

Deadline Extension Likely for IA Registration Changes

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[Shane B. Hansen](#)

Mid-sized investment advisers (assets under management of \$25 million to \$100 million) are likely to have until the second quarter of 2012 to complete the switch from SEC to state registration, according to an April 8, 2011, letter from the SEC's Division of Investment Management to the North American Securities Administrators Association (NASAA). Click [here](#) to read the letter.

Similarly, large fund advisers (assets under management of \$150 million or more) previously relying upon the "private adviser" exemption (15 or fewer clients) are likely to have until the second quarter of 2012 to become registered with the SEC.

According to the Division's letter to NASAA, the SEC expects to adopt final rules governing these registration-related requirements before the Dodd-Frank Act's July 21, 2011 deadline; however, related reprogramming of the IARD System is not anticipated to be operational until sometime near the end of this year. When adopted in the SEC's final rules, an extended registration deadline will be a welcome relief to many advisers, particularly those switching to one or more state registrations.

State registrations typically take more than a month to complete. State regulators closely review and frequently comment on all parts of Form ADV and application-related documents, such as client service contracts. Many states perform background checks looking beyond any regulatory history reported on the WebCRD/IARD System. Form ADV amendments and contract changes may be necessary before a state's registration will be granted. When registering with more than one state, advisers should anticipate receiving comments and requested changes from each state's registration staff. Working cooperatively through NASAA, many states do hope to make their application processes more consistent.

With an estimated 4,100 advisers switching to state registrations, a backlog of pending applications is likely to develop in many states. Typically, states handle applications on a first-come, first-served basis. Some but not all states may allow an adviser to request that a completed application remain pending for a time, so as to avoid simultaneous federal and state registrations.

Remember too that registration is only the tip of the compliance "iceberg." Many advisers will need to prepare for all of the registration-driven compliance requirements. When the change in registration becomes effective, firms must be in compliance with all applicable regulatory requirements. For firms switching to state registration, this could entail compliance with all of the requirements in up to 14 states (if registration is required in 15 or more states, SEC registration is permissible). Similarly, for firms newly registered with the SEC, a robust compliance program must be fully operational, including all related policies, procedures, books and records.

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Developing these kinds of state or federal compliance-related policies, procedures, books and records entails significant time and effort. We recommend that firms start planning and drafting sooner, rather than later. If you need assistance, please contact Shane Hansen (shansen@wnj.com or 616.752.2145) co-chair of the Broker Dealer/Investment Adviser Law and Regulation Group at Warner Norcross & Judd, or any other member of the group.

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