

Investment Adviser Regulation in Colorado

BY JASON SPITALNICK





This article explains the federal and state regulations applicable to investment advisers in Colorado and discusses how to develop and maintain an effective compliance program.

Colorado has a robust investment advisory industry. According to the North American Securities Administrators Association (NASAA), there are nearly 600 state-registered investment advisers in the Centennial State.¹ The state is also home to numerous federally registered advisers who each manage hundreds of millions of dollars of client assets. For lawyers who represent investment industry participants, it is vital to understand the governing regulatory framework.

The regulation of investment advisers in the United States operates through a bifurcated system, with oversight divided between the Securities and Exchange Commission (SEC) and state securities regulators. For Colorado practitioners, this means grappling with two distinct but overlapping regulatory regimes: federal law embodied in the Investment Advisers Act of 1940 (Advisers Act) and Colorado state law administered by the Division of Securities within the Department of Regulatory Agencies. The dividing line between these regimes primarily depends on the amount of assets an adviser manages, creating what regulators sometimes call the “\$100 million cliff”—a threshold that determines not just which regulator has primary jurisdiction, but also which substantive requirements apply.

This article examines the federal and state definitions of “investment adviser,” explains the bifurcated jurisdictional framework, details registration requirements at both levels, and provides practical guidance on compliance program development—a critical requirement given that SEC examination priorities in recent years have consistently emphasized the adequacy of compliance programs and that the SEC has brought numerous enforcement actions against advisers for compliance program deficiencies.

What Is an Investment Adviser?

“Investment adviser” is defined under both state and federal law. Section 202(a)(11) of the Advisers Act defines an “investment adviser” as any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who issues analyses or reports concerning securities as part of a regular business.² This definition is intentionally broad and is designed to capture a wide range of advisory activities, including wealth managers providing comprehensive financial planning for individuals, robo-advisers using algorithms to manage retail portfolios, and private fund managers overseeing hedge funds or private equity vehicles.

The definition encompasses both natural persons and legal entities. Whether someone “engages in the business of advising others” depends on several factors, including whether the person holds themselves out as an investment adviser, receives compensation for advice, and regularly provides advice, and whether providing advice is a substantial part of the business in question. Importantly, the definition includes those who provide advice about securities, not just those who manage portfolios or have discretionary authority over client accounts.³

However, the statute carves out several important exclusions, including (subject to particular circumstances) banks, lawyers, accountants, broker-dealers, teachers, publishers, and certain family offices.⁴

Colorado’s securities statutes adopt a similar definition but operate independently. An “investment adviser” under Colorado law is a person or entity who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or

who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.⁵

While Colorado's definition of investment adviser largely mirrors the federal standard, practitioners must remain mindful of specific state statutory exclusions, such as those for depository institutions and incidental professional services, that ensure that state and federal oversight remains distinct yet complementary.

The Federal-State Divide: Determining Jurisdiction

The National Securities Markets Improvement Act of 1996 fundamentally restructured investment adviser regulation by creating a two-tiered system that divided oversight between the SEC and state regulators.⁶ Understanding which regulator has primary jurisdiction is the first critical question for any investment advisory firm, because this determines compliance obligations.

Under section 203A of the Advisers Act, an adviser is generally prohibited from registering with the SEC unless it is either eligible for or required to be federally registered. An adviser is usually eligible for SEC registration if it has at least \$100 million in "regulatory assets under management" (RAUM), including securities portfolios for which the adviser provides continuous and regular supervisory or management services.⁷ Once an SEC-registered adviser's RAUM falls below \$90 million, it generally must withdraw its SEC registration and register with the states where it maintains clients (the \$90 million withdrawal threshold creates a buffer to prevent frequent switching between federal and state registration).

