documented?

Group Discussion

Succession Planning

- Does your firm have a succession plan in place?
 - Any tips you can provide on how you set it up?
- Do you have a plan in place to address the possible loss of a company principal or principal advisor?
- Any experiences you can share in dealing with implementing a succession plan?

Tips on building and implementing your RIA firm's business continuity/succession plan

Plans should consist of:

- Step-by-step process with contact persons and key responsibilities of each person – document *the who, what when, where and how* of each critical function.
- Different procedures should be created in to prepare for different types (duration) of interruptions
- Test your plan at least annually for different types of disruptions
- Test physical emergency and backup communication equipment
 - Make sure to document your testing procedures and outcome.
- Have a both a written and electronic copy of the plan
- Make sure each employee has a copy, has signed, and agreed to abide by the BCP

Tips on building and implementing your RIA firm's business continuity/succession plan – *Continued*

- If your clients will be transferred to another adviser, possibly get consent in advance
- Check your individual state laws

While there is not a "one-size-fits-all" business continuity plan for RIA firms, it is important to consider your firm's business model, circumstances, current operations, firm size, and number of locations your firm has when designing a robust business continuity plan.

Resources

Tools:

- **RIA Express – Compliance Manual Drafter**

Sample Forms

- [Succession - Client Communication Re Assignment/Buy-Sell/Succession](#)
- [Succession – Due Diligence Checklist for Buying/Selling Rep’s Client List](#)
- [Assignment/Change of Ownership - Client Letter – Internal Sale – 60 Day Notice – No Response Consent](#)
- [Assignment/Change of Ownership - Client Letter - Death of Former Owner - New Owner - No Response Consent](#)
- [Assignment/Change of Ownership - Client Letter – Confirmation of Assignment of Advisory Agreement after Initial 60 Day Notice](#)

Compliance Manual Sections

- [Succession Plan](#)

Webinars

- [Investment Adviser Fiduciary Duty](#)
- [Succession Planning for Investment Advisers - Why? & How?](#)
- [Conducting an Annual Compliance Review – Session 10 – Business Continuity Plans & Information Security](#)

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