



STATE OF RHODE ISLAND
DEPARTMENT OF BUSINESS REGULATION - SECURITIES
DIVISION JOHN O. PASTORE COMPLEX - BUILDING 68-2 1511
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SECURITIES DIVISION POSITION ON USE OF CLIENT USERNAMES AND/OR PASSWORDS

The Rhode Island Department of Business Regulations ("Department"), Securities Division ("Division"), has received inquiries concerning what action, if any, the Division would take if a Rhode Island registered investment adviser or investment adviser representative (collectively "Registrants") are using client usernames and/or passwords to access client custodial accounts. The Division has two concerns that arise from the Registrants use of client usernames and/or passwords: 1) Custody, and 2) Dishonest and Unethical Practices. The Division has also found itself strongly suggesting during examinations that its licensees take action regarding this issue. As such, the Division issues this interpretative Bulletin explaining its views on Registrants holding client usernames and/or passwords and strongly recommends that Registrants follow this guidance to avoid future administrative action.

Custody

Custodial account usernames and passwords often allow the user to change client personal information (such as residential addresses, email addresses and phone numbers), or to transfer funds and/or securities out of an account. Registrants using client usernames and/or passwords with these capabilities may meet the definition of custody. An investment adviser with custody must be in compliance with all custody rules as outlined in the Investment Advisers Act of 1940 and Regulations promulgated by the Department. An investment adviser licensed under the Rhode Island Uniform Securities Act ("RIUSA"), but exempt from registration under the Investment Advisers Act of 1940, may take or retain custody of securities or funds of a client only while the

investment adviser is in full compliance with SEC Rule 17 C.F.R. § 275.206(4)-2, and the provisions of the RIUSA and all relevant rules promulgated thereunder.

Dishonest and Unethical Practices

Registrants are fiduciaries and shall act primarily for the benefit of their customers. Registrants shall observe high standards of commercial honor and just and equitable principals of trade in the conduct of their business. The use of client usernames and/or passwords by Registrants may cause clients to violate their own custodial user agreements, or it can void the custodian's policies that may reimburse clients for unauthorized withdrawals. At a minimum, Registrants engaged in these practices are misrepresenting themselves as their client to the custodian.

Division Position

The Division considers Registrants using client usernames and/or passwords to access client custodial accounts as a dishonest and unethical practice. The Division will recommend administrative action in these circumstances, unless remedial action is taken as outlined below.

Remedial Action

Unless additional circumstances exist, the Division is unlikely to recommend taking an administrative enforcement action for custody violations or dishonest and unethical practices **IF** the Registrant immediately ceases the use of client usernames and/or passwords to access client custodial accounts. In addition, the Registrant must notify affected clients to change their custodial account username and/or password and security questions. This client notification must be made within 30 days of the date of this bulletin, and it must be made by means of written communication, with a copy kept in the client's file. The Division is not asking Registrants at this time to report the use of client usernames and/or passwords to the Department if these remedial steps are taken. Please keep in mind that client communications must be kept in accordance with record retention requirements. As always, the Division reserves the right to recommend administrative actions based on similar circumstances at its own discretion.