Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

INDEPENDENT REGULATORY REVIEW COMMISSION

(1) Agency

Department of Banking and Securities

(2) Agency Number: 3

Identification Number: 54

IRRC Number: 3152

(3) PA Code Cite:

10 Pa. Code Chs. 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901, 1001

(4) Short Title:

Securities Regulation Omnibus Amendments

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

- X Proposed Regulation
- ☐ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department of Banking and Securities proposes to amend and delete various sections of the Securities Regulation (10 Pa. Code §§ 1.1, 102.021 – 1001.010) to read as set forth in Annex A. The proposed rulemaking will: replace terminology made obsolete by the 2012 merger of the former Pennsylvania Securities Commission into the former Department of Banking ("2012 merger"); correct formatting and word choice issues; delete multiple statements of policy; reduce compliance requirements; permit electronic format submissions as well as electronic filing; and align the language of the regulation with the North American Securities Administrators Association ("NASAA") model rules and the Securities and Exchange Commission rules and regulations.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Sections 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C)(promulgation of rules and regulations); Section 609(a) of the Pennsylvania Securities Act of 1972 ("1972 Act")(70 P.S. § 1-609(a)) (ability to make, amend and rescind regulations, rules and orders); and Section 9(b) of the Takeover Disclosure Law ("TDL")(70 P.S. § 79(b)) ((ability to make, amend and rescind regulations, rules and orders).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

There are no federal or state laws or court orders, or federal regulations mandating this proposed rulemaking. There are no relevant state or federal court decisions.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The Department's proposed changes to the Securities Regulation are needed for the following reasons:

(a) To Replace Terminology

The proposed rulemaking replaces all references to "Commission" relating to the former Pennsylvania Securities Commission with "department" to reflect the 2012 merger. A new definition of "commission" has been added to the general provisions applicable to the entire agency at 10 Pa. Code § 1.1(a), consistent with the adjudicatory role of the Banking and Securities Commission for the entire agency. All references to "by order of" to provide discretion for the Department as to how to act, such as by letter, which is consistent with the other areas of the agency. Any section which indirectly references a procedure of the former Pennsylvania Securities Commission is proposed to be deleted, including sections 601.010 (commission quorum; action; disqualification), Section 601.020 (secretary, assistant secretaries), Section 602.060 (charges for Commission publications), Section 606.041 (delegation and substitution), Section 610.010 (destruction of documents and records) and Section 901.011 (applicability of general rules).

The terminology in the current Securities Regulation is inaccurate because it refers to the former Pennsylvania Securities Commission and its policies and procedures. The regulated community as a whole will benefit from the proposed regulation reflecting the Department's incorporation of the former Pennsylvania Securities Commission and the changes to policies and procedures as a result of the incorporation.

(b) To Conform to the Pennsylvania Code and Bulletin Style Manual

The current Securities Regulation is not drafted in a manner consistent with the Pennsylvania Code and Bulletin Style Manual, likely because of numerous amendments at different time periods. Because the regulation required changes to most of the sections to reflect the merger, the Department also updated the formatting and word choice to conform to the Pennsylvania Code and Bulletin Style Manual. For example, the proposed regulation will:

(1) Divide the content of § 602.022 (denial for abandonment) into proposed §§ 208.010 (denial for abandonment) and 303.016 (deemed as abandoned), then delete § 602.022 because Chapter 200 contains the rules related to corporate finance and Chapter 300 contains the rules related to licensing.

(2) Relocate all definitions contained in the current regulation to proposed § 102.021 (definitions) for ease of reading and to adhere to Independent Regulatory Review Commission and Legislative Reference Bureau standards.

The correction of formatting and word choice issues makes the regulation more user friendly for the regulated community as intended by the Pennsylvania Code and Bulletin Style Manual. In addition, it removes formatting and phrasing which could be read two different ways by the regulated community.

(c) To Delete the Statements of Policy Contained in Section 604

The Department reviewed the Statements of Policy (SOPs) contained in the regulation and determined that all of the SOPs in section 604 either needed to be deleted as obsolete because of the merger, could be better reflected in other sections of the regulation or should be placed on the website as guidance rather than as SOPs. The preamble specifically outlines the Department's plan for dissemination of the information currently contained in each of the SOPs.

The former Pennsylvania Securities Commission drafted the SOPs contained in the current Securities Regulation. Upon review of those SOPs, the Department determined that the SOP format was not the best manner of disseminating any remaining relevant information to the regulated community. The regulated community will benefit from the Department consolidating information into either the proposed rulemaking or on the website because it removes an additional layer of guidance to be considered.

(d) To Reduce Compliance Requirements

To reduce compliance requirements on the regulated community the Department proposes to delete § 206.020 (tax opinion in offerings of limited partnership interests) to remove the tax opinion requirement for limited partnership interests because the requirement only applies in narrow instances and is currently applied too broadly and § 302.060 (relating to dual registration of agents in certain instances) because the rule is no longer applicable to the industry as since 1979, the regulation applied to one individual. In addition, the Department proposes to amend sections 210.010 (relating to retroactive registration), 609.010 (relating to use of prospective financial statements) and 609.034 (relating to financial statements) to remove certain unnecessary filing requirements.

Both the Department and the regulated community will benefit from the reduction in compliance requirements. The reduction will provide a minimal monetary benefit, reduce paperwork requirements and remove some compliance hurdles for the regulated community. The Department will benefit from the reduction in compliance checks.

(f) To Permit Electronic Format/Filing

The Department is proposing the addition of § 701.010 (relating to filing of registration forms); § 701.011 (relating to filing of exemption forms) and section 701.020 (relating to electronic filing) to permit the Department to handle filings in a manner better reflecting technology used by the regulated community.

Both the Department and the regulated community will benefit from the inclusion of electronic format and electronic filing sections in the proposed rulemaking. As of this time, the Department has the technology to accept forms filed in electronic format. This reduces mailing fees and filing time frames for the regulated community. It also reduces paperwork being housed by the Department. The Department does not currently have a dedicated electronic filing platform, but considers it to be a future option. Including the electronic filing section will permit the Department to make that technology available to the regulated community in the future without requiring an additional rulemaking.

(g) To Align Language with NASAA and SEC

The Department works closely with NASAA and the SEC to develop consistent policies and procedures for the securities industry. The Department is proposing multiple changes to the Securities Regulation to align the proposed rulemaking's language with either NASAA or the SEC, or both. The preamble sets forth in detail the NASAA or SEC rule after which the Department is modelling specific sections.

The regulated community will benefit from the changes. Consistency in regulatory treatment is important to the success of the industry as a whole because the securities industry frequently operates across states and countries.

(11) 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 regulations.

Specific Provision - § 302.070

Proposed section 302.070 (registration exemption for investment advisers to private funds) is more stringent than the federal standard set by the Dodd-Frank Act and the Securities and Exchange Commission because it imposes an additional condition to be met before an investment adviser qualifies for a broader federal exemption. As is further explained below, because of the manner in which most advisers choose to collect fees, the additional condition imposed by the Department will come into play anyway for most funds through other applicable regulations. Overall, proposed § 302.070 will apply to very few advisers in the regulated community.

The definition of "investment company" used by the Dodd-Frank Act, the Securities and Exchange Commission, NASAA and the Department is found in the Investment Company Act of 1940 ("Investment Company Act"). (15 U.S.C.S. § 80a-3(a)). Subsection 80a-3(a) defines investment company generally, then subsections 80a-3(b) and 80a-3(c) list exemptions to subsection 80-3(a). The exemptions set forth that none of the persons described in subsections 80-3(b) or 80-3(c) are investment companies for purposes of the Investment Company Act.

Prior to the Dodd-Frank Act, the Securities and Exchange Commission rules and regulations contained a private adviser exemption which included a de minimus exemption for investment advisers with 15 or fewer clients. (17 CFR § 275.203(m)-1). In response to the Dodd-Frank Act, the Securities and Exchange Commission amended the private adviser exemption to include the "Dodd-Frank Exemption" which defines "qualifying private fund" and states that "an investment adviser may treat as a private fund an issuer that qualifies for an exclusion from the definition of an 'investment company,' as defined..." under § 80a-3(a), 80-3(c)(1) or 80-3(c)(7) of the Investment Company Act "...provided that the investment adviser treats the issuers as a private fund under the Act (15 U.S.C. § 80b) and the rules thereunder for all purposes." (17 CFR § 275.203(m)-1(d)(5). Effectively, the Dodd-Frank Exemption provides for an exemption for investment advisers acting solely as an investment adviser to one or more qualifying private funds and managing private fund assets of less than $150 million.

