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Advanced Personal Financial Planning

Implementing PFP: Regulatory & Compliance

Saturday, June 8, 2019

MGM Grand, Las Vegas, NV

#AICPAENGAGE #AICPApfp

Ellen M. Bruno, CPA/PFS, CGMA

Ellen M. Bruno is the President of Compliance Advisor Professionals, LLC. She has worked in the securities industry for over thirty years. In addition to her certifications, she is a specialist in investment advisor compliance and registration issues.

She is responsible for the strategic direction of Compliance Advisor Professionals including client service, marketing and business development.



Ellen M. Bruno, CPA/PFS, CGMA

Prior to founding CAP, Ellen was Chief Compliance Officer for a registered investment adviser and a broker/dealer; the Secretary/Treasurer of an investment company trust; and developed an internal compliance consulting program for a large financial services firm. Ellen began her career at Price Waterhouse where she gained experience with compliance issues, and investment adviser registration, and regulatory requirements. One of her greatest strengths is her knowledge of the industry from various perspectives. Ellen uses this knowledge to work with clients to develop pragmatic solutions that fit within the framework of regulations and business operations.



Overview

- **Providing Investment Advice- Legal Basics**
- Professional Standards
- RIA Registration
- Investment Advisory Business Models
- Regulatory Oversight
- Compliance Programs



Providing Investment Advice- Legal Basics

- Definition of Investment Advisor/Release IA – 1092
- Accountant's Exclusion
- Exemptions from IA Registration



Providing Investment Advice- Legal Basics

Definition of Investment Advisor/Release IA – 1092

An Investment Advisor is:

- a person or entity which,
- for compensation,
- is engaged in the ***business of providing advice, or issuing reports, or analysis on securities***



Providing Investment Advice- Legal Basics

If you:

- Recommend asset allocation
- Provide advice as to the selection or retention of an advisor
- Provide advice concerning securities; not necessarily related to specific securities
- Advise employee benefit plans on investing in securities



Providing Investment Advice- Legal Basics

Then...

- You may be providing Investment Advice

And...

- May be subject to State, FINRA and/or SEC regulation



Providing Investment Advice- Legal Basics

Excluding:

- ***Certain*** Lawyers, ***Accountants***, Engineers, and Teachers
- Certain Broker-Dealers and Registered Reps and Others
- Banks
- Bona Fide Publishers



Providing Investment Advice- Legal Basics

Accountant's Exclusion:

- Advice solely incidental to their professional practices are excluded

Factors:

- Fee structures
- Holding out to public
- Advice in connection with accounting services



Providing Investment Advice- Legal Basics- Ann

- Provides financial planning, in segments. i.e retirement, college savings, etc.
- For compensation
- Website “...accounting and financial planning”
- Holding out
- In the business
- Not solely incidental
- May need to register



Providing Investment Advice- Legal Basics- Bill

- Advises
 - Asset allocations
 - Tailored advice
- Separate Compensation
- Letterhead “CPA-PFS”
- Holding out
- In the business
- Not solely incidental
- May need to register



Providing Investment Advice- Legal Basics- Cathy

- Presents Morningstar Reports
 - Re: Mutual Funds and ETFs
 - Objectives, risk levels
- Charges quarterly fee
- Publishes newsletter
 - To clients and prospects



Providing Investment Advice- Legal Basics- Cathy

(continued)

- For compensation
- Holding out
- In the business
- Not solely incidental
- May need to register



Providing Investment Advice- Legal Basics- Fred

- Sign
 - Accounting, Tax and Insurance
- Time to time advice re: LPs
- Fee for service
- For compensation
- Holding out
- In the business
- Not solely incidental
- May need to register



Overview

- Providing Investment Advice – Legal Basics
- **Professional Standards**
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Professional Standards

