

Regulation XXX-XXXX-XXXX		This space for use by IRRC	
(1) Agency PA Securities Commission		RECEIVED 2000 APR 11 PM 12:56 IRRC Number: <i>2107</i>	
(2) I.D. Number (Governor's Office Use) #50-114			
(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 Wrap fee 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		REVIEW COM. 105.01	
(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 § 404.014 64 Pa. Code § 404.020 64 Pa. Code § 602.060 64 Pa. Code § 603.031		(5) Agency Contacts & Telephone Numbers Primary Contact: G. Philip Rutledge 783-5130 Secondary Contact: Rebecca Alford 783-5130	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120 Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	

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

- a. Commission Regulation 202.070 would clarify when the exemption provided by Section 202(g) of the Pennsylvania Securities Act of 1972 ("1972 Act") would be available to certain non-employees included in compensatory plans or compensatory contracts.
- b. Commission Regulation 203.101 would allow 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 would allow 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 would allow attorneys to give a clear legal opinion on the availability of the exemption provided by the Regulation.
- e. Commission Regulation 203.186 would allow attorneys to give a clear legal opinion on the availability of the exemption provided by the Regulation.
- f. Commission Regulation 203.192 would create 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 would replace Commission Form 205 with Commission Form R and eliminate 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 would replace Commission Form 206 with Commission Form R and reduce 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 would be repealed as its provisions have been superseded by a new Internet-based electronic transfer program.
- j. Commission Regulation 302.063 would codify 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 would add language to anticipate electronic filing through a centralized depository system and would eliminate 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 would update terminology in the current Regulation and add language to anticipate electronic filing through a centralized depository system.
- m. Commission Regulation 303.015 would implement the notice filing requirement imposed on federally covered advisers by Act 109 of 1998.
- n. Commission Regulation 303.021 would accord 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 would repeal the experience requirement for agents and investment adviser representatives and adopt new uniform examinations for investment advisers and investment adviser representatives, uniform grandfathering provisions, and uniform waivers of the examination.
- p. Commission Regulation 303.042 would reduce net worth requirements for investment advisers and eliminate 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 would revise the surety bond requirements applicable to investment advisers.
- r. Commission Regulation 304.012 would establish record keeping requirements for investment advisers.
- s. Commission Regulation 304.022 would reduce the financial reports required to be filed by investment advisers.
- t. Commission Regulation 304.052 would delete language to reflect the elimination of standardized commission rates for investment advisers.
- u. Commission Regulation 305.011 would expand the coverage of this Regulation to investment adviser representatives and incorporate requirements from the National Association of Securities Dealers ("NASD") Code of Conduct.
- v. Commission Regulation 305.019 would expand the coverage of this Regulation to investment adviser representatives and would include 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 would add language to anticipate electronic filing through a centralized registration depository and would extend the Regulation to withdrawal of notice filings by federally covered advisers.
- x. Commission Regulation 404.010 would extend the regulation to investment adviser representatives.
- y. Commission Regulation 404.011 would make 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 would make an investment adviser's failing to furnish a wrap fee disclosure statement to prospective clients when appropriate a fraudulent, deceptive or manipulative act or practice under Section 404 of the 1972 Act.
- aa. Commission Regulation 404.013 would make 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.
- bb. Commission Regulation 404.014 would make 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.
- cc. Commission Regulation 404.020 would be deleted in favor of Commission Regulation 404.014.
- dd. Commission Regulation 602.060 would delete the subscription fee for the Commission's Bulletin and Annual Report.
- ee. Commission Regulation 603.031 would clarify 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(e) 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(a) and 70 P.S. § 1-609(a)
- cc. 70 P.S. § 1-404(b) and 70 P.S. § 1-609(a)
- dd. 70 P.S. § 1-602(f) and 70 P.S. § 1-609(a)
- ce. 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.

