(1) Agency PA Securities Commission	This space for use by IRRC
(2) I.D. Number (Governor's Office Use) #50-114	IRRC Number: 2107 RECEIVED 2000 JUL 12 PM 12: 37 REVIEW COMMISSION

(3) Short Title

Securities issued in connection with employe benefit plans
Mortgages
Liquidations, dividends and distributions
Offers prior to effectiveness of registration by qualification exempt
Employe takeovers
SEC Rule 801 and 802 offerings exempt
Registration by coordination
Registration by qualification
Temporary agent transfer registration for certain agents ineligible for agent transfer
Financial institutions exempt from broker-dealer registration
Investment adviser registration procedure
Investment adviser representative registration procedures
Notice filing for federally covered advisers
Registration and notice filing procedures for successors to a broker-dealer, investment adviser or federally covered adviser
Examination requirements for investment advisers and investment adviser representatives
Investment adviser capital requirements
Surety bonds
Investment adviser required records
Investment adviser required financial reports
Investment adviser compensation
Supervision of agents, investment adviser representatives and employes
Dishonest and unethical practices
Withdrawal of registration or notice filing
Advertisements by investment advisers and investment adviser representatives
Investment adviser brochure disclosure
Cash payment for client solicitation
Investment adviser custody or possession of funds or securities of clients
Charges for Commission publications
Public inspection of records

(4) PA Code Cite

64 Pa. Code § 202.070
64 Pa. Code § 203.101
64 Pa. Code § 203.171
64 Pa. Code § 203.185
64 Pa. Code § 203.186
64 Pa. Code § 203.192
64 Pa. Code § 205.021
64 Pa. Code § 206.010
64 Pa. Code § 301.021
64 Pa. Code § 302.063
64 Pa. Code § 303.012
64 Pa. Code § 303.014
64 Pa. Code § 303.015
64 Pa. Code § 303.021
64 Pa. Code § 303.032
64 Pa. Code § 303.042
64 Pa. Code § 303.051
64 Pa. Code § 304.012
64 Pa. Code § 304.022
64 Pa. Code § 304.052
64 Pa. Code § 305.011
64 Pa. Code § 305.019
64 Pa. Code § 305.061
64 Pa. Code § 404.010
64 Pa. Code § 404.011
64 Pa. Code § 404.012
64 Pa. Code § 404.013
64 Pa. Code § 404.020
64 Pa. Code § 602.060
64 Pa. Code § 603.031

(5) Agency Contacts & Telephone Numbers

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(6) Type of Rulemaking(check one)

___ Proposed Rulemaking
__X__ Final Order Adopting Regulation
____ Final Order, Proposed Rulemaking Omitted

(7) Is a 120 Day Emergency Certification Attached?

__X__ No
____ Yes: By the Attorney General
____ Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

a. Commission Regulation 202.070 clarifies when the exemption provided by Section 202(g) of the Pennsylvania Securities Act of 1972 ("1972 Act") is available to certain non-employees included in compensatory plans or compensatory contracts.

b. Commission Regulation 203.101 allows attorneys to give a clear legal opinion on the availability of the exemption provided by Section 203(j) of the 1972 Act.

c. Commission Regulation 203.171 allows attorneys to give a clear legal opinion on the availability of the exemption provided by Section 203(q) of the 1972 Act.

d. Commission Regulation 203.185 allows attorneys to give a clear legal opinion on the availability of the exemption provided by the Regulation.

e. Commission Regulation 203.186 allows attorneys to give a clear legal opinion on the availability of the exemption provided by the Regulation.

f. Commission Regulation 203.192 creates a registration exemption for certain rights offerings and exchange offers made by foreign private companies to Pennsylvania residents that are exempt from registration with the Securities and Exchange Commission ("SEC").

g. Commission Regulation 205.021 replaces Commission Form 205 with Commission Form R and eliminates the requirement to file Commission Form R for all issuers applying for registration under Section 205, except those relying on SEC Regulation A.

h. Commission Regulation 206.010 replaces Commission Form 206 with Commission Form R and reduces the requirement to file Commission Form R to apply only to issuers making an offering under Section 3(a)(4) or 3(a)(11) of the Securities Act of 1933, Rule 504 of SEC Regulation D, or SEC Regulation A.

i. Commission Regulation 301.021 is repealed as its provisions have been superseded by a new Internet-based electronic transfer program.

j. Commission Regulation 302.063 codifies a No Action Letter issued by the Commission in 1999 concerning third party brokerage activities occurring in a limited purpose bank branch office.

k. Commission Regulation 303.012 adds language to anticipate electronic filing through a centralized depository system and eliminates the requirement for investment adviser applicants that do not have custody, possession or discretion over clients' funds or securities to file a statement of financial condition.

l. Commission Regulation 303.014 updates terminology in the current Regulation and adds language to anticipate electronic filing through a centralized depository system.

m. Commission Regulation 303.015 implements the notice filing requirement imposed on federally covered advisers by Act 109 of 1998.

n. Commission Regulation 303.021 accords the same treatment to notice filings by federally covered advisers for successor firms as is accorded to registered investment advisers.

o. Commission Regulation 303.032 repeals the experience requirement for agents and investment adviser representatives and adopts new uniform examinations for investment advisers and investment adviser representatives, uniform grandfathering provisions, and uniform waivers of the examination.

p. Commission Regulation 303.042 reduces net worth requirements for investment advisers and eliminates the current net worth requirement for investment advisers that do not have custody, possession or discretion over clients' funds or securities.

q. Commission Regulation 303.051 revises the surety bond requirements applicable to investment advisers.

r. Commission Regulation 304.012 establishes record keeping requirements for investment advisers.

s. Commission Regulation 304.022 reduces the financial reports required to be filed by investment advisers.

t. Commission Regulation 304.052 deletes language to reflect the elimination of standardized commission rates for investment advisers.

u. Commission Regulation 305.011 expands the coverage of this Regulation to investment adviser representatives and incorporates requirements from the National Association of Securities Dealers ("NASD") Code of Conduct.

v. Commission Regulation 305.019 expands the coverage of this Regulation to investment adviser representatives and includes failure to comply with investor suitability requirements as a basis for taking action against the license of an investment adviser representative.

w. Commission Regulation 305.061 adds language to anticipate electronic filing through a centralized registration depository and extends the Regulation to withdrawal of notice filings by federally covered advisers.

x. Commission Regulation 404.010 extends the regulation to investment adviser representatives.

y. Commission Regulation 404.011 makes an investment adviser's failing to furnish a disclosure statement to prospective clients a fraudulent, deceptive or manipulative act or practice under Section 404 of the 1972 Act.

z. Commission Regulation 404.012 makes it a fraudulent, deceptive or manipulative act or practice under Section 404 of the 1972 Act for an investment adviser to make cash payments to persons who solicit business for the investment adviser unless certain requirements are met.

aa. Commission Regulation 404.013 makes an investment adviser's having custody or possession of clients' funds or securities a fraudulent, deceptive or manipulative act or practice under Section 404 of the 1972 Act unless certain conditions are met.

bb. Commission Regulation 404.020 is deleted in favor of Commission Regulation 404.014.

cc. Commission Regulation 602.060 deletes the subscription fee for the Commission's Bulletin and Annual Report.

dd. Commission Regulation 603.031 clarifies that any record which the Commission deems excluded from the definition of "public record" in 65 P.S. § 66.1(2) may be withheld from the public and that the social security numbers, home addresses, and dates of birth appearing in filings made by agents and investment adviser representatives with the Commission would be treated as confidential.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

a. 70 P.S. § 1-202(g) and 70 P.S. § 1-609(a)

b. 70 P.S. § 1-203(j) and 70 P.S. § 1-609(a)

c. 70 P.S. § 1-203(q) and 70 P.S. § 1-609(a)

d. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)

e. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)

f. 70 P.S. § 1-203(r) and 70 P.S. § 1-609(a)

g. 70 P.S. § 1-205(b) and 70 P.S. § 1-609(a)

h. 70 P.S. § 1-206(b) and 70 P.S. § 1-609(a)

i. 70 P.S. § 1-301(b) and 70 P.S. § 1-609(a)

j. 70 P.S. § 1-302(f) and 70 P.S. § 1-609(a)

k. 70 P.S. § 1-303(a) and 70 P.S. § 1-609(a)

l. 70 P.S. § 1-303(a) and 70 P.S. § 1-609(a)

m. 70 P.S. § 1-303(a) and 70 P.S. § 1-609(a)

n. 70 P.S. § 1-303(b) and 70 P.S. § 1-609(a)

o. 70 P.S. § 1-303(c) and 70 P.S. § 1-609(a)

p. 70 P.S. § 1-303(d) and 70 P.S. § 1-609(a)

q. 70 P.S. § 1-303(e) and 70 P.S. § 1-609(a)

r. 70 P.S. § 1-304(a) and 70 P.S. § 1-609(a)

s. 70 P.S. § 1-304(b) and 70 P.S. § 1-609(a)

t. 70 P.S. § 1-304(c) and 70 P.S. § 1-609(a)

u. 70 P.S. § 1-305(a) and 70 P.S. § 1-609(a)

v. 70 P.S. § 1-305(a) and 70 P.S. § 1-609(a)

w. 70 P.S. § 1-305(f) and 70 P.S. § 1-609(a)

x. 70 P.S. § 1-404(a) and 70 P.S. § 1-609(a)

y. 70 P.S. § 1-404(a) and 70 P.S. § 1-609(a)

z. 70 P.S. § 1-404(a) and 70 P.S. § 1-609(a)

aa. 70 P.S. § 1-404(a) and 70 P.S. § 1-609(a)

bb. 70 P.S. § 1-404(b) and 70 P.S. § 1-609(a)

cc. 70 P S. § 1-602(f) and 70 P.S. § 1-609(a)

dd. 70 P.S. § 1-603(c) and 70 P.S. § 1-609(a)

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Changes to Commission Regulations 303.021, 303.042, 303.051, 304.012, 304.022, and 305.061 conform these regulations to the requirements of the federal Investment Advisers Supervision Coordination Act of 1996. Changes to Commission Regulations 303.014, 303.015, 303.032, 305.011, and 305.019 and new Commission Regulations 404.011 - 404.013 are required to implement Act 109 of 1998.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

a. In order to avoid ambiguity as to the precise scope of the regulation, the changes to Commission Regulation 202.070 are intended to clarify which securities and securities transactions qualify for the exemption provided by Section 202(g) of the 1972 Act.

b. As currently written, small business issuers have a difficult time obtaining a legal opinion that the exemption from registration under Section 203(j) of the 1972 Act is available because current language requires them to opine that the issuer has not made a material misstatement or omission. Changes in the language will allow issuers to obtain a "clear" legal opinion at a cheaper cost.

c. Similar to the changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.171 clarify for issuers and their counsel the availability of the exemption provided by Section 203(q) of the 1972 Act.

d. Similar to the changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.185 clarify for issuers and their counsel the availability of the exemption provided by the regulation.

e. Similar to the changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.186 clarify for issuers and their counsel the availability of the exemption provided by the regulation.

f. Commission Regulation 203.192 is a response to SEC rules creating an exemption from the registration provisions of the federal Securities Act of 1933 for foreign private companies that conduct rights offerings or exchange offers involving residents of the United States. The SEC rules enable the foreign companies to exclude U.S. residents from these transactions if the state(s) in which they reside does not provide an exemption that corresponds to the new federal exemption. Commission Regulation 203.192 provides an exemption under the 1972 Act that corresponds to the SEC exemption and thereby prevents Pennsylvania residents who may be eligible to participate in rights offerings or exchange offers made by foreign private companies from being excluded from these transactions.

g. In order to simplify the requirements of issuers making registration filings under the 1972 Act, Commission Regulation 205.021 adopts a new form, Commission Form R, and reduces the number of issuers who must file Commission Form R when seeking to register securities under Section 205. Currently, all but a few distinct classes of issuer must file Form 205 when seeking to register securities under Section 205 of the 1972 Act. The proposed regulation amends this requirement to require that only issuers relying on SEC Regulation A and seeking to register securities with the Commission under Section 205 must file Form R.

h. Commission Regulation 206.010, in conjunction with Commission Regulation 205.021, intends to simplify the filing requirements of issuers seeking to register securities under Section 206 of the 1972 Act by adopting Commission Form R. Commission Regulation 206.010 restricts the requirement to file Form R to those issuers who are relying on Sections 3(a)(4) and 3(a)(11) of the federal Securities Act of 1933, Rule 504 of SEC Regulation D, or SEC Regulation A and who wish to register securities under Section 206 of the 1972 Act.

i. Commission Regulation 301.021 is repealed, as the filing requirements of the present regulation have been superseded by an Internet-based electronic filing system and are thus no longer necessary.

j. This amendment is needed to codify a No Action Letter issued by the Commission in 1999.

k. Commission Regulation 303.012, by adding language to permit the filing of applications for registration investment advisers through a centralized registration depository, keeps the regulation up to date with current developments in the securities industry. Also, the regulation would eliminate the requirement that investment advisers that do not have custody or discretion over their clients' funds or securities file statements of financial condition, thereby furthering the Commission's goal of uniform regulation.

l. As required by Act 109 of 1998, changes to Commission Regulation 303.014 adopt the new term "investment adviser representative" in place of "associated person" and incorporate language permitting the filing of applications for registration of investment adviser representatives with a centralized registration depository.

m. In order to implement the notice filing requirement of Act 109 of 1998, Commission Regulation 303.015 prescribes the notice filing requirements for federally covered investment advisers.

n. Commission Regulation 303.021 offers federally covered advisers the same procedures for successor businesses as are offered broker-dealers and investment advisers.

o. The changes in Commission Regulation 303.032 facilitate the registration process for agents and investment adviser representatives by eliminating the requirement that these persons have at least two (2) years experience before they may be registered in Pennsylvania. Also, the regulation adopts uniform examinations for investment advisers and investment adviser representatives and uniform grand fathering and waiver provisions pursuant to a model adopted by the North American Securities Administrators Association ("NASAA").

p. Commission Regulation 303.042 reduces net worth requirements for investment advisers and eliminates such requirements for investment advisers that do not have custody or possession of their clients' funds or securities. These changes adopt a uniform NASAA model rule and conform the regulation to the provisions of the federal Investment Advisers Supervision Coordination Act of 1996.

q. Commission Regulation 303.051 reduces the regulatory burden on issuers registering securities in Pennsylvania by eliminating the requirement that they obtain a surety bond in connection with securities transactions in Pennsylvania. The regulation requires that investment advisers and broker-dealers maintain surety bonds under certain circumstances, subject to the requirements of the federal Investment Advisers Supervision Coordination Act of 1996.

r. Commission Regulation 304.012 establishes record keeping requirements for investment advisers. These requirements are similar to those imposed by the SEC on federally covered advisers.

s. The requirements of Commission Regulation 304.022 ease the regulatory burden of investment advisers that do not have custody of or discretion over the securities or funds of their clients by eliminating the requirement that they file annual financial reports with the Commission. The financial reporting requirements conform to the requirements of the federal Investment Advisers Supervision Coordination Act of 1996.

t. Commission Regulation 304.052 amend the language in the current regulation to reflect the elimination of standardized commission rates set by national securities exchanges for compensating investment advisers.

u. It is necessary for investment advisers to be required to establish policies and procedures aimed at ensuring that the activities of investment adviser representatives and other employees of these entities are properly supervised. To this end, amendments to Commission Regulation 305.011 require that investment advisers establish and maintain such policies and procedures.

v. As required by Act 109 of 1998, Commission Regulation 305.019 amends the present regulation to replace the term "associated person" with the newer term "investment adviser representative." The regulation also strengthens the Commission's regulatory response to dishonest and unethical practices by persons registered to effect securities transactions in Pennsylvania by expanding the scope of the present regulation to include investment adviser representatives.

w. To conform to the federal Investment Adviser Supervision Coordination Act of 1996, Commission Regulation 305.061 adds language addressing the withdrawal of notice filings by federally covered advisers.

x. Commission Regulation 404.010 extends the scope of the present regulation to investment adviser representatives with respect to advertising literature.

y. Pursuant to Act 109 of 1998, Commission Regulation 404.011 protects Pennsylvania investors by requiring investment advisers to provide their clients or prospective clients with the disclosure specified in the regulation. The SEC imposes the same requirement on federally covered advisers.

z. Pursuant to Act 109 of 1998, Commission Regulation 404.012 protects individuals whom investment advisers may seek to solicit as prospective clients by prescribing requirements that investment advisers must meet in order to engage and compensate an agent to solicit prospective clients for the investment adviser. The SEC imposes the same requirement on federally covered advisers.

aa. Pursuant to Act 109 of 1998, Commission Regulation 404.013 protects the clients of investment advisers from misuse of the clients' funds or securities by investment advisers who have custody of or discretion over those funds or securities by prescribing specific requirements that such investment advisers must follow in holding and accounting for the funds and securities. The requirements of the proposed regulation conform Pennsylvania law to the applicable provisions of federal law thereby creating a uniform regulatory environment for investment advisers who operate in Pennsylvania.

bb. In order to keep Commission regulations current and to avoid redundancy, Commission Regulation 404.020 deletes the present regulation in favor of Commission Regulation 404.014 which codifies the current requirements.

cc. To facilitate the public's access to certain Commission publications containing important information about the Commission and its operations, Commission Regulation 602.060 deletes the subscription fees for the Commission's Bulletin and Annual Report.

dd. In order to protect the privacy of certain individuals required to file applications with the Commission and to prevent disclosure of information potentially injurious to their personal security, Commission Regulation 603.031 specifically provides that the home addresses, social security numbers, and dates of birth of persons applying for, or registered as, agents or investment adviser representatives be treated as confidential.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation:

a. Neglecting to amend Commission Regulation 202.070 to clarify the scope of the exemption provided by Section 202(g) of the 1972 Act could result in confusion and add transactional costs to issuers.

b. Failure to change Commission Regulation 203.101 could result in ambiguity among issuers and their counsel as to when this exemption is available.

c. Failure to change Commission Regulation 203.171 could result in ambiguity among issuers and their counsel as to when this exemption is available.

d. Failure to change Commission Regulation 203.185 could result in ambiguity among issuers and their counsel as to when this exemption is available.

e. Failure to change Commission Regulation 203.186 could result in ambiguity among issuers and their counsel as to when this exemption is available.

f. Failure to enact Commission Regulation 203.192 could result in the exclusion of Pennsylvania residents from rights offerings and exchange offers by foreign private companies.

g. If Commission Regulation 205.021 is not amended to limit the filings required of issuers seeking to register securities under Section 205 of the 1972 Act, there will be an unnecessary regulatory burden imposed upon those issuers.

h. If Commission Regulation 206.010 is not amended to limit the filings required of issuers seeking to register securities under Section 206 of the 1972 Act, there will be an unnecessary regulatory burden imposed upon those issuers.

i .Failing to delete Commission Regulation 301.021 to reflect new developments in the securities industry would cause the Commission's regulations to be out of date.

j. It is necessary to effect the amendments proposed in Commission Regulation 302.063 to expand the benefit of the Commission's 1999 No Action Letter to all financial institutions.

k. If Commission Regulation 303.012 is not amended as proposed to update certain terminology and to reduce the filing of a statement of financial condition by certain investment advisers, the Commission's regulation will not be current and an unnecessary regulatory burden will be imposed upon those investment advisers.

l. Failure to amend Commission Regulation 303.014 to reflect new terminology in Act 109 of 1998 and to anticipate technological developments in the securities industry would cause this regulation to be out of date.

m. The changes proposed in Commission Regulation 303.015 are intended to conform Pennsylvania law to the existing requirements of federal law and Act 109 of 1998.

n. Federal law requires accommodation of federally covered advisers in Commission Regulation 303.021.

o. Failing to effect the changes proposed in Commission Regulation 303.032 would submit investment advisers and investment adviser representatives seeking to register in Pennsylvania to unnecessary prerequisites to registration and a non-uniform examination process.

p. Commission Regulation 303.042 is intended to facilitate investment advisers' compliance with certain net capital requirements. Failure to effect the regulation would make these requirements non-uniform and in violation of federal law.

q. Changes to Commission Regulation 303.051 are required by federal law.

r. Revisions to Commission Regulation 304.012 are necessary to conform to federal law.

s. Without the proposed changes to Commission Regulation 304.022, which eliminate the requirement for certain investment advisers to file financial reports with the Commission and comport the requirements of Pennsylvania law to the requirements of federal law as regards financial reporting for other investment advisers, Pennsylvania would be non-uniform and inconsistent with federal law.