Pathway to Standards



Professional Standards

- Foundation of Professional Standards: The Statement on Standards in PFP Services (SSPFPS)
- Build on the AICPA's Code of Professional Conduct
 - Professional responsibilities
 - Serving the public interest
 - Integrity
 - Objectivity and independence
 - Due care



Professional Standards

(continued)

- Overview of the requirements
 - General professional responsibilities and specific responsibilities for PFP engagements
 - Planning the engagement
 - Obtaining and analyzing information
 - Developing and communicating recommendations
 - Implementation, monitoring and updating engagements
 - Working with and using the advice of other service providers



Professional Standards

Why You Should Care

- Protect your clients' interests
- Protect you and your firm
- Access a framework for delivering PFP services consistently and competently
- Understand the parameters of your professional responsibilities in PFP
- Elevate your PFP practice



Professional Standards

Resources & Where to Find More Information

- Standards in PFP Services: Compliance Toolkit*
 - Sample Checklists
 - Sample Engagement Letter Templates
 - Whitepaper
 - Frequently Asked Questions
- Visit aicpa.org/pfp/standards to access the standards, toolkit and other resources, including *The CPA's Guide to Investment Advisory Business Models*
- Visit financialplanning@aicpa.org and direct inquiries to the PFP Division Staff

*Available as part of PFP/PFS membership; available for purchase to non-PFP/PFS members



Overview

- Providing Investment Advice – Legal Basics
- Professional Standards
- **RIA Registration**
- Investment Advisory Business Models
- Regulatory Oversight
- Compliance Programs



RIA Registration

- Form ADV Part I
- Registration/Application
- “Check the Box”



RIA Registration

Form ADV Part I

- Updated Annually
- Public Disclosure

www.adviserinfo.sec.gov



RIA Registration

Form ADV Parts 2A and 2B

- Primary Disclosure Documents
- Plain English



RIA Registration

Form ADV Parts 2A and 2B

Part 2A – “The Brochure” – The Firm

- The Firm
- 19 Separate Sections
 - Disciplinary Disclosure



RIA Registration

Form ADV Parts 2A and 2B

Part 2B – “The Brochure Supplement” – The Individual

- Supervised Persons
- Disciplinary Disclosure



RIA Registration

Form ADV Parts I and 2

Important Dates

- **FILE** - Form ADV I and 2 Annual Amendment
 - Within 90 days after fiscal year end
- **DELIVER** - Form ADV 2
 - Initial
 - Within 120 days after fiscal year end
 - Interim

