

INDIANA SECRETARY OF STATE SECURITIES DIVISION

STATEMENT OF POLICY REGARDING INVESTMENT ADVISER DISCLOSURE

The Indiana Secretary of State and the Securities Commissioner have determined that it is appropriate and in the public interest to issue a Statement of Policy addressing investment adviser representatives (“IAR”) disclosure to clients and potential clients of all investment adviser firms (“advisory firms”) through which the representative is registered.

Statutory Context

Section 23-2-1-11(a)(6) of the Indiana Securities Act (“Act”) permits the Commissioner to deny, suspend, or revoke a registration of an IAR or censure a registrant or officer of a registrant if the IAR has engaged in dishonest or unethical practices in the securities business. The Commissioner promulgated administrative regulation 710 IAC 1-16-22 to define dishonest or unethical practices for IARs. 710 IAC 1-16-22(a)(6) includes as an unethical practice “misrepresenting to any advisory client or prospective advisory client any of the following: (A) Qualifications of the investment adviser or any employee of the investment adviser, (B) The nature of the advisory services being offered or fees to be charged for such service, and (C) Omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading.”

Background

It has come to the Commissioner’s attention that some IARs while registered through an advisory firm represent themselves to clients and potential clients as being a completely separate entity with no mention of the advisory firm. Advertisements, marketing materials, and websites display only the name of the IAR or a name under which the IAR conducts non-advisory business without disclosing the name of the advisory firm through which the IAR is registered. As a result, the client or potential client does not receive full disclosure of all material information concerning the IAR.

The identity of the advisory firm under which the IAR is registered and provides advisory services is material information and must be disclosed to all clients and potential clients. The Indiana Administrative Code uses the word “material” as the test for whether or not information must be disclosed because “materiality” is well defined in securities law as information that a reasonable person would consider important in deciding whether or not to go forward.¹ Further, without the knowledge of the relationship with the advisory firm, potential clients may be misled, or face a difficult task in determining, the registration status of the persons with whom

¹ See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) at 449 and *Manns v. Skolnik*, 666 N.E.2d 1236 (Ind.Ct. App. 1996).

they are doing business or being solicited to do business. The registration of an IAR with an advisory firm creates a relationship that may, among other things, affect the investment opportunities the IAR may recommend.

Policy

- (A) An IAR registered in Indiana must disclose the advisory firms through which services are rendered on all print/visual materials and in all other communications with a potential client.
- (B) Print and visual materials include but are not limited to the Form ADV delivered or required to be delivered to the client, advertisements, including listings under special categories in telephone or other directories which indicate the persons so listed are in the investment adviser business, letterhead, website, and all marketing materials.
- (C) Failure to provide these disclosures will be deemed a dishonest or unethical practice in the securities business as defined in 710 IAC 1-16-22(a)(6) and hence a violation of Ind. Code §23-2-1-11(a)(6).
- (D) This policy takes effect on July 1, 2006 for all print/visual materials, except for already existing or contracted listings in telephone or other directories. All contracts with listing services entered into after the date of this Statement must be in accordance with this Statement of Policy. For all non-print/visual communications, the policy takes effect on the date hereof.

Question and Answer Scenarios

- (1) Q: Where and when must the IAR disclose registration status if the IAR cold calls potential clients?

A: In the phone call with a potential client, the IAR must disclose the advisory firm through which the IAR is registered.
- (2) Q: Where and when must the IAR disclose registration status if the IAR sends letters or gives a seminar to potential customers?

A: The name of the advisory firm through which the IAR is registered must be on the letterhead of any letter sent out to potential clients and must be included within the materials given to the attendees of any seminar.
- (3) Q: Where and when must the IAR disclose registration status on any advertisement including advertisements on television, in a newspaper, or in a magazine?

A: The IAR must disclose in the advertisement the advisory firm through which the IAR is registered and operating for the purposes of that advertisement.

(4) Q: Where and when must the IAR disclose registration on the IAR's website?

A: IAR must disclose the advisory firm through which the IAR is registered and operating on the home page of the website.

(5) Q: Where and when must the IAR disclose its registration status in a telephone directory, whether online or in print?

A: All directory listings, whether they are listed under investment adviser or another listing that indicates that they are an investment adviser, must include the advisory firm under which the IAR is registered and operating.

(6) Q: What if the IAR is registered under two advisory firms? Do they need to disclose both advisory firms to all potential customers?

A: Certain IARs may be registered through two separate advisory firms. In that case, the IAR must disclose the registration through which the IAR is soliciting clients. If the potential client will not have any contact with one of the advisory firms, then the relationship with that advisory firm need not be disclosed.

DATED at Indianapolis, Indiana, this 23rd day of March, 2006.

TODD ROKITA
SECRETARY OF STATE


O. WAYNE DAVIS
SECURITIES COMMISSIONER