Proposed changes to Commission Regulations 303.021, 303.042, 303.051, 304.012, 304.022, and 305.061 would conform these regulations to the requirements of the federal Investment Advisers Supervision Coordination Act of 1996. Proposed changes to Commission Regulations 303.014, 303.015, 303.032, 305.011, and 305.019 and new Commission Regulations 404.011 - 404.014 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 proposed 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. Proposed changes in the language will allow issuers to obtain a "clear" legal opinion at a cheaper cost.
- c. Similar to the proposed changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.171 would clarify for issuers and their counsel the availability of the exemption provided by Section 203(q) of the 1972 Act.
- d. Similar to the proposed changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.185 would clarify for issuers and their counsel the availability of the exemption provided by the regulation.
- e. Similar to the proposed changes to Commission Regulation 203.101, the modifications to Commission Regulation 203.186 would 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 would thereby prevent 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 would amend 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 proposed 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 would restrict 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 would be 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, would keep the regulation up to date with current developments in the securities industry. Also, the proposed 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 would adopt the new term "investment adviser representative" in place of "associated person" and would 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.

- REGULATORY DEVELOPMENTS
- 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 proposed in Commission Regulation 303.032 would 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 proposed regulation would adopt 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 would reduce net worth requirements for investment advisers and would eliminate 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 would reduce 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 proposed regulation would require 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 proposed Commission Regulation 304.022 would 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 would 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 would 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 would add 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 would protect 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 would help to ensure that investors are made aware of any fees charged by their investment advisers that are not directly related to the transactions in the investors' accounts (so-called "wrap fees") by requiring investment advisers to disclose any such fees to their clients. The SEC imposes the same requirement on federally covered advisers.

- aa. Pursuant to Act 109 of 1998, Commission Regulation 404.013 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.
- bb. Pursuant to Act 109 of 1998, Commission Regulation 404.014 would protect 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.
- cc. In order to keep Commission regulations current and to avoid redundancy, Commission Regulation 404.020 would delete the present regulation in favor of Commission Regulation 404.014 which codifies the current requirements.
- dd. To facilitate the public's access to certain Commission publications containing important information about the Commission and its operations, Commission Regulation 602.060 would delete the subscription fees for the Commission's Bulletin and Annual Report.
- ee. 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 would 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 disclose to their clients any fees charged to the clients that are not directly related to transactions in the clients' accounts. This may result in those clients being charged hidden or unexplained fees.
- aa. Failure to enact Commission Regulation 404.013 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.
- bb. Failure to enact Commission Regulation 404.014 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.
- cc. 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.
- dd. 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.
- ee. 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 clients of investment advisers by requiring investment advisers to disclose any fees charged to clients that are not directly related to the clients' accounts (so-called "wrap fees"). The regulation will also benefit investment advisers by harmonizing Pennsylvania's wrap fee disclosure requirements to similar requirements under federal law, thereby facilitating compliance with the Pennsylvania requirements.
- aa. Commission Regulation 404.013 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.
- bb. Clients of investment advisers will benefit from the creation of Commission Regulation 404.014, 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.
- cc. The regulated community will benefit from Commission Regulation 404.020, which will keep the Commission's regulations consistent and up to date.
- dd. 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.
- ee. 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, 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 would 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, would be required to file Commission Form R rather than Commission Form 205 pursuant to Commission Regulation 205.021. Issuers relying on SEC Regulation A would not be 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, would be 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 would not be required to Commission Form R.
- e. Agents formerly required by Commission Regulation 301.021 to make filings on Commission Form TATR for transfer registrations would now be required to file on a new Internet-based system.
- f. Investment advisers seeking to register under the 1972 Act would be 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 would not longer be required to file statements of financial condition with the Commission.
- g. Investment adviser representatives seeking to register under the 1972 Act would be 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 will have to comply with the net worth requirements of Commission Regulation 303.042. Net worth requirements will be 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 would have to 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 will have to comply with the provisions of Commission Regulation 305.019.
- m. Federally covered advisers wishing to withdraw a notice filing made with the Commission will have to comply with the requirements of Commission Regulation 305.061.
- n. Investment adviser representatives who circulate or distribute advertisements in connection with their business will have to comply with Commission Regulation 404.010.

- o. Investment advisers that take on prospective clients will have to comply with Commission Regulation 404.011.
- p. Investment advisers that wish to charge clients certain fees not directly related to transactions in the clients' accounts will have to comply with Commission Regulation 404.012.
- q. Investment advisers wishing to engage persons to solicit prospective clients on their behalf and to compensate those persons will have to comply with the requirements of Commission Regulation 404.013.
- r. Investment advisers wishing to have custody of or discretion over the funds or securities of their clients will have to comply with Commission Regulation 404.014.

