

# Investment adviser Licensing: Requirements to Consider

Chapter 515: “Investment Adviser Licensing” of the Rules of  
the Maine Office of Securities

# *Disclaimer*

- This is not intended to cover every requirement under Chapter 515. It is intended to highlight some of the more common requirements.
- The information contained in this overview is believed to be truthful and accurate, however, mistakes can occur.

# *Section 1*

- Sectional Definitions

## Section 2

### Electronic filing with designated entity

- Electronic Filing via IARD and CRD.
- Requires all filings to be done electronically.
- Temporary and Continuing Hardship exemptions available (see Section 2 of Chapter 515.)

## Section 3

### Application for investment adviser licensure

- Application for IA licensure.
- \$200 filing fee, \$200 annual renewal fee.
- Requires submission of Form ADV.
- Requires annual renewal.
- Requires amendment if information becomes inaccurate or incomplete in a material way. Amendment should be filed “promptly”, which is within 30 days of the event.
- Requires filing of Form BR on the CRD for branch offices.
- \$50 branch office filing fee, \$30 annual renewal fee thereafter.

# Section 4

## Application for investment adviser representative licensure

- **\$50 initial filing fee, \$30 annual renewal fee thereafter.**
- **Filing of Form U-4 with the CRD.**
- **Firms must update Part 2B for any representatives.**
- **Meet examination requirements (see section 10)**
- **Complete set of fingerprint cards on file with the office.**
- **Requires annual renewal.**
- **Requires amendment if information becomes inaccurate or incomplete in a material way. Amendment should be filed “promptly”, which is within 30 days of the event.**

# Section 5

## Notice filing Requirements for Federal Covered Investment Advisers

- **Once state licensed, you are no longer required to notice file.**
- **See Section 5 of Chapter 515**

# Section 6

## Advertising

- **Advertisement includes any notice, circular, letter or written communication addressed to more than one person, or any notice or other announcement in any publication or by radio, television or the internet which offers:**
  - Analysis, reports, or publications concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;**
  - Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or**
  - Any other investment advisory service with regard to securities.**
- **See Section 6 of Chapter 515 for requirements.**



# Section 7

## Record keeping requirements for investment advisers

- Record keeping requirement—not less than 6 years with the first 2 years in the principal office of the investment adviser.
- Written procedures to supervise employees and investment adviser representatives designed to achieve compliance with securities laws and regulations.
- A record of the investment adviser’s privacy policies, all privacy notices sent to consumers or customers and the date such notices were sent (*Evidence of delivery*).
- See Section 7 of Chapter 515 for additional requirements.
- \* *We believe that the SEC requires a code of ethics manual. Maine only requires written supervisory procedures.*

# Section 8

## Investment adviser brochure rule

- **The current brochure and supplements (Form ADV Part 2A-Firm Brochure, Part 2A *Appendix 1*-Wrap Fee Brochure, and Part 2B-Brochure supplements) must be delivered to a client:**
  - 1. not less than forty-eight (48) hours prior to entering into any investment advisory contract with such client or prospective client; or**
  - 2. at the same time of entering into any such contract, if the client has a right to terminate the contract without penalty within five (5) business days after entering into the contract.**

# *Section 8-Cont*

## *Investment adviser brochure rule*

- **On an annual basis an adviser must deliver or offer to deliver in writing a copy of its current brochure and any supplements. If a client accepts the offer, they must receive the current brochure and supplements within (7) seven days after the adviser is notified.**
- **Requires the delivering of updates and amendments to clients “promptly” should brochure and supplements become material inaccurate.**
- **“Promptly” is considered to be within 30 days of the event that requires the amendment.**

## Section 9

### Termination, Transfer and Withdrawal

- **Firms must submit a Form U-5 “promptly” with the CRD for any representatives that have terminated or are no longer required to be licensed.**
- **Firms withdrawing from licensure must file a Form ADV-W with the IARD.**

