



www.RIA-Compliance-Consultants.com

How to Become a Registered Investment Advisor

Copy of Slides

You can access a copy of today slides through your online subscription account.

Presenter

Tammy Emsick

Senior Compliance Consultant &
Vice President of Business Development
RIA Compliance Consultants



Grant Parr

Director of Marketing
RIA Compliance Consultants



Presentation Disclosures

- Although the sponsor of this presentation, RIA Compliance Consultants, Inc. (“Sponsor”), is an affiliate of a law firm and Sponsor may have an individual on its staff that is also licensed as an attorney providing legal services in a completely separate capacity, Sponsor is **not** a law firm and does **not** provide legal services or legal advice. A consulting relationship with Sponsor does not provide the same protections as an attorney-client relationship.
- This presentation is offered for educational purposes only and should not be considered an engagement with Presenter or Sponsor. This presentation should not be considered a comprehensive review or analysis of the topics discussed today. These materials are not a substitute for consulting with an attorney or compliance consultant in a one-on-one context whereby all the facts of your situation can be considered in their entirety.
- Despite efforts to be accurate and current, this presentation may contain out-of-date information. Additionally, Presenter and Sponsor will not be under an obligation to advise you of any subsequent changes.
- Information provided during this presentation is provided "as is" without warranty of any kind, either express or implied, including, without limitation, warranties and merchantability, fitness for a particular purpose, or non-infringement. Presenter and Sponsor assume no liability or responsibility for any errors or omissions in the content of the presentation.
- Information provide during this presentation relates solely to the Investment Advisers Act of 1940 and the rules thereunder and, at times, we may reference similar state securities rules and regulations specific to registration as an investment adviser. Certain circumstances or arrangements you may have may warrant you to consider other regulations that may apply including, but not limited to: the Investment Company Act of 1940; the Securities Act of 1933; the Securities Exchange Act of 1934; ERISA and other Department of Labor regulations; federal or state laws and regulations and self-regulatory (e.g., FINRA) rules for broker-dealers and registered representatives/securities agents of broker-dealers; and state insurance rules and regulations. The Sponsor of this presentation does not provide any advice or consulting services outside the scope of the Investment Advisers Act of 1940 or similar investment adviser state securities rules and regulations. If you need advice regarding any other rules or regulations, the Sponsor recommends that you consult with an attorney or consultant that specializes in those specific rules or regulations.

Presentation Disclosures

- There is no guarantee or promise that concepts, opinions and/or recommendations discussed will be favorably received by any particular court, arbitration panel or securities regulator or result in a certain outcome.
- To the extent that you provide RCC with your email address, it will be added to RCC's electronic newsletter mailing list regarding compliance issues for investment advisors. You may opt out at any time by calling RCC at 877-345-4034 or clicking at any time the "unsubscribe" link on the electronic newsletter.
- Communication with today's webinar presenter is not protected by attorney-client privilege. Please keep questions during this seminar in a hypothetical form. This seminar session and/or the presentation materials may be recorded, copied and/or shared with third parties and/or posted to our public website.

Agenda

- Definition of Investment Advisor
- SEC v. State Registration
- Registration Process & Requirements
- Best Practices for Drafting the Form ADV
- Some Common Registration Traps
- Ongoing Compliance Duties of a New Firm

Definition of Investment Advisor

Individual or Entity that:

- (1) provides advice or analysis by making direct or indirect recommendations regarding securities or securities markets;
- (2) for compensation in any form; and
- (3) engages in the regular business of providing advice regarding securities.

Exemption from Registration

- “Solely Incidental” Exclusion for Broker-Dealers, Lawyers, Accountants, Engineers, Teachers, Banks, Bona Fide Publishers
- Private Fund Adviser Exemption
- Some state may have exemption based on limited number of clients

Who Should Register as an Investment Advisor?

