

# State laws and regulations



## Broker-dealers

**Definition:** person engaged in business of effecting transactions in securities for the account of others or for his own account

**Registration form:** Form BD

**Exclusions from registration:**

- Agents, issuers, and banks
- Vacation rule
- Institution rule
- Canadian (limited registration)

## Investment advisers

**Definition:** person offering securities Advice as a regular Business for Compensation

**Registration form:** Form ADV (Part 1, 2A, 2B)

**Reg. withdrawal form:** Form ADV-W

**Exemptions from registration:**

- Vacation rule
- Institution rule
- De minimis rule
- Private fund advisers

**Exclusions from registration:**

- Investment adviser representatives (IARs)
- LATE professions (incidental)
- BDs and agents (no advisory fees)
- Media programs if general advice
- Fed covered advisers (excl. from state)
- Banks and savings institutions

## State administrator

**Responsibilities:**

- Registration & regulation of persons
- Registration & regulation of securities
- Enforcement of general securities laws
- Enforcement of anti-fraud provisions

**Jurisdiction exists if:**

- Client or professional in state during...
- A securities offer or transaction

**Punitive actions**

- May deny, suspend, or revoke registration
- Must be in public interest and break law

**Record retention enforcement**

- Investment advisers = 5 years
- Broker-dealers = 3 years
- Records in past 2 years rapidly available

## Agents

**Definition:** individual representing a broker-dealer or issuer in effecting securities transactions

**Registration form:** Form U4 (agent & BD file)

**Reg. withdrawal form:** Form U5 (agent & BD file)

**Exclusions from registration:**

- Vacation rule
- Institution rule
- Clerical roles
- Representing an issuer while offering exempt securities or performing exempt transactions

## Investment adviser representatives (IARs)

**Definition:** any partner, officer, director of, or securities advice-providing employee of an IA

**Registration form:** Form U4

- If representing state IA = filed by IA
- If representing fed cov'd IA = filed by IAR

**Reg. withdrawal form:** Form U5

- If representing state IA = filed by IA
- If representing fed cov'd IA = filed by IAR

**Exemptions from registration:**

- Vacation rule
- Institution rule
- De minimis rule

## Vacation rule (no office in state)

No registration if engaging current clients visiting a state

## Institution rule (no office in state)

No registration if only engaging institutions

## De minimis rule (no office in state)

No registration if 5 or fewer retail clients in a state

## Criminal penalties (5-5-3 rule)

Penalties if willfully violating law:

- 5 year statute of limitations
- \$5,000 maximum fine
- 3 year maximum jail sentence

## Civil liabilities

Liabilities if unknowingly violating law

- 3 year statute of limitations
- No more than 2 years post-discovery

Right of rescission

- Offer to repurchase security at original cost, plus interest & legal fees, minus income
- 30 days for client to accept or reject

## Person

Any natural person (individual) or organization able to enter into binding contracts

**Non-persons:** minors, incapacitated, deceased

## Investors

**Institutional** = organization investing a pool of capital (money) on behalf of others

**Retail** = individual investing for their own goals or on behalf of a family

## Federal covered advisers

Eligible:

- Advisers with \$100 - \$110 million AUM
- Advisers operating in 15 or more states

**Mandatory:**

- Advisers exceeding \$110 million AUM
- Advisers to registered investment companies

**Must de-register (go back to state registration)**

- If falling below \$90 million AUM

## 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

**Considered offers and/or sales:**

- Bonus offer of securities
- Gift of assessable stock
- Offer of warrants, rights, derivatives, and convertibles

**Not considered offers and/or sales:**

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

## Custody

**Defined as:** holding client funds, check meant for 3rd party > 3 business days, access to outside acct

**Requirements (for investment advisers):**

- Ensure state allows custody and inform state administrator on Form ADV
- Subject to annual surprise audit (filed on Form ADV-E)
- Send quarterly statements
- Maintain \$35,000 net worth (vs. \$10,000 req if no custody)

## Securities exemptions

**Exempt securities** = gov't, bank, insurance, com carrier, fed cov'd, non-profit, prom notes, emp. plans

**Exempt transactions:**

- Private placements (10 or fewer offers to retail investors)
- Isolated non-issuer transactions
- Unsolicited non-issuer transactions
- Certain fiduciary transactions (executor, sheriff, bankruptcy trustee, guardian, conserv.)
- Debt-related transactions (bona-fide loans)
- Transactions between issuers and underwriters
- Institutional transactions
- Offer of pre-organization certificates (no more than 10 subscribers, no payments)

**Registration methods:**

- **Notice filing:** SEC reg only (state exempt), fed cov'd only, easiest form of registration
- **Coordination:** SEC + state reg, interstate securities not eligible for fed cov'd status
- **Qualification:** state reg only (fed exempt), intrastate securities, hardest form of registration