In response to the Dodd-Frank Exemption, NASAA promulgated the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule ("NASAA Private Funds Rule"). The NASAA Private Funds Rule follows the Dodd-Frank Exemption, except that it adds an additional condition to be met to exempt the smaller funds addressed in § 80-3(c)(1) of the Investment Company Act. The additional condition requires that all the investors in an § 80-3(c)(1) must also be "qualified clients" as defined in Rule 205-

3(d)(1). (17 CFR § 275.205-3(d)(1)). Rule 205-3(d)(1) defines "qualified clients" as persons who have over $1 million under management of the investment adviser, or who have a net worth (excluding primary residence) of more than $2 million.

Compelling Pennsylvania Interest

The Department notes that Congress included no federal preemption provision in the Dodd-Frank Act regarding this issue. Generally, investment advisers managing more than $ 100 million in assets are under the sole jurisdiction of the Securities and Exchange Commission and those under the $ 100 million are under the sole jurisdiction of the states. However, for purposes of this issue, the Securities and Exchange Commission and the states have concurrent jurisdiction.

Proposed section 302.070 adopts the NASAA Private Funds Rule. The Department chose to adopt the NASAA Private Funds Rule instead of the Dodd-Frank Exemption for two reasons. The first reason is that the states have experienced an increase in fraud in the smaller private funds addressed in subsection 80-3(c)(1). To attempt to curb the fraud, the Department determined that the specific inclusion of the qualified client requirement strikes an appropriate balance between investor protection and capital formation.

The second reason is that within the regulated community most advisers to private funds prefer to receive performance-based fees. Performance-based fees are collected by the advisers based on the performance of the underlying fund, rather than as a percentage of the fund assets. As an example, an adviser's performance-based fees might be 30% of the fund gains over $5 million. For an adviser to collect performance-based fees, both the Securities and Exchange Commission's rules and the Department's regulations require all investors in the fund to be "qualified clients." (15 USC § 80b-5 and 70 P.S. § 1-405). Therefore, most of the subsection 80-3(c)(1) funds addressed by the Dodd-Frank Exemption need to meet the qualified client requirement anyway.

The Department's securities regulations contain a de minimus exemption from the definition of "investment adviser" for in-state people with 5 or fewer clients. The regulations also include an exception to registration for out-of-state people with 5 or fewer clients. The proposed rulemaking continues the applicability of these de minimus rules in proposed §§ 102(j)(vii) and 302(d). (70 P.S. §§ 1-102(j)(vii) and 302(d)).

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

Comparison to Other States

The majority of states enacted securities laws modelled after one of two Uniform State Securities Acts, the 1956 Uniform State Securities Act and the 2002 Uniform Securities Act, drafted by the National Conference of Commissioners on Uniform State Laws. As explained in the prefatory note, the 2002 Uniform State Securities Act is the result of the need to modernize the Uniform Securities Act as a consequence of new federal preemption legislation and recent changes in the technology of securities trading and regulation.

Pennsylvania modelled the 1972 Act after the 1956 Uniform Securities Act. Approximately 37 states adopted the 1956 Uniform Securities Act. Roughly 26 of those states continue to base their respective securities laws on the 1956 Uniform Securities Act, while about 20 states use the 2002 Uniform Securities Act as a model. Although not every state uses a Uniform Securities Act as its model, every state has some form of state securities law.

All 50 states and the District of Columbia are members of NASAA. In addition, the provinces and territories of Canada, Puerto Rico, the Virgin Islands and Mexico are members. The majority of states adopted securities regulations modelled after the NASAA model rules. Not all states adopt the NASAA model rules verbatim. For example, at least 19 states, not yet including Pennsylvania, adopted some form of the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule. However, 8 of those states changed the "qualified client" requirement of the NASAA model rule to a lower "accredited investor" requirement for Section 3(c)(1) funds. One state adopted a stricter version by deleting the Section 3(c)(1) funds from the rule and another added additional requirements to Section 3(c)(1) funds. Six states adopted the rule without change.

Pennsylvania is behind other states in the adoption of some NASAA model rules because the former Pennsylvania Securities Commission last updated the regulations under the 1972 Act in 2004. For example, approximately 40 states already adopted the NASAA Model Custody Rule. The Department proposes to adopt the NASAA Model Custody Rule without variation under proposed section 404.014 and other related proposed sections. In addition, approximately 32 states already adopted the NASAA Model Rule on the use of Senior-Specific Certifications and Professional Designations without variation. The Department is proposing to adopt the Senior-Specific NASAA Model Rule model rule without variation in proposed section 305.020.

Ability to Compete

The proposed rulemaking will not affect Pennsylvania's ability to compete with other states. In contrast, the proposed rulemaking enhances the ability to compete by increasing consistency with the rules and regulations of the federal government and other states, implementing changes to aid the regulated community with compliance and heightening investor protections. These changes create a favorable regulatory environment in Pennsylvania for both issuers and investors.

Consistency of the rules and regulations of the federal government and the states is a key component of capital formation in the securities industry. The majority of securities offerings are multi-state and the issuer must adhere with the law of every state they sell into, so the individual states benefit from having substantially similar laws. To achieve this consistency, the proposed regulations include several new exemptions from registration, including the exemption for private fund advisers (proposed section 302.070) and the exemption for solicitors for investment advisers (proposed section 302.071). In addition, proposed section 210.010 expands retroactive registration.

Ease of compliance is a factor considered by the regulated community when considering a regulatory structure. The proposed rulemaking includes several changes to aid the regulated community's compliance with the 1972 Act. The proposed rulemaking includes the expansion of methods to file documents with the Department (proposed sections 603.011, 701.010, 701.011, 701.020); the deletion of the tax opinion requirement for limited partnerships (proposed section 206.020); the deletion of the requirement for an additional year of financial statements for direct participation programs (proposed section 609.034); the deletion of the requirement to include financial statements of the issuer's parent corporation (proposed section 609.010); and the clarification of various rules relating to "custody" (proposed sections 404.013, 303.042(a)(3), 303.012(b)(1), 304.012 and 304.022).

Investor protection is a necessary component to a favorable regulatory environment. The proposed rulemaking balances the regulatory concerns of the regulated community for exemptions and a less prohibitive compliance structure with investor protections. The proposed rulemaking includes several

provisions aimed at heightening investor protection, including the adoption of enhanced "custody" rules (proposed section 404.014) and addressing the misuse of senior specific certifications and professional designations (proposed section 305.020).

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

The regulation will not affect any other regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The Department did not communicate with or solicit input from the general public during the development and drafting process because the proposed rulemaking does not impact the public.

Currently, no trade association solely represents the interests of the securities industry in Pennsylvania. To facilitate input from the regulated community, the Department formed the Securities Industry Advisory Committee (SIAC). The SIAC is a voluntary group comprised of nine securities industry professionals (financial advisors; lawyers, including a former chief counsel to the former Pennsylvania Securities Commission; and a state representative of the National Association of Insurance and Financial Advisors). The members of the SIAC provide securities industry services to large and small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) as well as individuals across the Commonwealth.