- Recommend Establishing an Entity
- This Entity Will Register as the Investment Advisor
- Individuals Will Get Licensed as Investment Adviser Representatives under the Investment Advisor (the Firm)

Investment Adviser Representative (“IAR”)

- Definition Differs Depending Whether IAR to an Investment Adviser Firm Registered with the State or the SEC
- Definition of a State Registered IAR with Also Varies by State
 - Need to Consult Applicable Rules of State Securities Regulator

General Definition of IAR

A person who, for compensation

- (1) provides any advice or recommendations regarding securities;
- (2) makes investment decisions regarding securities;
- (3) solicits or sells investment advisory services; or
- (4) supervises employees who perform any of the foregoing

IAR – Who to License

- For SEC Registered RIAs – Anyone Meeting SEC Definition of IAR Must Be Licensed in Any State Where They Have an Office Location
 - TX Requires Notice Filing for IARs

IAR – Who to License

- For State Registered RIAs – Must Look at Each State’s Definition of IAR. Anyone Meeting State’s Definition of IAR Must be Licensed:
 - In Any State Where They Have an Office Location
 - License in States Where the Firm Exceeds the State’s Deminimis Exemption and is Required to Register in the State – At Least 1 IAR Must be Licensed in the State if the RIA is Required to Register There

IAR – How to Become Licensed

- Must Meet Exam Requirements Which Can Vary By State
 - Series 65*
 - Series 66* & Series 7*
 - In Lieu of Exams: CFP, CFA, ChFC, PFS, CIC currently Active and in Good Standing
- *Note – Exams Expire after a Period of 2 Years with No Registration*
- To Become Licensed Must Submit a Form U4 Through the CRD System
 - License Must be Renewed Each Year

SEC vs. State Registration of IA - SEC Registration Eligibility

- Typically Determined by Amount of Regulatory Assets Under Management (AUM)
 - Amount of Securities Portfolios Receiving Continuous and Regular Supervisory or Management Services (Review Instructions for Form ADV Part 1A, Item 5.b.)
 - SEC Registration Allowed at \$100 Million AUM

SEC vs. State Registration – SEC Registration Eligibility

- 120 Day Exemption
- Investment Company
- 15 States
- Pension Consultant (\$200M)
- Internet Advisor

SEC vs. State Registration – State Registration

- Firms Not Eligible for Registration with the SEC Must Register with the Appropriate State Regulator(s) Unless the Firm Qualifies for an Exemption from Registration

SEC Registration Process

- Establish & Fund IARD/CRD Account
- File ADV Part 1A & Applicable Schedules (i.e., Schedules A, B, & D) via IARD System
- Upload ADV Part 2A and Form CRS/ADV Part 3 via IARD System
- Minimal Review by SEC
- Typically Takes Less than 30 Days for SEC to Approve/Deny an Application
- Notice File in Applicable States
- File Form U4s of IA Reps with Applicable States
- Expect SEC Audit within First 12 Months of Registration

State Registration Process

- Establish & Fund IARD/CRD Account
- File Application with State Securities Regulator
 - ADV Parts 1A & 1B and Applicable Schedules (i.e., Schedules A, B, & D) via IARD System
 - Upload Form ADV Part 2A & Part 2B via IARD System
 - Financial Statements
 - Sample Client Agreements
 - Misc. State Forms
- File Form U4s of IA Reps
- Intense Review – Will Ask Questions & Require Changes
- Expect Approval /Denial to Take Anywhere from 45 to 90 Days on Average

States Requiring Registration/Notice Filing

- Generally Required to Register or Notice File in States Where Offices Located or More than Five Clients
- Certain States Do Not Follow This Rule

Financial Requirements

- SEC Registered Firm
 - Doesn't Require Net Worth or Bond
 - Requires Firm to Maintain Financial Books & Records
 - Must Disclose to Clients Precarious Financial Condition
- State Registered Firm
 - Many States Require a Required Net Worth Depending Upon Whether Firm Has Custody or Discretion
 - This Typically Ranges from \$10,000 to \$35,000 Depending Upon State & Activity
 - Surety Bonds Are Often Allowed as Substitute for Net Worth

Note: If a state requires you to submit a financial statement at the time of registration, it is HIGHLY LIKELY that you have to submit one each year either at the time of renewal or at time your Form ADV Annual Amendment is filed. Check your state requirements each year.

