



An Interactive Brokers Group Company

Investment Adviser Registration: Understanding the Registration Process

Who is Required to Register as an Investment Adviser:
SEC Registration Requirements, Exceptions, Exemptions and Prohibitions Explained

Presented By:

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• Introduction & Series Overview •



Webinar #1

Who is Required to Register as an IA – SEC Registration Requirements, Exceptions, Exemptions and Prohibitions Explained



Webinar #2

Who is Required to Register as an IA – State Registration Requirements Explained



Webinar #3

Exemptions from State Registration and the "National De Minimis Standard"



Webinar #4

Exemptions from State Registration and "Intra-State De Minimis Standard(s)"

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Who is Required to Register as an Investment Adviser:

SEC Registration Requirements, Exceptions, Exemptions and Prohibitions Explained



Regulation of Adviser Registration: Governing Regulations

The Investment Advisers Supervision Coordination Act & the National Securities Markets Improvement Act of 1996 (“NSMIA”)

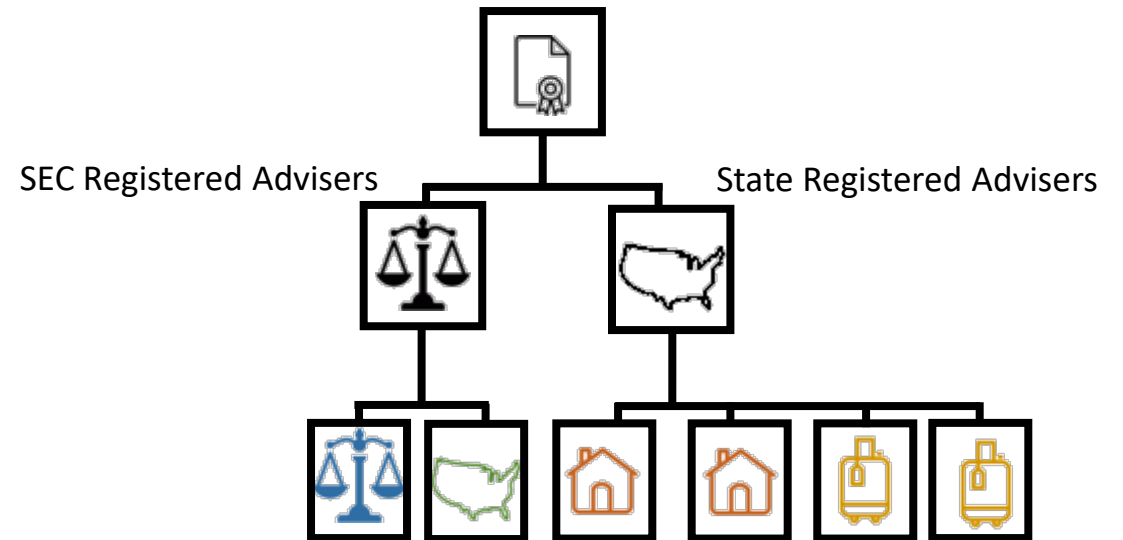
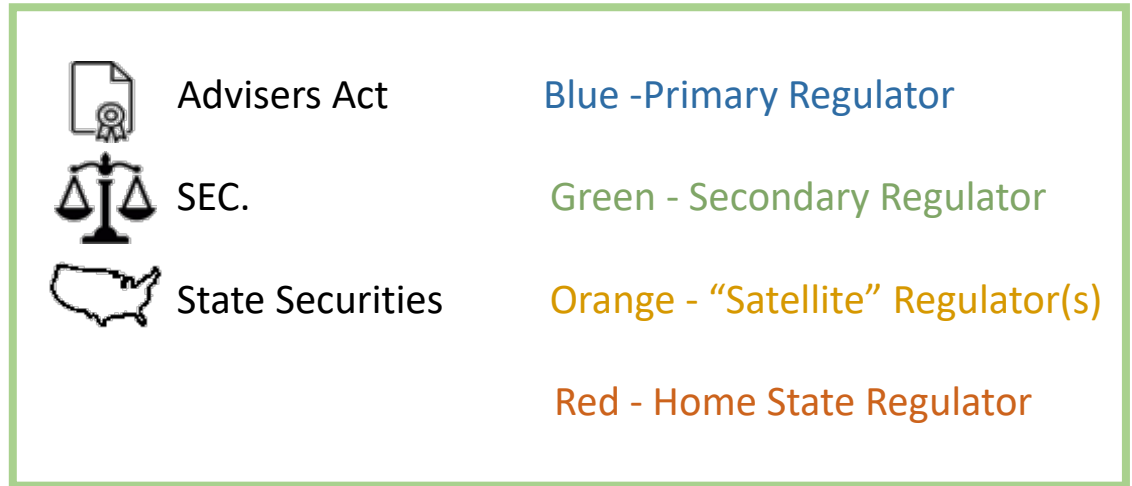
- Determines if primary source registration requirements and regulation is federal or state

