

REGULATION OF INVESTMENT ADVISERS, INCLUDING STATE-REGISTERED AND FEDERAL-COVERED ADVISERS

A person is not a minor, a dead person, or someone declared mentally incompetent.

A person meeting the three-prong test is an investment adviser (IA).

If a person is in the business of comparing the performance of one adviser against others for compensation, registration as an IA is required.

IA-1092 added financial planners, entertainment/sports representatives, and pension consultants.

AUM of \$110 million or more—SEC registration as federal-covered adviser;
+ \$100 million AUM—state registration.

A federal-covered IA falling below \$90 million must register with the state(s).

If any advisory clients are investment companies, the IA must be federally registered (SEC).

Lawyers, accountants, teachers, and engineers (LATE) are excluded from the definition of an IA as long as advice is incidental to the practice of the profession. Charging for the advice removes the exclusion. State-registered IAs qualify for an exemption under the de minimis rule (i.e., no place of business in the state and five or fewer retail clients).

With no place of business in the state, the IA can have an unlimited number of institutional clients without registering.

The *seventh rule* provides an exemption from registration for all securities professionals when dealing with vacationing clients. Subject to 30-day rule for change of residence.

The term *investment counsel* can only be used by an IA whose principal business consists of rendering investment advice and a substantial portion of his advisory business involves investment supervisory services.

Under the Uniform Securities Act (USA), all professionals' registrations/withdrawals take place at noon, 30 days after completed application.

All registrations of persons expire on the first December 31 after registration, with annual renewal after that. However, registration of securities is effective for one year from the registration date.

A successor firm to a broker-dealer (BD) or IA does not pay a fee until the renewal date.

All professionals file a consent to service of process as a permanent part of their registration.

An IA exercising discretion needs \$10,000 net worth or a surety bond. (USA)

An IA maintaining custody of customer funds/securities needs \$35,000 net worth or a surety bond. (USA)

If a state-covered IA meets the bonding, net worth, or recordkeeping requirements of the IA's home state, it suffices for any other state in which the IA is registered. Federal-covered IAs meet SEC requirements only.

Under state and federal law, a person is deemed to be in control of an IA with an ownership level of at least 25%.

Company records, such as corporate charters or partnership agreements, must be maintained in the principal office of the IA or BD and preserved until at least three years after termination of the enterprise.

REGULATION OF INVESTMENT ADVISER REPRESENTATIVES

An investment adviser representative (IAR) is an individual associated with an IA, including those who supervise IARs.

The de minimis exemption is available to an IAR with a state-registered IA.

There is no de minimis for IARs with a covered IA, but they only register in states where they have a place of business regardless of the number of clients.

Under the USA, a solicitor for an investment advisory firm who is paid a fee for his services must register as an IAR.

Under the USA, when an IAR leaves the employ of an IA, notification depends on whether the IA is federal covered or state registered. If state registered, only the IA notifies the Administrator; if federal covered, only the IAR notifies the Administrator.

REGULATION OF BROKER-DEALERS AND THEIR AGENTS

If a BD has an office in a state, it must register.

A BD exercising discretion or maintaining custody of customer funds/securities may have to post a surety bond unless the BD's net capital is in excess of SEC requirements.

An agent exercising discretion (cannot have custody) may have to post a surety bond.

In lieu of a surety bond, the Administrator may accept deposits of cash or securities.

For a surety bond to meet the requirements of the USA, it must provide that any customer who

can prove a violation is entitled to collect against the bond.

Anytime a customer deposits securities with a BD, a receipt for those certificates must be issued promptly.

Under the USA, when an agent terminates association with a BD, both the agent and the BD must notify the Administrator promptly.

Any individual representing a BD in any form of securities offer or sale must be registered.

Records may be kept on a computer disk that cannot be altered.

BD records must be kept for three years and IA records for five years.

Material changes to a BD's registration must be reported promptly.

REGULATION OF SECURITIES AND ISSUERS

The following are not securities: retirement plans (IRAs, Keoghs), nonvariable insurance contracts (fixed annuity, term, whole life, modified endowment), collectibles, commodities (e.g., precious metals like gold), condominiums used as a personal residence, and currencies.

Securities Act of 1933: Registration of securities (Paper Act).

Nonexempt new issues can only be sold once the prospectus is effective. Indications of interest (but no orders or money) can be accepted during the time the issue is "in registration" (before the effective date).

USA: Security registered by qualification becomes effective only with an active review of registration.

The most common exempt transactions are as follows:

- Isolated nonissuer transactions
- Unsolicited orders
- Transactions with institutions
- Transactions between the issuer and underwriter
- Transactions by fiduciaries
- Private placements (10 or fewer offers to noninstitutional clients within 12 months)

Even if the security or the transaction is exempt, the agent of a BD must be properly registered.

A registered agent may accept an unsolicited order for a nonexempt unregistered security because it is an exempt transaction. However, the Administrator retains the right to have clients acknowledge that the order was truly unsolicited.

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