



## **INVESTMENT ADVISER APPLICATIONS FOR REGISTRATION**

### **General Guidelines For Applying As A State Registrant<sup>1</sup>**

The Registration Section (sometimes referred to as Licensing Section) for each state securities administrator is responsible for reviewing, issuing comments, and approving those persons who apply for registration (or licensure) to be an investment adviser and/or an investment adviser representative. Whether you are a new investment adviser, already approved in your home state and applying to another state, or switching from SEC registration to state jurisdictional authority, the following information is being provided to assist you in avoiding the most common deficiencies in the process.

❖ **Make sure you submit all the required documents.**

- Contact the state securities administrator for the exact documents needed for application and how they are to be submitted. To contact any state securities administrator please follow this link: <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/>.
- In general an investment adviser will be required to submit the Form ADV Part 1A, 1B, 2A (also known as the brochure), and 2B (the brochure supplement), samples of all investment advisory agreement(s)/contract(s), and Form U4 (for each investment adviser representative), primarily utilizing the Investment Adviser Registration Depository (IARD) and either electronic mail or regular mail for materials such as the

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<sup>1</sup> This information is being provided for informational purposes only and while it concerns legal matters, should not be considered as legal advice. Applicants for registration are responsible for verifying and complying with the registration requirements of the jurisdiction in which registration or licensure is being sought.

agreements/contracts or other supplemental materials to the application filed through the IARD.

- A list of registration requirements for investment advisers can also be found on the NASAA website at <http://www.nasaa.org/industry-resources/investment-advisers/ia-switch-resources/state-investment-adviser-registration-information/>.

- ❖ **Avoid the common deficiencies.** The most common errors found in an application are related to inconsistencies between Form ADV Part 1A-1B; the new "plain language" narrative Form ADV Part 2A-2B; and the investment advisory agreement(s)/contract(s).
- ❖ **Review of applications.** The staff of the state securities administrator in the state(s) where the investment adviser seeks to transact business will review and provide comments on the documents.

**To help you avoid the most common deficiencies please be aware of the following general guidelines, but remember that it is your responsibility to inform yourself of the specific requirements of the states where you are submitting filings:**

## **Form ADV, Parts 1 and 2**

- Ensure:
  - The types of clients listed on Item 5.D of ADV Part 1A match Item 7 of Part 2A.
  - The type of compensation listed on Item 5.E of Part 1A matches Item 5 of Part 2A.
  - The fee schedule listed in Item 5 of Part 2A matches the fee schedule in the investment advisory agreement/contract, including the method of calculating and charging the fees and the disclosure of the constructive custody elements for those advisers who engage in direct fee deduction.
  - How often fees are paid as listed in Item 5 of Part 2A matches the investment advisory agreement/contract.
  - Services marked in Item 5.G of Part 1A match the services described in Item 4 of Part 2A.
  - Discretionary authority marked in Item 8.C of Part 1A matches the discretionary authority described in Item 16 of Part 2A. In addition, you must discuss, if any, the restrictions or limitations imposed by your clients.
- If you list other business in Item 6 of Part 1A, discuss the other business in Item 10 of Part 2A.
- If required by the relevant state(s), include both the required balance sheet and financial condition disclosures for Items 18.A and 18.B of Part 2.

## **Investment Advisory Agreements**

- The following items should be addressed in the agreement(s)/contract(s) and should be consistent with the information found in Form ADV Parts 1A-1B and 2A-2B if applicable:

- Description of services to be rendered by the adviser;
- Term of the contract;
- A fee schedule;
- The fee formula;
- Whether fees are charged in advance or in arrears;
- How often fees are paid;
- Whether fees are negotiable;
- Whether fees are withdrawn from the client's account;
- Whether the firm has discretionary authority;
- The firm's termination policy, including ; and
- A refund policy, if applicable.
- If applicable, the agreement(s)/contract(s) must contain language explaining the adviser will not be compensated on a basis of capital gains (performance fees) unless the client is qualified and it is disclosed in ADV Part 1A. Item 5.E, and was described in Item 5 of ADV Part 2A.
- The agreement(s)/contract(s) must contain a non-assignment clause.
- The following items should NOT be in a agreement(s)/contract(s):
  - Inappropriate termination fees and notification time frames;
  - Any provision that is likely to lead a client to believe that he or she has waived non-waivable rights of action against the adviser available under federal or state law (hedge clauses);
  - Language suggesting that a client is waiving the adviser's requirement to comply with the securities laws of the client's home state;
- The fee schedule in the agreement must match the fee schedule discussed in the Form ADV Part 2. Additionally, the type of compensation described in the contract must match what was described in Item 5 of Part 2.A and the form of compensation marked in Item 5.E of ADV Part 1A.