- Advisers Act Section 203A – State and Federal Responsibilities

- Advisers Act Rules 203A-1 and 203A-2

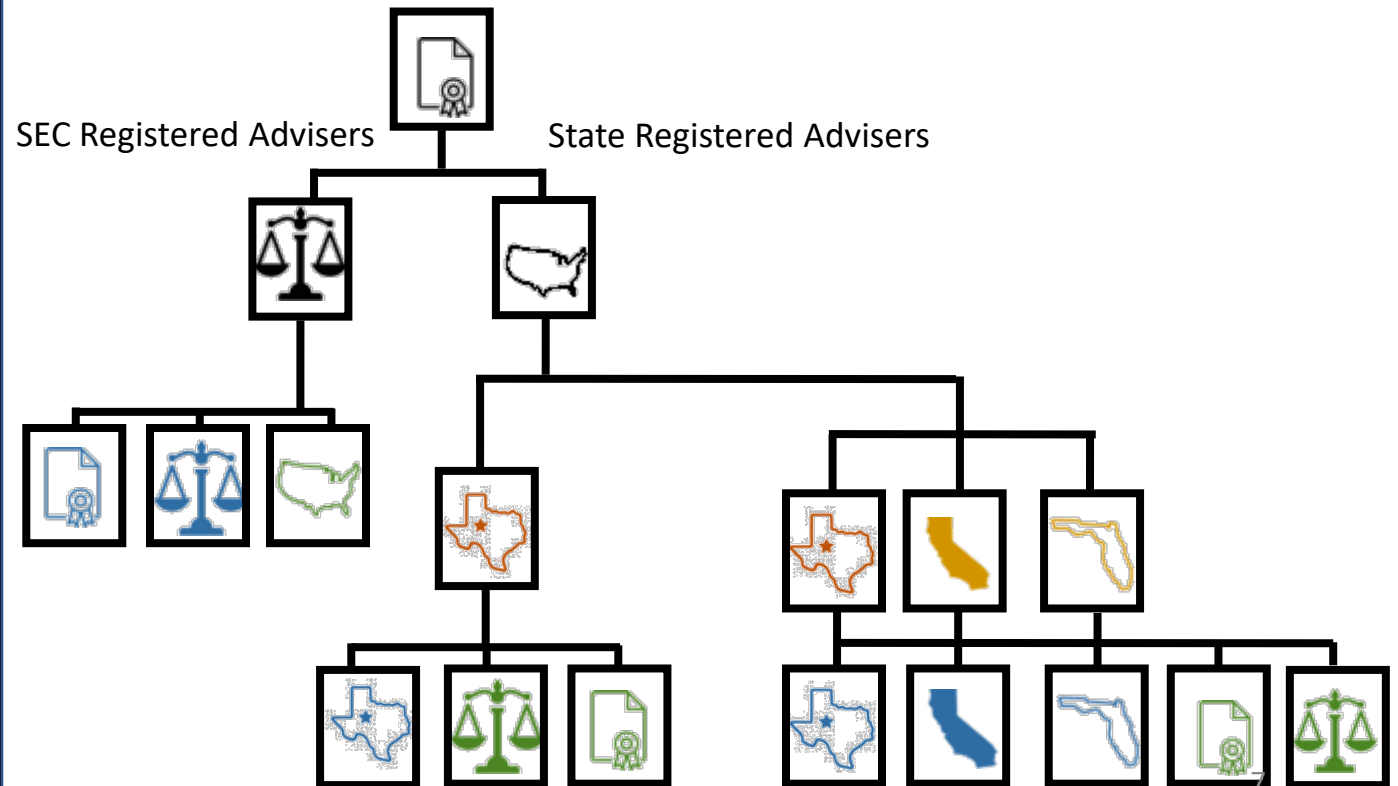
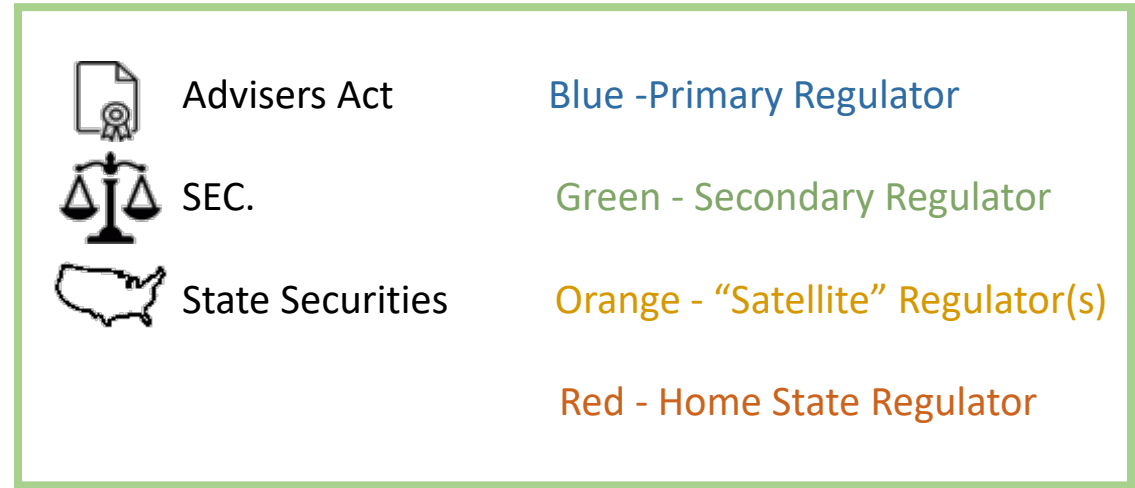
Regulation of Adviser Registration:

Governing Regulations



Regulation of Adviser Registration:

Governing Regulations



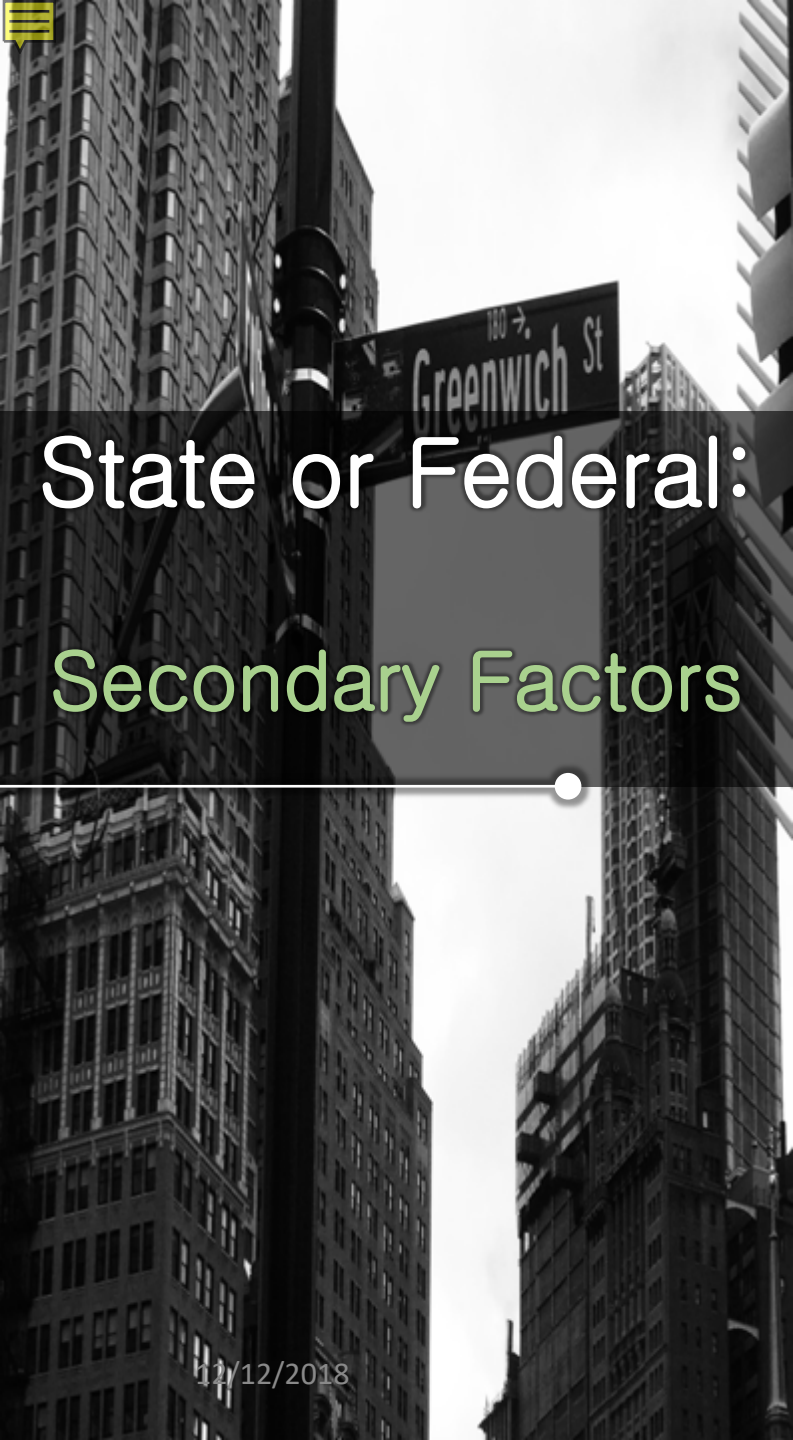


State or Federal Registration:

Main Factors Considered

Main Factors Considered

- Do they meet the definition of Investment Adviser?
- Do they qualify for an exclusion from the definition of Investment Adviser?
- Are they prohibited from registering with the SEC?
- Are they exempt from registering with the SEC?
- Are they required to register with the SEC?



State or Federal:

Secondary Factors

Secondary Factors

Regulatory Assets Under Management

Principal Office and Place of Business

Nature of the Advisers Business



Secondary Factors:

Regulatory
Assets Under
Management

The value of all “Securities Portfolios” for which the Adviser provides continuous advisory services (Discretionary and Non-Discretionary).



Secondary Factors:

Principal Office and Place of Business

Executive office from which senior officers of the adviser direct, control, and coordinate the activities of the Investment Adviser

Secondary Factors:

Nature of the Adviser's Business

The nature of the adviser's business may be categorized by:

a)

the type of clients the adviser has;

b)

the type of advice the adviser primarily provides; and/or

c)

the nature of the adviser's relationship with their client(s).



Who is an Investment Adviser: Definition of an Investment Adviser

Who is an Investment Adviser:

Definition of an Investment Adviser

Generally, an Investment Advisor is defined as any person or firm that:

i.

For compensation;

ii.

Is engaged in the business of;

iii.

issuing reports or analyses regarding securities.

Definition of an Investment Adviser:

1. For Compensation

For Compensation:

Generally, the receipt of any economic benefit, whether in the form of an advisory fee, some other fee relating to the total services rendered, a commission, or some combination, satisfies this element.

1. For Compensation

2. Is engaged in the business of

3. Providing advice to others ... regarding securities

Investment Adviser

Definition of an Investment Adviser:

2. Engaged in the Business of

Engaged in the Business of:

Factors used to evaluate whether a person is engaged are:

- (i) whether the person holds himself out as an investment adviser;*
- (ii) whether the person receives compensation that represents a clearly definable charge for providing investment advice; and*
- (iii) the frequency and specificity of the investment advice provided.*

1. For Compensation

2. Is engaged in the business of

3. Providing advice to others ... regarding securities

Investment Adviser

Definition of an Investment Adviser:

3. Providing advice to others...

Providing advice to others or issuing reports or analyses regarding securities...:

A person clearly meets the third element of the statutory test if he provides advice about specific securities, such as stocks, bonds, mutual funds, limited partnerships, and interests in commodity pools.

1. For Compensation

2. Is engaged in the business of

3. Providing advice to others ... regarding securities

Investment Adviser



Who is an Investment Adviser: Definition of an Investment Adviser

Registration Analysis – Stage One

Definition of an Investment Adviser

Registration Analysis: Stage One

Ask

Are **all** three elements of the definition of Investment Adviser met?

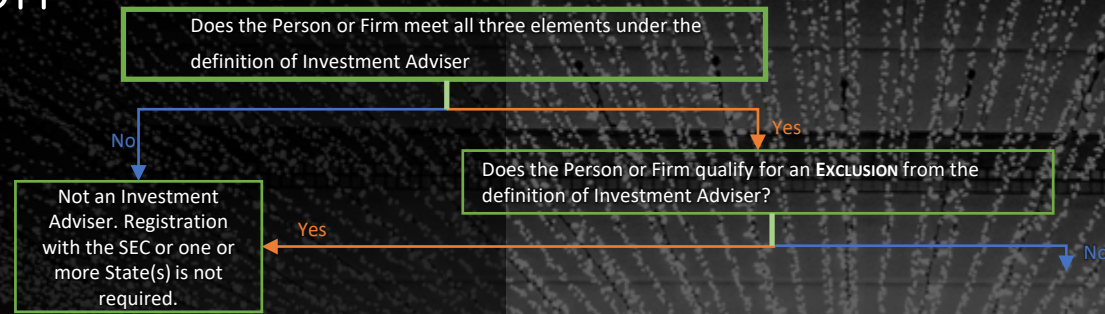
No

Not an Investment Adviser. **Generally**, are not required to register with the SEC or one or more States.

Yes

Continue to **EXCLUSIONS** from the Definition of Investment Adviser.

Registration Analysis: Stage One





Who is an Investment Adviser: EXCLUSIONS from the Definition of an Investment Adviser



Who is an Investment Adviser:

EXCLUSIONS from the Definition of an Investment Adviser

There are several EXCLUSIONS from the Investment Adviser Definition available to persons who presumably satisfy all three elements of the definition.