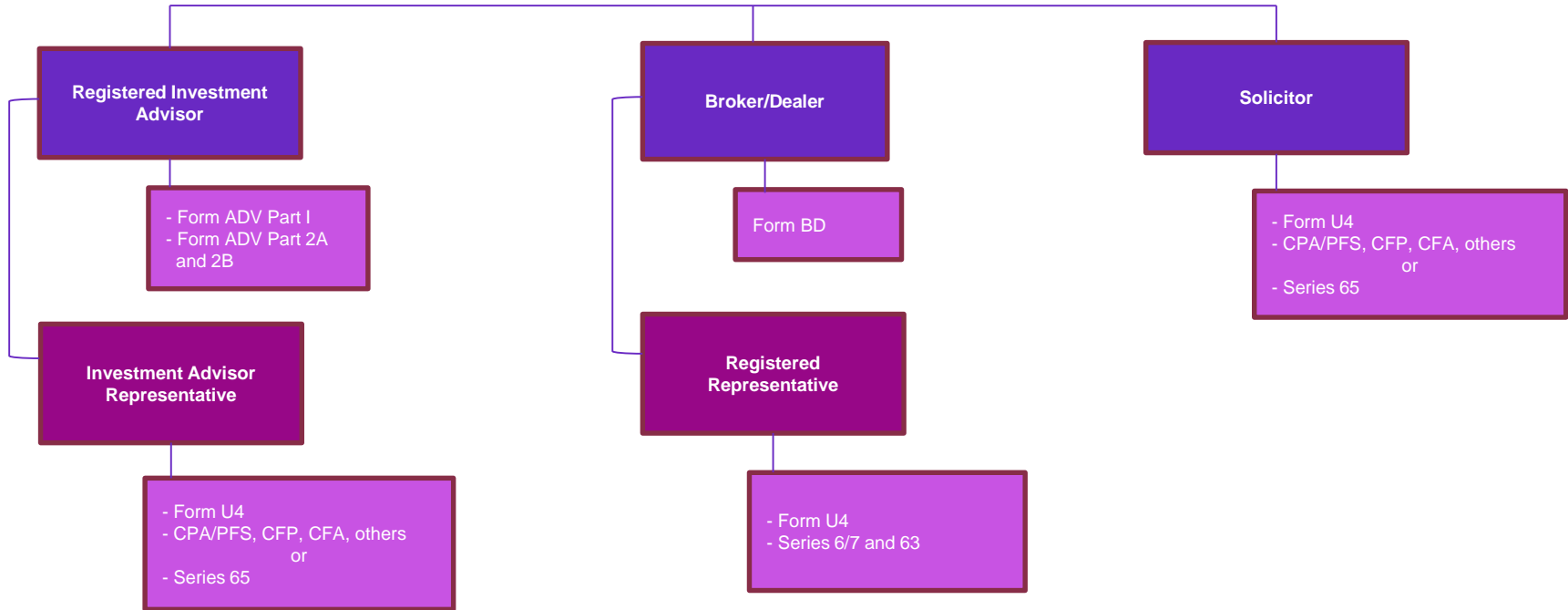


Overview

- Providing Investment Advice – Legal Basics
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- **Investment Advisory Business Models**
- Regulatory Oversight
- Compliance Programs



Investment Advisory Business Models



Investment Advisory Business Models

Registered Investment Advisor (RIA)

- Establish and register (Form ADV Parts I and 2)
- Services provided:
 - Develop financial plans
 - Manage client portfolios
 - Independently
 - TAMP
 - Maintain “back office”
 - Work directly with a custodian



Investment Advisory Business Models

(continued)

Registered Investment Advisor (RIA)

- Fee only (no commissions)
- PFS, Series 65 or CFP
- Fiduciary duty



Investment Advisory Business Models

Notice vs. Registration

- SEC RIA (> \$100M AUM)
 - Notice to States (Fees)
- State RIA (< \$100M AUM)
 - Register in each state (Fees PLUS Registration)
- General Rules
 - Over 6 Clients
 - Some exceptions
 - Check with States



Investment Advisory Business Models

Differences in State Regulation

- Each State has its own twist
- Specific Differences are:
 - Net capital or bonding
 - Financial statements
 - Solicitors
 - Compliance Programs / Code of Ethics
 - Written policies and procedures
 - Custody



Investment Advisory Business Models

Registered Investment Advisor (RIA)

- Pros
 - interests are better aligned
 - more control of relationships, may be the sole provider of financial advice
 - generate a growing and recurring revenue stream
 - more control and flexibility over the fee structure



