



IMPORTANT NOTICE

AVOIDING COMMON DEFICIENCIES FOUND IN INVESTMENT ADVISER APPLICATIONS

As a part of the licensing process, the Office of Securities examination staff reviews a firm's ADV and investment advisory agreements checking both for compliance with Maine law and for inconsistencies between the documents. Avoiding common deficiencies when preparing Form ADV Parts 1 and 2 and investment advisory agreements will help speed up the review of your application.

The most common errors found in an application are related to inconsistencies between Part 1, the "plain language" narrative Part 2, and the investment advisory agreement/contract. Investment advisers with questions regarding the licensing process are encouraged to contact one of our examination staff.

FORM ADV, PARTS 1 AND 2

To avoid the most common deficiencies, please follow these guidelines:

- The **type of compensation** listed on Item 5.E of Part 1 must match Item 5 of Part 2
- The **advisory activities** marked in Item 5.G of Part 1 must match the services described in Item 4 of Part 2.A.
- If you list **other business activities** in Item 6 of Part 1, discuss the other business in Item 10 of Part 2 as applicable.
- **Discretionary authority** marked in Item 8.C of Part 1 must match the discretionary authority described in Item 16 of Part 2. Additionally, the Part 2 must discuss the restrictions or limitations imposed by your clients.
- In Part 2, do not state that you are "registered with the U.S. Securities and Exchange Commission" or "registered under the Investment Advisors Act of 1940." Your firm's ADV Part 2 should reference the applicable **Maine statutes and regulations**.
- Update references in the investment advisory agreement from the "ADV Part II" to the "ADV Part 2."

INVESTMENT ADVISORY AGREEMENTS

In addition, the examiners review and comment on the applicant's investment advisory agreement(s). The following items should be discussed in the agreement and should be consistent with the information found in Form ADV Parts 1 and 2:

- A description of services to be rendered by the adviser
- Term of contract
- The fee schedule (including formula for computing the fee) and whether fees are negotiable
- Whether fees are charged in advance or in arrears
- How often fees are paid
- Whether fees are withdrawn from the client's account
- The firm's termination policy and refund policy (if applicable)
- Discretionary authority
- Non-assignment clause

- The fee schedule in the agreement must match the fee schedule discussed in the Form ADV Part 2. In addition, the type of compensation described in the contract must match what was described in Item 5 of Part 2 and the form of compensation marked in Item 5.E of Part 1.
- Also, nothing in the contract can cause the client to waive any right that the client has under law.

| Topic | ADV 1 Item | ADV 2A Item | ADV 2B Item |
|---|-------------------|--|--------------------|
| Employees as registered reps | 5B(2) | 10A | 4A |
| Employees are insurance agents | 5B(5) | 10C | 4B |
| Use of solicitors | 5B(6), 8H | 14B | |
| Types of clients | 5D | 7 | |
| Compensation | 5E | 5A 5E 10D 14 | 4A, 4B |
| Performance fees | 5E | 6, 19C | |
| Assets under management | 5F | 4 (do not have to match, but must be w/in 90 days) | |
| Services provided | 5G | 4 | |
| Wrap program | 5I | 4D, if so, Appendix 1 is required | |
| Advise on limited security types | 5J | 4B | |
| Other financial business | 6A | 5E, 10A,10B, 10C | |
| Other business or services | 6B | 19B | |
| Financial industry affiliations | 5B, 7A | 10A, B, and/or C, 19E | |
| Private fund adviser Please submit: LPA, PPM, and Sub Docs | 7B | 4, 5, 10C | |
| Your interest in client trades | 8A | 11B, 11C, 11D | |
| Sales interest in client trades | 8B, 5B, 7B | 11B | |
| Discretion | 8C | 4, 16, 18B | |
| Related brokers | 8D, 8F | 10A, 10C | |
| Recommend brokers | 8E | 12A | |
| Soft dollars | 8F, 8G | 12A | |
| Receive pay for referrals | 8I | 10D, 14A | 5 |
| Custody | 9 | 15, 18B | |
| Disciplinary disclosures | 11 | 9, 19D | 3, 7 |
| Direct Owners | Schedule A | 4, 19A | |