In 2012, the Department invited the SIAC to review proposed amendments to the 1972 Act. In 2014, the Department requested that the SIAC reconvene to review the proposed rulemaking. The SIAC discussed the proposed rulemaking during a series of four two-hour conference calls during August and September of 2014 and afterward provided feedback to the Department.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

For the purposes of this answer, person means "an individual, corporation, partnership, association, joint stock company, syndicate, trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, government, political subdivision of a government, or any other entity." 70 P.S. § 1-102(n). The proposed rulemaking affects:

(a) Agents of Broker-Dealers: individuals meeting the definition set forth in 70 P.S. § 1-102(c) and proposed section 102.021;

(b) Investment Adviser Representatives: individuals meeting the definition set forth in 70 P.S. § 1-102(j)(i) and proposed section 102.021;

(c) Companies registering securities for sale in Pennsylvania: Companies intending to sell securities in Pennsylvania that are required under various sections of the 1972 Act and the securities regulation to register with the Department;

(d) Companies applying for exemption to see securities in Pennsylvania: Companies intending to sell securities in Pennsylvania that fit the requirements for registration, but apply to be exempted from registration based on various sections of the 1972 Act and the securities regulation which permit exemption;

(e) Companies "notice" filing for the sale of securities in Pennsylvania: Companies intending to sell

securities in Pennsylvania not meeting the requirements for registration which are still required by various sections of the 1972 Act and the securities regulation to file a notice with the Department;

(f) Broker-Dealers registered in Pennsylvania: Persons meeting the definition of broker-dealer set forth in 70 P.S. § 1-102(j)(i) and proposed section 102.021;

(g) Investment advisers registered in Pennsylvania: Persons meeting the definition of investment adviser set forth in 70 P.S. § 1-102(j)(i) and proposed section 102.021 that fit the requirements for registration under various sections of the 1972 Act and the securities regulation; and

(h) Investment advisers "notice" filing in Pennsylvania: Persons meeting the definition of investment adviser and not meeting the requirements for registration which are still required by various sections of the 1972 Act and the securities regulation to file a notice with the Department.

Section 3 of the Regulatory Review Act, Act 76 of 2012, defines a small business "in accordance with the size standards described by the Small Business Administration's small business size regulations under 13 CFR CH. 1 Part 121." *See* 71 P.S. § 745.3. The Small Business Administration's regulations reference the small business size standards established by the NAICS Industry Classification System ("System"). The System classifies all aspects of the securities industry as small businesses if the entities have less than $38.5 million in annual receipts. *See* 13 CFR § 121.201, NAICS Nos. 523110-523999.

Type of Regulated Individual/Person	NAICS Small Business Category	Total Number (Estimated)	Total Number of Small Businesses (Estimated)
Agents of Broker-Dealers	N/A	177,950	N/A
Investment Adviser Representatives	N/A	16,925	N/A
Companies registering securities for sale in Pennsylvania	Securities, Commodity Contracts, and other Financial Investments and Related Activities, 523110-523999	90-100	10
Companies applying for exemption to sell securities in Pennsylvania	Securities, Commodity Contracts, and other Financial Investments and Related Activities, 523110-523999	10-20	15
Companies notice filing for the sale of securities in Pennsylvania	Securities, Commodity Contracts, and other Financial Investments and Related Activities, 523110-523999	5,000	Unknown – no financial information required
Broker-Dealers registered in Pennsylvania	Securities Brokerage, 523120	2,110	Unknown – no financial information required
Investment Advisers registered in Pennsylvania	Investment Advice, 523930	850	850
Investment Advisers notice filing in Pennsylvania	Investment Advice, 523930	2,040	Unknown – no financial information required

The overall effect of the proposed rulemaking on the regulated community as a whole is minimal. The proposed changes will reduce some costs to the regulated community, as well as provide consistency with industry standards and clarity throughout the regulation. Because the entire regulated community will be required to follow the proposed rulemaking, the Department does not anticipate any specific adverse effect to either the small businesses of which it is aware or to the small businesses of which it is not aware.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

All persons subject to the provisions of the 1972 Act and regulations will be required to comply with the proposed rulemaking. The regulated community includes the types of regulated individuals/persons listed in the Department's answer to Question 15 which total a regulated community of approximately 205,000.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

There is no negative financial impact anticipated on individuals, small businesses, businesses and labor communities and other public and private organizations as a result of the proposed regulations.

There is no negative economic impact anticipated on individuals, small businesses, businesses and labor communities and other public and private organizations as a result of the proposed regulations.

There is no social impact anticipated on individuals, small businesses, business and labor communities and other public and private organizations as a result of this regulation.

The Department expects the following benefits as a result of the regulation. Specifically:

(a) *Elimination of registration fees for individuals or businesses, including small businesses, qualifying for the proposed "private funds" and "solicitor" exemptions.* Proposed §§ 302.070 and 302.071 contain exemptions from registration as an investment adviser if the section requirements are satisfied. Individuals or businesses exempted from registration as an investment adviser save $500 per year in adviser registration fees.

(b) *Reduced costs of compliance for businesses, including small businesses, seeking to raise capital.* Several of the proposed regulations reduce the costs of compliance for certain businesses seeking to raise capital from the sale of securities in Pennsylvania. For example:

(1) The proposed deletion of section 207.140 and revision of 603.011 expand the acceptable methods for document filing with the Department.

(2) The proposed deletion of section 206.020, requiring the filing of a tax opinion in registrations for the sale of limited partnership interests, eliminates the cost of such an opinion. The costs of a tax opinion currently range from $ 5,000 - $ 25,000 per opinion.

(3) The proposed revision to section 609.010 to delete the requirement to include financial statements of the issuer's parent corporation eliminates the cost associated with compliance.

(c) *Consistency of custody rules for individuals and businesses, including small businesses, registered as Investment Advisers that have "custody" of client funds.* The proposed rulemaking adopts the NASAA Model Custody Rule and amends the various custody-related rules accordingly to align Pennsylvania with custody-related rules in other states as well as with the Securities and Exchange Commission rules. The

consistency of the proposed custody amendments will reduce confusion for the regulated community. This reduction will be most noticeable for firms where a provision of the Dodd-Frank Act of 2010 required a "switch" in registration from the Securities and Exchange Commission to the Department.

(d) *Increased investor protections for individuals and businesses, including small businesses, which purchase securities.* The proposed rulemaking increases certain investor protections. For example:

(1) The proposed addition of section 305.020 addresses the misuse of senior specific certifications and professional designations. For instance, the proposed language will prohibit a user from indicating or implying that they have special certification or training in advising or servicing senior citizens or retirees. The proposed rulemaking considers the use of such certifications and designations, when not issued by a credible organization, to be "dishonest and unethical" conduct by registered sales agents and investment advisers.

(2) The proposed adoption of the NASAA Model Custody Rule and amendments to the various custody related rules require that a "qualified custodian" hold customer funds. The custodian is also required to provide the customer with account statements.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

There are no adverse effects of this regulation.

Any costs to the regulated community or the state government will be minimal. The Department determined that the benefit of increasing consistency with the rules and regulations of the federal government and other states, implementing changes to aid the regulated community with compliance and heightening investor protections outweighed the possible minimal increase in costs.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The proposed rulemaking does not require the regulated community to incur any additional costs associated with compliance. Compliance with proposed sections 303.042 and 404.014 may require a small fee arrangement between an investment adviser and a qualified custodian. In addition, the proposed rulemaking imposes some additional books and records requirements for investment advisers with custody of client funds. However, the Department estimates that most investment advisers covered by these proposed sections already pay the fee arrangement and comply with the books and records requirements as sound business practices. Therefore, the proposed rulemaking does not result in an additional cost to the regulated community.

There are no specific anticipated savings for the regulated community associated with compliance with the regulation. The inclusion of retroactive registration in section 210.010, the deletion of the tax opinion requirement in section 206.020 and the inclusion of exemptions from registration as an investment advisor in sections 302.070 and 302.071 will likely result in savings to some members of the regulated community associated with compliance, but that savings cannot be properly estimated by the Department.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

This proposed rulemaking does not affect local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no anticipated costs or savings to the state government associated with the implementation of the proposed regulations. The Department already regulates the companies issuing securities and the persons acting as broker-dealers, agents, investment advisers and investment adviser representatives covered in the proposed rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

No legal, accounting or consulting procedures or additional reporting, recordkeeping or other paperwork, including forms or reports, are required for the implementation of this proposed rulemaking for the regulated community, the local governments or the state government.

(23) 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.

	Current FY Year (12-13)	FY +1 Year (13 -14)	FY +2 Year (14 -15)	FY +3 Year (15 -16)	FY +4 Year (16 -17)	FY +5 Year (17 -18)
SAVINGS:	$	$	$	$	$	$
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Savings	$0	$0	$0	$0	$0	$0
COSTS:	$0	$0	$0	$0	$0	$0
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Costs	$0	$0	$0	$0	$0	$0
REVENUE LOSSES:	$0	$0	$0	$0	$0	$0
Regulated Community	$0	$0	$0	$0	$0	$0
Local Government	$0	$0	$0	$0	$0	$0
State Government	$0	$0	$0	$0	$0	$0
Total Revenue Losses	$0	$0	$0	$0	$0	$0

(23a) Provide the past three year expenditure history for programs affected by the regulation.

