

**Commonwealth of Pennsylvania
Department of Banking and Securities
Bureau of Securities Compliance and
Examinations**

**Investment Adviser
Self-Inspection Checklist**

October 2023

Investment Adviser Self-Inspection Checklist

Registration

Is the investment adviser registered correctly in the IARD System?

70 P.S. §1-301 and 10 P.A. Code § 303.012

Are all of the firm's investment adviser representatives registered correctly in IARD System?

70 P.S. §1-301 and 10 P.A. Code §303.014

If brokerage commissions are received for client securities transactions, are the agents properly registered?

70 P.S. § 1-301 and 10 P.A. Code § 303.013

If the investment adviser issues securities, are those securities properly registered or exempt?

70 P.S. §1-102, §1-201, §1-202, and §1-203 and related regulations

Disclosure Form ADV

Are both the Form ADV Parts 1 & 2 current and updated?

10 P.A. Code § 303.012

- Updated “promptly” is defined as within 30 days _____
10 PA Code § 303.012(i)
- Annual update within 90 days of the fiscal year _____
10 P.A. Code § 303.012 and ADV Instructions

Does the investment adviser provide new and prospective clients with the ADV Part 2?

10 P.A. §§ Code 303.012 and 404.011(c)

Is the ADV Part 2 provided at least 48 hours prior to entering into the advisory contract, or at the time of entering the contract? The latter requires the adviser to disclose to clients that they may terminate the contract without penalty within 5 business days?

10 P.A. Code § 404.011(d)(1) and (2)

Does the adviser maintain a record of the date the Form ADV Part 2 was given to each client?

10 P.A. Code §§ 404.011 and 304.012(a)(14)

Does the adviser make an annual offer to give clients a copy of the Form ADV Part 2?

10 P.A. Code §§ 404.011(e) and 304.012(a)(14)

Does the adviser maintain a record of the date that the annual offer of Form ADV Part 2 was made to each client?

10 P.A. Code §§ 404.011 and 304.012(a)(14)

Advisory Agreement

Does the written advisory agreement contain provisions to allow for the following:
70 P.S. § 1-304; 10 PA Code §§ 303.042, 305.019, and 404.011

- A description of the services to be provided by the adviser?
- A description of the terms of the contract?
- The amount of the fee or schedule and any formula used to compute fees?
- Are the fees, as stated in all client agreements, consistent with the actual fee currently being charged to those clients?
- If fees for portfolio management are greater than 3% for non-wrap accounts, is disclosure provided in the agreement and the ADV Part 2 to inform clients that those fees may be higher than the industry standard and that similar services may be available for a lower fee?
- The amount of any prepaid fee to be returned to the customer in the event of termination or nonperformance? The agreement should state whether fees are charged in advance or arrears.
- That no assignment of the contract may be made by the adviser without the customer's consent?
- States whether the contract grants discretionary authority to the adviser if investment supervisory services are provided?

Provides that the adviser shall not be compensated on the basis of a share of the capital gains or appreciation of any portion of clients' funds if investment supervisory services are provided?

70 P.S. §1-304(e) and §1-405(1)

Does the advisor maintain copies of all advisory agreements with the customers?
10 P.A. Code § 304.012(a)(10)

When the ADV Part 2 is delivered to clients when they sign the advisory agreement, does the agreement include a provision that clients may have five days to terminate the agreement without penalty?

10 P.A. Code § 404.011(d)(1) and (2)

Supervision

Every broker-dealer and investment adviser registered under section 301 of the act (70 P.S. § 1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives.

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70 P.S. § 1-304 and § 1-305(a)(vii); 10 PA Code § 305.011(a)

Has the adviser designated a person to supervise the activities of the Investment adviser representatives?

70 P.S. § 1-305(a)(vii) and 10 PA Code § 305.011(c)(1)

Do the written supervisory procedures cover the following areas?

- The review and written approval by the designated supervisor of the opening of each new client account?

10 P.A. Code § 305.011(a)(1) and (c)(4)

- The frequent examination of client accounts to detect and prevent irregularities or abuses?

10 P.A. Code § 305.011(a)(1) and (c)(5)

- The prompt review and written approval by a designated supervisor of all advisory transactions by the investment adviser representatives?

10 P.A. Code § 305.011(a)(1) and (c)(7)

- The prompt review and written approval by a designated supervisor of correspondence pertaining to solicitation or execution of all advisory transactions by investment adviser representatives?

10 P.A. Code § 305.011(a)(1) and (c)(7)

- The prompt review and written approval of the handling of all client complaints?

10 P.A. Code § 305.011(a)(1) and (c)(6)

- Does the adviser maintain a policies and procedures manual that includes the firm's code of ethics, privacy policy, computer security procedures including back-up and cloud storage policies, and policies covering the use of social media?

