



SECURITIES INDUSTRY PRACTICE

ALERT

ADVISORS: BEWARE OF THE “SWITCH” FROM SEC OVERSIGHT TO STATE REGULATION

By July 21, 2011 — the one-year anniversary of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act — investment advisors with less than \$100 million in assets under management will be required to register with the states. This impacts all advisors, whether currently registered with the Securities and Exchange Commission. The "switch" to state regulation is likely to raise a number of issues — and confusion — for advisors.

- Advisors with more than \$25 million in assets under management previously were able to opt out of federal registration — and state registration as a result — if they had fewer than 15 direct clients. With the passage of Dodd-Frank, that 15-client threshold has been removed outright from the Investment Company Act of 1940. Thus, absent another exemption, many advisors will face federal or state registration for the first time.
- Advisors with clients in multiple states may have to register in multiple states, potentially creating burdensome requirements for advisors. (One exception: an advisor that must register in 15 or more states may choose to remain SEC-registered.)

• States differ on their registration, custody, books and records and other requirements. Just to cite one arcane but significant difference, Connecticut does not require its state-registered investment advisor representatives to have a 65 (or 7 and 66); it instead only requires them to have sufficient "experience." New York, meanwhile, not only requires the 65 (or 7 and 66), but also mandates that representatives have taken the exams within two years prior to registering with New York. (That means that a neophyte advisor in New York can sail through the state registration process with flying colors, while a more veteran advisor in New York has to file for a waiver on the state's exams-in-the-last-two-years requirement to become registered (if such representative got his or her 65 (or 7 and 66) more than two years ago).)

Fox Rothschild's Securities Industry Group will continue to monitor the "switch" and alert you to any updates, including any guidance issued by the SEC regarding the transition to state oversight as well as any news regarding multistate cooperation on registration.

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