

## **AVOIDING COMMON DEFICIENCIES FOUND IN INVESTMENT ADVISER FILINGS**

When the Registration Section of the Securities Division is reviewing an investment adviser's Form ADV and investment advisory agreements/contracts, inconsistencies between the documents are frequently noted.

### **Form ADV, Parts 1 and 2**

To avoid the most common deficiencies, please follow these guidelines:

- Ensure:
  - The types of clients listed on Item 5.D of Part 1 match Item 7 of Part 2.A.
  - The type of compensation listed on Item 5.E of Part 1 matches Item 5 of Part 2.A.
  - The fee schedule listed in Item 5 of Part 2.A matches the fee schedule in the investment advisory agreement/contract.
  - How often fees are paid as listed in Item 5 of Part 2 matches the investment advisory agreement/contract.
  - Services marked in Item 5.G of Part 1 match the services described in Item 4 of Part 2.A.
  - Discretionary authority marked in Item 8.C of Part 1 matches the discretionary authority described in Item 16 of Part 2.A. Additionally, you must discuss the restrictions or limitations imposed by your clients.
  - Other businesses disclosed in Item 6 of Part 1 should be discussed in Item 10 of Part 2.A.
- In Part 2, do not state that you are "registered with the U.S. Securities and Exchange Commission" or "registered under the Investment Advisors Act of 1940."
- If you receive more than \$500 in fees per client six months or more in advance, include both the required balance sheet and financial condition disclosures for Items 18.A and 18.B of Part 2.
- Update references in the investment advisory agreement from the "ADV Part II" to the recently adopted "ADV Part 2."
- Be sure your surety bond information in Part 1B of Form ADV is correct, if applicable. The original of the surety bond should be sent to the Securities Division.

### **Investment Advisory Agreements**

To avoid the most common deficiencies, please follow these guidelines:

- The following items should be discussed in the agreement and should be consistent with the information provided in Form ADV Parts 1 and 2:
  - A description of services to be provided by the adviser;
  - whether the contract grants discretionary power to the adviser;
  - the term of the contract;
  - a fee schedule, or the formula for computing the fee;
  - whether fees are charged in advance or in arrears;
  - how often fees are paid;
  - whether fees are withdrawn from the client's account;
  - the adviser's termination policy;
  - refund policy of unearned prepaid fees, if applicable; and

- a non-assignment clause.
- The fee schedule in the agreement should match the fee schedule disclosed in the Form ADV Part 2. Additionally, the type of compensation described in the contract must match what was described in Item 5 of Part 2.A and the form of compensation marked in Item 5.E of Part 1.

### Form ADV Cross-Reference Guide

Topic	ADV I Item	ADV 2A Item	ADV 2B Item
Employees as Registered Reps	5B(2)	10A	4A
Employees are insurance agents	5B(5)	10C	4B
Use of solicitors	5B(6), 8H	14B	
Types of clients	5D	7	
Compensation	5E	5A, 5E, 10D, 14	4A, 4B
Performance Fees	5E	6, 19C	
Assets under management	5F	4 ( do not have to match, but Part 2A must be w/in 90 days of brochure update)	
Services provided	5G	4	
Wrap Program	5I	4D, if so, Appendix 1 is required	
Advise on limited security types	5J	4B	
Other financial business	6A	5E, 10A,10B, 10C	
Other business or services	6B	19B	
Financial industry affiliations	5B, 7A	10A, B, and/or C, 19E	
Your interest in client trades	8A	11B, 11C, 11D	
Sales interest in client trades	8B	11B	
Discretion	8C	4, 16, 18B	
Related brokers	8D, 8F	10A, 10C	
Recommend brokers	8E	12A	
Soft dollars	8G	12A	
Receive pay for referrals	8I	10D, 14A	5
Custody	9	15, 18B	
Disciplinary disclosures	11	9, 19D	3, 7
Direct Owners	Schedule A	4, 19A	

This information is provided as a courtesy to industry, and should not be considered a substitute for the instructions to the Form ADV and the official statutes and regulations that pertain to investment advisers.