10 PA Code §§ 304.012(a)(19) and 305.011(a)(1) and (d)

Record-Keeping Requirements

Business Formation Records

Does the adviser maintain, on-site, a record of partnership articles, articles of incorporation, bylaws, charter, minute books, and stock certificate books maintained at Registrant's principal office?

10 P.A. Code § 304.012(f)(2)

Financial Records

Does the adviser maintain a complete accounting system that contains or provides the following?:

70 P.S. 1-304(b) and 10 P.A. Code § 304.012

- Complete financial statements (balance sheet and income statement) along with the related trial balances and internal audit papers?
- A general ledger reflecting all asset, liability, capital, income, and expense accounts?
- Journals or other records of original entry such as cash receipts and expense journals?
- Checkbooks, deposit tickets, bank statements, canceled checks, and bank reconciliations?
- All paid and unpaid bills or statements?

Regulatory Correspondence

10 P.A. Code § 304.012(a)(20)

Does the adviser maintain a file for all correspondence with any state or federal Agency pertaining to the firm and its representatives?

General Advertising

10 P.A. Code §§ 404.010 and 304.012(a)(11)

Does the adviser maintain copies of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication circulated to two or more persons not associated with the adviser?

If an advertisement or other communication recommends a specific security transaction, is there a memorandum explaining the recommendations or are the reasons included in the communication?

If a communication cites a performance claim, does the adviser maintain a file with all accounts, books, and internal working papers demonstrating the calculation of the performance claim?

Does the advertisement appear to be free from any testimonials or misleading or deceptive statements?

Does the adviser's stationary and business cards properly identify the entity as the investment adviser and the agent as the I.A. representative?

Complaints and Litigation

10 P.A. Code § 304.012(a)(17)

Does the adviser maintain copies of all customer complaints and written Communications received or sent regarding any litigation involving the firm, its representatives or employees?

Securities Transactions by the Firm, its Representatives or other Principals

10 P.A. Code § 304.012(a)(12)

Does the adviser maintain a record of the personal securities transactions of all the firm's investment adviser representatives, as well as the firm's proprietary trading account?

Does the adviser maintain a record of the personal securities transactions of principals of the adviser, even if those persons do not provide investment advice?

Written Agreements

10 P.A. Code § 304.012(a)(10)

Does the adviser maintain copies of all agreements related to the investment adviser's business?

Solicitor Agreements

10 P.A. Code §§ 304.012(a)(15), 404.011, and 404.012

For each client that was obtained by means of a solicitor for a fee, does the adviser maintain the following:

- A written agreement between the solicitor and the other adviser describing the solicitation activities to be engaged in on behalf of the other adviser?
- A signed and dated acknowledgment from the client evidencing that they received copies of the adviser's ADV Part 2A disclosure statement, as well as a solicitor's disclosure document?
- A copy of the solicitor's ADV Part 2A disclosure statement?

If the adviser acts as a solicitor, is there a written agreement between the solicitor and the other investment adviser?

Do the agreement and the additional ADV Part 2 disclosure contain all of the Requirements?

Suitability Information

10 P.A. Code §§ 304.012(a)(18) and 305.019(c)(3)

Does the adviser prepare and maintain written information that forms the basis for the investment adviser's recommendations or investment advice for each client?
(The Bureau prefers an investment policy statement or similar profile that clearly portrays the adviser's understanding of each client's goals, objectives, and tolerance for investment risks).

Data points of each client that should be collected:

- A. Birth Year
- B. Annual Income
Occupation/employment status
- C. Net worth/excluding the value of the client's primary residence
- D. Risk tolerance
- E. Investment objective

Discretionary Authority or Power of Attorney

10 P.A. Code §§ 304.012 and 304.042(a)(4)(ii)

Does the adviser maintain a list of the clients for which it has discretionary authority to effect securities transactions?

Does the adviser maintain copies of all powers of attorney and other discretionary powers held by the adviser over client accounts?

Is the adviser's actual use of a discretionary authority or power of attorney consistent with the documents granting such authority?

Client Correspondence

10 PA Code § 304.012(a)(7)

Does the adviser maintain original copies of correspondence received or sent by the firm or its representatives related to; recommendations or advice, receipt, or delivery of funds or securities, and placing any securities orders?

Order Memoranda

10 PA Code § 304.012(a)(3)

Does the adviser prepare a memorandum of each brokerage order given by the firm for the purchase or sale of securities? (*Required whether or not the order was executed*).

Does the memorandum include the following:

- Terms and conditions?
- Individuals who placed the order?
- Individual who recommended the transaction?
- Account for which entered?
- Date of entry?
- Bank, broker, or dealer who executed order?
- Discretionary authority exercised?

Portfolio Management Records

10 P.A. Code § 304.012(d)(1)(2)

To the extent that the information is reasonably available, does the adviser maintain a securities cross-reference listing showing separately:

- For each client, the date, amount, and price of each security purchased or sold?
(History of client transactions)
- For each security in which any client has a current position, the name and current amount or interest of each client? (Current positions)

Records Retention

70 P.S. § 1-304; 10 P.A. Code § 304.012(e)(f)(1)

Are the investment adviser's records retained for a period of five years, the first two years located at the Registrant's office (or easily accessible location)?

