

SECURITIES AND EXCHANGE COMMISSION GETS SERIOUS ABOUT BUSINESS CONTINUITY

SEC – Division of Investment Management New rule 206(4)-4 [17 CFR 275. 206(4)-4] and amendments to rule 204-2 [17 CFR 275.204-2] under the Advisers Act [15 U.S.C. 80b]

The SEC has now issued new and updated existing rules due to their perception of the robust nature of business continuity plans at some firms, especially as they pertain to the use of 3rd party vendors to perform market critical functions. IM firms need to quickly assess the impact these changes will have on their operations.

Following a 10-month study of the Aug. 31, 2015 failure of a Sungard InvestOne upgrade at BNY Mellon, the SEC Division of Investment Management issued additional guidance on firm’s business continuity practices, specifically with regard to 3rd party service providers.

IM Guidance Updates are geared toward senior legal and compliance officers to provide them with a summary of new rules, pending changes, and their implications. In addition, as BCP has an impact at the Board level – it is a way of bringing the topic to the Board’s attention early with the correct amount of information and emphasis.

The guidance bulletin was published following the filing of a new rule proposal covering BCP and transition planning: <https://www.sec.gov/rules/proposed/2016/ia-4439.pdf>.

The SEC and the Division of IM recognize that registered investment advisors currently have BCP plans, however the inconsistency and robustness of the plans and the degree of customer risk this presents has moved them to propose rule changes that will bring the plans into alignment with more stringent minimum requirements across five critical areas. The SEC has stated:

“While we believe advisers should generally assess and inventory all of the components of their businesses in order to develop their business continuity and transition plans and tailor their plans to the specific risks their businesses face, we also believe that identifying these key components should facilitate the adoption and implementation of robust BCPs by all SEC-registered investment advisers.”

A BCP plan “would include policies and procedures designed to minimize material service disruptions, including policies and procedures that address the following:

1. Maintenance of critical operations and systems and the protection, backup, and recovery of data;
2. Pre-arranged alternate physical location(s) of the adviser’s office(s) and/or employees;
3. Communications with clients, employees, service providers, and regulators;
4. Identification and assessment of third-party services critical to the operation of the adviser; and
5. Plan of transition that accounts for the possible winding down of the adviser’s business or the transition of the adviser’s business to others in the event the adviser is unable to continue providing advisory services.” *

UNDERSTANDING THE USER IMPACT OF RULE 206(4)-4

All registered SEC investment advisors would need to comply with the new rule in order to continue to legally conduct business. It is expected that the new rule will have the least impact on big firms with large and complex businesses. They already have robust plans and will have the smallest gaps, if any, to fill between the new proposed rule and their current BCP and transition positions.

Mid- to small-size firms and individual advisors will have a larger gap to fill. At this point the SEC feels that the rule should apply to all size firms with any differences in BCP and transition plan complexity based on the firm’s business model.

IMPORTANT DATES FOR RULE 206(4)-4 IMPLEMENTATION

Date	Event
June 28, 2016	SEC submits new rule on adviser business continuity and transition plans for comment
September 6, 2016	Comments due on proposed rule
September 2016	Track SEC response to comments and schedule for rule filing

* <https://www.sec.gov/rules/proposed/2016/ia-4439.pdf>

REFERENCES

Securities and Exchange Commission - Adviser Business Continuity and Transition Plans:

<https://www.sec.gov/rules/proposed/2016/ia-4439.pdf>



For more information about this TIP, please contact Doren Jacobs, Financial Services Practice Lead at Trexin. Doren welcomes comments and discussion on this topic and can be reached at doren.jacobs@trexin.com