However, the \$100 million threshold is not absolute. Several categories of advisers are either required or permitted to register with the SEC regardless of their AUM, including advisers or sub-advisers to registered investment companies (mutual funds), advisers to business development companies with at least \$25 million in AUM, pension consultants with respect to assets of employee benefit plans of a certain size, "multistate advisers" required to register in 15 or more states, and foreign advisers that have sufficient US business.⁸

“
If an adviser does not meet the criteria for SEC registration, it typically must register with the state securities regulator in each state where it maintains a place of business or has more than a de minimis number of clients.
”

If an adviser does not meet the criteria for SEC registration, it typically must register with the state securities regulator in each state where it maintains a place of business or has more than a de minimis number of clients. Advisers located in Colorado with less than \$100 million in RAUM must register with the Colorado Division of Securities.⁹ Colorado advisers with assets under the \$100 million threshold but who have more than five clients in other states may also need to register in those states.¹⁰

Failing to correctly navigate this registration framework carries significant risk. An adviser who registers with the SEC when it does not meet the \$100 million threshold (or a specific exemption) is in violation of Section 203A-1 of the Advisers Act. Conversely, failing to register with the Colorado Division of Securities when required can lead to state enforcement actions, including rescission offers to clients, administrative fines, and a statutory disqualification that can permanently tarnish a firm's regulatory record.¹¹

Colorado State Registration Requirements

For investment advisers required to register in Colorado, the registration process centers on Form ADV, a uniform registration document filed electronically through the Investment Adviser Registration Depository (IARD), a centralized database maintained by the Financial Industry Regulatory Authority (FINRA) on behalf of the SEC and the NASAA. (Despite FINRA's role as custodian of IARD, advisers are not regulated by FINRA, which oversees broker-dealers.)

Form ADV consists of multiple parts, each serving a distinct purpose. Part 1 is a "check-the-box" questionnaire that collects basic information about the firm's business, ownership, clients, employees, services, fees, and disciplinary history. This information is largely public and forms the basis of the investment adviser's record in both state and federal databases. Part 2A (the "firm brochure") and part 2B (the "brochure supplement") are narrative disclosures written in plain English that must be delivered to clients. The brochure describes the adviser's services, fees, strategies, conflicts of interest, disciplinary information, and other material information. The brochure supplement provides information about specific advisory personnel who work with clients.

In addition to Form ADV, Colorado requires several supplemental documents and filings. The state requires advisers to file a financial statement if the adviser maintains custody of client assets or requires prepayment of fees six months or more in advance.¹² Investment adviser

representatives (IARs)—the natural persons who provide investment advice on behalf of the firm—must file Form U4 and pass qualifying examinations.¹³ Most commonly, IARs must pass the Series 65 Uniform Investment Adviser Law Examination.¹⁴

Federal SEC Registration Requirements

Advisers meeting the criteria for SEC registration must also file Form ADV through the IARD system, but the requirements and ongoing obligations differ in important respects from state registration. SEC-registered advisers must file Form ADV parts 1 and 2, but they also must complete part 3, also known as Form CRS (Client Relationship Summary), a brief, plain-English summary of the advisory relationship designed to help retail investors understand and compare services. Form CRS was adopted as part of the SEC's Regulation Best Interest package and must be provided at the beginning of a retail client relationship and updated when there are material changes.¹⁵

Certain advisers that would otherwise be required to register with the SEC may instead qualify as “exempt reporting advisers” (ERAs).¹⁶ The two most common categories are advisers solely to venture capital funds and advisers solely to private funds with under \$150 million in RAUM attributable to US operations. ERAs are not fully registered but must file an abbreviated version of Form ADV part 1 with the SEC to claim their exempt status. ERAs remain subject to the anti-fraud provisions of the Advisers Act and may face SEC enforcement for fraudulent conduct.

