2013 Investment Adviser Briefing and Update

November 20, 2013

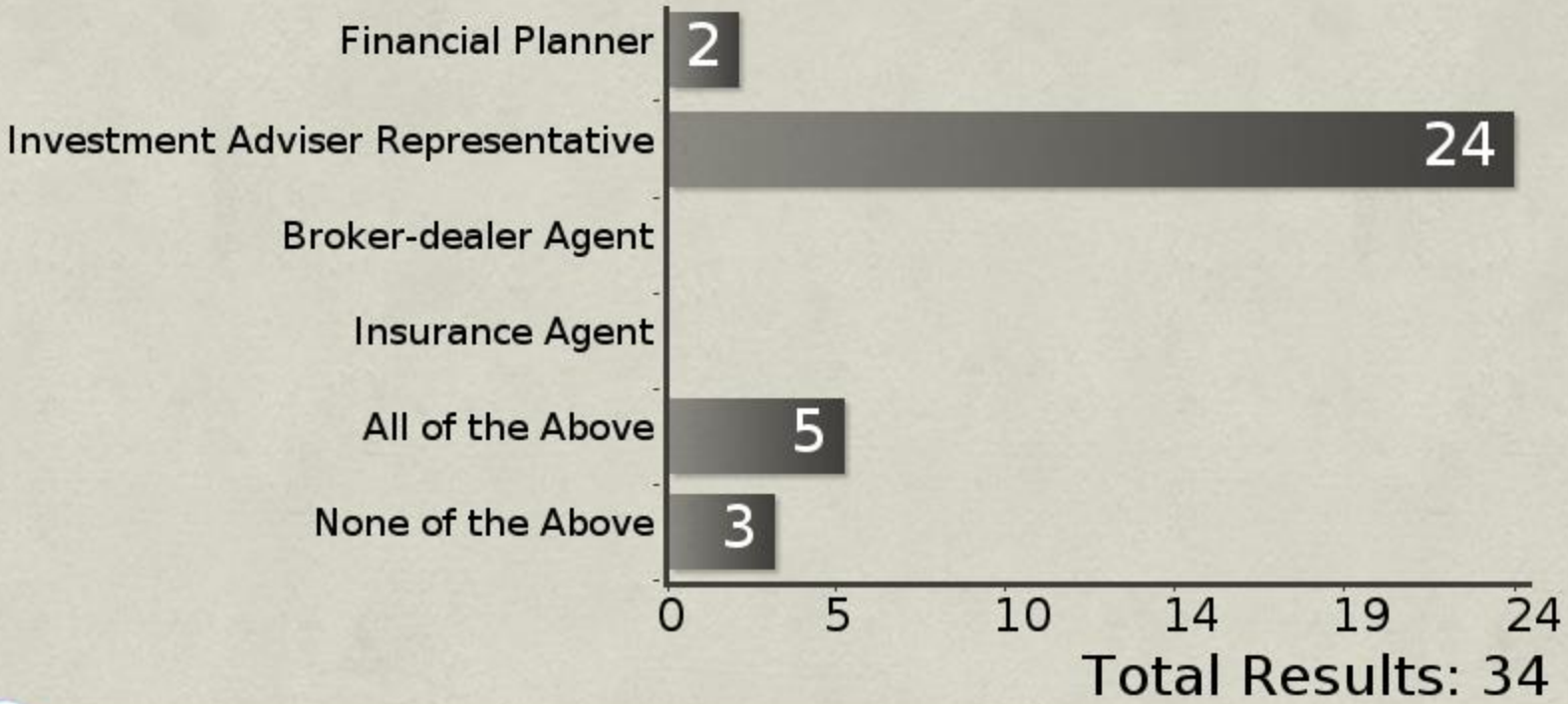
Oklahoma Securities Commission

www.securities.ok.gov

www.investedok.org

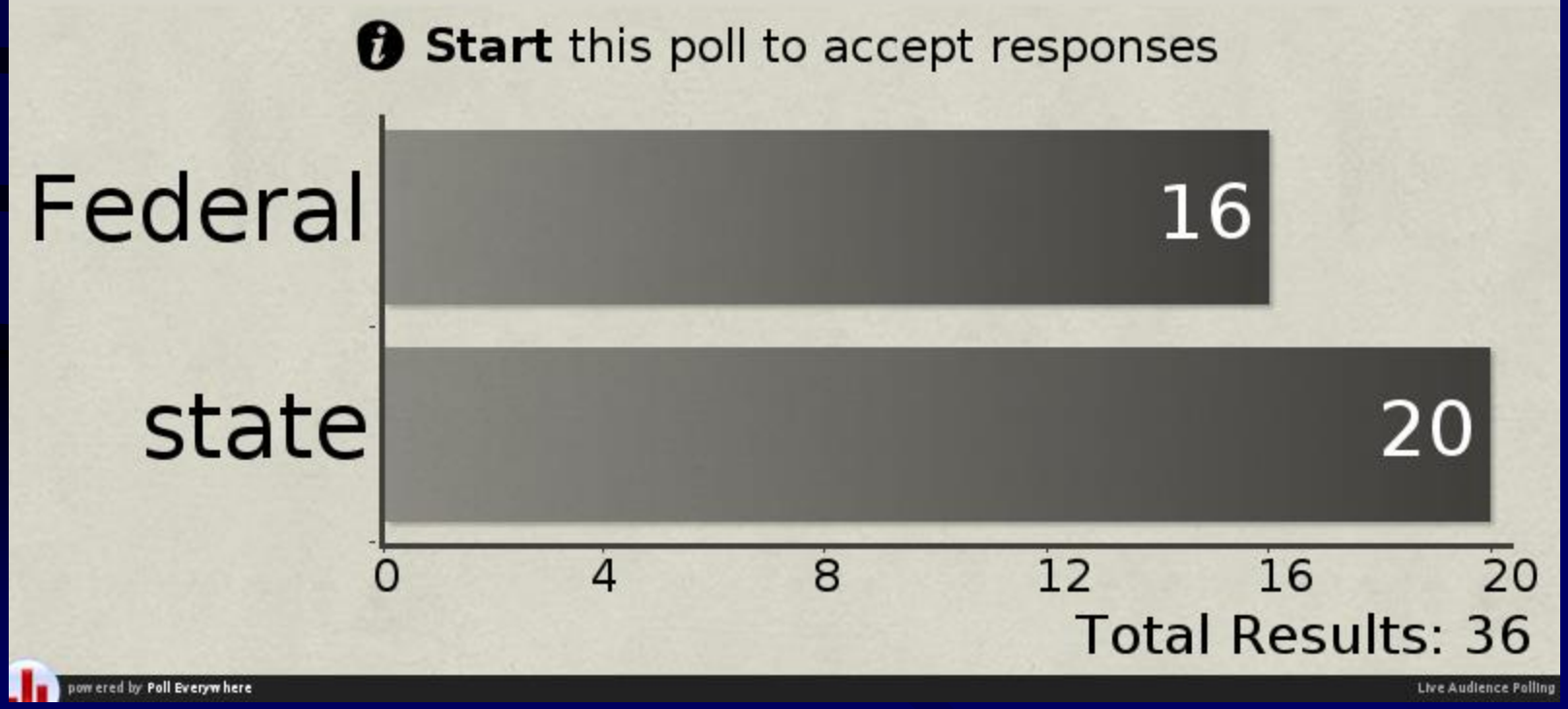
What is your primary field of expertise?

Start this poll to accept responses



powered by Poll Everywhere
Live Audience Polling

If you are an IAR, are you federally or state registered?



Are you familiar with our Web site (www.securities.ok.gov)?