t. Failure to delete Commission Regulation 304.052 would cause the Commission's regulations to be inaccurate.

u. If investment advisers are not required to establish policies and procedures for supervising their representatives and other employees, as Commission Regulation 305.011 intends, there is a significant risk that clients of investment advisers could suffer damages as a result of the failure of investment advisers properly to supervise their representatives and other employees that handle the affairs of those clients.

v. Neglecting to effect the changes proposed in Commission Regulation 305.019 would hinder the Commission's ability to discipline broker-dealers and investment advisers who engage in dishonest or unethical business practices in violation of the 1972 Act.

w. If the changes proposed in Commission Regulation 305.061 are not effected, the Commission's regulations will not be up to date with anticipated technological developments in the securities industry.

x. Without the amendments proposed in Commission Regulation 404.010, investment adviser representatives will not be accountable for circulating deceptive or misleading advertisements.

y. Enacting Commission Regulation 404.011 will help to ensure that clients of investment advisers will receive pertinent information about their investment adviser and will simplify the compliance obligations of investment advisers by conforming Pennsylvania law in this area to the companion provisions of federal law.

z. Failure to enact Commission Regulation 404.012 would hinder the Commission's efforts to ensure that investment advisers who pay cash to persons who solicit clients are not engaging in unethical or deceptive practices.

aa. Failure to enact Commission Regulation 404.013 would hinder the Commission's efforts to ensure that investment advisers who have custody of the funds or securities of their clients do not misappropriate or misuse these funds or securities.

bb. Neglecting to effect Commission Regulation 404.020 would cause the Commission's regulations not to be current and would create redundancy between the current regulation and proposed Commission Regulation 404.014.

cc. Failure to enact Commission Regulation 602.060 would cause the Commission's regulations to be out of step with the Commission's current practice of providing certain Commission publications to the public at no charge.

dd. Failure to enact Commission Regulation 603.031 may perpetuate ambiguity and concern as to the public disclosure of certain private information of certain applicants or registrants.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

a. Those issuers wishing to rely on the exemption provided by Section 202(g) of the 1972 Act will benefit from the added guidance Commission Regulation 202.070 provides as to the scope of the exemption.

b. Issuers who wish to rely on the exemption provided by Section 203(j) of the 1972 Act and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed to Commission Regulation 203.101, which will make it easier for those persons to determine whether they comply with Section 203(j).

c. Issuers who wish to rely on the exemption provided by Section 203(q) of the 1972 Act and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed to Commission Regulation 203.171, which will make it easier for those persons to determine whether they comply with Section 203(q).

d. Issuers who wish to rely on the exemption provided by Commission Regulation 203.185 and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed in Commission Regulation 203.185, which will make it easier for those persons to determine whether they comply with the regulation.

e. Issuers who wish to rely on the exemption provided by Commission Regulation 203.186 and counsel who are responsible for advising their clients whether this exemption is available will benefit from the amendments proposed in Commission Regulation 203.186, which will make it easier for those persons to determine whether they comply with the regulation.

f. Pennsylvania investors who hold securities of foreign private companies that effect rights offerings or exchange offers in the United States will benefit from new Commission Regulation 203.192, which provides a companion exemption to SEC Rules 801 and 802.

g. The proposed changes to Commission Regulation 205.021 will benefit issuers who make filings with the Commission under Section 205 of the 1972 Act by simplifying the filing requirements through the creation of Commission Form R and reducing the number of issuers who must file Commission Form R.

h. The proposed changes to Commission Regulation 206.010 will benefit issuers who make filings with the Commission under Section 206 of the 1972 Act by simplifying the filing requirements through the creation of Commission Form R and reducing the number of issuers who must file Commission Form R.

i. The repeal of Commission Regulation 301.021 will benefit the regulated community by keeping the Commission's regulations current and consistent with technological developments in the securities industry.

j. Financial institutions who wish to provide securities brokerage services to their customers through a networking arrangement will benefit from proposed Commission Regulation 302.063, which codifies a 1999 Staff No Action Letter.

k. Investment advisers who do not have custody or discretion over the funds or securities of their clients would benefit from Commission Regulation 303.012 since they will no longer have to file statements of financial condition with the Commission.

l. The changes proposed in Commission Regulation 303.014 will benefit the regulated community by updating the terminology in the regulation to reflect current usage and by anticipating technological developments in securities regulation that will facilitate electronic filing with the Commission.

m. Federally covered advisers required to make filings with both the SEC and the Commission will benefit from Commission Regulation 303.015, which harmonizes the filing requirements for these persons under Pennsylvania law with those under federal law thereby facilitating compliance with the Pennsylvania requirements.

n. Commission Regulation 303.021 will benefit federally covered advisers who will succeed to the business of another federally covered adviser.

o. Those persons seeking to be registered in Pennsylvania as investment advisers or investment adviser representatives will benefit from Commission Regulation 303.032, which eliminates the experience prerequisite and adopts uniform examination, grandfathering, and waiver provisions.

p. The changes proposed in Commission Regulation 303.042 will benefit investment advisers by reducing or, for certain investment advisers, eliminating net worth requirements.

q. Commission Regulation 303.051 will benefit issuers by eliminating the requirement that they obtain a surety bond in certain situations. Broker-dealers and investment advisers will also benefit in that the regulation harmonizes the requirements for these persons in regard to surety bonds under Pennsylvania law with those under federal law.

r. Clients of investment advisers will benefit from Commission Regulation 304.012, which codifies record keeping requirements for investments advisers at the state level.

s. The proposed changes to Commission Regulation 304.022 will benefit investment advisers that do not have custody or discretion over the funds or securities of their clients by eliminating the requirement that these persons file annual financial reports with the Commission.

t. Commission Regulation 304.052 will benefit the regulated community by keeping the Commission's regulations up to date with recent developments in securities regulation.

u. Commission Regulation 305.011 will benefit clients of investment advisers since it will require that investment advisers establish and observe policies and procedures designed to ensure that their representatives and employees are properly supervised and do not engage in wrongful conduct.

v. Commission Regulation 305.019 will benefit Pennsylvania investors by strengthening the Commission's regulatory response when its registrants engage in dishonest or unethical conduct.

w. The proposed changes to Commission Regulation 305.061 will benefit the regulated community by updating the present regulation to allow for anticipated developments in securities regulation. The regulation will also benefit federally covered advisers that want to withdraw a notice filing with the Commission.

x. Commission Regulation 404.010 will benefit Pennsylvania investors by expanding the scope of the present regulation to address the use of misleading or deceptive advertising by investment adviser representatives.

y. Pennsylvania investors and investment advisers will benefit from the creation of Commission Regulation 404.011, which prescribes certain disclosures that investment advisers must make to prospective clients and harmonizes the disclosure requirements under Pennsylvania law with similar requirements under federal law, facilitating compliance with the Pennsylvania provisions.

z. Commission Regulation 404.012 will benefit Pennsylvania investors by prescribing certain requirements that investment advisers must meet in order to engage and compensate an agent to solicit prospective clients for the investment adviser. The regulation also benefits investment advisers who wish to engage solicitation agents in that it harmonizes the requirements under Pennsylvania law with companion requirements under federal law, facilitating compliance with the Pennsylvania provisions.

aa. Clients of investment advisers will benefit from the creation of Commission Regulation 404.013, which requires that investment advisers who have custody or discretion over the funds or securities of their clients follow specific procedures with regard to holding and accounting for the funds or securities and thus prevents misuse or misappropriation of the funds or securities. Investment advisers who exercise custody or discretion over the funds or securities of their clients will also benefit from the regulation's harmonizing the requirements of Pennsylvania law with similar requirements under federal law, which will make it easier to comply with the Pennsylvania provisions.

bb. The regulated community will benefit from Commission Regulation 404.020, which will keep the Commission's regulations consistent and up to date.

cc. Pennsylvania investors and other persons interested in obtaining information about the Commission and its activities will benefit from Commission Regulation 602.060, which eliminates the subscription fees for certain Commission publications.

dd. Those individuals applying for registration as agents or investment adviser representatives will benefit from Commission Regulation 603.031, which mandates that certain information submitted by those individuals as part of their applications be kept confidential.

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No groups will be adversely affected by these regulations. These regulatory actions: (1) reduce filing burdens on issuers, and net worth requirements for applicants and registrants; (2) harmonize provisions of Pennsylvania law with applicable provisions of federal law; (3) adopt uniform model rules adopted by NASAA; (4) clarify ambiguities in existing regulatory language; and (5) implement de-regulatory changes adopted in Act 109 of 1998.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

a. The following proposed regulations merely delete or modify existing language and do not increase the current compliance requirements: Commission Regulations 202.070, 203.101, 203.171, 203.185, 203.186, 302.063, 303.021, 303.051, 304.012, 304.022, 304.052, 404.020, 602.060, and 603.031.

b. Foreign private companies making rights offerings or exchange offers to their security holders in Pennsylvania must comply with the exemption in Commission Regulation 203.192.

c. Issuers seeking to register securities under Section 205 of the 1972 Act, except those issuers relying on SEC Regulation A, are required to file Commission Form R rather than Commission Form 205 pursuant to Commission Regulation 205.021. Issuers relying on SEC Regulation A are not required to Commission Form R.

d. Issuers seeking to register securities under Section 206 of the 1972 Act, except those issuers relying on Sections 3(a)(4) and 3(a)(11) of the Securities Act of 1933, Rule 504 of SEC Regulation D and SEC Regulation A, are required to file Commission Form R rather than Commission Form 206 pursuant to Commission Regulation 206.010. Issuers relying on Sections 3(a)(4) and 3(a)(11) of the Securities Act of 1933, Rule 504 of SEC Regulation D and SEC Regulation A are not required to Commission Form R.

e. Agents formerly required by Commission Regulation 301.021 to make filings on Commission Form TATR for transfer registrations are now required to file on a new Internet-based system.

f. Investment advisers seeking to register under the 1972 Act are permitted to submit their applications to the Commission by means of a centralized registration depository under Commission Regulation 303.012. Investment advisers that do not have custody or discretion over the funds or securities of their clients are no longer required to file statements of financial condition with the Commission.

g. Investment adviser representatives seeking to register under the 1972 Act are permitted to submit their applications to the Commission by means of a centralized registration depository under Commission Regulation 303.014.

h. Federally covered advisers making notice filings in Pennsylvania must do so in accordance with the provisions of Commission Regulation 303.015.

i. Commission Regulation 303.032 eliminates certain experience prerequisites to registration for agents and investment adviser representatives.

j. Investment advisers that have custody of or discretion over the funds or securities of their clients must comply with the net worth requirements of Commission Regulation 303.042. Net worth requirements are eliminated for investment advisers that do not have custody of, or discretion over, the funds or securities of their clients.

k. Broker-dealers and investment advisers registered under the 1972 Act must comply with Commission Regulation 305.011, which requires that all such entities establish policies and procedures for supervising their employees.

l. In order to avoid having their registrations denied, revoked or conditioned, broker-dealers and their agents and investment advisers and their representatives must comply with the provisions of Commission Regulation 305.019.

m. Federally covered advisers wishing to withdraw a notice filing made with the Commission must comply with the requirements of Commission Regulation 305.061.

n. Investment adviser representatives who circulate or distribute advertisements in connection with their business must comply with Commission Regulation 404.010.

o. Investment advisers that take on prospective clients must comply with Commission Regulation 404.011.

p. Investment advisers wishing to engage persons to solicit prospective clients on their behalf and to compensate those persons must comply with the requirements of Commission Regulation 404.012.

q. Investment advisers wishing to have custody of or discretion over the funds or securities of their clients must comply with Commission Regulation 404.013.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Commission sought the input of the regulated community, primarily by means of the Commission's Attorney Advisory Committee. It also solicited directly the input of the Investment Company Institute, the Financial Planners Association (which represents state-registered investment advisers) and the Investment Counsel Association of America (which represents federally covered advisers). These organizations support adoption of the final form rules.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including and legal, accounting or consulting procedures which may be required.

a. The requirement that issuers file a single form in lieu of Form 205 or Form 206 will save issuers seeking to register securities under Sections 205 and 206 of the 1972 Act the time and expense of preparing and filing different forms. The categories of issuers that must file this form have been reduced dramatically.

b. Commission Regulation 303.012 would eliminate for investment advisers that do not have custody of or discretion over the funds or securities of their clients the expense of filing statements of financial condition with the Commission.

c. By allowing investment adviser representatives to make registration filings through a centralized electronic registration depository, Commission Regulation 303.014 will save those individuals the time and expense of making a filing directly with the Commission.

d. By allowing federally covered advisers to make notice filings through a centralized electronic registration depository, Commission Regulation 303.015 will save those persons the time and expense of making a filing directly with the Commission.

e. Commission Regulation 304.022 would eliminate for investment advisers that do not have custody of or discretion over the funds or securities of their clients the expense of filing annual financial reports with the Commission.

f. Under Commission Regulation 305.011, investment advisers would incur the cost necessary to establish and enforce policies and procedures aimed at effective supervision of their investment adviser representatives.

g. Under Commission Regulations 404.011 - 404.013, investment advisers will incur the costs of establishing policies and procedures to comply with those requirements. These are the same requirements that SEC imposes on federally covered advisers and must be met in the context of completing the Form ADV registration application.

h. Commission Regulation 602.060 will save those members of the public interested in obtaining information about the Commission by means of the Commission's Bulletin and Annual Report the expense of having to subscribe to these periodicals in order to receive them.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

These Commission Regulations do not affect local government.

(19) Provide a specific estimate of costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

Reductions in forms and certain filing requirements will reduce costs to the Commission of processing, reviewing, and storing such information.

(20)In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

(in thousands)	Current FY Year	FY+1 Year	FY+2 Year	FY+3 Year	FY+4 Year	FY+5 Year
SAVINGS:	$	$	$	$	$	$
Regulated Community	10,000	10,000	10,000	10,000	10,000	10,000
Local Government						
State Government						
Total Savings	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
COSTS:						
Regulated Community	94	94	94	94	94	94
Local Government						
State Government						
Total Costs	$94	$94	$94	$94	$94	$94
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Under the final form regulations, the Commission will have authority to require state-registered investment advisers (SRAs) and federally covered advisers (FCAs) to make application and notice flings through an electronic investment adviser registration depository (IARD). This will provide a one-stop, Web-based filing system for the entire investment advisory community and is similar to the Registration Depository which has served the brokerage community since 1981.

The U.S. Securities and Exchange Commission (SEC), which has exclusive regulatory authority over FCAs, will mandate that all FCAs use IARD. Development of IARD by SEC was mandated by Congress in the National Securities Markets Improvement Act of 1996. Although SEC has expended $3.2 million in federal funds to underwrite development costs, IARD will require payment of a user fee to cover operating costs. This user fee would be in addition to license fees and assessments required under Sections 602(d.1) and 602.1 of the Act. FCAs particularly will benefit from significant cost reductions by being able to make one electronic filing and fee payment to satisfy notice filing and fee payment requirements in every state it transacts business.

These user fees slightly will offset the significant savings afforded by these final form rules to SRAs by the elimination of the current $5,000 net capital/$12,500 tangible net worth requirement for two-thirds of investment advisers registered in Pennsylvania (those without custody or discretion) and a reduction from $20,000 net capital/$50,000 tangible net worth to $10,000 net worth for the other one-third of investment advisers registered in Pennsylvania (those with discretion) versus a projected $125 annual IARD user fee for SRAs. The final form rules are expected to save SRAs a total of $10million in collective net net worth requirements versus collective annual IARD user fees of $58,750.

The exact amount of the user fees has not yet been determined by SEC, in part because it does not know the level of participation by SRAs. That is why SEC Chairman Arthur Levitt, in his May 30, 2000 letter, urged the widest possible participation by the states because that would result in the lowest possible user fees for SRAs. In the same letter, it was noted that larger, FCAs will pay higher user fees than SRAs. Nevertheless, all the commenters, which represent FCAs and SRAs, commented favorably on the final form rules wherein the Commission, by order, can require filings to be made through IARD.

NASAA recently advised the Comarission (in an unofficial capacity) that it thought the likely annual user fee would be approximately $125 for SRAs and approximately $50 for IARs. As of July 1, 2000, the Commission has 470 registered investment advisers and 2,333 registered IARs. The vast majority of registered IARs (69%) work for FCAs which will be mandated by SEC to use IARD.

In return for the IARD user fee, investment advisers can make as many filings via the IARD electronic system as they want (registration applications, amendments, filing and updating of disclosure materials). This eliminates duplicate filings with other states, associated mailing costs, and issuing separate checks for fee payments. Being Web-based, the investment advisory community will have access to IARD on a 24-hour a day basis. NASAA further advised that IARD does provide hardship exemptions for persons who may not have access to Internet or, due to computer problems beyond their control, may not be able to file timely through IARD. The Commission intends to honor hardship exemptions granted by IARD.

As noted in the preamble to the final form rules, the Commission understands that the U.S. Senate Banking Committee is considering amendments to the 1940 Act which would ***preempt*** state jurisdiction over notice filings and fee payments by FCAs and registration applications and fee payments by out-of-state investment advisers subject to state registration if the Commission did not accept filings made through IARD.

Given Congressional support for mandating IARD in NSMIA and current Congressional ruminations on mandating state participation in IARD on pain of preemption; the request of SEC for state participation in IARD; support for IARD by the trade organizations representing the entire spectrum of the investment advisory community; the elimination or substantial reduction of net worth requirement for all investment advisers registered with the Commission; the benefit to investors of having a complete, Web-based data base to consult when looking for investment advisory services; and the time savings to the investment advisory community of making all regulatory filings in one place online, the Commission believes the benefits of participating in IARD justify the costs of participation to the investment advisory community.

The Commission calculated costs savings as follows:

As of July 1, 2000, there were 470 SRAs. Approximately 32% (150) had discretion. Most of the rest had no discretion, custody or possession as to client funds or securities. Because the new capital requirements for SRAs approximate the Commission's previous definition of tangible net worth, comparisons are made based on the tangible net worth standard. Current and new net worth requirements for SRAs are:

SRAs without discretion, custody or possession:

OLD: $12,500 tangible net worth x 320 SRAs = $4 million annual tangible net worth requirement

NEW: None

SAVINGS: $4 million

SRAs with discretion:

OLD: $50,000 tangible net worth x 150 SRAs = $7.5 million annual tangible net worth requirement.

NEW: $10,000 net worth x 150 = $1.5 million annual net worth requirements

SAVINGS: $6 million

TOTAL SAVINGS: $10 million

The Commission calculated the costs of IARD user fees for SRAs as follows:

470 SRAs x 125 = $58,750 collective annual IARD user fees.

Approximately 31% of the Commission's 2,333 registered investment adviser representatives are (IARs) employed by SRAs. The remaining IARs work for FCAs which SEC is requiring to use IARD. The impact of IARD user fees on IARs of SRAs is calculated as follows:

732 IARs of SRAs x $50 per IAR = $36,161 collective IARD user fees.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Being a small agency, the Commission does not maintain expenditure history for its operating divisions.

PROGRAM	FY-3	FY-2	FY-1	Current FY

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

With respect to the reduction of filing requirements, all of the changes are beneficial. With respect to those regulations which impose compliance requirements on investment advisers, those compliance requirements currently exist and require no greater compliance than current SEC rules applicable to federally covered advisers.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

As the 1972 Act requires the Commission to take action by rulemaking, no alternative regulatory scheme was considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

See Item 22.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No. In many instances, thechanges are being made either to conform to federal law requirements or to make Pennsylvania's requirements conform with current federal regulation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General

(DEPUTY ATTORNEY GENERAL)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

PENNSYLVANIA SECURITIES COMMISSION
(AGENCY)

DOCUMENT/FISCAL NOTE NO. #50-114

DATE OF ADOPTION: July 11, 2000

BY: M. Joanna Cummings

TITLE: Secretary
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

BY:

July 11, 2000
DATE OF APPROVAL

~~(Deputy General Counsel)~~
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

FINAL FORM RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION
TITLE 64. SECURITIES

Subpart B. Registration of Securities
Ch. 202. Exempt Securities
Ch. 203. Exempt Transactions
Ch. 205. Registration by Coordination
Ch. 206. Registration by Qualification

Subpart C. Registration of Broker-Dealers, Agents, [and] Investment Advisers and Investment Adviser Representatives and Notice Filings by Federally Covered Advisers
Ch. 301. Registration Requirement
Ch. 302. Exemptions
Ch.303. Registration and Notice Filing Procedure
Ch. 304. Post-Registration Provisions
Ch. 305. Denial, Suspension, [and] Revocation and Conditioning of Registration

Subpart D. Fraudulent and Prohibited Practices
Ch. 404. Prohibited Activities; Investment Advisers

FINAL FORM RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION

Subpart F. Administration
Ch. 602. Fees
Ch. 603. Administrative Files

Statutory Authority

Notice is hereby given that the Pennsylvania Securities Commission (Commission), pursuant to the authority contained in sections 202(g), 203(j), 203(q), 203(r), 205(b), 206(b), 301(b), 302(f), 303(a), 303(b), 303(c), 303(d), 303(e), 304(a), 304(b), 304(e), 305(a), 305(f), 404(a), 602(f), 603(c) and 609(a) of the Pennsylvania Securities Act of 1972, as amended, Act of December 5, 1972 (P.L. 1280 No. 284) (70 P.S. §§1-101 *et seq.*) (Act) amends and adopts regulations concerning the subject matter of the Act.

