



**ARM
ANNUAL EDUCATIONAL CONFERENCE**

NASAA Regulator Panel

Sarasota, Florida

January 24, 2012





NASAA Regulator Panel

Melanie Lubin - Maryland

Rod Griess – Nebraska

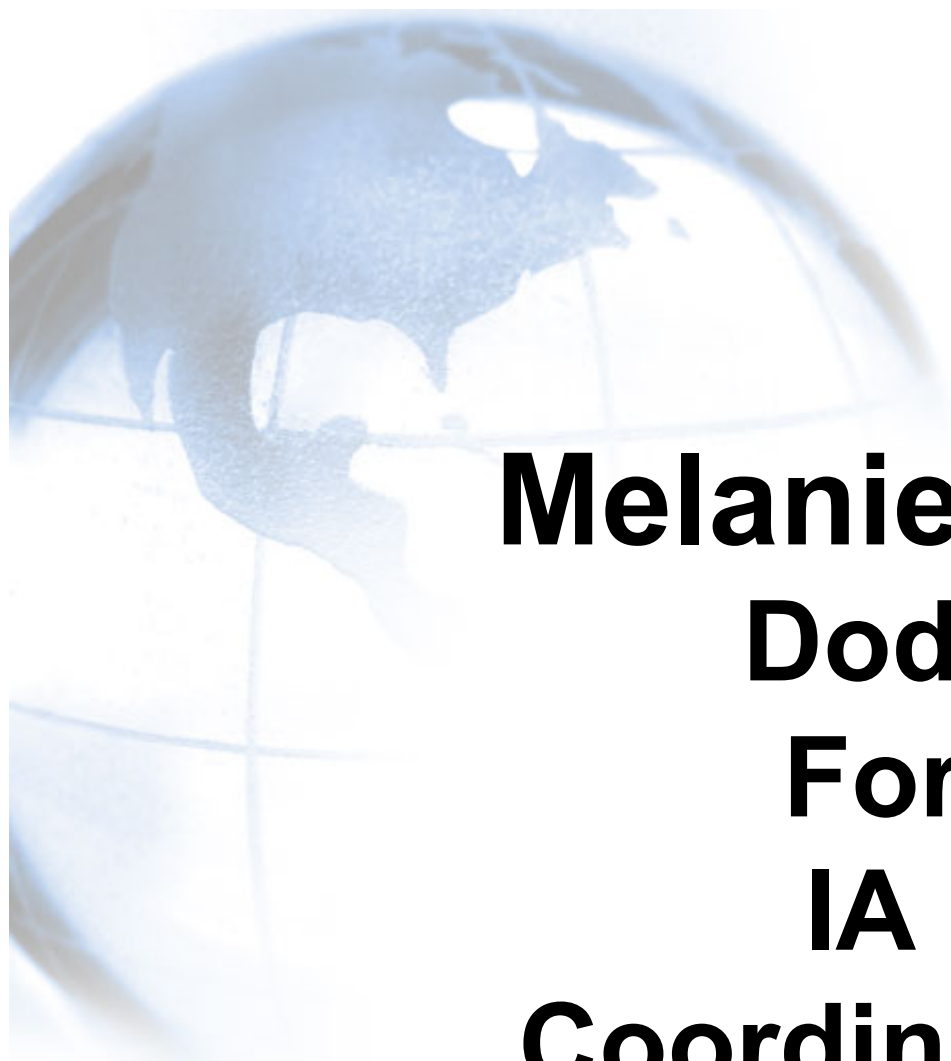
Andrea Seidt – Ohio

Larry Burton – NASAA

Michele Van Tassel – ARM

Moderator





Melanie Lubin, MD
Dodd-Frank
Form ADV
IA Switch
Coordinated Review



Dodd-Frank and the IA Switch

Overview of Switch Topics:

- Mid-sized investment advisers
- State registration for mid-sized advisers
- Coordinated Review
- Switch Timeline



- Under the Dodd-Frank Wall Street Reform and Consumer Protection Act state securities regulators have greater responsibility for the regulation of investment advisers.
- Dodd-Frank establishes a threshold of \$100 million assets under management (AUM) for federal covered advisers.
- Approximately 3200 advisers nationally affected by the “Switch”
- Relative percentage of increased IAs varies greatly state to state
- Law effective July 21, 2011
- SEC approved the final rules on June 22, 2011.
- Implementation began in Fall 2011.
- Switch must be complete by June 28, 2012.
- Dodd-Frank eliminated the private adviser exemption. No good estimate on those numbers on a state-by-state basis.



