



Jay Richardson is senior counsel with Buckley Law PC and is licensed in Oregon and Washington. He is a Certified Public Accountant and holds CMA and CFM designations with the Institute of Management Accountants. Mr. Richardson's practice focuses on income tax, estate planning, business law, and securities law. Mr. Richardson can be reached at jar@buckley-law.com. His article,* *It's in the Details: What You Need to Know Before You Give Advice on the Patient Protection and Affordable Care Act*, which appears on page 15.

***David Dean**, Managing Attorney at Buckley Law PC, also contributed to this article.

Stuart Weiss, Stuart Weiss CPA/PFS, LLC, in Portland, focuses on valuations of small companies for gift & estate tax, divorce, or shareholder buyout purposes. When he noticed that many of these entities had brokerage accounts that were neglected, either because no one was taking responsibility or the account was too small to attract a fee-based money manager, Stuart decided to pursue the RIA license to help these clients. Stuart can be contacted at 503-223-3142; stu@stuartweisscpa.com. His article, *Your Clients Need Financial Advice: Should You Become A Registered Investment Advisor?*, appears on page 19.



Ryan Northcutt, CPA is a senior audit manager in the financial services group of AKT LLP, CPAs and Business Consultants. With over 15 years of experience in public accounting, Ryan works extensively with growing entrepreneurial companies and enjoys helping clients solve strategic business and accounting issues. He specializes in attest services and consulting on business growth, risk management, employee benefit plans, and technical accounting research. He works with clients primarily in the manufacturing, distribution, and automotive dealership industries. Ryan's article, *How to Effectively Use SSAE No. 16 Reports in Planning Benefit Plan Audits*, appears on page 21.



Sandra Wiley is COO and a shareholder with Boomer Consulting, Inc. Sandra's background is in the financial services industry in the areas of human resources, marketing, sales, training, and business development. Her article, *The Search for Sustainable Employee Engagement*, appears on page 24.



Publisher

Oregon Society of CPAs

Mailing address

PO Box 4555 / Beaverton, OR 97076-4555

Location

10206 SW Laurel St. / Beaverton, OR 97005-3209

503-641-7200 / 1-800-255-1470 • Fax: 503-626-2942

www.orcpa.org / oscpa@orcpa.org

Chair Michele C. Henney

Chair-Elect Jason R. Orme

Vice Chair Timothy R. Filkins

Past Chair Deborah J. Hollingsworth

Board of

Directors David E. Adams, Two Years

Elizabeth D. Almer, One Year

Amy I. Dale, Two Years

Mark E. Damon, Two Years

Ann M. Ferguson, Two Years

Lawrence H. McNamara, Jr., One Year

John C. Mlynczyk, One Year

Chapter

Council

Chairs

Lawrence W. Stover, Jr.
Benton-Linn Chapter

Thomas P. Cocanower
Central Oregon Chapter

Harry E. Bose

Eastern Oregon Chapter

Selene L. Petersen

Emerald Empire Chapter

Carol D. Friend

Mid-Columbia Chapter

Larry A. Reiber

South Coast Chapter

Ana M. Marroquin

Southern Oregon Chapter

President/CEO Sherri L.D. McPherson, CAE

Editor Leslie R.P. Konst

Konst Communications

Cary, NC

lkonst@orcpa.org

The Oregon Society of CPAs assumes no responsibility for statements or advertisements herein, and reserves the right to reject any advertising. The thoughts, opinions, and advertisements are those of the authors, editors, and advertisers. In this publication, masculine terms shall be understood to include the feminine and vice versa as stated in the OSCPA Bylaws and the OSCPA Policy Compendium.

Send address changes to

OSCPA / PO Box 4555 / Beaverton, OR 97076-4555

Or update your member profile online at

www.orcpa.org/members/member_info

Copyright © OSCPA 2013

Magazine design by

Joleen Funk / www.getsomefunk.com
Hillsboro, Oregon

Cover image by

© iStock.com

Printed by

Journal Graphics, Portland, Oregon



Your Clients Need Financial Advice:

Should You Become a Registered Investment Advisor?

By Stuart Weiss

As a CPA, you are typically your client's most trusted advisor. So, it's no wonder that while you're providing advice about capital gains and losses, your client might ask the following question: "What do you think of my investment portfolio?"

This triggers a dilemma: do you dive in with advice or inform your client that you can't comment because you're not a registered investment advisor (RIA)?

According to the Oregon Division of Finance and Corporate Securities, www.dfcs.oregon.gov, the rules for CPAs giving advice are the same as for all other professionals. You must be a registered investment advisor if you are giving investment advice and getting paid for the service.

So, if you're happy offering a "sanity check" to your clients that doesn't involve a fee, then keep doing what you're doing. Under most circumstances, involving only free, casual advice, this should not be a problem.

Another critical test, though, is whether the advice is occasional. "If the advice is incidental to the CPA practice, and it is not a stand-alone piece of your

practice, then you can give such advice without being an RIA," says John T. Carr, a partner in Carr Butterfield, LLC, a Lake Oswego law firm, which specializes in the financial services industry.*

For example, let's say you're engaged for tax planning, and in conversation with your client, you comment that certain stocks in their portfolio have a low cost basis, which, if sold, would generate significant tax. That's not investment advice per se. Nor is it investment advice to comment on the dividend paying status of stocks in the portfolio.