# Section 10

## Examination and Training Requirements

- **Investment adviser applicants who are individuals and investment adviser representatives must take and pass:**
  - The Series 65 examination or both the Series 7 and 66**
- **Attend approximately an hour and a half seminar at the Maine Office of Securities (contact the office to schedule an appointment and for further details.)**

# Section 10-Cont

## Examination and Training Requirements

- **The examination requirements do not apply to an individual who holds one of the following designations or certifications:**
  - 1. Certified Financial Planner**
  - 2. Chartered Financial Consultant**
  - 3. Personal Financial Specialist**
  - 4. Chartered Financial Analyst**
  - 5. Chartered Investment Counselor**

# Section 11

## Custody of client funds or securities by investment advisers

- **Custody means holding, directly or indirectly, client funds or securities or having the ability to appropriate them**
- **Custody includes:**
  - Possession of client funds or securities, unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;**
  - Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the adviser's instruction to the custodian; and**
  - Any capacity (such as a general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser, an owner of the investment adviser, or a supervised person of the investment adviser legal ownership of or access to client funds or securities.**

# Section 11-Cont

## Custody of client funds or securities by investment advisers

- **Funds and securities shall be maintained by a qualified custodian in a separate account for each client under the client's name or in accounts that contains only the funds and securities of the adviser's clients under the advisers name as agent or trustee for the clients.**
- **The adviser shall notify the client promptly in writing of the qualified custodians name, address, and the manner in which the funds and securities are maintained.**



## Section 11-Cont

### Custody of client funds or securities by investment advisers

- **Account statements must be sent to clients at least quarterly either from a qualified custodian or the investment adviser.**

# Section 11-Cont

## Custody of client funds or securities by investment advisers

- If the investment adviser sends account statements to its clients, the adviser must comply with the following requirements:
  - The investment adviser shall send an account statement, at least quarterly, to each client for whom the investment adviser has custody of funds or securities, identifying the amount of funds and of each security of which the investment adviser has custody at the end of the period and setting forth all transactions during that period;
  - An independent certified public accountant shall verify all of those funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the adviser and that is irregular from year to year, and shall file a certificate on Form ADV-E [17 CFR 279.8] with the Administrator within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and the extent of the examination; and (continued on next slide)*

# Section 11-Cont

## Custody of client funds or securities by investment advisers

**- The independent certified public accountant, upon finding any material discrepancies during the course of the examination, shall notify the Administrator within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Administrator.**

**\* *We believe this is different from the SEC in that Maine only requires the surprise audit if the adviser sends account statements to it's clients.***

# Section 11-Cont

## Custody of client funds or securities by investment advisers

- **An adviser who has custody by virtue of having fees directly deducted from client advisory accounts must also provide the following safeguards:**
  - The investment adviser must have written authorization from the client to deduct advisory fees from the account with the qualified custodian.**
  - Each time a fee is directly deducted from a client account, the investment 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 the fee is based on, and the time period covered by the fee. Invoices need not be sent more frequently than every quarter, provided that the invoice must show the calculation of each fee deducted during the quarter (continued on next slide.)**

# Section 11-Cont

## Custody of client funds or securities by investment advisers

- **An adviser is not required to send a client an invoice if the client waives in writing the right to receive the invoice**

\* *We believe this is different from the SEC in that the SEC does not require these additional safeguards for direct fee deduction.*

# Section 12

## Minimum financial requirements for investment advisers

- **An investment adviser licensed or required to be licensed under the act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000**
  - **An investment adviser licensed or required to be licensed under the act that has discretionary authority over clients funds or securities but does not have custody shall maintain at all times a minimum net worth of \$10,000**
- \* *See section 12 of Chapter 515 for procedures if net worth is less than the minimum requirement and for a definition of net worth.*

# Section 13

## Bonding requirements for licensed investment advisers

- **An investment adviser that has custody or discretion and does not meet the minimum net worth standards shall be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000.**

## Section 14

### *Dishonest and Unethical Practices*

- See section 14 of Chapter 515.