Persons or Firms falling under an Exclusion from the definition of Investment Adviser are NOT Investment Advisers.



Who is an Investment Adviser:

EXCLUSIONS from the Definition of an Investment Adviser

EXCLUSION from the Definition of Investment Adviser Definition

- i. Banks and Bank Holding Companies;
- ii. Lawyers, Accountants, Engineers, and Teachers;
- iii. Brokers and Dealers;
- iv. Publishers;
- v. Government Securities Advisers;
- vi. Credit Rating Agencies;
- vii. Family Offices;
- viii. Governments and Political Subdivisions;
- ix. Non-US Advisors with no U.S. Clients or Presence in the U.S.



Who is an Investment Adviser: EXCLUSIONS from the Definition of an Investment Adviser

Registration Analysis – Stage Two



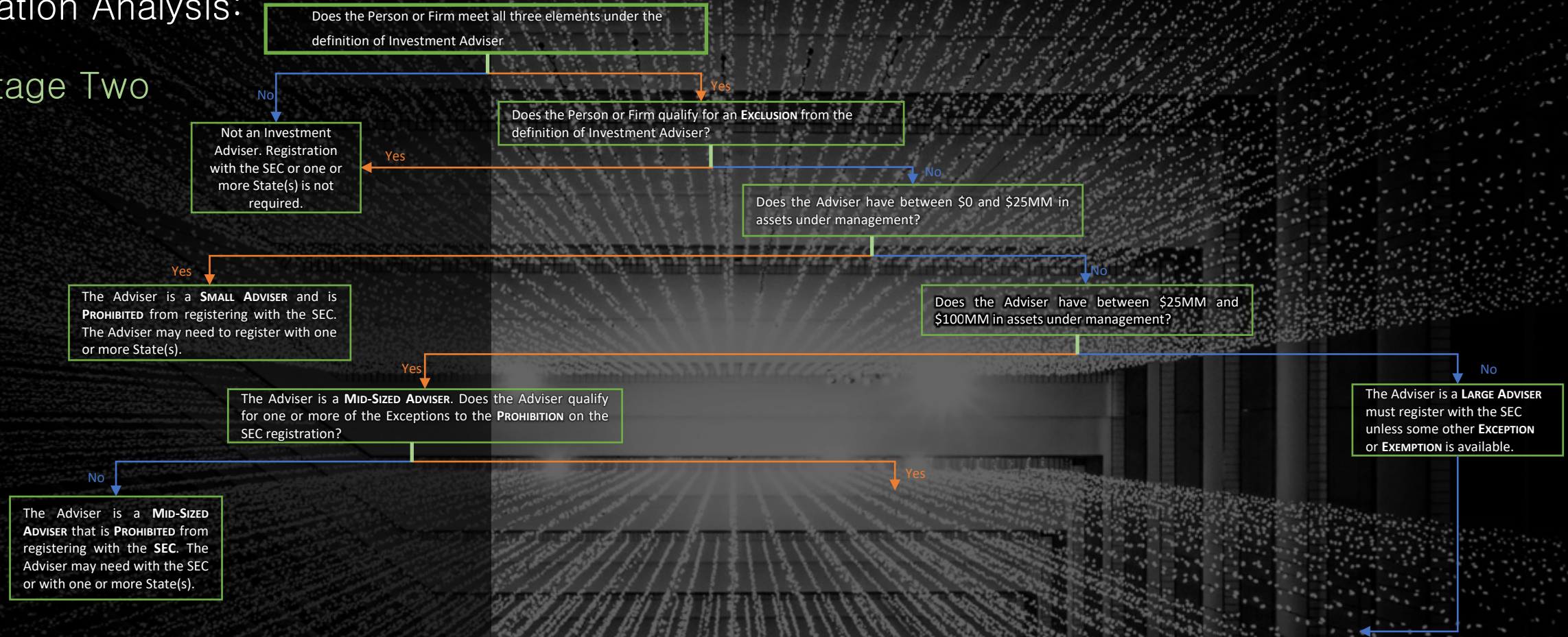
EXCLUSIONS from the Definition of an Investment Adviser

Registration Analysis: Stage Two



Registration Analysis:

Stage Two





Who is Required to Register as an Investment Adviser: SEC or State Registration



Who is Required to Register as an Investment Adviser:

SEC or State Registration

A Firm that meets the definition of “Investment Adviser” must register with the Securities and Exchange Commission (“SEC”) unless it:

- i. Is PROHIBITED *or*
- ii. Qualifies for an EXEMPTION



Who is Required to Register as an Investment Adviser:

SEC or State Registration

The following types of a Advisers generally must register with the SEC:

1. LARGE ADVISERS – \$100MM+ in RAUM
2. NON-U.S. ADVISERS
3. Advisers that fall under an EXCEPTION to PROHIBITION on SEC Registration



SEC or State Registration
Is the Firm **PROHIBITED** from Registering with the
SEC



SEC or State Registration:

Is the Firm
PROHIBITED from
Registering with the
SEC?

Generally, most **Small Advisers** and **Mid-Sized Advisers** are PROHIBITED from registering with the SEC and are subject to state regulation and registration requirements.

- Small Advisers: $> \$25\text{MM}$
- Mid-Sized Advisers: $\$25\text{MM} \geq \leq \100MM



SEC Registration EXCEPTION to PROHIBITION on SEC Registration

There are several EXCEPTIONS to PROHIBITION on SEC registration tied to RAUM.