Notice Filing Requirements for SEC-Registered Advisers in Colorado

Even though SEC-registered advisers are exempt from state registration requirements, Colorado (like most states) requires SEC-registered advisers to make a notice filing if they conduct business in the state. Specifically, an SEC-registered adviser with a place of business in Colorado, or that employs or engages individuals with a place of business in Colorado to act as investment adviser representatives, must submit Form ADV and

pay a notice filing fee to the Colorado Division of Securities.¹⁷

Additionally, for each investment adviser representative with a place of business in Colorado, the SEC-registered adviser must file Form U4 and pay the IAR registration fee.¹⁸ These representatives remain subject to state testing and continuing education requirements even though the adviser itself is federally registered.¹⁹

The Fiduciary Standard: The Foundation of Investment Adviser Regulation

Regardless of whether an investment adviser is registered with the SEC or with Colorado, the adviser owes a fiduciary duty to its clients. This duty stands as the cornerstone of investment adviser regulation and distinguishes advisers from broker-dealers, who do not presumptively owe fiduciary duties.

The Supreme Court established the fiduciary nature of the adviser-client relationship in the seminal 1963 case *SEC v. Capital Gains Research Bureau, Inc.* The Court held that Section 206 of the Advisers Act imposes a fiduciary duty by operation of law, even though the statute itself never uses the word “fiduciary.”²⁰ The purpose of this duty, the Court explained, is to eliminate conflicts of interest that might incline an adviser—consciously or unconsciously—to render advice that is not disinterested.²¹

The SEC has interpreted this fiduciary duty as consisting of two components: a duty of care and a duty of loyalty. In June 2019, the SEC issued comprehensive guidance on these duties in Commission Interpretation Regarding Standard of Conduct for Investment Advisers.²² This interpretation, while not creating new obligations, consolidated and clarified decades of case law, releases, and no-action letters into a single framework.

The duty of care encompasses three principal obligations. First, advisers must provide advice that is in the best interest of the client, based on the client's objectives. This requires understanding the client's financial situation, investment experience, and goals, and tailoring recommendations accordingly. The required level of understanding may differ depending on

the sophistication of the client and the scope of the relationship; advisers serving retail clients in ongoing relationships face more extensive obligations than those advising sophisticated institutional investors in limited engagements.

Second, when an adviser has the responsibility to select broker-dealers to execute client trades, it must seek best execution. This means seeking the most favorable terms reasonably available under the circumstances, considering not just price but also factors such as the speed of execution, the likelihood of settlement, and the overall cost of the transaction.

Third, advisers must provide ongoing advice and monitoring over the course of the relationship, at least when the relationship contemplates such services. An adviser in an asset-based fee arrangement, for example, has an obligation to monitor the portfolio and update advice as circumstances change. The extent of this monitoring duty depends on the express terms of the advisory agreement and the reasonable expectations established through the relationship.

The duty of loyalty requires advisers to make full and fair disclosure of all material facts, particularly conflicts of interest that might affect the adviser's judgment. The SEC has emphasized that boilerplate, vague disclosures are inadequate; clients must receive sufficiently specific information to understand the conflict and provide informed consent.²³ For example, an adviser cannot simply disclose that it “may” receive third-party compensation; if such compensation exists, the adviser must describe the specific arrangements, amounts, and how the conflict will be managed.

Certain conflicts cannot be disclosed away and must be eliminated. For instance, an adviser generally cannot trade against client positions (unless in a separate capacity as a registered broker-dealer under specific circumstances). Where conflicts can be disclosed, the adviser must still act to mitigate them where possible; disclosure does not provide carte blanche to exploit the conflict.

Importantly, the adviser's fiduciary duty cannot be waived. Advisory agreements cannot include provisions disclaiming fiduciary status or providing blanket waivers of all conflicts.

Substantive Requirements Under the Advisers Act

Beyond the overarching fiduciary duty, the Advisers Act and SEC rules impose specific operational requirements on investment advisers. These requirements apply primarily to SEC-registered advisers, though some states have adopted certain parallel rules. The following list is illustrative, not comprehensive:

- **Rule 206(4)-7.** The “compliance rule” requires every registered investment adviser to adopt and implement written policies and procedures reasonably designed to prevent violations of the Advisers Act.²⁴ The rule requires the adviser to designate a chief compliance officer (CCO) responsible for administering the compliance program and to conduct an annual review of the adequacy and effectiveness of the policies and procedures. The CCO must have appropriate authority and resources to fulfill this role, and should report directly to senior management or the board. The content of the compliance program must be tailored to the adviser’s specific business model, client types, investment strategies, and size. The SEC has made clear that generic, off-the-shelf compliance manuals are inadequate. Advisers should address risks such as portfolio management processes, trading practices, valuation of client holdings, safeguarding of client assets, accuracy of disclosures, allocation of investment opportunities, protection of material non-public information, and business continuity planning.
- **Rule 206(4)-1.** The “marketing rule” governs advertising and marketing communications.²⁵ The current marketing rule, adopted in 2020, establishes a principles-based framework prohibiting certain practices (such as false or misleading statements and unsubstantiated performance claims) while allowing some flexibility for testimonials, endorsements, and third-party ratings, subject to disclosure requirements.
- **Rule 206(4)-2.** The “custody rule” imposes safeguarding requirements when an

adviser has custody of client funds or securities.²⁶ “Custody” is defined broadly and includes not only physical possession but also the ability to access or transfer client assets. An adviser with custody must use a qualified custodian (typically a bank or registered broker-dealer), ensure clients receive account statements directly from the custodian, and in many cases undergo an annual surprise examination by an independent public accountant. Certain arrangements, such as pooled investment vehicles audited under GAAP, may qualify for exemptions.

- **Section 205 of the Advisers Act.** This section generally prohibits performance-based compensation arrangements, which can create conflicts of interest by encouraging excessive risk-taking.²⁷ However, the prohibition includes significant exceptions for qualified clients—typically those with substantial net worth or assets under management with the adviser. Performance fees are common in private fund contexts and are permissible for investors meeting the qualified client thresholds.
- **Rule 204-2.** This rule specifies the books and records that advisers must maintain, including client communications, trade records, performance calculations, advisory agreements, compliance documents, and financial statements.²⁸ These records must be maintained for specified periods and must be readily available for examination by the SEC or state regulators.

Colorado-Specific Requirements for State-Registered Advisers

While Colorado has modeled many of its substantive requirements on federal rules, state-registered advisers face some distinct obligations. The Colorado Division of Securities has authority to examine state-registered advisers to confirm the adequacy of business records, ensure compliance with fiduciary duties, and investigate potential violations of anti-fraud provisions.²⁹

Colorado requires investment adviser representatives to complete continuing education

credits annually.³⁰ This requirement, adopted by Colorado in recent years based on the NASAA model rule, mandates that IARs complete continuing education courses covering ethics, regulatory updates, and other topics relevant to advisory practice.

The Division of Securities maintains discretion to impose conditions on registration or to deny applications where an applicant has a disciplinary history or other disqualifying events. Colorado’s securities statutes prohibit investment advisers and investment adviser representatives from engaging in certain conduct, including dishonest or unethical practices.³¹ The regulations implementing these provisions prohibit actions such as recommending unsuitable investments, exercising discretion without proper authorization, charging unreasonable fees, engaging in certain principal transactions without disclosure and consent, commingling client and adviser funds, and borrowing from clients (absent specific exceptions for transactions with financial institutions).³²

Colorado’s rules also address the use of senior-specific designations and credentials. The misuse of certifications or professional designations, particularly those suggesting specialized expertise in advising seniors or retirees, constitutes a dishonest and unethical practice under Colorado regulations.³³ Advisers and representatives must actually earn any designation they use, and the designation must meet specific educational and ethical standards.³⁴

On the whole, while Colorado’s substantive rules are generally similar to federal requirements, state-level oversight is often perceived as more granular. For example, while the SEC relies on a principles-based “best interest” interpretation for the duty of care, Colorado regulations provide a more prescriptive list of prohibited “unethical business practices,” such as specific restrictions on borrowing from clients or charging unreasonable fees.³⁵

Building and Maintaining an Effective Compliance Program

In view of both federal and state regulations, the importance of a robust and carefully tailored

compliance program cannot be overstated. SEC examination priorities in recent years have consistently emphasized the adequacy of compliance programs, and the SEC has brought numerous enforcement actions against advisers for compliance program deficiencies—even where no underlying substantive violation occurred.

