



Risk Management Update January 2017

INVESTMENT ADVISERS – WHAT YOU MAY NOT KNOW COULD AFFECT YOUR REGISTRATION

There are many facets surrounding the registration of investment advisory firms (“IA Firm”) and investment adviser representatives (“IAR”) and the process can be erroneous if not performed correctly. Since registration is one of our core service offerings, we get asked a lot of questions from prospects and clients on this subject. Therefore, this Risk Management Update provides answers to some frequently asked questions pertaining to both State and Securities and Exchange Commission (“SEC”) registration requirements for IA Firms and their IARs.

Advisory Firm Registration

Q. *If an IA Firm doesn’t have \$100 million in assets under management (“AUM”), what are some of the other ways they can qualify for SEC registration?*

A. In most cases, IA Firms with less than \$100 million or more in AUM are required to register with the state where their principal place of business is located. However, there are some situations where IA Firms can (or must) register with the SEC, including the following:

- An IA Firm that provides advisory services to investment companies registered under the Investment Company Act of 1940 must register with the SEC regardless of AUM;
- An IA Firm that is required to be registered in 15 or more states can register with the SEC;
- A newly formed IA Firm that believes it will accumulate AUM of \$100 million or more within the first 120 days of initial registration can file their initial registration with the SEC;
- An IA Firm with a principal place of business located outside the U.S.; and
- An IA Firm that meets the definition of “related adviser” under rule 203A-2(b) and that controls, is controlled by, or is under common control with, an investment adviser that is already registered with the SEC. *Please note:* the IA Firm’s principal office and place of business must be the same as the registered adviser.

Importantly, the above list is not all inclusive, but rather lists the main ways an IA Firm can register with the SEC.

Q. If an IA Firm's principal office is located in New York or Wyoming and their assets under management (AUM) are less than \$100 million, do they register with the state where they are located or the SEC?

A. An IA Firm headquartered and doing business in Wyoming is required to register with the SEC regardless of the amount of AUM. An IA Firm headquartered and doing business in New York must register with the SEC if the Firm has \$25 million or greater in AUM. Mainly, these requirements are due to the fact that Wyoming does not have regulation pertaining to investment advisers and New York does not perform examinations of their registered advisers.

Q. What are the main requirements that an IA Firm must meet to qualify as an "Exempt Reporting Adviser" ("ERA")?

A. IA Firms whose only clients are private funds usually can claim the ERA exemption. This requires the IA Firm to file a shortened version of Form ADV Part 1A. A Form ADV Part 2 is not required. The determination of whether to file as an SEC ERA or a State ERA depends on the amount of AUM of the IA Firm, the state where the IA Firm is located, and whether that state has adopted an ERA exemption.

Q. If an IA Firm only manages private funds with assets totaling \$151 million, can the firm file as an ERA?

A. No. An IA Firm that has previously qualified as an ERA, but has reported AUM of \$150 million or more on their annual Form ADV filing, must register with the SEC within 90 days of the date of the Form ADV filing.

IAR Registration

Q. Who has jurisdiction over IARs?

A. States. The SEC does not register IARs.

Q. When does an employee of an SEC registered IA Firm have to register as an IAR?

A. Each state (with the exception of Wyoming and New York) has a definition of an IAR in their regulations. Generally, any employee of an SEC registered IA Firm that meets the definition and has a place of business in the state is required to be registered. Notably, some states have de minimis exemptions, such as if the IAR has less than six clients in the state. It is important to check each state's registration requirements since some states may be more restrictive. For example, Texas requires an IAR to register with their state regardless of whether the IAR has a place of business in the state.

Q. What are the general licensing requirements for IARs?

A. In order to become registered as an IAR, most states require a person requesting registration to pass the Series 65 (Uniform Investment Adviser Law) or other qualifying examination, such as the Series 7 (General Securities Representative) and 66 (Uniform Combined State Law). Persons who hold certain designations such as the Certified Financial Planner (CFP), Chartered Financial Analyst (CFA), Personal Financial Specialist (PFS) or Charter Financial Consultant (ChFC) are exempt from such licensing requirement, so long as their designation(s) remains current.

Q. When do solicitors have to be registered?

A. The rules regarding the registration of Solicitors vary from state to state, so it is important to check each state's requirements prior to entering into a solicitation arrangement. When hiring a solicitor, the IA Firm should confirm that the solicitor is properly registered in the appropriate states.

Conclusion

Wading through the requirements surrounding IA Firm and IAR registration can be overwhelming and sometimes the regulations can appear to be contradictory. To help, below is a list of websites that house the regulations:

- State contact information and regulations: <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/>
- SEC registration information: http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=c7cbe9b63d85903d1fcfc7fc748ffb17&tpl=/ecfrbrowse/Title17/17cfr275_main_02.tpl

For assistance or for more information on this topic, please contact us at (619) 278-0020, info@corecls.com or visit www.corecls.com.

Author: Kurt Nuñez, Compliance Consultant; Editor: Tina Mitchell, Lead Sr. Compliance Consultant, 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.