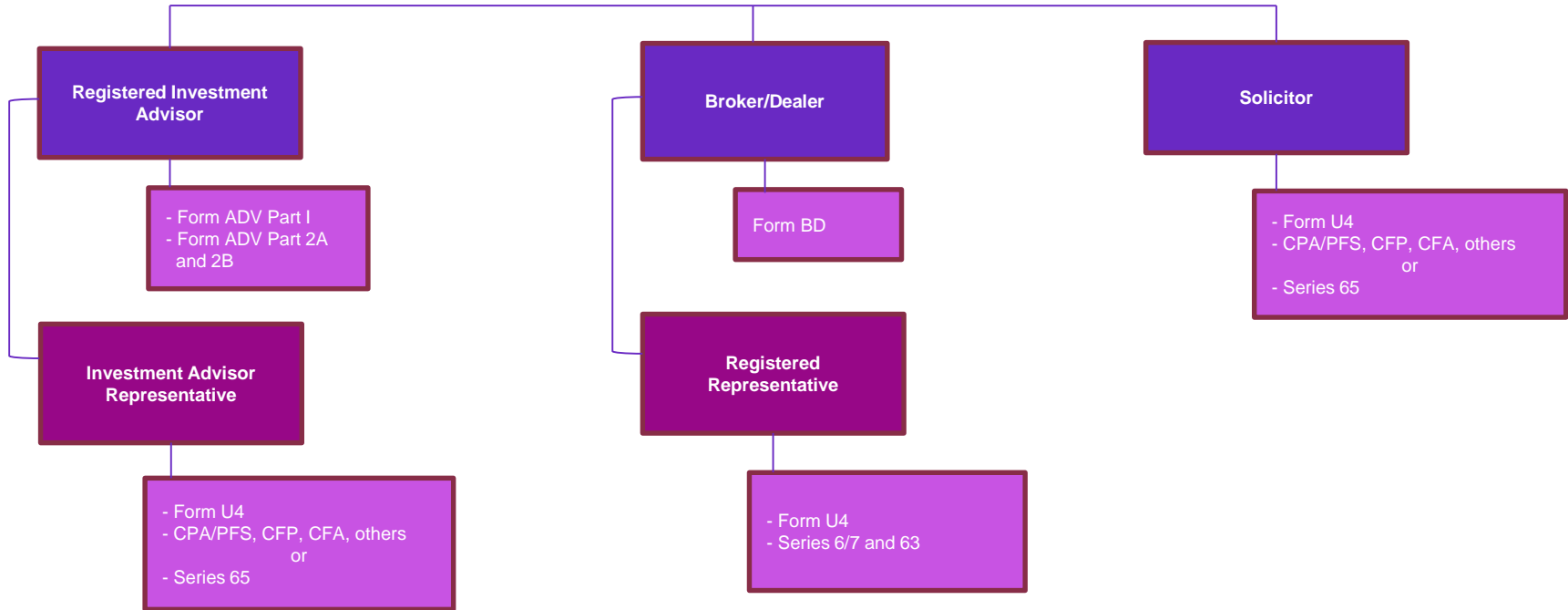
Investment Advisory Business Models

Registered Investment Advisor (RIA)

- Cons
 - requires the greatest commitment of time and resources
 - must be knowledgeable about investments and portfolio development
 - higher practice set-up and maintenance costs to maintain a “back office” and compliance



Investment Advisory Business Models



Investment Advisory Business Models

Investment Advisor Representative (IAR)

- Individual operating under existing RIA
- Fee only (no commissions)
- Fiduciary duty
- Form U4

PFS, Series 65 or CFP or certain other designation (CFA, etc.)



