

## Secretary Galvin Proposes Expert Network Regulations for Massachusetts Advisers

Written by Jeffrey D. Collins

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Secretary of the Commonwealth William Francis Galvin has proposed regulations to add conditions to the use of “matching or expert network services” by investment advisers which are registered in Massachusetts or operating in Massachusetts within an exemption from registration.

The proposed “matching and expert network services” regulation is part of a package of eight different regulatory proposals, the majority of which reflect technical changes to the Code of Massachusetts Regulations (“CMR”) in order to make the regulations consistent with the Dodd-Frank Consumer Protection and Regulatory Reform Act, eliminate references to the NASD (which has now become FINRA), update out-of-date references to Forms U-4 and U-5 and fees, and eliminate references to the Boston Stock Exchange and the Philadelphia Stock Exchange (which were both purchased by NASDAQ), and the Pacific Exchange (which has merged with the NYSE).

Secretary Galvin’s specific proposal is to add a sixteenth practice to the “non-exhaustive list of practices by an adviser which shall be deemed ‘dishonest or unethical conduct or practices in the securities business’” for “advisers” under 950 CMR 12.205(9)(c). Under Section 12.205 “advisers” is defined broadly to include:

any person, including persons registered or excluded from registration under [Massachusetts law], who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase and sale, whether through the issuance of analyses or reports or otherwise. It is a rebuttable presumption that such term includes all investment advisers and investment adviser representatives, as well as other persons who charge fees based on assets under management or portfolio performance for rendering investment advice.

The proposed sixteenth dishonest or unethical practice would be:

a. To retain consulting services, for compensation that is provided either directly to the consultant or indirectly through a Matching or Expert Network Service, unless the adviser obtains a written certification, signed by the consultant that:

- (i) describes all confidentiality restrictions that the consultant has, or reasonably expects to have, regarding Confidential Information; and
- (ii) affirmatively states that the consultant will not provide any Confidential Information to the adviser.

b. Notwithstanding section (a) an investment adviser who comes into possession of material Confidential Information through a consultation is precluded from trading any relevant security until such time as the Confidential Information is made public.

c. Definitions. For purposes of this section:

- (i) “Confidential Information” means any non-public information, which one is bound by a confidentiality agreement or fiduciary (or similar) duty not to disclose.
- (ii) “Matching or Expert Network Service” means a firm that for compensation matches consultants with investment advisers.

Written comments on the proposed regulation are being accepted up until the close of business on Friday, June 24, 2011, and a public hearing will be held at 10 a.m. on June 23, 2011 at the Office of the Secretary of the Commonwealth.

In light of these proposals, financial professionals are well-advised to assess their use of and practices with respect to “matching or expert network services.” We are available to discuss the impact of the proposed regulations and facilitate written comments.

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