

Investment Adviser “Switch” Workshop

**Navigating the Dodd-Frank Act’s
New Regulatory Requirements for
Maryland’s Investment Advisers**

Presented by

Office of the Attorney General

Maryland Division of Securities



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Our primary goal is to protect investors

- ❑ Maryland Division of Securities regulates:
 - ❑ Investment Advisers & Investment Adviser Representatives
 - ❑ Broker-Dealers
 - ❑ Securities Agents/Registered Representatives

- ❑ Other responsibilities of the Securities Division:
 - ❑ Securities-related Investigations
 - ❑ Examinations
 - ❑ Securities Product Registration
 - ❑ Investor Education

Workshop Topics

- ❑ What Dodd-Frank Means for Investment Advisers and the Investment Adviser “Switch”
- ❑ Registration and Post-Registration Requirements for Investment Advisers
- ❑ Investment Adviser Examination Program

Dodd-Frank and the IA Switch

Overview of Switch Topics:

- Mid-sized investment advisers
- State registration for mid-sized advisers
- Coordinated Review
- Private fund adviser obligations
- Switch Timeline

What Dodd-Frank Means For IAs

Under the **Dodd-Frank Wall Street Reform and Consumer Protection Act**, state securities regulators will have greater responsibility for the regulation of investment advisers.

Dodd-Frank Stats

- ❑ Dodd-Frank establishes a threshold of \$100 million assets under management (AUM) for federal covered advisers.
- ❑ Approximately 3200 advisers nationally will be affected by the “Switch”.
- ❑ Maryland currently has approximately 400 Maryland-based state investment advisers.
- ❑ We expect about 100 new Maryland-based and 100 new non-Maryland-based state investment advisers.
- ❑ Law effective July 21, 2011.
- ❑ SEC approved the final rules on June 22, 2011.
- ❑ Implementation begins in Fall 2011.
- ❑ Switch must be complete by June 28, 2012.
- ❑ Dodd-Frank eliminated the private adviser exemption. Estimating at least 100 additional Maryland-based private fund advisers.

Dodd-Frank: Which Advisers Switch?

- ❑ Mid-sized investment advisers
 - ❑ AUM of \$25- \$100 million, with buffer \$90 million
 - ❑ Principal office and place of business in a state where IA is required to be registered and, if registered, is subject to examination
 - ❑ If exempt or excluded in state where principal office is located then SEC registration required unless exempt
 - ❑ NY and WY based advisers excluded
- ❑ Investment advisers **required** to register in 15 or more states will register with the SEC.

AUM Buffer

- ❑ Current buffer
 - ❑ \$25 million - \$30 million eliminated
- ❑ New buffer
 - ❑ \$90 million - \$110 million
 - ❑ An adviser may register with the SEC once it reaches AUM of \$100 million. An adviser must register with the SEC if its AUM is \$110 million or more.
 - ❑ Once registered with the SEC, a mid-sized adviser can remain registered with the SEC as long as its AUM is at least \$90 million. This means that a mid-sized adviser currently registered with the SEC may remain registered with the SEC if the adviser's AUM is at least \$90 million.

What Dodd-Frank Means For Maryland IAs

- ❑ In Maryland, all new investment advisers with \$100 million or less under management will be required to register with the Securities Division **unless**:
 - ❑ The investment adviser is required to be registered in 15 or more states, or
 - ❑ The investment adviser qualifies for an exemption under Rule 203A-2 of the Investment Advisers Act of 1940 (e.g., affiliate of SEC adviser, adviser to IC, expectation to qualify for federal AUM within prescribed timeframe).

Switching in Maryland

- ❑ Firms required to register with Maryland:
 - ❑ IAs with AUM of \$25 million or less
 - ❑ New IAs with AUM of \$100 million or less (**after July 21, 2011**)
 - ❑ Existing SEC IAs with AUM up to \$90 million -- Federal IAs registered as such as of December 31, 2011 may rely on buffer down to \$90 million before switching to Maryland registration.

- ❑ SEC IAs with AUM of \$25 million to \$100 million may register with Maryland prior to December 31, 2011, but also must remain registered with the SEC until the firm:
 - ❑ updates its Form ADV indicating that it is switching;
 - ❑ becomes registered in the appropriate states; and
 - ❑ files an ADV-W withdrawing the firm's SEC registration.

- ❑ Pay attention to investment adviser representative registration as “place of business” limitation does not apply to investment adviser representatives for state advisers.

Registration for Mid-Sized IAs

- ❑ Mid-sized advisers registered with the SEC as of 1/1/2012 (the “Switch”):
 - ❑ If registered with the SEC on 7/21/11 must remain SEC registered until 1/1/12.
 - ❑ Must file amendment to ADV between 1/1/12 - 3/30/12.
 - ❑ Mid-sized advisers no longer eligible for SEC registration must file ADV-W by 6/28/12.
- ❑ “New” Mid-sized advisers:
 - ❑ Until 7/21/2011 could have registered with either the SEC **or** appropriate state regulator.
 - ❑ After 7/21/2011 must register with the appropriate state regulator (prohibited from SEC registration).
 - ❑ Advisers with AUM of \$100 million or more continue to register with SEC.