Start this poll to accept responses

Total Results: 38

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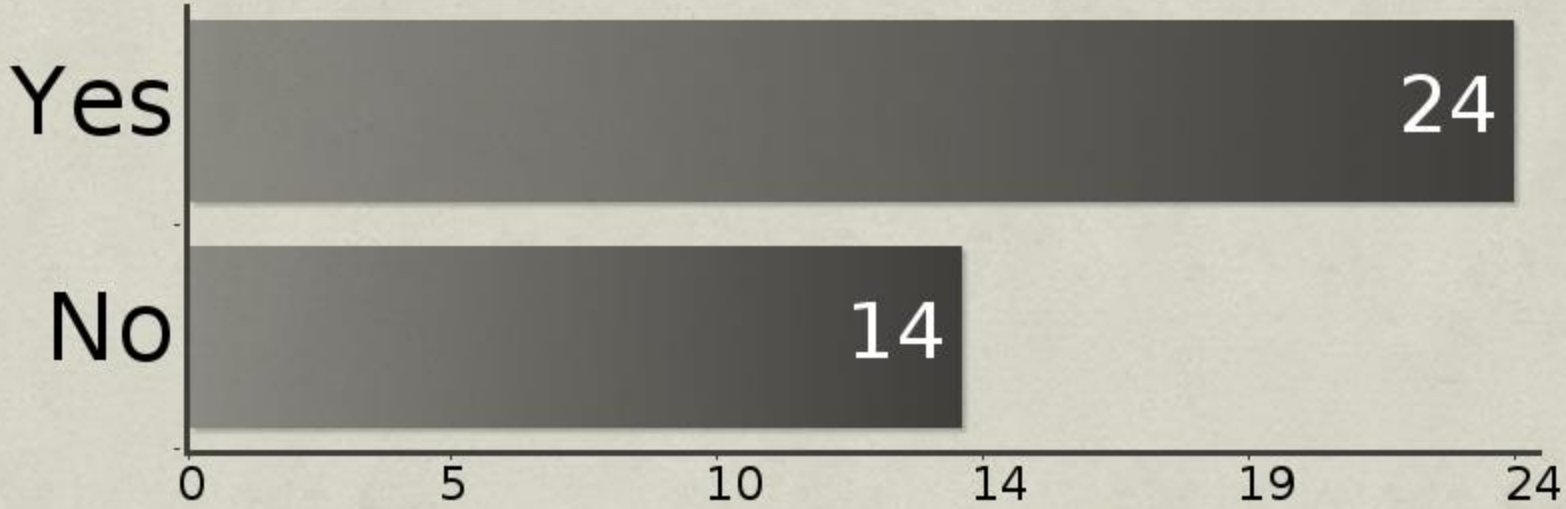
Have you ever had a compliance exam by the OK Dept of Securities?

Start this poll to accept responses



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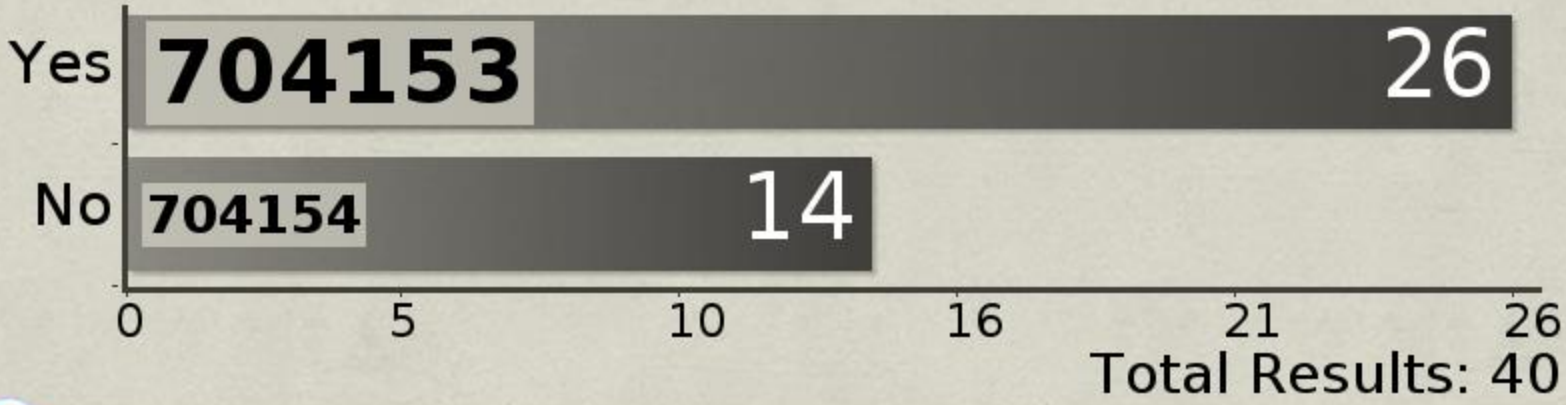
Do you know the difference between a compliance exam and an investigation?

