



Complexities of Dual Registration



A person's hands are shown sorting through a large stack of papers on a wooden desk. The papers are organized into several distinct stacks, some of which are bound with orange rings. In the background, a laptop is open, and the scene is softly lit, suggesting a professional or academic setting. A semi-transparent purple rectangle is overlaid on the left side of the image, containing the text.

Topics We'll Cover

1. Introduction to Dual Registration

- Overview of Dual Registration
- Historical Context and Evolution

2. Understanding Dual Registration

- Definition and Scope
- Importance and Context of Dual Registration in the Financial Industry
- Fiduciary Duties and Responsibilities

3. Regulatory Compliance

- Registration
- Dual Compliance
- Reporting and Disclosures
- Written Supervisory Procedures Manual
- RIA SEC Sample Policies and Procedures Manual

4. Understanding Registrations

- FINRA Exams
- NASAA Exams
- Definition of Commissions
- Definition of Fees
- Insurance

5. Reporting and Disclosures

- Reporting
- Disclosures

6. Legal Implications and Contractual Considerations

- Dispute Resolution in a Dual Registration Scenario
- Legal Documentation for Dual Registration

7. Risk Management and Mitigation Strategies

- Identifying and Assessing Risks
- Mitigation Strategies
- Regular Assessments of Compliance

8. Emerging Trends and Future Considerations

- Technological Advances and Their Impact

9. Conclusion and Key Takeaways

- Recap of Key Complexities Discussed

Introduction to Dual Registration



Overview of Dual Registration

Who is my regulator?

FINRA is the regulator for all broker-dealers. FINRA derives its authority from the SEC and it is responsible for market regulation including the regulation of brokers-dealers, whereas the SEC is directly responsible for regulating Registered Investment Advisors (RIA).

What does this mean to me?

It depends, who do you work for? Is your firm a broker-dealer, an RIA, or both? What licenses do you have? If you have a Series 7, that is a general securities license that is required to be held by a broker-dealer. FINRA has jurisdiction over you. If you have a Series 65, that is an advisory license that must be held by an RIA. The SEC also has direct jurisdiction over you.

Why does this matter?

FINRA rules are prescriptive. For example, a FINRA rule might say, “you may not give a gift over \$100.”

SEC rules are principled. In this example, the SEC enforces a fiduciary duty of loyalty and duty of care. Therefore, you may not give a gift at a value that may influence a customer to act in your favor.

The outcome may be the same, or it may be different, but the two styles of regulation should be understood and applied to the appropriate customers and accounts.

Introduction to Dual Registration



Historical Context and Evolution

In the mid to late 1900s, many financial professionals considered themselves “stockbrokers.”

In the late 1990s, that started to change. More and more advisors became licensed to accept fee-based accounts.

Stockbrokers place trades for a commission. They are registered representatives of broker-dealers. If you have a Series 7, you fall into this category, in that you are able to earn commissions from client accounts. For example, you may have a client’s 529 Plan for their grandchild’s education. In that 529 Plan, you placed commissionable trades. A Series 7 is a FINRA license that must be held at a broker-dealer and gives FINRA jurisdiction.

Financial advisors have a Series 65 or a Series 66. These licenses allow you to charge an ongoing fee on assets under management for discretionary trading in clients’ accounts. A Series 65 must be held by a Registered Investment Advisor Firm (RIA) and is under the jurisdiction of the SEC or the State Securities Division.

Understanding Dual Registration



Definition and Scope

What becomes important is whether or not your actions impact a brokerage account or an advisory account. A brokerage account is an account where you charge a commission for a trade. An advisory account is an account where you charge a management or advisory fee.

Often times, clients have both, making it important for you to follow the most restrictive of the two FINRA or SEC rules.

Sometimes, however, a client merely has fee-based accounts and, therefore, the SEC has jurisdiction.

FINRA rules are often more restrictive and, thus, your dually licensed firm will focus more on the FINRA rules.