(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 intends to solicit directly the input of the Financial Planners Association which represents state-registered investment advisers and the Investment Counsel Association of America which represents federally covered advisers.

(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 - 404.014, 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.
- 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.

The Commission Regulations proposed herein 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.

Regulatory Activities

(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						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

The Commission lacks the empirical data to quantify the savings to issuers or the costs or savings to the investment adviser community. For the period ending June 30, 1999, the Commission had approximately 1,200 investment adviser registrants and 2,100 investment adviser representative registrants.

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

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 proposed 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, the proposals are being made either to conform to federal law requirements or to make Pennsylvania's requirements conform with current federal regulation.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

- a. The following proposed regulations would merely delete or modify existing language and do not affect Pennsylvania's competitiveness with other states: Commission Regulations 202.070, 203.101, 203.171, 203.185, 203.186, 304.052, 404.020, 602.060, and 603.031.
- b. The following regulations are based in part on model rules promulgated by the North American Securities Administrator's Association, Inc., an organization that represents the interests of all state securities regulators: 303.032, 303.042, 303.051, 304.012, and 304.022.
- c. The remaining Commission Regulations proposed herein relate to existing compliance requirements and do not affect Pennsylvania's competitiveness with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The proposed regulations affect only the promulgating agency.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times and locations, if applicable.

None are anticipated at this time.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

- a. Commission Regulation 205.021 would require certain issuers seeking to register securities under Section 205 of the 1972 Act to file Commission Form R rather than Commission Form 205.
- b. Commission Regulation 206.010 would require certain issuers seeking to register securities under Section 206 of the 1972 Act to file Commission Form R rather than Commission Form 206.
- c. Commission Regulation 301.021 would eliminate the requirement that agents of broker-dealers file Commission Form TATR.
- d. Commission Regulation 303.012 would permit applicants for investment adviser registration to file with a centralized electronic registration depository and would eliminate the requirement that certain investment advisers file statements of financial condition with the Commission.
- e. Commission Regulation 303.014 would permit applicants for registration as investment adviser representatives to file with a centralized electronic registration depository rather than filing with the Commission directly.
- f. Commission Regulation 303.015 requires federally covered advisers to file a notice with the Commission on Form ADV as required by Act 109 of 1998.
- g. Commission Regulation 304.022 eliminates the requirement that investment advisers without custody of, or discretion over, the funds or securities of their clients file annual financial reports with the Commission.
- h. Commission Regulation 305.011 would require investment advisers to draft policies and procedures regarding the supervision of their representatives.
- i. Commission Regulation 305.061 would permit federally covered advisers withdrawing notice filings to do so by means of a centralized registration depository rather than a specific filing with the Commission.
- j. Investment advisers would have to establish policies and procedures that comply with Commission Regulations 404.011 - 404.014 which requirements are identical to SEC requirements for federally covered advisers.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Commission Regulation 203.192 provides a companion exemption to the exemptions contained in SEC Rules 801 and 802 so that Pennsylvania investors holding securities of foreign private companies that make rights offerings or exchange offers in Pennsylvania will not be excluded from those transactions by operation of federal law.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

It is anticipated that the regulations will become effective upon publication of final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Commission Regulations proposed herein will be periodically reviewed by staff and, where changes are warranted, they will be included in the Commission's Regulatory Agenda.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

RECEIVED

2000 APR 11 PM 12: 56

LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION



DO NOT WRITE IN THIS SPACE

#2107

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

[Signature]
(DEPUTY ATTORNEY GENERAL)

April 7, 2000

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: March 21, 2000

BY: *M. Jenna Cummings*

TITLE: SECRETARY
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: *[Signature]*

March 21, 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.

PROPOSED 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 Procedure

Ch. 304. Post-Registration Provisions

Ch. 305. Denial, Suspension and Revocation of Registration

Subpart D. Fraudulent and Prohibited Practices

Ch. 404. Prohibited Activities; Investment Advisers

**PROPOSED 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) proposes to amend and adopt regulations concerning the subject matter of the Act as set forth in Annex A to this notice and further described under the Summary and Purposes of Regulations.

