



**BECOMING AN SEC-REGISTERED INVESTMENT ADVISER**

**COMPLIANCE HIGHLIGHTS**

This Memorandum highlights certain aspects of becoming and operating as an SEC-registered investment adviser (an “**RIA**”). The shift from non-registered to registered status generally entails a change in “mind-set” and/or “culture” within an investment adviser firm, due to the nature of the compliance obligations to which RIAs are subject. In our experience in assisting numerous clients undertake the registration process (including the corresponding development and implementation of compliance policies and procedures), we have observed that the following compliance obligations frequently involve (i.e., require) such a change in “mind-set” or “culture”. Note that the following list is a highlight of only certain compliance obligations applicable to RIAs. It is not intended to (and it does not) list all applicable compliance obligations. Also note that, at present, the following compliance obligations generally apply to all RIAs – irrespective of advisory products offered or investment strategy(ies) employed.

<u>Compliance Obligation</u>	<u>Summary Description</u>
<b>Filing of Form ADV with SEC</b>	<p>As part of the registration process with the Securities and Exchange Commission (the “<b>SEC</b>”), an investment adviser is required to file Form ADV (Uniform Application for Investment Adviser Registration) with the SEC. Specifically, Part 1 and Part 2A of Form ADV are required to be filed. The filing, which serves to commence the registration process with the SEC, is made electronically via the IARD (Investment Adviser Registration Depository), a database managed by FINRA on behalf of the SEC.</p> <p>Form ADV contains extensive information about an RIA including, <u>without limitation</u>:</p> <ul style="list-style-type: none"> <li>• The name and ownership level of each 5% or greater direct owner of the RIA.</li> <li>• The name and ownership level of each 25% or greater indirect owner of the RIA.</li> <li>• The name of each executive officer of the RIA.</li> </ul>

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<u>Compliance Obligation</u>	<u>Summary Description</u>
	<ul style="list-style-type: none"> <li>• Material facts regarding any legal or disciplinary event that is material to an evaluation of the integrity of the RIA or its management persons. Form ADV contains an extensive (but not exhaustive) list of the types of judicial and regulatory “events” that are required to be disclosed.</li> <li>• Types of advisory products / services offered (including a listing of investment funds managed).</li> <li>• Material risks involved for each significant investment strategy or method of analysis employed.</li> <li>• Certain conflicts of interest.</li> <li>• Assets under management (AUM).</li> <li>• Fee arrangements.</li> <li>• Certain affiliate relationships.</li> <li>• Client / investor introduction and referral arrangements.</li> <li>• Brokerage and investment allocation practices.</li> </ul> <p>Form ADV Part 1 and Part 2A of all RIAs are posted on a publicly accessible portion of the SEC’s website. All information contained in such portions of an RIA’s Form ADV may be viewed and printed by the public without any restrictions.</p> <p>Form ADV is required to be updated periodically.</p>
<p><b>Adoption and Implementation of Written Compliance Policies and Procedures</b></p>	<p>An RIA is required to adopt and implement written compliance policies and procedures (“<b>Procedures</b>”). Among other things, the policies and procedures should address:</p> <ul style="list-style-type: none"> <li>• Portfolio management processes, including allocation of investment opportunities among clients and consistency of portfolios with clients’ investment strategies and objectives.</li> <li>• Proprietary trading by the RIA.</li> <li>• Personal investment accounts and investment activities of the RIA’s personnel.</li> <li>• The accuracy of disclosures made to investors, clients, and regulators.</li> <li>• Safeguarding of client assets from conversion or inappropriate use by advisory personnel.</li> </ul>

<u>Compliance Obligation</u>	<u>Summary Description</u>
	<ul style="list-style-type: none"> <li>• Creation and maintenance of required books and records.</li> <li>• Correspondence (including electronic communications)..</li> <li>• Marketing and advertising practices, including the use of placement agents.</li> <li>• Valuation practices.</li> <li>• Privacy of client records and personal information.</li> <li>• Business continuity plans.</li> <li>• Gifts given by and received from RIA personnel.</li> <li>• Proxy voting.</li> <li>• Business continuity.</li> </ul> <p>An RIA’s Procedures must be customized for its particular business activities and infrastructure. The SEC does not like “off the shelf” Procedures. The Procedures must be reviewed annually and updated as appropriate.</p>
<p><b>Adoption and Implementation of Code of Ethics; Personal Securities Holdings and Transactions Reporting</b></p>	<p>An RIA must establish a written Code of Ethics that includes, among other things, provisions requiring firm personnel who have access to non-public information regarding a managed fund’s or client’s portfolio(s) to:</p> <ul style="list-style-type: none"> <li>• Periodically report to the RIA personal securities holdings and transactions.</li> <li>• Obtain pre-approval before investing in initial public offerings or private placements.</li> </ul> <p>The Code of Ethics must also require:</p> <ul style="list-style-type: none"> <li>• Firm personnel to submit an initial report – to the RIA’s Chief Compliance Officer or his/her designee -- all personal securities holdings. The initial report is required at the time the RIA gets registered, and must be updated annually.</li> <li>• Firm personnel to report personal securities transactions, on at least a quarterly basis.</li> </ul>
<p><b>Appointment of Chief Compliance Officer</b></p>	<p>An RIA is required to designate a single individual to serve as its Chief Compliance Officer. The Chief Compliance Officer is charged with implementing and enforcing the RIA’s Procedures. A Chief Compliance Officer may be subject to direct regulatory action under certain circumstances where the RIA has not complied with its</p>