NASAA Investment Adviser Coordinated Review Program

- ❑ NASAA Investment Adviser Coordinated Review Program
 - ❑ NASAA has a program manager to manage the program.
 - ❑ Advisers required to register in 4 or more states can elect to have their applications reviewed in the program.
 - ❑ Program availability: November 7 through March 30.
 - ❑ Advisers elect to participate by completing the Investment Adviser Coordinated Review Form on the NASAA website and clicking the “submit” button.
 - ❑ Submission of the form notifies the program manager of the adviser’s participation.
 - ❑ The program manager will send an email to the states where the adviser has applied that a conference call will be convened to discuss the application.
 - ❑ The program’s goals are to expedite the reviews of applications and to avoid conflicting and inconsistent deficiencies or comments.
 - ❑ Each state can send a separate deficiency letter.
 - ❑ If there are inconsistent or conflicting deficiencies that cannot be resolved, the program manager will schedule a second call with staff and the state’s securities administrator.

Dodd-Frank and Private Fund Advisers

□ **Private Fund Investment Advisers Registration Act of 2010** (Title 4 of Dodd-Frank) – Significant reforms to the regulation of advisers to hedge funds and other private funds, including:

- Elimination of the private adviser exemption (202(b)(3))
- SEC registration for advisers to “private funds” with AUM of at least \$150 million
- SEC reporting for advisers to “private funds” with AUM of less than \$150 million and for advisers to “venture capital funds”

SEC Private Fund Advisers

- ❑ Advisers solely to venture capital funds.
- ❑ Advisers solely to private funds.
- ❑ Note new SEC Rule 203(m)-1 defining “private fund” broader than 3(c)(1) or 3(c)(7).
- ❑ 3(c)(1) private funds:
 - ❑ Securities are not publicly offered and are owned by not more than 100 persons.
 - ❑ Interests typically offered pursuant to Reg D, Rule 506.
 - ❑ Accredited investors only.
- ❑ 3(c)(7) private funds:
 - ❑ Securities are not publicly offered and generally not owned by more than 499 persons.
 - ❑ Investors must be qualified purchasers (individuals with investments of \$5,000,000/institutions with \$25,000,000 of investments).

SEC Private Fund Advisers: Registration/Reporting

SEC Registration

- Advisers to private funds with \$150 million in AUM or more.
- Use Form ADV.
- Deadline for registration is 3/30/12.

SEC Reporting

- Advisers solely to private funds with less than \$150 million AUM.
- Advisers to VC funds as defined by the SEC regardless of AUM.
- Form ADV items 1, 2B, 3, 6, 7, 10 and 11 plus corresponding schedules.
- Reports must be filed between 1/1/12 – 3/30/12

NASAA's Private Adviser Proposal

- ❑ NASAA model rule subject to membership vote.
- ❑ Rule includes advisers to 3(c)(1) and 3(c)(7) funds and other private funds that would satisfy the statutory requirements found in these exclusions.
- ❑ There are additional requirements for advisers to 3(c)(1) funds.
 - ❑ Investors in the 3(c)(1) fund must be “qualified clients” under SEC Rule 205-3 (either \$1 million in investments managed by the adviser or at least \$2 million in net worth excluding primary residence).
 - ❑ Specific additional disclosures, including the duties the adviser owes to the individual investors.

Private Adviser Proposal (cont'd)

- There is a “bad boy” disqualification provision.
- The exemption is contingent on the adviser filing a report with the state through IARD. This report is identical to the report required by the SEC for exempt reporting advisers.
- Advisers registered with the SEC are not eligible for the exemption.
- Investment adviser representatives employed by the exempt advisers would not be required to register.
- Rule has provisions for transitioning to registration if exemption is lost.
- Optional “grandfathering” provisions would allow currently exempt advisers to remain exempt under certain conditions.
- Maryland plans to adopt the rule by an implementing order.

Maryland and the Switch

- ❑ **Prepared to handle the switch.** We are working to ensure a seamless, comprehensive and effective switching process.
- ❑ **Switching is not new.** Regulatory switches regularly happen when the asset levels of IA firms rise above or fall below mandated thresholds.
- ❑ **State registration is a smooth process for most IAs,** especially those that have made the switch before and those that operated prior to 1996 when most IAs were required to register both with the SEC and with each state in which they were doing business.

Switch Timeline in Maryland

- IARD updated as of **November 7, 2011** with all amendments necessary to “switch” and to file as a private fund adviser.
- Advisers that want to get a jump on state registration can file **now**.
- File **as soon as possible** to allow time for state review and resolving deficiencies.
- Use coordinated review if the IA is filing in 4 or more jurisdictions.
- Request that state effectiveness be delayed until after **January 1, 2012**.
- Make SEC filing to indicate switching or not by **March 30, 2012**.
- Before **June 28, 2012**, obtain registrations in appropriate state jurisdictions for firm and investment adviser representatives.
- By **June 28, 2012**, file Form ADV-W to withdraw SEC registration, but do not file Form ADV-W until state registrations are effective.
- Renew registrations by **December 31** annual deadline.
- File annual amendments and material amendments as required.

Questions?