Publication of Notice of Proposed Rulemaking

Publication of a Notice of Proposed Rulemaking appeared at 30 Pa.B. 2237 (May 6, 2000).

Public Comments

The Commission received comment letters from the Certified Financial Planners Board of Standards (CFP), the Investment Company Institute (ICI), the Financial Planning Association (FPA) and the Investment Counsel Association of America (ICAA). Pursuant to Section 5(c) of the Regulatory Review Act, all comment letters were forwarded within 5 days of receipt to the Independent Regulatory Review Commission and the legislative standing committees. Comments were made with respect to the following regulatory proposals:

§303.012. ICI and FPA commented that the amount specified in subsection (b)(1) should be raised from $500 to $1,200. This dollar figure refers to the amount of funds received by an investment adviser as prepayment of advisory fees six months or more in advance of when they are due. An investment adviser applying for registration with the Commission that fell into this category would be required to file an audited balance sheet prepared in accordance with generally accepted accounting principles. This requirement mirrors similar requirements for investment advisers required to be registered with the U.S. Securities and Exchange Commission (SEC) and uniform model rules adopted by the North American Securities Administrators Association (NASAA) for investment advisers who are regulated exclusively by the states.

FINAL FORM RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION

In 1996, Congress enacted the National Securities Markets Improvement Act of 1996 (NSMIA). Prior to this legislation, investment advisers conducting business in Pennsylvania had to be registered with the Commission and, if they were engaging in interstate commerce, with SEC. In NSMIA, Congress recognized that there were basically two types of investment advisers – those who were small advisers that provided advice to an exclusively retail clientele and those who were money managers for institutions and individuals with significant assets under management.

In NSMIA, Congress determined that SEC would have exclusive authority over investment advisers with assets under management of $25 million or more, known as federally covered advisers (FCAs) and states would have exclusive authority over investment advisers which had less than $25 million under management, known as state-registered advisers (SRAs). NSMIA effectively split the universe of investment advisers into two distinct groups regulated by two distinct levels of government – state and federal. Implicit in NSMIA was legislative recognition that what may be appropriate regulation for FCAs may not be appropriate for SRAs. NSMIA, however, did retain state authority over FCAs with respect to fraudulent or deceptive conduct.

Post-NSMIA, NASAA adopted a Memorandum of Understanding Concerning Investment Advisers and Investment Adviser Representatives on April 27, 1997 (MOU) (available at www.nasaa.org/iaoversight/iamou). The MOU recognized that uniformity of rules among states concerning investment advisers subject exclusively to state registration was crucial and a working group was established . The Commission subscribed to the MOU and this rulemaking seeks to implement model rules adopted by NASAA in the context of the MOU (NASAA Model Rules).

Prior to this rulemaking, an applicant described in subsection (b)(1) was not required to file an audit report. To be uniform with NASAA Model Rule 202(a)-1, the Commission proposed adoption of the requirement that an applicant who receives prepayment of advisory fees of $500 or more per client six months or more in advance of when they are due be required to file an audited statement of financial condition. The commenters note that SEC recently issued a notice of proposed rulemaking to change various requirements for FCAs and, in the SEC provision analogous to this one, SEC proposes to raise the aggregate amount from $500 to $1,200. The commenters urged, for federal/state uniformity, that the Commission do likewise for SRAs.

Although NASAA Model Rule 202(d)-1 is set at $500, the new SEC provision will be found in Form ADV which is an application form used by both the states and SEC. Therefore, most applicants will be apprised of the SEC rule allowing up to $1200 in prepayment of fees and will have to perform further research to determine that such rule is not applicable to SRAs. Also, the NASAA Model Rule could be changed in the future to reflect the new SEC provision. The Commission adopted the amendment with the $1200 figure which is consistent with SEC.

FPA and ICI also commented about application of this regulation to SRAs whose principal place of business is not in this Commonwealth. Another part of NSMIA adopted "home state" treatment with respect to net capital and bonding and books and records. For example, a SRA maintains its principal place of business in Maryland but has 10 retail clients in Pennsylvania which requires registration with the Commission. Under NSMIA, the Commission is prohibited from requiring the Maryland SRA to comply with the requirements of any Commission regulation concerning net capital and bonding or books and records that exceed the requirements of the Maryland Securities Division if (1) the Maryland SRA is registered or licensed in Maryland and (2) is in compliance with applicable requirements of the Maryland Division of Securities.

Currently, the U.S. Senate Committee on Banking, Housing and Urban Affairs is drafting legislation known as the Securities Markets Enhancement Act (SMEA). The Commission, through NASAA, has been actively involved with drafting of SMEA as have ICI and FPA. One SMEA proposal is to provide "home state" treatment for financial reports. All relevant parties, including FPA and ICI, have agreed to language to be included in Section 222 of the federal Investment Advisers Act of 1940 (1940 Act) to implement such treatment. The Commission added a provision that mirrors the language proposed to be amended into the 1940 Act by SMEA.

§303.014. ICI commented that the Commission should clarify that the rule included investment adviser representatives of FCAs. The Commission agreed and inserted language suggested by ICI. Another comment was that, in subsection (c), there should be a conjunctive "or" between investment adviser representative (IAR) and investment adviser rather than "and." The apparent theory was that the Commission might be overstepping its authority under NSMIA by requiring a FCA to file something with the Commission that was not filed with SEC and such language may result in the Commission receiving duplicative filings.

Form U-4, which is the document which must be maintained current under this regulation, is a uniform form used by state securities regulators and industry for registration of IARs employed by SRAs and FCAs. Pursuant to the instructions to Form U-4, the "Appropriate Signatory" is "the individual designated by the . . . investment adviser [SRA or FCA]. . . who is authorized to execute Form U-4 on its behalf." Since Form U-4 must be signed by the employing firm, an IAR cannot file an amendment on his/her own. Therefore, there is little scope for filing duplication and, in the 8 years since this regulation was last amended, this has not been the case.

ICI's concern about FCA's signing amendments to Form U-4 as violative of NSMIA is misplaced. This regulation requires no more signatures than what currently is required by the instructions to Form U-4. No FCA has declined to sign Form U-4 on behalf of an IAR with a place of business in Pennsylvania or complained about this requirement. If ICI's belief is sincere, the better course of action would be to request NASAA and securities industry representatives to revise Form U-4. On this basis, the Commission declined to accept this comment.

§303.015. ICI commented that the regulation should be revised to distinguish initial notice filings from renewal filings. The Commission agreed. Under Section 303(a)(iii) of the Act, a FCA must file a copy of its Form ADV as filed with SEC prior to acting as a FCA in Pennsylvania and pay a notice filing fee of $300. This is the initial filing requirement. For renewals, the FCA, pursuant to Section 602(d.1) shall pay an annual notice filing fee of $300. The Commission revised this regulation to address ICI's concerns and also has indicated that renewals may be made through an investment adviser registration depository.

§303.021. ICI urged a clarification to the language in subsection (c). The Commission agreed.

§303.032. ICI, FPA and ICAA commented on this regulation. The CFP also commented. The CFP commented that the designation in proposed §303.032(c)(1)(ii)(A) should read "Certified Financial Planner Board of Standards, Inc." The Commission accepted this comment and modified the amendment accordingly.

ICI, FPA and ICAA expressed two identical concerns. The first concern was that there was no provision which exempted an investment adviser or IAR from taking the required examinations if the investment adviser or IAR had taken the appropriate examination after January 1, 2000 (which date is important because new Series 65 and Series 66 examinations were implemented on that date), was registered continuously in another state as an investment adviser or IAR since the date of the examination but applied for registration in Pennsylvania more than two years from the date of taking the examination. The Commission agreed with this comment and added subsection (a)(3) which would exempt persons from having to retake an examination if they met either of the criteria in (a)(1) or (2) and had not been out of the business for more than two years immediately preceding the filing of an application for registration in Pennsylvania. This parallels an existing provision applicable to agents of broker-dealers at §303.031.

The second issue raised was automatic waivers of the examination requirement provided in subsection (c) based upon a person possessing a specified designation and not having any disciplinary history requiring an affirmative response to the Disclosure Information section of Form U-4. The commenters argue that this was not part of the NASAA Model Rules even though they recognize that a state securities regulator may want to require additional examinations for any individual found to have violated state or federal securities laws. The commenters claim that the proposed language is too broad as it would include bankruptcies and customer complaints in addition to federal or state securities laws violations or proceedings.

The Commission had established criteria for the waiver of exams at §604.014 and §604.016 which is exerciseable by delegated authority under §606.041(b) upon application. An intent of this amendment was to eliminate the application process and make certain waivers automatic if the applicant had no reportable disciplinary history.

Under the amendment, existence of reportable disciplinary history does not consign the applicant to never being eligible for a waiver of the examination requirement. It just would not make the waiver automatic. A waiver still could be granted on a case-by-case basis and subsection (c)(4) makes it clear that applicants have the ability to petition the Commission for an order waiving the examination requirement.

In recognition of the comments, however, the Commission did modify subsection (c)(1) - (3) to narrow the disciplinary history to an affirmative response to Items 23A-E or H of Form U-4 or successor item thereto. Items 23A and B address criminal convictions; 23C-E deal with proceedings before SEC, CFTC, state securities regulators and self-regulatory organizations (stock exchanges, NASD) and Item 23H relates to court injunctions. The Commission believes this provides a balanced approach to the concerns of industry and the need to protect investors.

FPA also commented that the regulation should not afford waivers to Certified Public Accountants (CPAs) or attorneys. In the statement of policy published at §604.016 in which the Commission expressed its disposition to grant waivers of examination requirements to persons holding certain designations referred to in subsection (c), the Commission also expressed a similar disposition with respect to CPAs and members of the bar who are in good standing. The Commission believes it would be unfair at this time and, without substantial evidence, to treat CPAs and attorneys differently than the other designations contained in the same statement of policy. Therefore, the Commission declined to accept this comment.

§303.042. ICI commented on this proposal and raised the same issue as was raised with respect to §303.012. The Commission determined to address this comment in the same manner as the ICI comment raised with respect to §303.012.

FPA commented on the proposal that a SRA with discretionary authority over client funds and securities, but without custody, would be required to maintain a minimum net worth of $10,000. FPA was concerned that this would act as a barrier to entry into the business for first time advisers. FPA suggested that this requirement be waived if (1) the SRA had a certain amount of experience and a satisfactory disciplinary record; (2) the SRA provided evidence of errors and omissions insurance sufficient to cover investor losses, such as $100,000 per occurrence with an aggregate amount of coverage based on experience; or (3) the SRA's compensation is a fee based solely on the amount of assets under management, is a retainer or other flat fee, an administrative fee for services rendered under the Employee Retirement Income Security Act of 1974 and the adviser does not receive any other compensation or pecuniary benefit, directly or indirectly, as a result of any purchase or sale in the account.

Under the MOU, NASAA adopted Model Rule 202(d)-1 which established uniform capital requirements for SRAs (CCH NASAA Reports ¶3529-3). To promote uniformity of regulation among the states, the Commission proposed to substantially lower its current capital requirements of $20,000 minimum net capital or $50,000 tangible net worth to $10,000 net worth contained in the NASAA Model Rule. Adoption of the amendment would provide substantial regulatory relief from the current net worth requirements for approximately 32% of registered investment advisers that have custody. For exceptional circumstances, the Commission does possess the authority to waive the requirements of this regulation on a case-by-case basis upon good cause shown. Therefore, the Commission adopted the amendment as proposed.

§304.012. ICI suggested a minor clarifying amendment which the Commission accepted.

§304.022. ICI again raised the same comments with respect to this section as it did with §303.012. The Commission addressed the comments in the same manner as §303.012.

§305.011. ICI expressed two concerns. The first was that the regulation did not have a specific provision which addressed "home state" treatment afforded for books and records under NSMIA. The second was that, to the extent that this regulation imposed record keeping requirements beyond those of SEC with respect to broker-dealers, there was insufficient recognition that NSMIA would preempt those provisions for broker-dealers registered under the Securities Exchange Act of 1934 (1934 Act).

On the first concern, the Commission added language consistent with the "home state" treatment for investment advisers with a principal place of business outside this Commonwealth. On the second concern, the Commission modified the regulation to be consistent with the Rules of Conduct for member firms of the National Association of Securities Dealers (NASD). Because the requirements of this regulation now mirror the NASD Conduct Rules applicable to SEC registered broker-dealers, the regulation does not extend beyond that permitted by NSMIA. The requirements of subsection (c) parallel those contained in the following NASD Conduct Rules:

Subsection (c)(1) - NASD Conduct Rule 3010(a)(5) and 3010(b).
Subsection (c)(2) - NASD Conduct Rules 3010(a)(6) and (b).
Subsection (c)(3) - NASD Conduct Rules 3010(a), (b), (e) and 3110(c)(1).
Subsection (c)(4) - NASD Conduct Rule 3010(d).
Subsection (c)(5) - NASD Conduct Rule 3010(c).
Subsection (c)(6) - NASD Conduct Rules 3010(a), (b) and 3110(d).
Subsection (c)(7) - NASD Conduct Rules 3010(d) and 3110(c)(3).
Subsection (c)(8) - NASD Conduct Rules 3010(b) - (d).
Subsection (c)(9) - NASD Conduct Rule 3010(a)(7)
Subsection (c)(10) - NASD Conduct Rule 3010(c) and NASD Notice to Members 98-38.

The Commission did modify the amendment to add a new subsection to clarify the length of time records are required to be kept under subsection (c)(9) and (c)(10)(iii) and the manner in which they may be kept. The Commission could find no similar time limitation in NASD Rules. The relevant NASD rule on inspections states that "Each member shall retain a written record of the dates upon which each review and inspection is conducted." As there appears to be no controlling provision federally, the Commission does not believe it is constrained by NSMIA. The Commission's experience is that, in supervision cases, usually three years have passed before the investor files a complaint. Therefore, the Commission adopted a requirement to keep any records required by this section for five years, the first two years in an easily accessible place.

§305.019. ICAA expressed a concern that, since this section covered IARs who may work for a FCA, the Commission may be attempting to regulate conduct of FCAs which is impermissible under NSMIA (except to the extent that the conduct of a FCA constitutes fraud or deceit). ICAA suggested that the regulation be limited solely to IARs of SRAs. The Commission disagrees.

The Commission, per NSMIA and Act 109 of 1998, has no registration authority over FCAs. The purpose of this regulation is to place all registrants under the Commission's jurisdiction (including SRAs and IARs) on notice as to what types of activity may be deemed "dishonest or unethical" which could form the basis for revocation, suspension or conditioning of their license pursuant to Section 305(a)(ix) of the Act. Under that section, the Commission only has authority to affect the licenses of persons over whom it has registration jurisdiction.

Even if SRAs or IARs would engage in conduct described in this regulation, a revocation, suspension or conditioning of a license is not automatic. The Commission must institute a separate proceeding against the registrant. If, in its investigation of an IAR of a FCA for activity described in this regulation, the Commission concluded that the FCA was responsible for the activity and not the IAR, the Commission could proceed against the FCA *only* by issuance of an Order to Show Cause and *only* if the activity constituted fraud or deceit. Under federal law, the Commission cannot affect the ability of the FCA to conduct advisory business in Pennsylvania.

To adopt the ICAA's proposal would be to leave out an significant number of IAR registrants over which the Commission has full regulatory authority from the ambit of this regulation which would create an unequal playing field between IARs of FCAs and IARs of SRAs. This is not desirable regulatory policy. To address the ICAA's concern, the Commission, however, did add a new subsection to make it clear that the regulation does not apply to FCAs unless the conduct otherwise is actionable under Sections 401(a) or (c) or 404 of the Act.

§305.061. ICAA commented that, under the investment adviser registration depository scheme, Form ADV-W only will be used to withdraw the registration of a FCA from SEC. The Commission made changes to this amendment for withdrawing a notice filing by a FCA consistent with this comment. The Commission also added a provision to address withdrawal from registration with the Commission in instances where a SRA becomes a FCA.

§303.012 - 306.061. ICAA recommended that all references in these regulations to a central registration depository be replaced with a reference to an investment adviser registration depository. ICAA was concerned that persons may confuse the registration depository for investment advisers with the Central Registration Depository run by NASD for broker-dealers and agents. The Commission agreed with the ICAA's comment and changed references.

§404.010. ICAA and ICI both commented on this amendment. Both were concerned about indirect regulation of FCAs. ICAA asserted that firms, not IARs, advertise. The Commission's experience is otherwise as there have been many instances where the IAR has advertised without the knowledge, consent or authorization of the employing firm. This regulation, which is issued under Section 404 of the Act makes it clear in subsection (c) that the prohibitions imposed by that section apply to FCAs *only* to the extent that the prohibited conduct involves fraud or deceit.

Like the similar suggestion made on §305.019 (ICI did not raise this comment on §305.019), to adopt ICAA's proposed language (and ICI's with respect to this amendment) would be to leave out an significant number of IAR registrants over which the Commission has full regulatory authority from the ambit of this regulation. This would create uneven regulation between IARs of FCAs and IARs of SRAs. That is not desirable regulatory policy. To address this issue, the Commission, however, added a subsection to indicate that this section does not apply to FCAs unless the conduct otherwise is actionable under Sections 401(a) or (c) or 404 of the Act.

§404.011 and §404.012. ICI suggested that these two rules more closely conform to the revisions to SEC rules proposed in its recent release on Form ADV. For instance, SEC proposes to incorporate the wrap fee brochure disclosure into the investment adviser disclosure brochure. The Commission agreed and has incorporated the provisions of §404.012 into §404.011 consistent with SEC proposals. This, of course, necessitated re-numbering of §§404.013 and 404.014.

In the new Form ADV which is used by SEC and state securities regulators, FCAs and SRAs both will have to develop a disclosure brochure as part of completing Form ADV. Therefore, no investment adviser can be registered either with SEC or with a state unless it has developed a brochure. Under the Commission's proposed rulemaking, a SRA did not have to provide a disclosure brochure to those clients for whom it provided impersonal advisory services requiring a payment of less than $200.

Because Form ADV requires each SRA to create a disclosure brochure as part of the application process, the Commission believes that every client should be entitled to receive the same disclosure about the adviser. This requirement adds no burden to the registrant as it must develop the disclosure brochure anyway as part of the application process. This being the case, the Commission determined to delete the language which appeared at §404.011(d) in the proposed rulemaking and modify accordingly the language which had appeared at §404.011(b) and (g).

By letter dated June 26, 2000, Commission staff advised ICI, FPA and ICAA of the foregoing responses to their comments and provided them with the text of the final form regulations. By letter dated June 28, 2000, ICI expressed support for adoption of the final form rules as they appear herein. On the same date, representatives of FPA and ICAA advised Commission staff by telephone that those organizations joined ICI in their support for adoption of the final form regulations.

Commission Comments

§603.031. The Commission revised subsection (f) to insure that the confidentiality provisions of this section will apply to individuals who are investment advisers doing business as sole proprietors and individuals who are principals of broker-dealer and investment adviser firms.

Comments of the U.S. Securities and Exchange Commission

By letter dated May 30, 2000 and received on June 5, 2000, SEC Chairman Arthur Levitt wrote each state securities administrator urging state regulators to require investment advisers and federally covered advisers to participate in a Web-based, one-stop electronic filing system for investment advisers known as the Investment Adviser Registration Depository (IARD). Mr. Levitt noted that SEC has expended $3.2 million in federal funds to develop IARD and will be requiring all investment advisers subject to SEC jurisdiction to make filings through that system. Chairman Levitt explained that full participation by the states to require receipt of notice filings by FCAs through IARD as well as registration applications for SRAs will result in keeping user fees as low as possible for SRAs.

