

FLORIDA OFFICE OF FINANCIAL REGULATION

Division of Securities

Investment Adviser Guide

Updated February 2020

This guide is intended to assist newly-registered investment advisers in understanding their compliance obligations. It does not provide a complete description of all requirements under the Florida Statutes or Florida Administrative Code.

- ★ As an investment adviser, you are a fiduciary to your clients, meaning you have a fundamental obligation to act and provide investment advice that is in the best interest of your clients.
- ★ You should not engage in any activity that conflicts with the interest of any client, and you must use reasonable care to avoid misleading clients.
- ★ You must provide full and fair disclosure of all material facts to your clients and prospective clients.
- ★ You must ensure that your investment advice is impartial at all times; all conflicts of interest that could lead to impartiality, whether intentional or not, must be disclosed.
- ★ You cannot use your clients' assets for your own benefit or the benefit of other clients.

Florida Statutes – Securities and Investor Protection Act (Act)

The following are sections of the law that pertain specifically to investment advisers and investment adviser representatives:

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| 517.021(14)(a) | Definition of an Investment Adviser |
| 517.021(18) | Definition of a Principal of an Investment Adviser |
| 517.12 | Registration Requirements of Investment Advisers and Associated Persons |
| 517.1202 | Notice-Filing Requirements for Branch Offices |
| 517.12(11) | Annual Renewal Provisions for Investment Advisers |
| 517.1202(3) | Annual Renewal Provisions for Branch Offices |
| 517.121 | Books and Records Requirements |
| 517.161 | Revocation, Denial, or Suspension of Registration of Investment Adviser or Associated Person |
| 517.1611 | Guidelines |

Florida Administrative Code – Florida Securities Rules

The following are sections of the Administrative Code that pertain specifically to investment advisers and investment adviser representatives:

| | |
|-------------------|---|
| 69W-200.001(6)(a) | Definition of an Associated Person (Investment Adviser Representative) |
| 69W-200.001(8)(a) | Definition of Investment Adviser Branch Office |
| 69W-600.0016 | Application for Registration as an Investment Adviser |
| 69W-600.0024 | Application for Registration as an Associated Person (Investment Adviser and Federal Covered Advisor) |
| 69W-600.0034 | Notice-Filing of Branch Office (Investment Adviser) |
| 69W-600.0131 | Prohibited Business Practices for Investment Advisers and Associated Persons |
| 69W-600.0132 | Custody Requirements |
| 69W-600.014 | Books and Records Requirements |
| 69W-600.0161 | Net Capital and Financial Reporting Requirements for Investment Advisers |

For more information on these sections, please visit www.flofr.com

Annual Renewal

Initial registration as an investment adviser with the Florida Office of Financial Regulation (OFR) is valid from the date of registration approval through December 31 of the same year. Registration must be renewed each year prior to December 31 for the subsequent calendar year. Advisers renewing through the Investment Advisers Registration Depository (IARD) should be mindful of the Financial Industry and Regulatory Authority (FINRA) deadline for depositing funds.

To renew the registration of the firm and associated person(s) and notice-filings of any branch office(s), you must submit payment to FINRA by depositing funds into your renewal account through IARD for all required registration and filing fees.

Annual Financial Statements

Advisers registered with the OFR and domiciled in Florida are required to annually file financial statements with the OFR via the mailing address provided on the last page of this document. Financial statements must be prepared in accordance with the provisions of Rule 69W-600.0161(2), Florida Administrative Code (F.A.C.), and filed within 90 days of the firm's fiscal year end. The rule requires that financial statements be prepared in accordance with generally accepted accounting principles (GAAP); this means financial statements must be prepared using the **accrual** method of accounting.

Firms that do not have custody of client funds or securities, or those who have custody solely due to direct fee deduction or who meet the requirements of paragraphs 69W-600.0132(3)(d), (3)(e), or (3)(f), F.A.C., shall submit unaudited financial statements containing an oath or affirmation made by an authorized person of the firm that the financial statement is true and correct to the best of their knowledge or belief. The oath or affirmation must be notarized.

Firms that require payment of advisory fees six months or more in advance and in excess of \$500 per client or who have custody of client funds or securities except those who have custody solely due to direct fee deduction or who meet the requirements of paragraphs 69W-600.0132(3)(d), (3)(e), or (3)(f), F.A.C., shall file audited financial statements as defined in Rule 69W-600.0161(2), F.A.C.