1. Advisers to Investment Companies
2. Advisers to Business Development Companies;
3. Pension Consultants*;
4. Related Advisers;
5. Advisers Expecting to be eligible for Commission Registration (*expecting an RAUM within 120 days to be $\$100MM \leq \geq \$110MM$*);
6. Multi-State Advisers (*RAUM > \$25 MM and required to register with $15 \leq$ state securities authorities*);
7. Internet Advisers



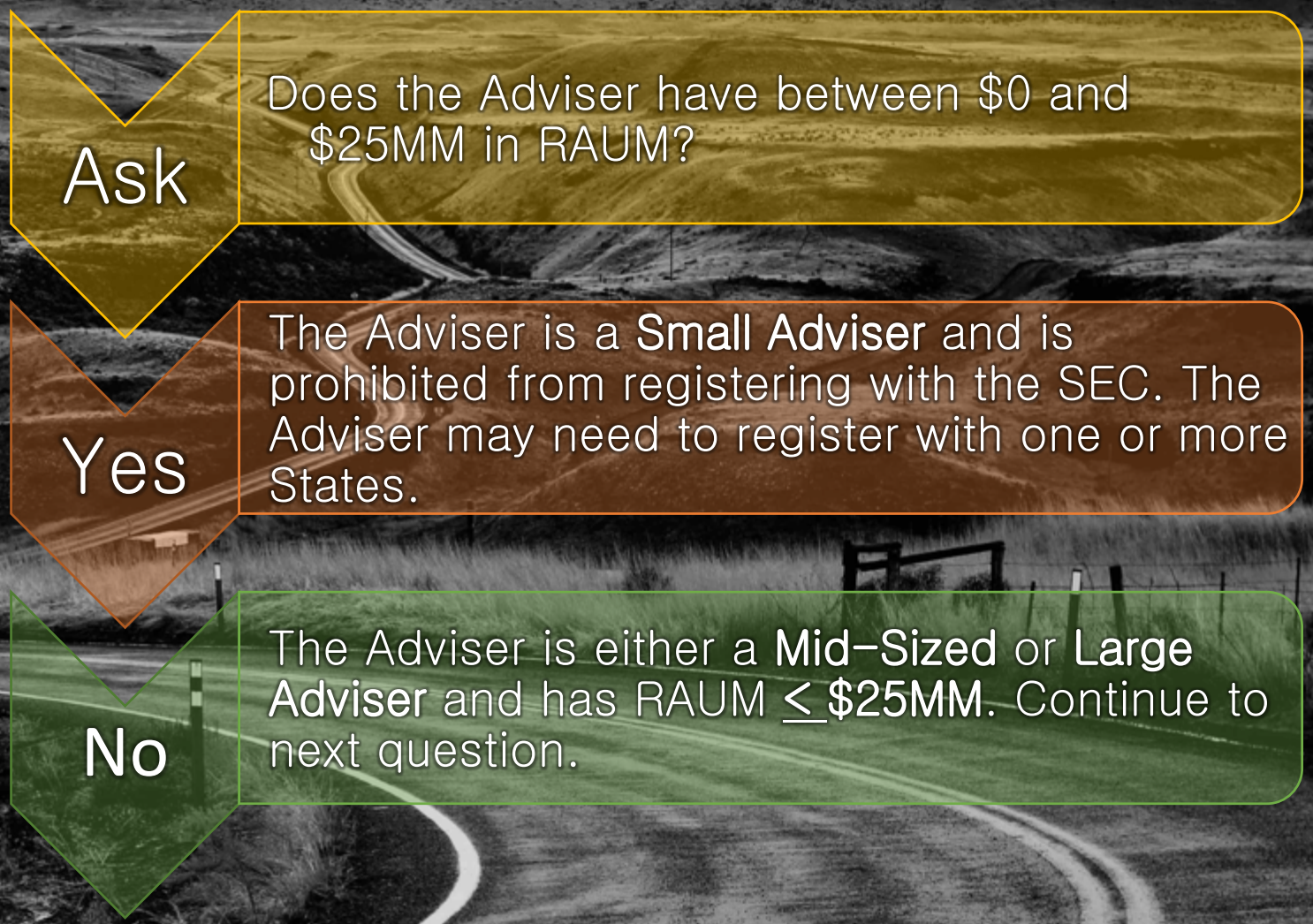
SEC or State Registration Is the Firm Prohibited from Registering with the SEC

Registration Analysis – Stage Three



Is the Firm PROHIBITED from Registering with the SEC

Registration Analysis: Stage Three





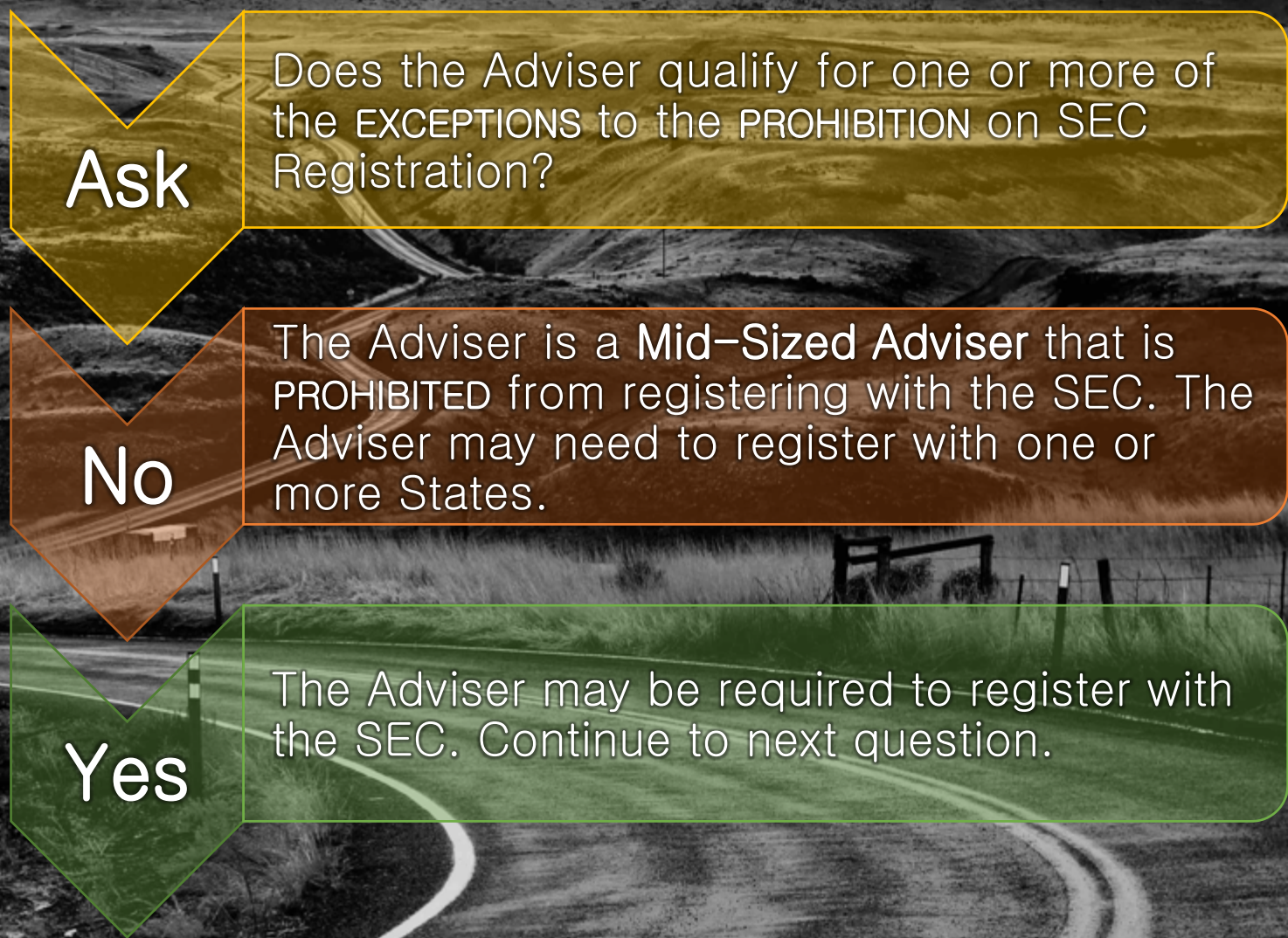
Is the Firm PROHIBITED from Registering with the SEC

