



5301 N. Federal Highway, Suite. 380  
Boca Raton, FL 33487  
T: 561-600-0565  
F: 866-688-7725  
ara@ria-compliance.com

## **Compliance Alert - State RIAs Will Need to Implement Business Continuity Plans**

On April 13, 2015, the North American Securities Administrators Association (NASAA) adopted a model rule, which requires state-registered investment advisers to establish a business continuity and succession plan (BCP). NASAA's model rule, which must be adopted on a state-by-state basis, requires every investment adviser to establish, implement, and maintain written procedures relating to business continuity and succession planning. Even if a state does not enact NASAA's model rule, RIAs owe a fiduciary duty to implement policies and procedures to minimize the risk to clients arising from sudden or unexpected events that might impact firms' business operations.

At a minimum, the plan must address the following areas:

- Protection, backup and recovery of books and records;
- Providing alternative means of communicating with customers, key personnel, employees, vendors, service providers, and regulators;
- Office relocation if the principal office of the Registered Investment Adviser (RIA) is unavailable;
- Assignment of duties to qualified persons if a key person dies or becomes unavailable; and
- Minimizing service disruptions and client harm resulting from a significant business interruption.

The goal of BCPs is to ensure that clients will have access to their assets if RIAs are unable to provide service, either permanently or temporarily.

The model rule was accompanied by commentary entitled, *NASAA Guidance on Business Continuity and Succession Planning for State Registered Advisers*, which gives advice to RIAs on how to create a plan. NASAA's approach is to recognize the wide range of different RIA business models. The rule gives RIAs flexibility in addressing business continuity and succession planning issues.

Aside from exposure to regulatory actions, there are other compelling reasons for an RIA to develop a BCP. The failure to address these risks can result in harm to clients, as well as litigation for failure to satisfy contractual, legal, and regulatory obligations.

The model rule and guidance can be found at:

<http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Model-Rule-on-Business-Continuity-and-Succession-Planning-with-gu....pdf>.

SEC-registered advisers will also benefit from reading the rule and the guidance.