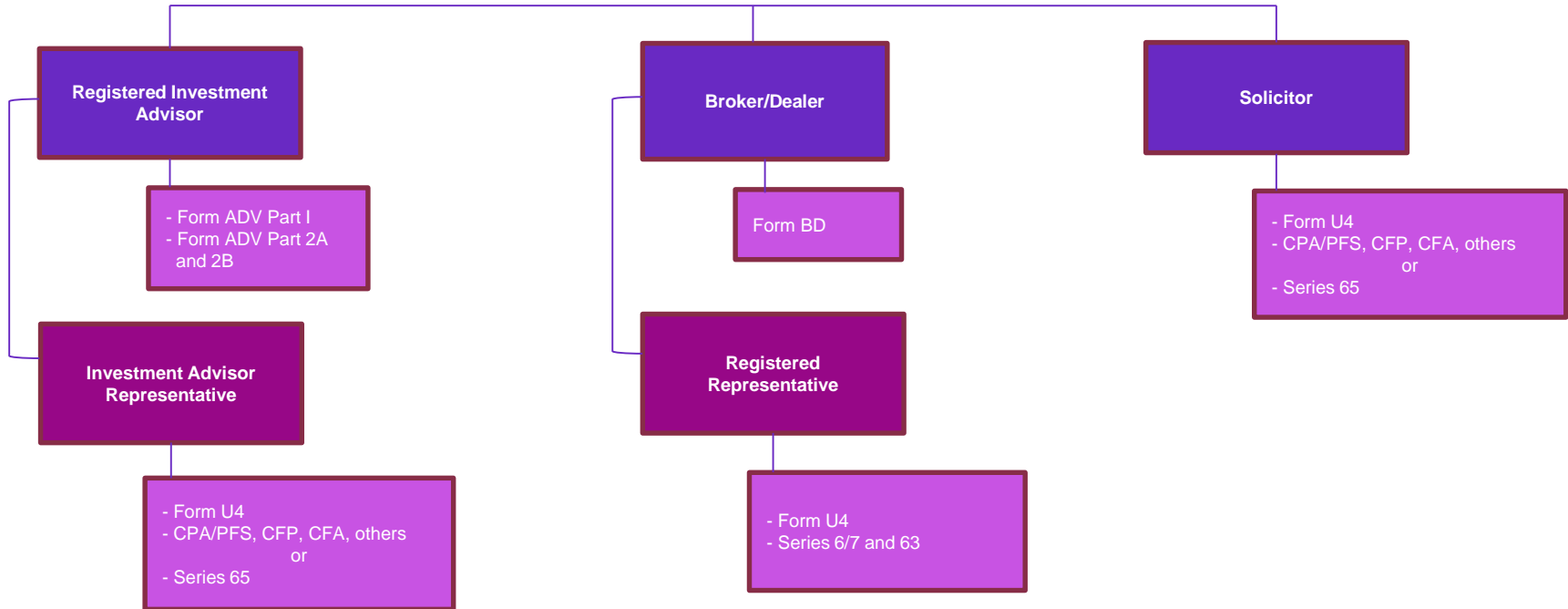
Investment Advisory Business Models

Investment Advisor Representative (IAR)

- Pros
 - provide IA services without creating a separate entity
 - education provided by the RIA
- Cons
 - must be knowledgeable about investment planning and products



Investment Advisory Business Models



Investment Advisory Business Models

Registered Representative of a broker-dealer (RR)

- Affiliate with FINRA broker/dealer (employee or IC)
- Commission based fees
- Payout dependent on support and production
- Supervised by broker/dealer including approval of outside business activities
- Series 6 or 7 and 63
- Suitability standard



Investment Advisory Business Models

Registered Representative of a broker-dealer (RR)

- Pros
 - smaller capital investment
 - affiliate with a well-capitalized, regulated organization
 - education, performance reports, and marketing materials are typically provided by the broker-dealer
 - ability to give investment advice to clients with minimal assets



