InvestmentNews DAILY

October 03, 2011

# States: Advisers violating rules by using 'RIA'

Signatures on letters often followed by 'RIA,' implying earned designation; it's not

**By Liz Skinner**

October 3, 2011 3:36 pm ET

State examinations of investment advisers this year have found an uptick in compliance violations, especially involving registration, records, unethical business practices such as signing blank documents, inadequate supervision over trades and advertising issues such as misusing the term “RIA.”

Examinations by state securities regulators of 825 investment advisers from Jan. 1 through June 30 turned up 3,543 problems, or an average of 4.3 deficiencies per adviser, according to the North American Securities Administrators Association Inc. In 2009, investigators uncovered 1,887 deficiencies from 458 investment advisers, or 4.1 problems per adviser.

Most of the unethical business practices uncovered this year involved contract-related issues, such as altered documentation, signed blank documents and missing or nonexistent contracts, NASAA said.

Advertising deficiencies included issues with websites, correspondence and business cards, as well as advisers' calling themselves “registered investment advisers” as if it were an

industry designation, said Mike Huggs, director of the Mississippi Securities Division and chair of NASAA's IA Operations Project Group, which prepared the report. The violation can occur if an adviser signs his name and includes “RIA” after it, he said.

“A firm is an RIA; a person is not an RIA,” he said. “When you sign a letter that way, it implies it is a designation that's earned, and it is not.”

The top deficiencies concerned inconsistencies and outdated information provided by investment advisers in annual disclosure documents form ADV Parts I and II, NASAA said. The most common books-and-records violations included failing to keep client suitability information, and not keeping client records and data safe.

The deficiencies uncovered by securities regulators from 45 states this year led NASAA to update its compliance guidelines recommending that advisers review their disclosure documents annually, carefully maintain records, including electronic backups, and other best practices.

“Our goal in identifying deficiencies and recommending best practices is to help investment advisers strengthen their internal compliance programs and improve the services they provide to clients,” said Jack Herstein, president of NASAA and assistant director of the Nebraska Banking and Finance Department's securities bureau.

State securities regulators are poised to take over regulatory oversight from the Securities and Exchange Commission in June 2012 of investment advisers that manage assets under $100 million. The Dodd Frank financial reform legislation boosted the size of advisers regulated by the states from today's $25 million AUM. An additional 3,200 advisers are expected to come under state jurisdiction.

David Tittsworth, executive director of the Investment Adviser Association, said the increase in compliance problems wasn't too significant from the period two years ago. He said firms appreciate any and all compliance guidance regulators offer.

“It's helpful when regulators share information with advisory firms about the types of deficiencies they are finding and what firms can do to promote more-robust compliance programs,” Mr. Tittsworth said.

Of the 71 hedge fund advisers examined, the most likely deficiencies concerned the valuation of holdings, cross-trading, preferential treatment, registration exemption issues, nonaccredited investors and undisclosed conflicts of interest, Mr. Herstein said.