



Exemptions from State Registration and the “National De Minimis Standard”



GREENWICH COMPLIANCE

An Interactive Brokers Group Company

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)"





• What is the national *de minimis* standard? •

Elements of the *national de minimis* standard.

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser –

1

does not have a place of business located within the State;

2

during the preceding 12-month period; *and*

3

has had fewer than 6 clients who are residents of that State.

Elements of the *national de minimis* standard – As Adopted by States

Arizona

- A. An investment adviser is not required to be licensed or make a notice filing under this chapter if that investment adviser **does not have a place of business in this state** ...:
- ... 2. During the **preceding twelve months** it had **fewer than six clients** who are residents of this state...

NSMIA: Section 222(d)

National De Minimis Standard

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—

- (1) does not have a place of business located within the State; and
- (2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

Florida

- 517.021(14)(b)(7) The de minimis exemption for investment adviser is any person who does not **hold herself or himself out** to the general public as an investment adviser and has **no more than 15 clients within 12 consecutive months** in this state.

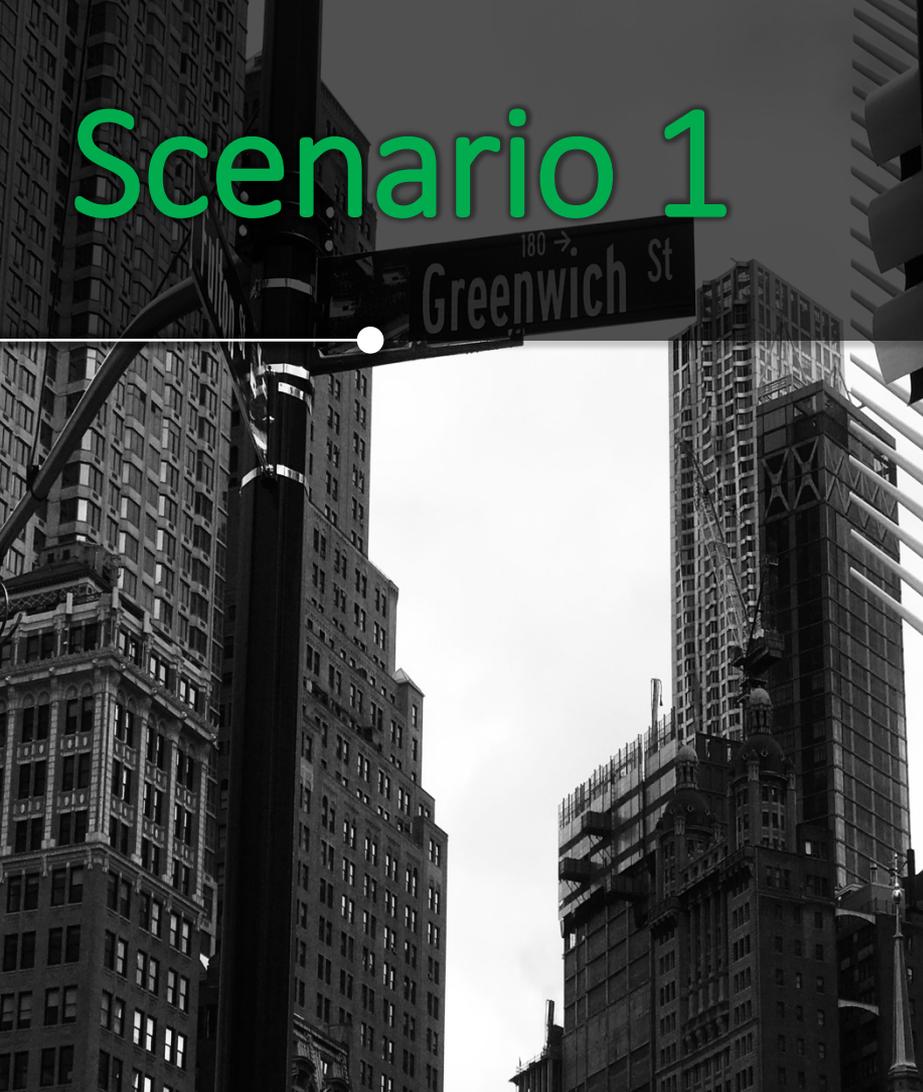
An aerial, high-angle view of a dense urban skyline, likely New York City, featuring numerous skyscrapers and buildings. The image is in grayscale and has a dark, muted tone. The text "What does this mean?" is overlaid in the center in a white, sans-serif font, flanked by two horizontal lines with circular endpoints.