Form ADV - Uniform Form for Investment Adviser Registration

- Form ADV Part 1A
 - Contact Info – Firm, Person Responsible for ADV, CCO
 - Basis for SEC Registration (if applicable)
 - States Firm is Notice Filing In (if applicable)
 - Organization Form
 - Fees & Compensation Arrangements
 - Advisory Activities
 - Advisory Clients
 - Other Business Activities & Affiliated Firms
 - Discretion & Proprietary Transactions
 - Custody
 - Felonies, Investment-Related Misdemeanors, Adverse Regulatory Actions & Court Judgments in Violation of Statute or Regulation

Form ADV (Cont.)

- Schedules A & B – Officers & Ownership
- Schedule D – Misc.
- Part 1B – State Registered
 - States Where Registering
 - Supervisory Principal
 - Surety Bond
 - Unsatisfied Liens, Arbs & Civil Judgments

Form ADV Part 2

- Advisory services and fees;
- Types of Clients;
- Types of investments;
- Methods of analysis, sources of information and investment strategies;
- Education and business standards required by the firm;
- Education and a minimum of five years of business background for executives of the firm and those that provide investment advice;
- Other business activities;
- Other financial industry activities or affiliations;
- Participation or interest in client transactions;
- Conditions for managing accounts;
- Review of accounts;
- Investment or brokerage discretion; and
- Additional compensation.

Form ADV Balance Sheet & Appendix 1

- If Balance Sheet Is Required Pursuant to Form ADV Part 2, Item 18
- Form ADV Part 2 - Wrap Fee Brochure
 - Generally, if investment advisory services and custodial/brokerage services are “wrapped” under one fee, the program can be deemed a wrap fee program.
- Form CRS/ADV Part 3 – SEC only firms

ADV Drafting Tips

- Know Who Is Completing Form & Who Is a Related Person
- Understand How to Calculate Regulatory AUM
- Fully Describe Advisory Services & Fees
- Fully Describe OBA of Firm, Reps & Affiliates
- Disclose ALL Conflicts of Interests
- Know What Should Be Disclosed that's Not Included in the Instructions for Part 2