You may respond at **PollEv.com/investedok** when the presenter pushes this poll



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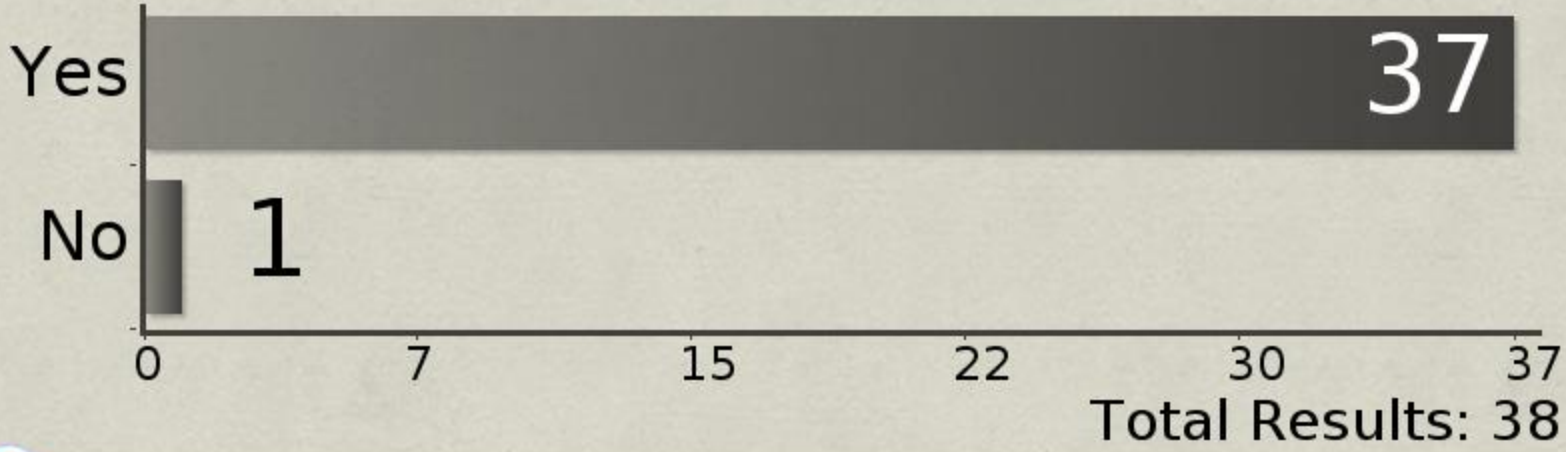
Assuming the governance, costs and services are to your liking, would you consider joining a state wide Investment Adviser's association that provided networking, political, industry, and educational benefits?

Start this poll to accept responses



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LET’S BEGIN…

Scope of Today's Discussion

- Consider the practical methods to address state law compliance issues. We at the ODS consider it important to help Adviser Groups like you to prevent, detect, report, and correct compliance problems
- Fiduciary Duty
- New Private Fund Advisers Registration Exemption
- The new world of private offering with general solicitation
- Dealing with elderly clients
- Role of the ODS
- Hear from YOU

Send questions, comments or suggestions to:
http://PollEv.com/investedok OR Text **"704191** <space> **your question" to 22333**

Investment Adviser

- a person that, for compensation,
- engages in the business of advising others, either directly or through publications or writings,
- as to the value of securities
- or the advisability of investing in, purchasing, or selling securities
- or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

Investment Adviser

- a financial planner or other person that, as an integral component of other financially related services,
- provides investment advice to others for compensation as part of a business
- or that holds itself out as providing investment advice to others for compensation.

Investment Adviser

- The term does not include:
- a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession,
- A broker-dealer or agent who provides advice solely incidental to b/d business and does not receive special compensation
- A publisher of items generally and regularly circulated
- Persons excluded by Federal law

Fiduciary Duty

- All investment advisers owe their advisory clients a Fiduciary Duty
- The U.S. Supreme Court held that the [Federal] Advisers Act: *"reflects a congressional recognition of the delicate fiduciary nature of an investment advisory relationship, as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser - consciously or unconsciously - to render advice which was not disinterested."* *SEC v. Capital, 375 U.S. 180 (1963)*
- What does that mean? (duty of care… duty of loyalty)

Fiduciary Duty

It means, at least:

- to put clients' interests first;
- to act with utmost good faith;
- to provide full and fair disclosure of all material facts;
- not to mislead clients; and
- to clearly disclose all material conflicts of interest to clients

Exemption from Registration Requirements for Advisers to Private Funds

- Exempt advisers are those who are advising only federally exempt private funds (either 3c1 fund or 3c7 funds)
- Who have no qualification limitations (bad boys)
- Who file federal reports and
- Who pay the appropriate fees to the state

General Solicitation

- The SEC has adopted new Rule 506(c) that permits an issuer to offer and sell securities by means of general solicitation, if:
- All **purchasers** of the securities are accredited investors (as defined in Rule 501(a) of Regulation D), at the time of the sale of the securities or the issuer reasonably believes that they are.
- The issuer takes "reasonable steps to verify" that all purchasers of the securities are accredited investors.
- All other conditions of existing Rules 501 (definitions), 502(a) (integration restriction) and 502(d) (resale limitations) of Regulation D are met.

The Role of ODS Vis-à-vis FINRA and SEC

- Stepping on toes
- Confidential Information sharing
- Is there a pecking order?
- Is there agency cooperation, e.g. seeking and using the help of the other agency?
- What is the role of each agency?