However, if you start doing more detailed analysis on specific stocks on a regular basis, then it's a different story. Let's say your client likes biotechnology as a group, but doesn't have the ability to evaluate a specific company. You tell him to consider selling the biotech stock and buy an exchange traded fund (ETF) that covers the entire industry. The client agrees that this makes sense. Is this going over the regulatory line?

"Yes," says Carr. "The more that the CPA advises in this manner, the more that the CPA is exposed to potential legal claims," he says. "The State of Oregon could file a regulatory action asserting unlicensed activity." Or, an investment

advisor who is properly licensed may learn of a CPA firm that is conducting unlicensed investment work and contact the state.

If you become convinced that you should register as an RIA, you would be joining the other 283 state licensed investment advisor firms in Oregon. If you're really ambitious and collect more than \$100 million in assets under management, you'll join the 102 SEC licensed investment advisors in Oregon. Be prepared: there are a lot of hoops to jump through, and most CPAs should ask a securities lawyer for advice before moving forward. Some of the steps that will be necessary include:

- Pass the FINRA Series 65 investment advisory examination.
- Determine the legal name of your RIA firm and file the name through the Business Registry Office of the Oregon Secretary of State. (Note that it is advisable to form a separate legal entity such as a corporation or limited liability company to hold the firm license).
- Open an account through FINRA's Investment Adviser Registration Depository (IARD) system.
- Create the Form ADV Part 1 and ADV Part 2, documents describing your business.
- Obtain a \$10,000 surety bond, renewable every year.
- Once licensed, request a securities examiner from the Division of Finance and Corporate Securities to meet with you to discuss required books and records and other matters.

Once you get started in this new business area, you must deliver to each client the Form ADV Part 2A disclosure document and an initial privacy notice; in addition you must have the client execute an investment management agreement. You should also have a client intake document outlining the client's risk tolerance, ▶

time horizon, and so on. “Regulators have been focusing on suitability documentation as a hot button issue over the past few years,” says Carr.

Another decision to make is whether you want to have the ability to execute trades in client accounts. If you do, then you’ll need to establish a relationship with a broker-dealer to hold the client accounts in custody and have the client execute a limited power of attorney and other paperwork to place the client’s assets in a master account with your broker-dealer. If you don’t want to establish a relationship with a broker-dealer custodian, then you can simply meet with clients and make recommendations that the client can then execute on their own. Some CPA advisors meet with their clients, make recommendations, and, then, contact the client’s broker-dealer with the client to help the client make the recommended trades.

“One of the most common examination deficiencies we find when examining CPA-advisors is the absence of formal suitability information for each client in the advisory side of the business,” says Diane Carney, an Oregon securities examiner. “This used to surprise me, since we know that of all professions, the client’s CPA will have the most detailed and current financial picture from tax records.” This can be fixed easily by simply creating a duplicate record; otherwise it’s a violation of ORS 59.195. “Sometimes the CPA advisor believes that the CPA records are sufficient and they’re not,” she says.

If you decide that you don’t want to take on the regulatory burdens of being an RIA, but you still want to serve your clients by referring them, what type of due diligence should you perform on a potential RIA firm? A simple first step is to go to FINRA’s BrokerCheck and the SEC’s Investment Adviser Public Disclosure websites to see if there are any client, regulatory, civil, or criminal claims against the RIA. In addition, get refer-

ences from people who have used the RIA firm’s services. In terms of suitability, you should find out if the firm employs a passive investment strategy or an active strategy. Of course, research the RIA’s credentials and performance track record.

Sending your client to a third party can be risky. What if that firm’s performance is not satisfactory to your client? What if their fees turn out to be too high? Rather than recommend one firm, you might consider having a list of three or four for the client’s consideration.

If you decide that the best way to serve your clients is to add this area of competency and licensure to your practice, then consider this checklist of basic state-based RIA start-up documents:

- Initial application for IARD username/password registration (FINRA Entitlement)

- Form ADV Part 1 and related schedules filed on IARD
- ADV Part 2A-“Firm Brochure”
- ADV Part 2B – “IAR Brochure”
- Other applicable Schedules
- U-4 Forms filed on CRD system
- Disclosure Reporting Pages filed on CRD system;
- Privacy Procedures Policy
- Initial Privacy Statement;
- Annual Privacy Statement
- Client Investment Advisory Agreement
- Financial Planning Agreement
- Fee Schedule
- Investment Policy Statement or other document used to confirm suitability
- Surety Bond (\$10,000.00 for Oregon)
- Initial firm Balance Sheet

*Mr. Carr’s firm handled Mr. Weiss’ application to become an RIA.

Author’s profile appears on page 4.

Good people make great lawyers.

Mitch Cohen, Tom Landye
Corporate Business and Tax

Our philosophy is simple: hire and keep the best lawyers around. Like our team of Corporate Business and Tax attorneys. We help companies manage complex business and financial issues, from mergers and acquisitions, to intellectual property, to complex tax matters. Simply put, we know business and money.

**LANDYE BENNETT
BLUMSTEIN LLP**
ATTORNEYS

503.224.4100 LBBLawyers.com
Oregon ■ Alaska

Simply Great Lawyers.