

Massachusetts Securities Division

REGISTRATION, INSPECTIONS, COMPLIANCE AND EXAMINATIONS SECTION

▲ 2020 DECEMBER NEWSLETTER ▲

A Division of the Office of the Secretary of the Commonwealth, William Francis Galvin

EMERGENCY NOTICE UPDATE

On November 25, 2020, the Massachusetts Securities Division (the "Division") issued an Amended Emergency Notice (the "Amended Emergency Notice"), effective until December 31, 2020 (unless otherwise extended or rescinded) amending or removing some of the accommodations from the March 24, 2020 Emergency Notice, which granted temporary relief for securities filers and registered financial professionals in response to the COVID-19 pandemic. Pursuant to the Amended Emergency Notice, the Division is granting temporary relief in the following processes: (1) the acceptance of electronic signatures for Corporate Finance filings; and (2) the acceptance of electronic signatures for Form U4 filings.

The Amended Emergency Notice no longer provides relief in the following areas: (1) the temporary waiver of notarizations in connection with Corporate Finance filings; (2) the relief from submitting a notarized CORI form in connection with an application for investment adviser representative ("IAR") registration; and (3) the relief from annual update filings and document delivery for Investment Advisers.

Please visit the Division's website for a full copy of the most recent Amended Emergency Notice.¹

¹ <https://www.sec.state.ma.us/sct/covid-19/COVID-19-Emergency-Notice-Nov-25-2020.pdf>

INVESTMENT ADVISER ("IA") FREQUENTLY ASKED QUESTIONS AND HELPFUL REMINDERS

Frequently asked questions ("FAQs") received from Massachusetts-registered IAs and helpful reminders have been provided throughout this newsletter. Be on the lookout for the colored boxes containing these FAQs. Additional FAQs,¹ past versions of the Division's newsletters,² and relevant policy statements³ can be found on the Division's website.

¹ <https://www.sec.state.ma.us/sct/sctlic/licidx.htm#faq2>

² <https://www.sec.state.ma.us/sct/sctnewsletters/newslettersidx.htm>

³ <https://www.sec.state.ma.us/sct/sctps/psidx.htm>

REQUIRED UPDATE TO IA'S WEBSITE: TABLE OF FEES FOR SERVICES

The Division would like to remind its registered IAs that if it maintains a website, the IA's Table of Fees for Services ("Fee Table") must be available and easily accessible on the website.¹ If the IA's website has an internal search feature, a search for the term "fee" or "fees" should return a link to the Fee Table as one of the top results.



¹ 950 MASS. CODE REGS. 12.205(8)(f). Additional information is available on the Division's website at: <http://sec.state.ma.us/sct/sctfeetable/feetable-adoption.htm>

CORPORATE FINANCE UPDATE

Emergency Order

In response to the COVID-19 pandemic, the Corporate Finance Section of the Division has modified its filing procedures to accommodate filers who are working remotely. The Corporate Finance Section is temporarily accepting filings via e-mail and payments via wire transfer. Please note that the Division also accepts manual ink and electronic signatures, and accepts remote notarizations as well as in-person notarizations.¹

Electronic Filings

The Corporate Finance Section accepts
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¹ Refer to the Division's Emergency Notice, as updated on November 25, 2020: <https://www.sec.state.ma.us/sct/covid-19/Emergency-Notice-for-Corporate-Finance-Filers.htm>

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IA EXAMINATION RESOURCES AND COMPLIANCE BEST PRACTICES

Below are two resources available to assist IAs in assessing and improving their business practices and compliance programs.

North American Securities Administration Association’s (“NASAA”) 2020 IA Section Annual Report

NASAA’s 2020 IA Section Annual Report¹ recommends a number of best practices to assist IAs in formulating compliance programs, including:

- Updating contracts to accurately reflect the IA’s current business practices and any fee alterations, and reviewing contracts to ensure they are signed by the client(s), and maintained through the life of the contract plus an additional five years after termination;
- Preparing and maintaining in a written format client profiles or other client suitability information; and
- Preparing written compliance and supervisory procedures which include a business continuity plan containing procedures for displacement due to a natural disaster and the temporary or permanent incapacitation of key personnel.

The U.S. Securities and Exchange Commission’s (the “SEC”) 2020 Examination Priorities

The SEC’s Office of Compliance Inspections and Examinations publishes an annual report of examination priorities for IAs. The 2020 report² emphasizes protecting retail investors and ensuring IAs are continuing to serve as fiduciaries by acting solely in the best interests of their clients. The report notes some IAs fail to disclose arrangements that may present a material conflict of interest to their clients. IAs must make full and fair disclosures of all conflicts of interest, as the conflicts might prompt IAs to provide advice that is in their own interest instead of in the best interest of their clients. An example of a compensation arrangement that presents a material conflict of interest is an IAR who earns commissions through the sale of insurance and/or brokerage products to IA clients.

