



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

## Investment Adviser Newsletter

Fall 2017

Our periodic newsletter for investment advisers registered in Wisconsin is published twice per year. Past editions can be found at: <http://wdfi.org/fi/securities/registration/iaNewsletter.htm>

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### 2018 Registration Renewal Season

Soon it will be time to renew your firm and individual registrations through the Investment Adviser Registration Depository (IARD). Your renewal statement will be available on IARD beginning on November 13th. Renewal payments for firm, individual, and branch registrations are due this year on December 18th. Here's a link to the 2018 Renewal Program Calendar:

[https://www.iard.com/sites/default/files/standalonefiles/2018\\_renewal\\_calendar.pdf](https://www.iard.com/sites/default/files/standalonefiles/2018_renewal_calendar.pdf)

If you have any questions regarding the renewal process or your status, please contact either the IARD Call Center at (240) 386-4848 or our Examiner of the Day at (608) 266-2139.

### New NASAA Cybersecurity Checklist

The North American Securities Administrators Association (NASAA) recently released a [Cybersecurity Checklist](#) to help state registered investment advisers assess and create robust cybersecurity procedures. In contrast to other available resources such as [The National Institute of Standards and Technology \(NIST\) framework](#) or FINRA's [Small Firm Cybersecurity Checklist](#), the NASAA Cybersecurity Checklist was created specifically for state registered investment advisers by state securities regulators.

The multi-page Checklist includes 5 categories – Identify, Protect, Detect, Respond, and Recover. Each category includes a number of statements with columns for the investment adviser to check YES, NO, or N/A. The responses to the checklist are designed to facilitate a review of the investment adviser's level of cybersecurity preparedness.

In most instances, a YES response is most desirable with a large percentage of NO responses suggesting a need for more attention to cyber issues. However, in a few instances a positive

response may indicate additional risk or liability associated with the adviser's technology solutions – for example:

- Identifiable information of a client is transmitted via email. (page 1)
- The investment adviser solely relies on free cloud storage. (page 3)
- The cloud service provider (or its staff) may access and/or view the investment adviser's data stored in the cloud. (page 3)

During examinations conducted by our Division, you can expect the Examiner to ask about your firm's written supervisory procedures regarding cybersecurity. While completion of the Cybersecurity Checklist is not required, it could be a useful tool to help you develop and regularly update your firm's written supervision procedures concerning cybersecurity.

To download the Cybersecurity Checklist, visit - <http://bit.ly/NASAA-Cyber-Checklist>

### **Checking Out A Potential Hire**

Most state registered investment advisers in Wisconsin are small businesses with one or several representatives and without a separate human resources department. As a result, the addition of new personnel is most likely handled by the firm's owner(s). If you are contemplating hiring or partnering with another representative, be sure to conduct an appropriate and thorough background review. You can easily run reports on individuals previously registered in the securities industry from the following websites:

SEC Investment Adviser Public Disclosure: <https://www.adviserinfo.sec.gov/>

FINRA Broker-Check: <https://brokercheck.finra.org/>

Examiners at the Division of Securities can also provide a registration and disciplinary history for potential new hires. You can contact an Examiner by calling the Division of Securities Examiner of the Day phone line at 608-266-2139.

In reviewing the information you have gathered, you might consider the following questions:

- Does the representative's business fit with that of the firm?
- Will the representative need to take any examinations? [See [DFI-Sec 5.01\(3\)](#)]
- Has the representative changed firms frequently?

- Does the representative have Form U4 disclosures that need to be reported or updated?
- Was the representative previously registered with a firm that has a disciplinary history?

If the representative has reportable disclosures, your firm needs to determine whether or not these actions could be repeated and if they would negatively affect your firm. You may want to consider imposing heightened supervision or other restrictions on the representative's activities. It is important to remember that all representatives, even those without reportable disclosure, are subject to your firm's ongoing supervision.

### **DOL Impartial Conduct Standard is Live**

As of June 9th, partial implementation of the Department of Labor fiduciary rule went into effect. Assuming no other delay, full implementation is expected on July 1, 2019. All financial professionals handling qualified money are now fiduciaries under the Impartial Conduct Standard. The key components to focus on during the Impartial Conduct Standard period are:

1. Give advice that is in the clients' best interest.
2. Disclose compensation and charge no more than reasonable compensation.
3. Do not mislead clients about your compensation or the investment you recommend, and fully disclose any conflict of interests.

Currently, taxable accounts are not subject to the DOL Fiduciary Rule. However, on June 1st, SEC Chairman Jay Clayton stated:

"I welcome the Department of Labor's invitation to engage constructively as the Commission moves forward with its examination of the standards of conduct applicable to investment advisers and broker-dealers, and related matters. I believe clarity and consistency — and, in areas overseen by more than one regulatory body, coordination — are key elements of effective oversight and regulation. We should have these elements in mind as we strive to best serve the interests of our nation's retail investors in this important area."

<https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>

Given the statement from Chairman Clayton, it is probably wise to handle all client accounts as if they are subject to the full DOL rule, especially if the SEC proposes its own fiduciary rule that applies to taxable accounts.