This chart is not applicable because the regulation does not affect a program of the Department.

Program	FY -3	FY -2	FY -1	Current FY

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.
(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
(c) A statement of probable effect on impacted small businesses.
(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

As stated above (under 15), the regulation does not adversely impact small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

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

The Department did not develop any special provisions because the affected members of the securities industry which qualify as small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) do not have any particular needs different than those applicable to all of the securities industry.

Proposed section 305.020 is designed to protect senior citizens from the misuse of professional designations that connote nothing more than a marketing tool for persons selling securities or providing advice regarding securities.

The proposed rulemaking does not affect any other group.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The Department attempted to draft a non-burdensome proposed rulemaking. However, the Department did receive comments from the SIAC regarding the exemption for investment advisers to private funds in proposed section 302.070. Proposed section 302.070 directly adopts the NASAA Private Funds Rule. The SIAC requested that the Department consider deleting the requirement for audited financial statements for Section 3(c)(1) funds and lowering the qualified client standard to the accredited investor standard for investors in those funds. The SIAC requested this change because of concerns about the utility of the exemption if the Department did not make the requested modifications. They expressed reservations about whether any advisers would avail themselves of the exemption, or just register anyway.

The Department considered SIAC's comments, but did not make the requested modifications. Proposed section 302.070 adopts the NASAA Private Funds Rule without changes because the Department concluded that:

(a) The standards set forth in the NASAA Private Funds Rule provide the appropriate balance of investor protection and fostering capital formation.

(b) The qualified client standard is already required for many advisers in the regulated community because both Federal and state rules require investors to be qualified clients for the adviser to receive the performance-based fees collected by the majority of advisers.

(c) The advisers that qualify for the Department's current "de minimus" exemption for advisers with five or fewer clients are not effected by proposed section 302.070 because the de minimus exemption remains available in the proposed rulemaking.

(d) Proposed section 302.070 implements an exemption where one does not currently exist from which many in the regulated community may benefit, even though the proposed rulemaking is not as unrestricted as requested by the SIAC.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;
(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
(c) The consolidation or simplification of compliance or reporting requirements for small businesses;
(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

As stated above, the proposed rulemaking does not have an adverse impact on small businesses. The proposed rulemaking actually reduces the compliance burden of the regulated community, including small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012).

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a

searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

All data used as a basis for this proposed rulemaking is attached.

NASAA Model Rules: The Department obtained the attached NASAA Model Rules from the internet site www.nasaa.org because it is a publicly accessible web site. The Department used the below listed model rules as guidance when drafting the proposed rulemaking.

Custody Requirements for Investment Advisers Model Rule 102(e)(1)-1, *adopted April 3, 2000, amended 4/18/04, 9/11/05; amended 9/11/2011*: The Department used this rule as a reference for various proposed rulemakings relating to advisers having custody, including proposed sections 102.021, 303.012(b)(1), 303.042(a)(3), 304.012, 304.022 and 404.013.

Investment Adviser Representative Definition Model Rule USA 2002 102(16), *adopted 9/17/2008*: The Department used this rule as a reference for proposed section 302.071.

Model Rule on the Use of Senior-Specific Certifications and Professional Designations, *adopted March 20, 2008*: The Department used this rule as a reference for proposed section 305.020.

Prohibited Conduct of Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers Model Rule USA 2002 502(b), *adopted 9/17/2008*: The Department used this rule as a reference for proposed section 404.010.

Recordkeeping Requirements for Investment Advisers Model Rule 203(a)-2, *adopted 9/3/87, amended 5/3/99, 4/18/04, 9/11/05; amended 9/11/2011*: The Department used this rule as a reference for proposed section 304.012.

Registration Exemption for Investment Advisers to Private Funds Model Rule, *adopted December 16, 2011; amended October 08, 2013*: The Department used this rule as a reference for proposed section 302.070.

Code of Federal Regulations: The Department obtained the attached Code of Federal Regulation sections from the internet site www.ecfr.gov because it is a publicly accessible web site. The Department used the below listed sections as guidance when drafting the proposed rulemaking.

Access to nonpublic information, 17 CFR 240.24c-1, *effective October 8, 1993*: The Department used this rule as a reference for proposed section 601.030.

Cash payments for client solutions, 17 CFR 275.206(4)-3, *effective July 14, 2010, amended September 13, 2010*: The Department used this rule as a reference for proposed section 302.071.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:	July 11, 2016
B. The date or dates on which public meetings or hearings will be held:	No public meetings are anticipated at this time.
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	September 15, 2016
D. The expected effective date of the final-form regulation:	Immediately upon publication in the *Pennsylvania Bulletin.*
E. The date by which compliance with the final-form regulation will be required:	60 days after the effective date
F. The date by which required permits, licenses or other approvals must be obtained:	N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will periodically seek input from the regulated community and conduct internal evaluations of the regulation after its implementation.

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Copy below is hereby approved as to form and legality. Attorney General	Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:	Copy below is hereby approved as to form and legality. Executive or Independent Agencies.
BY: Amy M. Elliott (DEPUTY ATTORNEY GENERAL)	Department of Banking and Securities (AGENCY)	BY: DATE OF APPROVAL
JUN 02 2016 DATE OF APPROVAL	DOCUMENT/FISCAL NOTE NO. 3-54 DATE OF ADOPTION: BY: TITLE: Secretary of Banking and Securities (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)	3/17/16 Deputy General Counsel ~~(Chief Counsel, Independent Agency)~~ (Strike inapplicable title)
☐ Check if applicable Copy not approved. Objections attached.		☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF PROPOSED RULEMAKING

DEPARTMENT OF BANKING AND SECURITIES

10 Pa. Code Chs. 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901, 1001

SECURITIES REGULATION OMNIBUS AMENDMENTS

PROPOSED RULEMAKING
DEPARTMENT OF BANKING AND SECURITIES
[10 Pa. Code Chs. 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901, 1001]

Preamble

The Department of Banking and Securities (Department) proposes to amend and delete various sections of Chapters 1, 100-600, 900 and 1001 to read as set forth in Annex A. This chapter is proposed under the authority of Sections 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C (promulgation of rules and regulations)); Section 609(a) of the Pennsylvania Securities Act of 1972 ("1972 Act")(70 P.S. § 1-609(a) (ability to make, amend and rescind regulations, rules and orders); and Section 9(b) of the Takeover Disclosure Law ("TDL")(70 P.S. § 79(b) (ability to make, amend and rescind regulations, rules and orders)).

Purpose

The Department of Banking and Securities proposes to amend and delete various sections of the Securities Regulation (10 Pa. Code §§ 1.1, 102.021 – 1001.010) to read as set forth in Annex A. The proposed rulemaking will: replace terminology made obsolete by the 2012 merger of the former Pennsylvania Securities Commission into the former Department of Banking ("2012 merger"); correct formatting and word choice issues; delete multiple statements of policy; reduce compliance requirements; permit electronic format submissions as well as electronic filing; and align the language of the regulation with the North American Securities Administrators Association ("NASAA") model rules and the Securities and Exchange Commission rules and regulations (17 CFR §230.100 – 230.1001 (Securities Act of 1933); 17 CFR § 240.0-1 – 240.36a1-2 (Securities Exchange Act of 1934); and 17 CFR § 275.0-2 – 275.222-2 (Investment Advisers Act of 1940)).

Explanation of Regulatory Requirements

PART 1. GENERAL PROVISIONS
CHAPTER 1. PRELIMINARY PROVISIONS

Section 1.1 (relating to definitions) is proposed to be amended to add the definition of "commission" to subsection (a) by referencing the statutes pertaining to the commission contained in sections 733-1121-A and 733-1122-A in the Department of Banking and Securities Code (71 P.S. §§ 733-1121-A – 1122-A).