¹ <https://www.nasaa.org/wp-content/uploads/2020/04/2020-IA-Section-Report-FINAL.pdf>

² <https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2020.pdf>

Q. How can I be sure that I do not miss any important communications from the Division?

A. IAs should ensure that their mailing address, phone number, and email address as reported on the IARD are up-to-date.

BROKER DEALER AND AGENT FIDUCIARY CONDUCT STANDARD

On March 6, 2020, the Division adopted amendments to its regulations¹ applying a fiduciary conduct standard to broker-dealers and agents when dealing with their customers (the “Fiduciary Conduct Standard”).

On September 1, 2020, the Division began enforcement of the Fiduciary Conduct Standard. The Fiduciary Conduct Standard requires broker-dealers and agents to, among other things, make recommendations and provide advice without regard to the interests, financial or otherwise, of any party other than the customer, and to make all reasonably practicable efforts to avoid conflicts of interest, eliminate conflicts that can reasonably be avoided, and mitigate conflicts that cannot reasonably be avoided or eliminated.

The Division is monitoring compliance with the Fiduciary Conduct Standard and will take action against any violations. Failure to adhere to the fiduciary conduct standard of utmost care and loyalty constitutes a dishonest or unethical practice.² The Division has issued an Adopting Release³ regarding the Fiduciary Standard as well additional guidance in the form of FAQs.⁴

¹ 950 MASS. CODE REGS. 12.207

² MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G)

³ <https://www.sec.state.ma.us/sct/sctfiduciary-conductstandard/fiduciaryrule-adoption.htm>

⁴ <https://www.sec.state.ma.us/sct/sctfiduciary-conductstandard/fiduciaryrule-faq.htm>

CORPORATE FINANCE UPDATE

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Rule 506 notice filings electronically via the NASAA Electronic Filing Depository (“EFD”). Filers continue to have the option to make hardcopy filings and pay filing fees by check. Additional information about filing via the NASAA EFD is available on the Division’s website.²

The Corporate Finance Section recommends that filers regularly check the Division’s website for up-to-date information.

² <https://www.sec.state.ma.us/sct/sctefd/efdidx.htm>

Q. How can I be sure that my Table of Fees for Services is in compliance with Massachusetts requirements?

A. By referencing the fillable Fee Table Template¹ and Guide to Table of Fees for Services² available on the Division’s website.³

¹ <https://www.sec.state.ma.us/sct/sctfeetable/Fillable-Fee-Table-Template-06-14-2019.docx>

² <https://www.sec.state.ma.us/sct/sctfeetable/Guide-to-Table-of-Fees-for-Services.pdf>

³ <https://www.sec.state.ma.us/sct/sctfeetable/feetable-adoption.htm>

CYBERSECURITY BEST PRACTICES FOR IAS AND THEIR CLIENTS

Red Flags for Phishing Scams

Phishing is the fraudulent practice of sending e-mails purporting to be from a reputable sender in order to induce individuals to reveal personal and private information. Some common red flags for phishing scams are:

- Links in an e-mail not matching the text of the link;
- Inconsistent logos or organization names; and
- Typos, a generic greeting, or a sense of urgency.¹

If you receive a suspicious request, delete the e-mail and do not click the links or respond to the request.

¹ May 7, 2020 NASAA Presentation “Phishing 101 – How to Stay Off the Hook” Charlie Jarrett (Georgia Securities and Charities Division) James McDowell (Alabama Securities Commission)

Protecting Client Information When Working Remotely

Due to the ongoing COVID-19 pandemic increasing the number of financial professionals working remotely, the Division recommends IAs review their cybersecurity policies and procedures for potential weaknesses to ensure that client information is being protected.

Some cybersecurity best practices include: utilizing antivirus software; regularly backing-up data and maintaining storage procedures; keeping work devices separate from personal or family devices; using encrypted Wi-Fi; and utilizing a secure VPN.²

² May 7, 2020 NASAA Presentation “Phishing 101 – How to Stay Off the Hook” Charlie Jarrett (Georgia Securities and Charities Division) James McDowell (Alabama Securities Commission)

INVESTOR EDUCATION

The Division is planning to conduct six unique educational programs in collaboration with the Girl Scouts of Eastern Massachusetts during the winter of 2020-2021. The virtual sessions are intended for students in grades six through twelve who are scouts at the Cadet, Senior, and Ambassador levels. These programs will cover topics such as financial literacy, budgeting, financing purchases, and higher education,

Q. I plan to solicit clients for a Massachusetts-registered IA. Does this raise any registration issues?

A. Yes. Solicitation for compensation on behalf of a Massachusetts-registered IA will require you to register as a representative of that adviser. A person who will only solicit for a single IA and offer no investment advice or perform any other advisory services may request that the examination or certification requirement be waived but that person must register as an IAR.



among others. Learning objectives for the students include best practices for tracking income and expenses, planning for spending, saving and charitable giving, and creating long term financial plans. Completion of the programs will result in the award of a financial literacy badge.

If you would like more information regarding opportunities for Investor Education programs offered by the Division, please contact the office at 617-727-3548.