Registration Analysis: Stage Three



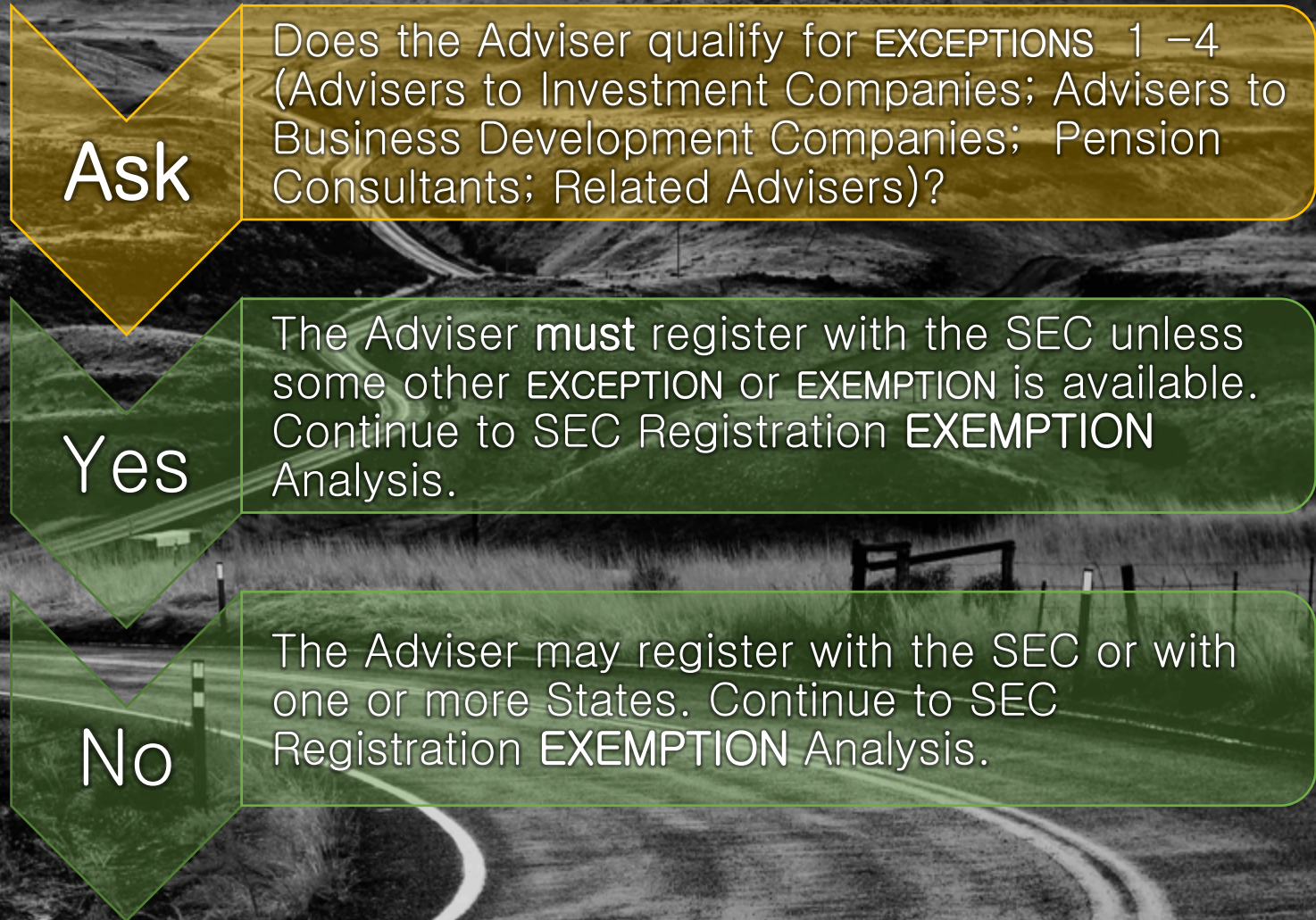


Is the Firm PROHIBITED from Registering with the SEC Registration Analysis: Stage Three