PART VII. SECURITIES

Part VII is proposed to be amended to: replace all references to "Commission" relating to the former Pennsylvania Securities Commission with "department" as a reflection of the 2012 merger; replace all references to the "United States Securities and Exchange Commission" or "SEC" with "Securities and Exchange Commission" for consistency; delete all references to "order of" to remove the requirement that the Department take actions through the format of an order; and replace "the National Association of Securities Dealers, Inc. (NASD)" with "FINRA" because the

NASD merged with the regulatory arm of the New York Stock Exchange to form the Financial Industry Regulatory Authority, Inc. (FINRA) as a regulatory body.

PART VII. SECURITIES
Subpart A. DEFINITIONS
CHAPTER 1. GENERAL PROVISIONS

Proposed § 102.021 (relating to definitions) is proposed to be added to organize the terms currently defined throughout the regulation into one section for readability and to add additional terms for clarity purposes.

The proposed rulemaking amends and moves the following existing defined terms into the proposed § 102.021 definition section from other sections in the regulation: 203(d) restricted securities (formerly "restricted securities"); accountant's report; advertisement; agent; agricultural cooperative association; amount; any credit union; audit; bank; bank holding company; bond; broker-dealer; client; compensation; comparative financial statement; control; convicted; cooperative business association; custody; customer; date of filing; development stage company; engaged in agriculture; entity; equity security; equity securityholder; examination; exchange; executive officer; experienced private placement investor; feasibility study; financial forecast; financial institution; financial projection; fiscal year; franchise; going concern disclosure; guarantor; guaranty; hypothetical assumption; independent; independent party; individuals controlling; industrial loan association; industrial loan business; insolvent, insolvency; institutional investor; insurance holding company; investment adviser representative; investment supervisory services; majority-owned subsidiary; most recent audited financial statements; net capital; net worth; networking arrangement or brokerage affiliate arrangement; note or footnote; office of supervisory jurisdiction; parent; pooled investment vehicle; principal; prime quality; principal place of business; private placement offering of securities; pro rata; promotional securities; publish; purchase of securities by an experienced private placement investor; qualified custodian; registrant; related; related parties; rental pool arrangement; review; review report; security or securities; share; side-by-side fund; significant subsidiary; solicitor; sponsor; standby commission; subsidiary of a specified person; tangible book value of a company's common shares; tangible net worth; totally-held subsidiary; trade or professional association; trustee for the bondholders; voting shares; wholly-owned subsidiary; and wrap fee program.

The proposed rulemaking adds the following additional defined terms into proposed §102.021: 3(c)(1) fund; accredited investor; agricultural cooperative association member; beneficial ownership; bona fide distribution; bona fide pledgee; branch office; CRD; class of a series; confidential information; discretionary power; FINRA; fair value; firm member; IARD; impersonal investment advisory services; independent certified public accountant; independent representative; NASAA; non-branch office; portfolio management; private fund adviser; professional corporation; prospective financial statement; qualifying private fund; related person; Securities and Exchange Commission; securities issued by a credit union; securities issued by an industrial loan association; and venture capital fund.

Section 102.031 (relating to agent registration) is proposed to be deleted as the topic of agent registration addressed in this section is included in the definition of "agent" in proposed section 102.021.

Section 102.041 (relating to bank holding companies; banks in organization) is proposed to be deleted as the definitions of "bank holding company" and "bank" are included in proposed section 102.021.

Section 102.050 (relating to transfer agents and registrars) is proposed to be deleted as the topics of transfer agents and registrars are included in the definitions of "agent" and "broker-dealer" in proposed section 102.021.

Section 102.060 (relating to the former commission) is proposed to be deleted as the definition of "commission" as of the 2012 merger, is included in proposed section 1.1.

Section 102.111 (relating to institutional investors) is proposed to be deleted as the definition of "institutional investors" is included in proposed section 102.021.

Section 102.112 (relating to retirement and pension plans SEPs, IRAs and KEOGHS as institutional investors) is proposed to be deleted as the topics of retirement and pension plans, SEPS, IRAs and KEOGHS are addressed in the definition of "institutional investors" in proposed section 102.021.

Section 102.201 (relating to franchises) is proposed to be deleted as the topic of franchises as currently addressed in this section is included in the definition of "security" in proposed section 102.021.

Section 102.202 (relating to real property) is proposed to be deleted as the topic of real property is addressed in the definition of "security" included in proposed section 102.021.

Section 102.241 (relating to exchange) is proposed to be deleted as the definition of "exchange" is included in proposed section 102.021.

Subpart B. REGISTRATION OF SECURITIES
CHAPTER 202. EXEMPT SECURITIES

Section 202.010 (relating to securities issued by a governmental unit) is proposed to be amended to include format and language choice changes for readability.

Section 202.030 (relating to commercial paper) is proposed to be amended to: delete the definition of "prime quality" as it is included in proposed section 102.021; add "general solicitation through" and "Internet, or other means" to section (d) for consistency with the 2004 amendment to section 203(d) of the Pennsylvania Securities Act of 1972 ("1972 Act"); and include format and word choice changes for readability.

Section 202.041 (relating to credit union and industrial loan association securities) is proposed to be deleted as the topics of credit unions and industrial loan association securities as addressed in this section are included in the definition of "any credit union" in proposed section 102.021.

Section 202.052 (relating to trade or professional association) is proposed to be deleted as the definition of "trade or professional association" is included in proposed section 102.021.

Section 202.091 (relating to shares of professional corporations) is proposed to be amended to delete the definition of "professional corporation" as it is included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 202.092 (relating to guaranties of certain debt securities exempt) is proposed to be amended to: delete "as that term is defined in 609.032(a)(relating to definitions)" from subsection (c), all of subsection (d) and all internal references to the subsection (d) as the definitions of "bond", "guaranty", "guarantor", "insolvent", "trustee for the bondholders" and "going concern disclosure" are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 202.093 (relating to charitable contributions to pooled income funds exempt) is proposed to be amended to: delete "of 1954" from subsection (a)(2); replace the "Charitable Organization Reform Act (10 P.S. §§ 161.1 – 161.19)" with "Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ 162.1 – 162.23)" in subsection (a)(3) for citation accuracy; and include format and word choice changes for readability.

Section 202.094 (relating to world class issuer exemption) is proposed to be amended to include format and word choice changes for readability.

Section 202.095 (relating to charitable gift annuities) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 203. EXEMPT TRANSACTIONS

Section 203.011 (relating to nonissuer transactions) is proposed to be amended to add "or an affiliate" after "the issuer" in the second sentence of the paragraph for consistency within the section and with the language of the 1972 Act as well as to include format and word choice changes for readability.

Section 203.041 (relating to limited offerings) is proposed to be amended to replace "application" with "notice" for consistency with the terminology of the Act of 1972 as well as to include format and word choice changes for readability.

Section 203.091 (relating to equity securities issued by reporting company) is proposed to be deleted as the definition of "equity security" is included in proposed section 102.021.

Section 203.101 (relating to mortgages) is proposed to be amended to: delete "market" and "as defined under § 609.032" from subsection (a)(3) for consistency with the Financial Accounting Standards Board Accounting Standard Codification (ASC) Topic 820 referenced in the definition of "fair value" in proposed section 102.021; add "general solicitation through" and "Internet or other means is used" to subsection (a)(4) for consistency with the 2004 amendment to section 203(d) of the 1972 Act.; delete "is used or" and "made or other form of general solicitation is utilized" for consistency with the 2004 amendment to section 203(d) of the 1972 Act; delete "of

Banking" after "department" in subsection (a)(6) to reflect the 2012 merger; replace "70 P.S. § 1-417" with "70 P.S. §§ 1-401 – 409" for citation accuracy; and include format and word choice changes for readability.

Section 203.131 (relating to bona fide pledgee) is proposed to be deleted as the definition of "bona fide pledgee" is included in proposed section 102.021.

Section 203.141 (relating to sales to existing equity securityholders) is proposed to be amended to: add "equity" prior to "securityholder(s)" throughout the section for consistency with section 203(n) of the 1972 Act; delete the definition of "securityholder" as this term, now referenced as "equity securityholder" is included in proposed section 102.021; and delete the definitions of "class", "standby commission" and "pro rata" as these terms are included in proposed section 102.021; and include format and word choice changes for readability.

