



## INVESTMENT ADVISOR NEWSLETTER

Fall 2012

This periodic newsletter from the Wisconsin Division of Securities is directed toward state registered investment advisers. We welcome your suggestions for future content.

### DIVISION OF SECURITIES MOVING TO NEW LOCATION

The Department of Financial Institutions, including the Division of Securities, will have a new physical address in downtown Madison as of Monday, November 19<sup>th</sup>. Our new offices will be located in the Tommy G. Thompson Commerce Building at 201 W. Washington Avenue, about one block from the Division's current location. The Division of Securities will be located on the third floor of the new building. Our phone numbers and email addresses, as well as the P.O. Box mailing address, will all remain the same.

### IARD SYSTEM FEE WAIVER

The annual system maintenance fee for filings made through IARD has again been waived for investment adviser firms in 2013. The IARD fee for investment adviser representatives (IARs) will be reinstated in 2013 at the substantially reduced rate of \$10. Any fees charged by IARD are separate from the state registration and renewal fees.

### EXAMINER OF THE DAY

If you have questions about the renewal process or any other topic related to professional registration and/or compliance, please feel free to call our Examiner of the Day phone line at (608) 266-2139.



### INVESTMENT ADVISOR SWITCH

53 investment advisers, including 30 located in Wisconsin, registered with the state as a result of the requirement that mid-sized advisers (with assets under management of \$25 - \$100 million) switch from SEC to state registration. We are currently in the process of examining the newly switched advisers and have visited more than one-third of these new registrants. A common deficiency or area of confusion concerns the requirement to send written invoices for fees due for investment advisory services. When fees are deducted from client accounts, the invoice itemizing the fee must include the formula used to calculate the fee, the amount of assets under management that the fee is based on, and the time period covered by the fee. DFI-Sec 5.035(1)(f) and DFI-Sec. 5.05(13).

### RENEWAL SEASON

We are quickly approaching the registration renewal season. Your renewal statement will be available through IARD on November 12<sup>th</sup> and renewal payments are due by December 13<sup>th</sup> for your renewal of firm, IA representative, and branch registrations. Information regarding various payment options can be found at the following IARD website: [http://www.iard.com/ren\\_payment.asp](http://www.iard.com/ren_payment.asp)

## ASK YOUR REGULATOR – QUESTIONS FROM ADVISERS

**QUESTION:** My client is updating his estate planning by transferring assets into a trust, and has asked me to become a trustee. As the client’s investment adviser, is this allowed?

**RESPONSE:** If you become a trustee for an advisory client, you will have legal ownership or access to client funds or securities, and therefore be deemed to have constructive custody under the definition of custody in DFI-Sec 5.035(4). Having custody requires that your firm amend its ADV to reflect the custody of client assets, and also meet safekeeping and books and records requirements. The firm will also be required to maintain a minimum net worth of \$35,000, unless certain requirements are met, such as an annual examination by an independent CPA. For these reasons, many advisers avoid trustee relationships that will result in custody issues.

Additional information and/or exceptions relating to this situation can be found in the Wisconsin Administrative Code: DFI-Sec 5.02 [Net worth requirement] and DFI-Sec 5.035 [Investment advisers with custody]. The Wisconsin statutes and administrative code can be referenced on our website ([www.wdfi.org](http://www.wdfi.org)). There is also a discussion of Custody (and an exception to the safekeeping and net capital requirements where the beneficial owner of the trust is a family member) in our online Investment Adviser Guide: <http://www.wdfi.org/fi/securities/registration/iaguide/custody.htm>.

### SOCIAL MEDIA TIP

If your profile is on LinkedIn, it’s certainly flattering and seems “good for business” to post a recommendation from a client. Unfortunately, an online recommendation is inconsistent with advertising rules. Under DFI-Sec 5.06(19), it is prohibited conduct to publish an advertisement that refers to any testimonial of any kind concerning the investment adviser or IA representative. The SEC similarly prohibits testimonials that include a statement of a client’s experience with, or endorsement of, an investment adviser.

If you have posted a client recommendation on your LinkedIn profile, you can remedy it as follows: Go to the Edit Profile function and click on Edit near the recommendation. Then, unclick the checked “show” box next to the recommendation and scroll to the bottom of the page to click on Save Changes. If you receive a notice from LinkedIn of a new recommendation that amounts to a testimonial, you can decline to post it on your profile. In thanking the sender, you may wish to point out that while you appreciate the recommendation, the securities rules preclude you from posting it to your LinkedIn profile.

A more recent LinkedIn development concerns the ability of others to “endorse” any skills that you have listed on your profile. If you have skills listed, an endorsement can appear without first giving you the ability to accept or decline the endorsement for posting. At this stage, it appears that the only way to avoid an endorsement is not to have any skills listed. However, a LinkedIn endorsement does not include any narrative comments, and we have not yet seen any regulatory opinions that would equate an endorsement with a testimonial. (Note that the Edit Profile function can be used to hide endorsements, but that hiding an endorsement has the effect of permanently deleting it.)

## **FUTURE NEWSLETTER AND EVENT TOPICS**

If there are questions or topics that you would like to see us address in future newsletters, events or other communications to the investment adviser community, please feel free to send an email to: [deborah.fabritz@dfi.wisconsin.gov](mailto:deborah.fabritz@dfi.wisconsin.gov).

### **ADDRESS UNTIL NOV. 16TH**

345 West Washington Avenue, 4th Floor  
Madison, WI 53703

### **ADDRESS ON NOV. 19TH**

201 West Washington Avenue, 3rd Floor  
Madison, WI 53703

### **MAILING ADDRESS REMAINS UNCHANGED:**

PO BOX 1768, Madison, WI 53701