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



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 NEW IAs

- In states, all new investment advisers with \$100 million or less under management will be required to register with their Securities Administrator **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).



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 Form 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 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, 2011 through March 30, 2012.
- Advisers elect to participate by completing the Investment Adviser Coordinated Review Form on the NASAA website and clicking the “submit” button.
- Form submission notifies the program manager of the adviser’s participation.
- The program manager will send an email to the relevant states 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 and will send its own effective 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.
- <http://www.nasaa.org/industry-resources/investment-advisers/coordinated-review/>



The States and the Switch

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



Switch Timeline

- **NOW:** Switching advisers can file applications for state registration.
- **NOW:** Early filing allows time for state review and comment response.
- **NOW:** Use coordinated review if the IA is filing in 4 or more jurisdictions: go to <http://www.nasaa.org/1719/ia-switch-resource-center/>.
- **NOW:** IARD is updated with all amendments necessary to “switch” and to file as a private fund adviser.
- **MARCH 30, 2012:** SEC filing deadline for ongoing SEC eligibility.
- **JUNE 28, 2012:** Deadline for state registration for firm and investment adviser representatives.
- **JUNE 28, 2012:** Deadline to file Form ADV-W to withdraw SEC registration, but **do not** file Form ADV-W until state registrations are effective.



Helpful Websites

North American Securities Administrators Association (NASAA)

www.nasaa.org

NASAA Investment Adviser Switch Resource Center

www.nasaa.org/1719/ia-switch-resource-center/

NASAA Investment Adviser Coordinated Review Form

<http://www.nasaa.org/industry-resources/investment-advisers/coordinated-review/>

NASAA Investment Adviser Coordinated Review Program Notice

<http://www.nasaa.org/wp-content/uploads/2011/08/Coordinated-Review-Program-Letter-to-IAs.pdf>



Helpful Websites

NASAA Investment Adviser Coordinated Review FAQs

<http://www.nasaa.org/7425/investment-adviser-coordinated-review-program-frequently-asked-questions/>

NASAA IA Switch State-by-State Contact List

http://www.nasaa.org/wp-content/uploads/2011/08/Registration_and_Exam_Staff_Directory-11-11-2011.pdf