Section 203.151 (relating to proxy materials) is proposed to be amended to include format and word choice changes for readability.

Section 203.161 (relating to debt securities of nonprofit organizations) is proposed to be amended to include format and word choice changes for readability.

Section 203.171 (relating to liquidations, dividends, and distributions) is proposed to be deleted as the definition of "bona fide distribution" is included in proposed section 102.021.

Section 203.183 (relating to agricultural cooperative associations) is proposed to be amended to delete the definitions of "agricultural cooperative association", "members", "securities" and "engaged in agriculture" as these terms are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 203.184 (relating to offers and sales to principals) is proposed to be amended to delete the definition of "principal" as this term is included in proposed subsection 102.021 as well as to include format and word choice changes for readability.

Section 203.185 (relating offers before effectiveness of registration by qualification exempt) is proposed to be amended to include format and word choice changes for readability.

Section 203.186 (relating to employee takeovers) is proposed to be amended to delete "as that term is defined in § 609.010 (relating to use of prospective financial statements)" as the definition of "prospective financial statements" is included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 203.187 (relating to small issuer exemption) is proposed to be amended to: align with the language of the 2004 amendment to section 203(d) of the 1972 Act by adding "general solicitation through" and "Internet or other means is used" to subsection (a)(6); delete "is used or" and "is made" from subsection (a)(5); and include format and word choice changes for readability.

Section 203.188 (relating cooperative business associations exemption) is proposed to be amended to delete subsection (b) as the definitions of "cooperative business association" and "securities"

are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 203.189 (relating to isolated transaction exemption) is proposed to be amended to: add "general solicitation through" and "Internet or other means is used" to subsection (a)(5) for consistency with the 2004 amendment to section 203(d) of the 1972 Act; delete "is used or" and "is made" for consistency with the Securities and Exchange Commission; and include format and word choice changes for readability.

Section 203.191 (relating to SEC Rule 505 offerings) is proposed to be amended to: replace "application" with "notice" in subsection (a) for consistency with the 1972 Act; add "to be filed" to subsection (a) for consistency with the requirements of section 203(s)(i) of the 1972 Act; add "1-" to the citation for accuracy; delete the definitions of "compensation" and "beneficial ownership" as these terms are included in proposed Section 102.021; and include format and word choice changes for readability.

Section 203.192 (relating to Rule 801 and 802 offerings exempt) is proposed to be amended to include format and word choice changes for readability.

Section 203.201 (relating to accredited investor exemption) is proposed to be amended to: replace "application" with "notice" for consistency with the 1972 Act; replace the citation "70 P.S. § 203(t)(i)" with "70 P.S. § 1-203(t)(ii)" in subsection (a) for citation accuracy; insert a "1-" before "606(c)" and "606.031" in subsection (b) for citation accuracy; delete subsections (c) and (d) as the terms "compensation" and "beneficial ownership" are included in proposed section 102.021; and include format and word choice changes for readability.

Section 203.202 (relating to certain transactions with persons from Canada exempt) is proposed to be amended to include format and word choice changes for readability.

Section 203.203 (relating to certain Rule 144A exchange transactions exempt) is proposed to be amended to delete "as that term is defined in 17 CFR 230.144(a)(3)(relating to persons deemed not to be engaged in a distribution and therefore not underwriters)" as the definition of "restricted securities" is included in proposed section 102.021 as "203(d) restricted securities" as well as to include format and word choice changes for readability.

CHAPTER 204. EXEMPTION PROCEEDINGS

Section 204.010 (relating to increasing number of purchasers and offerees) is proposed to be amended to: add "exemption" in front of "notice filing" in subsection (a)(2) to clarify the type of notice referred to by the subsection; replace "application" with "notice" in subsection (a)(2) for consistency with the 1972 Act; delete subsection (d) and all internal references to the subsection (d) as the definitions of "experienced private placement investor", "private placement offering of securities" and "purchase of securities by an experienced private placement investor" are included in proposed section 102.021; and include format and word choice changes for readability.

Section 204.011 (relating to waivers of the 12-month holding period) is proposed to be amended to delete subsection (b) as the terms "restricted securities" (now referred to as "203(d) restricted

securities") and "insolvent" are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 204.012 (relating to waivers for pre-effective offers under section 203(h)) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 205. REGISTRATION BY COORDINATION

Section 205.021 (relating to registration by coordination) is proposed to be amended to add "or otherwise equivalent form" to subsection (c)(2) to eliminate the need to amend the regulation if the Securities and Exchange Commission chooses to renumber its forms as well as to include format and word choice changes for readability.

Section 205.040 (relating to series of unit investment trusts as separate issuers) is proposed to be amended to add "of the act" for consistency within the section as well as to include format and word choice changes for readability.

CHAPTER 206. REGISTRATION BY QUALIFICATION

Section 206.010 (relating to registration by qualification) is proposed to be amended to include format and word choice changes for readability.

Section 206.020 (relating to tax opinion in offerings of limited partnership interests) is proposed to be deleted to remove the requirement that the regulated community incur a substantial cost to obtain a tax opinion when that information, where applicable, will be included in the filing in some other format.

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

Section 207.050 (relating to reports by engineers, appraisers and others) is proposed to be amended to include format and word choice changes for readability.

Section 207.071 (relating to escrow of promotional securities) is proposed to be amended to delete subsection (b) as the definition of "promotional securities" is included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 207.072 (relating to escrow of proceeds) is proposed to be amended to include format and word choice changes for readability.

Section 207.091 (relating to subscription contracts) is proposed to be amended to include format and word choice changes for readability.

Section 207.101 (relating to effective period of registration statement) is proposed to be amended to include format and word choice changes for readability.

Section 207.130 (relating to notice to purchasers under section 207(m)) is proposed to be amended to include format and word choice changes for readability.

Section 207.140 (relating to signatures on electronic filings) is proposed to be deleted as this topic is addressed in other sections of the regulation.

CHAPTER 208. DENIAL FOR ABANDONMENT

Proposed section § 208.010 (relating to denial for abandonment) is proposed to be added to relocate the denial for abandonment language related to corporate finance that is currently included in section 602.022 into Chapter 200 as this chapter contains the rules related to corporate finance, whereas Chapter 600 addresses fees.

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

Section 209.010 (relating to required records; report on sales of securities and use of proceeds) is proposed to be amended to: add "on sales of securities and Form 209" to subsection (b)(1) to eliminate the need for subsection (c); delete subsection (c) and the internal reference to subsection (c) as redundant; and include format and word choice changes for readability.

CHAPTER 210. RETROACTIVE REGISTRATION

Section 210.010 (relating to retroactive registration) is proposed to be amended to: remove "of certain investment company securities" from the title; replace the language of subsection (a) to be consistent with the 2014 amendment to section 210 of the 1972 Act permitting retroactive registration for all issuers with effective registration statements thereby reducing the filing burden on the regulated community; and include format and word choice changes for readability.

CHAPTER 211. FEDERALLY COVERED SECURITIES

Section 211.010 (relating to notice filings for Federally covered securities) is proposed to be amended to add subsection (d) including the language "or any notice filing form that has been adopted by the department" to cover the recent SEC final rule in Regulation A, which made Tier 2 offerings covered securities as well as to include format and word choice changes for readability.

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

CHAPTER 301. REGISTRATION REQUIREMENT

Section 301.020 (relating to agent transfers) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 302. EXEMPTIONS

Section 302.060 (relating to dual registration of agents in certain instances) is proposed to be deleted as this rule is no longer applicable to the industry because since 1979, the regulation applied to one individual.

Section 302.061 (relating to auctioneers exemption from broker-dealer and agent registration) is proposed to be amended to replace the "Auctioneer License Act" with "Auctioneers and Auction Licensing Act" for citation accuracy as well as to include format and word choice changes for readability.

Section 302.063 (relating to financial institutions exempt from broker-dealer and agent registration) is proposed to be amended to delete subsection (b) as the definitions of "financial institution" and "networking arrangement or brokerage affiliate arrangement" are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 302.064 (relating to stock exchange exemption from agent registration) is proposed to be amended to add the language "a currently effective" in subsection (3) for consistency within the section as well as to include format and word choice changes for readability.

Section 302.065 (relating to Canadian broker-dealer exempt) is proposed to be amended to include format and word choice changes for readability.

