

Avoiding Common Deficiencies

IMPORTANT NOTICE: **AVOIDING COMMON DEFICIENCIES FOUND IN** **INVESTMENT ADVISER APPLICATIONS**

The Examiners of the Registration Division are responsible for reviewing and issuing comment letters to those persons who apply for registration as investment advisers and investment adviser representatives. Avoiding common deficiencies when preparing Form ADV Parts 1 and 2 and investment advisory agreements will help speed up the review of your application.

The most common errors found in an application are related to inconsistencies between Part 1, as filed on the IARD system; the new "plain language" narrative Part 2; and the investment advisory agreement/contract.

Form ADV, Parts 1 and 2

To avoid the most common deficiencies, please follow these guidelines:

- Ensure:
 - The types of clients listed on Item 5.D of Part 1 match Item 7 of Part 2.A.
 - The type of compensation listed on Item 5.E of Part 1 matches Item 5 of Part 2.A.
 - The fee schedule listed in Item 5 of Part 2.A matches the fee schedule in the investment advisory agreement/contract.
 - How often fees are paid as listed in Item 5 of Part 2 matches the investment advisory agreement/contract.
 - Services marked in Item 5.G of Part 1 match the services described in Item 4 of Part 2.A.
 - Discretionary authority marked in Item 8.C of Part 1 matches the discretionary authority described in Item 16 of Part 2.A. Additionally, you must discuss the restrictions or limitations imposed by your clients.
- If you list other business in Item 6 of Part 1, discuss the other business in Item 10 of Part 2.A.
- In part 2, do not state that you are "registered with the U.S. Securities and Exchange Commission" or "registered under the Investment Advisors Act of 1940."
- Do not reference or use the fact of your registration in public displays or advertisements in connection with rendering of services as an investment adviser. See [Section 20 of the Act](#).
- If you are registering or registered with one or more state securities administrators and you receive more than \$500 in fees per client six months or more in advance, include both the required balance sheet and financial condition disclosures for Items 18.A and 18.B of Part 2.
- Update references in the investment advisory agreement from the "ADV Part II" to the newly adopted "ADV Part 2."

Investment Advisory Agreements

In addition, the Examiners also review and comment on the applicant's investment advisory agreement(s). To avoid deficiencies, please follow these guidelines:

- The following items should be discussed in the agreement and should be consistent with the information found in Form ADV Parts 1 and 2:
 - A description of services to be rendered by the adviser;

- a fee schedule;
- whether fees are charged in advance or in arrears;
- how often fees are paid;
- whether fees are negotiable;
- whether fees are withdrawn from the client's account;
- the firm's termination policy; and
- a refund policy, if applicable.
- The agreement must contain the exact language found in [Texas Rule 116.12\(a\)](#)
- The agreement must contain a non-assignment clause as described in [Texas Rule 116.12\(c\)](#) **This rule requires the client's written consent before the agreement can be assigned by the adviser.**
- The fee schedule in the agreement must match the fee schedule discussed in the Form ADV Part 2. Additionally, the type of compensation described in the contract must match what was described in Item 5 of Part 2.A and the form of compensation marked in Item 5.E of Part 1.

Topic	ADV I Item	ADV 2A Item	ADV 2B Item
Employees as Registered Reps	5B(2)	10A	4A
Employees are insurance agents	5B(5)	10C	4B
Use of solicitors	5B(6), 8H	14B	
Types of clients	5D	7	
Compensation	5E	5A 5E 10D 14	4A, 4B
Performance Fees	5E	6, 19C	
Assets under management	5F	4 (do not have to match, but must be w/in 90 days)	
Services provided	5G	4	
Wrap Program	5I	4D, if so, Appendix 1 is required	
Advise on limited security types	5J	4B	
Other financial business	6A	5E, 10A,10B, 10C	
Other business or services	6B	19B	
Financial industry affiliations	5B, 7A	10A, B, and/or C, 19E	
Private Fund Adviser Please submit: LPA, PPM and Sub Docs	7B	4, 5, 10C	
Your interest in client trades	8A	11B, 11C, 11D	
Sales interest in client trades	8B, 5B, 7B	11B	
Discretion	8C	4, 16, 18B	
Related brokers	8D, 8F	10A, 10C	
Recommend brokers	8E	12A	
Soft dollars	8F, 8G	12A	

Receive pay for referrals	8I	10D, 14A	5
Custody	9	15, 18B	
Disciplinary disclosures	11	9, 19D	3, 7
Direct Owners	Schedule A	4, 19A	

Source: http://www.ssb.state.tx.us/Important_Notice/Avoiding_Common_Deficiencies.php