Understanding Dual Registration



Importance and Context of Dual Registration in the Financial Industry

Many financial advisors who work for large companies may not even realize that they are, in fact, dually licensed and that their broker-dealer also has an affiliated RIA Firm. If you have a Series 65 or 66 but you work for a large firm, you are likely dually licensed.

What this means for you is that you are subject to the jurisdiction of both FINRA and the SEC (or the State). If you find yourself under investigation by one of these regulators, you may also have to respond to the other.

Even if your actions are above reproach, some of the activities that you engage in on a daily basis for your clients are subject to FINRA rules while others are not.

Understanding Dual Registration



Fiduciary Duties and Responsibilities

Registered representatives with FINRA members are subject to FINRA rules which are very prescriptive. FINRA rules identify with some specificity what actions you may or may not take.

Investment Advisors Representatives (IARs) have a fiduciary duty to their clients. This includes both a duty of loyalty and a duty of care. Under your duty of loyalty, you must not put your needs above the needs of your clients. Under your duty of care, you must act as you would if you were in your client's position while maintaining your own knowledge and experience of the financial markets and investing.

As opposed to FINRA rule-based regulation, the SEC and State Securities divisions utilize a principle-based regulatory scheme.

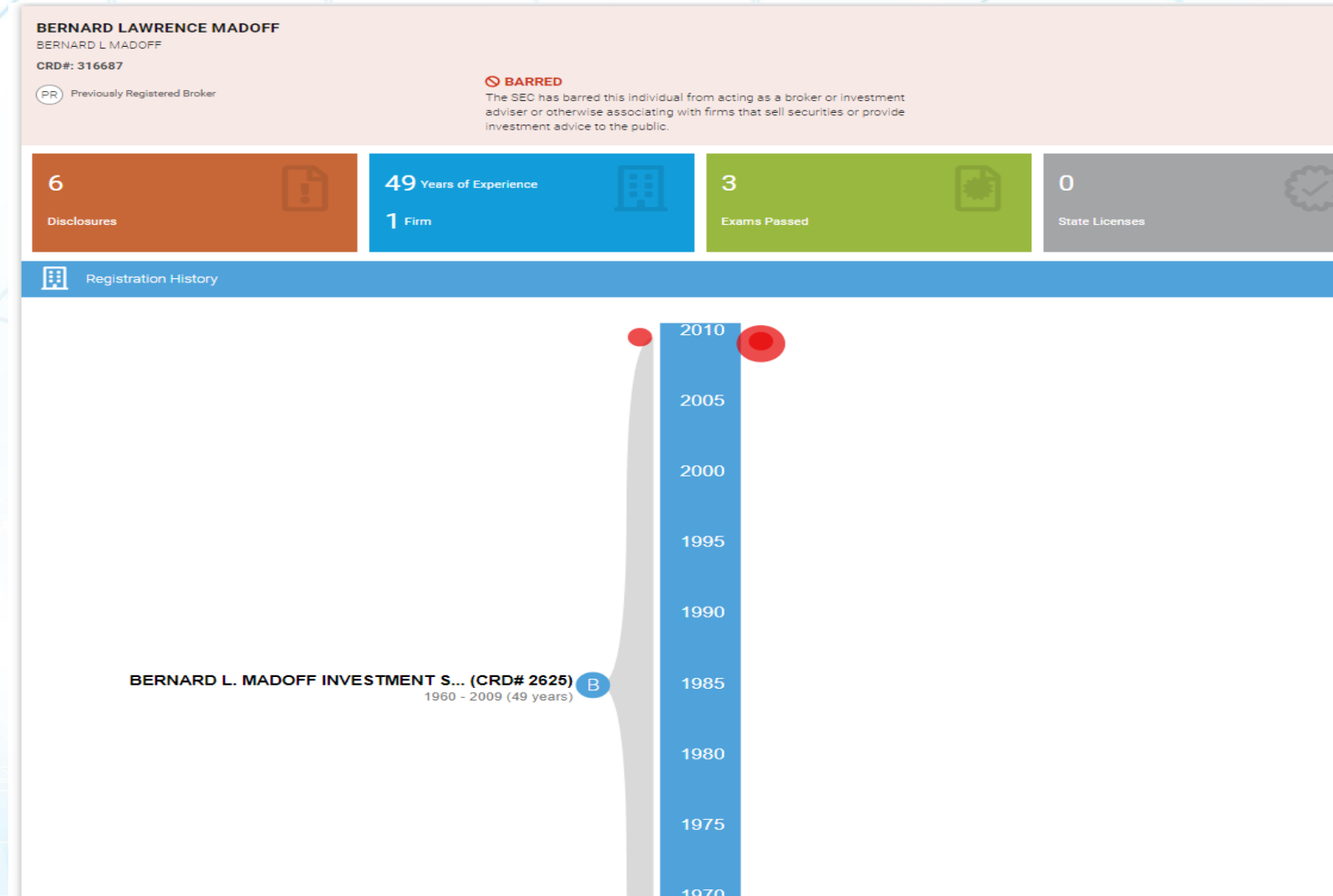
What this means for you is that you have more flexibility but a higher level of obligation to develop and understand your compliance program while ensuring that it is designed to keep your firm compliant based on the principles of your fiduciary duties.