Proposed section 302.070 (relating to registration exemption for investment advisers to private funds) is proposed to be added for consistency with the NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule adopted in December 2011 and amended in 2013 ("NASAA IA Private Funds Model Rule").

Proposed section 302.071 (registration exemption for solicitors) is proposed to be added for consistency with the NASAA IA Private Funds Model Rule.

CHAPTER 303. REGISTRATION PROCEDURE

Section 303.011 (relating to broker-dealer registration procedures) is proposed to be amended to include format and word choice changes for readability.

Section 303.012 (relating to investment adviser registration procedure) is proposed to be amended to: add language to align with the language of the Securities and Exchange Commission and the NASAA Custody Requirements for Investment Advisers Model Rule 102(e)(1)-1 ("NASAA IA Custody Model Rule"); delete the definition of "principal place of business" as the definition is included in proposed section 102.021; and include format and word choice changes for readability.

Section 303.013 (relating to agent registration procedures) is proposed to be amended to include format and word choice changes for readability.

Section 303.014 (relating to investment adviser representative registration procedures) is proposed to be amended to include format and word choice changes for readability.

Section 303.015 (relating to notice filing for Federally covered advisers) is proposed to be amended to include format and word choice changes for readability.

Proposed section 303.016 (relating to considered as abandoned) is proposed to be added to relocate the denial for abandonment language related to licensing that is currently included in section 602.022 into Chapter 300 as this chapter contains the rules related to licensing, whereas Chapter 600 addresses fees.

Section 303.021 (relating to registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally-covered adviser) is proposed to be amended to: delete "SEC" in front of "Rule 15b1-3(a)" in subsection (a)(1) because the regulated community identifies this an Securities and Exchange Commission rule through the citation; replace "may" with "shall" in subsection (b)(1) to reflect that the successor investment adviser must adhere to the requirements of that subsection; and include format and word choice changes for readability.

Section 303.031 (relating to examination requirement for agents) is proposed to be amended to include format and word choice changes for readability.

Section 303.032 (relating to examination requirements for investment advisers and investment adviser representatives) is proposed to be amended to include format and word choice changes for readability.

Section 303.041 (relating to broker-dealer capital requirements) is proposed to be amended to delete subsection (c) as the definition of "customer" is included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 303.042 (relating to investment adviser capital requirements) is proposed to be amended to: replace "of $25,000" with "required under Rule 15c3-1 (17 CFR 240.15c3-1)" in subsection (a)(2); add "maintained by a qualified custodian" to subsection (a)(3)(i), add subsection (a)(3)(i)(D), add subsection (a)(3)(ii)(B)(III), and delete subsection (a)(3)(iii) to align with the language of the NASAA IA Custody Model Rule; delete the definitions of "custody", "independent party", "net capital", "net worth", "pooled investment vehicle", "principal place of business" and "qualified custodian" as those definitions are included in proposed section 102.021; and include format and word choice changes for readability.

Section 303.051 (relating to surety bonds) is proposed to be amended to delete the definition of "principal place of business" is included in proposed section 102.021 as well as to include format and word choice changes for readability.

CHAPTER 304. POSTREGISTRATION PROVISIONS

Section 304.011 (relating to broker-dealer required records) is proposed to be amended to include format and word choice changes for readability.

Section 304.012 (relating to investment adviser required records) is proposed to be amended to: delete ", as the term is defined in § 303.042(c) or possession of securities or funds of any client," and the definitions of "investment adviser", "control", "solicitor", "client", "investment

supervisory services" and "custody" as those definitions are included in proposed § 102.021; add subsections (a)(21), (22), (23) and (24), subsections (b)(5), (6), (7) and (8) and "(22) – (24)" to subsection (e)(5)(i) to be consistent with the NASAA IA Custody Model Rule; and include format and word choice changes for readability.

Section 304.021 (relating to broker-dealer required financial reports) is proposed to be amended to include format and word choice changes for readability.

Section 304.022 (relating to investment adviser required financial reports) is proposed to be amended to: require sole proprietors to file an affirmative statement at the end of its fiscal year; delete the current language in subsections (a) – (d) as the appropriate information is either included in the proposed subsections (a) – (f) or addressed in the definition of custody and in proposed section 209.010 (books, records and accounts); add subsection (e) to limit the application of custody so as to exclude investment advisers in compliance with proposed section 303.012(c)(3) with custody solely because of the authority to deduct fees from client accounts or solely because of service as a general partner to private funds; and add subsection (f) to include an exemption to proposed subsection (d).

Section 304.041 (relating to examination of broker-dealers and investments advisers) is proposed to be amended to replace "or" with "and" in subsection (b) to require broker-dealers and investment advisers to maintain files in accordance with both the rules of the Securities and Exchange Commission and any National Securities Exchange or National securities association registered with the Securities and Exchange Commission as well as to include format and word choice changes for readability.

Section 304.051 (relating to broker-dealer compensation) is proposed to be amended to include format and word choice changes for readability.

Section 304.061 (relating to free credit balances) is proposed to be amended to delete "for the purpose of this section, the term 'customer' means every person other than the broker-dealer" as the definition of "customer" is included in proposed section 102.021 as well as to include format and word choice changes for readability.

Proposed section 304.071 (relating to business continuity and succession planning) is proposed to be added to require investment advisers to implement succession plans.

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

Section 305.011 (relating to supervision of agents, investment adviser representatives and employees) is proposed to be amended to include format and word choice changes for readability.

Section 305.012 (relating to convicted) is proposed to be deleted as the definition of "convicted" is included in proposed section 102.021.

Section 305.019 (relating to dishonest and unethical practices) is proposed to be amended to: delete "provision of the Rules of Fair Practice of the National Association of Securities Dealers or an

applicable" from subsection (c)(1)(xxi) to reference that the Securities and Exchange Commission is the appropriate regulatory body; add "or affiliated person" to subsection (c)(3)(xi)(B) to remove the possibility of duplicative fees; delete "affairs or" and add "or other financial information" to subsection (c)(3)(xiv) as the term "affairs" is too vague; replace "404.013" with "404.014" in subsection (c)(3)(xv) for consistency with the proposed deletion of 404.013 and addition of 404.014; and include format and word choice changes for readability.

Proposed section 305.020 (relating to use of senior specific certifications and professional designations) is proposed to be added for consistency with the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations adopted March 20, 2008 and with Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") Pub. L. No. 111-203, 124 Stat. 1367 (various sections of U.S.C. titles 7, 12, 15, and 31).

Section 305.061 (relating to withdrawal of registration or notice filing) is proposed to be amended to include format and word choice changes for readability.

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 401. SALES AND PURCHASES

Section 401.020 (relating to professional responsibility) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Section 404.010 (relating to advertisements by investment advisers and investment adviser representatives) is proposed to be amended to: delete "by any customer" from subsection (a)(1) to be consistent with the NASAA Unethical Business Practices of Investment Advisers, Investment Adviser Representatives, and Federal Covered Advisers Model Rule 102(a)(4)-1; delete subsections (b) and (c) as the definitions of "advertisement" and "clients" are included in proposed section 102.021; and include format and word choice changes for readability.

Section 404.011 (relating to investment adviser brochure disclosure) is proposed to be amended to delete subsection (k) as the definitions of "client", "portfolio manager", "sponsor" and "wrap fee program" are included in proposed section 102.021 as well as to include format and word choice changes for readability.

Section 404.012 (relating to cash payment for client solicitation) is proposed to be amended to: add "or any other economic benefit" to subsection (b) and (b)(3) to be consistent with the NASAA Regulations Regarding Solicitors Model Rule 404(a)-(2); replace ", unless exempted, is registered under the act" with "is registered as an investment adviser representative or is exempt from registration under section 302.071 or qualifies for another exemption under the act" in subsection (b)(2) to permit the individual exemption included in section 302.071 to apply to firms; add "prospective" before client to subsection (b)(4)(iii), (b)(4)(iii)(B)(VI) and (b)(5) to clarify that it applies to a "prospective" client; replace "(b)(4)" with "(b)(5)" in subsection (c) to reference the proper subsection; add "investment advisory" in subsection (c)(1) for language consistency within

the section; delete subsection (e) as the definitions of "client", "impersonal advisory services" and "solicitor" are included in proposed section 102.021; and include format and word choice changes for readability.

