



State of Wisconsin
Department of Financial Institutions
Strengthening Wisconsin's Financial Future

Investment Adviser Newsletter

Spring 2014

This is the fourth edition of our periodic newsletter from the Wisconsin Division of Securities to investment advisers registered in our state. We welcome your suggestions for future content.

Calling for Discussion Topics and Ideas

The Division has received inquiries about holding a future compliance seminar or other event for investment advisers. If you have a suggestion on a format or topic you believe would be of particular interest to investment advisers in Wisconsin, please call our Examiner of the Day phone line at 608-255-2139 or email deborah.fabritz@wisconsin.gov.

ADV Updates

Per DFI-Sec 5.04(3)(b), an updated ADV is due 90 days after the firm's fiscal year end. This is not a task to ignore. In addition to being mandated, an informative, concise and up-to-date ADV has many advantages for investment advisers and their clients.

If all material information is clearly presented at the start of the relationship, a client is less likely to become confused or unhappy with your services and fees. To determine what qualifies as "material," put yourself in your clients' shoes. What would you like to know before investing your life savings?

A well-written and regularly updated ADV can also prevent written deficiencies during the examination process. Division examiners performing an onsite exam will confirm that, at a minimum, you have updated the date on the cover page, the number of clients, and your assets under management. Further, examiners will verify that all proper disclosures have been made.

If your ADV is not up to date, please take the time to correct any provisions that do not accurately reflect your current advisory business. ADVs are evolving documents that require maintenance, but in turn, they can pay dividends for all involved.

Contingency and Succession Business Planning

Investment advisers have a fiduciary duty to put their clients' interests first. This includes making sure a client's wealth transitions smoothly during a succession of the advisory business, or following an unexpected event such as an accident that may render the firm unable to provide advisory services. Recent research indicates that fewer than 25% of advisers have viable succession or contingency plans in place, so this spring is a good time to consider a succession or contingency plan with the clients in mind.

With many investment advisers approaching retirement age, advisers should plan for succession, whether the successor is internal or external to the firm. With internal successions, a younger adviser is usually groomed for a period of time to take over the existing business. They will begin meeting with clients and getting to know them so that the clients become comfortable working with them, while the older adviser prepares to transition out of the business. External successions involve the sale of the business with the former owner usually remaining for a specified time period to help move clients' accounts to the new adviser. An external succession may involve a faster exit for the retiring adviser. The appropriate plan for your firm will depend on the type of advisory business, number of clients, firm size, as well as many other factors specific to your circumstances. Consulting with an attorney or a succession planning firm can help ensure that your plan is complete and identify areas that may require more attention or thought to protect your clients' interests.

Even if you are decades away from retirement, you should at a minimum have a plan in case of an accident or other catastrophic event. Make sure that clients' records are complete and backed up onto an off-premise storage site or device on a regular basis. Practice rebooting records from this system on a periodic basis to keep yourself and your staff familiar with the protocol you have designed and put into place. Firms will differ on their protocols depending on their storage and filing methods. You should also designate who would take over (even in an interim capacity) and look after clients if you were temporarily incapacitated; this person should be aware of this designation and familiar with the duties they would be expected to perform, as well as hold the appropriate securities registration(s) to serve clients.

While, like estate planning, it is not always easy to plan for what will happen after you are gone or no longer working in the advisory business, it is important to have a plan in place to protect your clients, and your business.

Advertising Basics

Investment advisers can use a variety of methods to advertise the products and services they offer. As advertising methods continue to evolve, it is important to review fundamental advertising concepts and regulations. With regards to investment advisers, advertising is defined in **DFI-Sec 5.06(19)(g)** as (1) a written communication addressed to one or more person(s); or (2) any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

- (a) Any analysis, report, or publication concerning securities.
- (b) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell.
- (c) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.
- (d) Any other investment advisory service with regard to securities.

Common examples of advertising include a letter or newsletter addressed to more than one client or potential clients, an investment adviser's website or social media page, or a brochure describing the firm's investment advisory services.

Advertisements used by an investment adviser may not use or refer to any testimonial of any kind. The use of past performance data must include all recommendations by the investment adviser for the preceding period of not less than one year. In short, the advertisement must include all recommendations: good, bad, and otherwise. If the advertisement uses a graph, chart, formula or similar device, it must be stated that the device cannot in and of itself be used to make trading decisions unless the advertisement also identifies difficulties and limitations in its use.

Like most other records, advertisements must be maintained for at least five years, with the first two years in an easily accessible place.

Please refer to DFI-Sec. 5.06(11) and DFI-Sec. 5.06(19) for more information regarding advertising.

Crowdfunding Springs Forward

Crowdfunding is a way to raise capital for a business by accepting investments of small dollar amounts from a larger number of people, typically via the internet. In other words, a “crowd” of investors helps to fund the business. While this concept, and recent legislative developments, may not have a direct impact on your business, it is possible that your clients will hear of crowdfunding opportunities and seek your advice.

In Wisconsin, the Governor signed into law Act 52 last Fall which created a number of new exemptions to facilitate capital raising and crowdfunding within the State. This legislation that permits Wisconsin businesses to raise money through internet crowdfunding sites takes effect June 1st.

Among other provisions, the new law creates a registration exemption that allows a business that is organized under Wisconsin law and authorized to do business here to raise up to \$1 million from investors (\$2 million if the issuer has had an audit in the most recent fiscal year). To qualify for the exemption, the issuer must file a notice with specified disclosures at least 10 days before the offering, offer only to Wisconsin investors, and make the offer available through one or more internet site operators that are registered with the Division of Securities.

Any single purchaser may invest a maximum of \$10,000 in a single crowdfunding offering unless that person is an accredited investor or a certified investor. “Certified” is newly defined by the Act as an individual with a net worth of at least \$750,000, or an income in excess of \$100,000 (or \$150,000 joint income with a spouse) in the last two years.

Additional information will be available at www.wdfi.org by approximately mid-May.

Common Deficiency Alert: Don't Forget Your Privacy Disclosure Document!

President Clinton signed the Graham-Bliley-Leach Act into law in 1999 to protect consumer and customers' non-public information from dissemination to third parties by firms in possession of that information. Per DFI Sec. 5.06(21) and federal law, investment advisers need to create policies and procedures to protect their clients' non-public material information and distribute a privacy disclosure document at the time of signing an investment advisory service contract with clients, and annually thereafter. This document will differ for each firm depending on its business model, and the North American Securities Administrators Association provides a helpful guide for drafting these disclosures on its website at:

<http://www.nasaa.org/industry-resources/investment-advisers/privacy-guidance-for-state-registered-ias/>. The disclosure can be sent out along with the annual offering in writing for the ADV Part 2 or alternative brochure for your business, as required by **DFI Sec. 5.05(8)(c)**.

Contact an Examiner

If you have questions relating to professional registration and/or compliance, please feel free to contact our Examiner of the Day phone line at (608) 266-2139.

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