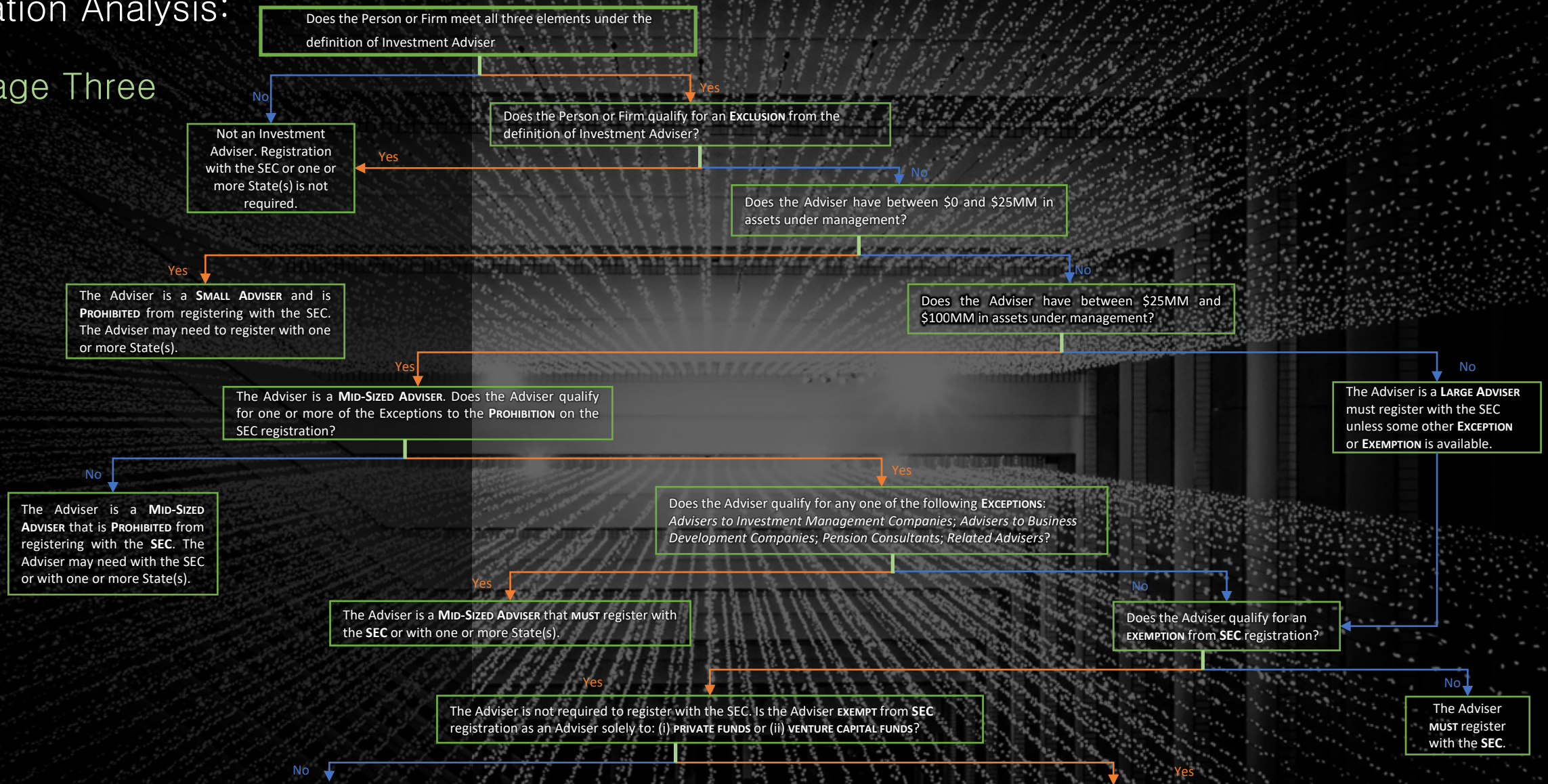


Is the Firm PROHIBITED from Registering with the SEC Registration Analysis: Stage Three



Registration Analysis:

Stage Three





SEC or State Registration: EXEMPTIONS from Registration



SEC or State Registration:

EXEMPTIONS from Registration

The Advisers Act provides several EXEMPTIONS from registration with the SEC.

The EXEMPTIONS are:

- Based on the nature Advisers business
- Voluntary

*Advisers may still be required to register with *one or more state securities regulator.*

SEC or State Registration

EXEMPTIONS from Registration

Advisers EXEMPT from SEC Registration:

1. Intrastate Advisers;
2. Advisers to Insurance Companies;
3. Foreign Private Advisers;
4. Advisers to Charitable Organization and Plans;
5. Commodity Trading Advisers;
6. Private Fund Advisers*;
7. Venture Capital Advisers*;
8. Advisers to Small Business Investment Companies (“SBICs”)

**Exempt Reporting Advisers*

SEC or State Registration

EXEMPTIONS from Registration

Exempt Reporting Advisers

1. EXEMPT from Federal registration
2. Must file form ADV
3. Subject to Examination
4. Defined under:
 - Rule 203(l)-1: Advisers solely to venture capital funds; and
 - Rule 203(m)-1: Advisers solely to qualifying private funds

Advisers may still be required to register with one or more state securities regulator.



SEC or State Registration EXEMPTIONS from Registration

Registration Analysis – Stage Four



Stage Four

EXEMPTIONS from Registration

Ask

Does the Adviser qualify for an EXEMPTION from SEC registration?

No

The Adviser must register with the SEC

Yes

The Adviser is not required to register with the SEC. Continue to Exempt Reporting Adviser Analysis.



Stage Four

EXEMPTIONS from Registration

Ask

Is the adviser EXEMPT from SEC registration as an adviser solely to : (i) private funds or (ii) venture capital funds