Securities and Exchange Commission Switching Advisers

<http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm>

SEC Investor Bulletin on Switching Advisers

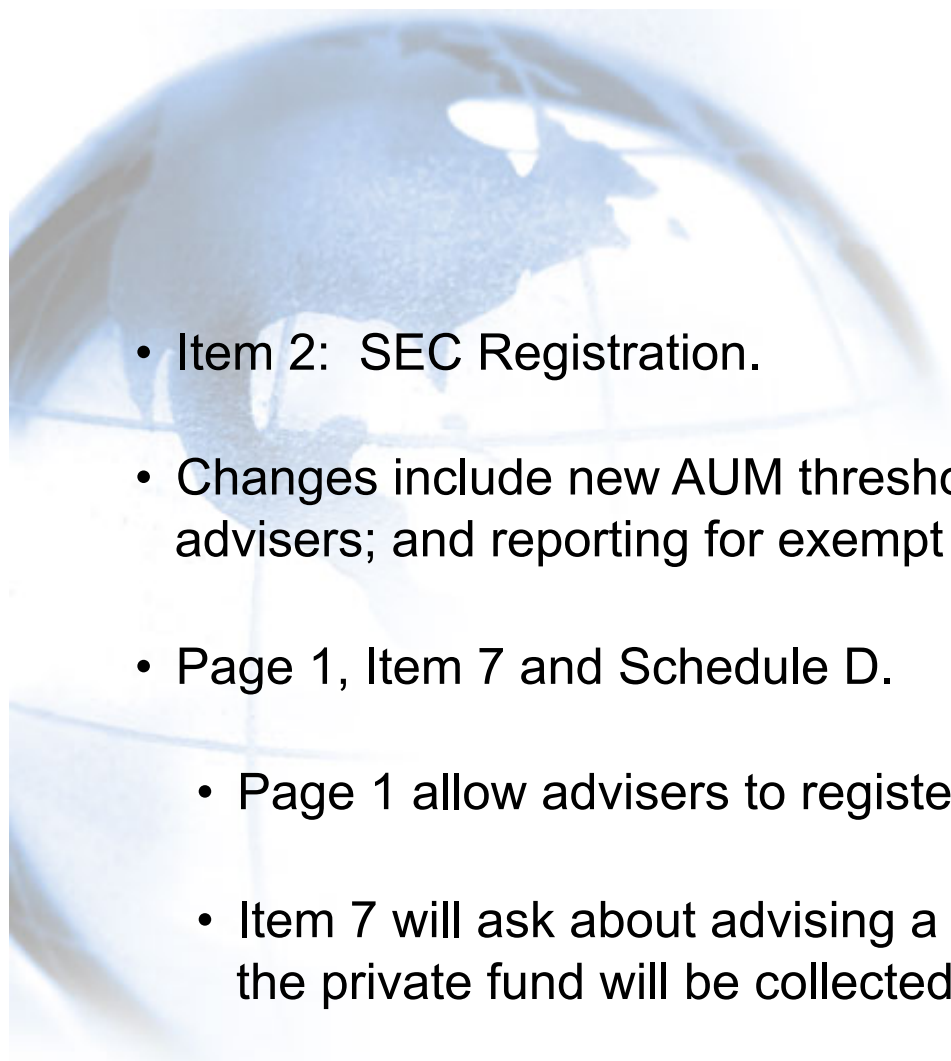
<http://www.sec.gov/investor/alerts/transition-of-mid-sized-investment-advisers.pdf>



