



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

SECURITIES DIVISION

P.O. Box 9033 • Olympia, Washington 98507-9033

Telephone (360) 902-8760 • TDD (360) 664-8126 • FAX (360) 902-0524 • Web Site: www.dfi.wa.gov/sd

NOTICE REGARDING INVESTMENT ADVISER SWITCH TO STATE REGISTRATION

OCTOBER 21, 2011

The Department of Financial Institutions (“DFI”) is issuing this release to alert investment advisers about new federal rules that became effective July 21, 2011.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) made significant changes to the regulation of investment advisers and instructed the U.S. Securities and Exchange Commission (“SEC”) to develop rules to implement those changes. The oversight of investment advisers has always been a partnership between state and federal regulators. The Dodd-Frank Act increases the states’ authority in the area of investment adviser regulation by raising the threshold from \$25 million to \$100 million in assets under management. Generally speaking, this affects investment advisers registered with the SEC with less than \$100 million of assets under management; they must switch from SEC oversight to state registration. After July 21, 2011, new investment adviser applicants with less than \$100 million in assets under management are prohibited from registering with the SEC and must register with the appropriate state securities authorities.

On June 22, 2011, the SEC issued final rules implementing the Dodd-Frank Act’s required changes. In order to provide a smooth transition to state registrations, the SEC postponed the switch deadline from July 21, 2011 to March 30, 2012. This extended deadline provides additional time for federally registered investment advisers to determine whether they are still eligible for SEC registration.

Investment advisers registered with the SEC as of July 21, 2011, must remain registered with the SEC until January 1, 2012 (unless an exemption from SEC registration is available). Each investment adviser registered with the SEC on January 1, 2012 must file an amendment to its Form ADV no later than March 30, 2012, which for most advisers will be their annual updating amendment. This amendment must include an update to the assets under management section of Form ADV, regardless of the adviser’s fiscal year end.

Investment advisers with less than \$100 million under management, as reflected on their updated Form ADV, are no longer eligible for SEC registration and must register with the appropriate state(s). However, the final rules did create a new “buffer zone” for mid-sized advisers with assets under management between \$90 million and \$110 million. A mid-sized adviser currently registered with the SEC, can remain registered with the SEC as long as its assets under

management is at least \$90 million. The deadline for state registration and SEC withdrawal is **June 28, 2012**. The final rules are on the SEC website at: <http://www.sec.gov/rules/final/2011/ia-3221.pdf>.

Additionally, the final rules also adopt new definitions and rules for investment advisers to “private funds,” that is, investment funds that are exempt from the definition of an investment company under federal law. These rules can be found at: <http://www.sec.gov/rules/final/2011/ia-3222.pdf>. In general, Washington State requires private fund advisers (including hedge funds, private equity funds, or other privately pooled investment vehicles) to register as an investment adviser in Washington if: (1) the adviser has a place of business in Washington; **or** (2) the adviser doesn’t have a place of business in Washington but has more than 5 investor clients who reside in Washington State.

To ensure the most efficient registration process, DFI recommends that all investment advisers with less than \$100 million under management who are currently notice-filed in Washington initiate the application process with DFI as soon as possible. The registration process will take time and the timeline will depend on when your application for registration is received, how many applications DFI receives, and the complexity of your application. DFI will provide written comments when applications are deficient, which will require a response including possible changes to the application documents or additional information before it can be approved.

Early application submission will help facilitate a smooth transition to state registration. Investment advisers **MUST** maintain their SEC registration until the firm has received notice from DFI that registration has been approved. However, investment advisers with less than \$100 million in assets under management (as reported on the Form ADV filed between January 1st and March 30th 2012) *must* withdraw SEC registration by June 28, 2012.



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

SECURITIES DIVISION

P.O. Box 9033 • Olympia, Washington 98507-9033
Telephone (360) 902-8760 • TDD (360) 664-8126 • FAX (360) 902-0524 • Web Site: www.dfi.wa.gov/sd