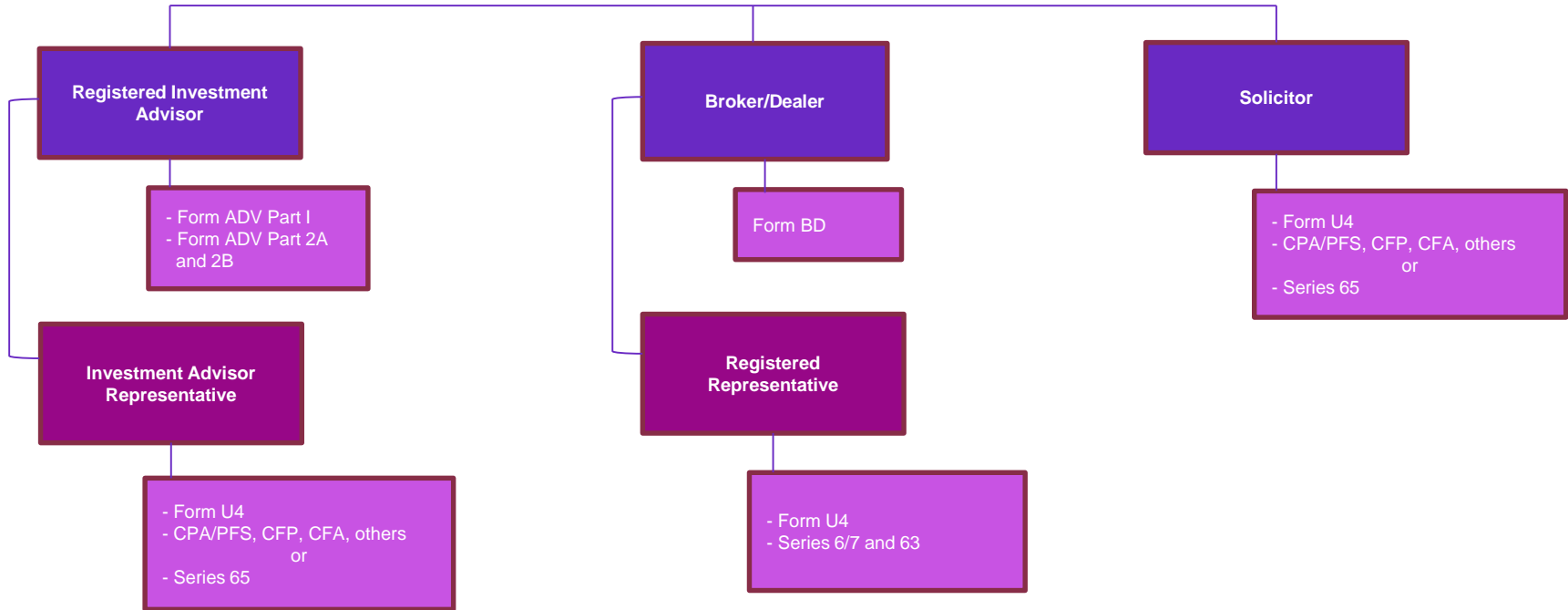
Investment Advisory Business Models

Registered representative of a broker-dealer (RR)

- Cons
 - additional licensing
 - broker-dealer supervision limits flexibility in providing services
 - potential conflict of interest between the RR's form of compensation and the fiduciary responsibility to the client



Investment Advisory Business Models



Investment Advisory Business Models

Referral or Solicitor's agreement

- Refer clients to an RIA
- Typically fee is % of assets, one time or recurring
- RIA controls advice and client relationship
- May require PFS, Series 65 or CFP



Investment Advisory Business Models

Referral or Solicitor's agreement

- Pros
 - easy to establish
 - requires minimal capital
 - does not require expertise in investments and portfolio development, although the solicitor must have a sufficient background to monitor the services provided by the RIA



Investment Advisory Business Models

Referral or Solicitor's agreement

- Cons
 - gives the RIA direct access to the clients and control over the client's financial decisions
 - agreement may restrict solicitor's ability to provide certain types of services
 - state board of accountancy might not allow compensation on the form of commissions or referral fees from third parties



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- Compliance Programs



Regulatory Oversight



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Compliance Programs

RIA Compliance Programs

- Common Sense
- “Duty of Care, Loyalty and Good Faith”
- Chief Compliance Officer (CCO)
 - Administers Compliance Program
 - Responsibility and authority to develop and enforce
 - May delegate many responsibilities to others



Compliance Programs

RIA Compliance Programs

- Disclosure
- Compliance Program
 - Compliance Manual
 - Code of Ethics
 - Business Continuity Plan
- Regulatory Examinations
- Annual Review



Compliance Programs

RIA Compliance Programs

- Disclosure →
 - Form ADV Parts I, 2A, and 2B
 - Marketing Materials
 - Websites



Compliance Programs

RIA Compliance Programs

Compliance Program

- Compliance Manual
 - Portfolio Management
 - Trading
 - Disclosures
 - Books and Records
 - Marketing
 - Valuations
 - Privacy
 - Other Areas



Compliance Programs

RIA Compliance Programs

Compliance Program

- Code of Ethics
 - Personal Securities Reporting
 - Disclose Conflicts of Interest
 - Inside Information
 - Gifts and Entertainment
 - Formalize Commitment
 - Required
 - Invasion of Privacy?