• What does this mean? •

A black and white photograph of the Golden Gate Bridge in San Francisco, viewed from a high angle looking down the length of the bridge towards the water. The sky is dark and cloudy, and the water is calm. The bridge's towers and suspension cables are prominent. The text is overlaid in the center of the image.

*The majority of states allow firms to rely on a **national de minimis exemption** if they have five clients or less **and** no presence in the state.*

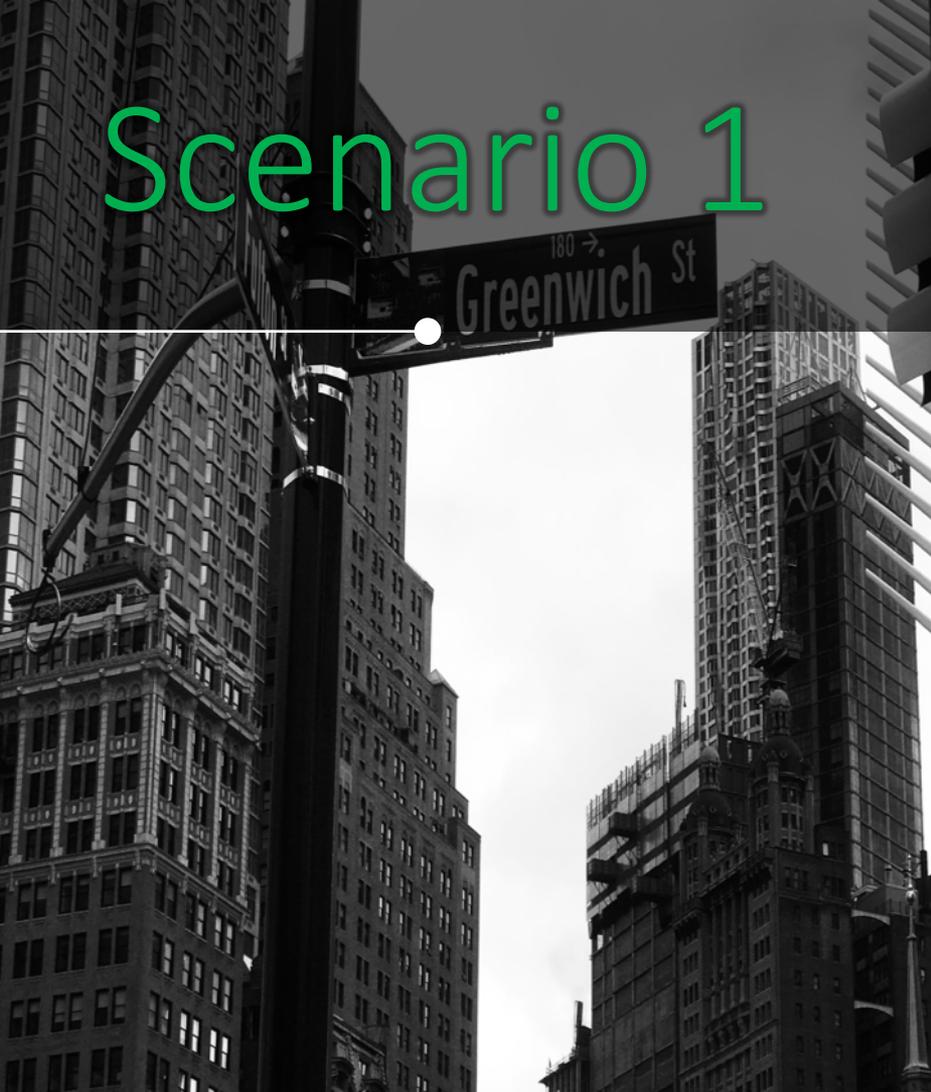
Scenario 1



John is curious about NJ registration and the applicable **National De Minimis Rules** in that state. Specifically, he wants to know:

- if he could rely on the NJ **National De Minimis Rule**; and
- if so could he *also* rely on the **National De Minimis Rule(s)** for the states of OR and NM, respectively.

