



## For SEC Licensed Firms Transitioning to California Registration October 2011

The following instructions are provided to assist firms currently registered with the SEC that are required to transition and register with the State of California, pursuant to the **Dodd-Frank Wall Street Reform and Consumer Protection Act**. The Transition Period is January 1, 2012 to June 28, 2012.

### **STEP 1 Amend Form ADV and submit CA Application Fee through IARD**

#### **A. On Form ADV Part 1**

- Check the box on **Item 2A(12)** "Are no longer eligible to remain registered with the SEC" and check the box "CA" (If your firm will also do business in other States, check all appropriate States);
- Complete and file **Form ADV Part 1B** through IARD. Check the box "CA" on **Part 1B, Item 1-State Registration**, and fill out **Part 1B, Item 2- Additional Information**.

#### **B. On Form ADV New Part 2**

If you have not already updated **Form ADV Part II** to the **ADV New Part 2** (the **Firm Brochure**), please do so before applying for a CA license, otherwise CA approval may be delayed. Go to the NASAA website for [General Instructions](#) on developing the firm brochure. If a specific item is not applicable, please mention that item and its non-applicability.

- Verify that boxes checked in **Part 1** are consistent with narrative in **Part 2**;
- Verify that **Part 2A: Firm Brochure** is uploaded through IARD and respond to **Item 19**;
- Verify that **Part 2A: Appendix 1 Wrap Fee Program Brochure** is uploaded through IARD (only if your firm provides a Wrap Fee Program);
- Verify that **Part 2B: Brochure Supplement** is uploaded through IARD and respond to **Item 7**. All information about key staff members, anyone providing advisory services, and investment adviser representatives **must** be current.

#### **C. Pay Registration Fee**

If your firm is already licensed as a CA Broker-Dealer, you do not have to pay this Registration Fee.

- The CA fee to register as an investment adviser is \$125 per firm, paid through IARD.
- The Registration Fee is **due** when you **file** the CA application.



## **STEP 2 Submit Documentation to the Department:**

After completing **Step1**, submit the following documents (as applicable to your firm) electronically to [IAAPP@corp.ca.gov](mailto:IAAPP@corp.ca.gov) Forms may be downloaded on the Department's website at <http://www.corp.ca.gov/forms/securities.asp#cia>

**NOTE:** Additional documents may also be required after your application is reviewed by the Department. If so, the Department will notify you via e-mail.

### **A. Customer Authorization of Disclosure of Financial Records**

The form must be typewritten or printed legibly, and signed and dated.

### **B. Advisory Contract(s)**

Submit a revised **sample copy** of **each type** of written investment advisory contract(s) prepared by your firm. The contract(s) must not reflect nor imply that your firm is registered with the SEC, nor that your firm is subject to federal regulation.

Advisory contracts with current clients *do not need to be revised*, although notification that your firm is now under CA registration **must** be provided to all clients within 90 days, through a "material change" on **Form ADV Part 2**.

The Advisory Contract(s) should disclose:

- Services to be provided;
- Term of the contract;
- Advisory fees or the formula for computing the fee;
- Amount or manner of calculating the amount of the prepaid fee to be returned in the event of contract termination or nonperformance;
- Whether the contract grants discretionary power to the investment adviser or its representatives;
- That the contract will not be assigned by the investment adviser without the consent of the client; **and**
- If your firm does not have discretionary authority, the contract must also include that the client's permission must be obtained prior to effecting securities transactions in the client's broker-dealer account(s).

### **C. Financial Information**

You **must** submit the following documents (*unless your firm is a CA licensed Broker-Dealer*) **if** your firm has a principal place of business in California, **and**

- has **custody** of client funds or securities; **or**
- has **discretionary authority** over client funds or securities; **or**
- accepts **prepayment of fees** more than \$500 per client and six or more months in advance:

#### **1. Balance Sheet and Income Statement**

Complete and date no more than 45 days prior to the filing of the application and prepared in accordance with generally accepted accounting principles; **and**

#### **2. [Verification Form](#); and**



### 3. Minimum Net Worth Requirement Worksheet

The date on the worksheet should be consistent with the date on the balance sheet and income statement.

- If your firm has **custody** of client funds or securities, it **must** maintain a minimum net worth of **\$35,000** at all times (*unless your firm relies on the **CA Safeguarding Procedures** described in box below*); **or**
- If your firm has **discretionary authority**, but does not have custody, it **must** maintain a minimum net worth of **\$10,000** at all times; **or**
- If your firm accepts **prepayment of fees** of more than \$500 per client and six or more months in advance, it **must** maintain a **positive net worth** at all times.