Why Hire RIA Compliance Consultants



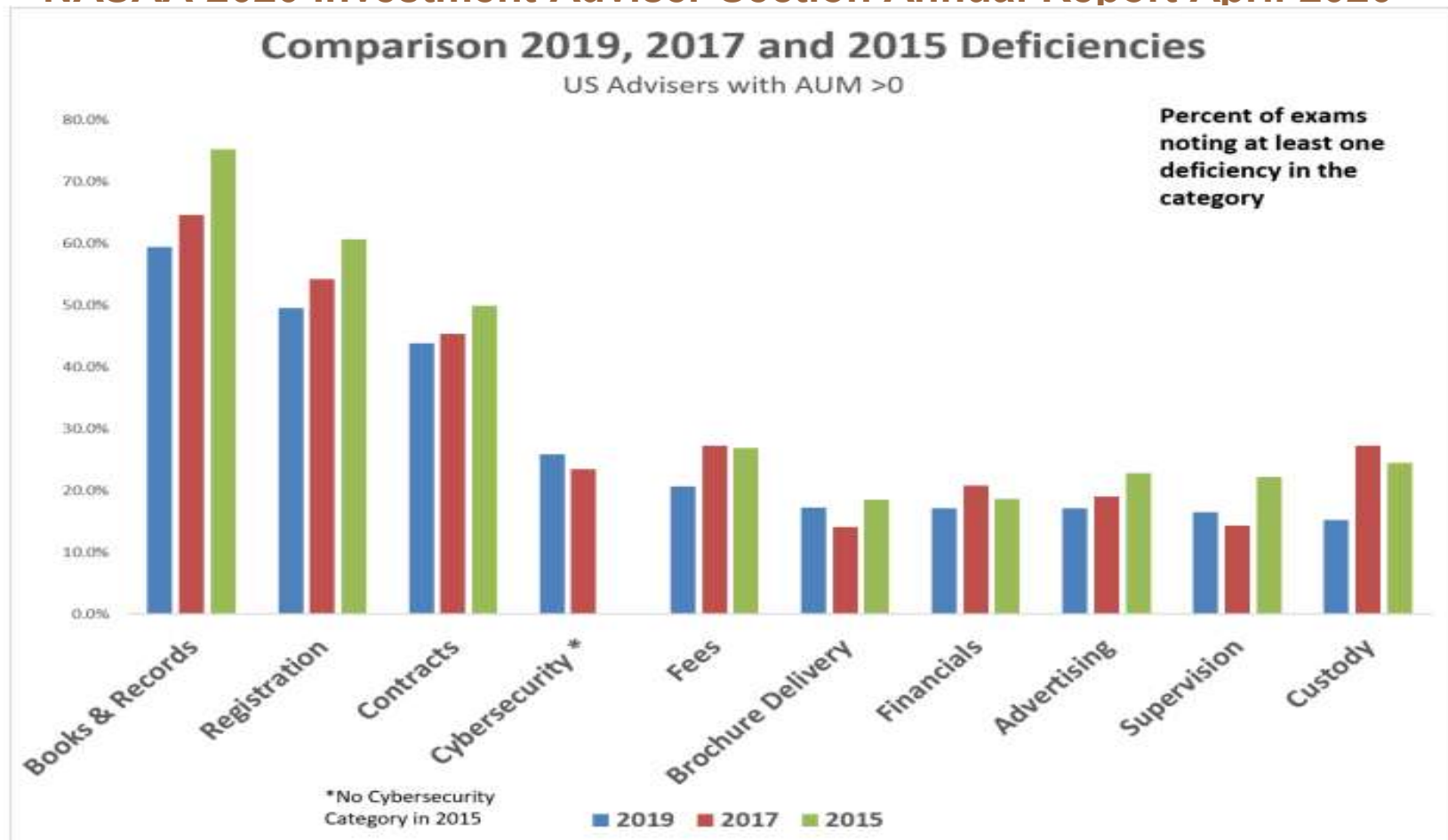
Common Mistakes

- Failure to Submit Client Agreement or Inconsistent Client Agreement
- Failure to Submit IA Rep Fingerprint Card
- Failure to Submit Adequate Financial Statement or Surety Bond
- Failure to Submit Misc. State Forms
- Failure to Designate CCO
- Failure to License Owner of Firm

Registration Challenges Facing Lay Person

- Knowledge of IA Business Models, Best Practices & Worst Case Scenarios
- Understanding Expectations of a Regulator at Registration & Later During Exam
- Navigating the IARD/CRD System
- Accurately & Thoroughly Answering Form ADV Questions & Miscellaneous Forms
- Consistency Within Form ADV & Between Other Documents
- Disclosing Conflicts & Information Not Specifically Requested but Required
- Communicating with Regulators

NASAA 2019 Investment Adviser Coordinated Exams Report – From NASAA 2020 Investment Adviser Section Annual Report April 2020



<https://www.nasaa.org/5134/nasaa-outlines-best-practices-for-investment-advisers/>

The screenshot shows the NASAA website with a navigation menu at the top: ABOUT NASAA, INVESTOR EDUCATION, ISSUES & ANSWERS, NASAA NEWSROOM, and INDUSTRY & REGULATORY RESOURCES. The main content area is titled "Current NASAA Headlines" and features a "printer-friendly page" link. The article, dated September 29, 2009, is titled "NASAA Outlines Best Practices For Investment Advisers" and has a sub-headline "Coordinated IA Examinations Spotlight Deficiencies in Key Areas". The text states that NASAA released an updated series of recommended best practices for investment advisers. A quote from NASAA President Denise Voigt Crawford says: "By identifying these deficiencies, our goal is to help investment advisers minimize the risk for regulatory violations by strengthening their internal compliance programs. Our best practices are designed to assist advisers in meeting compliance challenges while providing better services to their clients." Crawford also noted that 458 state-level investment advisers were examined between January and May 2009, revealing 1,887 deficiencies in 13 compliance areas. The top five categories with the most deficiencies were registration, books and records, unethical business practices, supervision, and financials. The article lists the top trouble spots in registration as inconsistencies between parts I and II of Form ADV and failing to amend Form ADV in a timely manner, and in books and records as not maintaining suitability information, not properly safeguarding records, and not backing up data.