Scenario 1



Response.

No.

Why?

Both OR and NM require an Adviser to be registered in their home state (or principal place of business) before relying on their **National De Minimis Rules (or registration exemptions).**

Exceptions to the Rule



Texas

Rule

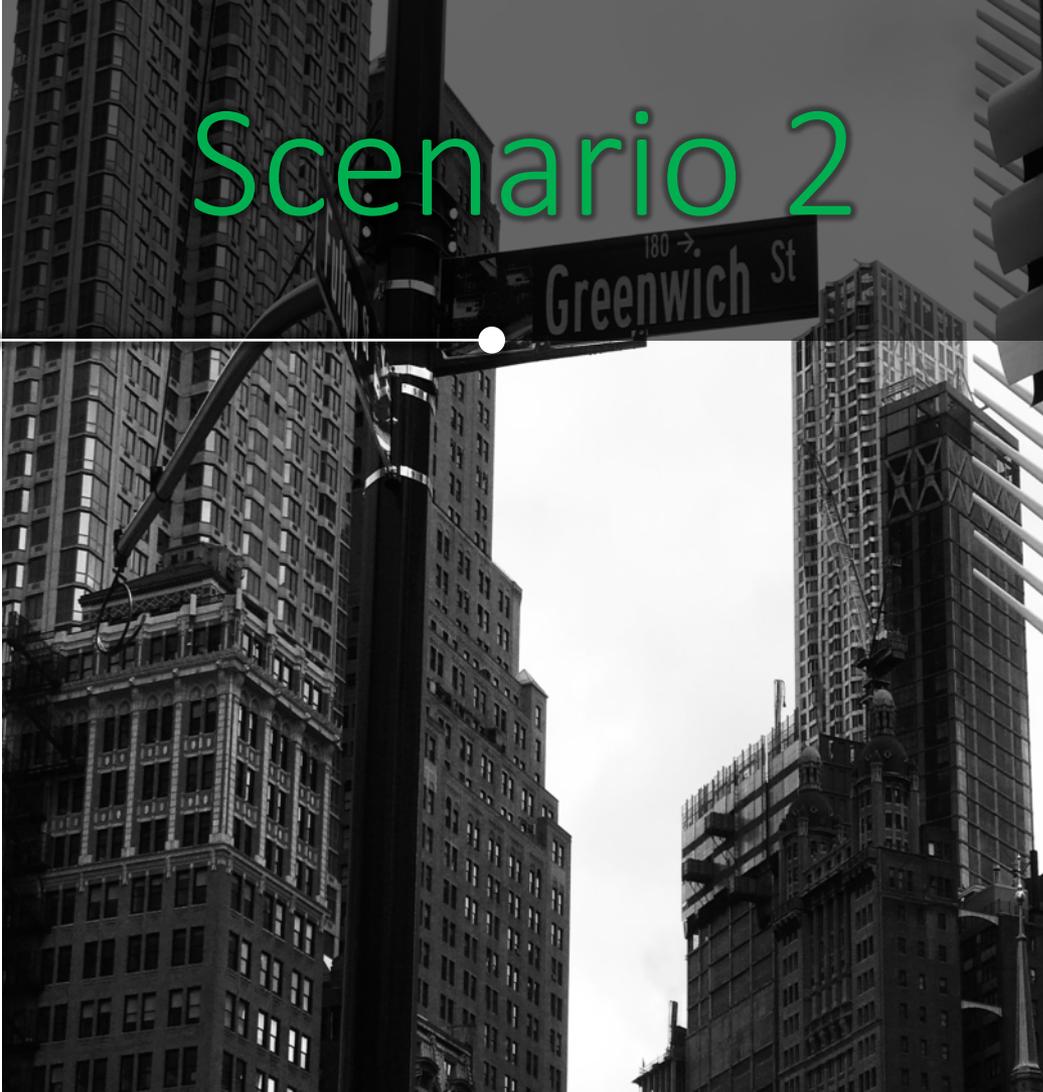
An investment adviser who does **not** have a **place of business** located in this state and, during the **preceding 12-month period**, has **had fewer than six clients** who are **Texas residents**.

Notice filing requirements and fees for investment advisers and investment adviser representatives exempted from registration pursuant to this subsection only.