INVESTMENT ADVISER 2012 SWITCH TO STATE REGISTRATION

FREQUENTLY ASKED QUESTIONS

- Q1: [As a result of the Dodd-Frank Act, which investment advisers must switch to state registration from SEC oversight?](#)
- Q2: [What does it mean to be a state registered investment adviser?](#)
- Q3: [Who needs to be registered as a state registered investment adviser and/or investment adviser representative?](#)
- Q4: [Will I have to file Form U4 amendments for my investment adviser representatives?](#)
- Q5: [What are the qualification criteria to register as an investment adviser in Washington State?](#)
- Q6: [Are there any exemptions from registration that may apply to an investment adviser *not* located in Washington?](#)
- Q7: [I am a manager of a privately pooled investment; is there additional information I should know?](#)
- Q8: [Should investment advisers begin registering with states now?](#)
- Q9: [What is the registration process timeline?](#)
- Q10: [How do I switch to a Washington-registered investment adviser from a federally covered investment adviser?](#)
- Q11: [What are the Washington requirements for investment adviser registration?](#)
- Q12: [What fees will I have to pay Washington because of the switch?](#)
- Q13: [Will the Department of Financial Institutions make recommendations for any consulting firms?](#)
- Q14: [Where can I get technical assistance about filing through the IARD?](#)
- Q15: [If I have Washington specific questions, who may I call?](#)

Q1: As a result of the Dodd-Frank Act, which investment advisers must switch to state registration from SEC oversight?

A: The U.S. Securities and Exchange Commission (“SEC”) will determine which advisers need to switch from SEC registration to state registration on the following schedule:

Between January 1st and March 30th 2012:

- Every investment adviser, regardless of its fiscal year end date, **must** file an amendment to Form ADV to update the assets under management (“AUM”) section.
- **After** this amendment is filed, the SEC will determine if the adviser is required to withdrawal SEC registration and register with the appropriate state(s).

Before June 28, 2012:

- An investment adviser **may** switch to state registration if the SEC determines that the adviser’s AUM is less than \$100 million as reported on the Form ADV filed between January 1st and March 30th 2012.
- An investment adviser **must** switch to state registration if the SEC determines that the adviser’s AUM is less than **\$90 million** as reported on the Form ADV filed between January 1st and March 30th 2012.

The “Buffer Zone”

- An adviser **must** switch from state registration to SEC registration if the adviser’s AUM (as reported on its Form ADV annual updating amendment) is more than \$110 million.
- An adviser **must** switch from SEC registration to state registration if the adviser’s AUM (as reported on its Form ADV annual updating amendment) is less than \$90 million.

Q2: What does it mean to be a state registered investment adviser?

A: Investment advisers and their representatives who are subject to state registration are required to meet the minimum qualifications standards under Washington Administrative Code (“WAC”) 460-24A-050. In addition, state registered investment advisers will be subject to the state's net capital requirements, books and records requirements, and field examinations. State registered investment advisers are required to submit financial statements, register at least one qualifying principal, and register all investment adviser representatives.

Q3: Who needs to be registered as a state registered investment adviser and/or investment adviser representative?

A: The Securities Act of Washington, RCW 21.20, requires all investment advisers and investment adviser representatives who transact business in this state to be registered in Washington unless a specific exception applies.

Corporate entities are required to: (1) register as investment advisers; (2) register at least one principal as an investment adviser representative; and (3) register all required investment adviser representatives. Investment adviser representatives are all persons associated with the investment adviser who: (a) make any recommendations or otherwise render advice regarding securities; or (b) manage accounts or portfolios of clients; or (c) determine which recommendation or advice regarding securities should be given; or (d) solicit, offer, or negotiate for the sale of or sell investment advisory services; or (e) supervise employees who perform any of the functions under (a) through (d).

Sole proprietors are required to register as investment advisers and register any additional required associated persons as investment adviser representatives.

Q4: Will I have to file Form U4 amendments for my investment adviser representatives?

A: Some investment adviser representatives that may have been exempt from registration with a federally covered adviser may now need to be registered with state securities regulators. This would require the investment adviser representative to file a Form U4. Investment adviser representatives that have a current state registration through the investment adviser firm should not have any impact on their existing and current Form U4 filings as a result of the firm switching to state registration.

Q5: What are the qualification criteria to register as an investment adviser in Washington State?

A: Investment advisers in Washington can be *sole proprietors* or *corporate entities*. Corporate entities must register a principal officer as an investment adviser representative. The sole proprietor or the principal investment adviser representative, under WAC 460-24A-050, must qualify for registration by *examination* or current and active *professional designation*. Qualification by examination requires a passing score on the Series 65 examination or Series 7 & Series 66 examinations. Qualification by current and active professional designation includes the professional designations: CFP, ChFC, PFS, CFA, or CIC.

If you are currently registered with the SEC and you do not qualify for registration in Washington by examination or professional designation please contact us as soon as possible. In order to register as an investment adviser you must comply with WAC 460-24A-050.

Q6: Are there any exemptions from registration that may apply to an investment adviser not located in Washington?