“The top trouble spots in the area of registration were inconsistencies between parts 1 and II of Form ADV....”

- The top trouble spots in the area of registration were inconsistencies between parts I and II of form ADV and failing to amend form ADV in a timely manner.
- In the area of preparing and maintaining current and accurate books and records, the top deficiencies included not maintaining suitability information, not properly safeguarding records and not backing up data.

<https://www.sec.gov/divisions/investment/advoverview.htm>



Information for Newly-Registered Investment Advisers

Prepared by the Staff of the Securities and Exchange Commission's Division of Investment Management and Office of Compliance Inspections and Examinations¹

This information sheet contains general information about certain provisions of the Investment Advisers Act of 1940 (also called the "Advisers Act") and selected rules under the Advisers Act. It is intended to assist newly-registered investment advisers in understanding their compliance obligations with respect to these provisions. This information sheet also provides information about the resources available to investment advisers from the SEC to help advisers understand and comply with these laws and rules.

As an adviser registered with the SEC, you have an obligation to comply with all of the applicable provisions of the Advisers Act and the rules that have been adopted by the SEC. This information sheet does not provide a complete description of all of the obligations of SEC-registered advisers under the law. To access the Advisers Act and rules and other information, visit the SEC's website at www.sec.gov (the Advisers Act and rules are available at <http://www.sec.gov/divisions/investment.shtm>).²

Investment Advisers Are Fiduciaries













As an investment adviser, you are a "fiduciary" to your advisory clients. This means that you have a fundamental obligation to act in the best interests of your clients and to provide investment advice in your clients' best interests. You owe your clients a duty of undivided loyalty and utmost good faith. You should not engage in any activity in conflict with the interest of any client, and you should take steps reasonably necessary to fulfill your obligations. You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients. Generally, facts are "material" if a reasonable investor would consider them to be important. You must eliminate, or at least disclose, all conflicts of interest that might incline you — consciously or unconsciously — to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict. You cannot use your clients' assets for your own benefit or the benefit of other clients, at least without client consent. Departure from this fiduciary standard may constitute "fraud" upon your clients (under [Section 206](#) of the Advisers Act).

"You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients.... You must eliminate, or at least disclose, all conflicts of interest that might incline you — consciously or unconsciously — to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict."

Inaccurate, Omitted & Unclear ADV Disclosures Identified as a Risk by SEC Staff

Risk Inventory Guide*

This chart is intended to visually guide you through some of the risks that may be present as part of an adviser's everyday operations. As a CCO responsible for your firm's compliance, you should determine what risks are present and how they might affect your firm and its operations, assess whether the controls in place to manage or mitigate these risks are adequate, and make or recommend modifications to the compliance policies and procedures as necessary. You are not expected to personally perform all compliance-related activities. Rather, you "administer" or manage the compliance program by determining whether controls are necessary and what reviews and tests should be performed, when and by whom, and ensuring that business persons are involved in creating and complying with the established procedures. In essence, you determine "how much is enough."