Summary

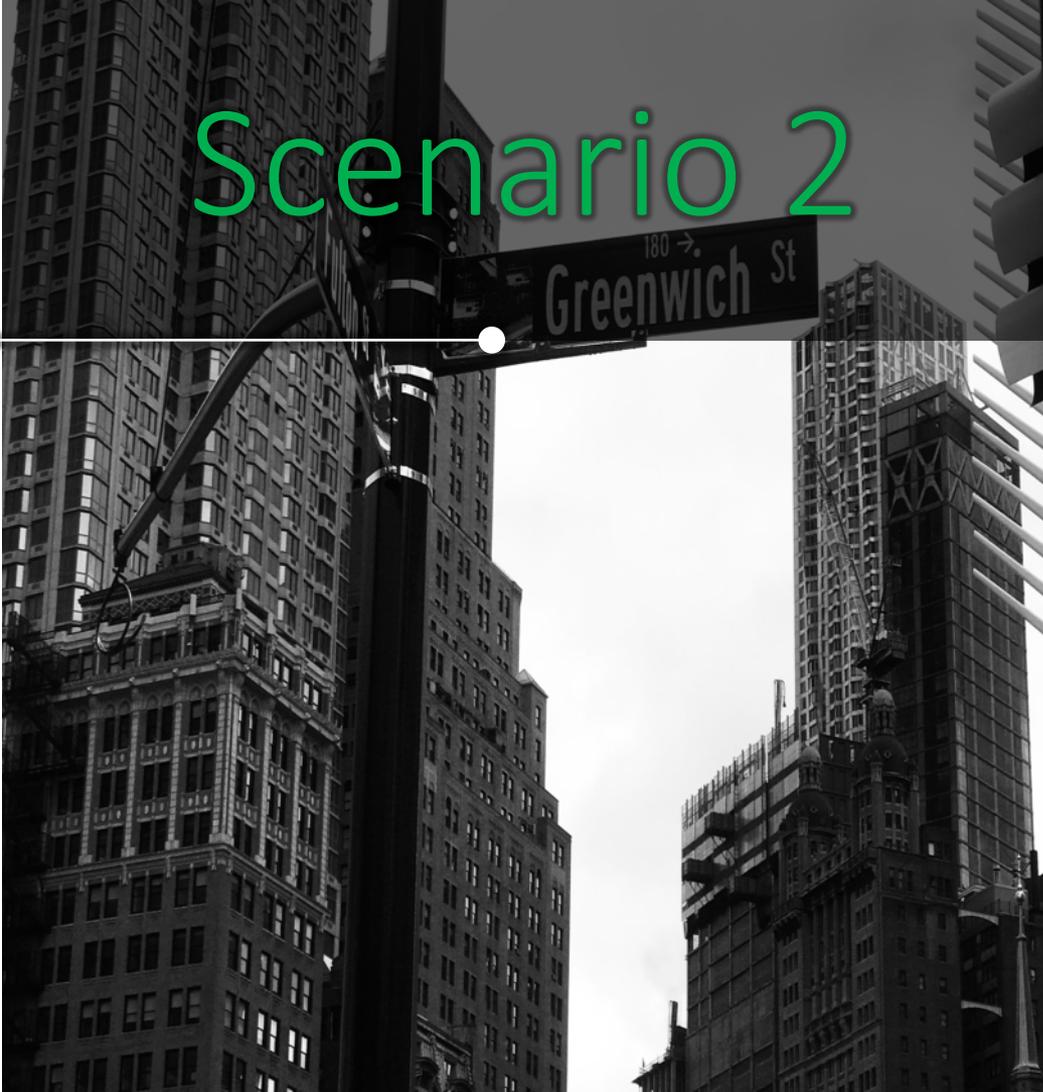
Texas doesn't have a **true National De Minimis Rule (registration exemption)**, it does require firms with five or fewer clients to notice file.

Texas requires the investment advisory firm to notice file before taking on their first clients in TX.

A black and white photograph of a city street corner. In the foreground, a street sign for "Greenwich St" is visible, with "180" and an arrow pointing right above it. The background is filled with tall, multi-story buildings, some with intricate architectural details. The overall scene is urban and dense.

Scenario 2

Mary lives in New Jersey and one of her clients is moving to Texas in a few weeks. May she continue to service her client without having to register in Texas? Note, Mary does not have any other Texas clients.

