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Securities Bulletin S-2025-01

Guidance for Registration Requirements for Investment Advisers and Investment Adviser Representatives

APRIL 2, 2025

The purpose of this bulletin is to provide general guidance for the registration of investment advisers and investment adviser representatives in Vermont.

I. Registration Requirements for Investment Advisers and Investment Adviser Representatives

Definition of Investment Adviser

An investment adviser is defined as “a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investment in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.” The term investment adviser “includes financial planners or a person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of business or that holds itself out as providing investment advice to others for compensation.”¹

The following are excluded from the definition of investment adviser:

- An investment adviser representative;
- A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of their profession;
- A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and does not receive special compensation for the investment advice;

¹ 9 V.S.A. § 5102(15).



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- A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- A federal covered investment adviser;
- A bank or savings institution;
- Any other person excluded by 15 U.S.C. § 80b-1 et seq. from the definition of investment adviser; or
- Any other person excluded by rule adopted or order issued under this chapter.²

Registration Requirements for Investment Advisers

Any investment adviser transacting business in the State of Vermont must register with the Department of Financial Regulation (“DFR”), unless they are exempt from registration.³ The following persons are exempt from registration in Vermont:

- A person without a place of business in Vermont that is registered under the securities act of the state in which the person has its principal place of business if its only clients in Vermont are: federal covered investment advisers, investment advisers registered under the Securities Act, or broker-dealers registered under the Securities Act; institutional investors; bona fide preexisting clients who principal places of residence are not in Vermont;
- A person without a place of business in Vermont if the person has had, during the preceding 12 months, not more than five clients that are resident in Vermont in addition to those specified above; or
- Any other person exempted by rule adopted or order issued under the Securities Act.⁴

Investment advisers must file an initial registration request through IARD and then submit supplemental materials to the Securities Division.⁵ Directions for registering as an investment adviser in Vermont can be found on the Securities Division’s website at <https://dfr.vermont.gov/securities/investment-advisers>.

Definition of Investment Adviser Representative

An investment adviser representative is defined as “an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing.”⁶

² 9 V.S.A. § 5102(15)(A)-(H).

³ 9 V.S.A. § 5403(a).

⁴ 9 V.S.A. § 5403(b)(1)-(3).

⁵ V.S.R. § 7-1(b).

⁶ 9 V.S.A. § 5102(16).

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The following are excluded from the definition of an investment adviser representative:

- an individual who performs only clerical or ministerial acts;
- an individual whose performance of investment advice is solely incidental to the individual acting as a broker-dealer agent and who does not receive special compensation for investment advisory services;
- an individual employed by or associated with a federal covered investment adviser, unless the individual has a “place of business”⁷ in Vermont and is:
 - o (i) an “investment adviser representative” as that term is defined in 17 C.F.R. § 275.203A-3; or
 - o (ii) not a “supervised person” as that term is defined in 15 U.S.C. § 80b-2(a)(25); or
- an individual who is excluded by rule adopted or order issued under the Securities Act.⁸

Registration Requirements for Investment Adviser Representatives

Any investment adviser representative (“IAR”) transacting business in the State of Vermont must register with the DFR, unless they are exempt from registration.⁹

The following IARs are exempt from registration in Vermont:

- an individual who is employed by or associated with an investment adviser that is exempt from registration under 9 V.S.A. § 5403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of 9 V.S.A. § 5405; and
- any other individual exempted by rule adopted or order issued under the Securities Act.¹⁰

Investment adviser representatives must file an initial registration request through IARD and then submit supplemental materials to the Securities Division.¹¹ Directions for registering as an investment adviser representative in Vermont can be found on the Securities Division’s website at <https://dfr.vermont.gov/securities/agents-and-advisers>.

⁷ “Place of business” is defined as: (1) an office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and (2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients. See 17 C.F.R. § 275.203A-3.

⁸ 9 V.S.A. § 5102(16)(A)-(D).

⁹ 9 V.S.A. § 5404(a).

¹⁰ 9 V.S.A. § 5404(b).

¹¹ V.S.R. § 7-1(c).

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Frequently Asked Questions

- **If an investment adviser has a place of business in Vermont, but all of the firm's clients are located outside of Vermont, is the investment adviser required to register in Vermont?**

Yes, the investment adviser must register in Vermont because the adviser is "transact[ing] business in the State as an investment adviser."¹² There is no de minimis client exemption for firms with a place of business in Vermont. Additionally, any investment adviser representative who works for the Firm from a place of business in Vermont or services any Vermont clients is required to register in Vermont.