In its proposed form rules and in minor revisions suggested by commenters and included in the final form rules, the Commission will have authority to designate, by order, the IARD as the filing depository for FCAs, SRAs and IARs. As the availability of IARD for filing by these various groups will be phased in over the next 12-18 months, the Commission envisions issuance of a series of orders at differing times designating IARD as the filing depository.

The Commission further noted that the U.S. Senate Banking Committee is considering amendments to the Investment Advisers Act of 1940 which would ***preempt*** state jurisdiction over notice filings and fee payments by FCAs and registration applications and fee payments by out-of-state investment advisers subject to state registration if the Commission did not accept filings made through IARD. The Commission agrees with SEC that compulsory filings with IARD will provide a more complete data base for investor protection and lowering of costs to participants. It also preserves state jurisdiction if Congress enacts the proposed amendments.

Comments of the Independent Regulatory Review Commission

By letter dated July 6, 2000, the Commission received the following comments of the Independent Regulatory Review Commission (IRRC).

§303.012. IRRC reiterated the comments of ICI and FPA with respect to increasing the threshold in subsection (b)(1) from $500 to $1,200 and asked the Commission to consider raising the threshold. In its final form rules, the Commission increased the threshold to $1,200.

IRRC restated the comments of ICI and FPA concerning the filing of certain statements of financial condition by out-of-state investment advisers. In its final form rules, the Commission adopted subsection (f) that gives "home state" treatment to these financial reports which mirrors a proposed amendment to the 1940 Act being considered by Congress.

IRRC pointed out a typographical error in subsection (b)(2). In its final form rules, the Commission corrected the error.

§303.014. IRRC agreed with a comment made by ICI to clarify the application of subsections (a) and (b) with respect to federally covered advisers. In its final form rules, the Commission adopted clarifying language.

With respect to the ICI's comment on subsection (b), IRRC requested the Commission to explain its position. As set forth under the ***Public Comments***, the Commission explained why it disagreed with ICI's assertion that this subsection creates the potency for duplicative filings and demonstrated that, historically, such has not been the case . By letter dated June 28, 2000, ICI stated its support for the final form rules which, in this respect, were unchanged from the proposed form rules.

§303.015. In noting a comment made by ICI, IRRC asked the Commission to explain the renewal process for FCAs. In its final form rules, the Commission substantially revised this section to distinguish initial notice filings and renewals. Section 303(a)(iii) of the Act requires the initial notice filing on Form ADV and Section 602(d.1) requires an annual notice filing fee. The Commission also would have the authority to require renewals to be made through IARD which basically would consist of electronic transmittal of the annual filing fee to the Commission's depository bank.

§303.021. IRRC restated an ICI comment that registered investment advisers should be added to this section. In its final form rules, the Commission included registered investment advisers.

§303.032. With respect to subsections (a)(1) and (2), IRRC reiterated the comments of ICI and FPA concerning application of the two-year limitation. In its final form rules, the Commission added a new paragraph (3) to address this issue and resolve the potential problem raised in the ICI and FPA comment letters. By letter dated June 28, 2000, ICI expressed support for adoption of the final form rules and, on the same day, a representative of FPA advised Commission staff by telephone that FPA also supported adoption of the Commission's final form rules.

IRRC also noted the FPA's concern about providing waivers of the examination requirement for attorneys and certified public accountants. This explanation has been provided in the ***"Public Comments"*** section and, on June 28, 2000, a representative of FPA advised Commission staff by telephone that FPA supported adoption of the Commission's final form rules.

IRRC further noted a comment from the Certified Financial Planners Board of Standards that the designation contained in the proposed form rules was imprecise. In its final form rules, the Commission adopted the designation appropriate to this organization.

§303.042 IRRC raised the same comment as ICI and FPA concerning the $500 or $1,200 threshold issue which also was raised with respect to §303.012. In its final form rules, the Commission adopted a threshold of $1,200.

With respect to subsection (d), IRRC requested an explanation of the circumstance under which the Commission may require a current appraisal of an asset, the value of which is being submitted to establish the required net worth. For instance, if an investment adviser possessed a work of art which he wanted to assign a value for purposes of calculating the net worth required for an investment adviser under the Act and regulations, the Commission may request an apprisal of that object rather than accept the value submitted by the registrant. The same may be true with respect to shares in a closely-held company or a general or limited partnership. In practice, this provision is rarely used as a registrant that must demonstrate a certain net worth usually does so in cash, cash equivalents or marketable securities.

§303.051. IRRC requested an explanation of why the Commission used the term "may" instead of "shall" in subsection (a)(1) which deviates from the NASAA model rule. The reason for this deviation was that the Commission wanted to retain discretion as to whether it would allow an investment adviser to make up its net worth deficiency through a surety bond. While the Commission does not necessarily foresee any particular circumstance under which it would not grant such an order, adopting "shall" would forever foreclose the Commission from raising any objection.

With respect to subsection (c), IRRC requested a description of the circumstances under which the Commission would request evidence of existence of a surety bond. One instance is where an investment adviser is filing an annual financial report under §304.022 which indicates that the adviser is meeting its net worth requirement through a surety bond (assuming original approval was granted by the Commission under §303.051). The Commission may ask for evidence of the surety bond to insure that it is current and in full effect for the appropriate amount. The Commission conducts routine and for cause examinations of investment adviser and broker-dealer branch offices throughout the Commonwealth. One of the items which is checked during an examination is that the investment adviser has the requisite net worth. Again, if the investment adviser is relying on a surety bond to meet the applicable net worth requirement, the examiner may ask for evidence that it is current and in full effect for the appropriate amount.

§304.012. IRRC reiterated ICI's comment that an introductory clause should be added to subsection (a) indicating in the forepart of the regulation that the requirements of this section do not apply to persons specified in subsection (j). In its final form rules, the Commission adopted such an introductory clause.

In its comments, IRRC asserted that the definition of "investment adviser representative" in this rule was at variance with the definition of that term set forth in Section 102(j.1) of the Act. The Commission believes that an individual described in subsections (a)(12)(iv) and (a)(13)(v) would be an investment adviser representative under Section102(j.1) of the Act and that it has not gone beyond the statutory definition. In reality, the definition used in paragraphs (12) and (13) is a subset of the statutory definition.

As IRRC noted, this language is consistent with the NASAA Model Rule on this subject. NASAA (which follows identical statutory language as Section 102(j.1) of the Act) and the Commission felt that it was important to communicate a more precise nature of a person's activities for whom the investment adviser would have the compliance burden of maintaining books and records. This gives the firm's principals a better, "plain English" understanding than the statutory definition otherwise may impart. The important issue is that the Commission not go beyond the statutory definition and include persons within the ambit of the regulation that the Legislature did not intend. IRRC is appropriately sensitive to this issue as is the Commission.

The Commission is satisfied that the definition contained in paragraphs (12) and (13) does not go beyond the statutory definition. In fact, it explicitly does not include solicitors which are included in the statutory definition of investment adviser in Section 102(j.1)(i)(D) of the Act. Under Section 609(a), the Commission is authorized to define "any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the act." The Commission posits that the definition of "investment adviser representative" adopted for purposes of paragraphs (12) and (13) of this section are not inconsistent with Section 102(j.1) of the Act.

The Commission also believes that uniformity, particularly in the area of books and records, is important. This language is taken directly from the relevant NASAA Model Rule. A change in this provision may inject uncertainty for investment advisers and the professionals who counsel them in the interpretation of their legal obligations under the Act.

§304.052. IRRC requested whether the Commission could specify what constitutes "adequate." In its final form rules, the Commission deleted the phrase "adequately disclosed to each client in writing" because the disclosure of compensation is now covered by adoption of §404.011 which requires delivery of a brochure containing all the information required by Part 2 to Form ADV. Part 2 of Form ADV, which also applies to FCAs, requires disclosure of material information about the firm and its business practices, including fees and compensation. The Commission thinks that the disclosure of fee information is best addressed in §404.011 and in uniformity with the requirements of Form ADV.

§305.011. With respect to subsection (a)(1), IRRC commented on use of the term "timely" and whether a specific period of time should be adopted. The Commission reviewed this section and, in its final rules, adopted language used in NASD Rule of Conduct 3010 upon which it is modeled which does not include use of the that term. Revisions were made to subsections(a)(1) and (c).

On subsection (c), IRRC restated ICI's comment about recordkeeping requirements for out-of-state investment advisers. In its final form rules, the Commission added subsection (e) which addresses this comment in the same fashion as a similar comment raised on §303.012.

Also on subsection (c), IRRC suggested that the Commission should establish the specific length of time records required under this section need be kept. In its final form rules, the Commission added subsection (d) which specifies five years, the first two years being in an easily accessible place. This language is taken from a similar provision in the NASD Rules of Conduct.

§305.061 IRRC noted the comment made by ICAA. In its final form rules, the Commission adopted provisions allowing withdrawals from registration through IARD, including withdrawals from state registration resulting from a registrant becoming a FCA.

§404.011. IRRC expressed concern that this section may be inconsistent with federal rules. In its final form rulemaking, the Commission adopted this section which is modeled on the federal rule proposed in the SEC Release on Form ADV. This action included combining (a la the federal model) proposed rules §404.011 and §404.012. The Commission does not anticipate that the SEC rule proposal will change significantly upon final adoption by SEC. In the event that the federal rule would change, the Commission would use its powers under Section 609(a) of the Act to waive any provision of this section which would be inconsistent with the final federal rule.

Summary and Purpose of Regulations

§202.070	The change clarifies when the exemption would be available to certain non-employees included in compensatory plans or compensatory contracts.
§203.101	The change allows attorneys to give a clear legal opinion on the availability of the exemption.
§203.171	The change allows attorneys to give a clear legal opinion on the availability of the exemption.
§203.185	The change allows attorneys to give a clear legal opinion on the availability of the exemption.
§203.186	The change allows attorneys to give a clear legal opinion on the availability of the exemption.
§203.192	The new regulation creates a registration exemption for certain rights offerings and exchange tender offers made by foreign private companies to Pennsylvania residents that are exempt from registration with SEC.
§205.021	The change replaces Form 205 with Form R and eliminates the requirement to file Form R for all issuers applying for registration under Section 205 except those relying on SEC Regulation A.
§206.010	The change replaces Form 206 with Form R and restricts the requirement to file Form R to issuers making an offering under Sections 3(a)(4) or 3(a)(11) of the Securities Act of 1933, Rule 504 of SEC Regulation D or SEC Regulation A.

FINAL FORM RULEMAKING
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§301.021 This regulation has been repealed because its provisions have been superceded by a new Web-based electronic transfer program.

§302.063 This change codifies a No Action Letter issued by the Commission in 1999 concerning third party brokerage activities in a limited purpose bank branch office.

§303.012 This change anticipates electronic filing through an investment adviser registration depository and eliminates the requirement for investment adviser applicants that do not have custody, possession or discretion over clients' funds or securities to file a statement of financial condition.

§303.014 This change utilizes the new term "investment adviser representative" and anticipates electronic filing through an investment adviser registration depository.

§303.015 This new regulation implements the notice filing requirement imposed on FCAs by Act 109 of 1998.

§303.021 This change accords the same treatment to notice filings by FCAs for successor firms as is accorded to registered investment advisers.

§303.032 This change repeals the experience requirement for agents and IARs, adopts new uniform examinations for investment advisers and IARs, uniform grandfathering provisions and uniform waivers of the examination. These are based upon on a uniform model adopted by NASAA.

§303.042 This change reduces net worth requirements for investment advisers and eliminates the current net worth requirement for investment advisers that do not have custody, possession or discretion over clients' funds or securities. These changes are based on a NASAA model rule and conform to federal law as provided by NSMIA.

§303.051 This change revises the surety bond requirements to conform to a NASAA Model Rule and the requirements of NSMIA.

§304.012 This change establishes recordkeeping requirements for investment advisers in Subpart C. This change conforms to a NASAA Model Rule and NSMIA.

§304.022 This changes required investment adviser financial reports. It conforms to NSMIA, a proposed amendment to NSMIA and a NASAA Model Rule.

§304.052 This change recognizes that standardized commission rates charged by national securities exchanges have been eliminated.

§305.011 This change expands coverage of this regulation to IARs and incorporates requirements found in the NASD Code of Conduct Rules.

§305.019 This change expands coverage of this regulation to IARs and includes failure to comply with investor suitability requirements as a basis for taking action against a person's license.

§305.061 This change anticipates electronic filing through an investment adviser registration depository and extends the regulation to withdrawal of notice filings by FCAs and SRAs who become FCAs.

§404.010 This change extends this regulation to IARs.

§404.011 This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of Section 404 of the Act for an investment adviser to fail to furnish a disclosure statement to prospective clients. Also, an investment adviser who sponsors a wrap fee program must furnish a wrap fee disclosure statement to prospective clients. Similar rules apply to FCAs.

§404.012 This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of Section 404 of the Act for an investment adviser to make cash payments to persons who solicit business for the investment adviser unless certain requirements are met. A similar provision already applies to FCAs.

§404.013 This new regulation makes it a fraudulent, deceptive or manipulative act or practice within the meaning of Section 404 of the Act for an investment adviser to have custody or possession of clients' funds or securities unless certain requirements are met. This regulation is similar in scope to §404.020 which is being deleted. A similar provision already applies to FCAs.

§404.020 This regulation was repealed in favor of §404.013 which codifies current requirements.

§602.060 This change deletes the subscription fee for the Commission's Bulletin and Annual Report. These publications are now available to the public free of charge.

§603.031 This change would clarify that any record which the Commission deems excluded from the definition of a public record in 65 P.S. §66.1(2) may be withheld from the public and that confidential treatment would be provided for social security numbers, home addresses and dates of birth of individuals appearing on Form U-4, Form BD and Form ADV.

Persons Affected by these Regulations

The first eight proposed regulatory actions will affect issuers relying on certain exemptions from registration to issue securities and issuers of securities in registered offerings. The bulk of the remaining proposed regulatory actions will affect, to varying degrees, broker-dealers, agents, FCAs, SRAs and IARs. These actions are required to implement the provisions of Act 109 of 1998 and NSMIA.

Fiscal Impact

Investment Advisers; Federally Covered Advisers. Regulatory actions affecting investment advisers will lower compliance costs by reducing or eliminating net worth requirements, reducing or eliminating required financial reports, waiving examination requirements for certain classes of applicants and conforming Commission rules to uniform NASAA Model Rules and provisions of NSMIA. FCAs will benefit from significant cost reductions by being able to make one electronic filing and fee payment to satisfy notice filing and fee payment requirements in every state it transacts business.

The final form rules permit the Commission to issue orders requiring participation in IARD. These user fees slightly will offset the significant savings afforded by these final form rules to SRAs by the elimination of the current $5,000 net capital/$12,500 tangible net worth requirement for two-thirds of investment advisers registered in Pennsylvania (those without custody or discretion) and a reduction from $20,000 net capital/$50,000 tangible net worth to $10,000 net worth for the other one-third of investment advisers registered in Pennsylvania (those with discretion) versus a projected $125 annual IARD user fee for SRAs. The final form rules are expected to save SRAs a total of $10 million in collective net worth requirements versus collective annual IARD user fees of $58,750.

Development of IARD by SEC was mandated by Congress in NSMIA. Although SEC has expended $3.2 million in federal funds to underwrite development costs, IARD will require payment of a user fee to cover operating costs. This user fee would be in addition to license fees and assessments required under Sections 602(d.1) and 602.1 of the Act. Nevertheless, all the commenters, which represent FCAs and SRAs, commented favorably on the final form rules wherein the Commission, by order, can require filings to be made through IARD.

The exact amount of the user fees has not yet been determined by SEC, in part because it does not know the level of participation by SRAs. That is why SEC Chairman Arthur Levitt, in his May 30, 2000 letter, urged the widest possible participation by the states because that would result in the lowest possible user fees for SRAs. In the same letter, it was noted that larger, FCAs will pay higher user fees than SRAs.

NASAA recently advised the Commission (in an unofficial capacity) that it thought the likely annual user fee would be approximately $125 for SRAs and approximately $50 for IARs. As of July 1, 2000, the Commission has 470 registered investment advisers and 2,333 registered IARs. The vast majority of registered IARs (69%) work for FCAs which will be mandated by SEC to use IARD.

In return for the IARD user fee, investment advisers can make as many filings via the IARD electronic system as they want (registration applications, amendments, filing and updating of disclosure materials). This eliminates duplicate filings with other states, associated mailing costs, and issuing separate checks for fee payments. Being Web-based, the investment advisory community will have access to IARD on a 24-hour a day basis. NASAA further advised that IARD does provide hardship exemptions for persons who may not have access to Internet or, due to computer problems beyond their control, may not be able to file timely through IARD. The Commission intends to honor hardship exemptions granted by IARD.

As noted previously, the Commission understands that the U.S. Senate Banking Committee is considering amendments to the 1940 Act which would ***preempt*** state jurisdiction over notice filings and fee payments by FCAs and registration applications and fee payments by out-of-state investment advisers subject to state registration if the Commission did not accept filings made through IARD.

Given Congressional support for mandating IARD in NSMIA and current Congressional ruminations on mandating state participation in IARD on pain of preemption; the request of SEC for state participation in IARD; support for IARD by the trade organizations representing the entire spectrum of the investment advisory community; the elimination or substantial reduction of net worth requirement for all investment advisers registered with the Commission; the benefit to investors of having a complete, Web-based data base to consult when looking for investment advisory services; and the time savings to the investment advisory community of making all regulatory filings in one place online, the Commission believes the benefits of participating in IARD justify the costs of participation to the investment advisory community.

Issuers. Most companies making a registered public offering of securities no longer will have to expend the time and money to file an additional state-specific form with the Commission.

Record Keeping, Supervision, Disclosure Delivery. The record keeping provisions, supervisory requirements and disclosure delivery requirements are similar to what currently is required by the NASD Code of Conduct, existing Commission regulations or federal law with respect to FCAs. Therefore, the regulatory actions will not impose additional financial burdens on applicants or registrants.

Paperwork

The Commission has eliminated current Forms 205 and 206 in favor of one new form designated as Commission Form R which will be used by certain issuers making application with the Commission to make a public offering of securities in Pennsylvania. The Commission further reduced substantially the categories of issuers that would be required to file new Form R.

With respect to investment advisers, the Commission, in certain cases, has eliminated required financial reports and statements of financial condition that must be filed by applicants or registrants and, in other cases, reduced substantially reduced the required financial reports and statements of financial condition.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Commission, on April 11, 2000 submitted a copy of proposed rulemaking published at 30 Pa.B. 2237 (may 6, 2000) to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Commerce and Economic Development and the Senate Committee on Banking and Insurance for comment and review. In addition to submitting the proposed amendments, the Commission has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

By letter dated July 6, 2000, IRRC provided the Commission with its comments on the proposed form rules. The Commission's response to those comments is contained herein.

In preparing final form rules, the Commission considered all comments received from the public, the U.S. Securities and Exchange Commission, and IRRC. It adopted numerous changes to the proposed rules as previously indicated. The final form rules were submitted on July 12, 2000 to the House Committee on Commerce and Economic Development, the Senate Committee on Banking and Insurance and IRRC.

PROPOSED RULEMAKING
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Availability in Alternative Formats

This final form rulemaking may be made available in alternative formats upon request. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

Contact Person

The contact person for an explanation of these regulations and amendments is G. Philip Rutledge, Deputy Chief Counsel, Pennsylvania Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130.

Order

The Commission, acting under the authorizing statute, orders that:

(a) The regulations of the Commission, 64 Pa. Code Chapters 202, 203, 205, 206, 301, 302, 303, 304, 305, 404, 602 and 603 are amended by amending §§202.070, 203.101, 203.171, 203.185, 203.186, 205.021, 206.010, 301.021, 302.063, 303.051, 404.020 and 602.060 to read as set forth at 30 Pa.B. 2237; by adopting §203.192 as set forth at 30 Pa.B. 2237; by amending §§303.012, 303.014, 303.021, 303.032, 303.042, 304.012, 304.022, 304.052, 305.011, 305.019, 305.061, 404.010 and 603.031 as set forth in Annex A; and by adopting §§303.015, 404.011, 404.012 and 404.013 as set forth in Annex A.