ADULT PROTECTIVE SERVICES OVERVIEW

Adult protective services (“APS”) are victim-focused services provided by government agencies or their contractors which investigate allegations of abuse, neglect, and financial exploitation of seniors or adults with disabilities. There are APS programs in every state, including Massachusetts.¹ The majority of the cases involve abuse, neglect, and/or exploitation by family members, friends and caregivers. APS is an important resource, as one in every ten seniors is mistreated, and for every elder abuse case reported over 23 go unreported.² Anyone can, and should, call to report any suspicious activity.

Steps IAs can take to protect senior clients include:

- Calling the client to confirm the authenticity of wire transfer requests received electronically or by a third party; and
- Implementing policies and procedures on reporting and/or addressing suspected exploitation or diminished decision making capacity including obtaining the name and contact information of a trusted contact person, such as a financial proxy, for each senior client.³

If financial exploitation is suspected, IAs can contact the client’s identified trusted contact, the Division, APS, and/or local law enforcement.

¹ <https://www.mass.gov/reporting-elder-abuse-neglect> Please note that in many situations, IAs must get informed consent from a client before sharing personal information with a third party.

² July 15, 2020 NASAA Presentation “Financial Exploitation, Abuse and Neglect of Seniors and Adults with Disabilities: What You Need to Know” Lori Delagrammatikas (Executive Director, National Adult Protective Services Association) Joe Snyder (Elder Justice Consultant, National Adult Protective Services Association)

³ Obtaining a financial proxy from the client will alleviate privacy concerns should the adviser need to contact the specified individual.

RECENT ENFORCEMENT ACTIONS

Participation in NASAA's COVID-19 Enforcement Sweep Task Force

In April 2020, the Division participated in NASAA's COVID-19 Enforcement Sweep Task Force. The Division conducted web searches, reviewed identified URLs, and monitored social media and internet marketplaces for sales tactics involving the COVID-19 pandemic. As of August 2020, the Task Force had identified a total of 244 fraudulent schemes, 154 of which were investment-related. The Division required firms to provide support for statements made in their advertisements claiming to offer financial freedom to individuals by teaching them to trade securities and providing them with proprietary software to assist them, all for a fee. Additionally, in July 2020, the Division filed two separate administrative complaints against two individuals, alleging the sale of unregistered securities, transacting business in Massachusetts as unregistered broker-dealers, engaging in fraudulent and deceptive acts and practices, and making material misstatements.

Digital Advertisements Soliciting Investments in Foreign Exchange Market

The Division filed an administrative complaint against an individual alleging that he posted digital advertisements soliciting investments in a Forex account without being registered in Massachusetts. Further, the complaint alleges the individual made false and misleading statements in those digital advertisements.

The individual allegedly made postings to several Craigslist boards, both in Massachusetts and nationally, claiming to be a professional Forex trader with six years of experience, inviting people to invest with him, and promising guaranteed astronomical returns. In postings made nationally, he has warned that the stock market is crumbling and invited interested investors to contact him to profit off the COVID-19 pandemic with Forex.

The complaint alleges that when the individual did receive investor funds, he immediately withdrew them, either in cash or by transferring to another bank account, and at no point have investor funds been invested in the Forex market.

Digital Advertisements Soliciting Investments in Penny Stocks

The Division filed an administrative complaint against an individual alleging he posted digital advertisements soliciting investments in penny stocks or in a penny stock trading account without being registered in Massachusetts. Further, the complaint alleges the individual made false and misleading statements in those digital advertisements.

Dating back to January 2018, the individual allegedly made postings to several Craigslist boards in at least 49 states, two countries, the District of Columbia, and Puerto Rico, promising to teach people how to trade in penny stocks and show them his 'top secret' sources, which are, allegedly, all free. Alternatively, he offered to teach people how to open their own account, promising to trade for them and split the profits. Postings in March of this year reference the "overblown corona virus panic" causing the biotech sector to surge.

Solicitation of Unregistered Securities Investments

In December 2020, the Division filed an administrative complaint against an individual alleging that he defrauded two Massachusetts investors out of \$140,000, using a business plan filled with numerous fraudulent statements to convince the investors to purchase unregistered securities in his companies. The individual allegedly purchased a number of domain names with the intention of later selling the domain names for a profit. The individual also formed limited liability companies using some of the domain names he had purchased, and went on to attempt to recruit investors for his companies.

The complaint alleged the individual described his company as a platform for loans and banking with crowdfunding services, offering an exclusive low-cost crowdfunding platform which, along with an app, had a pre-launch valuation of \$10 million. The individual allegedly used the funds invested to pay for a number of personal expenses, including paying for airfare and hotel expenses to attend a networking event in San Francisco, and to make purchases at multiple retail establishments. The Division is seeking disgorgement of all profits from the alleged wrongdoing, provide restitution to the investors and an administrative fine.



Q: Where can I find information about recent enforcement actions taken by the Division?

A: The Division publishes a copy of complaints filed by the Enforcement Section on its website. Complaints filed in 2019 and later are viewable on the main page,¹ while actions from 2012 to 2018 are available online in the archives.² Information on complaints filed before 2012 can be obtained by contacting the Division.

¹ <https://www.sec.state.ma.us/sct/sctidx.htm>

² https://www.sec.state.ma.us/sct/archived/sct_archives.htm