- **If an investment adviser has its main office outside of Vermont, but it employs an IAR who primarily works remotely from a home office in Vermont, is the investment adviser required to register in Vermont?**

Yes, the investment adviser must register in Vermont because the adviser, through its IAR, is "transact[ing] business in the State as an investment adviser." Additionally, the Vermont-based IAR working from Vermont is required to register in Vermont.

- **If a person is offering financial coaching or planning services for compensation, must they register as an investment adviser in Vermont?**

That depends on the type of advice they are giving clients. If the person is giving clients individualized advice on whether to buy, sell, or hold specific securities¹³, the person is likely required to register as an investment adviser, subject to the requirements and exemptions explained above. The following is a non-exhaustive list of activities that satisfy the definition of "investment advice:" advice about market trends; advice about the advantages of investing in securities versus other types of investments (e.g. coins, real estate, or insurance products); providing a selective list of securities; asset allocation advice.

Additionally, if the person is referring clients to an investment adviser (including an SEC-registered investment adviser) in exchange for an economic benefit, the person is likely acting as a solicitor and required to register as an investment adviser representative. (Information on solicitor registration requirements can be found below in this bulletin.)

- **If a person holds an insurance license that authorizes the sale of annuities or life insurance products, what information may the person discuss with a client without being required to register as an investment adviser?**

¹² 9 V.S.A. § 5403(a).

¹³ The definition of a "security" can be found at 9 V.S.A. § 5102(28).

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Please see DFR Securities Bulletin S-2018-01, on Joint Guidance on Providing Advice for Securities and Insurance Products: <https://dfr.vermont.gov/sites/finreg/files/regbul/dfr-bulletin-securities-s-2018-01.pdf>

- **If an out-of-state firm has five Vermont clients, must it register in Vermont before accepting a sixth Vermont client?**

Yes, out-of-state firms must be registered in Vermont if they have six or more Vermont clients. Firms with five Vermont clients that may take on additional Vermont clients should consider registering with DFR, to avoid any delay in onboarding new clients. If a firm fails to register in Vermont prior to accepting six or more Vermont clients, the Division may require the firm to pay a penalty before permitting registration.

II. Registration Requirements of Solicitors under Vermont Securities Regulations

Definition of Solicitor

A solicitor is defined as “any individual, person, or entity who, directly or indirectly, receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients or prospective clients on behalf of an investment adviser.”¹⁴ A solicitor is also deemed to be an investment adviser representative.¹⁵

Registration Requirements for Solicitors

As solicitors are deemed to be IARs, they must register with DFR. However, solicitors who are employed as IARs by federal covered investment advisers do not need to register as IARs in Vermont if they (i) do not have a place of business in Vermont¹⁶ or (ii) are covered by a statutory exemption.¹⁷

Under Vermont law, an IAR must be employed by or associated with an investment adviser. Directions for registering as an investment adviser in Vermont can be found on the Securities Division’s website at <https://dfr.vermont.gov/securities/investment-advisers>.¹⁸

Note that investment adviser representatives must also complete an examination requirement, unless covered by an exemption.¹⁹

¹⁴ V.S.R. § 1-2(fff). The general requirements concerning the use and registration of solicitors in Vermont are set out in 9 V.S.A. §§ 5403-5406, 9 V.S.A. § 5012(16), V.S.R. § 1-2(fff), V.S.R. § 7-1(c), V.S.R. § 7-2(a)(15), and V.S.R. § 7-3(f).

¹⁵ V.S.R. § 7-3(f).

¹⁶ 9 V.S.A. § 5102(16)(C).

¹⁷ 9 V.S.A. § 5404(b); see 9 V.S.A. § 5403. Please refer to V.S.R. § 7-1(c) for specific registration requirements, including annual renewal requirements.

¹⁸ See 9 V.S.A. §§ 5406, 5410, and V.S.R. § 7-1.

¹⁹ See V.S.R. § 7-1(c)(4).