Compliance Programs

RIA Compliance Programs

Compliance Program

- Code of Ethics

Personal Securities Reporting

- Pre-Clear Transaction:
 - Initial Public Offerings
 - Private Placements
- Report:
 - Quarterly: Transactions In Reportable Securitie
 - Annually: Holdings in Reportable Securities



Compliance Programs

RIA Compliance Programs

Compliance Program

- Code of Ethics

Outside Business Activities

- Preapproval
- Report
- Disclose?



Compliance Programs

RIA Compliance Programs

Compliance Program

- Business Continuity Plan
 - Who
 - Where
 - What
 - Why
 - When
 - How



Compliance Program

RIA Compliance Programs

Regulatory Examinations

- Common Deficiencies
 - Compliance Program
 - ADV I and 2
 - Portfolio Management/Trading
 - Advertising
 - Supervising
 - Books and Records
 - Conflicts of Interest



Compliance Program

RIA Compliance Programs

Regulatory Examinations

- Outcomes
 - Deficiency Letter
 - Administrative Proceeding
 - Enforcement
 - Close Operations



Overview

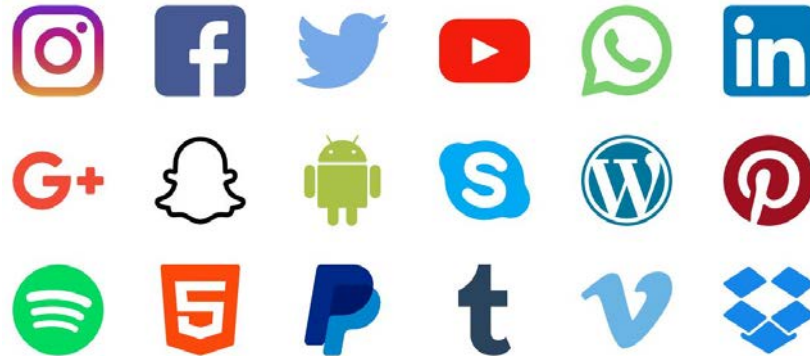
- Providing Investment Advice – Legal Basics
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- **Compliance Programs**
 - Social Media
 - Cybersecurity
 - Advertising
 - Custody



Compliance Programs- Social Media

Different Venues- Same Rules

- LinkedIn
- Facebook
- Twitter, etc.



Compliance Programs- Social Media

Issues/Stumbling Blocks

- Testimonials
- Recordkeeping
 - Chronological
 - Available to Regulators
 - Texts
 - Monitoring and Capture via Software



Compliance Programs- Social Media

PROHIBITED

- Confidential, proprietary and non-public information
- All copyright, trademark, privacy and other laws
- Any violations of firm policies



Compliance Programs- Social Media

Personal vs. Business Use

- Distinct and separate
- Personally responsible for what you post
- Do not suggest that you are representing the Firm's official position, unless authorized to do so



Compliance Programs- Social Media

Personal vs. Business Use – considerations

- LinkedIn – Professional
- Twitter – Separate Accounts?
- Facebook – Personal and Professional
- Monitoring & Records
 - Manual
 - Automated (Global Relay, Smarsh, Actiance, e.g.)



