



Utah Department of Commerce

**Division of Securities**

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Protecting Investors. Regulating Industry. Promoting Commerce.

# Investment Adviser Workshop:

the New Form ADV Part 2, New Rules, and the IA Switch



# Utah Rule Amendments

# Chip Lyons

## Analyst



# Amended Utah Rules IA Filing Requirements

- Electronic Filing Mandatory
- New Form ADV Part 2 Adopted
- Formalized Division Notification:
  - Designated Official
  - Custody / Discretion
  - Proof of Bond, if required



# Amended Utah Rules IA Filing Requirements

- Renewals – no new requirements
- Increased advanced fee amounts from \$500 to \$1,200
- Housekeeping: NASD => FINRA



# Amended Utah Rules Custody

New Rule Formally Adopts the  
SEC's 2010 Custody Rule 206(4)-2

- SEC post-Madoff goal:  
safeguard investor monies.
- Seamless switch for federal  
covered advisers.



# Amended Utah Rules Custody

Two Concerns with the new rule:

- 1) Advisers that withdraw their fees directly from client accounts.
- 2) Advisers relying on the PIMS No-Action Letter.



# Amended Utah Rules Direct Withdrawal of Fees

SEC's Kennedy No Action Letter will be rescinded by the Division.

- Now, deemed to have custody.
- However, if advisers have custody solely for the withdrawal of fees, they are exempt from the surprise audit and bonding requirements.
- See R164-4-5(F)(2).



# Amended Utah Rules Relying on PIMS Letter

SEC's PIMS No Action Letter will be rescinded by the Division.

- Applied to a few advisers managing pooled funds with an independent party controlling withdrawals.
- Now considered to have custody.
- Going forward, must bond and are subject to all custody requirements.



# Amended Utah Rules Increased Filing Times

For advisers with custody, the amount of time to submit audited financial statements has increased from 90 to 120 days after the adviser's fiscal year end.



# Amended Utah Rules Reviewing the Rules

- View rules on the Division's website.
- Public comment period ends 11/15/10.
- Soonest effective date: 11/22/10.
- Contact the Division with any questions or comments.



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**For more information, please call  
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