683 routine Investment Adviser examinations

January 1 – July 31, 2023

232 IAs first time examined by the state
Number of IARs per IA

- 1: 72%
- 2: 20%
- 3 or more: 8%
2023 vs. 2021

<table>
<thead>
<tr>
<th>Category</th>
<th>2023</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>44.05%</td>
<td>41.72%</td>
</tr>
<tr>
<td>Books and Records</td>
<td>17.09%</td>
<td>16.35%</td>
</tr>
<tr>
<td>Supervision and Compliance</td>
<td>16.35%</td>
<td>12.38%</td>
</tr>
<tr>
<td>Contracts</td>
<td>29.48%</td>
<td>30.52%</td>
</tr>
<tr>
<td>Fees</td>
<td>19.27%</td>
<td>18.77%</td>
</tr>
<tr>
<td>Custody</td>
<td>6.40%</td>
<td>2.70%</td>
</tr>
<tr>
<td>Financial Matters</td>
<td>14.23%</td>
<td>2.54%</td>
</tr>
<tr>
<td>Advertising</td>
<td>19.67%</td>
<td>2.54%</td>
</tr>
<tr>
<td>Cybersecurity</td>
<td>5.34%</td>
<td>1.53%</td>
</tr>
</tbody>
</table>
This is the 1st state exam of this adviser
Last state exam was between 2-3 years ago
This is a “desk” exam
Last state exam was between 3-4 years ago
Last state exam was between 4-5 years ago
Adviser is registered in more than one state
Last state exam was over 5 years ago
Last state exam was between 1-2 years ago
Other
Other Types of Business IA Engages In

- Accounting firm: 24
- Broker-dealer: 9
- Commodity pool operator, commodity trading adviser, or futures commission merchant: 4
- Insurance agency: 50
- Law firm: 3
- Other: 36
- Real estate agency: 2

Number of IAs
Advisers Offering Financial Planning Services

- # of IAs: 284
- # of Clients:
  - 0: 31
  - 1-5: 25
  - 6-10: 39
  - 11-20: 15
  - 21-30: 70
  - >30: 284
Advertising Violations

Untrue or misleading statements or omissions – qualifications, services, or fees (UBP)

Misuse of “RIA” or “IAR”

Insufficient website disclaimer

Testimonials (UBP)

Website still active

Untrue or misleading statements or omissions – exaggerated claims (UBP)

No submitted advertisements prior to use

Misuse of third party reports (UBP)

Misleading charts, graphs, formulas or other devices (UBP)

Marketing/Advertising

Guarantees of specific results or against loss (UBP)

Found in:
- Websites
- Business Cards & Stationery
- Social Networking Sites
- Newsletters
Books & Records Violations

- Client suitability information
- ADV Part 2 (Brochures) amendments and revisions
- All written agreements (client contracts plus all business agreements)
- Trial balances, financial statements
- General and auxiliary ledgers
- Delivery and offering dates of brochures
- Order memorandums
- No business continuity/succession planning
- No written supervisory/compliance (WSP) policies/procedures
- Inadequate business continuity/succession planning
- No policies/procedures for information security
- Bills and statements
Contract Violations

- Contract is not properly executed (proper signatures and dates)
- Contract contains impermissible hedge clause(s)
- Contracts not in writing
- Fee formula is not clearly stated
- Fee is not clearly stated
- Refund policy for pre-paid fees is not clearly stated
- No clause giving client 48 hours to review ADV before executing contract or 5 days to rescind contract
- Fee discount or waiver is not clearly identified
- Discretionary or non-discretionary authority is not clearly stated
- Contract does not contain a description of services to be provided
- Contract is missing a non-assignment clause
- Adviser violated terms of contract
Custody Violations

- Direct Fee Deduction: Improper client invoice (fee, time period, formula, assets in formula)
- Direct Fee Deduction: Failed to dual invoice client and custodian
- Other custody issues/concerns (attach Notes/Explanation)
- Safekeeping: No notice to administrator on ADV that the adviser has custody
- Safekeeping: Account statements from adviser – No Independent CPA annual surprise audit
- Inadvertent Custody: Failed to keep records documenting the return of inadvertently...
- Ability to use client identity (username/passwords) to obtain customer funds or securities...
- Trustee/Executor: No Notice to administrator
- Safekeeping: Customer funds not held by qualified custodian in separate client accounts...
- Pooled Vehicle (Annual Audit): Audit NOT performed by independent CPA
- No invoices sent to clients
- General Power of Attorney: Failed to follow custody requirements
- Direct Fee Deduction: No Notice to Administrator on ADV
- Direct Fee Deduction: Failed to provide client with concurrent invoices
- Direct Fee Deduction: Failed to obtain written client authorization
- Custody: Failed to keep records documenting the forwarding/return of inadvertently...
- Custody: Ability to use client identity (username/passwords) to obtain customer funds or...
Cyber Incident: IA did not have existing incident response plan in place to help react to the incident