No

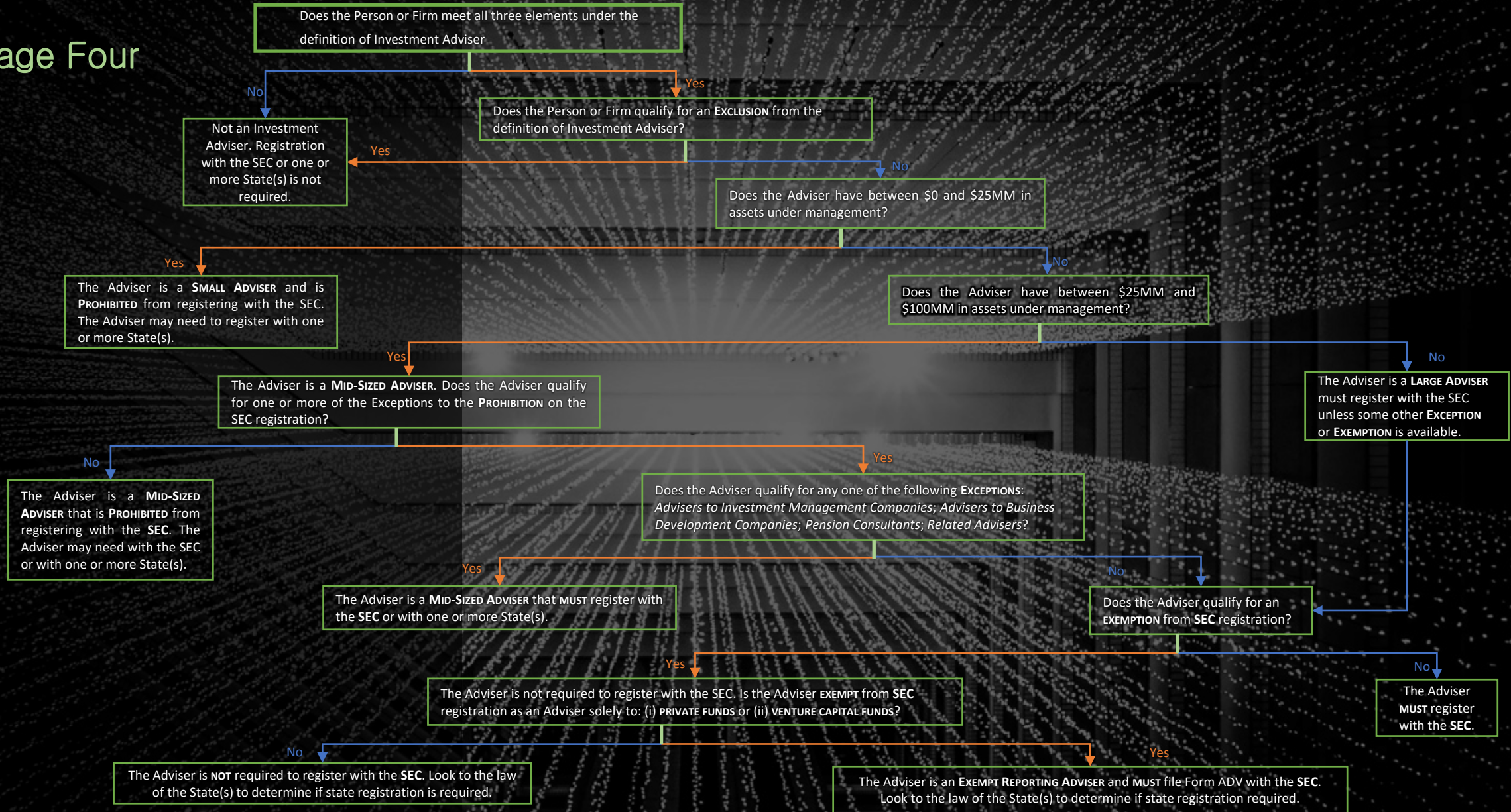
The Adviser is not required to register with the SEC. Look to the law of the State(s) to determine if state registration is required.

Yes

The Adviser is an **Exempt Reporting Adviser** and must file FORM ADV with the SEC. Look to the law of the State(s) to determine if state registration is required.

Registration Analysis:

Stage Four





SEC Registration: NOTICE FILING AND ADVISORY PERSONNEL



SEC Registration:

NOTICE Filing Requirements

NOTICE FILING

- A federally registered adviser may be required to NOTICE FILE
- Notice file in *every* state in which it is doing business
- Notice filing must occur *before* it can legally do business there.



State and SEC Registration

Registration of Advisory Personnel

- Advisory personnel of a state-registered adviser are generally required to be registered in a state.
- These requirements generally include passing a qualifying exam and submitting an application with the state.



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Who is Required to Register as an Investment Adviser—
State Registration Requirements Explained

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State Registration

Generally, an investment Adviser must register with state(s) securities authorities if it:

- Is not required to register with the SEC
- Is prohibited from registering with the SEC;
- Chooses not to register with the SEC when it has the option to do so
- Is not excepted from the investment Adviser definition in the Investment Advisers Act of 1940 §202(a)(11)*; and
- Cannot avail itself of a registration exemption



State Registration

Two Determinative Factors

REGULATORY ASSETS UNDER MANAGEMENT

The value of all “Securities Portfolios” for which the Adviser provides continuous Advisory services (Discretionary and Non-Discretionary).

PRINCIPAL OFFICE AND PLACE OF BUSINESS

The Adviser’s executive office from which senior officers of the Adviser direct, control and coordinate the activities of the Investment Adviser.



State Registration

REGULATORY ASSETS
UNDER MANAGEMENT

SMALL ADVISERS and MID-SIZED ADVISERS are subject to state regulation of Advisers and are PROHIBITED from registering with the SEC. (subject to a few exceptions)



State Registration:

REGULATORY ASSETS
UNDER MANAGEMENT

Three EXCEPTIONS TO STATE REGISTRATION FOR MID-SIZED ADVISERS:

1. Registered Under State Law
2. Subject to Examinations
3. Multi-State Registration



State Registration:

Which State(s)' Law(s) Applies

As such, an Adviser registered in multiple states will need to concern itself with:

- Compliance with each state's law;
- Registering the Adviser itself in applicable states;
- Registering/licensing Advisory personnel;
- Registering the physical locations that have been established to carry out its business.



Which State's Law
Applies:
Where Must the
Adviser Register

An Adviser subject to state regulation is generally required to register in *each* state where it transacts business. These states can be divided in to two sets :

1. The state(s) in which the Adviser has their PRINCIPAL OFFICE AND PLACE OF BUSINESS *and* any state(s) where they have an office;
2. The state(s) in which the Advisers has **more than five clients**, subject to some distinctions.



Which State(s)' Law(s) Applies

When does an
Adviser have a
place of business in
a state?

An investment Adviser has a place of business in any state where the Adviser maintains:

1. An office where the Adviser regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; or
2. Any other location the Adviser holds out to the general public as one where the Adviser provides investment advisory services, solicits, meets with, or communicates with clients. 17 C.F.R. § 275.222-1(a).

Ask, is there a physical presence in the state:

- Home Office
- Formal Office
- Branch Office
- Temporary Office



NOTICE FILING and Exempt Reporting Advisers

- If an Adviser is registered federally with the SEC, it will not be required to register at the state level as well.
- A federally registered Adviser may be required to NOTICE FILE in every state in which it is doing business as an investment Adviser before it can legally do business there.
- SEC rules adopted under Dodd–Frank Act created a new category of Advisers, Exempt Reporting Advisers (“ERAs”)