A black and white photograph of a city street corner. In the foreground, a street sign for "Greenwich St" is visible, with "180 →" above it. The background features several tall, multi-story buildings with many windows. The text "Scenario 2" is overlaid in a large, green, sans-serif font in the upper left quadrant.

Scenario 2

Response.

Yes.

Why?

If Mary does not have a **place of business** in Texas.

However, a **notice filing** and **fee** is required.

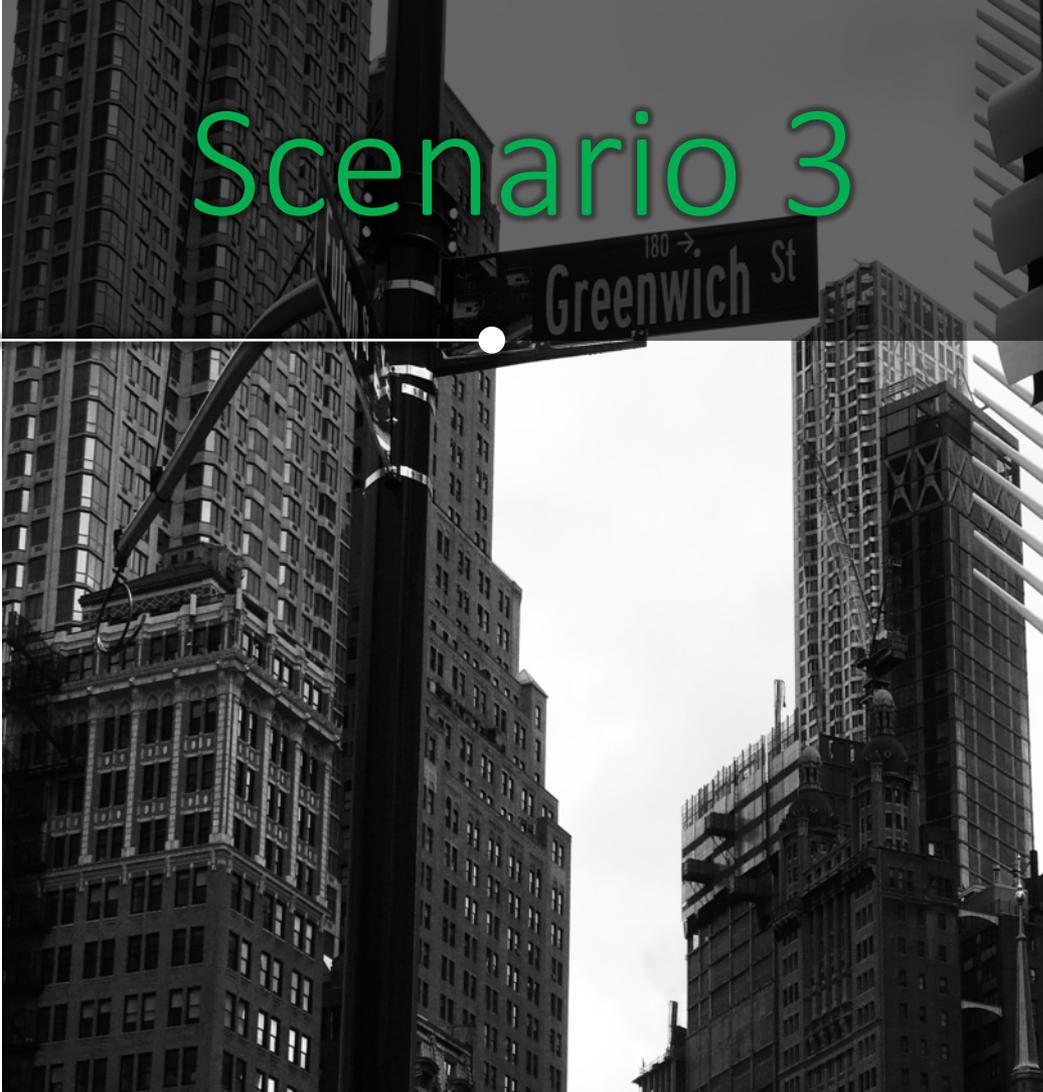
New Hampshire

Rule

A person who has **no place of business** in this state and who, during the **preceding 12 month** period, has had **not more than 5 clients**...who are residents of this state.

