

Welcome

We will begin today's program at 2:00 PM Eastern.

“Compliance for State Registered Advisers”

If you have joined this event early, we invite you to sit back, relax and learn about other upcoming FPA Educational Opportunities.

Thank you for your continued support of FPA and the Virtual Learning Center. We hope you enjoy today's program – **The Learning Group**

VLC Educational Track: Technical Knowledge

About the Program:

This presentation will help you determine if you are calculating assets under management correctly to ensure you are properly registered at the state level and cover some of the books and records requirements of running your RIA so the firm can pass an audit with flying colors!

Submit your entry to the 2008 Financial Frontiers Awards

THINKERS. CREATORS. INNOVATORS. EVERY INDUSTRY, SOCIETY AND PROFESSIONAL ORGANIZATION HAS THEM. THEIR MINDS ARE WHERE ORIGINAL IDEAS ARE BORN AND THEIR ACTIONS LAUNCH SIGNIFICANT CHANGE. THE FINANCIAL FRONTIERS AWARDS WERE CREATED TO RECOGNIZE THE MOST INNOVATIVE IDEAS IN FINANCIAL SERVICES. THE AWARDS ARE FOR OUTSTANDING RESEARCH PAPERS ON FINANCIAL TOPICS THAT INTRODUCE PRACTICAL SOLUTIONS THAT CAN HELP FINANCIAL ADVISORS AND THEIR CLIENTS.



Be sure to enter in 2008.

The competition, sponsored by FPA and Janus InTECH, is open to all financial planners, investment consultants, registered representatives, registered investment advisers, bankers, accountants, educators, students, attorneys and practitioners from the insurance field and trust and estate planning firms. In addition, submissions also are welcome from financial advisers and management or support staff at financial services institutions, regardless of their size.

Early Bird deadline: January 31, 2008 (\$25 for FPA members, \$35 for nonmembers)

Final deadline: March 3, 2008 (\$50 for FPA members, \$70 for nonmembers)

To submit a research paper for consideration, to review the competition guidelines, or to view past winning papers, please visit www.FinancialFrontiersAwards.org. Winners of the 2008 competition will be honored at FPA's 2008 annual conference in Boston.

Upcoming Virtual Seminars

November 16, 2007 (2-3:00 p.m. ET)

How to Use a Benchmark Study

Presented by: **Daniel Inveen and Kenneth Evans**

Educational Track: Practice Management

Free to FPA Members

November 28, 2007 (12-2:00 p.m. ET)

Ethics: A Practical Framework of Universal Principles

Presented by: Michael Snowdon

Educational Track: Ethics

Pending Approval for 2.0 Ethics CFP CE

Live Rebroadcast

FPA Business Solutions 2008

Register now! FPA Business Solutions 2008, the advanced business management conference, will be held March 3-5, in Chicago, Ill. Visit www.FPASolutions.org for information and registration.

Learning Center Archives

Looking for a fast, easy way to fulfill your CE requirements?

Visit the VLC archive library for sessions covering a wide variety of topics:

<http://www.fpanet.org/fpa%5Fproduct%5Fstore/?WT.svl=0>

Compliance for State Registered Advisers

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STATE REGISTERED

*TO BE OR
NOT TO BE????*

Assets Under Management Determine Where the RIA is to be Registered...

State or SEC Registered

- Assets Under Management less than \$25 million—**MUST** register with the States
- Assets Under Management greater than \$30 million—**MUST** register with the SEC
- Assets Under Management between \$25-\$30 million—**MAY** register with the States **or** the SEC

Calculate Assets Under Management correctly

Asset allocation/portfolio monitoring
vs.
“Continuous & Regular” Supervisory or
Management Services

3 Prong Test:

1. Active Management – Market timing and periodic reviews do not constitute “continuous and regular” supervisory management
 - Generally involves discretion – without discretion, it is difficult to demonstrate “management”, but it can be done
 - Adviser should have an investment policy statement, rebalancing strategy, etc. – maintain evidence of active management

3 Prong Test (con't):

2. Contract terms – does the contract state the Adviser will provide ongoing management services?
3. Compensation – is it based on the value of the assets managed?

Which Assets are Counted?