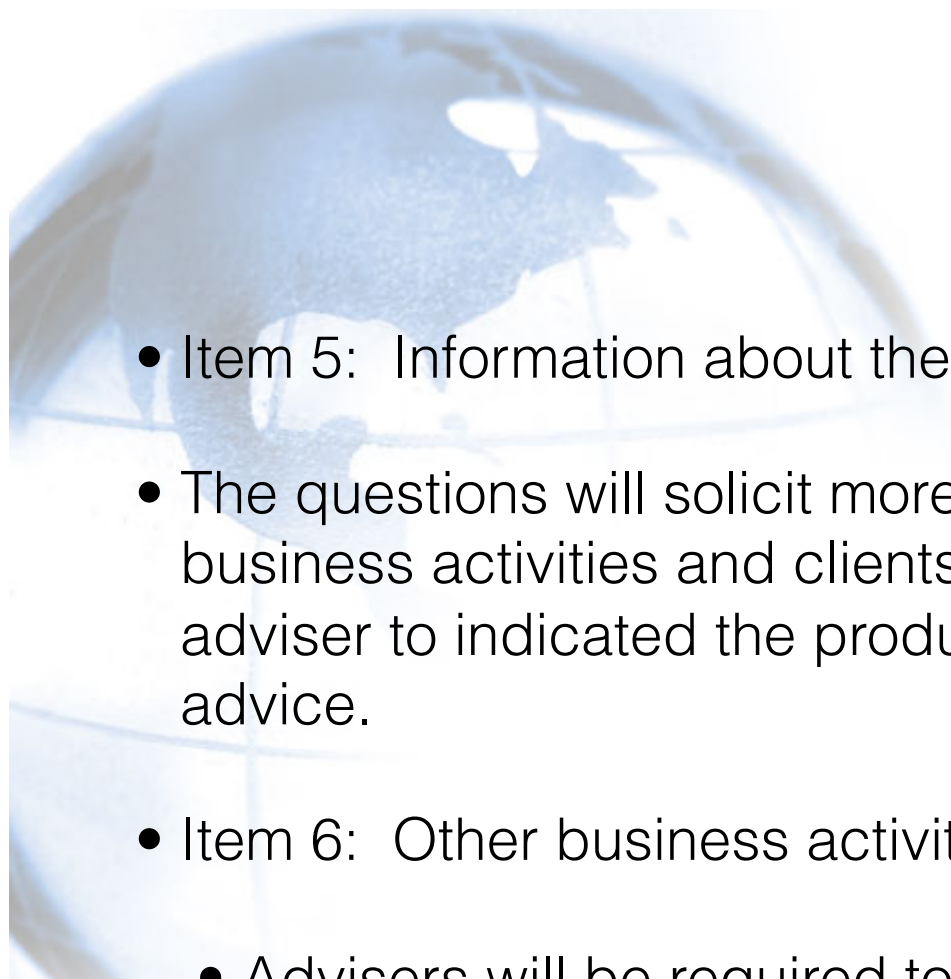
Changes to Form ADV

- Revisions necessary to implement increased AUM threshold.
 - Item 2
- Significant changes to accommodate reporting requirements for Private Fund Advisers.
 - Page 1
 - Item 7 and Schedule D
- More information on types of clients.
 - Item 5
- Specific non-advisory services or products.
 - Item 6



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- Item 2: SEC Registration.
 - Changes include new AUM threshold; 15 state requirement for multi-state advisers; and reporting for exempt reporting advisers.
 - Page 1, Item 7 and Schedule D.
 - Page 1 allow advisers to register or file *reports* with states and/or the SEC.
 - Item 7 will ask about advising a private fund and extensive information about the private fund will be collected on Schedule D.



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- Item 5: Information about the IA' s business
 - The questions will solicit more information about the adviser' s business activities and clients including a question requiring the adviser to indicated the products about which the adviser provided advice.
 - Item 6: Other business activities.
 - Advisers will be required to disclose more information about their other business activities including the types of products they sell to clients.

Exempt Reporting Advisers

- Advisers solely to venture capital funds.
- Advisers solely to private funds.
- Exempt from registration with the SEC. No state preemption.
- NASAA Model Rule.
 - Exempts advisers to venture capital funds and private funds but only if they meet certain requirements.
 - Advisers file reports identical to reports filed with the SEC.
 - Fees could be charged for filing reports.





Rod Griess, NE

**State Regulatory Initiatives
U4 - Section 12 vs Section 13 Reporting
Proof of Citizenship**






Andrea Seidt, OH

**State IA Uniformity Project
State Enforcement Activities**





**Type of
Non-fraud Industry Violation**
(in order of frequency
reported by states)


1. Unregistered securities	6. Books & Records
2. Unlicensed individual or firm	7. Unauthorized Trading
3. Dishonest/unethical activity	8. Selling Away
4. Failure to Supervise	9. Churning
5. Suitability	10. Other

Table 7: Non-fraud charges

Actions by Type of Industry Participant

Type of Non-fraud Violation	Number of Reported Actions
Broker-Dealer Firms	427
Broker-Dealer Agents	264
Investment Adviser Firms	208
Investment Adviser Representatives	146
Insurance Agents	143

Table 8: Actions by Type of Industry Participant



Most Reported Products 2010

*(In order of frequency
reported by states)*

1. Rule 506 Offerings

2. Real Estate Investments or Interests

3. Oil & Gas Investments or Interests

4. Structured Products

5. Hedge Funds or Private Equity Funds

6. Variable Annuities

7. Viaticals or Life Settlements

8. Precious Metal Commodities

9. Non-Precious Metal Commodities

10. Equity Indexed Annuities

Table 9: Most Reported Products



Larry Burton, NASAA

**2011 Web CRD/IARD
System Updates
State Highlights**



2011 Web CRD/IARD Releases

Release 2011.1 – 03/21/2011

Release 2011.2 – 06/20/2011

Release 2011.4 – 11/07/2011



Release 2011.1 – 03/21/2011

- **Verification of an individual's social security number (SSN) and month/day of birth** will be required upon creation of the following filing types: U4 Initial, U4 Dual, U4 Relicense, U4 Page 2 Initial, Initial NRF.
- Entitled jurisdiction users will be able to **withdraw S63, S65, and S66 exam requests via Non-Filing Information**, and the individual does not have an exam deficiency for that exam type with another jurisdiction.
- A new **IA State - Firm Download report** will display the responses to questions on Part 1A and 1B of Form ADV for all investment adviser firms registered in the requesting state.