Summary and Purpose of Regulations

- §202.070 Proposed changes would clarify when the exemption would be available to certain non-employees included in compensatory plans or compensatory contracts.
- §203.101 Proposed changes would allow attorneys to give a clear legal opinion on the availability of the exemption.
- §203.171 Proposed changes would allow attorneys to give a clear legal opinion on the availability of the exemption.
- §203.185 Proposed changes would allow attorneys to give a clear legal opinion on the availability of the exemption.
- §203.186 Proposed changes would allow attorneys to give a clear legal opinion on the availability of the exemption.
- §203.192 Proposed new regulation would create 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 U.S. Securities and Exchange Commission (SEC).
- §205.021 Proposed changes would replace Form 205 with Form R and eliminate the requirement to file Form R for all issuers applying for registration under Section 205 except those relying on SEC Regulation A.

**PROPOSED RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION**

- §206.010 Proposed changes would replace Form 206 with Form R and restrict 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 or Rule 504 of SEC Regulation D or SEC Regulation A.
- §301.021 This regulation would be repealed as its provisions have been superceded by a new Web-based electronic transfer program.
- §302.063 Proposed changes would codify a No Action Letter issued by the Commission in 1999 concerning third party brokerage activities occurring in a limited purpose bank branch office.
- §303.012 Proposed changes anticipate electronic filing through a centralized depository system and eliminate 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 Proposed changes utilize the new terminology of "investment adviser representative" and anticipate electronic filing through a centralized depository system.
- §303.015 This new regulation is proposed to implement the notice filing requirement imposed on federally covered advisers by Act 109 of 1998.
- §303.021 Proposed changes would accord the same treatment to notice filings by federally covered advisers for successor firms as is accorded to registered investment advisers.
- §303.032 Proposed changes repeal the experience requirement for agents and investment adviser representatives, adopt new uniform examinations for investment advisers and investment adviser representatives, uniform grandfathering provisions and uniform waivers of the examination. These are based upon on a uniform model adopted by the North American Securities Administrators Association (NASAA).
- §303.042 Proposed changes 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. This changes are based on a NASAA model rule and conform to federal law as provided by the Investment Advisers Supervision Coordination Act of 1996 (Federal Act).

**PROPOSED RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION**

- §303.051 Proposed changes revise the surety bond requirements to conform to a NASAA model rule and the requirements of the Federal Act.
- §304.012 Proposed changes establish in state regulation record keeping requirements for investment advisers. Under the Federal Act, SEC has exclusive jurisdiction over investment advisers with \$25 million or more of assets under management or advise investment companies and states have exclusive jurisdiction over the remaining investment advisers. These changes conform to a NASAA model rule and the Federal Act.
- §304.022 Proposed changes revise the required financial reports to be filed by investment advisers which conform to a NASAA model rule, the Federal Act and a proposed amendment to the Federal Act.
- §304.052 Proposed changes recognize that standardized commission rates charged by national securities exchanges have been eliminated.
- §305.011 Proposed changes expand coverage of this regulation to investment adviser representatives and incorporate requirements found in the Code of Conduct of the National Association of Securities Dealers.
- §305.019 Proposed changes expand coverage of this regulation to investment adviser representatives and include failure to comply with investor suitability requirements as a basis for taking action against a person's license.
- §305.061 Proposed changes anticipate electronic filing through a centralized depository system and extend the regulation to withdrawal of notice filings by federally covered advisers.
- §404.010 Proposed changes extend this regulation to investment adviser representatives.
- §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. A similar provision already applies to federally covered advisers.
- §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 who sponsors a wrap fee program to fail to furnish a wrap fee disclosure statement to prospective clients. Similar rules currently apply to federally covered advisers.

**PROPOSED RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION**

- §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 make cash payments to persons who solicit business for the investment adviser unless certain requirements are met. A similar provision already applies to federally covered advisers.
- §404.014 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 federally covered advisers.
- §404.020 This regulation is being deleted in favor of §404.014 which codifies the current requirements.
- §602.060 Proposed changes would delete the subscription fee for the Commission's Bulletin and Annual Report. The publications are now currently available to the public free of charge.
- §603.031 Proposed changes would clarify that any record which the Commission deems is excluded from the definition of a 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 on Form U-4 filed by all agent and investment adviser representative applicants and registrants would be treated as confidential.