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Other Requirements for Investment Advisers Using Solicitors

Investment advisers using solicitors must comply with the requirements of V.S.R. § 7-3(f) and the recordkeeping requirements of V.S.R. § 7-2(a)(15). V.S.R. § 7-3(f) prohibits an investment adviser from engaging a solicitor unless payment is made pursuant to a written agreement between the investment adviser and solicitor and the solicitor provides the client with (i) a current copy of the investment adviser's written disclosure statement and (ii) a separate written disclosure document which details the solicitor's arrangement with the investment adviser. Additionally, the investment adviser must make a bona fide effort to ensure the solicitor complies with these disclosure requirements and the investment adviser must receive a signed and dated receipt of these disclosures before entering into an advisory contract with the client.²⁰

Key Differences Between the SEC Marketing Rule and Vermont Securities Law

The SEC Marketing Rule, which became effective in 2021, includes an exemption from the requirements that an investment adviser have a written agreement with any person giving a testimonial or endorsement if the testimonial or endorsement is "disseminated for no compensation or de minimis compensation."²¹ *De minimis* compensation "means compensation paid to a person for providing a testimonial or endorsement of a total of \$1,000 or less (or the equivalent value in non-cash compensation) during the preceding 12 months."²²

Additionally, the SEC Marketing Rule does not require solicitors to deliver the investment adviser's Form ADV Part 2 brochure and separate promoter's disclosure document to referred clients. It also does not require a signed and dated acknowledgment of receipt from the referred client.

In contrast, the Vermont Securities Regulations do not include a "de minimis compensation" exemption to the requirement for a written agreement for the use of solicitors. Vermont Securities Regulations also require that solicitors provide clients with written disclosure statements for both the investment adviser and the solicitor. Additionally, referred clients must complete signed and dated acknowledgments of receipt of these documents.²³

An investment adviser representative employed by an SEC-registered investment adviser²⁴ would be subject to the SEC Marketing Rule; an investment adviser representative employed by an investment adviser registered in Vermont and not registered with the SEC or subject to any other exemption would be subject to the requirements of V.S.R. § 7-3(f).²⁵

²⁰ Please refer to V.S.R. § 7-3(f) for the specific requirements.

²¹ 17 C.F.R. § 275.206(4)-1(b)(4)(i). *See generally* 17 C.F.R. § 275.206(4)-3.

²² 17 C.F.R. § 275.206(4)-1(d)(2). The SEC Marketing Rule also provides an exemption to the disqualification provisions that prevent an investment adviser from compensating an ineligible person for an endorsement or testimonial if the compensation is de minimis.

²³ V.S.R. § 7-3(f).

²⁴ Including a person that meets the requirements of the definition of a "supervised person" under 15 U.S.C. § 80b-2(a)(25).

²⁵ See 15 U.S.C. § 80b-3a(b)(1).

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Frequently Asked Questions:

- **If a person is acting as a promoter/solicitor to refer clients to an SEC-registered investment adviser and the investment adviser follows all requirements under the SEC Marketing Rule, does that also satisfy all applicable Vermont requirements?**

If the solicitor is employed by an SEC-registered investment adviser to whom the solicitor is referring clients and the solicitor does not have a place of business in Vermont, the solicitor is not considered an IAR under Vermont law and therefore not required to register in Vermont.²⁶ Additionally, if the solicitor works for an SEC-registered investment adviser that is exempt from registration in Vermont, the solicitor is exempt from the registration requirement.²⁷

If the solicitor is employed by an SEC-registered investment adviser to whom the solicitor is referring clients and the solicitor does have a place of business in Vermont, then the solicitor is considered an IAR under Vermont law and is required to register, unless an exemption applies. However, a solicitor employed or supervised by an SEC-registered investment adviser would be required to follow the SEC Marketing Rule rather than the requirements of V.S.R. § 7-3(f).²⁸

If the solicitor is not employed by the SEC-registered investment adviser to whom the solicitor is referring clients, the solicitor does not have a place of business in Vermont (i.e. the solicitor is referring clients from a location outside of Vermont), and the solicitor is referring non-Vermont residents to the SEC-registered adviser, the solicitor is not required to register as an IAR in Vermont.

However, if the solicitor is not employed by the SEC-registered investment adviser to whom the solicitor is referring clients, but the solicitor has a place of business in Vermont or the solicitor is referring Vermont residents to the SEC-registered adviser, the solicitor is likely required to register as an IAR in Vermont. A solicitor that is required to register in Vermont as an IAR and is not employed or supervised by an SEC-registered investment adviser must follow the requirements of Vermont Securities Regulations, including the requirements of V.S.R. § 7-3(f).