Annual Update and Other Filing Requirements of Form ADV

You are required to file an annual update of your firm's Form ADV through the IARD within 90 days of the firm's fiscal year end. You must also file an amendment to the Form ADV, within 30 days, when certain information contained in the form becomes inaccurate.

- ★ Make sure the firm's Form ADV is complete and current. Inaccurate, misleading or omitted disclosure is the most frequently cited finding from examinations of investment advisers.

- * Accurately report the amount of assets you have under management.

You are reminded that it is unlawful to make any untrue statement or omit any material facts in an application or other document filed with the OFR, including the Form ADV.

Net Capital Requirements

Net capital is defined as assets minus liabilities in accordance with GAAP.

Investment advisers that do not have custody of customer funds shall maintain minimum net capital of \$2,500.

Firms that require payment of advisory fees six months or more in advance and in excess of \$500 per client or who have custody of client funds or securities, except those firms listed below, shall maintain net capital in the amount of \$25,000.

The following firms with custody are required to maintain minimum net capital of \$2500:

- * An investment adviser who has custody of client funds or securities solely due to direct fee deduction.
- * An investment adviser having custody solely due to advising pooled investment vehicles **and** complying with the terms described under 69W-600.0132(3)(d), F.A.C.
- * An investment adviser having custody solely because the investment adviser, associated person of the investment adviser, or employee, director, or owner of the investment adviser is the trustee for a trust, and where the investment adviser acts as the investment adviser to that trust **and** complying with the terms described under 69W-600.0132(3)(e), F.A.C.
- * An investment adviser having custody solely because the investment adviser, associated person of the investment adviser, or employee, director or owner of the investment adviser is the trustee for a beneficial trust **and** complying with the terms described under 69W-600.0132(3)(f), F.A.C.

Firms not complying with the additional terms are subject to \$25,000 minimum net capital requirements and audited financial statements pursuant to Rule 69W-600.0161, F.A.C.

Written Disclosure Document

Investment advisers are required to provide their clients and prospective clients with a written disclosure document. Most advisers comply with this requirement by providing Part 2A of the Form ADV for the firm and Part 2B for the investment adviser representatives. You may also use a prepared brochure; however, the brochure must contain the same information in the same order as the Part 2A. The written disclosure document should be delivered to your prospective clients before or at the time of entering into an advisory contract.

Each year, you must deliver Part 2A and Part 2B, if applicable, or a summary of material changes to your clients, without charge. You must maintain a copy of each disclosure document and each amendment or revision that was given or sent to clients or prospective clients. Accompanying this copy must be a record reflecting the dates on which the disclosure was given to a client.

Books and Records

Creation and Maintenance

You are required to prepare and maintain true, accurate and current records relating to your business and have available for the OFR **at least** the following records:

- ★ Advisory business financial and accounting records, including: cash receipts and disbursements journals; income and expense account ledgers; checkbooks; bank account statements; advisory business bills; and financial statements.
- ★ Records pertaining to providing investment advice and transactions in clients' accounts, including: suitability determination; orders to trade in client accounts (order memoranda); trade confirmation statements received from broker-dealers; documentation of proxy vote decisions; written requests for withdrawals or documentation of deposits received from clients; and written correspondence sent to or received from clients or potential clients regarding recommendations or suggestions.
- ★ Records documenting your authority to conduct business in client accounts, including: a list of accounts in which you have discretionary authority; documentation granting you discretionary authority; and written agreements with clients (advisory contracts)
- ★ Advertising and performance records, including: newsletters; articles; and computational worksheets demonstrating performance returns.
- ★ Records regarding the maintenance and delivery or offer of delivery of your written disclosure documents and, if applicable, disclosure documents provided by solicitors who seek clients on your behalf.

- ✦ Written compliance and supervisory policies and procedures, including documentation prepared during your annual review of your compliance program.
- ✦ Corporate formation and governance documents.

Rules describing the required books and records for investment advisers are found in Rule 69W-600.014(3), F.A.C., and SEC Rule 204-2. Advisers that have custody or possession of clients' funds or securities are subject to additional books and records requirements as well as safeguard and safekeeping requirements. These additional safeguard and safekeeping requirements are found in Rule 69W.600.0132, F.A.C.

Retention

You must keep these records for specific periods of time. Generally, books and records must be kept for five years from the last day of the fiscal year in which the last entry was made on the document or the document was disseminated. You may be required to keep certain records, such as records supporting performance calculations used in advertisements, for longer periods of time.

You are required to keep your records in an easily accessible location. **For the first two years, you must keep your records in the principal office and place of business identified on your Form ADV.** After the first two years, if you maintain some of your books and records somewhere other than your principal office and place of business, you must identify the location(s) on your Form ADV. You may elect to store duplicate copies of your advisory records in a location separate from your principal office for business continuity purposes in case of a disaster.

You may store your original books and records by using electronic media, such as electronic text, digital images, proprietary and off-the shelf software, and email. If you use email or instant message, you must maintain the email or instant message, including all attachments that are required records. Precautions must be taken to ensure electronic records are secure from unauthorized access, theft or unintended destruction. Electronic records must be arranged and indexed in a way that permits easy location, access and retrieval of any particular record. Generally, you should be able to promptly (within 24 hours) produce required electronic records requested by the OFR examiners, including email.

Registration with the OFR may be summarily suspended if you do not promptly provide to the office, after a written request, any of the required records.

Examinations Conducted by the OFR

The OFR conducts examinations of registered investment advisers, associated persons and notice-filed branch offices pursuant to subsection 517.121(2), Florida Statutes (F.S.), to determine compliance with the Act. Examinations are generally conducted on-site with no advance notice; the OFR may also require the production of documents via written requests.

Designated Principal

You are required at all times to have a designated principal for the firm. The designated principal is responsible for ensuring that the investment adviser and employees of the firm are compliant with the provisions of the Florida Statutes and its related Administrative Code. You must notify the OFR in writing if the firm's designated principal changes, and appoint a new qualified designated principal.

Investment Adviser Representatives

All investment adviser representatives employed by your firm also must be registered with the Florida Office of Financial Regulation. Representatives must pass the appropriate examination(s) for the type(s) of business in which they engage, pursuant to Rule 69W-600.0024(6), F.A.C.

Solicitors

You may compensate individuals to solicit new clients on your behalf, if they meet certain conditions under SEC Rule 206(4)-3.

- ★ The solicitor cannot be subject to certain disciplinary actions.
- ★ The fee paid is pursuant to a written agreement between you and the solicitor. The agreement must: describe the solicitor's activities and compensation arrangement; require that the solicitor perform the duties you assign and in compliance with the Investment Advisors Act of 1940; require the solicitor to provide clients with a current copy of your disclosure document; and, if seeking clients for personalized advisory services, require the solicitor to provide clients with a separate written disclosure document containing specific information.
- ★ You receive from the solicited client, prior to or at the time you enter into an agreement, a signed and dated notice confirming that they were provided with your disclosure document and, if required, the solicitor's disclosure document.
- ★ You have a reasonable basis for believing that the solicitor has complied with the terms of your agreement.

Failure to comply with these terms subjects the individual(s) soliciting on your behalf to the registration requirements as an associated person of your firm.

Additional Requirements for Investment Advisers that Directly Deduct Fees from Client Accounts

If you deduct fees from client accounts, you must comply with the safekeeping requirements in 69W-600.0132(2)(a)-(d), F.A.C., and provide the following additional safeguards:

- ✦ Written Authorization. You must have written authorization from the client to deduct advisory fees from the account(s) held with the qualified custodian;
- ✦ Notice of Fee Deduction. Each time a fee is deducted from a client account, the adviser must concurrently:
 - ✦ Send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and
 - ✦ Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management on which the fee is based, and the time period covered by the fee.
 - ✦ Provide notification in writing to the OFR on Form ADV that you intend to use the safeguards provided above.

Failure to send the client an itemized invoice is a prohibited business practice under Rule 69W-600.0131(1)(v), F.A.C.

Advertising

Pursuant to SEC Rule 206(4)-1 and Rule 69W-600.0131(1)(a), F.A.C., it is a fraudulent, deceptive or manipulative act, practice, or course of business for an investment adviser to publish, circulate or distribute any advertisement:

- ✦ Which contains any testimonial concerning the investment adviser or any advice, analysis, report or service rendered by the investment adviser; or
- ✦ Which refers to past specific recommendations of the adviser that were or would have been profitable to any person, without specified disclosures; or
- ✦ Which represents any graph, chart, formula or other device being offered, in and of itself, can be used to guide investors regarding securities transactions without prominently disclosing the limitations and difficulties with respect to its use; or
- ✦ Which contains a statement that any report, analysis or other service will be free or without charge, unless there are absolutely no associated costs or conditions; or

- ★ Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

Advertising is broadly defined to include any notice, circular, letter or other written communication addressed to more than one person, and any notice or other announcement in any publication, on the radio, or on television. Use of electronic media, such as the internet, is included in the definition of advertising.

Branch Offices

Investment advisers registered with the OFR, with branch office(s) located in Florida, must notice-file each branch with the OFR. The definition for branch office is found in Rule 69W-200.001(8), F.A.C. Advisers notice-filing branch offices shall file the Form BR (Uniform Branch Office Registration), documents and fees prescribed in section 517.1202, F.S., and Rule 69W-600.0034, F.A.C., through the Central Registration Depository (CRD). For information regarding branch office filings through the CRD, please contact FINRA by calling (301) 950-6500 or via their website <http://www.finra.org/Industry/Compliance/>.

Pursuant to subsection 517.12(5), F.S., no investment adviser shall conduct business from a branch office within Florida unless the branch office is notice-filed with the OFR.

Change in Assets under Management

Under state and federal law, state-registered investment advisers are defined as investment advisers with assets under management not exceeding \$100 million. Once a firm's assets under management exceed \$100 million, the firm must register with the U.S. Securities and Exchange Commission (SEC) by following these procedures:

- 1) File an amendment on the IARD system to amend Form ADV, Part 1A, Item 2A, to indicate the firm is seeking registration with the SEC. At the same time, the investment adviser must review Part 1A, Item 2B, to ensure that the appropriate states are selected in which the investment adviser will operate once SEC registration is approved.
- 2) Upon receipt of confirmation that your firm is registered with the SEC, the OFR will approve the "switch" and grant notice filing for the investment adviser in Florida.
- 3) File a partial Form ADV-W to request termination of the firm's state-registration status through the IARD system.

Form ADV, Parts 1 and 2

Part 1 — If any information contained on Form ADV changes, an amendment (Part 1) must be filed on the IARD system within thirty (30) business days of occurrence.

Part 2A — A copy of Part 2A of Form ADV, also referred to as the “Disclosure Document” or “Brochure,” must be provided to clients when first engaged as well as on an annual basis.

Part 2B — A copy of Part 2B of Form ADV, also referred to as the “Brochure Supplement,” must be provided to clients when first engaged as well as on an annual basis.

Form of Organization

If a firm changes its legal form of organization, an amendment must be filed on the IARD system to reflect this change.

Disclosure of Disciplinary Information

You must disclose any legal or disciplinary events that would be material to a client’s or a prospective client’s evaluation of the firm’s integrity or ability to meet its commitments to clients. Such disciplinary events are described on the Form ADV and include specified criminal or civil actions, administrative proceedings by federal or regulatory agencies, and self-regulatory organization proceedings.

Any such qualifying event shall be disclosed on the Form ADV and/or Form U4 within 30 days of the event.

Terminations

The firm must file the following to request termination of registration or notice filing:

- Form ADV-W through IARD for the firm’s registration.
- Form U5 through CRD for any associated person.
- Amendment to Form BR through CRD for any branch office.

IARD and CRD

FINRA operates the IARD and CRD under an agreement with state securities regulators, such as the Florida Office of Financial Regulation, and the U.S. Securities and Exchange Commission. For assistance or more information about the IARD and CRD systems, please contact the FINRA Call Center by calling 240-386-4848.

Florida Office of Financial Regulation Division of Securities

Physical Address:

Florida Office of Financial Regulation
101 E. Gaines Street
Tallahassee, FL 32399

Mailing Address:

Florida Office of Financial Regulation
200 E. Gaines Street
Tallahassee, FL 32399

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(850) 410-9893

Inquiries regarding the IARD system:

FINRA Call Center:

(240) 386-4848

www.iard.com