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, investment advisers and investment adviser representatives. These actions are required to implement the provisions of Act 109 of 1998 and the Federal Act.

Fiscal Impact

The proposed regulatory actions substantially will reduce costs to the investment advisory community 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 the Federal Act.

**PROPOSED RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION**

The proposed record keeping provisions, supervisory requirements and disclosure delivery requirements are similar to what currently is required by the NASD Code of Conduct, by existing Commission regulations or by federal law with respect to federally covered advisers. Therefore, the Commission does not anticipate that the proposed regulatory actions will impose additional financial burdens on applicants or registrants.

Also, 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.

Paperwork

The Commission proposes to eliminate 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 proposes to reduce substantially the categories of issuers that would be required to file new Form R.

With respect to investment advisers, the Commission proposes to eliminate or reduce the required financial reports and statements of financial condition that must be filed by applicants or registrants.

Effective Date

The proposed amendments and regulations will become effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 11, 2000, the Commission submitted a copy of these proposed amendments 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.

**PROPOSED RULEMAKING
PENNSYLVANIA SECURITIES COMMISSION**

If IRRC has objections to any portion of the proposed amendments, it will notify the Commission within 10 days of the close of the committee comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the final-form regulations 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. Mr. Rutledge also is the contact person for an explanation of the proposed amendments and regulations.



BY ORDER OF THE COMMISSION

M. Joanna Cummings
M. JOANNA CUMMINGS, SECRETARY

ANNEX A

TITLE 64. SECURITIES
Subpart B. REGISTRATION OF SECURITIES
CHAPTER 202. EXEMPT SECURITIES

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

(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:

(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 employees.

(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 an 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.

(3) The securities being issued:

(i) [have] Have been registered under the Securities Act of 1933 (15 U.S.C.A. §§77a - 77aa); and

(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)) (relating to an exemption for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation).

(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 anti-fraud provision of Part IV of the act (70 P.S. §§4-401 - 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 anti-fraud 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] or made in violation of the anti-fraud provisions of Part IV of the act (70 P.S. §§1-401 - 1-409) and Subpart D (relating to fraudulent and prohibited practices)].

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

* * *

(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 anti-fraud provision of Part IV of the act (70 P.S. §§4-401 - 1-409) and Subpart D (relating to fraudulent and prohibited conduct)].

§203.186. Employee 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 anti-fraud provision of Part IV of the act (70 P.S. §§4-401 - 1-409) and Subpart D (relating to fraudulent and prohibited conduct)].

§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 appropriate 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 U.S. 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:

(1) A registration statement and other materials required under section 205 of the act (70 P.S. §1-205).

(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.

(3) Additional information the Commission may be regulation or order require under section 205(b)(iii) (70 P.S. §1-205(b)(iii)).

(b) In [order to effect the purposes of the act] addition to filing the information and form required in subsection (a), [the Commission requires, as a condition of registration, that for classes of] issuers in offerings being made in reliance on SEC Regulation A promulgated under Section 3(b) of the Securities Act of 1933 [specified in subsection (c), issuers] shall execute and file with the Commission within the specified time period the form, designed 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) Offering 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.

(7) 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 (70 P.S. §15 U.S.C.A. §§80a-1 - 80b-21).

(e)] The 10-day registration statement filing period requirement in section 205(c)(2)(ii) of the act (70 P.S. §205(c)(2)(ii)) shall be reduced to five 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 [N] nationally recognized statistical rating organizations.

[(f) Pricing information shall be deemed to be 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) (d) [An applicant required to file Form 205] 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.]

DELETE FORM 205 AND INSERT NEW FORM R

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.

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 a 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 office" 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:

(1) A registration statement and other materials required under section 206(b)(1) - 16 of the act (70 P.S. §1-206(b)(1) - (17)).

(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].

(3) Additional information the Commission may be regulation or order require under section 206(b)(17) of the act.