 Marketing/Performance: • Inaccurate performance calculations • Overstated performance • Guarantees of profit • Unsubstantiated claims • Misrepresentation of services offered • Use of unapproved marketing materials • Misrepresentation about advisory firm and principals	 Objectives/Restrictions: • Objectives not kept current • Objectives miscommunicated or not clearly understood • Adviser influences client to accept higher risk than desired • Failure to reconcile information communicated to portfolio manager and strategy implemented • Restrictions not monitored
 Form ADV/Disclosures: • Failure to provide Form ADV • Inaccurate, omitted, or unclear disclosures • Out of date disclosures • Misrepresentation of services offered • Failure to disclose potential conflicts of interest • Inaccurate account statements • Overstating account values	 Trade Ticket: Preferential trade allocation • Side by side management conflicts • Investments outside client objectives or restrictions • Failure to include required information on trade ticket • Inappropriate allocation on partial fills
 Invoices/Fees: • Non-"research" products obtained without disclosure • Incorrect fee calculation • Use of inflated asset values • Direct debit of fees from custodial account • Prohibited fees	 Trade Execution: • Failure to seek to obtain best execution • Favoring brokers based on research or referrals received • Post-trade allocation instructions • Principal or cross trades without required disclosure/consent • Errors/corrections not identified and resolved in client's best interest
 IPO Offerings: • Directing trades to brokers that provide IPO offerings • Placement of IPO allocations in adviser's proprietary or employees' personal accounts	 Non-public Information: • Non public information obtained during analysis phase • Use of non-public information for personal gain/loss avoidance • Use of client trading to manipulate price of publicly traded stock
 Soft Dollars/Kickbacks: • Research and/or sources of research outside safe harbor • Inadequate due diligence on research product • Broker does not pay research source directly • Inaccurate or misleading research obtained • Research obtained is not current • Mixed-use items not appropriately allocated	 Personal and Proprietary Trading Account: • Portfolio manager utilizes knowledge of upcoming trades for gain/loss avoidance in personal account • Trader uses knowledge of market and current or upcoming trades to manipulate prices or for gain/loss avoidance
 Compensation: • Incentive-based compensation leads to inappropriate recommendations or investments	 Money/Securities to/from Broker/Custodian: • Funds or securities sent to the adviser or employees instead of the custodian • Theft

* The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its staff. The views expressed by the staff in these written materials are those of the staff and do not necessarily reflect the views of the Commission or of other Commission staff.

The SEC's Risk Inventory Guide specifically identifies as operational risks: (a) inaccurate, omitted and unclear ADV disclosures; (b) out of date ADV disclosures; (c) misrepresentation of services offered; and (d) failure to disclose potential conflicts of interests.

Resources/Additional Information

- www.ria-compliance-consultants.com
- https://www.ria-compliance-consultants.com/faq_investment_advisor_registration/
- https://www.ria-compliance-consultants.com/compliance_tips/state_investment_advisor_registration_tips/
- https://www.ria-compliance-consultants.com/frequently_asked_questions/investment_advisor_investment_adviser_rep_series_65_exam_faq/
- https://www.ria-compliance-consultants.com/investment_adviser_representative_continuing_education_faqs/
- <https://www.nasaa.org/industry-resources/investment-advisers/investment-adviser-guide/>
- <https://www.nasaa.org/industry-resources/investment-advisers/>
- <https://www.nasaa.org/industry-resources/investment-advisers/state-investment-adviser-registration-information/>

About Us

- ✓ Serve Over 500 Investment Advisor Firms
- ✓ Principals Are Industry Experienced Working in Compliance or Law Departments & Hold Professional Credentials
- ✓ Consult with Retail & Institutional Firms
- ✓ Offer Full Array of IA Compliance Services
- ✓ Reasonably Priced at Midwest Rates

RIA Compliance Consultants, Inc. is not a law firm and does not provide legal services.

Work with Numerous IA Business Models

Financial Planning

- Fixed
- Hourly
- Retainer

Research Reports & Newsletter Subscriptions

Solicitor

Asset Management

- Discretion
- Non-Discretion

Wrap Sponsor

Third-Party Money Manager, Sub-Advisor and Signals Provider

Fund Manager

- Private Fund
- Mutual Fund

Our Turn-Key Service

Complete IARD Entitlement Forms

Act as IARD Service Bureau

Draft Custom Form ADV

Post Filings to IARD & CRD Accounts

Prepare Registration for Other States

Open Series 65 Window; File Waiver of Series 65 Due to Professional Designation (CFP, CFA & ChFC)

Draft Form U4

Advise of IARD Funding Requirements

Complete Miscellaneous Documents (Except Accounting)

Serve as Regulatory Liaison

Prepare Customized Written Compliance Policies and Procedures and a Code of Ethics

Provide a Packet of Sample Forms and Checklists to be Used to Help with Ongoing Compliance Responsibilities

Consulting Fee for State Registration

- The consulting fee for our registration service is based upon a client's specific circumstances and anticipated advisory services.
- Please refer to our Consulting Agreement for the amount of the consulting fee and terms of such an engagement.