- Only assets receiving continuous and regular supervisory management services qualify
- Third party managed business generally does not count
- Commission based assets are not counted
- Update each year with the annual amendment

Financial Planning only firms will always remain state registered since they are not managing any assets

Where to Register?

The Adviser must register in its Home State and any state with a Place of Business or more than 5 clients (de minimis)

- Exceptions: TX/LA — even 1 client triggers filing requirements
- TX requires special language in the client agreement

Miscellaneous:

- Start the registration process after obtaining the 4th client
- Many states take up to 60+ days to complete the process
- “Client” is defined as a household or an individual

Investment Adviser Representative (IAR)

- Anyone who provides advice to clients
- Anyone who makes investment decisions on behalf of the firm (investment committee)
- Anyone who reviews the financial plan recommendations
- Most states require at least one IAR be registered

IAR Registrations

- Any state where Advisory Representative is doing business if the firm/entity exceeds the de minimis, plus TX/LA
- The de minimis is for the entity/firm, not each individual Advisory Representative
- Broker/Dealer and Investment Adviser state registrations do not necessarily need to be the same

Annual Renewal

- All registrations (both firm and IARs) expire 12/31/07 and should be renewed
- Ensure both the Adviser (firm) and each individual is renewed in each applicable state
- Get new password now—if last use was annual amendment in March 2007, it has expired

Branch Offices

- Form BR (IARD)—required for Advisers who have a place of business and/or additional branch in OH, ME, CT, NV, TX
- Register/Renew all branches, if applicable

Annual Amendment

- Due within 90 days of fiscal year-end (by 3/31/08 if year-end is Dec. 31st)
- Required for all investment advisers
- Completed on the IARD system
- There are no fees for the annual amendment for state-registered advisers

Annual Offer of Form ADV

- All Advisers must offer to clients a copy of the current Form ADV Part II/Schedule F
(Note: NY advisers must also offer Form ADV Part I)
- There is not a “required” format—can be a separate letter, at the bottom of the quarterly invoice, in a newsletter, etc.
- Set up a file and keep a list of the clients to whom the offer is sent along with a copy of the method of making the offer

Annual Offer (con't)

- If copy requested, Adviser must deliver the Form ADV and Schedule F, without charge to the client, within 7 business days
- Maintain record of delivery within the required time—dated letter sent with the ADV
- If no requests, suggest keeping a note to that effect in the file

Privacy Policy

- Required for all advisers
- Must be given at the initiation of the relationship (attaching to Form ADV/ Schedule F ensures compliance with this requirement)
- Must be sent annually to all clients—keep a list of everyone to whom it is sent

Privacy Policy (con't)

- Best business practices suggest including an acknowledgement in the agreement
- If a template was used, make certain it has been customized to the specifics of the Adviser
- Make certain the firm is complying with the statements contained in the policy

Part II and Schedule F (Disclosure Brochure) Moving to the IARD

- State by state requirement (States currently requiring *transition*: CA, MA, FL, NH--by 3/08)
- Almost all states will accept Part II through IARD.
- Some states now **require** filing Part II through IARD for initial filings and amendments.
- If you are uncertain whether your state requires submission via the IARD, contact the state securities regulator directly. Their numbers are available on the NASAA web site at www.nasaa.org.

Part II and Schedule F (Disclosure Brochure) Moving to the IARD (con't)

- IARD web site (www.iard.com) has a Navigation Guide and Frequently Asked Questions
- Disclosure Brochure must be in a searchable text, portable document format (PDF)

Code of Ethics

State Advisers generally need to include disclosure under Item 9 on Schedule F and have a written code of ethics

(If not currently required by your home state, keep monitoring the regulations)

Written Supervisory Procedures

- Required by many states (if not required, still a Best Business Practice)
- State examiner will request a copy at beginning of the audit
- Must be customized to each practice
- If not doing “it”, do not include “it” in the procedures. Better to not have a procedure than to include a procedure that is not being followed!

Written Supervisory Procedures (con't)

- Use clear, plain English
- What's the goal of the procedure?
- What's the frequency – i.e., quarterly, monthly, as needed?
- Who will perform the procedure?
- List the answers for each procedure

Last, but not least...

It is a good idea to test the procedures – do a trial run!!