## SEC Form ADV Amendments

The Securities and Exchange Commission adopted amendments to Form ADV that advisers must comply with beginning October 1, 2017. The amendments to ADV Part 1A are designed to provide additional information about the adviser's business, more detailed information regarding the adviser's separately managed account business, disclosure of any accounts on publicly available social media platforms such as Twitter, Facebook and LinkedIn, and a method for private fund adviser entities operating a single advisory business to register more than one investment adviser under an umbrella registration. The amendments also include clarifying and technical amendments to Form ADV items and instructions.

The most significant amendments are briefly described below:

1. Umbrella Registration – ADV Item 1 and Schedule R.

This amendment allows for multiple private fund advisers operating as a single advisory business to file an "umbrella registration" if certain conditions are met. A new Schedule R must be completed for each relying adviser under the umbrella registration.

2. Website and Social Media – ADV Item 1.I. and Schedule D Section 1.I.

In addition to providing the firm's website address, advisers will be required to disclose the address for each of the firm's accounts on publicly available social media platforms, including but not limited to, Twitter, Facebook and LinkedIn.

3. Chief Compliance Officer – ADV Item 1.J.

If your Chief Compliance Officer is compensated or employed by anyone other than you (including a related person or an investment company registered under the Investment Company Act of 1940 that you advise) for providing chief compliance officer services to you, you must provide the person's name and IRS Employer Identification Number (if any).

4. Number and Types of Clients – ADV Items 5.C. and 5.D.

Currently, advisers only report the percentage of types of clients and regulatory assets under management they have attributable to individuals, high net worth individuals, charitable organizations, etc. This amendment requires advisers to now report the approximate number of clients and amount of the firm's total regulatory assets under management attributable to each of these types of clients.

5. Wrap Fee Programs – ADV Item 5.I. and Schedule D Section 5.I.

Additional information is required for advisers who participate in wrap fee programs. Advisers will be required to report the amount of regulatory assets under management attributable to acting as a sponsor and/or portfolio manager for a wrap fee program.

6. Separately Managed Account Clients – ADV Item 5.K. and Schedule D Section 5.K.

Advisers will be required to disclose more information regarding separately managed account clients and the use of borrowing or derivative transactions. Schedule D amendments require the adviser to report the approximate percentage of regulatory assets under management attributable to twelve asset categories for separately managed accounts.

7. Clarifying and Technical Amendments

The clarifying and technical amendments include amendments to ADV Item 2, Item 4, Item 7 and corresponding sections of Schedule D, Item 8, Schedule D Section 9.C., and amendments to disclosure reporting pages, instructions and glossary.

If your firm has a December 31 fiscal year end, this means complying with the updates no later than the annual amendment filing due by March 31, 2018 (90 days after the fiscal year end). The SEC has issued guidance for advisers who may need to file an unanticipated other-than-annual amendment before their annual amendment is due and how to respond to new or amended questions in Item 5 and the related Schedule D sections. The SEC's Guidance is available [here](#).

We encourage firms to review the ADV amendments prior to filing the firm's next annual amendment or other-than-annual amendment. Form ADV Part 1A Summary of Changes Per IA 4509 To Be Implemented October 1, 2017 is available [here](#). Updated ADV Instructions and Glossary is available [here](#). The SEC's final rule in its entirety is available [here](#).

### **A Helpful Tip for ADV Part 1**

For state investment advisers, the ADV Part 1 has two sections, Part 1A and Part 1B. An often overlooked area in Part 1B is the Business Information section - more specifically, questions G (1) and G (2). These questions deal with outside business activities. G (1) lists five choices pertaining to certain business activities. However, if your outside business activity is not listed under G (1) or listed in Part 1A's Item 6 A., then G (2) applies.

For simplicity, G (2) can be thought of as an "Other" category. To correctly fill out G (2), you

should describe the business and list the approximate amount of time spent on the outside business activity. For example, if the firm's owner also engages in insurance sales, it would be prudent to enter the following information: "John Smith Insurance Company, insurance agent, approximately 40% of John Smith's time". Please note that G (2) applies to the firm, advisory affiliates, or any management person.

### **Equifax Data Breach**

By now, everyone has heard the news regarding the Equifax data breach but may not have checked to see if they were affected by the data breach. If you are receiving questions from your clients, here is a link to the WI Department of Consumer Affairs press release regarding steps consumers can take to protect themselves:

[https://datcp.wi.gov/Pages/News\\_Media/20170908CA\\_EquifaxBreach.aspx](https://datcp.wi.gov/Pages/News_Media/20170908CA_EquifaxBreach.aspx)

### **How to Reach the Examiner of the Day**

Our securities examiner staff includes: Mark Eisenmann, Charlie Benson, Joe Friesen, Jenny Acker, and Rob Monroe. You can expect one or more of our examiners to visit your office when you are next due for an examination by our Division of your business practices and your books and records. In the meantime, questions regarding compliance with Wisconsin Uniform Securities Law, including the administrative code, may be directed to our Examiner of the Day at (608) 266-2139.

### **More Ways to Connect with DFI**

The Wisconsin Department of Financial Institutions (DFI) Facebook page provides information on DFI activities, financial literacy, investor education, scam warnings and other timely news to help protect investors. Please check out DFI's Facebook page – [www.facebook.com/WIDFI](http://www.facebook.com/WIDFI) and share any content that you find useful. Feel free to "Like" our page so that you receive future posts in your Facebook newsfeed. In addition, to keep up with the latest from DFI - follow us on Twitter at: [@WIS\\_DFI](https://twitter.com/WIS_DFI)