(b) In [order to effect the purposes of the act] addition to the information and form required in subsection (a), [the Commission requires, as a condition of registration, that for classes of] 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.

(2) Offerings made in reliance on Section 3(a)(11) of the Securities 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 the 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, and F-10.

(6) Has filed a registration statement with the Commission for pass-through certificates evidencing undivided interests in trust 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] Ch. 609 (relating to regulations, forms and orders) or as the Commission shall, by order, require.

[(f)] (d) [An] During the period of the offering, the issuer 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.]

DELETE FORM 206

**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

§301.021. [Temporary agent transfer registration for certain agents ineligible for agent transfers.] Reserved.

[(a) An agent who wishes to terminate employment with one registered broker-dealer and commence employment with another registered broker-dealer, which has undertaken to participate in the NASAA/CRD Temporary Agent Transfer Program as described in § 301.020(b) (relating to agent transfers), may do so on a temporary basis, subject to the terms and conditions of subsection (b), under a filing with the Commission of a completed and executed form designated by the Commission as Form TATR in addition to filings required to be made with the Central Registration Depository (CRD):

DELETE FORM TATR

(b) No agent may effect transactions in securities in this Commonwealth under this section prior to the date of the Commonwealth's approval of effectiveness of registration as an agent of the employing broker-dealer as reflected in the CRD system.

(c) The effective period of a temporary agent transfer registration under this section terminates at the earliest of one of the following:

(1) The date upon which the Commission issues an order summarily revoking or suspending the registration.

(2) The close of business on the date which is the 45th day of effectiveness of the temporary agent transfer registration. In the absence of an order issued by the Commission under section 305(d) of the act (70 P.S. § 1-305(d)) with respect to the initial application for agent registration, the date of effectiveness of the initial application for agent registration with the employing broker-dealer shall be the day after the 45th day of effectiveness of the temporary agent transfer registration under subsection (b).

(d) An agent who is subject to a summary order of the Commission suspending the effectiveness of a temporary agent transfer registration under this section may not effect transactions in securities for the employing broker-dealer during the period that the order remains in effect.

(e) For purposes of this section, the phrase "Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" means the document entitled "Broker-Dealer Undertaking for Participation in the NASAA/CRD Temporary Agent Transfer Program" which the employing broker-dealer has executed and filed with the NASAA/NASD Central Registration Depository, 1735 K Street, N.W., Washington D.C. 20006.]

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:

Financial institution – A Federal or State chartered bank, savings and loan association, savings bank or credit union and any service corporation affiliated with these entities.

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 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] As set forth [in paragraphs (1) and (2)] below, 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 compiled, 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 \$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 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 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.

* * *

§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 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 shall complete and file with the Commission or a central 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 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 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) The notice required by 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) as filed with the U.S. Securities and Exchange Commission.

(b) One executed Form ADV shall be filed annually with the Commission or a central registration depository designated by order of the Commission. The filing fee required by Section 602(d.1) of the act (70 P.S. §602(d.1)) shall accompany the filing of Form ADV.

§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 15b1-13 promulgated 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, 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. Examination requirements for investment advisers and [associated persons] investment adviser representatives.

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

(1) Received, on or after January 1, 2000 and within 2 years 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 prior to the date of filing an application with the Commission, a passing grade on the General Securities Representative Non-Member Examination (Series 7) administered by the National Association of Securities Dealers, Inc. and the Uniform Combined State Law Examination (Series 66) or successor examinations.

(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:

(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:

(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:

(i) Has no disciplinary history which requires an affirmative response to the Disclosure Information section of The Uniform Application for Securities Industry Registration or Transfer (Form U-4); 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 the Disclosure Information section of Form U-4.

(3) The individual is licensed as an attorney, is currently in good standing and has no disciplinary history that requires an affirmative response to the Disclosure Information section of Form U-4.

(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 \$500 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:

(1) Proof of money balances of ledger accounts in the form of a trial balance.

- (2) A computation of net [capital or tangible net] worth [(See subsection (c))].
- (3) An analysis of clients' securities and funds which are not segregated.
- (4) A computation of the aggregate amount of clients' ledger debit balances.
- (5) A computation of the aggregate amount of clients' ledger credit balances.
- (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-798kk).