- Provide periodic, ongoing training for all employees

Insider Trading Procedures

- Even if a Procedures Manual is not required, Insider Trading Procedures are required
- Designed to prevent trading on material, non-public information by all of Adviser's employees
- Each individual associated with the firm, even clerical personnel, should acknowledge receipt of the policy

Discretion

- Executing a trade in a client's account without specific authorization
- Must be in writing from the client
- Oral instructions "expire" at close of business (i.e. price/time discretion)
- Adviser must be able to produce a list of all discretionary accounts
- Some states require a minimum net capital or a bond

Custody

- Access to client money or securities
 - Actual possession
 - Bill paying service/check writing authority
 - Debiting fees from client's accounts (some states)
 - Trustee, etc.
 - Some states require a minimum net capital or a bond
 - Processing stock certificates—OK to assist, but client should mail to custodian

Form ADV

- It is a prospectus on the firm - give full disclosure.
- Must be provided to clients at least 48 hours in advance of signing contract or the client must have 5 days to terminate the contract with no penalty

Form ADV

- Make certain Form ADV is always current
 - Amendments for material information must be filed within 30 days
 - Other minor changes can be made when filing the annual amendment
- Keep a file of all amendments
- Some states require a manually signed Execution Page with the amendment

Form ADV Common Errors

- Failing to provide complete responses to all of the information requested by Part II on Schedule F
- Only providing the client Part II (without Schedule F)
- Disclosure Brochure (if a separate document is used) is more of a marketing brochure than a Disclosure Brochure
- Code of Ethics is not disclosed under Item 9

Form ADV Common Errors (con't)

- Information disclosed is different from the business conducted by the Adviser or inconsistent with other documents
- The Form ADV (or Disclosure Brochure) is not a legal document and must be in plain English; if all material information is not disclosed that could be used against the Adviser in legal or regulatory proceedings

Required Books and Records

Financial and Accounting Records

- Journal – maintained in accordance with Generally Accepted Accounting Principles (GAAP). It should reflect all receipts and disbursements of the Investment Adviser. By definition, a journal is “a book of original entry for all daily business transactions”.
- General Ledgers – should reflect all of the entity’s assets, liabilities, reserves, capital, income and expenses. The ledgers must also be maintained in accordance with GAAP. By definition, a general ledger is “a book containing accounts to which debits and credits are posted from books of original entry (journal).”

Financial and Accounting Records (con’t)

- Checkbooks – Keep all checkbooks, bank statements, cancelled checks and cash reconciliations
- Retention of Bills –Maintain copies of all paid (or unpaid) bills or statements
- Trial Balances –Must be completed on a quarterly basis. Keep all financial statements and internal working papers related to the advisory business. A trial balance is “a list of the debit and credit balances of accounts in a double entry ledger at a given date prepared primarily to test their equality.”

Corporate Records

- Articles of Incorporation, Partnership Articles, etc.
- Minute Books
- Must be maintained in the Investment Adviser's office until termination of the business.

Additional files to be
maintained by Adviser...

Advertising/Sales Literature

- Keep a copy of each item that is used
 - Web site, yellow page listing, business cards, letterhead, fax coversheets, seminar announcements, etc.
- Mass mailings – keep a list of individuals to who the letter is sent

Correspondence

- Incoming and outgoing, including email, hand written notes, faxes, etc.
- Can be maintained electronically or in hard copy
- Can be filed chronologically or in each client file
- Many states require all “business related” emails to be maintained, not just to clients

Order Tickets

- A record of each transaction conducted for a client.
- Electronic records are allowed
- Not required for check and application business
- Required for trades executed in a brokerage account or over the phone with a mutual fund sponsor (exchanges also)

Required Information

- Buy, sell, exchange (including modification or cancellation of trade)
- Solicited, unsolicited or discretionary
- Number of shares or dollar amount
- Who recommended and placed the order
- Long or short for sales

Trade Confirmations

- Match to the order ticket or blotter
- Show evidence of review
 - Date
 - Initial
- Watch for errors
- Staple to trade ticket and/or keep with blotter (if not kept electronically)

Transaction Log/Blotter

- Chronological listing of all transactions
- Include check and application business as well as trades in a brokerage account
- Most clearing firms produce an electronic version for executed trades

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