

## **South Carolina Securities Division Notice Regarding Investment Adviser Switch to State Registration**

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) increases states’ authority in the area of investment adviser regulation by raising the threshold from \$25 million to \$100 million assets under management (“AUM”). Generally speaking, this affects those investment advisers registered with the Securities and Exchange Commission (“SEC”) with less than \$100 million in AUM, and they must switch to state registration from SEC oversight. On June 22, 2011, the SEC issued final rules implementing the Dodd-Frank Act’s required changes, including postponing the switch deadline from July 21, 2011, to March 30, 2012. A complete copy of the rules was published in the Federal Register at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-19/pdf/2011-16318.pdf>.

This extended deadline provides additional time for investment advisers to determine whether they are still eligible for SEC registration. Investment advisers registered with the SEC as of July 21, 2011, should remain registered with the SEC until January 1, 2012 (unless an exemption from SEC registration is available). Investment advisers no longer eligible for SEC registration have until June 28, 2012, to register with the appropriate state regulator(s) and to withdraw their SEC registration.

The South Carolina Securities Division encourages all federally covered investment advisers with less than \$100 million under management who are currently Notice Filed in South Carolina to initiate registration in South Carolina as soon as possible. This will allow the investment adviser to continue providing investment advisory services under the authority of the SEC while South Carolina reviews the investment adviser’s application for registration.

Below is a list of frequently asked questions. These are updated as new information is received, so please check this site periodically.

### **Frequently Asked Questions**

#### **Q: 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 the South Carolina Uniform Securities Act (the “Act”) and the regulations issued pursuant thereto. State registered investment advisers will be subject to the state's minimum capital and bonding requirements ([Regulation 13-406](#)), books and records requirements ([Regulation 13-408](#)), and field examinations ([Examination Program Overview](#)). Certain practices that may be considered dishonest or unethical are included in [Regulation 13-502](#).

**Q: When should existing federal covered advisers who are required to switch to state registration begin registering with states?**

A: Investment advisers currently registered with the SEC should initiate registration with the states as soon as possible. The South Carolina Securities Division allows investment advisers to be dually registered with the State of South Carolina and the SEC during the switching process to state regulation from SEC oversight. Early application will help facilitate a smooth transition to state registration.

**Q: Is the AUM of \$100 million firm or is there a choice at some level?**

A. The SEC has imposed by rule a “buffer” similar to that currently in place for advisers with \$25 million to \$30 million in assets under management. The new buffer is for Investment Advisers with AUM between \$90 million and \$110 million. An adviser may register with the SEC once it reaches AUM of \$100 million. An adviser must register with the SEC if its AUM is \$110 million or more. Once registered with the SEC, a mid-sized adviser can remain registered with the SEC as long as its AUM is at least \$90 million. This means that a mid-sized adviser currently registered with the SEC may remain registered with the SEC if the adviser’s AUM is at least \$90 million.

**Q: What are the South Carolina requirements for Investment Adviser registration?**

A: They include submission of the Form ADV Part 1 and Part 2 and Form U-4 for at least one associated person (if required). In addition to the electronic filings on the IARD system, please file the following documents in paper form with the Securities Division:

1. A copy of the investment adviser’s standard contract(s), which comply with Regulation 13-502 A (16).
2. [Surety Bond](#), if required.
3. A balance sheet and income statement for the firm dated within 45 days of the submission, attested to by executing and filing the [Verification Form](#).
4. Other information, as requested by the Securities Division.

Investment advisers should maintain their SEC registration until the firm has received notice from the South Carolina Securities Division that registration has been approved.

**Q: What if I am switching my registration to multiple states?**

A: The Investment Adviser Coordinated Review Program administered by the North American Securities Administrators Association (“NASAA”) provides a structure for SEC registered investment advisers switching their registration to four or more states to request a coordinated review of its registration materials by those states. Further information about the program can be found on the [NASAA IA Switch Resource Center](#)

**Q. Have there been common deficiencies that the Securities Division has noted when reviewing the Form ADV Part 2 forms filed with the office?**

**A:** Please read the instructions, and fully respond to each item, including Item 19, Requirements for State Registered Advisers. Also, we have noted inconsistencies between the responses to Part 1 and Part 2A, particularly in the types of advisory services the firm offers.

Item 8.B of Part 2A requires that an investment adviser explain the material risks for each significant investment strategy or method of analysis the adviser uses. An adviser using multiple strategies or methods of analysis may satisfy the requirements of Item 8.B by summarizing the strategies and methods and their material risks and referring clients and prospective clients to a separate disclosure document that the client has or will receive that sets out a more detailed explanation of the material risks of investment strategies or methods of analysis that are or will be used to manage the client's account.

**Q: Where can I find the new Part 2 with the instructions?**

**A:** The North American Securities Administrators Association ("NASAA") has updated the Investment Adviser and Forms sections of the NASAA website to include the new [Form ADV Part 2 and instructions](#).

**Q. What fees will I have to pay South Carolina because of the switch?**

**A:** In South Carolina, each investment adviser is subject to the following fees:

- \$210.00 for the firm application; fees will be paid out of the firm's IARD account
- \$55.00 for each investment adviser representative; fees will be paid out of the firm's IARD account.

**Q: Will I have to file Form U-4 amendments for my investment adviser representatives?**

**A:** Investment adviser representatives who have a current state registration through the investment adviser firm should not have any impact on their existing Form U-4 filings as a result of the firm switching to state registration.

Some investment adviser representatives who may have been exempt from registration with a federal covered adviser will now need to be registered with the South Carolina Securities Division. To qualify for registration, the South Carolina Securities Division requires, among other things, a passing score on the Series 65 or both the Series 7 and 66. Certain [professional certifications](#) may also be accepted in lieu of the exams.

**Q: Does South Carolina have a *de minimis* rule that may apply to an investment adviser not located in South Carolina that has a limited number of clients and less than \$100 million of AUM?**

**A:** Yes. The provisions under Section 35-1-403 (b) (2) of the Act exempt an investment adviser and its investment adviser representatives if the investment

adviser does not have a place of business located within this state and, during the preceding 12-month period, has had not more than five clients who are South Carolina residents.

**Q: Does South Carolina have a *de minimis* rule that may apply to an investment adviser located in South Carolina that has a limited number of clients and less than \$100 million of AUM?**

A: No. If the investment adviser has a place of business in South Carolina, the *de minimis* rule does not apply. An investment adviser firm with a physical location in South Carolina must register the firm and all representatives located in South Carolina.

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

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

**Q: If I have South Carolina-specific questions about the Investment Adviser Switch, how may I contact you?**

A: You may email your switch questions to Lisa Lomas at [agllomas@scag.gov](mailto:agllomas@scag.gov), or call the Securities Division registration staff at (803) 734-9916. Additional resources are available at the [NASAA IA Switch Resource Center](#).