



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

Investment Adviser Newsletter

Spring 2016

This is the 8th regular edition of our periodic newsletter from the Wisconsin Division of Securities to investment advisers registered in our state. Past editions can be found at:

http://wdfi.org/fi/securities/whats_new.htm

In Remembrance of Patricia Struck

Our long time Administrator of the Division of Securities, Patty Struck, unexpectedly passed away on December 20th. Serving as Wisconsin's chief securities regulator since 1996, Patty was dedicated to the protection of investors. She was a frequent speaker on issues relating to investor education and senior issues, as well as investment adviser compliance.

"Patty was the consummate professional and worked tirelessly to improve the industry and protect the investing public," former DFI Secretary Ray Allen said. "She also was a wonderful person. Her passion for her work and her co-workers was unparalleled. She will be dearly missed by her DFI family."

Patty was a former President and Board Member of NASAA (North American Securities Administrators Association) and chaired NASAA's Investment Adviser Section in addition to serving on many NASAA committees and working groups. According to NASAA's Executive Director, "Patty's leadership at NASAA was marked not only by her command of the subject matter but her diplomatic skills as well. She was courteous and always willing to listen. She valued respect and collaboration."

Going forward, we will continue to serve our registrants and investor community with the benefit of Patty's prior guidance and inspiration that always set a positive example for our Division. All of us at DFI and within the Division of Securities greatly miss Patty as a colleague, mentor and friend. We were fortunate to have known her.

Leslie Van Buskirk, who previously served as the Bureau of Enforcement's Attorney Supervisor within the Division of Securities, has been named the new Administrator of the Division.

Data Breach Notification Statute

Investment advisers, their clients and state regulators all agree – cybersecurity is forever changing the landscape of financial advice. This is not a topic that can only live in a neglected compliance manual. Cybersecurity demands the ongoing attention of all parties involved.

It has become apparent to the Division that many investment advisers are not aware of the steps required by statute if a cybersecurity event occurs. Indeed, there are rules pertaining to notifying clients “without reasonable delay” once an adviser notices a breach of protected client information. Here are some of the highlights of [Wis. Stat § 134.98](#):

- The types of protected information include: Social Security numbers, credit card / debit card numbers and “any security code, access code or password that would permit access to the individual’s financial account.”
- Advisers are required to notify clients of the data breach, “without reasonable delay” or no later than 45 days after the breach. If more than 1,000 individuals are affected, the adviser also needs to notify consumer reporting agencies including Equifax, Experian and Trans Union.
- Notification to clients is not required if the stolen information does not pose a material threat of identity theft or fraud. For instance, if the information is redacted or encrypted, the theft may not necessitate notification.

Take this time to become familiar with the statute and update the firm’s policies and procedures as necessary. As always, feel free to contact the Division if you have any questions.

Protect Your Firm from Third-Party Wire Fraud

The Division has noticed multiple instances of a fraud that could harm your client’s account and increase liability on your firm. In this scheme, hackers capture personal information about a client including the email address and password, financial data, signatures, and previous email correspondence. The hacker then logs into the client’s email account and makes an innocuous request to the adviser inquiring about the account balance or available cash. The hacker follows up with a request to have money wired to a third party, after telling a story about how they are out of town with no cell service. The hacker could even use prior language and signature blocks from previous emails to further impersonate the writing style of the client.

In order to prevent this fraud from occurring, always call the client at their phone number on file in order to confirm a request. Ensure that your firm's compliance manual and/or written supervisory procedures mandate calling the client to verify wire transfer instructions received via email. Ensure that any administrative staff members are familiar with the firm's wire transfer procedures.

Some firms may mistakenly believe their custodian is responsible for preventing wire fraud. While custodians certainly play a role in surveillance, the ultimate responsibility lies with advisers to properly verify client instructions.

Don't Borrow From Clients

The Division recently investigated several cases involving investment advisers that borrowed money from their clients. In light of this, please note that § DFI 5.06(6) prohibits investment advisers and their representatives from borrowing money or securities from, or lending money or securities to, a client, with limited exceptions for financial institutions and institutional investors.

Many advisers have clients that are also family members or friends, but the closeness of a relationship does not create an exemption from the prohibition on borrowing from a client, or waive the adviser's fiduciary duty to the client. An adviser who borrows money from his or her client could be subject to disciplinary action for dishonest, unethical business practices, including revocation and fines.

NASAA Approves Model Act for Seniors

The membership of the North American Securities Administrators Association (NASAA) recently voted to adopt a model act designed to protect vulnerable adults from financial exploitation. (NASAA is the oldest international organization devoted to investor protection.) The model, entitled "An Act to Protect Vulnerable Adults from Financial Exploitation," is now available for states to enact as legislation or implement through regulation.

Key provisions of the model act, which has not yet been enacted in Wisconsin, include the following:

- Mandates reporting to the state securities regulator and state adult protective services agency when a securities broker or investment adviser has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred;
- Authorizes notification to third parties in instances where an eligible adult has previously designated the third party to whom the disclosure may be made;

- Enables broker-dealers and investment advisers to impose an initial delay of disbursements from an account of an eligible adult if financial exploitation is suspected;
- Provides immunity from administrative or civil liability for broker-dealers and investment advisers for taking actions including delaying disbursements;
- Requires securities brokers and investment advisers to provide records that are relevant to the suspected or attempted financial exploitation to government authorities.

Additional information, including the full text of the model act, may be found at <http://serveourseniors.org/about/policy-makers/nasaa-model-act/>

Is Your Form U4 Current?

Investment adviser firms are required to maintain a current Form U4 for their investment adviser representatives. The definition of current is within 30 days of the event. DFI-Sec 5.04 (3)(c) provides, "Each investment adviser representative and his or her employing investment adviser or federal covered investment adviser shall update information contained in an investment representative's application by filing an amendment to Form U4 with the central registration depository within 30 days of the date of the event that requires filing of the amendment." Therefore, maintaining current Form U4s is part of the firm's supervision duties. This means the firm should be inquiring about Form U4 accuracy on a regular basis.

The investment adviser representative is accountable to their employing firm for the accuracy of the representations on the Form U4. Each representative has a personal responsibility to update Form U4 within 30 days of the reportable event. Failure to report an event within 30 days gives the supervising firm, as well as regulators, a basis to sanction the employee up to and including termination.

Examples of reportable events that require updating include:

- Address change
- All employment, full or part time
- Complaints and subsequent resolution
- Criminal matters
- Regulatory actions
- Civil cases
- Arbitrations
- Bankruptcy, liens, judgments
- Other outside business activities

For a full listing of reportable items, review the Form U4 and its instructions.

Form U4: <https://www.finra.org/sites/default/files/form-u4.pdf>

Instructions: <https://www.finra.org/file/form-u4-instructions>

Best practice for firms: Use an annual compliance questionnaire to supervise missed or missing U4 reportable events by investment adviser representatives. Supplement the questionnaire with an internet search. The following are sample questions a firm may consider including on an annual compliance questionnaire:

- Is your residential address current on Form U4?
- Are your outside business activities reported on Form U4?
- Is question 14 accurate on your Form U4?

Best practice for investment adviser representatives: Be familiar with the Form U4 content so you know what is reportable within 30 days. You are accountable for the accuracy of the information on your U4. Do not risk either missing information or missing the 30-day reporting deadlines. If you are the sole owner and investment adviser representative of your investment advisory firm, review the Form U-4 to determine whether it is up to date. Feel free to contact the Division of Securities if you have questions.

Examiner of the Day Phone Line

Questions regarding compliance with Wisconsin Uniform Securities Law and the administrative code may be directed to our Examiner of the Day at (608) 266-2139.

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