(b) The Secretary of the Commission shall submit this order and Annex A to the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

BY ORDER OF THE COMMISSION

M. JOANNA CUMMINGS, SECRETARY

ANNEX A

TITLE 64. SECURITIES

Subpart C. REGISTRATION OF BROKER-DEALERS, AGENTS, [AND] INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY COVERED ADVISERS

CHAPTER 303. REGISTRATION AND NOTICE FILING PROCEDURE

§303.012. Investment adviser registration procedure.

(a) An application for initial registration as an investment adviser shall contain the information requested in and shall be made on the Uniform Application for Investment Adviser Registration (Form ADV), or a successor form. The applicant shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of the form accompanied by the [requisite filing fee, exhibits and statement of financial condition required by subsection (b) or (c)] filing fee in Section 602(d.1) of the act (70 P.S. §1-602(d.1)), the compliance assessment in Section 602.1(a)(4) of the act (70 P.S. §1-602.1(a)(4)) and any exhibits required by this section.

(b) Except as set forth [in paragraphs (1) and (2)] subsection (f), the following statements of financial condition shall accompany an [each] application for initial registration as an investment adviser [shall be accompanied by a statement of financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard compilation report, standard review report or standard audit report compiled, reviewed or examined by an independent certified public accountant or public accountant. The statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recent fiscal year is unavailable, and if the application is filed within 14 months of the end of the preceding fiscal year. In addition, if the date of the most recent complied, reviewed, or audited statement is more than 45 days prior to the date of filing, the applicant also shall file a statement of financial condition which may be unaudited and may be prepared by management, as of a date within 45 days of filing.]:

(1) An applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees six months or more in advance and in excess of $1,200 per client shall file an audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard audit report containing an unqualified opinion of an independent certified public accountant or an independent public accountant. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or

proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant. [In the case of an] If the applicant [who] is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the applicant, in lieu of filing [a compilation, review or] an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22 of the American Institute of Certified Public Accountant's Technical Information Service and signed by a certified public accountant or public accountant who either is the applicant or one of the principals of the applicant.

(2) [In case if an applicant who has custody or possession of any funds or securities in which any client has any beneficial interest, the application shall be accompanied by a statement of financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by an audit report containing an unqualified opinion of an independent certified public accountant or independent public accountant. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year. In addition, if the date of the most recent audited statement of financial condition is more than 45 days prior to the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing. The accountant shall submit as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.] An applicant that has discretionary authority over client funds or securities, but not custody, shall file a balance sheet which need not be audited but must be prepared in accordance with generally accepted accounting principles. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet, which must be prepared in accordance with generally accepted accounting principles as of a date within 45 days of filing the application. Each balance sheet required by this paragraph may be unaudited and prepared by management of the applicant. Each balance sheet required by this paragraph also shall contain a representation by the applicant that the balance sheet is true and accurate.

(3) An applicant whose proposed activities do not come within paragraphs (1) or (2) need not file a statement of financial condition.

* * *

(e) For purposes of this section, [the term] the following terms shall have the following meanings:

Principal - [means the] The chairperson, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.

Principal place of business - The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-1 *et seq.*).

(f) An applicant that maintains its principal place of business in a state other than this Commonwealth need not comply with subsection (a) if the applicant meets the following:

(1) Is registered as an investment adviser in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of the assets of any client residing in this Commonwealth at any time during the preceding12 month period.

§303.014. [Associated person] Investment adviser representative registration procedures.

(a) An application for initial registration as an [associated person] investment adviser representative of an investment adviser or federally covered adviser shall contain the information requested in and shall be made on the Uniform Application for Securities Industry Registration or Transfer (Form U-4), or a successor form. The [associated person] investment adviser representative and the investment adviser or federally covered adviser shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of Form U-4 and exhibits thereto accompanied by the [requisite] filing fee required [in] by section 602(d.1) of the act (70 P.S. §1-602(d.1)), the compliance assessment required by Section 602.1(a)(1) (70 P.S. §1-602.1(a)(1)) and [passing] the results evidencing passage of the examinations required by §303.032 (relating to qualification of and examination requirement for investment advisers and [associated persons] investment adviser representatives).

(b) [Every investment adviser for whom associated persons are to be registered shall obtain from the associated person and maintain the following information with respect to each associated person. While this information is required to be maintained by the investment adviser, it otherwise is not required to be filed with the Commission on Form U-4.

(1) The name, address, date of birth, social security number and the starting date of employment or other association with the investment adviser.

(2) A complete educational background and a complete statement of the associated person's principal business, occupation or employment for the preceding 10 years, including the reason for leaving each prior employment.

(3) A record of denial of registration, disciplinary action taken or sanction imposed by a Federal or state agency, by a National securities exchange or a National securities association, or by a foreign country governing or regulating any aspect of the business of securities, commodities or banking.

(4) A record of convictions for a felony or misdemeanor, except minor traffic offenses, of which the associated person has been the subject.

(c) Every investment adviser shall ensure that each applicant for registration as an associated person is familiar with the sections of the act and regulations governing associated persons and investment advisers. Further, the investment adviser shall have taken appropriate steps to verify the items and attachments contained in Form U-4.

(d)] An [associated person] investment adviser representative and an investment adviser or federally covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the [associated person] investment adviser representative and the investment adviser or federally covered adviser shall file with the Commission an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§303.015. Notice filing for federally covered advisers.

(a) *Initial Filing.* The notice required to be filed by federally covered advisers under section 303(a)(iii) of the act (70 P.S. §1-303(a)(iii)) shall be the Uniform Application for Investment Adviser Registration (Form ADV) or successor form thereto as filed with the U.S. Securities and Exchange Commission. Prior to the federally covered adviser conducting advisory business in this Commonwealth, a completed Form ADV accompanied by the notice filing fee required by Section 602(d.1) of the act (70 P.S. §1-602(d.1)) shall be filed with the Commission or with an investment adviser registration depository designated by order of the Commission

(b) *Renewals.*, Every federally covered adviser conducting advisory business in this Commonwealth annually shall pay a notice filing fee set forth in Section 602(d.1) of the act. Payment of the notice filing fee should be made directly with the Commission or with an investment adviser registration depository designated by order of the Commission.

§303.021. [Successor broker-dealer and investment adviser registration procedures] Registration and notice filing procedures for successors to a broker-dealer, investment adviser or federally covered adviser.

(a) [An application for registration under Section 301 of the act (70 P.S. §1-301) of a broker-dealer or investment adviser to be formed or organized may be made by a broker-dealer or investment adviser to whose business the broker-dealer or investment adviser to be formed or organized is to be the successor] The following shall apply with respect to broker-dealers:

(1) Where a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under Section 301 of the act (70 P.S. §1-301) and as a broker or dealer under Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk)(successor broker-dealer) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC rule 15b1-3(a) promulgated under the Securities Exchange of 1934, except that the successor broker-dealer shall file the amendments to Form BD with the Commission.

(2) Where a broker-dealer is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a broker-dealer registered under Section 301 of the act (70 P.S. §1-301) and as a broker or dealer under Section 15(b) of the Securities Exchange Act of 1934 (successor broker-dealer) for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor broker-dealer shall comply with the requirements of SEC rule 15b1-3(b) promulgated under the Securities Exchange of 1934, except that the successor shall file Form BD with the Commission.

(b) [If the successor to the business of a broker-dealer registered under the act is filing for successor registration under the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk) and SEC Rule 15b1-13promulgated thereunder and files with the Commission the prescribed amendments to Form BD within the time period set forth in SEC Rule 15b1-3, the successor application shall become effective simultaneously with successor registration under the Securities Exchange Act of 1934. The amendments to Form BD shall be accompanied by an unaudited statement of financial condition of the successor which is prepared in accordance with generally accepted accounting principles and dated within 30 days of the filing date] The following shall apply to investment advisers:

(1) Where an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under Section 301 of the act (successor investment adviser) based solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser may file an initial application for registration by amending Form ADV of the predecessor and, pursuant to Section 303(b) of the act (70 P.S. §1-303(b)), succeed to the

unexpired portion of the predecessor's term of registration.

(2) Where an investment adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, an investment adviser registered under Section 301 of the act for reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall file Form ADV with the Commission. Upon registration, the successor investment adviser, pursuant to Section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's term of registration.

(c) [If the successor to the business of an investment adviser registered under the act is filing for successor registration under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21) and SEC Rule 203-1 promulgated thereunder and files with the Commission the prescribed amendments to Form ADV within the time period set forth in SEC Rule 203-1, the successor application shall become effective simultaneously with successor registration under the Investment Advisers Act of 1940. The amendments to Form ADV shall be accompanied by an unaudited statement of financial condition of the successor which is prepared in accordance with generally accepted accounting principles and dated within 30 days of the filing date] Where a federally covered adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a registered investment adviser or of another federally covered adviser (successor federally covered adviser), the successor federally covered adviser shall file with the Commission either Form ADV or an amendment to Form ADV as required under SEC Release No. IA-1357 (December 28, 1992) and, pursuant to Section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's notice period.

§303.032. [Qualification of and] Examination requirements for investment advisers and [associated persons] investment adviser representatives.

(a) *Examination requirements.* An individual may be not registered as an investment adviser or investment adviser representative under the act unless the person has [all of] met one of the following qualifications:

(1) Received, on or after January 1, 2000 and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on [each of the following:] The Uniform Investment Adviser Law Examination (Series 65), or successor examination; or

[(i) the securities examination for registered representatives or supervisors (Series 2,7,8 or 24), or successor examination administered by the National Association of Securities Dealers, Inc., within 2 years prior to the date of filing an application for registration, has previously passed the Series 2,7,8 or 24, or the examination requirement has been waived by the Commission and has not had a lapse in employment as an investment adviser or associated person or principal or agent of a broker-dealer for a period exceeding two years.

(ii) The Uniform Investment Adviser Law Examination (Series 65) or the Uniform Combined State Law Examination (Series 66) or successor examination, administered by the National Association of Securities Dealers, Inc., within 2 years prior to the date of filing an application for registration, has previously passed the Series 65 or Series 55 or the examination requirement has been waived by the Commission and has not had a lapse in employment as an investment adviser or associated person or principal or agent of a broker-dealer for a period exceeding two years.]

(2) [Been engaged in business as a principal of a broker-dealer or investment adviser or as an employe of a broker-dealer or investment adviser in other than a clerical capacity or has occupied some other position satisfactory to the Commission in the securities, banking, finance or other related employment on a substantially full-time basis during the 2-year period immediately prior to the filing of the application or during 3 of the 5 years immediately preceding the filing.] Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Commission, a passing grade on the General Securities Representative Examination (Series 7) administered by the National Association of Securities Dealers, Inc. and the Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) Received, on or after January 1, 2000, a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations and has not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately prior to the date of filing an application with the Commission.

(b) [An individual may not be registered as an associated person unless the person has met the following requirements:] *Grandfathering.*

(1) [Satisfied the examination requirements of subsection (a)(1)] Compliance with subsection (a) is waived if the individual meets the following qualifications:

(i) Prior to January 1, 2000, the individual had received a passing grade on the Series 2,7,8, or 24 examination for registered representatives or supervisors administered by the National Association of Securities Dealers, Inc. and the Series 65 or Series 66 examinations; and

(ii) The individual has not had a lapse in employment as an investment adviser, investment adviser representative or principal or agent of a broker-dealer for any consecutive period exceeding 2 years prior the date of filing an application with the Commission.

(2) [Satisfied the experience requirement of subsection (a)(2).] An individual need not comply with subsection (a) if the individual meets the following qualifications:

(i) Prior to January 1, 2000, the individual was registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration or

qualification of investment advisers or investment adviser representatives; and

(ii) The individual has not had a lapse in registration as an investment adviser or investment adviser representative in another state for any consecutive period exceeding two years prior to the date of filing an application with the Commission.

(c) *Waivers of exam requirements.* Compliance with subsection (a) is waived if:

(1) The individual meets the following qualifications:

(i) Has no disciplinary history which requires an affirmative response to Items 23A-E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto; and

(ii) Has been awarded any of the following designations which, at the time of filing of the application with the Commission, is current and in good standing:

(A) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.

(B) Chartered Financial Consultant (ChFC) or Master of Science and Financial Services (MSFS) awarded by the American College, Bryn Mawr, Pennsylvania.

(C) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts.

(D) Personal Financial Specialists (PFS) awarded by the American Institute of Certified Public Accountants.

(E) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.

(2) The individual is licensed as a certified public accountant, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 23A-E or Item 23H of Form U-4 or successor items thereto.

(3) The individual is licensed as an attorney, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 23A-E or Item 23H of Form U-4 or successor items thereto.

(4) The individual has received an order from the Commission waiving compliance with subsection (a).

§303.042. Investment adviser capital requirements.

(a) [Except as set forth in paragraphs (1)-(3), an] Every investment adviser registered or required to be registered under section 301 of the act (70 P.S. §1-301) shall maintain [a minimum net capital of $5,000 or a minimum tangible net worth of $12,500] at all times the following net worth requirements:

(1) An investment adviser [who is also registered as a broker-dealer under section 301 of the act (70 P.S. §1-301) shall maintain a minimum net capital of $5,000] that has its principal place of business in a state other than this Commonwealth shall maintain the net worth required by the state where the investment adviser maintains its principal place of business if the investment adviser currently is licensed in that state and is in compliance with that state's net worth requirements.

(2) Except as provided in subsection (e), [An] an investment adviser [who holds custody of clients' funds or securities and who is not registered as a broker-dealer shall maintain a minimum net capital of $50,000 or a minimum tangible net worth of $125,000] that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 301 of the act shall maintain at all times a minimum net capital of $25,000.

(3) An investment adviser [who is vested with discretionary authority with respect to clients' investments and who is not registered as a broker-dealer shall maintain a minimum net capital of $20,000 or a minimum tangible net worth of $50,000] that has its principal place of business in this Commonwealth and has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000.

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000. An investment adviser shall not be deemed to be exercising discretion and subject to the requirements of this paragraph when it places trade orders with a broker-dealer under a third party trading agreement if:

(i) The investment adviser has executed a separate investment adviser contract exclusively with its clients that acknowledges that a third party agreement will be executed to allow the investment adviser to effect securities transactions for the client in the client's broker-dealer account;

(ii) The investment adviser contract specifically states that the client does not grant discretionary authority to the investment adviser and the investment adviser, in fact, does not exercise discretion with respect to the account; and

(iii) A third party trading agreement is executed between the investment adviser,

the client and the broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than six months in advance and more than $1,200 per client shall maintain at all times a positive net worth.

(b) [Unless otherwise exempted, as a] As condition of the right to continue to transact business in this Commonwealth, an investment adviser registered [or required to be registered] under the act shall [immediately] notify, by the close of business on the next business day, the Commission if the investment adviser's total net [capital or tangible net] worth is less than the minimum required net [capital or tangible] worth. Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

* * *

(2) A computation of net [capital or tangible net] worth [(See subsection (c))].

* * *

(6) A statement [of the approximate] as to the number of client accounts.

(c) For the purpose of this section, the following terms shall have the following meanings:

[(1) *Net capital* - Shall have the meaning set forth in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk).

(2) Net worth - An excess of assets over liabilities, as determined by generally accepted accounting principles.

(3) Tangible net *worth* - the net worth of an investment adviser registered or required to be registered under the act reduced by the following:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of an intangible nature.

(iv) [Home furnishings and automobile - less indebtedness secured by these assets but only to the extent that the indebtedness does not exceed the carrying value of the assets - and personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.]

Custody - A person is deemed to have custody of client funds or securities if the person directly or indirectly holds clients funds or securities, has any authority to obtain possession of them or has the ability to appropriate them.

Net capital - The meaning set forth in 17 CFR 240.15c3-1 (relating to net capital requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk).

Net worth - The excess of assets over liabilities as determined by generally accepted accounting principles reduced by the following:

(i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.

(ii) Deferred charges.

(iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense and all other assets of an intangible nature.

(iv) Home furnishings, automobile(s) and any other personal items not readily marketable in the case of an individual.

(v) Advances or loans to stockholders and officers in the case of a corporation; members and managers in the case of a limited liability company; and advances or loans to partners in the case of a partnership.

Principal place of business - The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A §80b-1 *et seq.*).

(d) For investment advisers registered or required to be registered under the act [who maintain a minimum tangible net worth requirement rather than a minimum net capital requirement], the Commission may require that a current appraisal be submitted [in order] to establish the worth of an asset being calculated under the [tangible] net worth formulation.

(e) The requirements of subsection (a)(2) shall not apply to an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, SEC Rule 15c3-1; or

(2) A member of a national securities exchange whose members are exempt from SEC Rule 15c3-1 under subsection (b)(2) thereof and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

CHAPTER 304. POST-REGISTRATION PROVISIONS

§304.012. Investment adviser required records.

(a) [Every] Except as provided in subsection (j), every investment adviser registered [or required to be registered] under the act shall make and keep [the books, ledgers and records required to be maintained as described in Rules 204-2 and 204-3 (17 CFR 275.204-2 and 275.204-3) adopted under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21).] true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies of), paid or unpaid, relating to the investment adviser's business as an investment adviser.

(6) All trial balances, financial statements, net worth computation, and internal audit working papers relating to the investment adviser's business as an investment adviser. For

purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement. The net worth computation means the net worth required by §303.042 (relating to investment adviser capital requirements), if any.

(7) Originals of all written communications received and copies of all written communications sent by the investment adviser relating to one or more of the following:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities, or;

(iii) The placing or execution of any order to purchase or sell any security, except that an investment adviser:

(A) Shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(B) With respect to any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service sent by the investment adviser to more than 10 persons (including transmission by electronic means), the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent except, that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

(8) A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

(10) A copy in writing of each agreement entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

(12) Records of transactions as follows:

(i) A record of every transaction in a security in which the investment adviser or investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership except:

(A) Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States. The record shall state:

(I) The title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition).

(II) The price at which it was effected.

(III) The name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) For purposes of this paragraph, the following terms shall have the following meanings:

Investment adviser representative - A partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee of the investment adviser who, in connection with assigned duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) *Control* - The power to exercise a controlling influence over the

management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(v) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) Records of transactions by investment advisers primarily engaged in a business other than advising clients as follows:

(i) Notwithstanding paragraph (12), where the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any investment adviser representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States. The record shall state:

(I) The title and amount of the security involved.

(II) The date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition).

(III) The price at which it was effected, and the name of the broker-dealer or bank with or through whom the transaction was effected.

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

(iii) A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(iv) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of

(A) Its total sales and revenues, and

(B) Its income (or loss) before income taxes and extraordinary items, from

such other business or businesses.

(v) For purposes of this paragraph, the following terms shall have the following meanings:

Investment adviser representative - When used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, the term means any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with assigned duties, obtains information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) any affiliated person of a controlling person; and

(III) any affiliated person of an affiliated person.

(B) *Control* - The power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company.

(vi) An investment adviser shall implement adequate procedures and use reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of §404.011 (relating to investment adviser brochure rule), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser shall maintain the following:

(i) Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

(iii) A copy of the solicitor's written disclosure statement if required by §404.013 (relating to cash payment for client solicitation).

(iv) For purposes of this paragraph, the term "solicitor" shall mean any person or entity who, for compensation, directly or indirectly solicits any client for, or refers any client to, an investment adviser.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser) except that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

(18) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(19) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(20) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in paragraph (12), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(b) [As a condition of the right to continue to transact business, each registered investment adviser shall immediately notify the Commission if the investment adviser shall fail to make and keep current the books and records required by this section. Within 24 hours after this notice, each investment adviser shall file with the commission a report stating what steps have been and are being taken to fully comply with this section.] If an investment adviser subject to subsection (a) has custody or possession of securities or funds of any client, the records required to be made and kept by subsection (a) also shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(2) A separate ledger account for each client showing all purchases, sales, receipts and

deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any client.

(4) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

(c) [Every investment registered or required to be registered under the act shall make, keep and preserve either a separate file of written complaints of customers and action taken by the investment adviser in response thereto, or a separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint as maintained by the investment adviser. A "complaint" shall be deemed to include a written statement of a customer or persons acting on behalf of a customer or a written notation of a verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction, the disposition of securities or funds of the customer, or the rendering of investment advice.] Every investment adviser subject to subsection (a) that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

(2) For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each the client, and the current amount or interest of the client.