No authentication of transaction instructions received by email

No IT or technology specialist/consultant to advise on cybersecurity

No non-disclosure or confidentiality agreement in place with technology specialist/consultant

No or inadequate cybersecurity insurance

No off-site storage of back-up data

No or very infrequent back-up of data

No testing of cybersecurity vulnerability

No cybersecurity policy

Weak or infrequently changed passwords

No or inadequate protection (i.e., password or encryption) for sensitive data files

No WSPs for cybersecurity

Transmitting sensitive data by unsecure means

No cybersecurity policy

Cybersecurity Violations
Adviser unable to provide evidence of work product to justify asset management fees

Does not have audited balance sheet in ADV for charging greater than $500 (or $1,200) and greater than 6 months in advance

Failure to disclose higher fees than the norm

Performance-Based Fee

Unreasonable/Excessive fee (UBP) - Higher than average financial planning or other services fees

Unreasonable/Excessive fee (UBP) - Fees charged on top of 3rd-party managers

Unreasonable/Excessive fee (UBP) – Higher than average asset-based fees for similar account management

Unreasonable/Excessive fee (UBP) - Charging on non-managed assets (cash, cash equivalents, fixed income)

Performance fees charged to non-qualified clients

Failure to provide refund of prepaid fees

Unreasonable/Excessive fee (UBP) - Higher than average asset-based fees for similar account management

Charging undisclosed fees for asset management

Unreasonable/Excessive fee (UBP) - Charging on non-managed assets (cash, cash equivalents, fixed income)

Fee charged doesn’t match contract or ADV

Charging miscalculated fees

Fee charged doesn’t match contract or ADV
Inadequate policies on detecting information security events
Inadequate policies on protecting against information security risks
Inadequate policies on protection: Use of Email
Inadequate policies on recovering from information security events
Inadequate policies on responding to information security events
Inadequate/no policies on use of anti-virus software
Inadequate/no policies on use of firewalls
Inadequate policies on protection: Use of Cloud Services
Inadequate policies on identification of internal and external risks
Inadequate policies on identification of information security risks
Inadequate policies on protection: Use of Devices
Inadequate/no plan to contact clients in policies
Inadequate/no plan to contact authorities in policies
Inadequate policies on protection: Use of Devices
Inadequate/no plan to contact clients in policies
Inadequate/no plan to contact authorities in policies
No written information security policy
Information Security Violations
Inadequate/no business continuity plan regarding information security
Inadequate/no policies on use of encryption
Privacy Violations

No evidence of annual delivery of privacy policy - 22 violations
No evidence of initial delivery of privacy policy - 15 violations
Inadequate privacy policy - 6 violations
No privacy policy - 5 violations
No opt-in to information sharing (if required in your jurisdiction) - 2 violations
Privacy Policy - Annual Delivery - 1 violation
Privacy Policy - Initial Delivery - 1 violation
No opt-out of information sharing - 1 violation
No confidentiality agreements with third parties - 1 violation
Did not deliver 2022 privacy policy - 1 violation
Other supervisory/compliance issues (include Notes/Explanation)
No/Inadequate: Updates to Form ADV/Form U4
No/Inadequate: Custody
No Written Supervisory Procedures
No/Inadequate: Information Security Procedures
No/Inadequate: Business Continuity Plan
Not tailored to state jurisdiction
Failure to follow supervisory/compliance procedures
Not current/up-to-date
No/Inadequate: Maintenance and Review of Supervisory/Compliance Procedures
No/Inadequate: Protection of Vulnerable Clients
Supervision & Compliance Violations
The adviser failed to provide the training to all appropriate personnel.

The adviser failed to provide the training to personnel in a reasonably timely manner.

The adviser failed to maintain records of the training attendance for each of its personnel.

Training content did not cover how to identify signs of financial exploitation.

Training content did not cover how to report suspected financial exploitation to the proper authorities.

Training content did not discuss the need to protect the privacy and integrity of the individual customer of the adviser.

Training content was not appropriate for the job responsibilities of the training attendee.

Training content was not maintained by the adviser.

No training provided regarding suspected financial exploitation of vulnerable persons.

No policies/procedures for suspected financial exploitation.

Vulnerable Persons Violations.
Recommendations to Investment Advisers

• Review and revise Form ADV and disclosure brochure annually to reflect current and accurate information.

• Review and update all contracts. Be aware of e-communications hedge clauses.

• Prepare and maintain all required records, including financial records. Back-up electronic data and protect records. Document checks forwarded.

• Prepare and maintain client profiles or other client suitability information. Maintain due diligence file for recommended products or strategy.

• Prepare a written compliance and supervisory procedures manual relevant to the type of business to include business continuity plan and information security policies/procedures. 1) Policy; 2) Who; 3) Does what; 4) How often; 5) How evidenced