Supervisory Procedures/Code of Ethics Our General Manual

- Firm Registration
 - IAR Licensing
- Fiduciary Duty
- Code of Ethics
 - Insider Trading
 - Personal Securities Transactions
 - Gifts and Entertainment
- Supervision
 - Outside Business Activities
 - Branch Office Audits
- Books & Records
- Client Documents and Disclosures
 - Conflicts of Interest
 - Annual ADV Offer
- Proxy Voting
- Custody
- Identity Theft Prevention Program
- Political Contributions
- Client Communications
 - Advertising,
 - Social Media & Networking Websites
- Advisory Services & Fees
- Privacy
 - Information Security Plan
 - Security Breach
- Due Diligence
- Solicitor Arrangements
- Privacy
- Proxy Voting
- Trading
 - Errors
 - Allocations
 - Aggregation
 - Best Execution
 - Directed Trades
 - Discretion
 - Soft Dollar
 - Principal/Cross Trades
- Complaints & Investigations
- Protecting Older and Vulnerable Clients with Diminished Capacity
- Business Continuity and Disaster Recovery Plan

Supervisory Procedures/Code of Ethics Available Options

Regulator Specific,
Template
\$495

Self-Customized,
Regulator Specific
\$695

Regulator Specific,
Customized
\$1,295
*3 Consulting Hours to
assist with
customization*

Annual Compliance Program – Bronze Package

New CCO & Code of Ethics Webinars
Compliance Webinars

Periodic Emails with General Compliance Reminders
Sample Supervisory Forms

Compliance Manual Section Update Templates
As-Needed Consulting (5 Hours)

IARD Renewal
ADV Annual Amendment

Fixed Consulting Fee \$240 per Month

Other Available Compliance Services

Customized Compliance Program & Individual Services

Form ADV
& Client
Brochure

Solicitor
Disclosure

Renewals &
Annual
Amendment

IARD
Service
Bureau

Supervisory
Procedures
& Code of
Ethics

Privacy
Policy

Section 13
Filings

Advertising
Reviews

Annual
Review

Mock
Regulatory
Exam

RCC Strategic Alliance Members

Our Strategic Alliance Members provide a variety of services that most investment advisers need. Many of our Strategic Alliance Members have agreed to provide a discount to RIA Compliance Consultant clients that sign-up for one of our Annual Compliance Program Packages. To learn more about our Strategic Alliance Members, please go to:

<https://www.ria-compliance-consultants.com/strategic-alliance-members/>

Note: The determination to use the services or products of a Strategic Alliance member is an important decision and should not be based solely upon a member's participation in our Strategic Alliance Program. RIA Compliance Consultants is not affiliated with these Strategic Alliance members, does not control or supervise the services or products of the Strategic Alliance member and reference to these Strategic Alliance members does not mean that RIA Compliance Consultants has performed any level of due diligence on the Strategic Alliance member's services or products. As with any service provider, clients are urged to perform their own due diligence on the Strategic Alliance members listed on this page. Each registered investment adviser should perform its own independent investigation and evaluation to make sure that the Strategic Alliance member is the best fit for its firm.

RCC receives compensation for these Strategic Alliance memberships.

Copy of Slides

You can access a copy of the slides from this presentation through your online subscription account.

If you need assistance accessing your online subscription account, please contact Grant Parr at gparr@ria-compliance-consultants.com.

Schedule Introductory Call via Online Appointment System

<https://my.timedriver.com/QQ21L>

Thank You

Tammy Emsick

Vice President of Business Development

RIA Compliance Consultants, Inc.

877-345-4034 x 102

temsick@ria-compliance-consultants.com