

Criminal penalties (5-5-3 rule)

- ✓ Penalties if willfully violating the law (per violation):
 - 5-year statute of limitations
 - \$5,000 maximum fine
 - 3-year maximum jail sentence

Federal covered advisers

- ✓ Eligible for SEC registration:
 - \$100—\$110 million AUM
 - Registered in 15 or more states (multi-state adviser rule)
- ✓ Must register with the SEC:
 - More than \$110 million AUM
 - Advisers to registered investment companies
- ✓ Must withdraw (return to state registration):
 - AUM falls below \$90 million

Custody

- ✓ Custody means:
 - Holding client funds or securities
 - Keeping client funds received by mistake more than 3 business days
 - Authority to withdraw from a client's account
- ✓ Requirements for investment advisers:
 - Confirm the state allows custody
 - Notify the state administrator on Form ADV
 - Place assets with a qualified custodian
 - Send quarterly statements
 - Annual surprise audit (filed on Form ADV-E)
 - \$35,000 minimum net worth (vs. \$10,000 for discretion)

Offers & sales

- ✓ **Offer:** attempt to dispose of, or solicitation of an offer to buy, a security for value
- ✓ **Sale:** contract of sale of, contract to sell, or disposition of, a security for value
- ✓ Considered offers and/or sales:
 - Bonus offer of securities
 - Gift of assessable stock
 - Warrants, rights, derivatives, and convertibles
- ✓ Not considered offers or sales:

• Bona fide pledges or loans	• Stock dividends
• Corporate actions	• Gift of non-assessable stock

Civil liabilities

- ✓ Liabilities if unknowingly violating the law:
 - 3-year statute of limitations
 - No later than 2 years after discovery
- ✓ **Right of rescission:** written offer to buy the security back
 - At the original cost, plus interest & legal fees, minus income received
 - Client has 30 days to accept or reject

Federal covered securities

- ✓ Regulated by the SEC, exempt from state registration:
 - Exchange-listed securities (and equal or senior securities of the same issuer)
 - Investment company securities
 - Rule 506 (Regulation D) private placements
 - Certain federally exempt securities (US government, out-of-state municipal)

Securities exemptions

- ✓ **Exempt securities:** government (US, Canadian, national foreign), bank, insurance, common carrier & utility, federal covered, non-profit, promissory notes, employee benefit plans
- ✓ **Exempt transactions:**
 - Private placements (offers to 10 or fewer retail investors in 12 months)
 - Isolated non-issuer transactions
 - Unsolicited non-issuer transactions
 - Certain fiduciary transactions (executor, sheriff, bankruptcy trustee, guardian, conservator)
 - Debt-related transactions (bona fide pledges and loans)
 - Transactions between issuers and underwriters
 - Institutional transactions
 - Offer of pre-organization certificates (10 or fewer subscribers, no payments)

Registering securities in a state

- ✓ **Notice filing:** federal covered securities only; not a state registration (easiest)
- ✓ **Coordination:** SEC and state registration at once; interstate securities that aren't federal covered
- ✓ **Qualification:** state registration only (SEC exempt); intrastate securities (hardest)