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Compliance Programs- Cybersecurity

ENGAGE IT PROFESSIONALS

- Privacy
- Training
- E-mail
 - Encryption
- IT Controls
 - Firewalls
 - Malware
- Client Portals



Compliance Programs- Cybersecurity

- Need to know basis
- Laptops, remote access and phones
- Clean Desks
- Passwords



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Compliance Programs- Advertising

Definition

- Any written communication addressed to more than one person (or used more than once)
- Existing client relationships or soliciting new clients
- Performance is not required to qualify

When in doubt: it is advertising



Compliance Programs- Advertising

Examples

Advertising

- Marketing Brochures
- Websites
- Paid advertising/reprints
- Newsletters
- Form letters/mass mailings
- Blast email messages
- Audio/video/media
- Reprints

Not Advertising

- In-person, telephone, or other one-on-one conversations
- Regular account statements and reports sent only to existing clients
- Media appearances/articles (WHEN Reprinted by Firm)



Compliance Programs- Advertising

The Catchall Provision

May not use an ad that "contains any untrue statement of a material fact " or that is "otherwise false or misleading“

Misleading? General factors considered:

- Form and content of the ad
- Advisor's ability to perform what is advertised
- Implications or inferences arising from the context
- Sophistication of the readers



Compliance Programs- Advertising

Misleading?

- *“We provide our clients with incomparable services ...”*
- *“Over the past five years, our average client has earned 150 basis points per year more, net of all investment management and consulting fees, than the average return for its peer group.”*
- *“Dave has been a leading business and personal advisor in the areas of finances, taxes, investment, and retirement planning.”*



Compliance Programs- Advertising

Specific Prohibitions-Testimonials

May not use an ad that...

- Refers to any *testimonial* concerning the advisor or any advice, analysis, report, or other service rendered by such advisor
- Is a statement of a client's experience or an endorsement by a client
- Is a written statement from a satisfied client "Dave is the best financial advisor..."
- List of client names
- Article reprints
- Advisor rankings



Compliance Programs- Advertising

Other Types

- List of Recommendations
- Performance Presentations- Gross vs. Net



Compliance Programs- Advertising

Written policies/procedures

- Review
- Approve
- Critical eye to:
 - Sophistication
 - Influences
 - Implications
 - Predictions
 - Promises

If you cannot substantiate it, do not say it!



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Compliance Programs- Custody

Definition

- An advisor or a related person
 - In connection with advisory services
- Authority to obtain possession of client funds
 - Directly
 - Indirectly



Compliance Programs- Custody

- Signing checks
- Standing Letters of Authorization (SLOA)
- Acting as Trustee (or co-Trustee) of a client trust
- Acting as Executor to a client's estate
- General Partner
- Managing Member



Compliance Programs- Custody- Complexity

Question:

Does possession of a user ID and password to a client's account constitute "custody"?

Answer:

According to the SEC, an advisor with possession of a user ID and/or password to a client's account may or may not have custody, depending on whether this provides the advisor with access to client assets.



Compliance Programs- Custody- Remedies

TREAD CAREFULLY HERE

Remedies include:

- Held by a “qualified custodian”
- Quarterly account statements
- Surprise Examination
 - Independent (PCAOB not required)
 - Only Custody Accounts
 - Annual- Irregular
 - Report to SEC
- Pooled Vehicle- GAAP Audit



Further Guidance

- Securities and Exchanges Commission

www.sec.gov

- National Association of State Securities Administrators

- State Regulator Contact Listing

www.nasaa.org

- Investment Advisor Regulation Depository

www.iard.com



Closing Thoughts

- Choose Wisely
 - What does your regulator require
 - How much are you willing/able to do?
- Initial and ongoing costs
- Customize! (no off the shelf/shrink wrap)



AICPA PFP Section Member Resources

- PFP Section Members, inclusive of CPA/PFS credential holders, have access to resources on the latest planning strategies and trends in personal financial planning services so that they can practice competently and profitably. Visit aicpa.org/pfp/resources.



Find more resources for building a PFP services business at aicpa.org/pfp/implementing

Questions



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