Summary

An exception from the licensure requirement is available for a **state regulated** investment adviser who has no place a business in New Hampshire and who, during the preceding 12 month period, has had not more than 5 clients who are residents of New Hampshire.

A black and white photograph of a city street corner. In the foreground, a street sign for "Greenwich St" is visible, with "180" and an arrow pointing right above it. The background is filled with tall, multi-story buildings, some with intricate architectural details. The overall scene is urban and dense.

Scenario 3

A transitioning adviser with approximately \$30 million AUM inquires about his registration requirements. The adviser has three clients (2 that are residents in his home state of New York and 1 located in New Hampshire). The adviser is aware that he meets the SEC requirements for registration and assumes that the SEC is the only regulatory authority that he must file with. Is he correct?

Scenario 3

180 →
Greenwich St

Response.

No.

Why?

The adviser is also required to

notice file and pay the

applicable fees in New

Hampshire.

Nebraska

Rule

Investment adviser does not include...(g) a person who has **no place of business** in this state if buyers, whether acting for themselves or as trustees, or (ii) during the **preceding twelve-month period**, he or she has had **five or fewer clients** who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision,

Summary

A person who has no place of business in this state if...during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified....

Louisiana

Rule

Investment Adviser does not include: (f) A person whose only clients in this state are other investment advisers, dealers, banks, savings institutions, trust companies, insurance companies, investment companies, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or who, during any period of twelve consecutive months, has had fewer than fifteen clients in this state and who does not hold himself or herself out generally to the public as an investment adviser.

Summary

Louisiana requires any advisor that holds itself out to the public as an investment advisor to register, but lets advisors that do not hold themselves out to the public have up to 15 clients before requiring them to register.

Elements of holding yourself out to the public.

In determining if a person or firm holds himself or itself out as an investment adviser within the meaning of Section 203(b)(3) of the Advisers Act, we can look at a number of factors.

1

Whether the person or firm advertises

2

Refers to himself or itself as an "investment adviser";

3

Maintains a listing as an investment adviser in a telephone, business, building, or other directory;

4

Expresses a willingness to accept new advisory clients; or

5

Uses letterhead indicating any investment advisory activity.

Scenario 5

180 →
Greenwich St

Jake, a resident of FL, has 5 clients in LA but believes that he is *not* required to register in LA because he is not holding himself out to the public as an IA. However, Jake has a public website dedicated to his “clients” that is not password protected.

Scenario 5

180 →
Greenwich St

Response.

Yes.

Why?

The minute Jake created that website he began “holding himself out to the public.”

Exceptions to the Rule



Florida

Rule

Any person who **does not hold herself or himself out to the general public** as an investment adviser and has **no more than 15 clients** within **12 consecutive months** in this state.

Summary

Florida statute does not specifically state that it only applies to firms with a place of business in the state; therefore, the **de minimis exemption** would also include firm that **do not** have a **place of business** in the state.

Scenario 6

180 →
Greenwich St

John lives in Tennessee and has 6 clients that are residents of TN and 4 additional clients that are domiciled in Florida. John wants to know if he is required to register in TN and FL.



Scenario 6

Response.

No. John isn't required to register in either TN or FL.

Why?

Advisors with a place of business in Tennessee are not required to register as an investment adviser if they have **fewer than 15 clients** during the course of the **preceding 12-months** and are **not holding themselves out as IAs**.

Connecticut

Rule

The following investment advisers are exempted from the registration requirements under subsection (c) of this section: Any investment adviser that (1) is registered or required to be registered under Section 203 of the Investment Advisers Act of 1940; (2) is excepted from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940; or (3) has **no place of business** in this state and, during the **preceding twelve months**, has had **no more than five clients** who are residents of this state.

Scenario 7

180 →
Greenwich St

Mark is not currently registered and lives in NJ. Mark currently has 4 fee paying clients and 1 non-paying client in CT. However, he will likely pick up a fifth (5) fee paying client in CT (total of 6 clients in CT) and wants to know if he will have to register with both NJ and CT before he picks of the 6th client.

Scenario 7

180 →
Greenwich St

Response.

No. Mark is not required to register in both NJ and CT. He will only have to register in NJ.

Why?