(d) [The term "customer" of an investment adviser as used in this section includes persons to whom the investment adviser has given investment advice for which the investment adviser has received compensation.] Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) [The records required to be maintained under this section shall be retained and preserved for inspection by the Commission for a period of 5 years, the period to be measured from the date of the last entry therein or from the date of receipt of the communication or other information contained therein. The retention and preservation of records required in this section may be upon microfilm, computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of facsimiles.] Every investment adviser subject to subsection (a) shall preserve the following records in the manner prescribed:

(1) The books and records required to be made under the provisions of subsection (a), (b) and (c)(1) (except for books and records required to be made under subsection (a)(11) and (a)(16)), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the

first two years being in the principal office of the investment adviser.

(2) Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and (a)(18) shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(4) Books and records required to be made under subsection (a)(19) and (a)(22) shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years being in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

(5) Notwithstanding other record preservation requirements of this section, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsection (a)(3), (a)(7)-(10), (14)-(15), (17)-(19), (b) and (c);

(ii) Records or copies required under subsection (a)(11) and (a)(16) which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number.

(f) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall arrange and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where the books and records will be maintained during the period.

(g) The requirements for the storage of records are as follows:.

(1) Records required to be maintained and preserved under this section may be imediately produced or reproduced by photograph on film or, as provided in paragraph (2) below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request,

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required,

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

(v) With respect to records stored on photographic film, at all times have available for the Commission's examination of its records pursuant to section 304(a) of the act (70 P.S. §1-304(a)) facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) An investment adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) *Definitions.* For purposes of this section, the following terms shall have the following meanings:

Client - Any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

Investment supervisory services - The gving of continuous advice as to the investment of funds on the basis of the individual needs of each client. Discretionary power does not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

Principal place of business - The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21).

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) and 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) under the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk), which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept, maintained

and preserved in compliance with this section.

(j) The requirements of this section shall not apply to an investment adviser registered under Section 301 of the act that meets the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the record keeping requirements of the state in which it has its principal place of business.

§304.022. Investment adviser required financial reports.

(a) [Every investment adviser shall file annually with the Commission a statement of its financial condition as of the end of its fiscal year.] Except as provided in subsection (b), the following investment advisers registered under section 301 of the act (70 P.S. §1-301) shall file the following reports of financial condition with the Commission within 120 days of the investment adviser's fiscal year end:

(1) An investment adviser that has custody of client funds or securities or requires prepayment of advisory fees six months or more in advance and in excess of $1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant or independent public accountant. The accountant shall submit, as a supplementary opinion, comments based on the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed. If the investment adviser is a certified public accountant or a public accountant or whose principals include one or more certified public accountants or public accountants, the investment adviser, in lieu of filing an audit report, may file a report modeled after the management responsibility letter contained in paragraph 9600.22 of the American Institute of Certified Public Accountant's Technical Information Service signed by a certified public accountant or public accountant or one of the principals of the investment adviser.

(2) An investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the Commission a balance sheet as of the end of its fiscal year. The balance sheet need not be audited but must be prepared in accordance with generally accepted accounting principles. The balance sheet must contain a representation by the investment adviser that it is true and accurate.

(b) [Except as set forth in subsection (c), the annual statement of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and may be unaudited] The requirements of subsection (a) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this

Commonwealth if the investment adviser meets the following conditions:

(1) Is registered in the state in which it maintains its principal place of business.

(2) Is in compliance with the financial reporting requirements of the state in which it maintains its principal place of business.

(3) Has not taken custody of assets of any client residing in this Commonwealth at any time during the preceding 12 month period.

(c) [With respect to an investment adviser who has custody or possession of funds or securities in which a client has a beneficial interest, the annual statement of financial condition filed under this section shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant or independent public accountant. The accountant shall submit as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate corrective action taken or proposed.

(d) The annual statement of financial condition required by this section shall be filed within 120 days following the end of the investment adviser's fiscal year.] For purposes of this section, the following terms have the following meanings:

Principal - The chair, president, chief executive officer, general manager, chief operating officer, chief financial officer, vice president or other officer in charge of a principal business function (including sales, administration, finance, marketing, research and credit), secretary, treasurer, controller and any other natural person who performs similar functions.

Principal place of business - The meaning set forth in 17 CFR 275-203A-3(c)(relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-1 - 80b-21).

§304.052. Investment adviser compensation.

No investment adviser registered [or required to be registered] under the act may charge or receive commissions or other compensation in connection with the giving of investment advice unless the compensation is fair and reasonable and is determined on an equitable basis [adequately disclosed to each customer in writing provided that the charges, commissions or other compensation consistent with rates set by a national securities exchange, when applied to transactions on that exchange, or by the Securities and Exchange Commission or a national securities association registered under the Securities Exchange Act of 1934 (15 U.S.C. §§78a-78kk), may not be deemed unreasonable].

CHAPTER 305. DENIAL, SUSPENSION, [AND] REVOCATION AND CONDITIONING OF REGISTRATION

§305.011. Supervision of agents, investment adviser representatives and employes.

(a) [Every broker-dealer and investment adviser registered or required to be registered under of the act shall exercise diligent supervision over the securities activities of its agents and employes. As evidence of compliance with the requirement to supervise the procedures and systems, the following shall be implemented by the broker-dealer or investment adviser:

(1) Every agent or employe shall be subject to the supervision of a supervisor.

(2) Written procedures, a copy of which shall be kept in each business office, shall be established, maintained and enforced and shall set forth the procedures adopted to comply with the following duties imposed by this section:

(i) The review and written approval by the designated supervisory of the opening of each new customer account.

(ii) The frequent examination of customer accounts to detect and prevent irregularities or abuses.

(iii) The prompt review and written approval of the handling of customer complaints.

(iv) The prompt review and written approval by the designated supervisory of all correspondence pertaining to the solicitation and execution of all securities transactions.

(v) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to his account and the frequent examination of discretionary accounts to prevent irregularities or abuses.

(3) Each office location shall be periodically inspected to insure that the written procedures are enforced.]

Every broker-dealer and investment adviser registered under Section 301 of the act (70 P.S. §1-301) shall exercise diligent supervision over the securities activities and securities related activities of its agents, investment adviser representatives and employees.

(1) Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the act and the regulations promulgated thereunder and to detect and prevent any violations of statutes, rules, regulations or orders described in section 305(a)(v)and (ix) of the act (70 P.S. §1-305(a)(v) and (ix)), the Conduct Rules of the National Association of Securities Dealers, Inc., or any applicable fair practice or ethical standard promulgated by the U.S. Securities and Exchange Commission or by a national securities exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§78a-78kk).

(2) Final responsibility for proper supervision shall rest with the broker-dealer and

investment adviser.

(b) Every issuer who employs agents registered under Section 301 of the act [in connection with a security or transaction not exempted by section 202 or 203 of the act (70 P.S. § 1-202 or 1-203)] shall be subject to the supervision requirements of subsection (a) with respect to those agents.

(c) As evidence of compliance with the supervisory obligations imposed by this section, every broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce written procedures designed to achieve compliance with the act and regulations promulgated thereunder and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

(1) The supervision of every agent, investment adviser representative, employee and supervisor by a designated qualified supervisor.

(2) Methods to be used to determine that all supervisory personnel are qualified by virtue of character, experience and training to carry out their assigned responsibilities.

(3) Methods to be used to determine the good character, business repute, qualifications, and experience of any person prior to making application for registration of that person with the Commission and/or hiring that person.

(4) The review and written approval by the designated supervisor of the opening of each new customer account.

(5) The frequent examination of customer accounts to detect and prevent violations, irregularities or abuses.

(6) The prompt review and written approval of the handling of customer complaints.

(7) The prompt review and written approval by the designated supervisor of all securities transactions and all correspondence pertaining to the solicitation or execution of all securities transactions.

(8) The review and written approval by the designated supervisor of the delegation by a customer of discretionary authority with respect to the customer's account and frequent examination of discretionary accounts to prevent violations, irregularities or abuses.

(9) The participation of each agent and investment adviser representative either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the broker-dealer or investment adviser at which compliance matters relevant to the activities of the agents and investment adviser representatives are discussed. Written records shall be maintained reflecting the interview or meeting.

(10) The periodic inspection of each location in Pennsylvania from which business is conducted to ensure that the written procedures and systems are enforced. In establishing an

inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature of complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location.

(i) The obligation of diligent supervision required by this section may require that one or more locations in Pennsylvania receive more than one inspection per year and that one or more of these inspections be unannounced.

(ii) It is the responsibility of the broker-dealer or investment adviser to determine the required number of inspections each location is to receive each year to ensure that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

(iii) Written records shall be maintained reflecting each inspection conducted.

(d) Any records required to be maintained under this section shall be maintained for five years, the first two years being in an easily accessible place. The retention an preservation of records may be on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(e) To the extent that this section imposes any record keeping requirement on an investment adviser registered under Section 301 of the act (70 P.S. §1-301), such record keeping requirement shall not apply if the investment adviser meets the following conditions:

(1) Has its principal place of business in a state other than this Commonwealth.

(2) Is licensed as an investment adviser in the state where it has its principal place of business.

(3) Is in compliance with the record keeping requirements of the state in which it has its principal place of business.

§305.019. Dishonest and unethical practices.

* * *

(b) Under section 305(a)(ix) of the act (70 P.S. §1-305(a)(ix)), the Commission may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or [associated person] investment adviser representative registration or censure a broker-dealer, agent, investment adviser or [associated person] investment adviser representative registrant if [that person] the registrant or applicant, or in the case of any broker-dealer or investment adviser, [an] any affiliate thereof, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(c) The Commission, for purposes of [issuing an order under] section 305(a)(ix) of the act, will consider the actions in paragraphs (1) - (3) to constitute dishonest or unethical practices in the

securities business or taking unfair advantage of a customer. The conduct described in paragraphs (1) - (3) is not exclusive. Engaging in other conduct inconsistent with the standards in subsection (a), such as forgery, embezzlement, non-disclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices or taking unfair advantage of a customer or former customer in any aspect of a tender offer also constitute grounds for denial, suspension, conditioning or revocation of any registration or application for registration of a broker-dealer, agent, investment adviser or [associated person registration] investment adviser representative.

(1) *Broker-dealers.* Includes the following actions:

* * *

(xxii) Failing to comply with investor suitability standards imposed as a condition of the registration of securities under section 205 or 206 of the act (70 P.S. §1-205 or 1-206) in connection with the offer, sale or purchase of a security in this Commonwealth.

(2) *Agents.* Includes the following actions:

* * *

(vi) Engaging in conduct specified in paragraphs (1)(ii) - (vi), (ix), (x), (xiv) - (xvii), [and] (xxi) and (xxii).

(3) *Investment advisers and investment adviser representatives.* Includes the following actions.

(i) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of a security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser or investment adviser representative.

(ii) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed under oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

* * *

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an employe of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(ix) Providing a report or recommendation to an advisory client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render advice or where an investment adviser or investment adviser representative orders [such a] the report in the normal course of providing advice.

* * *

(xi) Failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employe of the investment adviser [or its employes] which could reasonably be expected to impair the rendering of unbiased and objective advice including:

* * *

(B) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to the advice will be received by the investment adviser, the investment adviser representative or any employe of the investment adviser [or its employes].

* * *

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, where the investment adviser has custody or possession of the securities or funds when the adviser's action is subject to, and does not comply with, the requirements of [Rule 206(4)-2 under the Investment Advisers Act of 1940] §404.014 (relating to investment adviser custody or possession of funds or securities of customers).

(xvii) Failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of section 204A of the Investment Advisers Act of 1940 (15 U.S.C.A. §§80b-4a) and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder.

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-5)and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder. This shall apply to all investment advisers and investment adviser representatives registered under section 301 of the act (70 P.S. §1-301) notwithstanding whether the investment adviser is exempt from registration with the U.S. Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-3).

(xix) To indicate, in an advisory contract, any condition, stipulation, or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. §80b-6(4))and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder. This shall apply to all investment advisers and investment adviser representatives registered under section 301 of the act notwithstanding whether the investment adviser is exempt from registration with the U.S. Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940.

(xxi) Engaging in conduct or committing any act, directly, indirectly or through or by another person, which would be unlawful for such person to do directly under the provisions of this act or any rule, regulation or order issued thereunder.

(d) This section shall not apply to federally covered advisers unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act (70 P.S. §1-401(a) or (c) or 404).

§305.061. [Application to withdraw] Withdrawal of registration or notice filing.

(a) [An application to withdraw from registration as an investment adviser shall contain the information requested in and shall be made on Notice of Withdrawal From Registration as an Investment Advisor (Form ADV-W), or a successor form] The following shall apply to investment advisers that want to withdraw from registration as an investment adviser registered under Section 301 of the act (70 P.S. §1-301):

(1) For an investment adviser that seeks to withdraw from registration under Section 301 of the act because the investment adviser has become a federally covered adviser subject to exclusive registration with the U.S. Securities and Exchange Commission, the investment adviser shall file an amendment to the Uniform Application for Investment Adviser Registration (Form ADV) or successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission.

(2) For an investment adviser that seeks to withdraw from registration under Section 301 of the act because the investment adviser no longer transacts business in this Commonwealth as an investment adviser, the investment adviser shall file a Notice of Withdrawal From Registration as an Investment Adviser (Form ADV-W), or a successor form with the Commission or with an investment adviser registration depository designated by order of the Commission.

* * *

(c) [An application to withdraw as an associated person of an investment adviser or from registration as an agent of a broker-dealer or issuer shall contain the information requested in and shall be made on uniform Termination Notice for Securities/Futures Industry Registration, (Form U-5) or a successor form. Form U-5 shall be filed by the broker-dealer, issuer or investment adviser with whom the agent or associated person was employed within 30 days from the date of termination] To withdraw from registration as investment adviser representative, the investment adviser or federally covered adviser for whom the investment adviser representative was

employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration, (Form U-5) or a successor form thereto with the Commission or with an investment adviser registration depository designated by order of the Commission within 30 days from the date of termination.

(d) To withdraw from registration as an agent of a broker-dealer or an issuer, the broker-dealer or issuer shall Form U-5 or successor form thereto with the Commission within 30 days from the date of termination.

(e) To withdraw a notice filing, a federally covered adviser shall file a notice with the Commission or with an investment adviser registration depository designated by order of the Commission.

SUBPART D. FRAUDULENT AND PROHIBITED PRACTICES
CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

§404.010. Advertisements by investment advisers and investment adviser representatives

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of conduct within the meaning of section 404 of the act (70 P.S. §1-404), for any investment adviser or investment adviser representative, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind by any customer concerning the investment adviser or investment adviser representative concerning any advice, analysis, report or other service rendered to the customer by the investment adviser or investment adviser representative.

(2) Which refers, directly or indirectly, to past specific recommendations of the investment adviser or investment adviser representative which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets forth or offers to furnish a list of all recommendations made by the investment adviser or investment adviser representative for the 12 month period immediately preceding the date of the publication of the advertisement, and which:

* * *

(ii) Contains the following cautionary legend prominently displayed on the first page thereof in print or type as large as the largest print or type used in the body or text stating: "IT SHOULD NOT BE ASSUMED THAT RECOMMENDATIONS MADE IN THE FUTURE WILL BE PROFITABLE OR WILL EQUAL THE PERFORMANCE OF THE SECURITIES IN THIS LIST."

* * *

(4) Which contains any statement to the effect that any report, analysis [,] or other service will be furnished free or without charge, unless [such] the report, analysis[,] or other service actually is or will be furnished absolutely without condition or obligation [,directly or indirectly].

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading in any material respect, including the failure to disclose compensation (including free or discounted securities) received directly or indirectly in connection with making a recommendation concerning a specific security [;or].

(6) Which recommends the purchase or sale of any security unless the investment adviser or investment adviser representative simultaneously offers to furnish to any person upon request a tabular presentation of:

(i) The total number of shares or other units of [such] the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for [customers] clients.

* * *

(b) For the purpose of this [chapter] section, the term "advertisement" shall include any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, [or] by radio or television, or by electronic means, which offers:

* * *

(c) For the purpose of this section, the term "client" shall mean any person to whom the investment adviser or investment adviser representative has given investment advice for which the investment adviser or investment adviser representative has received compensation.

(d) This section shall not apply to federally covered advisers unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act (70 P.S. §1-401(a) or (c) or 404).

§404.011. Investment adviser brochure disclosure.

(a) Failure of an investment adviser to provide each advisory client or prospective advisory client the disclosure required by this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. §1-404).

(b) An investment adviser registered under Section 301 of the act (70 P.S. §1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as required by this section. The brochure and supplement(s) shall contain all the information required by Part 2 of Form ADV (CFR 279.1).

(c) An investment adviser shall deliver to each client and prospective client all of the following:

(1) a current firm brochure.

(2) a current brochure supplement(s) for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements required by this section shall be delivered:

(1) Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or

(2) At the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(e) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by subsection (b). If a client accepts a written offer, the investment adviser must send to that client the current brochure and supplement(s) within seven days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser must treat each of partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(h) Except as provided by paragraph (1), if the investment adviser is a sponsor of a wrap fee program, the brochure required to be delivered by subsection (b) to a client or prospective client of the wrap fee program shall be a wrap fee brochure containing all the information required by Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(1) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information specified in Part 2A Appendix 1 to Form ADV.

(2) A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under section.

(i) In accordance with Part 2 of Form ADV, the investment adviser shall amend its brochure and any brochure supplement and deliver the amendments to clients promptly when any information contained in the brochure or brochure supplement becomes materially inaccurate. The amendments must be promptly filed with the Commission or with an investment adviser registration depository designated by the Commission.

(j) Delivering a brochure or supplement in compliance with this section does not relieve the investment adviser of any other disclosure obligations which the investment adviser may have to its clients or prospective clients under the act or regulations adopted thereunder.

(k) For the purposes of this section, the following terms have the following meanings:

Client - Any person to whom the investment adviser has given investment advice and for which the investment adviser has received compensation.

Entering Into - In reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

Portfolio Manager - The process of determining or recommending securities transactions for any portion of a client's portfolio.

Sponsor - Any investment adviser that is compensated under a wrap fee program for administering, organizing or sponsoring the program, or for selecting or providing advice to clients regarding the selection of other investment advisers in the program.

Wrap fee program - Any program under which any client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

§404.012. Cash payment for client solicitation.

(a) Failure of an investment adviser to comply with the requirements of this section concerning cash payments for client solicitation shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. §1-404) unless the following conditions are met.

(b) No investment adviser may pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1) The investment adviser is registered under the act.

(2) The solicitor, unless exempted, is registered under the act.

(3) The cash fee is paid pursuant to a written agreement to which the investment adviser is

a party.

(4) The written agreement required by paragraph (3) shall:

(i) Describe the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor.

(ii) Contain an undertaking by the solicitor to perform its duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the act and the rules thereunder.

(iii) Require that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the following:

(A) The investment adviser's written disclosure statement required by §404.011 (relating to investment adviser brochure rule) or §404.012 (relating to wrap fee brochure); and

(B) A separate written disclosure document which contains the following:

(I) The name of the solicitor.

(II) The name of the investment adviser.

(III) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser.

(IV) A statement that the solicitor will be compensated for his solicitation services by the investment adviser.

(V) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor.

(VI) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of the advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(5) The investment adviser receives from the client prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement required by §404.011 (relating to investment adviser brochure disclosure) and the solicitor's written disclosure document required by paragraph (4)(iii)(B).

(c) For purposes of subsection (b)(4), this section shall not apply to an investment adviser where such cash fee is paid to a solicitor:

(1) With respect to solicitation activities for the provision of impersonal advisory services only;

(2) Who is one of the following:

(i) A partner, officer, director or employee of such investment adviser, or

(ii) A partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser: Provided, that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, is disclosed to the client at the time of the solicitation or referral.

(d) Nothing in this section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under the law.

(e) For purposes of this section, the following terms shall have the following meanings:

Client - Any prospective client.

Impersonal advisory services - Investment advisory services provided solely by means of one of the following:

(i) Written materials or oral statements which do not purport to meet the objectives or needs of the specific client.

(ii) Statistical information containing no expressions of opinions as to the investment merits of particular securities.

(iii) Any combination of the foregoing services.

Solicitor - Any person or entity who, for compensation, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

§404.013 Investment adviser custody or possession of funds or securities of clients.

(a) Failure of an investment adviser not registered as a broker dealer that has custody or possession of funds or securities in which any client has a beneficial interest to comply with the requirements of this section shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P.S. §1-404).

(b) An investment adviser registered under Section 301 of the act (70 P.S. §1-301) that has custody or possession of any funds or securities in which any client has any beneficial interest shall:

(1) Notify the Commission in writing that the investment adviser has or may have custody. Such notification shall be given on Form ADV.