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	Procedures and/or applicable laws, rules or regulations.
<b>Archiving and Review of Written Communications</b>	Written communications sent and received by RIA personnel (including e-mails via the RIA’s e-mail server) are required to be archived and must be subject to review by the RIA’s Chief Compliance Officer.
<b>Pre-approval of Marketing Activities and Materials</b>	Most or all marketing activities and marketing-related materials are required to comply with an RIA’s written compliance procedures (“ <b>Procedures</b> ”), as well as the SEC’s rules and interpretive positions. Such materials should be subject to review by an RIA’s Chief Compliance Officer.
<b>Procedures Regarding RIA Expenses</b>	<p>Expenses incurred by an RIA are required to comply with an RIA’s Procedures and are subject to review by the RIA’s Chief Compliance Officer. Ordinarily, the following types of expenses will be restricted, prohibited and/or subject to prior Chief Compliance Officer review:</p> <ul style="list-style-type: none"> <li>• Gift / entertainment expenses.</li> <li>• Payments to third parties for referrals of clients / investors.</li> <li>• Payments to affiliates.</li> <li>• Other expenses that may create or exacerbate conflicts of interest.</li> </ul>
<b>Reporting of Outside Business Activities</b>	Outside business activities of firm personnel must be reported to the Chief Compliance Officer. Activities that may conflict with the business of the RIA may be restricted or prohibited.
<b>“Pay-to-Play” Restrictions</b>	<p>A recently adopted SEC rule prohibits an RIA from:</p> <ul style="list-style-type: none"> <li>• Providing investment advisory services for compensation to a government entity within two years after a contribution to an official of the government entity is made by the RIA or certain firm personnel (including a person who is hired by the RIA up to two years after the contribution is made).</li> <li>• Providing or agreeing to provide, directly or indirectly, any payment to any individual or entity that is not a “Regulated Person” to solicit a government entity for investment advisory services on the RIA’s behalf.</li> <li>• Coordinating, or soliciting, any person or political action committee to make, any contribution to an official of a government entity to which the RIA is providing or seeking to provide investment advisory services or any payment to a political party of a state or locality where the RIA is providing or seeking to provide investment advisory services.</li> </ul>

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<b>Books and Records</b>	<p>An RIA is required to maintain extensive books and records with respect to its advisory business. Most books and records are required to be maintained for five or more years. The types of books and records required to be generated and maintained include, <u>without limitation</u>:</p> <ul style="list-style-type: none"> <li>• Financial and accounting records (including financial statements, cash receipts and disbursements journals, income and expense account ledgers, checkbooks, bank account statements and advisory business bills).</li> <li>• Written correspondence (including e-mail).</li> <li>• Records relating to personal securities transactions reports.</li> <li>• Marketing materials, including supporting information and documents for performance information used in marketing materials.</li> <li>• Fund offering documents, subscription agreements and investor questionnaires.</li> <li>• All compliance policies and procedures and documents evidencing compliance therewith.</li> </ul>
<b>Custody Rule</b>	<p>An RIA that has custody of client assets must comply with the SEC’s custody rule. Note that if an RIA or a related entity serves as general partner of an investment fund that is established as a limited partnership, then the RIA will be deemed to have custody of the investment fund’s assets.</p> <p>At present, most fund managers comply with the custody rule by delivering audited fund financial statements to their fund investors within 120 days after year end. The financial statements must be prepared in accordance with U.S. GAAP. If an RIA cannot satisfy the financial statement delivery approach, then it will be required to be comply with various other provisions of the custody rule, which are technical in nature and can be burdensome.</p>
<b>Performance Compensation:</b>	<p>An RIA is prohibited from charging a client performance-based compensation (such as a carry) unless the client is a “qualified client”, which is generally defined as a person:</p> <ul style="list-style-type: none"> <li>(i) with a minimum net worth of at least \$1,500,000;</li> <li>(ii) with assets under management with the RIA of not less than \$750,000; or</li> <li>(iii) who is a “qualified purchaser”.</li> </ul> <p>An RIA of an investment fund that relies on Section 3(c)(1) of the</p>

<u>Compliance Obligation</u>	<u>Summary Description</u>
	Investment Company Act of 1940, must impose the “qualified client” eligibility criteria on any investors that will be subject to performance-based compensation.
<b>SEC examinations</b>	<p>The SEC periodically examines and reviews the documents and information pertaining to an RIA (on an on-site and/or off-site basis). The SEC may or may not provide prior notice to an RIA with respect to an examination. The examination may involve the review of all or a substantial portion of the books and records of an RIA. The SEC may take a number of weeks (and in some cases, months) to complete an examination.</p> <p>RIA’s should expect the SEC to contact service providers, advisory clients and fund investors during an examination to verify account information and other information contained in the RIA’s books and records.</p>

If you have questions concerning the matters discussed above, or would like more detailed information, please contact one of the attorneys referenced below.

- Erik A. Bergman, Investment Management, 203-325-5026 or [ebergman@fdh.com](mailto:ebergman@fdh.com)
- Matthew S. Eisenberg, Investment Management, 203-325-5084 or [meisenberg@fdh.com](mailto:meisenberg@fdh.com)
- Harold B. Finn III, Investment Management, 203-325-5029 or [hfinn@fdh.com](mailto:hfinn@fdh.com)
- Richard D. Kilbride, Investment Management, 203-325-5075 or [rkilbride@fdh.com](mailto:rkilbride@fdh.com)