Connecticut has determined that **only paying clients count towards the registration limit.**

Ohio

Rule

No person shall act as an investment adviser, unless one of following applies: ...(4) The person has **no place of business** in this state, and during the **preceding twelve-month period**, the person has had **not more than five clients** ... that are residents of this state.

Summary

For clients based outside of Ohio, the adviser should be allowed to charge fees in accordance with the laws of the state of which the client resides.

If the adviser falls under the **national de minimis exception**, they may be able to **charge fees to up to 5 clients** residing in that state, without registering, if the state(s)' laws permit.

Scenario 8

180 →
Greenwich St

An Adviser with primary place of business in Indiana (IN) has moved to OH. The advisor works from home but maintains his primary place of in IN. All of his stationary, business cards have the IN address. All client calls are routed through the IN office to him in OH and he drives into IN to meet with clients in-person.

In what state should the Adviser be registered in?

Scenario 8

180 →
Greenwich St

Response.

IN and OH

Why?

The Adviser has a presence in BOTH IN and OH.

Summary of Exceptions



Fewer than 6
Clients



No Place of
Business



Not Holding
Yourself Out to the
Public



Counting Clients

Elements of Counting Clients

1

A natural person and any minor child of the person (whether or not the minor child shares the same address as the natural person);

2

Any relative, spouse, spousal equivalent, or relative of the spouse or spousal equivalent of the natural person sharing the same principal residence; **and**

3

All accounts or trusts of which the natural person and/or the person's relatives are the only primary beneficiaries are treated as a single client. The rule also treats as a single client two or more corporations, partnerships, or other legal organizations that each receive investment advice based on the organization's investment objectives and have identical shareholders, partners, or beneficiaries.



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Investment Adviser Registration: Understanding the Registration Process

*Exemption from State Registration
and
"Intra-State De Minimis Rule(s)"*



What is a *Intra-State
De Minimis Rule*?

National *De Minimis* Standard versus Intra-State *De Minimis* Rule

National *De Minimis* Rule

Arizona

- A. An investment adviser is not required to be licensed or make a notice filing under this chapter if that investment adviser **does not have a place of business in this state ...**:
- ... 2. During the **preceding twelve months** it had **fewer than six clients** who are residents of this state...

NSMIA: Section 222(d)

National *De Minimis* Standard

- **No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser—**
- **(1)** does not have a place of business located within the State; and
- **(2)** during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

Intra-State *De Minimis* Rule

New Jersey

- (g) A person shall be exempt from registration as an investment adviser or from making a notice filing required by section 10 of P.L.1967, c.93 (C.49:3-57), if:
- (2) The person has no place of business in this State, and during any period of 12 consecutive months that person does not have more than five clients, who are residents of this State, other than those specified in subparagraph (vi) of paragraph (2) of subsection (g) of section 2 of P.L.1967, c.93 (C.49:3-49).



• WHAT DOES THIS MEAN? •

An aerial photograph of a dense city skyline, likely New York City, with numerous skyscrapers. The image is overlaid with a semi-transparent dark grey filter. The text is centered horizontally and vertically.

• *The majority of states do **NOT** have an **Intra-State De Minimis Rule.*** •

Exceptions to the Rule: States with an Intra-State De Minimis Rule



Exceptions to the Rule: States with an Intra-State De Minimis Rule

State	Number of Clients	May Hold out to the Public as an Adviser
Georgia	5	Yes
Illinois	5	Yes
New Jersey	5	Yes
New York	5	Yes
North Carolina	15	No
Pennsylvania	5	No
Tennessee	15	No
Louisiana	15	No
Florida	15	No

Registration Rules for Advisors in their Home States

Advisors must register with the state(s) in which they have:

1. their **principal office and place of business** (i.e., their **home state**);
2. an office (regardless of the number of clients they have in that state); and
3. Clients (generally more than 5).

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

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

- Maintains an office where the advisor regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; **or**
- Holds out to the general public as one where the advisor provides investment advisory services, solicits, meets with, or communicates with clients. 17 C.F.R. § 275.222-1(a).

An aerial, high-angle photograph of a dense urban skyline, likely New York City, featuring numerous skyscrapers and buildings. The image is in grayscale with a dark, semi-transparent overlay. The word "Questions?" is written in a bright green, sans-serif font, centered horizontally and vertically over the cityscape.

Questions?