(2) Segregate the securities of each client marked to identify the particular client having the beneficial interest therein and held in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) Deposit all client funds in one or more bank accounts containing only client's funds.

(4) Maintain the accounts described in paragraph (3) in the name of the investment adviser as agent or trustee for such clients.

(5) Maintain a separate record for each such account described in paragraph (3) showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.

(6) Immediately after accepting custody or possession of funds or securities from any client, notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser gives written notice thereof to the client.

(7) At least once every three months, send each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of each such period and all debits, credits and transactions in the client's account during such period.

(8) At least once every calendar year, engage an independent certified public accountant or independent public accountant to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 days after each examination.

(c) For purposes of this section, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

SUBPART F. ADMINISTRATION

CHAPTER 603. ADMINISTRATIVE FILES

§603.031. Public inspection of records.

* * *

(b) The Commission may withhold from public inspection [for time as in its judgment is necessary, public records the disclosure of which the Commission determines would be unfairly prejudicial to a person or his personal safety as determined by a court of competent jurisdiction] those records which it determines are excluded from the definition of public records in 65 P.S. §66.1(2).

* * *

(f) The Commission has determined to treat confidential the following information which shall not be available for public inspection under any provision of the act and which the Commission deems excluded from the definition of public records in 65 P.S. §66.1(2):

(1) Social security number, date of birth and home address of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor form thereto required to be filed with the Commission under §303.013 (relating to agent registration procedures) or §303.014 (relating to investment adviser representative registration procedures).

(2) Social security number, date of birth and home address of an individual registered or applying for registration as an investment adviser or filing a notice as a federally covered adviser that appears on the Uniform Application for Investment Adviser Registration (Form ADV) or successor form thereto required to be filed with the Commission or an investment adviser registration depository designated by order of the Commission pursuant to §303.012 (relating to investment adviser registration procedure) or §303.015 (relating to notice filing for federally covered advisers).

(3) Social security number, date of birth and home address of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a federally covered adviser that appears on the Uniform Application for Broker-Dealer Registration (Form BD) or Form ADV or successor forms thereto. For purposes of this section, the term principal shall have the meaning in §303.012(e)(relating to investment adviser registration procedure).

Form prepared by the Commission in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Commission, the General Assembly and the Governor of objections raised.

Availability in Alternative Formats

This proposed rulemaking may be made available in alternative formats upon request. The Commission also will receive comments on this proposed rulemaking in alternative formats. TDD users should use the AT&T Relay Center (800) 854-5984. To make arrangements for alternative formats, contact Joseph Shepherd, ADA Coordinator, at (717) 787-6828.

Contact Person

Interested persons are invited to send comments concerning the proposed amendments within 30 days of publication of this notice to G. Philip Rutledge, Deputy Chief Counsel, Securities Commission, Eastgate Building, 1010 N. Seventh Street, 2nd Floor, Harrisburg, PA 17102-1410, (717) 783-5130. G. Philip Rutledge also is the contact person for an explanation of the proposed amendments.

M. JOANNA CUMMINGS,
Secretary

Fiscal Note: 50-114. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 64. SECURITIES

PART I. SECURITIES COMMISSION

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

§ 202.070. Securities issued in connection with employe benefit plans.

(a) An issuer may rely on the exemption in section 202(g) of the act (70 P. S. § 1-202(g)) if **[** one **]** any of the following **[** applies **]** apply:

(1) The securities are being issued in connection with a stock option, purchase, savings, pension, profit-sharing or similar compensatory benefit plan or compensatory contract for employes.

(2) The securities are being issued in good faith reliance that the transaction **[** would qualify **]** qualifies for an exemption under Securities and Exchange Commission Rule 701 (17 CFR 230.701) (relating to exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation) **as made effective April 7, 1999, in SEC Release 33-7645.**

[(2) **]** (3) The securities **[** have **]** being issued meet **the following conditions:**

(i) Have been registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(ii) Are issued in a transaction that meets the requirements of subsections (c) and (e) of Securities and Exchange Commission Rule 701 (17 CFR 230.701(c) and (e)).

(b) The exemption contained in section 202(g) of the act **[** (70 P. S. § 1-202(g)) **]** may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) **[or a transaction made in violation of the antifraud provision of Part IV of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited conduct).**

(c) A nonmaterial amendment to an employe benefit plan does not affect the applicability of section 202(g) of the act (70 P. S. § 1-202(g)) and this section to the plan. For purposes of this subsection, by way of illustration and not of limitation, an amendment which merely extends the term of an employe benefit plan shall be deemed a nonmaterial amendment].

CHAPTER 203. EXEMPT TRANSACTIONS

§ 203.101. Mortgages.

* * * * *

(b) The exemption **contained** in section 203(j) may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act **[(70 P. S. § 1-201) or a transaction made in violation of the antifraud provisions of Part IV of the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices)].**

§ 203.171. Liquidations, dividends and distributions.

The phrase "bona fide distribution" as used in section 203(q) of the act (70 P. S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration provisions of section 201 of the act (70 P. S. § 1-201) **[or made in violation of the antifraud provisions of the act (70 P. S. §§ 1-401—1-409) or Subpart D (relating to fraudulent and prohibited practices)].**

§ 203.185. Offers prior to effectiveness of registration by qualification exempt.

* * * * *

(b) The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act (70 P. S. § 1-201) **[or a transaction made in violation of the antifraud provisions of the act (70 P. S. §§ 1-401—1-409) or Subpart D (relating to fraudulent and prohibited practices)].**

§ 203.186. Employe takeovers.

* * * * *

(b) The exemption contained in this section may not be available for a transaction whose primary purpose is avoidance of the provisions of section 201 of the act **[(70 P. S. § 1-201) or a transaction made in violation of the antifraud provisions of Part IV the act (70 P. S. §§ 1-401—1-409) and Subpart D (relating to fraudulent and prohibited practices)].**

§ 203.192. SEC Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P. S. § 1-203(r)), the Commission finds it neither necessary nor ap-

propriate for the protection of investors to require registration under section 201 of the act (70 P. S. § 1-201) for the offer and sale of securities by an issuer which are exempt from registration under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa) pursuant to Rule 801 or 802 promulgated by the United States Securities and Exchange Commission (17 CFR 230.801 or 230.802) (relating to exemption in connection with a rights offering; and exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers).

CHAPTER 205. REGISTRATION BY COORDINATION

§ 205.021. Registration by coordination.

(a) Except as specified in [this section] subsection (b), registration by coordination may be initiated by filing with the Commission within the specified time period:

* * * * *

(2) A properly executed Uniform Application to Register Securities (Form U-1) [prepared by the Committee on State Regulation of Securities of the Section on Corporation, Banking and Business Law of the American Bar Association] and relevant exhibits thereto.

* * * * *

(b) In [order to effect the purposes of the act, the Commission requires, as a condition of registration, that for classes of] addition to filing the information and form required in subsection (a), issuers in offerings [specified in subsection (c), issuers] being made in reliance on SEC Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) shall execute and file with the Commission within the specified time period the form, designated by the Commission as Form [205] R, which follows [this section] subsection (d).

(c) [Except as to classes of offerings set forth in subsection (d), the filing of Form 205 is required for the following classes of offerings:

(1) Offerings which do not involve a firm underwriting commitment by a broker-dealer for the aggregate amount of securities to be offered to the public.

(2) Offerings made under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b) (1980)).

(3) Offerings made by or on behalf of issuers which have not been in existence for the 3-year period preceding the date of filing of the registration statement or offering circular.

(d) Filing of Form 205 is not required for classes of offerings in which the issuer:

(1) Has filed a registration statement with the Commission designated as Form S-2 or S-3 by the SEC.

(2) Is a wholly-owned subsidiary of an entity whose securities are exempt from registration under section 202(f) of the act (70 P. S. § 1-202(f)).

(3) Is a wholly-owned subsidiary of a reporting company, as that term is defined in section 102(q) of the act (70 P. S. § 1-102(q)).

(4) Has filed a registration statement with the Commission designated as Form F-7, F-8, F-9 or F-10 by the Securities and Exchange Commission (SEC).

(5) Has filed a registration statement with the Commission for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the three highest rating categories by one or more nationally recognized statistical rating organizations.

(6) Is an open-end or closed-end investment company, face amount certificate company or unit investment trust, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(e)] The 10-day registration statement filing requirement in section 205(c)(2)(ii) of the act (70 P. S. § 1-205(c)(2)(ii)) shall be reduced to 5 days for the following offerings:

(1) [Five days for a class of] An offering for which a registration statement has been filed with the Commission designated as Form S-2 or S-3 by the SEC.

(2) [Five days for a class of] An offering for which a registration statement has been filed with the Commission designated as Form F-7, F-8, F-9 or F-10 by the SEC.

(3) [Five days for a registration statement filed] An offering for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the top three rating categories by one or more Nationally recognized statistical rating organizations.

[(f) Pricing information shall be deemed to have been filed with the Commission and the requirement of section 205(c)(2)(iii) of the act met if the Commission is notified of the maximum offering price at which the securities may be sold and the maximum proposed underwriting discounts and commissions. The maximum proposed offering price shall be the price used to determine the maximum filing fee to be paid under section 602 of the act (70 P. S. § 1-602).

(g) An applicant required to file Form 205] (d) During the period of the offering, the issuer shall take steps necessary to ensure that all material information contained in its Form [205] R remains current and accurate in all material respects. [In the event that] If a material statement made in the form, or [in attachments] any attachment thereto, becomes materially incorrect or inaccurate, the [applicant] issuer shall file an amendment [on Form AM] with the Commission in accordance with § 609.011 (relating to amendments filed with the Commission) within [10] 5 business days of the occurrence of the event which required the filing of the amendment.

[(h) For the purpose of subsection (c)(3), an issuer shall be deemed to have been in existence for less than 3 years if the issuer was organized within 3 years prior to the date of filing Form 205 with the Commission. A corporation shall be deemed to have

been in existence for less than 3 years if the issuer was incorporated or reincorporated within 3 years prior to the date of filing with the Commission, unless the reincorporation was effected solely for the purpose of change of corporate name or state of incorporation.]

(*Editor's Note*: As part of the proposed rulemaking, the Commission proposes to delete the text of Form 205, which appears at 64 Pa. Code pages 205-3—205-7, serial pages (262433)—(262437). The following Form R is new. It has been printed in regular type to enhance readability.)

TDD/AT&T Relay Center 1-800-654-5894

PSC FORM R EFF: _____

SUPPLEMENT TO FORM U-1

PENNSYLVANIA SECURITIES COMMISSION
EASTGATE OFFICE BUILDING, 2ND FLOOR, 1010 N. 7TH Street
HARRISBURG, PA 17102-1410
(717) 787-5401 OR (1-800-600-0007 in PA)

APPLICATION UNDER THE
THE PENNSYLVANIA SECURITIES ACT OF 1972
TO REGISTER SECURITIES UNDER:
SECTION 205 - REGISTRATION BY COORDINATION OR
SECTION 206 - REGISTRATION BY QUALIFICATION

Under Regulation 603.011, a document is not deemed filed with the Pennsylvania Securities Commission ("Commission ") unless complete and properly executed in all material respects.

WHO MUST FILE: Issuers making application to register securities in Pennsylvania under Section 205 or Section 206 of the Pennsylvania Securities Act of 1972 ("Act").

WHEN AND WHERE TO FILE: Form R must be filed at the Commission's Harrisburg Office at the above address. For Registration by Coordination, the Form should be filed with the Commission at the same time the Issuer makes a filing with the Securities and Exchange Commission ("SEC"). For Registration by Qualification, no offers or sales of securities may be made in Pennsylvania until the registration statement is declared effective by the Commission.

NOTE: Under 64 Pa. Code § 604.011, a facsimile transmission of any materials to the Commission does not constitute a filing with the Commission.

GENERAL INSTRUCTIONS

1. One manually signed copy, and one photocopy of this Form, each with all attachments, shall be filed with the Commission. If mailed, it is advisable to send it by registered or certified mail, postage prepaid, return receipt requested.
2. Typewrite or print all answers in the space provided. Answer each item completely. An answer of "not applicable" is inappropriate. If the space is insufficient, attach a schedule to the Form and make reference to each item included in the schedule.
3. This Form must be manually signed by the issuer. If the issuer is a corporation, it should be signed in the name of the corporation by an executive officer duly authorized; if a partnership, it should be signed in the name of the partnership by a general partner; and if an unincorporated association or other organization not a partnership, this Form should be signed in the name of such organization by a person responsible for the direction or management of its affairs.
4. In the event that, at any time from the date of the filing of the Form with the Commission until the conclusion of the offering, any material statement made in the Form or in any attachment thereto becomes incorrect or inaccurate in any material respect, the issuer shall file an amendment with the Commission within 5 business days of the occurrence of the event which required the filing of such amendment.
5. An issuer may incorporate by reference information contained in any document attached hereto or previously filed with the Commission. Any such reference should be to *the page and paragraph number or other specified portion* of the document where the information is located.
6. The appropriate filing fee required in Section 602(b.1)(ii) or (iii) must accompany the filing of this Form. Checks are to be payable to the "Commonwealth of Pennsylvania."

   FILING FEE FOR SECTION 205:

   Under Section 602(b.1)(ii) of the Act, the filing fee for a registration by coordination is based upon the maximum aggregate offering price at which such securities are to be offered in Pennsylvania during the effective period of the registration statement:

   (A) Less than $10,000,000 $500

   (B) $10,000,000 or more $750

FILING FEE FOR SECTION 206:

Under Section 602(b.1)(iii) of the Act, the filing fee for a registration by qualification is $350 plus 1/20 of 1% of the maximum aggregate offering price at which securities are to be offered in Pennsylvania, during the effective period of the registration up to a maximum filing fee of $2,150.

7. Your attention is directed to the Commission's Prospectus Guidelines for preparation of a prospectus; all items contained therein should be covered to the extent applicable.

8. Submit herewith as part of this Form the following documents in addition to documents requested in Number 8 of Form U-1 (documents on file may be incorporated by reference).

   (a) Five copies of a prospectus prepared in accordance with the applicable prospectus guidelines. This includes the copy required by Form U-1.

   (b) An opinion of counsel as to whether the securities which are the subject of this offering will be, when sold and paid for in accordance with this offering, validly issued and outstanding, fully-paid and non-assessable and, if debt securities, will constitute a binding obligation.

   (c) Copies of any voting trust agreement among or affecting the management of Issuer or otherwise described in the prospectus, to the extent known by and available to Issuer.

   (d) Copies of every material contract, whether or not made in the ordinary course of business, if:

      (i) It is specifically referred to in the prospectus.

      (ii) The issuer's business is substantially dependent thereon (such as a license or requirements contract).

      (iii) It involves acquisition or sale of assets for consideration exceeding 15% of all fixed assets of Issuer and its subsidiaries.

      (iv) It is a lease for a significant part of the property owned and/or occupied by Issuer.

      (v) It is with the underwriter.

   (e) The consent of each person named in the prospectus as an expert, or on whose opinion or certification any information was included therein, to the use of such person's name and opinion or certification.

   (f) For an offering made pursuant to Section 504(d) of the Act and Regulation 504.060 promulgated thereunder, provide in columnar form the name and address of each Pennsylvania purchaser, the date of sale, and the dollar amount of securities purchased.

9. Your attention is further directed to the following applicable provisions of the Act:

   (a) Advertisements (Section 606(c), Regulation 606.031);

   (b) Financial reports to security holders (Section 606(a), Regulation 606.011);

   (c) Investor withdrawal rights (Section 207(m)(1), Regulation 207.130);

   (d) Record keeping requirements (Section 209(a), Regulation 209.010(a));

   (e) Post-effective reporting requirements (Section 209(c), Regulation 209.010(b) & (c)).

   (6) Increases in offering amount (Section 207(l)).

   (7) Escrow of promotional shares and escrow of proceeds (Section 207(g), Regulations 207.071 and 207.072).

10. Please remove this instruction sheet before filing this Form.

EACH PERSON COMPLETING THIS FORM OR PROVIDING INFORMATION TO BE INCLUDED IN THIS FORM SHOULD BE FAMILIAR WITH THE PENALTIES CONTAINED IN THE ACT, AND ALL REGULATIONS ADOPTED THEREUNDER FOR MAKING FALSE OR INCOMPLETE STATEMENTS IN CONNECTION WITH THE SALE OF A SECURITY OR IN ANY FILING WITH THE COMMISSION.

PSC FORM R
SUPPLEMENT TO FORM U-1 EFF: _____

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION
APPLICATION TO REGISTER SECURITIES UNDER
THE PENNSYLVANIA SECURITIES ACT OF 1972

(CHECK ONLY ONE)
SECTION 205 - REGISTRATION BY COORDINATION [ ]
SECTION 206 - REGISTRATION BY QUALIFICATION [ ]

1. Legal Status of the Issuer
   (A) Exact name of Issuer: _____
   (B) State and Date of incorporation or formation: _____
   State Date

2. Addresses
   (A) Address of principal office of Issuer: _____
   Number and Street
   City State Zip Code Telephone No.
   (B) Address of principal office of Issuer in Pennsylvania (if other than listed in (A)):
   Number and Street
   City State Zip Code Telephone No.
   (C) Name and address of person to whom correspondence regarding this filing should be sent:
   Name Title Number and Street
   City State Zip Code Telephone No.
   (D) Name and address of counsel to Issuer (if other than listed in (C)):
   Name Title Number and Street
   City State Zip Code Telephone No.

3. Information about the Executive Officers of the Issuer
   (A) State the names and addresses of persons holding any of the following positions with the Issuer:
   (i) General partner
   (ii) Promoter (as defined in Section 102(o) of the Act)
   (iii) Manager (if a limited liability company)
   (iv) President
   (v) Chief executive officer
   (vi) Chief operating officer
   (vii) Chief financial officer
   (viii) Director of the Issuer who owns 5% or more of any class of voting equity securities of the Issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111).
   (B) Indicate if any person described in (A) currently is registered as an agent under Section 301 of the Act or as a principal of a broker-dealer registered under Section 301 of the Act.
   NO _____ YES _____
   If YES, provide the individual's name, employer and Central Registration Depository number.

4. Prior Disciplinary History

(A) Indicate if any person described in Item 3(A) has been convicted of any crime or made the subject of any sanction described in Section 305(a)(ii)-(ix) of the Act.

NO _____ YES _____ If YES, describe fully.

(B) Indicate if any person described in Item 3(A) has been the subject of a Commission order issued under Section 512 (Statutory Bars) or Section 513 (Rescission Offer) of the Act or an order of a court of competent jurisdiction under Section 509(c) of the Act (Civil Contempt).

NO _____ YES _____ If YES, describe fully.

5. Previous Sales of Securities in Pennsylvania

(A) By the Issuer

Describe all sales of securities made in Pennsylvania during the past two years that directly or indirectly benefitted the Issuer. Include securities issued in exchange for property, services, or other securities and new securities resulting from the modification of outstanding securities. In each case, state:

(i) The date of sale and description of the securities sold;

(ii) Underwriting or selling fees or commissions paid and to whom paid;

(iii) Section of the Act or regulation relied upon for the offer and sale of securities.

NO _____ YES _____

(B) By a person related to the Issuer

Within the period of two years prior to the date of this Form, did any person described in Item 3(A) hold a position as a general partner, promoter (as defined in Section 102(o) of the Act), manager (if a limited liability company), president, chief executive officer, chief operating officer, chief financial officer or a director with a 5% or more ownership of any class of voting equity securities of the issuer (exclusive of any beneficial interest in a voting shareholder which is an institutional investor as defined in Section 102(k) of the Act and Regulation 102.111) with *another* person, not the Issuer, at the time when that person sold securities in Pennsylvania for which a filing with the Commission was required?

NO _____ YES _____

If YES, provide the following information:

(i) Name of the other person that sold the securities;

(ii) The position held with the other person;

(iii) Section of the Act or regulation relied upon for the offer and sale of securities;

(iv) If the proceeds from the sale were paid directly or indirectly to, or used directly or indirectly for, the benefit of the Issuer, please describe in detail.

6. If an independent accountant has been engaged as the principal accountant to audit the most recent financial statement of Issuer or, where Issuer is a partnership, the general partner(s) of Issuer, and such accountant was not the principal accountant for the previous fiscal year's certified financial statements, state the date upon which the successor accountant was engaged and whether preceding such engagement there were any disagreements with the predecessor accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements, if not resolved to the satisfaction of the predecessor accountant would have caused him to make reference in connection with his opinion to the subject matter of the disagreement.