Regulatory Compliance



Registration

An example of a Registered Representative that is not an Investment Advisor Representative.



Regulatory Compliance



Registration

An example of an Investment Advisor Representative that is not a Registered Representative of a Broker-Dealer

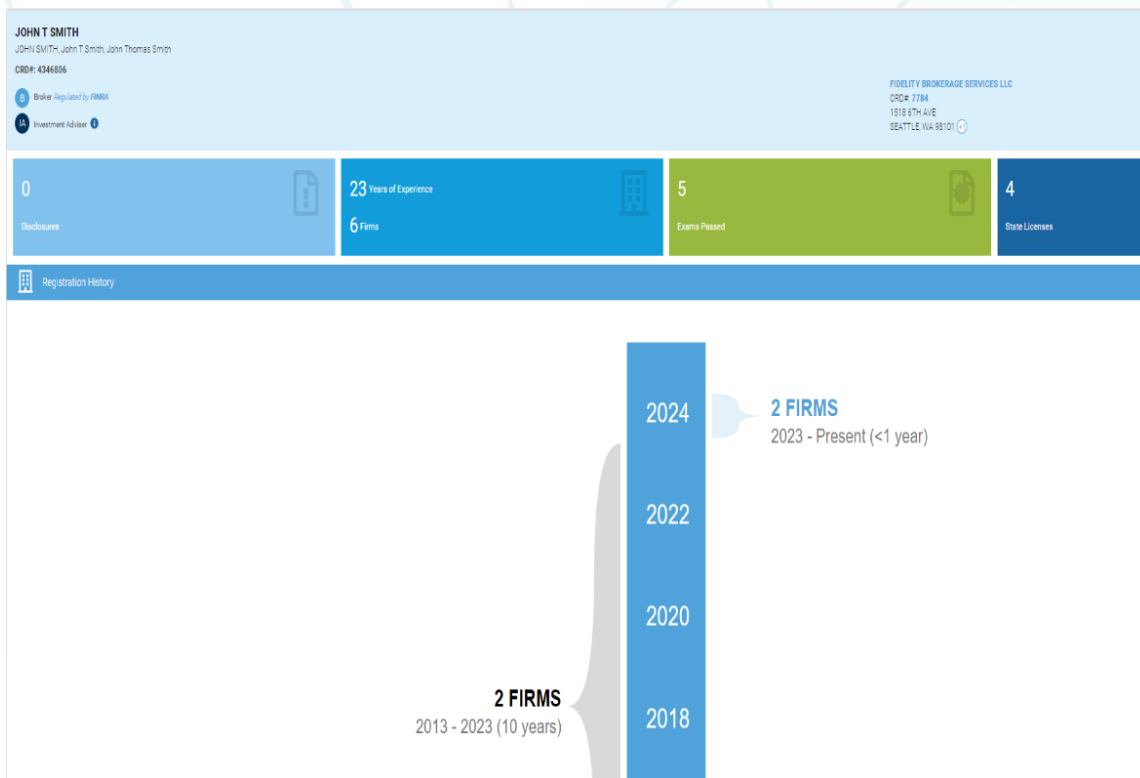


Regulatory Compliance



Registration

An example of a dually licensed individual



| Examination(s) | |
|---|--|
| ■ State Securities Law Exam | |
| B | IA Series 66 - Uniform Combined State Law Examination |
| ■ General Industry/Products Exam | |
| B | SIE - Securities Industry Essentials Examination |
| B | Series 7 - General Securities Representative Examination |
| ■ Principal/Supervisory Exam | |
| B | Series 10 - General Securities Sales Supervisor - General Module Examination |
| B | Series 9 - General Securities Sales Supervisor - Options Module Examination |
| Additional information including this individual's professional designations is available in the Detailed Report. | |
| License(s) | |
| State Registrations | |
| B Texas | B Washington |
| IA Texas | IA Washington |
| Not all jurisdictions require IAR registration or may have an exemption from registration. | |
| Current Registration(s) | |
| B | FIDELITY BROKERAGE SERVICES LLC (CRD#:7784) 1518 6TH AVE, SEATTLE, WA 98101 Registered with this firm since 6/13/2023 |
| IA | FIDELITY PERSONAL AND WORKPLACE ADVISORS (CRD#:288590) 1518 6TH AVE, SEATTLE, WA 98101 Registered with this firm since 6/28/2023 |

Dual Compliance

The challenge is which regulation to follow and why. Your firm should be your guide whenever there is confusion.

However, let's look at some examples.

Recordkeeping: FINRA requires that all business records be held for 6 years. The SEC requirement for keeping records, however, is 5 years. This conflict is easy to overcome by retaining all business records for 6 years.

Gift Log: As previously mentioned, FINRA has a maximum dollar amount for gifts. The SEC is more forgiving as you may gift at an appropriate level for the occasion. For example, for your client's 50-year wedding anniversary, you may spend \$500 on a gift that you believe is one-time and appropriate for the occasion. In both situations, you will want to document any gift on a gift log.

Reporting and Disclosures

The primary disclosure documents for an RIA Firm are their ADV, Part 1A, 2A, 2B, and 3(CRS). These documents disclose the services offered through an advisory firm. Broker-dealers are not subject to the requirement of an ADV filing. An advisory firm's disclosures can be found on the Investment Adviser Public Disclosure website (IAPD).

Broker-dealers report their disclosures through Form BD. This information can be found on BrokerCheck.

If you are dually licensed, both can be found on BrokerCheck.

FINRA Broker Dealer Written Supervisory Procedures Manual (WSP)

