



Holli Sullivan
Secretary of State

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State of Indiana

Securities Division

Alex Glass
Securities Commissioner

INVESTMENT ADVISER EXAMINATION PROCESS AND PROCEDURES

Onsite Examination Program

The Indiana Secretary of State, Securities Division (“Division”) routinely conducts examinations of investment advisers registered in the State of Indiana for compliance with the Indiana Code and Indiana Administrative Code. Under Ind. Code § 23-19-4-11 (d), “[t]he records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the Commissioner, within or without this State, as the Commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The Commissioner may copy, and remove for audit or inspection copies of, all records the Commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The Commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.” While most examinations are scheduled in advance, the Securities Division has the authority to conduct unannounced for-cause examinations at any time it is necessary for the protection of investors or in the public interest.

Before the Examination

The investment adviser (“adviser”) can expect routine examinations of its books and records. Prior to the examination, the adviser will be contacted by an examiner from the Division stating the date and time of the examination. The examiner will request a list of documents to be provided by the adviser prior to the examination, as well as documents and records to be made available during the onsite examination. Some examples of the documents that will be requested include client advisory agreements, client lists, list of custodians, pre-examination questionnaire responses, among others.



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The Examination

During the examination, the examiner will spend time interviewing key personnel regarding the conduct of the adviser's business. The examiner will then review the documents and information the adviser made available for the onsite examination. The examiner may request additional documents for review during the onsite examination. If the records are maintained in electronic format, electronic copies may be provided to the examiner in lieu of hard copies. The examiner will be available to answer questions during the examination, but cannot provide legal advice. The length of the examination will vary depending on the complexity of the examination, but generally an examination will not last more than one day. Key personnel must be available for the duration of the examination.

After the Examination

After the onsite portion of the examination is complete, the examiner may request additional documents or have follow up questions for the adviser. Once the examiner has reviewed all the necessary documents and all outstanding questions have been addressed, the examiner will provide the adviser with the outcome of the examination. There are three possible outcomes to an examination: (1) No Action Letter; (2) Cautionary Letter; or (3) referred to enforcement. A "No Action Letter," which results from no violations of the Indiana Code or other applicable rules. A "Cautionary Letter" will result if any deficiencies are discovered during the examination process. The adviser will have a reasonable amount of time to cure any deficiencies found by the examiner. . Once the deficiencies have been cured, the adviser must notify the examiner. Finally, more serious violations or failure to cure any deficiencies may be referred to enforcement.

Non-compliance

Failure to be prepared for or to cooperate with the onsite examination program, as well as failure to timely and satisfactorily respond to the Cautionary Letter, may result in an enforcement action being taken against the investment adviser and the investment adviser representative.

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Common Issues

These are some of the most common issues found during examinations:

1. **Form ADV Consistency.** The description of the advisory business and services in Part 1 should match the description in Part 2.
2. **Annual ADV Updates.** FINRA rules require annual updating of the Form ADV within 90 days of the adviser's fiscal year end. The adviser is required to make the annual filing on the IARD system even if there have been no changes to the business.
3. **Failure to Submit IARD Changes.** Select the SUBMIT button once all amendments are complete, otherwise the changes will not post to the FINRA system.
4. **Form ADV, Part 1, Item 9F.** This item is commonly answered incorrectly or is misunderstood. If fees are directly deducted from client accounts, for the purposes of this question, the adviser is considered to have custody limited to the direct deduction. Advisers can refer to the ADV Instructions at www.sec.gov/about/forms/formadv.pdf for further guidance.
5. **Compliance Manual.** The adviser's compliance manual should reflect all policies and procedures that apply to the firm. The purchase of "off the shelf" compliance manuals is acceptable so long as the manual is reviewed and amended to reflect the policies and procedures of the firm.
6. **Cybersecurity.** Compliance manuals should address the adviser's policies with respect to cybersecurity. How is client information safeguarded? How are systems kept secure? How is the identity of clients verified? How are records retained and then destroyed after the retention period?
7. **Discretion.** If the adviser is not granted discretion in the written contract, client approval must be obtained prior to each trade being made. The adviser must establish a means of documenting client contact and approval for each trade.
8. **Brochure Rule.** The instructions to Form ADV Part 2 require the adviser to provide a brochure statement to each client or potential client before, or at the time of the entering into

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the advisory agreement. This must be documented and may be accomplished by including this obligation in the advisory agreement.

9. **Privacy Policy.** The Gramm-Leach-Bliley Act requires the adviser to, at the time of establishing the relationship and not less than annually thereafter, provide the client with the adviser's privacy policy. This must be documented by the adviser.