Release 2011.2 – 06/21/2011

- The new **Individual - Disclosure Count Download** report will display current and archived disclosure counts for individuals currently registered with the requesting jurisdiction. As an addition to and for use with the **State Data Download** report.
- **FINRA Disciplinary Actions Online Database**
- Search for FINRA Disciplinary Actions
- You can conduct a search for **FINRA disciplinary actions** that were issued during **2005 or later**, and are eligible for publication pursuant to FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information). Results will also include opinions issued by the SEC and federal appellate courts that relate to FINRA disciplinary actions that have been appealed.
- <http://www.finra.org/Industry/Enforcement/DisciplinaryActions/FDAS/>



Release 2011.4 – 11/07/2011

- The **Form ADV** was **re-versioned as Rev. 11/2011** in order to accommodate the numerous changes made to the registration, reporting, and recordkeeping requirements for Investment Adviser firms for the Dodd Frank Act passed by Congress in July 2010.
- In addition, a **new Form ADV filing type** was added for **Exempt Reporting Advisers (ERAs)**.
- IARD View Organization** was updated to **reflect changes made to Form ADV**.



Release 2011.4 – 11/07/2011

- A **checkbox** was added to Form ADV Part 1A Disclosure Reporting Pages (**DRPs**) to request **removal of a DRP filed in error**. The checkbox was added to **Criminal, Regulatory Action and Civil Judicial DRPs**.
- The following **new Reason for Withdrawal** option was added to Form ADV-W: **Switching from SEC registration to SEC Exempt Reporting Adviser**.
- The following **checkboxes** were added to the **Brochure Types** options for Form ADV Part 2: - (A) **Includes material about supervised persons** that would otherwise be included in a supplement – (B) **This document is a Brochure Supplement** for one or more supervised persons



Web CRD/IARD Release Notes

Complete Web CRD/IARD Release Notes are viewable on Web CRD/IARD Site Maps through “Release Notes” or on the FINRA web site under Industry Professionals/ Compliance/Registration/User Support at:

<http://www.finra.org/Industry/Compliance/Registration/CRD/UserSupport/P085613>





Common Filing Issues



AG/RA Filing Issues

- **Not Registered in Home State**
- **Disclosure – Incomplete or Not Up To Date**
- **Dual Registration Prohibitions**
- **Failure to Provide Requested Information**
- **Exams – Must be Current & Acceptable for Registration Being Sought**
- **U4 Items 12 & 13 – Employment History & Other Business – Incomplete Disclosure**
- **IAR with SEC IA – No Place of Business in the State**
- **Lack of Timely Inquiry by Firm if AG/RA is Pending or Deficient for an Extended Period**
- **Fingerprint Cards Not Submitted Promptly to FINRA**
- **Open CRD System Disclosure Letter or Inquiry**
- **U5 Not Yet Filed By Prior Firm**



Fees & System Settings

FINRA & IARD Links

- **FINRA Industry Compliance Registration CRD Fees and Accounting**

- <http://www.finra.org/Industry/Compliance/Registration/CRD/FeesAndAccounting/>

- **SRO/Jurisdiction Fee and Setting Schedule - Web CRD Fees As Of 11/14/2011**

- <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/appsupportdocs/p005213.pdf>

- **IA Representative Fee and Setting Schedule Fees As Of 1/5/2012**

- http://www.iard.com/pdf/rep_fee_sch.pdf

- **IA Settings and Standard Fees* Fees As Of 1/3/2012**

- http://www.iard.com/pdf/reg_directory.pdf



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Links...

Listed below are some industry link that we thought might be useful:

**North American Securities
Administrators
Association (NASAA)**

**Financial Industry Regulatory
Authority (FINRA)**

**National Association of Insurance
Commissioners (NAIC)**

**Investment Adviser Registration
Depository (IARD)**

**National Futures Association
(NFA)**

**Informal Guidelines for Completing
Registration Forms(CRD & IARD)**

ARM Website

Links

Link to NASAA Informal
Guidelines



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