



## INVESTMENT ADVISOR NEWSLETTER

Spring 2013

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

### PROFITABLE SUNRISE

On March 14<sup>th</sup>, the Department of Financial Institutions (DFI) sent out a warning to Wisconsin consumers about an investment scheme in which investors are instructed to wire money to Eastern Europe.

Known as Profitable Sunrise, the scam promises investors risk-free returns up to 2.7 percent per day for periods ranging from 180 to 240 days, according to Patricia Struck, Administrator of the Division of Securities at the DFI.

"Wisconsin investors should be extremely wary of any offers to invest from Profitable Sunrise," Struck said. "The promises being made by this company appear to fall into the 'too good to be true' category."

Investors were informed that their money would be used to fund short-term loans to businesses and that "all funds deposited with (Profitable Sunrise) are insured against loss" by a leading investment bank.

By often referencing scripture passages and purportedly giving the option to donate investment returns to charity, it appears that religious groups and their members are specifically targeted.

Securities officials throughout the United States, Canada and New Zealand have taken steps to protect the public against Profitable Sunrise.

### FACEBOOK

Earlier this year, the Wisconsin Department of Financial Institutions (DFI) launched its profile on the popular social media site Facebook.

The new DFI Facebook page provides information about investor education, financial literacy, fraud and scam warnings, and other timely news from DFI.

For instance, recently, DFI posted a Scam Alert on Facebook regarding Profitable Sunrise, a recent scheme that poses a threat to investors. A traditional press release regarding Profitable Sunrise also appeared on DFI's website.

Check out our Facebook page and feel free to share it with your clients as an investor education resource for them. Also be sure to "like" our page to see future content in your Facebook newsfeed.

[www.facebook.com/WIDFI](http://www.facebook.com/WIDFI)



### ANNUAL AMENDMENT TO FORM ADV

Renewal applications for investment advisers are handled through the IARD. Investment advisers are required to perform an annual updating amendment to Form ADV within 90 days of the end of the adviser's fiscal year. For most firms, that will be on March 31st.

When you submit your annual updating amendment, you must update your responses to all items, including corresponding sections of Schedules A, B, C, and D.

You can submit your summary of material changes either in the brochure (cover page or the page immediately thereafter) or as an exhibit to your brochure.

The ADV Part 2 amendment should include, at a minimum, an update to the number of clients and assets under management. Failure to update Form ADV creates a disclosure violation.

Additional information can be found on the DFI website at: <http://wdfi.org/fi/securities/registration/iaguide/filings.htm>

### Completing the ADV Re: Custody

Custody of client funds is a focus of regulators. Having "custody" can arise from various arrangements depending on your firm's business practice. The kind of custody your firm may have is reported on your ADV1 and ADV2, and is viewable through the SEC IAPD website and the Central Registration Depository (CRD/IARD).

Fee deduction from client accounts is a form of custody. However, if you follow the requirements under Wisconsin's DFI 5.035(1)(f)<sup>1</sup>, your firm will not be subject to a \$35,000 minimum net worth requirement.<sup>2</sup> Because your firm's custody disclosure is reviewable by regulators, it is important to make sure it is recorded properly.

Most firms subject to examination in Wisconsin manage client assets and do not have direct custody of client assets; that is, the firm only deducts the fee from client accounts (a subtle form of custody). If this is the case for your firm, you should answer ADV1A Item 9(A) as "No" and ADV1B Item 2(l) as "Yes." There are sub-questions to each of the items that you need to address depending on your firm's practice. Please call the Examiner of the Day at 608-266-2139 if you have questions.

Note that the interpretation of the administrative code is incomplete for all forms of custody and paraphrased for this article. You can find a complete listing of the Wisconsin Administrative code for advisers at [http://docs.legis.wisconsin.gov/code/admin\\_code/dfi\\_sec/5.pdf](http://docs.legis.wisconsin.gov/code/admin_code/dfi_sec/5.pdf)

#### Footnote 1

DFI-Sec 5.035 Investment advisers with custody. (1)(f) (f) An adviser who has custody as defined in sub. (4) (a) as a result of having fees directly deducted from client accounts, as described in sub. (4) (a) 2., shall comply with all of the following:

1. The adviser shall obtain written authorization from the client to deduct advisory fees from the account held with the qualified custodian.
2. Except as provided in subd. 4., each time a fee is directly deducted from a client account, the adviser shall concurrently do both of the following:
  - a. Send the qualified custodian notice of the amount of the fee to be deducted from the client's account; and
  - b. Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.
3. The investment adviser notifies the division on Form ADV that the investment adviser intends to comply with subds. 1. and 2.

#### Footnote 2

DFI-Sec 5.02 Net worth requirement. (2) (a) Investment advisers having custody solely as a result of a direct fee deduction, as described in s. DFI-Sec 5.035 (4) (a) 2., who comply with all of the conditions in s. DFI-Sec 5.035 (1) (f), and who make and maintain the records required in s. DFI-Sec 5.035 (3) (b), shall not be required to comply with the net worth requirement in this subsection.

### DOS STAFF UPDATES

After thirty years with the Division of Securities, examiner Nancy Jackson retired at the end of the year. We wish Nancy well as she enjoys her well-deserved retirement! In February, we welcomed Charles Benson to our examiner team. Charles looks forward to meeting our registered investment advisers and assisting them with their regulatory compliance.

### 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).