If the adviser maintains books and records on film, an imaging system or on a computer, do the archive procedures satisfy the requirements of the rule?

Business Continuity and Succession Plan

10 P.A. Code § 304.071

If the adviser has a Business Continuity and Succession Plan (Plan), does the Plan provide for:

- Protection, back-up, and recovery of books and records?
- Alternative means of communication, notice to customers, key personnel, employees, vendors, regulators, and service providers?
- Office relocation if a temporary or permanent loss of the principal place of business occurs?
- Assignment of duties to a qualified, responsible person if death or unavailability of key personnel occurs?
- Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

Privacy

Does the adviser have a privacy disclosure policy that satisfies the terms of Gramm-Leach-Bliley Act under 16 C.F.R. 313 or S.E.C. 17 C.F.R. 248?

- Has the adviser provided its clients a copy of its privacy disclosure document on a timely basis?
- Does the adviser provide its clients a copy of its privacy disclosure document at least annually?

Custody – Exception due solely to the withdrawal of fees through the custodian

10 P.A. Code § 303.042(a)(3)(i)

An investment adviser is not required to obtain independent verification of client Funds and securities maintained by a qualified custodian if all of the following are met:

- The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee.
- The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian.
- Each time a fee is directly deducted from a client account, the investment adviser concurrently:
 1. Sends the qualified custodian an invoice or statement of the amount of the fee to be deducted from the client's account; and
 2. Sends the client an invoice or statement 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.The invoice will notify the client that the custodian will not be checking the accuracy of the fees, and this responsibility is the clients.

The investment adviser notifies the Bureau in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

Check Item 9.A. on Form ADV Part 1A as “No” if the only reason the investment advisers have custody is because they engage in direct fee deduction. Although complete Item 2.1 of Form ADV Part 1B.

Custody – Standing Letters of Authorization – “SLOA”

See Bureau Position on Custody Requirements for Investment Advisers with Standing Letters of Authorization Arrangements Established by Client and Qualified Custodian dated June 17, 2019

[SLOA Bureau Position.pdf \(pa.gov\)](#)

Performance-Based Fees

70 P.S. § 1-405

If the adviser provides his services based on a share of the capital gains or capital appreciation of any portion of a client’s funds does the adviser’s agreement with the client meet the following conditions?

Is the client that’s entering into a contract:

- A natural person or company with \$1,100,000 under management with the adviser immediately after entering into the contract?
- Or a natural person or company whose net worth at the time of entering the contract exceeds \$2,200,000?

Disclosure: In addition to the disclosure requirements of Form ADV, before entering into a performance fee-based contract, does the adviser disclose:

- That the fee arrangement may create an incentive for the adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee?
- Where relevant, that the adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client’s account?
- The time-period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee?
- The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the adviser believes the index is appropriate?

Does it appear that the contract represents an arms-length agreement between the parties, and that the client alone or together with the client's independent agent understands the proposed method of compensation and its risks?

Hedge funds / Pooled Investment Vehicles

Is the fund properly registered or exempt from registration?

What exemption is claimed? _____

Did the offer and sale of the offering comply with the requirements of the exemption claimed?

If the offering involved federally covered security and was made in reliance upon Regulation D 506(b) or Regulation D 506(c), did the fund or pooled investment vehicle make a notice filing on Form D to the Bureau no later than 15 days after the first sale in Pennsylvania?

Were all sales of the offerings sold only by registered broker-dealer agents if so required?

Do all of the investors meet the minimum investor qualifications as stated in the private placement memorandum or ADV?

Is the investment strategy and risk-appropriate for all of the non-accredited investors?

Has the adviser provided each investor provided with Form ADV Part 2 or made the proper disclosures in the P.P.M.?

If the adviser charges performance-based fees, do all investors qualify and have the proper disclosures been made to these investors?

Does the general partner comply with the Bureau's custody procedures?

Ongoing Financial Reporting Requirements

10 P.A. Code § 304.022

Custody

Does the adviser with custody of client funds or securities file an audited balance sheet with the Department within 120 days of the adviser's fiscal year-end?

Surprise examination.

10 P.A. Code § 404.014

Discretion

Does the adviser with the discretionary authority over client funds or securities file with the Department a balance sheet prepared in accordance with GAAP but not required to be audited with 120 days of the adviser's fiscal year-end?

NOTE: Annual balance sheets will need to be filed via the DOBS Portal.

- The Portal can be accessed at <https://www.portal.dobs.pa.gov/>
- The Portal User External Guide can be found [here](#).
- The Accounting FAQs can be found [here](#).

Contact Us:

Questions can be directed to: RA-BNSECURITIESREG1@pa.gov