- **What are the registration requirements if a person is acting as a promoter/solicitor to a State-registered investment adviser?**

If the solicitor is employed by a State-registered investment adviser and the solicitor (i) is soliciting new clients for the adviser from a place of business in Vermont or (ii) has no place of business in Vermont and has referred more than 5 Vermont residents to the State-registered investment adviser in the preceding 12 months, the solicitor is required to register as an IAR in Vermont and the State-registered firm is required to register as an investment adviser in Vermont.

²⁶ 9 V.S.A. § 5102(16)

²⁷ See 9 V.S.A. § 5404(b) and 9 V.S.A. § 5403(b).

²⁸ See 15 U.S.C. § 80b-3a(b)(1)(A).

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If the solicitor is not employed by a State-registered adviser and the solicitor (i) is soliciting new clients for a State-registered adviser from a place of business in Vermont or (ii) has no place of business in Vermont and has referred more than 5 Vermont residents to a State-registered investment adviser in the preceding 12 months, the solicitor is required to register as an IAR in Vermont and obtain employment by an investment adviser that is registered in Vermont.

- **If an investment adviser provides compensation worth less than \$1,000 (over a trailing 12-month period) to a person in exchange for endorsements or testimonials, is that person considered a solicitor under Vermont Securities Regulations?**

Under the Vermont Securities Regulations, a “solicitor” is any person who “receives a cash fee or any other economic benefit for soliciting, referring, offering or otherwise negotiating for the sale or selling of investment advisory services to clients or prospective clients on behalf of an investment adviser.”²⁹ There is no de minimis exception for compensation provided to a solicitor under Vermont Securities Regulations, and investment advisers must comply with applicable regulations regarding use of solicitors, including V.S.R. § 7-2(a)(15) and V.S.R. § 7-3(f).³⁰

- **Do Vermont’s solicitor rules, including the requirement that solicitors register as investment adviser representatives, apply to an investment adviser’s own clients who may refer prospective clients to the investment adviser if the investment adviser provides some kind of economic incentive to the clients for the referrals?**

The definition of “solicitor” under the Vermont Securities Regulations includes “any individual, person, or entity who, directly or indirectly, receives a cash fee or any other economic benefit” for referring clients or potential clients to an investment adviser.³¹ The Vermont Securities Regulations do not have an exclusion for current clients of an investment adviser, so a current client that meets the definition of solicitor is subject to registration and disclosure requirements for solicitors.

- **Is there a way for an investment adviser to show their appreciation to a current client for referring a new client to the investment adviser without triggering the solicitor provisions in the Vermont regulations? For example, could the investment adviser waive advisory fees for the client or donate to a charity the client supports?**

The definition of “solicitor” under the Vermont Securities Regulations includes any person who “directly or indirectly, receives a cash fee or any other economic benefit” for referring clients or potential clients to an investment adviser.³² The investment adviser would need to consider if their show of appreciation directly or indirectly provided an economic benefit to the client. The waiver of advisory fees that a client would otherwise need to pay would confer a direct economic

²⁹ V.S.R. § 1-2(fff).

³⁰ Excluding IARs employed by and referring clients to federal covered investment advisers, which are subject to the SEC Marketing Rule. 15 U.S.C. § 80b-3a(b)(1).

³¹ V.S.R. § 1-2(fff).

³² V.S.R. § 1-2(fff).

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benefit on the client, thus making the referring client a solicitor under the Vermont Securities Regulations. However, a donation to a charity that the referring client is not affiliated with and does not, directly or indirectly, benefit from economically would not make the client a solicitor under the definition in the Vermont Securities Regulations.

- **If an SEC-registered investment adviser based outside of Vermont has an office in Vermont (including a residential-based “home office”) that is used only to solicit new clients (and not offer investment advice or sell securities), would the SEC-registered investment adviser be required to notice file in Vermont?**

Under Vermont statute and the Vermont Securities Regulations, this office would be considered a branch office of the investment adviser. Under the Vermont Securities Regulations, “Investment adviser branch office” means a place of business as defined in 9 V.S.A. § 5102(21). The Vermont Uniform Securities Act defines “place of business” as: “an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.”³³ Additionally, any employees of the SEC-registered investment adviser who work at the Vermont office and solicit new clients would be required to register as investment adviser representatives in Vermont.

This Bulletin shall remain in effect until withdrawn.

Inquiries about this Bulletin should be directed to the Securities Division at DFR.SecuritiesInfo@vermont.gov.

Signed by:

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Kaj Samsom, Commissioner

4/16/2025

Date

³³ 9 V.S.A. § 5102(21).