

Template

Investment Advisory Contract or Agreement

Code of Alabama 1975, Section 8-6-17(d) and Commission Rule 830-X-3-.21(1)(p)

This is a template that may be helpful in compiling a client contract or agreement for investment advisory business.

- 1) All contracts or agreements must be in writing.**
- 2) All contracts must disclose the following information, and each area should be explained in its entirety:**
 - a. Services to be provided;
 - b. The term of the contract;
 - c. The advisory fee;
 - d. The formula for computing the fee;
 - e. The amount of prepaid fee to be returned in the event of contract termination or nonperformance;
 - f. Whether the contract grants discretionary power to the investment adviser;
 - g. That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;
 - h. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; and
 - i. The right to receive the disclosure document at least 48 hours prior to entering the contract or at the time of entering the contract if the client has the right to terminate such contract without penalty within five calendar days after entering into the contract.
- 3) Additional areas to be included when applicable:**
 - a. Investment objectives and restrictions;
 - b. Selection of broker-dealer and soft-dollar arrangements;
 - c. Proxies and voting;
 - d. Cross trades, a transaction in which an investment adviser, or any person controlled by, or under common control with such investment adviser, acts as a dealer for both the advisory client and the person on the other side of the transaction;
 - e. Transactions by employees; and
 - f. Direct fee deduction:
 1. The contract must give the adviser the authority to directly bill the custodian for its advisory fee.

2. The adviser must send billing invoices to the client and custodian simultaneously.
 3. The invoices sent to the client and custodian must provide details of the fee calculation.
- 4) **All contracts must contain a signature and date line for the client and for the investment adviser.**
 - 5) **Hold harmless or hedge clauses which purport to require clients to waive potential claims or rights they are entitled to or that mislead clients about their rights are prohibited.**
 - 6) **The investment advisory agreement should be accurate, complete, and easy to read for all clients.**
 - 7) **The terms of the advisory contract should be consistent with the services and fees described in the investment adviser's current disclosure document (ADV Part II or brochure).**

The Alabama Securities Commission provides these guidelines to assist investment advisers in developing client contracts and agreements. They are only guidelines and not a complete or exclusive list. Other items may need to be included to ensure the rights of the client and the adviser. You should contact the Alabama Securities Commission with specific questions. This information is not intended as legal advice. You are encouraged to consult legal counsel prior to reliance on the information contained herein.