In response to Items 7—16, please provide the following information or refer to the page of the prospectus where complete information concerning each item may be found.

7. (A) If any non-cash consideration is to be paid for the securities offered, describe fully and indicate the method of valuation.

(B) State whether any adverse order, judgement or decree has been entered, or any proceeding is pending, before the United States Securities and Exchange Commission or any court in connection with the securities included within this registration statement, or other securities of the same kind or class.

(C) State the names of all underwriters and broker-dealers proposing to sell or offer these securities for sale in Pennsylvania. (If all such names are not known at the time of filing this Form, a supplemental list may be filed prior to or after effectiveness; provided that no person may participate in this offering as an underwriter or dealer in Pennsylvania until notice of such fact has been filed with the Commission.)

(D) With respect to any person receiving compensation who is not a broker-dealer registered under Section 301 of the Act, explain why the person is not a promoter as that term is defined in Section 102(o) of the Act.

8. State the class of person to whom this offering will be restricted, if any. State also whether any promoter, officer, director or controlling persons or other person occupying a similar position or performing a similar function, including the spouse, minor children and relatives of such person living in the same household has committed himself or herself to purchase any securities in this offering. If so, describe the nature of such commitment.

9. Itemize below all expenses proposed to be incurred in this offering other than underwriting discounts, including without limitation, legal, accounting and engineering fees, printing and engraving costs, expert and transfer agent fees, state and Federal taxes, and other registration fees. Indicate the proportion of such expenses to be borne by each person selling shares other than the Issuer.

10. If any expert named in the prospectus as having prepared or certified any part thereof or any counsel named therein was employed for such purpose on a contingent fee basis, or, at the time of such preparation or certification has ownership or beneficial interest in Issuer or any of its parents, affiliates or subsidiaries, or was affiliated with the Issuer as a promoter, voting trustee, director, officer, employe or underwriter, describe the nature of such contingent fee, interest or affiliation.

11. List all parents, subsidiaries and other entities affiliated with the Issuer, indicating as to each the state of incorporation or formation and the percentage of voting securities owned or other basis of control exercised by the Issuer's immediate parent or general partner(s). Furnish a diagram where necessary for a clear understanding of relationships between entities. Indicate, where applicable: (i) entities for which separate financial statements are being filed, (ii) entities included in group financial statements filed for unconsolidated subsidiaries, and (iii) entities for which no financial statements are filed, indicating the reason therefor.

12. If, within the last five years, the Issuer or, where the Issuer is a partnership, the general partner(s) of the Issuer or any of its/their majority-owned subsidiaries or affiliated entities which have a common general partner with the Issuer has acquired or disposed of a material amount of assets from or to a promoter, officer, director or other person who owns beneficially more than ten percent of any class of securities of the Issuer, furnish the following information: (i) Identity of such promoter, officer, director or ten percent beneficial owner from whom the assets were acquired or to whom they were sold; (ii) Date and manner of the acquisition or disposition and a brief description of the assets; (iii) The nature and amount of the consideration given or received therefrom; and (iv) Method used in valuing the consideration.

13. If, within the past two years, there has been any material default in the payment of principal, interest, sinking or purchase fund installment, or any other material default (any of which were not cured within thirty days of occurrence), with respect to any indebtedness of the Issuer or, where the Issuer is a partnership, the general partner(s) of the Issuer, or any of its/their wholly-owned subsidiaries or affiliated entities which have a common general partner with the Issuer identify the indebtedness and state the nature of the default.

14. Provide the following information as to all securities of the Issuer sold within the past two (2) years by the Issuer or proposed to be issued to a promoter, officer, director or other person who owns beneficially ten percent of any class of securities of the Issuer whether they were reacquired by the Issuer or were new issues; securities issued in exchange for property, services or other securities; and new securities resulting from the modification of outstanding securities:

    (A) Name of each such promoter, officer, director or ten percent beneficial owner;

    (B) Date of sale, type, class and amount of securities sold;

    (C) Aggregate and per share price of securities sold; as to any securities sold for other than cash, state the aggregate amount of consideration received by Issuer and the method for valuing such consideration;

    (D) Nature of the transaction;

    (E) State whether the securities were: (i) legended and stop-transfer instructions given in connection therewith, or (ii) escrowed, and if so, the terms of the applicable escrow agreement.

15. Furnish information as to all direct remuneration paid by the Issuer and its subsidiaries (on an annualized basis) to each executive officer of the Issuer during its last fiscal year or proposed to be paid under any plan or arrangement during its next fiscal year. The term "executive officer" means the president, general partner, secretary, treasurer, any vice-president in charge of a principal business function (such as sales, administration or finance) and any other person occupying a similar status or performing similar functions for the Issuer.

16. Furnish information as to all qualified and non-qualified options to purchase any securities from Issuer or any of its subsidiaries which were granted or proposed to be granted to or exercised by any executive officer, promoter, director or affiliate of Issuer during the preceding five years. The term "executive officer" shall be as defined in Item 15. The term "options" as used in this item includes all options, warrants or rights to acquire such securities.

17. Issuer undertakes:

(A) To send its financial statements, which are audited or reviewed in accordance with generally accepted accounting principles as provided by Section 606(a) of the Act and the regulations adopted thereunder, to each holder of the class of securities sold in this offering not less than annually within 120 days after the close of Issuer's fiscal year.

(B) To keep and maintain the books and records required by Section 209 and the regulations adopted thereunder and will authorize the person having custody of such books and records to make them available to the Commission.

18. Affirmation

By executing this Form on behalf of the Issuer, the signatory affirms that:

(A) The undersigned is familiar with the provisions of Section 205 or Section 206 of the Act and the regulations adopted thereunder.

(B) The statements made in this Form, including all attachments hereto, are not incomplete in any material respect or false or misleading with respect to any material fact.

IN WITNESS WHEREOF, this Form has been duly executed on _____.
(Insert Date)

_____
(NAME OF ISSUER)

By: _____

_____
(Title)

§ 206.010. Registration by qualification.

(a) Except as specified in **[this section] subsection (b)**, registration by qualification shall be initiated by filing with the Commission:

* * * * *

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant exhibits**[, prepared by the Committee on State Regulation of Securities of the Section on Corporation, Banking and Business Law of the American Bar Association]**.

* * * * *

(b) In **[order to effect the purposes of the act, the Commission requires, as a condition of registration, that for Classes of] addition to the information and form required in subsection (a), issuers in the following** offerings **[specified in subsection (c), issuers]** shall execute and file with the Commission **[the form, designated by the Commission as Form 206, which follows this section.] Form R as set forth in § 205.021 (relating to registration by coordination):**

(1) Offerings made in reliance on section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(4).

(2) Offerings made in reliance on section 3(a)(11) of the Securities Act of 1933.

(3) Offerings made in reliance on Rule 504 of SEC Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on SEC Regulation A promulgated under section 3(b) of the Securities Act of 1933.

(c) **[Except as to classes of offerings set forth in subsection (d), the filing of Form 206 is required for the following classes of offerings:**

(1) Offerings which do not involve a firm underwriting commitment by a broker-dealer for the aggregate amount of securities to be offered to the public.

(2) Offerings made under an exemption from registration under the Securities Act of 1933 (15 U.S.C.A. §§ 77a—77aa).

(3) Offerings made by or on behalf of issuers which have not been in existence for the 3-year period preceding the date of the filing of the registration statement with the Commission.

(d) Filing of Form 206 is not required for classes of offerings in which the issuer:

(1) Is an open-end or closed-end investment company, face amount certificate company or unit investment trust as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1—80b-21).

(2) Is a wholly-owned subsidiary of an entity whose securities are exempt from registration under section 202(f) of the act (70 P. S. § 1-202(f)).

(3) Is a wholly-owned subsidiary of a reporting company, as that term is defined in section 102(q) of the act (70 P. S. § 1-102(q)).

(4) Has filed a registration statement with the Commission designated as Form S-2 or S-3 by the Securities and Exchange Commission (SEC).

(5) Has filed a registration statement with the Commission designated as Form F-7, F-8, F-9 or F-10 by the SEC.

(6) Has filed a registration statement with the Commission for pass-through certificates evidencing undivided interests in trusts consisting of, or debt securities secured by, specific categories of receivables which securities, as a condition of issuance, are to be rated in one of the three highest

rating categories by one or more Nationally recognized statistical rating organizations.

(e)] Financial statements used in connection with an offering under section 206 shall meet the requirements of section 609(c) of the act (70 P. S. § 609(c)) and [**the regulations adopted thereunder**] **Chapter 609 (relating to regulations, forms and orders)** or as the Commission shall, by order, require.

[**(f)** An] **(d) During the period of the offering, the** issuer required to file Form [**206**] **R** shall take steps necessary to ensure that **all** material information contained in its Form [**206**] **R** remains current and accurate. If a material statement made in the form or [**in attachments**] **any attachment** thereto becomes incorrect or inaccurate, the issuer shall file an amendment [**on Form AM**] with the Commission **in accordance with § 609.011 (relating to amendments filed with the Commission)** within [**10**] **5** business days of the occurrence of the event which required the filing of the amendment.

[(g) For the purpose of subsection (c)(3), an issuer shall be deemed to have been in existence for less than 3 years if the issuer was organized within 3 years prior to the date of filing Form 206 with the Commission. A corporation shall be deemed to have been in existence for less than 3 years if the issuer was incorporated or reincorporated within 3 years prior to the date of filing with the Commission, unless the reincorporation was effected solely for the purpose of change of corporation name or state of incorporation.]

(*Editor's Note*: As part of this proposed rulemaking, the Commission is proposing to delete Form 206, which appears at 64 Pa. Code pages 206-3—206-9 (serial pages (200077)—(200082) and (252153).)

Subpart C. REGISTRATION OF BROKER-DEALERS, AGENTS, [AND] INVESTMENT ADVISERS AND **INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY COVERED ADVISERS**

CHAPTER 301. REGISTRATION REQUIREMENT

§ 301.201. (Reserved).

(*Editor's Note*: As part of this proposed rulemaking, the Commission is proposing to delete § 301.021, which appears at 64 Pa. Code pages 301-2 to 301-5 (serial pages (252888) to (252891).)

CHAPTER 302. EXEMPTIONS

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

* * * * *

(b) For purposes [**in**] **of** this section, the following terms [**shall**] have the following meanings:

* * * * *

Networking arrangement or brokerage affiliate arrangement—A contractual arrangement between a broker-dealer registered under section 301 of the act and a financial institution whereby the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public, which transactions are effected on, or emanate from, the premises of a financial institution [**where retail deposits are taken**].

CHAPTER 303. REGISTRATION PROCEDURE

§ 303.012. Investment adviser registration procedure.

(a) An application for initial registration as an investment adviser shall contain the information requested in and shall be made on the Uniform Application for Investment Adviser Registration (Form ADV), or a successor form. The applicant shall complete and file with the Commission **or with a central registration depository designated by order of the Commission** one copy of the form accompanied by the [**requisite filing fee, exhibits and the statement of financial condition required by subsection (b) or (c)**] **filing fee in section 602(d.1) of the act (70 P. S. § 1-602(d.1)), the compliance assessment in section 602.1(a)(4) of the act and any exhibits required by this section.**

(b) [**Except as**] As set forth [**in paragraphs (1) and (2), each**] **in this section, the following statements of financial condition shall accompany an** application for initial registration as an investment adviser [**shall be accompanied by a statement of financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard compilation report, standard review report or standard audit report compiled, reviewed or examined by an independent certified public accountant or public accountant. The statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recent fiscal year is unavailable, and if the application is filed within 14 months of the end of the preceding fiscal year. In addition, if the date of the most recent complied, reviewed or audited statement is more than 45 days prior to the date of filing, the applicant also shall file a statement of financial condition, which may be unaudited and may be prepared by management, as of a date within 45 days of filing.]:**

(1) [**In the case of an**] **An** applicant [**who**] **that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of $500 per client shall file an audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles and accompanied by a standard audit report containing an unqualified opinion of an independent certified public accountant or an independent public accountant. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a**

(v) Advances or loans to stockholders and officers in the case of a corporation; members and managers in the case of a limited liability company; and advances or loans to partners in the case of a partnership.

Principal place of business—The meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

(d) For investment advisers registered or required to be registered under the act [who maintain a minimum tangible net worth requirement rather than a minimum net capital requirement], the Commission may require that a current appraisal be submitted [in order] to establish the worth of an asset being calculated under the [tangible] net worth formulation.

(e) Subsection (a)(2) does not apply to an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, SEC Rule 15c3-1.

(2) A member of a National securities exchange whose members are exempt from SEC Rule 15c3-1 under subsection (b)(2) thereof and the broker-dealer is in compliance with all rules and practices of the exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

§ 303.051. Surety bonds.

(a) [An issuer who employs agents in connection with any security or transaction not exempted by section 202 or 203 of the act (70 P. S. § 1-202 or § 1-203) shall furnish and maintain for the entire registration period a surety bond in the amount of $10,000 issued by a corporate surety authorized to transact business in this Commonwealth.] The following applies with respect to the filing of a surety bond with the Commission by an investment adviser:

(1) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) may, by order of the Commission, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest $5,000. The surety bond shall be [submitted to] filed with the Commission on Uniform Surety Bond Form (Form U-SB) or successor form thereto[.]; shall be subject to the claims of all clients of the investment adviser regardless of the client's state of residence; and shall be issued by a person licensed to issue surety bonds in this Commonwealth.

(2) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with paragraph (1) unless the investment adviser meets the following qualifications:

(i) Is registered as an investment adviser in that state.

(ii) Is in compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(3) For purposes of this section, the term "principal place of business" has the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).

* * * * *

(b) A broker-dealer [or investment adviser] registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78kk) may, by order of the Commission, be permitted to have and maintain for the registration period a surety bond in the amount[, of the type, and in the form described in subsection (a) in order to facilitate compliance with the broker-dealer minimum net capital requirements as set forth in § 303.041 (relating to broker-dealer capital requirements) or the investment adviser minimum net capital or minimum net worth requirements set forth in § 303.042 (relating to investment adviser capital requirements] of the net capital deficiency rounded up to the nearest $5,000. The surety bond shall:

(1) Be filed with the Commission on Form U-SB or successor form thereto.

(2) Be subject to the claims of all clients of the broker-dealer regardless of the client's state of residence.

(3) Be issued by a person licensed to issue surety bonds in this Commonwealth.

(c) [The Commission may require an issuer,] Upon request of the Commission, a broker-dealer or investment adviser [to demonstrate evidence of the existence of a surety bond at the time of initial registration and at another time the Commission may request] shall provide evidence of the existence of a surety bond.

[(d) The Commission may, upon written application, exempt an issuer from the requirements of this section, or modify its application if the Commission finds that, because of the special nature of the person's business, financial condition, and the safeguards established by it for the protection of investors' funds, it is not necessary or appropriate in the public interest or for the protection of investors that the person be subject to this section.]

CHAPTER 304. POST-REGISTRATION PROVISIONS

§ 304.012. Investment adviser required records.

(a) Every investment adviser registered [or required to be registered] under the act shall make and keep [the books, ledgers and records required to be maintained as described in Rules 204-2 and 204-3 (17 CFR 275.204-2 and 275.204-3) adopted under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).] true, accurate and current the following books, ledgers and records:

(1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

Solicitor—A person or entity who, for compensation, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

§ 404.014. Investment adviser custody or possession of funds or securities of clients.

(a) Failure of an investment adviser not registered as a broker dealer that has custody or possession of funds or securities in which a client has a beneficial interest to comply with this section constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404).

(b) An investment adviser registered under section 301 of the act (70 P. S. § 1-301) that has custody or possession of funds or securities in which any client has any beneficial interest shall:

(1) Notify the Commission in writing that the investment adviser has or may have custody. The notification shall be given on Form ADV.

(2) Segregate the securities of each client marked to identify the particular client having the beneficial interest therein and hold in safekeeping in some place reasonably free from risk of destruction or other loss.

(3) Deposit all client funds in one or more bank accounts containing only client's funds.

(4) Maintain the accounts described in paragraph (3) in the name of the investment adviser as agent or trustee for the clients.

(5) Maintain a separate record for each account described in paragraph (3) showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the account and the exact amount of each client's beneficial interest in the account.

(6) Immediately after accepting custody or possession of funds or securities from a client, notify the client in writing of the place where and the manner in which the funds and securities will be maintained and subsequently, if and when there is a change in the place where or the manner in which the funds or securities are maintained, the investment adviser will give written notice thereof to the client.

(7) At least once every 3 months, send each client an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during the period.

(8) At least once every calendar year, engage an independent certified public accountant or independent public accountant to verify all client funds and securities by actual examination at a time chosen by the accountant without prior notice to the investment adviser. A report stating that an accountant has made an examination of the client funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 days after each examination.

(c) For purposes of this section, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

§ 404.020. [Investment adviser custody or possession of funds or securities of customers] (Reserved).

[It shall constitute a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404), for any investment adviser not registered as a broker-dealer to have custody or possession of any funds or securities in which any customer has any beneficial interest unless the investment adviser has complied with the requirements described in Rule 206(4)-2 (17 CFR 275.206(4)-2) adopted under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1—80b-21).]

SUBPART F. ADMINISTRATION

CHAPTER 602. FEES

§ 602.060. Charges for Commission publications.

Under section 602(f) of the act (70 P. S. § 1-602(f)), the Commission has fixed the following charges for publications, issued under its authority:

(1) [PSC Monthly Bulletin and Annual Report Service: $35 per annual subscription.

(2)] Compendium of Commission and Staff Positions, Summary of Significant Commission Orders and Compilation of Staff No-Action Letters (Compendium), including annual supplement service for the calendar year in which Compendium was purchased: $95.

[(3)] (2) * * *

[(4)] (3) * * *

CHAPTER 603. ADMINISTRATIVE FILES

§ 603.031. Public inspection of records.

* * * * *

(b) The Commission may withhold from public inspection[, for time as in its judgment is necessary, public records the disclosure of which the Commission determines would be unfairly prejudicial to a person or his personal safety or detrimental to the public interest as determined by a court of competent jurisdiction] those records which it determines are excluded from the definition of public records in section 1 of the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. § 66.1(2)), known as the Right-to-Know Law.

* * * * *

(f) The Commission has determined to treat confidential the Social Security Number, the date of birth and home address of a person registered or applying for registration as an agent or an investment adviser representative that appears on the Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor form thereto required to be filed with the Commission under § 303.013 or § 303.014 (relating to agent registration procedures; and investment adviser representative registration procedures). This informa-

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Robert M. Lam
Chairman

July 12, 2000

Honorable John R. McGinley, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: SECURITIES COMMISSION
64 Pa. Code, Chs. 202, 203, 205, 206, 301, 302, 303, 304, 305, 404, 602, 603
FINAL FORM RULES
#50-114, General Revisions

Dear Mr. McGinley:

Enclosed is a copy of the above-referenced regulatory action for review pursuant to the Regulatory Review Act. The Commission's response to comments filed by the Independent Regulatory Review Commission on July 6, 2000 are contained in the preamble.

The Commission received substantive comments on the proposed form rules from the Investment Company Institute (ICI), the Financial Planning Association (FPA) and the Investment Counsel Association of America (ICAA). By letter dated June 26, 2000, the Commission advised ICI, FPA and ICAA of proposed responses to their comments and provided them with the text of the proposed final form rules. By letter dated June 28, 2000, ICI expressed support for adoption of the final form rules as they appear herein. On the same date, representatives of FPA and ICAA advised Commission staff by telephone that those organizations joined ICI in their support for adoption of the final form regulations.

G. Philip Rutledge of the Commission staff will provide you and your staff with an assistance your require to facilitate a thorough review of these regulatory actions. He may be contacted at 783-5130.

Very truly yours,

Robert M. Lam
Chairman

RML:gpr
Enclosures

1010 North Seventh Street ◆ Harrisburg, PA 17102-1410 ◆ 717-787-8061 ◆ Fax 717-783-5125

IRRC

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: #50-114

AGENCY: PA SECURITIES COMMISSION

TYPE OF REGULATION

____	Proposed Regulation
____	Final Regulation with Notice of Proposed Rulemaking Omitted
X	Final Regulation
____	120-day Emergency Certification of the Attorney General
____	120-day Emergency Certification of the Governor

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
7/12/00	Ray O'Hern	HOUSE COMMITTEE Commerce & Economic Development
7/12/00	Denise Hatton	SENATE COMMITTEE Banking & Insurance
7/12/00	J. Vaillancourt	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU