



**PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS SINCE 1905**

**Idaho Department of Finance  
Guidance Statement  
2022-01-SB**

**STATE REGISTERED INVESTMENT ADVISERS – GUIDANCE ON FEES**

**ISSUE DATE: NOVEMBER 23, 2022**

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**I. Background**

In its administration of the Idaho Uniform Securities Act (Act), Idaho Code § 30-14-101, et seq., and the Rules issued pursuant to the Act, IDAPA Rule Chapter 12.10.08 (Rule), the Idaho Department of Finance (Department) regularly conducts compliance examinations of State Registered Investment Advisers (RIAs). Over the past several months, during its examinations, the Department has observed increasing discrepancies in the accuracy of RIA fee calculations; the application of RIA fees undisclosed within client contracts; and incorrect billing practices and refund errors. The following Guidance is intended to address the Department’s observations, as they relate to State RIAs.

**II. Observations**

➤ **Inaccurate RIA Fee Calculation**

In multiple examinations, the Department has observed fees charged to accounts that differ from those to which clients have contractually agreed. These fees were: 1) charged at different rates than provided for in client contracts, 2) applied using billing methods that differed from those specified within client contracts, or 3) the result of new software or third-party services wherein the client’s contractual fee provisions were improperly entered.

➤ **Application of Undisclosed Fees**

In addition to inaccurate calculation of fees based on contractual provisions, the Department has also observed multiple occurrences of the application of fees that have not been disclosed in client contracts, such as billing adjustments for deposits or withdrawals made within the billing cycle. These incidents

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were commonly observed in instances where an RIA had amended its contract provisions for newly acquired clients but had not yet updated contractual provisions for existing clients or had implemented a new billing software system. Furthermore, the incidents were commonly observed in conjunction with a finding that the RIA had failed to provide the Department with its updated contract.

### **➤ Incorrect Billing Practices and Refund Errors**

The Department has observed incorrect billing practices including: 1) assets that were to be included or excluded from fee calculations, 2) the utilization of incorrect valuation dates to client billings, and 3) billing based on inaccurate account values resulting from the difference in point-in-time electronic custodial balance information and the available balances at the custodian. The Department has also observed inconsistent refund practices for unearned advisory fees.

### **III. Guidance**

The Act grants the Department authority to implement rules related to the supervision of RIAs. Specifically, Rule 89.05 provides the requirements imposed on investment advisers who seek registration with the Department, to include a requirement for RIAs to provide the Department with updated information, to correct information that has become inaccurate, such as the RIA's contract for services. Furthermore, Rule 94 requires that an RIA's client contract include a disclosure of the advisory fee and the formula for computing the fee. Finally, Rules 104.34, 104.40, and 104.44, provide the basis of disciplinary action for fraudulent or unethical practices, including:

- "...[practices that] misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they are made, not misleading." (Rule 104.34).
- "Entering into, extending, or renewing any investment advisory contract unless such contract is in writing and discloses, in substance the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract." (Rule 104.40).

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- “Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contrary to the provisions and associated rules of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.” (Rule 104.44).

Because the compliance implications of such findings can expose an RIA to consumer redress and impact the registration of the RIA, the Department recommends that RIAs take the following steps that will support their ongoing compliance with the Act and Rules:

- Regularly provide updated client contracts to impacted clients and the Department.
- Implement written policies and procedures addressing advisory fee billing processes and validating fee calculations, and regularly update those policies to address any changes.
- Regularly confirm that the fees charged to clients are consistent with compliance procedures, advisory contracts, and disclosures. Also, verify that fees applied by billing services providers or third-party platforms comply with the RIA’s billing policies.
- Ensure that RIA staff have adequate tools and resources to validate fee calculations.
- Record all advisory expenses and fees assessed to and received from clients, including those paid directly to advisory personnel.

#### IV. Summary

Though not all inclusive, the above Guidance is intended to assist registrants in continued compliance with the Act. In addition to those steps recommended in this Guidance, the Department encourages RIAs to consider adopting any reasonable practices that aid in ensuring the integrity of their billing practices. In doing so, RIAs can support the Department in its mission to safeguard the financial health of Idahoans while also avoiding practices that expose them to compliance risks.

**Contact** - You may direct comments or requests for additional information regarding this Guidance Statement to:

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