

## Risk Management Update August 2017

### WHAT ADVISERS NEED TO KNOW ABOUT WYOMING'S NEW INVESTMENT ADVISER REGULATIONS

On July 1, 2017, the State of Wyoming's new regulations became effective, which require certain investment advisers ("IAs") and investment adviser representatives ("IARs") to register with the State in order to provide investment advice in Wyoming.<sup>1</sup>

This month's Risk Management Update provides an outline of the new requirements for both IAs and IARs, including information on steps to take for obtaining such registration.

#### *Registration Requirements for IAs*

The Wyoming Secretary of State's office<sup>2</sup> is the regulatory body charged with, among other things, registering IAs and IARs. Generally, IAs providing investment advice for a fee that have less than \$100 million in assets under management and a principal office located in Wyoming will be required to become registered in Wyoming. Notably, any IA currently registered with the U.S. Securities and Exchange Commission ("SEC") that meets this criteria must register with Wyoming and then withdraw from SEC registration.

The new regulation includes a de minimis component, which exempts from registration any IA that has no place of business in Wyoming and five (5) or less clients located in Wyoming during the preceding 12 month period. In addition, investment advisers to private funds are exempt from full registration so long as they qualify for, and follow the steps outlined in the private fund adviser exemption adopted by the North American Securities Administrators Association ("NASAA").<sup>3</sup>

The following steps are required for IA registration:

- File a completed [Form ADV \(Parts 1A-1B, 2A and 2B\)](#) electronically through the Investment Adviser Registration Depository ("IARD") system;
- Pay a \$250 filing fee electronically through the IARD system;
- Provide financial statements for most recent fiscal year end;<sup>4</sup> and
- Submit additional documents requested by State examiner during review period.

Additional requirements:

- Firms with discretionary authority or custody will be required to obtain a surety bond;<sup>5</sup>
- Firms with discretionary authority will be required to maintain a minimum net worth of \$10,000;

---

<sup>1</sup> See [http://soswy.state.wy.us/Investing/Docs/Wyoming\\_Securities\\_Act\\_Effective\\_07-01-2017.pdf](http://soswy.state.wy.us/Investing/Docs/Wyoming_Securities_Act_Effective_07-01-2017.pdf).

<sup>2</sup> See <http://soswy.state.wy.us/Investing/InvestmentAdvisers.aspx>.

<sup>3</sup> See <http://www.nasaa.org/wp-content/uploads/2011/07/NASAA-Registration-Exemption-for-Investment-Advisers-to-Private-Funds-Model-Rule-Amended-Oct.-8-2013.pdf>.

<sup>4</sup> Investment advisory firms with custody or who requires payment of advisory fees six months or more in advance and in excess of \$500 per client is required to submit audited financial statements. See footnote 6 for information on custody.

<sup>5</sup> Amount to be determined by the Secretary of State based on the number of clients and total assets of the firm, with the minimum being \$10,000.

- Firms that require the prepayment of fees in the amount of \$500 or more, six months in advance will be required to maintain a positive net worth at all times;
- Firms with custody<sup>6</sup> will be required to maintain a minimum net worth of \$35,000;<sup>7</sup> and
- A supervisory or control individual of an entity will be required to meet the State's licensing requirements.

The above list is not all inclusive and additional requirements made apply depending on a firm's business practices.

### ***Registration Requirements for IARs***

Individuals that meet Wyoming's definition of investment adviser representative and do not qualify for an exemption must register with the Secretary of State. The initial registration period is July 1, 2017 through September 30, 2017.

Under Wyoming regulations, "investment adviser representative" is defined as:

*“An individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises 4 employees who perform any of the foregoing.”*

The following steps are required for IAR registration:

- Submit a completed Form U-4 through the IARD system;
- Submit a \$45 Fee through FINRA's IARD System; and
- Satisfy the examination/licensing requirement.

IARs are required to successfully pass the following unless eligible for a waiver:

- Series 65 – Uniform Investment Adviser State Law Examination; or
- Series 66 – Uniform Combined State Law Examination; and
- Series 7 – General Securities Representative Examination.

The following are waiver conditions that will satisfy examination requirements:

1. An IAR that has been registered in any state requiring licensing and registration within two years from the date of filing the application for registration or has taken and passed the Series 65 within the prior two years;
2. An IAR that has one of the below professional designations:
  - a. Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards
  - b. Chartered Financial Consultant (ChFC) or Masters of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania
  - c. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts

<sup>6</sup> The Wyoming Secretary of State has adopted the NASAA model rule on custody. See <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2011/07/NASAA-Model-Custody-and-Recordkeeping-Rules1956-and-2002.pdf>.

<sup>7</sup> This excludes advisers that have custody solely due to the authority to deduct advisory fees from clients' accounts.

- d. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants
  - e. Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association; or
3. Persons that are IARs solely due to soliciting, offering, or negotiating the sale of investment advisory services.

### ***Federally Covered Investment Advisers***

An SEC registered IA with \$100 million or more in assets under management or that otherwise meets the criteria for SEC registration, and that has a place of business in Wyoming, is required to make a notice filing and pay a fee. Additionally, SEC registered IAs with no place of business within Wyoming but which have six (6) or more clients located within the state is required to make a notice filing and pay a fee.

### **Conclusion**

Licensing and registration departments within IA firms must take inventory of who is directly impacted by this regulatory change and register such entities and individuals accordingly. Moreover, compliance personnel should be aware that in addition to new registration requirements, the State of Wyoming also implemented post-registration compliance program requirements. This includes, among other things, the requirement for IAs to have business continuity and succession planning policies and procedures that are customized to the firm, taking into consideration the unique services provided, the size of the firm, and number of offices. Therefore, it is imperative to review these new requirements and determine what additional action is needed so that internal controls can evolve accordingly.

For more information on the above, or if you have questions regarding how Wyoming's new requirements may affect you, please contact us at (619) 278-0020, or email our team at [info@corecls.com](mailto:info@corecls.com). Thank you.

**Author: Tina Mitchell, Lead Sr. Compliance Consultant and Jennifer Juckett, Marketing Coordinator; Editor: Michelle Jacko, CEO, Core Compliance & Legal Services ("CCLS"). CCLS works extensively with investment advisers, broker-dealers, investment companies, hedge funds, private equity firms and banks on regulatory compliance issues. This article is for information purposes and does not contain or convey legal or tax advice. The information herein should not be relied upon in regard to any particular facts or circumstances without first consulting with a lawyer and/or tax professional.**