An effective compliance program begins with a thorough risk assessment tailored to the adviser’s specific business. Generic compliance manuals downloaded from the internet or purchased from vendors are inadequate if they do not address the particular risks faced by the firm. The assessment should consider the adviser’s investment strategies, client types, fee structures, trading practices, use of affiliates or third-party service providers, custody arrangements, and other factors.

From this risk assessment, the adviser should develop written policies and procedures addressing each identified risk. These policies should be sufficiently detailed to provide concrete guidance to employees but not so prescriptive that they become obsolete with each minor change in business practices. The policies should clearly assign responsibilities for implementing and monitoring each procedure.

Annual compliance reviews should be substantive, not perfunctory. Many advisers make the mistake of conducting a paper review that simply confirms that the prior year’s manual is still on file. An effective annual review considers developments over the past year. Did the business change? Were new products or services introduced? Did the client base shift? Were there compliance incidents, and what do they reveal about program effectiveness? The review should result in documented findings and, where appropriate, recommended changes to policies or procedures.

Depending on the size and nature of the advisory business, testing can be essential. Advisers should not assume that policies are being followed simply because they are written. Periodic testing—whether through sampling of transactions, review of exception reports, or targeted examinations of high-risk areas—helps identify implementation gaps before they become serious problems.

“
Documentation matters enormously. Regulators often presume that, if something is not documented, it did not happen. Advisers should maintain records of annual reviews, testing results, training completion, incident reports and investigations, and disclosures made to clients.
”

Training is another critical element. All employees, not just those with direct client contact, should receive training appropriate to their roles. New employees should receive training upon joining the firm, and all employees should receive annual updates on regulatory developments, firm policies, and lessons learned

from compliance incidents (either at the firm or in the industry generally).

Documentation matters enormously. Regulators often presume that, if something is not documented, it did not happen. Advisers should maintain records of annual reviews, testing results, training completion, incident reports and investigations, and disclosures made to clients. When issues arise, advisers should document the investigation, analysis, and remediation.

The chief compliance officer should have appropriate authority and resources. The CCO should report to senior management or the board, not to the chief investment officer or other operational personnel who might have interests conflicting with the compliance function. The CCO should have sufficient budget to hire necessary staff, engage consultants, purchase compliance technology, and obtain training. Advisers that fail to adequately resource the compliance function frequently discover that the cost of remediation after an SEC examination far exceeds the cost of proper preventive measures.

Examinations and Enforcement

Both SEC-registered and state-registered investment advisers are subject to examination by their respective regulators. SEC examinations are conducted by the Division of Examinations (formerly the Office of Compliance Inspections and Examinations), while Colorado state-registered advisers may be examined by the Division of Securities.

The SEC conducts several types of examinations. Routine examinations are selected based on risk factors and are designed to evaluate overall compliance. Sweep examinations focus on specific topics or practices across multiple firms, often in response to emerging risks or regulatory priorities. Cause examinations occur when the SEC has reason to believe a material violation has occurred, often based on tips, complaints, or red flags identified during other reviews.

The examination process typically begins with a document request that can be extensive, requiring production of all manner of client communications, trading records, marketing materials, performance calculations, and com-

pliance documents. The SEC staff then conducts on-site interviews with key personnel, including the CCO, portfolio managers, compliance staff, and in some cases, clients. Following the examination, the staff prepares a report that may result in a deficiency letter identifying areas of concern, or in more serious cases, a referral to the SEC's Division of Enforcement.

Advisers should take deficiency letters seriously. While a deficiency letter is not an enforcement action, failure to remediate the identified issues can lead to enforcement activity. The letter provides an opportunity to respond, explain any mitigating circumstances, and demonstrate corrective action. Advisers should respond promptly, thoroughly, and honestly—ideally with the assistance of counsel.