A: Yes. The provisions under Revised Code of Washington (“RCW”) 21.20.040 (*Registration and notification required – Exemptions*) exempts an investment adviser and

its investment adviser representatives if the investment adviser (1) does not have a place of business located within this state **and** (2) during the preceding 12-month period, has had fewer than six clients who reside in Washington State. Please note that this provision does not apply if the investment adviser has even one “*place of business*” in Washington State.

Q7: I am a manager of a privately pooled investment; is there additional information I should know?

A: Yes. In general, Washington State requires private fund advisers (including hedge funds, private equity funds, or other privately pooled investment vehicles) to register as an investment adviser in Washington if: (1) the adviser has a place of business in Washington; ***or*** (2) the adviser doesn't have a place of business in Washington but has more than 5 investor clients who reside in Washington State. Registering as an investment adviser of a privately pooled investment may take longer than the average investment adviser registration. Therefore, we recommend that investment advisers with pooled investments begin the registration process as soon as possible. Please contact us if you have any questions.

Q8: Should investment advisers begin registering with states now?

A: Investment advisers **can** begin applying now and **should** initiate registration with the states as soon as possible. Early application submission will help facilitate a smooth transition to state registration. Washington State does not charge an additional filing fee for switching from SEC to state registration. Investment advisers **MUST** maintain their SEC registration until the firm has received notice from DFI that registration has been approved.

Do not terminate your SEC registration until you finalize your state registration.

Q9: What is the registration process timeline?

A: The timeline will depend on when your application for registration is received, how many applications DFI receives, and the complexity of your registration. The registration process cannot begin until DFI receives all of the required documents. Once your entire application has been received, it will be assigned to a reviewer who will notify you that your application was assigned to them. This will be your contact person and they will update you throughout the review process. We will be making comments on your application that will require a response and possibly changes to your documents before we will approve your registration.

Q10: How do I switch to a Washington-registered investment adviser from a federally covered investment adviser?

A: To initiate state registration, go to the Investment Adviser Registration Depository (“IARD”) system and amend **Form ADV Part 1B** to request "Washington" registration and import into the IARD System an amended copy of your **Form ADV Part 2** (include Item 19: Requirements for State Registered Advisers), **Form ADV Part 2B**, and any brochure(s) or disclosure document(s) delivered to clients. Detailed instructions can be found on the IARD User’s Manual (Chapter 5; Page 5-29) available at http://www.iard.com/firm_users_man.asp.

Investment advisers **MUST** maintain their SEC registration until the firm has received notice from DFI that registration has been approved.

Q11: What are the Washington requirements for investment adviser registration?

A: They include submission of:

- Form ADV (Part 1A, Part 1B, Part 2A, and Part 2B);
- Form U4 for each investment adviser representative;
- Form BR (listing at least every office in Washington State);
- All proposed client contracts;
- A list of all associated persons who transact business within Washington State or with clients who reside in Washington State; and
- A balance sheet dated within ninety (90) days.

For easy reference to the specific requirements, please continue to check the State-Registered Investment Adviser Registration and Renewal Website located at: <http://dfi.wa.gov/sd/iachecksheet.htm>. More information may be required depending on the circumstances.

Form ADV, Form U4, and Form BR submissions should be made on or uploaded to IARD. Proposed client contracts, the list of associated persons, and the signed and dated balance sheet should be emailed to IALicensing@dfi.wa.gov.

Do not terminate your SEC registration until you finalize your state registration.

Q12: What fees will I have to pay Washington because of the switch?

A: The fee schedule does not change. You will not need to pay an additional fee to switch from SEC to state registration. The annual renewal fees will stay the same: \$75.00 for the investment adviser and \$20.00 for each associated person. Please note that in the future FINRA may charge an additional system processing fee. We do not have any control over the processing fee amount. Fees will be paid out of the firm’s IARD daily account.

Q13: Will the Department of Financial Institutions make recommendations for any consulting firms?

A: No. As a governmental agency, DFI is precluded from making any recommendations endorsing particular consulting firms or attorneys.

Q14: Where can I get technical assistance about filing through the IARD?

A: For technical questions about IARD, please call the Gateway Call Center at: (240) 386-4848.

Q15: If I have Washington specific questions, who may I call?

A: If you have questions about the switch from SEC to state registration, you may email the licensing department at IALicensing@dfi.wa.gov.

If you have questions about the application filing procedures please:
call Victoria Kennedy at (360) 902-8815 or email Victoria.Kennedy@dfi.wa.gov.

If you have questions about pooled investment vehicles please:
call Elizabeth Smith at (360) 902-8786 or email Elizabeth.Smith@dfi.wa.gov.

For all other licensing questions (including general questions about the switch) please:
call Lyna Vo at (360) 725-7807 or email Lyna.Vo@dfi.wa.gov.