<https://www.finra.org/sites/default/files/2022-09/WSP-Checklist-for-BD.pdf>

RIA SEC Sample Policies and Procedures Manual

| |
|---|
| POLICIES AND PROCEDURES 1 |
| COMPLIANCE MANUAL 1 |
| INTRODUCTION: 1 |
| I. REGISTRATION AND EXAMINATION REQUIREMENTS 2 |
| II. THE FIDUCIARY STANDARD 4 |
| III. COMPLIANCE REVIEW 7 |
| IV. OPENING AND MAINTAINING A CUSTOMER ACCOUNT 9 |
| V. PORTFOLIO MANAGEMENT 14 |
| VI. TRADING PRACTICES 16 |
| VII. PERSONAL TRADING 20 |
| VIII. PRINCIPAL TRADES 20 |
| IX. ANTI-MONEY LAUNDERING 21 |
| X. ERROR POLICY 24 |
| XI. POLITICAL CONTRIBUTIONS 26 |
| XII. SOLICITATION ARRANGEMENTS AND REFERRAL FEES 28 |
| XIII. SPECIAL REPORTING REQUIREMENTS 30 |
| XIV. PROMOTIONAL ACTIVITIES 33 |
| XV. ELECTRONIC E-MAIL COMMUNICATIONS 36 |
| XVI. PRIVACY POLICY 37 |
| XVII. COMPLAINTS AND COMPLAINT FILE 38 |
| XVIII. EMPLOYEE SCREENING 38 |
| XIX. DISCIPLINARY POLICY 38 |
| XX. PROXY VOTING 39 |
| XXI. RECORDKEEPING 39 |

APPENDIX A: CODE OF ETHICS

APPENDIX B: BUSINESS CONTINUITY PLAN (BCP)

Understanding Registrations



FINRA Exams

What is a Series 6?

Investment Company and Variable Contracts Products Representative Exam

What is a Series 7?

General Securities Representative Exam

North American Securities Administrators Association (NASAA) Exams

What is a Series 63?

Uniform Securities Agent State Law Exam

What is a Series 65?

Uniform Investment Adviser Law Exam

What is a Series 66?

Uniform Combined State Law Exam

Discussion: What licenses do you have?



Understanding Registrations



When do you need a Series 7 and when do you need a Series 65?

- A. 529 Plan
- B. A traditional variable annuity
- C. Discretionary management of a client account
- D. A non-traded REIT

Understanding Registrations



Definition of Commission

A commission is compensation received by a third party (the broker) for arranging a transaction between a buyer and a seller.

This is similar to a real estate broker who connects a buyer and a seller for a commission.

Discussion: What products offer commissions?



Understanding Registrations



Definition of Fee

A fee is a price (usually fixed) paid in exchange for a service.

A fee is provided for an ongoing service and the service must be clearly defined.

Discussion: What products may you charge a fee to manage?



Understanding Registrations



Example: Non-Traded Private Placement

When offering a non-traded private placement to a suitable client, how will you get paid?

Regulators will expect you to clearly understand what services are being provided to earn a commission or a fee.

Understanding Registrations



Example: Non-Traded Private Placement

Joe is a dually licensed registered representative of an independent broker-dealer and has his own RIA for which he is an IAR.

Joe decided he wanted to offer his clients a real estate private placement that was not approved by his broker-dealer. Because it was not approved by the broker-dealer, he approved it for himself through his RIA. He offered it to his clients and he collected what the product sponsor called, “a marketing fee,” which was a percentage of the clients’ investment amounts.

When the state conducted an exam, it uncovered these sales. The state determined that he had received commissions through his RIA. The state ordered him to refund the full investment amounts, with interest, and suspended his RIA for two weeks. This order is now permanently disclosed on his Form ADV.

Understanding Registrations



What About Insurance?

Do you have an insurance license in addition to your securities license(s)?

A state insurance license allows you to recommend fixed insurance products for a commission.

A state insurance license in conjunction with a securities license (Series 6 or 7) allows you to recommend variable insurance products for a commission.

If you provide investment management advice on sub-accounts inside of variable insurance products, you may be able to charge a fee for management without an insurance license or a brokerage license.

Understanding Registrations



Example: Variable Annuities

Traditional VAs require a Series 6 or 7 and a state insurance license to be held by the representative of record.

In recent years, certain platforms have created VAs that allow for the management of the sub-accounts alone. These products that are considered “advisory” variable annuities may or may not require an insurance license and they do not require the investment professional to be affiliated with a broker-dealer.

Understanding Registrations



Example: Variable Annuities

Bob is considering leaving his dually licensed broker-dealer and starting his own RIA firm. Bob has approximately \$200 million in AUM that will likely move with him to his new firm.