(2) [Net worth - An excess of assets over liabilities, as determined by generally accepted accounting principles] Principal place of business - Shall have 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.*).

(3) [Tangible net] Net worth - [the net worth of an investment adviser registered or required to be registered under the act] 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 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] 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.

(4) 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.

(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:

(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.

§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 must comply with requirements of paragraph (1) unless the investment adviser:

(i) Is registered as an investment adviser in that state; and

(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, "principal place of business" shall have the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Adviser Acts of 1940 (15 U.S.C.A. §80b-1 et seq.).

(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-77kk) 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 requirement 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 be filed with the Commission on Form U-SB or successor form thereto; shall be subject to the claims of all clients of the broker-dealer regardless of the client's state of residence; and shall 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 shall provide evidence of the existence of a surety bond [to demonstrate evidence of the existence of a surety bond at the time of initial registration and at any other time the Commission may request].

[(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.

(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 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:

(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.

(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 the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale or other acquisition or disposition); 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) For purposes of this paragraph, the following terms shall have the following meanings:

(A) Investment adviser representative shall mean any 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 shall mean 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.

(i) Notwithstanding the provisions of paragraph (12) above, 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 the title and amount of the security involved; the date and nature of the transaction (i.e. purchase, sale, or other acquisition or disposition); 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:

(A) Investment adviser representative, when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean 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 shall mean 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 §304.013 (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 :

(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) All 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),

(a)(14)-(15), (a)(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) Storage of records.

(1) Records required to be maintained and preserved under this section may be immediately 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:

(1) Investment supervisory services means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall 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.

(2) Client means any person to whom the investment adviser has given investment advice for which the investment adviser has received compensation.

(3) Principal place of business shall have the meaning set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940.

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, 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:

(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; and

(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 \$500 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:

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

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

(3) Has not taken custody of client assets 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:

(1) *Principal place of business* shall have 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).

(2) *Principal* means 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.

§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[,] and adequately disclosed to each [customer] client 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, CONDITIONING AND
REVOCATION 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. Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain procedures, and a system for applying and enforcing those procedures, which would reasonably be expected to timely 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. 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 those procedures designed to timely detect and prevent any violations of law 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. 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. 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. Written records shall be maintained reflecting each inspection conducted.

§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.

* * *

(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.

* * *

(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 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:

(A) Compensation arrangements connected with advisory services to clients which are in addition to compensation from the clients for the services.

(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] §404.012 (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-1 et seq.) 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 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.

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

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

* * *

(c) To withdraw a notice filing, a federally covered adviser shall file Form ADV-W or successor form thereto.

(d) An application to withdraw as an [associated person] investment adviser representative of an investment adviser or federally covered 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 or federally covered adviser with whom the agent or [associated person] investment adviser representative was employed within 30 days from the date of termination.

(e) Filings required by subsections (a) - (d) shall be filed with the Commission or with a central 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:

(i) Includes the name of each security recommended, the date and nature of each recommendation (for example, whether to buy, sell or hold), the market price at the time, the price at which the recommendation was to be acted upon, and the current market price of each

security.

(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."

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the difficulties with respect to its use.

(4) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless 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 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.

(ii) The price or price range at which the securities listed in subparagraph (i) were purchased.

(iii) The date or range of dates during which the securities listed in response to subparagraph (i) were purchased.

(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:

(1) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(2) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(3) Any other investment advisory service with regard to securities.

(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.

§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) Unless otherwise provided in this section, an investment adviser registered under section 301 of the act (70 P.S. §1-301) shall furnish each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information required by Part II of Form ADV.

(c) Except as provided in subsection (d), an investment adviser:

(1) Shall deliver the disclosure described in subsection (b) to an advisory client or prospective advisory client:

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

(ii) 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.

(2) Annually and without charge, shall deliver, or offer in writing to deliver, upon written request to each of its advisory clients the disclosure described in subsection (b). Any statement requested in writing by an advisory client pursuant to this subparagraph must be mailed or delivered within seven days of the receipt of the request.

(d) Delivery of the disclosure described in subsection (b) need not to be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than \$200.00.

(e) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the disclosure to be furnished to an advisory client or prospective advisory client 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.

(f) Nothing in this section shall relieve any investment adviser from any obligation pursuant to any provision of the act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically set forth in this section.

(g) Definitions. For the purpose of this section, the following terms shall have the following meanings:

(1) Client means any person to whom the investment adviser has given investment advice and for which the investment adviser has received compensation.

(2) 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.

(3) Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

§404.012. Wrap fee brochure disclosure.

(a) Failure by an investment adviser that sponsors a wrap fee program to provide each client or prospective client of a wrap fee program 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) The investment adviser shall, in lieu of the written disclosure statement required by §404.011 (relating to investment adviser brochure disclosure), furnish each client or prospective client of a wrap fee program, a separate written disclosure statement containing at least the information required by Schedule H of Form ADV. Any information included in such disclosure statement that is not specifically required by Part II of Form ADV should be limited to information concerning wrap fee programs for which the investment adviser is required to furnish disclosure statements under this section.

(c) If an investment adviser sponsors or organizes more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a particular wrap fee program or programs any information required by Schedule H of Form ADV that is not applicable to clients or prospective clients of that wrap fee program or programs.

(d) An investment adviser need not furnish the written disclosure statement required by subsection (b) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(e) The wrap fee disclosure statement shall be attached to Part II of Form ADV and filed with the Commission. If the investment adviser prepared separate wrap fee brochures for clients of different programs, each brochure shall be filed with the Commission. An investment adviser shall deliver the statement required by this section to a client or prospective client:

(1) Not less than 48 hours prior to entering into a wrap fee program contract with a client or prospective client, or

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

(f) If information contained in the wrap fee disclosure statement becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment to Form ADV with the Commission correcting the information. An investment adviser may update the wrap fee disclosure statement by using a supplement or "sticker" that indicates what information is being added or updated and states the new or revised information, as long as the resulting brochure is readable.

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

(1) *Wrap fee program* means any program under which any client is charged a specified fee or fees not based directly upon 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.

(2) *Portfolio management* means the process of determining or recommending securities transactions for any portion of a client's portfolio.

(3) *Sponsor* means 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.

§404.013. 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).

(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):

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

(ii) Contains 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) Requires 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:

(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; and

(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:

(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:

(1) *Solicitor* means any person or entity who, for compensation, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(2) *Client* includes any prospective client.

(3) *Impersonal advisory services* means investment advisory services provided solely by means of:

(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, or

(iii) Any combination of the foregoing services.

§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 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.

§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 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) Compendium Annual Supplement Service: \$20 per annual subscription.

[(4)] (3) Orders for specific Compendium Supplements: \$10 per Supplement.

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 social security number, 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 (relating to agent registration procedures) or §303.014 (relating to investment adviser representative registration procedures). This information shall not be available for public inspection under any provision of the act.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA SECURITIES COMMISSION

Robert M. Lam
Chairman

April 10, 2000

Honorable John R. McGinley, Jr.
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
General Revisions
PROPOSED FORM
#50-114

Dear Chairman McGinley:

Enclosed is a copy of the above-referenced proposed form rules and a Regulatory Analysis for review by the Independent Regulatory Review Commission pursuant to the Regulatory Review Act.

Deputy Chief Counsel Philip Rutledge will provide the Commission with any assistance necessary to facilitate a thorough review of these proposed regulatory actions. He may be contacted at 783-5130.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Lam".

Robert M. Lam
Chairman

RML:gpr
Enclosures

RECEIVED

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

2000 APR 11 PM 12:56

I.D. NUMBER: 50-114

INDEPENDENT REGULATORY REVIEW COMMISSION

AGENCY: PA SECURITIES COMMISSION #2107

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- Final Regulation
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<u>4-11-00</u>	<u>Ray Adrin</u>	<u>HOUSE COMMITTEE</u> Commerce and Economic Development Committee Business & Commerce
<u>4/11/00</u>	<u>Bruce Mitchell</u>	<u>SENATE COMMITTEE</u> Banking & Insurance
<u>4/11/00</u>	<u>Tim Eckert</u>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
<u>4/11/00</u>	<u>C. Lee</u>	LEGISLATIVE REFERENCE BUREAU