The Division of Enforcement pursues violations through administrative proceedings or federal court actions. Common violations include failing to adequately disclose conflicts of interest, charging excessive fees, misrepresenting performance, breaching fiduciary duty, violating the custody rule, failing to implement required policies and procedures, and failing to supervise. Penalties can include disgorgement of ill-gotten gains, civil monetary penalties, censure, suspension or revocation of registration, and individual bars from the securities industry. Importantly, SEC enforcement activity is not limited to SEC registrants; the SEC can bring claims against state-registered advisers for violations of applicable laws (e.g., the anti-fraud provisions).

Colorado's Division of Securities maintains similar examination and enforcement authority over state-registered advisers. The division can impose fines, suspend or revoke registrations, and refer matters for criminal prosecution where appropriate.

Conclusion

The regulation of investment advisers in Colorado presents a complex but navigable framework. For advisers and the attorneys who counsel them, understanding the jurisdictional divide between SEC and state regulation is the critical first step. From there, advisers must implement the substantive requirements applicable to their registration status, with the

fiduciary duty serving as the lodestar guiding all advisory activities.

Colorado advisers—whether managing nine-figure portfolios or providing financial planning services to a handful of local clients—must remain vigilant, adaptable, and committed to the highest standards of client

service and regulatory compliance. For Colorado attorneys, investment adviser regulation offers both challenges and opportunities. The field requires synthesis of federal and state law, understanding of complex financial products and strategies, and appreciation for the practical realities of running an advisory business. 



Jason Spitalnick is a Denver-based partner in Snell & Wilmer's litigation, investigations, and trials practice group. He focuses his practice on securities enforcement defense, white collar defense, internal investigations, and commercial litigation. He previously served as counsel in the Division of Enforcement at the US Securities and Exchange Commission.

Coordinating Editors: Rachel Burkhart, burkhart.rachel@dorsey.com; David P. Steigerwald, dps@sparkswillson.com

NOTES

1. North American Securities Administrators Association, *NASAA Investment Adviser Section, 2025 Annual Report*, <https://www.nasaa.org/wp-content/uploads/2025/09/IA-Section-2025-Report-FINAL.pdf>.
2. 15 USC § 80b-2(a)(11).
3. Investment Advisers Act Release No. 1092 (Oct. 8, 1987).
4. 15 USC § 80b-2(a)(11)(A)-(G).
5. CRS § 11-51-201(9.5).
6. Pub. L. No. 104-290, 110 Stat. 3416 (1996) (codified as amended in scattered sections of 15 USC).
7. 15 USC § 80b-3a.
8. 15 USC § 80b-3a(a), (b).
9. CRS § 11-51-403(3)(a).
10. 17 CFR § 275.203A-2(d).
11. CRS § 11-51-601.
12. 3 CCR 704-1-51-4.4(IA)(B).
13. 3 CCR 704-1-51-4.4.1(IA).
14. 3 CCR 704-1-51-4.4.1(IA)(A)(1).
15. Securities and Exchange Commission Release No. IA-5248 (June 5, 2019).
16. 17 CFR § 275.204-4.
17. CRS § 11-51-403(3)(a).
18. CRS § 11-51-403(3)(b).
19. 3 CCR 704-1-51-4.4.1(IA).
20. *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180 (1963).
21. *Id.* at 191-92.
22. Securities and Exchange Commission Release No. IA-5248 (June 5, 2019).
23. *Id.*
24. 17 CFR § 275.206(4)-7.
25. 17 CFR § 275.206(4)-1.
26. 17 CFR § 275.206(4)-2.
27. 15 USC § 80b-5.
28. 17 CFR § 275.204-2.
29. CRS § 11-51-409.
30. 3 CCR 704-1-51-4.4.1(IA).
31. CRS § 11-51-501.
32. 3 CCR 704-1-51-4.8(IA).
33. 3 CCR 704-1-51-4.8(IA)(P).
34. *Id.*
35. 3 CCR 704-1-51-4.8(IA).