

MICHIGAN MANDATES SUCCESSION PLANS FOR INVESTMENT ADVISERS

By: Matthew J. Wiebe, Attorney

Effective July 3, 2019, the Securities Rules require every investment adviser in Michigan to establish, implement, and maintain a business continuity and succession plan.

The plan required by the Securities Rules contains two separate parts: continuity and succession. **Continuity planning** involves matters such as back-ups and contingency plans in case of disruptions to business, such as a natural disaster. **Succession planning** involves matters such as the assignment of duties in the event of the death or unavailability of key personnel. A good continuity and succession plan will cover both sudden unavailability and expected business transitions.

As an investment adviser, it's likely you are a sales- and service-oriented person who thrives when you are making a difference in the lives of clients. When it comes to succession planning, your first thoughts may be about who will take over the relationships with your clients. While your fiduciary duties to clients are important, there are a number of legal issues to consider as well.

Investment advisers are subject to considerable regulatory requirements, such as mandatory reporting, record-keeping, bonding, and maintenance of non-public information. Your successor will need to be aware of the legal requirements and the practical needs, such as how to access client databases and electronic regulatory filing systems (such as IARD). The issue becomes even more complicated if you have custody of client funds or securities, or if your clients have prepaid fees. There also may be issues of satisfying net worth requirements while transitioning or liquidating the business.

Apart from regulatory requirements, your company, broker-dealer, insurance carriers, and other affiliates may restrict how you can transfer or sell your practice or how you can be compensated. You may even need to file your continuity and succession plan with them.

The issues are even more salient for sole proprietors. The successor must have knowledge of the adviser's business and substantive knowledge to offer advisory services. An heir might not be able to fill that role without preparation.

You should start planning now as the Securities Rules are now effective and a continuity and succession plan is

now mandatory. Just as importantly, you can't predict the future; you can only put in place systems for responding to future changes. Fortunately, many challenges can be dealt with in advance, such as drafting investment adviser contracts to grant flexibility for assignment to a new investment adviser, which generally requires the client's consent.

Smith Haughey attorneys are ready to help you prepare your business continuity and succession plan to comply with regulations, satisfy your fiduciary and ethical duties to your clients, and give you and your loved ones peace of mind. Contact Nick Reister or Matthew Wiebe to start planning for the future.



Matthew is a business attorney in the Holland office. He practices business, securities, and real estate law, including nonprofit and for-profit entity formation and governance. Matthew may be reached at mwiebe@shrr.com or 616-335-6793.