#### **CA Safeguarding Procedures**

*The Department is proposing to amend its requirements for IAs with custody or possession of clients' funds or securities. The proposed amendments will incorporate provisions from SEC's Custody Rule and provisions from NASAA's proposed Model Rule. The Department anticipates releasing the text of the proposed rulemaking for public comment by late 2011.*

A. If your firm manages a **pooled investment vehicle** (limited partnership, limited liability entity, etc.) **and** relies on **an independent third party** who acts in the best interest of the clients, then provide copies of the **Disbursement Procedure** and **Independent Representative Agreements**.

B. If your firm **deducts fees directly** from clients' accounts, **and** meets the three conditions below, indicate "**Yes**" on **Form ADV, Part 1B, Item 2I(1): (a), (b) and (c)**:

- The client has authorized the firm to deduct fees directly from their account, which is maintained by a Qualified Custodian who sends quarterly statements to clients; **and**
- The client has signed a Custodial Agreement which only allows the firm to enter into transactions on their behalf and the withdraw of management fees; **and**
- The client and the Qualified Custodian are sent an itemized invoice at the same time, which includes: the asset value the fees are based on, how the fees were computed, and the period of time for the fees.



### **Step 3 Register Investment Adviser Representative(s):**

Under Section 260.236.1 CCR, CA generally requires that **all** Associated Persons/Investment Adviser Representatives (IARs) **are registered in CA**.

**NOTE:** Under CA law, each officer, director or partner exercising executive responsibility (or persons occupying a similar status or performing similar functions) or each person who owns 25% or more *is presumed to be acting as an investment adviser representative or associated person*. If any person who meets this requirement is not already registered, they **must** register at the time of the firm's application.

#### **A. For IARs Currently Registered with CA**

IARs that are already registered in California will remain registered when the firm is approved by California. **No further action is necessary.**

#### **B. For IARs NOT Currently Registered with CA**

Each individual IAR must:

- File a Form U-4 and pay the \$25 registration fee through the Central Registration Depository (CRD); **and**
- Meet the qualification requirements under Section 260.236 CCR. When the Form U-4 is filed, an exam window will pop-up and require the individual to take the Series 65 within 30 days.

#### **C. Solicitors**

Under CA law, if your firm pays (or intends to pay) a referral fee to another firm or individual for client solicitations, they must be licensed or registered.

- **Engaging an Entity to Solicit Clients:**

If your firm pays or intends to pay an entity (Corp., LLC, partnership, etc.) to solicit clients for your investment advisory business, that entity **must** be licensed as an Investment Adviser.

- **Engaging an Individual to Solicit Clients:**

Under CA law, a Solicitor must be registered as an IAR, but does not need to meet the IAR qualification requirements.

To **register** an individual Solicitor as an IAR, file the Form U-4 on CRD. When your firm does this, a Series 65 Exam window will open and the Solicitor's registration status will show 'Deficient.' The individual must pay the exam fee through CRD; this exam fee may be refunded later. At the same time, your firm must submit a letter to [IAAPP@corp.ca.gov](mailto:IAAPP@corp.ca.gov) with the name and CRD number of each individual and specify that they are Solicitor(s).

Once your firm is approved in California, the Department will waive the exam requirements for individual Solicitors. To initiate the refund process, your firm must submit a letter to [IAAPP@corp.ca.gov](mailto:IAAPP@corp.ca.gov) with the name(s) and CRD number(s) of the Solicitor(s), indicate that the firm has been approved, and provide the Transaction ID numbers for processing the refund for exam fees previously paid.

#### **Step 4. File Partial Form ADV-W through IARD**

Once your firm receives approval from the Department and has become registered with the State of California, you must immediately file a **Partial Form ADV-W** to surrender registration with the SEC. This is called a “Partial Withdrawal.”

**NOTE:** As of June 28, 2012, if your firm has under \$100 million in assets under management (AUM), your SEC registration will **no longer** permit you to perform investment advisory services in California, and your firm will be required to be licensed with the State of California in order to perform/offer these services within CA.

##### **A. On Form ADV-W**

- Fill in the bubble: “Withdraw from registration in some, but not all, of the jurisdictions with which you are registered (or have an application for registration pending)” **and**
- Check the box: “The SEC.”



##### **CA Department of Corporations**

Toll-Free 1-866-ASK-CORP  
TTY 1-800-735-2922  
Online [www.corp.ca.gov](http://www.corp.ca.gov)