One of his concerns is that he has \$10 million in legacy variable annuities for his clients. This represents about \$35,000 in annual trail commissions. If Bob does not maintain his Series 7 through a broker-dealer, he will not be eligible to collect commissions. The insurance company has informed him that he also cannot be representative of record on these accounts without his Series 7.

Bob has a dilemma – some of these clients may be suitable to 1035 these legacy annuities into newer products that allow for advisory services to these sub-accounts. Many of these clients will not be suitable to move.

What should Bob do?

Reporting and Disclosures



Reporting

If you have a Series 7, you are required to keep your U4 current and up-to-date.

If you have an advisory license (Series 65), you also have an ADV 2B that must be completed and kept up-to-date.

Both BD and Advisory registrations require the CRS to provide information as to whether or not the individual or the firm has disclosures.

Disclosures

It is very important to provide the appropriate required disclosure documents when opening an account.

For a brokerage account, a broker-dealer will have its own account form that it requires to obtain a customer financial profile, as well as a contract that outlines both the firm and the client's duties and responsibilities to one another.

For an advisory account, an RIA requires that its Investment Advisor Representatives (IAR) provide each client a copy of the firm's Form ADV Part 2A, as well as the IAR's ADV Part 2B. If the firm is SEC registered (rather than state registered), the firm's Form ADV Part 3, otherwise known as the Customer Relationship Summary (CRS), in addition to the Investment Advisory Agreement (contract), must be provided to each client.

Therefore, it is important to understand whether you are opening a brokerage account or an advisory account.

Legal Implications and Contractual Considerations



Dispute Resolution in a Dual Registration Scenario

If you are registered with FINRA, you must arbitrate disputes through FINRA Dispute Resolution Forum (FINRA DR).

If your registration is RIA only, you may use other dispute resolution forums or, if your investment advisory agreement does not specify required arbitration, disputes may be filed in state court.

Legal Implications and Contractual Considerations



Contracts

If you've opened a brokerage account, then you make non-discretionary trades buying and selling individual securities with each customer's explicit authorization.

An example of a brokerage account may be a 529 account.

If you have opened an advisory account where you have discretion to trade, you must have a contract that authorizes that discretion and clearly defines what actions you may take in the account, as well as the amount that you will charge for this management.

The industry has gradually moved towards advisory accounts and most financial advisors today have an advisory license and manage the majority of their clients' assets in this manner.

It is important to understand the type of accounts that you have for your clients and which regulations and rules apply to those relationships. It is equally important that the proper contracts are completed prior to charging any commissions or fees.

Risk Management and Mitigation Strategies



Identifying and Assessing Risks

Your firm must have a complete and comprehensive compliance program that recognizes the types of accounts that you are servicing. Your written supervisory procedures or compliance manual must outline procedures that help you to follow the appropriate rules and regulations. It is important that you review these manuals annually prior to attesting to your review and understanding.



Risk Management and Mitigation Strategies



Mitigation Strategies

The primary way to mitigate risk is to understand your activities and the duties that accompany those activities.



Representative

Compliance Department

Risk Management and Mitigation Strategies



Regular Assessments of Compliance

Regular assessment of the firm's compliance program is the responsibility of the Chief Compliance Officer (CCO) and any designees. However, when each investment professional understands the regulations under which they operate, the more effective the compliance program will be.

Emerging Trends and Future Considerations



Technological Advances and Their Impact

There are a variety of different compliance technologies available. Utilizing technology can assist in streamlining any well-designed compliance program incorporating both broker-dealer and advisory services. However, technology is not so advanced that human oversight and supervision can be left out.

Conclusion and Key Takeaways



Recap of Key Complexities Discussed

In conclusion, it is important to understand which securities licenses you need for each investment activity.

It is important to understand which securities licenses you have and what they allow you to do for your clients.

It is also important to understand which regulator has supervision over the investment activities that you perform.

Questions?

