

Reg. of Investment Advisers § 1:3

Regulation of Investment Advisers  
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Chapter I. Registration of Investment Advisers

§ 1:3. Who must register?—The investment adviser definition: Section 202(a)(11)

The Advisers Act defines an “investment adviser” in Section 202(a)(11) generally to include any person (including a natural person or an entity) who

- (1) For compensation (see § 1:4)
- (2) Is engaged in the business (see § 1:5)
- (3) Of providing advice to others or issuing reports or analyses regarding securities (see §§ 1:6 to 1:14).

To be an investment adviser under this definition, a person must satisfy each of these elements. Historically, these elements have been broadly construed by courts, the Securities and Exchange Commission (SEC) (the federal regulatory agency with primary jurisdiction over investment advisers), and the SEC staff, which interprets and administers the Advisers Act on a day-to-day basis.

The SEC addressed in detail the elements of the investment adviser definition in [Investment Advisers Act Release No. 1092 \(Release 1092\)](#).<sup>1</sup> This release was developed jointly by the SEC and the North American Securities Administrators Association (NASAA), an organization of state securities regulators, to address the applicability of the Advisers Act to investment advisers commonly known as “financial planners” (discussed in § 1:9).<sup>2</sup> In addition, Release 1092 provides guidance on the three elements of the investment adviser definition (see above), which are generally applicable to all advisers.<sup>3</sup> A copy of Release 1092 appears at [Appendix B5](#).

An investment adviser can be either an individual or an entity (e.g., corporation, partnership, etc.). Likewise, under certain circumstances an entity established primarily for other purposes can nonetheless be considered an investment adviser for purposes of the Advisers Act. For example, the SEC staff has deemed certain trustees with discretion over trust assets to be within the definition of an investment adviser.<sup>4</sup> Historically, the courts and the SEC have broadly construed each of the three elements of the investment adviser definition.

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Footnotes

- <sup>1</sup> [Investment Advisers Act Release No. 1092, 1987 WL 112702 \(Oct. 8, 1987\)](#). Release 1092 supplements and updates views previously published in [Investment Advisers Act Release No. 770 \(Aug. 13, 1981\)](#).
- <sup>2</sup> Release 1092 remains the definitive SEC statement about the status of financial planners under the Advisers Act.
- <sup>3</sup> [Investment Advisers Act Release No. 1092, 1987 WL 112702 \(Oct. 8, 1987\)](#).
- <sup>4</sup> See, e.g., [Resource Bank and Trust, SEC No-Action Letter, 1991 WL 178723 \(Mar. 29, 1991\)](#); [Philip Eiseman, SEC No-Action Letter, 1976 WL 12168 \(July 22, 1976\)](#).