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What Should the IA do in the Presence of Elder Abuse?

- The problem is vast and many of our fraud cases will involve senior victims
- In the case of investment fraud who do you call?
- Such abuse includes sales practices, suitability, swapping, churning and conversion
- What if a family member is involved?
- What is the IA's reporting obligation or duty?

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How do I begin the discussion if I suspect problems?

- Who manages your money day to day? How is that going?
- Do you run out of money at the end of the month?

Questions You Can Ask

- Do you regret or worry about financial decisions you've recently made?
- Have you given power of attorney to another person?
- Do you have a will? Has anyone asked you to change it?

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Financial Concerns Checklist (1)

Are you having any of the following common concerns?

- I have trouble paying bills because the bills are confusing to me
- I don’t feel confident making big financial decisions alone
- I don’t understand financial decisions that someone else is making for me

Financial Concerns Checklist (2)

- I give loans or gifts that I cannot afford
- My children or others are pressuring me to give them money or change my will
- People are calling or mailing me asking for money, e.g. lotteries
- Someone is accessing my accounts or money seems to be disappearing
- Friends or acquaintances, like people I meet at church, want me to change my investment plans

Interactions with Possible Responsible Party (1)

- Use non-confrontational demeanor
- Ask about relationship to the client
- Discuss client's daily activities and routines
- Discuss any of client's special needs

Interactions with Possible Responsible Party (2)

- Watch for the following behaviors:
  - demeaning comments about the client
  - defensive, suspicious attitude
  - hostility about your inquiries
  - threat to change advisers

Tueth, M (*Am J Geriatr Psychiatry* 8:2, Spring 2000)

Do I probe deeper or refer?

- If answers raise suspicion:
  - For legal advice or protection contact the Nat'l Academy of Elder Law Attorneys (NAELA) www.naela .com
  - For confidential reporting about financial investment abuse contact the Oklahoma Department of Securities (ODS) 405 280 7755 or www.securities.ok.gov

Registration Application and Exam Deficiencies

- There are approximately 158 IAs registered in Oklahoma
- 116 have an office in Oklahoma
- 4680 IARs are registered in Oklahoma
- 38 applications for IA registration last year
- Routine exams of 23 investment advisers last year

Common Deficiencies (1)

Deficient disclosure:

- Inconsistent, inaccurate, incomplete, and even misleading information in Forms ADV
- Problematic disclosure of business practices and fees charged to clients
- Failure to provide full, accurate and complete disclosure, written in “plain English” and designed to be understood by clients

Common Deficiencies (2)

Deficiencies in portfolio management:

- Inadequate controls to ensure that investments for clients are consistent with their objectives, risk tolerance and goals
- Inadequate required records
- Fiduciary Duty is implicated in this area because advisers have a duty to ensure that they are managing their clients' money in a manner that is consistent with the clients' direction

Common Deficiencies (3)

Deficiencies in performance calculations:

- Overstating performance results
- Comparing results to inappropriate indices
- Failing to disclose material information about how the performance results were calculated
- Using prohibited testimonials
- Advertising past results in a misleading manner (A fiduciary must calculate and set forth its past performance in an honest way, and must provide information that is not misleading) see generally, 660:11-13-4

Common Deficiencies (4)

Deficiencies in brokerage arrangements and execution:

- Poor or no controls to ensure that the adviser obtains "best execution"
- Use of soft dollar money to pay for undisclosed client referrals, and other goods and services that benefit the adviser
- Custody issues
- See the Department's Website

Suggested Best Practices

- Prepare and maintain all required records, including financial records. Back-up electronic data and protect records. Document checks forwarded.
- Review and revise Form ADV and disclosure brochure annually to reflect current and accurate information.
- Review and update all contracts.
- Prepare and distribute a privacy policy initially and annually.
- Deliver disclosure brochure initially and annually as required.

Suggested Best Practices

- Review all advertisements, including website and performance advertising, for accuracy.
- Calculate and document fees correctly in accordance with contracts and ADV.
- Prepare and maintain written compliance and supervisory procedures relevant to the type of business to include business continuity plan. Assess and update periodically.
- Implement appropriate custody safeguards, as applicable. Pay close attention to direct fee deduction invoices.

Suggested Best Practices

- Keep accurate financials. File timely with the jurisdiction. Maintain surety bond if required.
- Make sure client's investment policy and suitability information are current.
- Disclose soft dollars or benefits received.
- Prepare and maintain current client profiles.
- Review solicitor agreements, disclosure, and delivery procedures.

This concludes our presentation

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