Section 404.013 (relating to investment adviser custody or possession of funds or securities of clients) is proposed to be deleted to be replaced by 404.014.

Proposed section 404.014 (relating to custody requirement for investment advisers) is proposed to be added for consistency with the NASAA IA Custody Model Rule.

Subpart E. ENFORCEMENT

CHAPTER 501. CIVIL LIABILITIES

Section 501.011 (relating to criminal referrals) is proposed to be amended to include format only changes for readability.

CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

Section 504.060 (relating to rescission offers) is proposed to be amended to: replace "required by" with "materials prepared to satisfy" to clarify that although 401(b) is the anti-fraud section of the 1972 Act the section itself does not refer to a specific disclosure requirement; add language to create an actual duty; to provide the documents to each rescission offeree; add "shall advise the department of the results of the rescission offer within 15 calendar days after the expiration of the rescission offer period and" to subsection (f) to incorporate the timing requirement already in the form into the regulation; delete the definition of "executive officer" as this definition is included in proposed section 102.021; delete the definition of "general partner" as this is no longer a defined term; and include format and word choice changes for readability.

CHAPTER 513. RESCISSION ORDERS

Section 513.010 (relating to rescission orders) is proposed to be amended to include format and word choice changes for readability.

Subpart F. ADMINISTRATION

CHAPTER 601. ADMINISTRATION

Section 601.010 (relating to commission quorum; action; disqualification) is proposed to be deleted as the 2012 merger renders this section inapplicable to the administration of the Department.

Section 601.020 (relating to secretary, assistant secretaries) is proposed to be deleted as the 2012 merger renders this section inapplicable to the administration of the Department.

Proposed section 601.030 (relating to access to confidential information) is proposed to be added to address the dissemination of confidential information as well as to conform the meaning of

"necessary or appropriate" set forth in section 601(c) of the 1972 Act with the Securities and Exchange Commission Rule 240.24c-1.

CHAPTER 602. FEES

Section 602.022 (relating to denial for abandonment) is proposed to be deleted as the topic of denial of abandonment related to corporate finance is more properly addressed Chapter 208 and the topic of denial of abandonment related to licensing is more properly addressed in Chapter 303.

Section 602.060 (relating to charges for Commission publications) is proposed to be deleted as the 2012 merger renders this section inapplicable to the administration of the Department.

CHAPTER 603. ADMINISTRATIVE FILES

Section 603.011 (relating to filing requirements) is proposed to be amended to: replace "Secretary, Pennsylvania Securities Commission; 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410" with "Commonwealth of Pennsylvania Department of Banking and Securities, 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101, or such other address as the department may designate" in subsection (e) to update the filing address due to the 2012 merger and to allow for any future address changes without the need for amendment; add "or any such successor address" to subsection (f)(9) to allow for any future address changes of the NASAA/FINRA Central Registration Depository without the need for amendment; replace "www.psc.state.pa.us" with "www.dobs.pa.gov" in proposed subsection (i) to update the current web site address of the Department; and include format and word choice changes for readability.

Section 603.031 (public inspection of records) is proposed to be amended to: replace "1 of the act of June 21, 1957 (P.L. 390, No. 212)(65 P.S. § 66.1(2)" with "102 of the act of February 14, 2008 (P.L. 6, No. 3, known as the Right-to-Know Law (65 P.S. § 67.102), and any successor statute" in subsection (b) to update the Right-to-Know Law citations; add "or examination" to subsection (d) as "investigation" alone does not address the examination activities of the Department; replace " 1(2)" with "102" in subsection (f) for citation accuracy; delete "for purposes of this section, the term 'principal' has the meaning as set forth in § 303.012(e)" subsection (f)(3) as the definition of "principal" is included in proposed section 102.021; remove the phrase "and home address" from (f)(1)-(3) to reflect the current requirements of the Right-to-Know Law; and include format and word choice changes for readability.

Section 603.040 (relating to charges for department services) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 604. INTERPRETATIVE OPINIONS OF COMMISSION – STATEMENT OF POLICY

Section 604.010 (relating to interpretative opinions – statement of policy) is proposed to be deleted as the information included in this statement of policy (SOP) will be moved to the Department's website as a link under legal information.

Section 604.011 (relating to filings of copies – by facsimile or otherwise – of submittals, pleadings

and other nonoriginal documents - statement of policy) is proposed to be deleted as the information contained in this SOP is either irrelevant after the 2012 merger or already covered in amendments to the regulation.

Section 604.012 (relating to nonresponse or affirmative rejection of offers made under section 504(d) or (e) of the act and § 504.060 (relating to rescission offers) – statement of policy) is proposed to be deleted as subsection (b) is now contained in proposed § 504.060(e) and subsection (a) is no longer necessary.

Section 604.016 (relating to guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser Law Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2) – statement of policy) is proposed to be deleted as the information contained in this SOP will be moved to the Department's website as a link under releases.

Section 604.017 (relating to guidelines concerning the continuance of hearings by hearing officers – statement of policy) is proposed to be deleted as the information contained in this SOP is no longer relevant because since the 2012 merger hearing procedures are covered solely by the General Rules of Practice and Procedure, 1 Pa. Code §§ 31.1 – 35.251 (GRAPP).

Section 604.018 (relating to imposition of administrative assessments under section 602.1(c) – statement of policy) is proposed to be deleted as the information contained in this SOP is no longer relevant because the 2012 merger put new adjudicatory processes in place.

Section 604.019 (relating to requests for oral argument – statement of policy) is proposed to be deleted as the information contained in this SOP is no longer relevant because since the 2012 merger hearing procedures are covered solely by GRAPP.

Section 604.020 (relating to broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services – statement of policy) is proposed to be deleted as the information contained in this SOP will be moved to the Department's website as a link under releases.

Section 604.021 (relating to denial of allegations – statement of policy) is proposed to be deleted as the information contained in this SOP is no longer relevant because as of the 2012 merger the Banking and Securities Commission only serves in an adjudicatory capacity after the appointment of a hearing officer.

Section 604.022 (relating to offers of settlement and consent injunctions – criminal referrals and investigations – statement of policy) is proposed to be deleted as the information contained in this SOP is no longer relevant due to the 2012 merger because the Banking and Securities Commission only serves in an adjudicatory capacity and referrals are now covered under the Banking and Securities Code §§ 733-302 and 733-404.

Section 604.023 (relating to no-action letters – statement of policy) is proposed to be deleted as the information contained in this SOP will be moved to the Department's website as a link under legal.

CHAPTER 605. COMMISSIONERS AND COMMISSION EMPLOYEES; RELATIONSHIP WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS

Section 605.020 (relating to conflict of interest) is proposed to be amended to: remove "or" from subsection (a)(1) and add "or" to subsection (a)(2) because the proposed rulemaking expands the list to three subsections; add subsection (a)(3) to permit the holding or purchasing of securities by a Department employee when the employee is not involved in the review of the application for registration, or an investigation, audit or examination, of a broker-dealer, agent, investment adviser, or investment adviser representative; and include format and word choice changes for readability.

CHAPTER 606. MISCELLANEOUS POWERS OF DEPARTMENT

Section 606.011 (relating to financial reports to securityholders) is proposed to be amended to include format and word choice changes for readability.

Section 606.031 (relating to advertising literature) is proposed to be amended to delete subsection (g) as the definitions of "advertisement" and "publish" are included in proposed section 102.021 as well as to be amended to include format and word choice changes for readability.

Section 606.041 (relating to delegation and substitution) is proposed to be deleted as the 2012 merger rendered this section inapplicable and the corresponding section 606(d) of the 1972 Act is deleted effective as of August 9, 2014.

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

Section 609.010 (relating to use of prospective financial statements) is proposed to be amended to: delete the definitions of feasibility study, financial forecast, financial projection, hypothetical assumption, independent and prospective financial statement as those terms are now included in proposed section 102.021 where applicable; delete "as that term is defined in § 204.010(d)(1)(relating to increasing number of purchasers and offerees)" from proposed (b)(3) as the definition of "experienced private placement investors" is included in proposed section 102.021; replace "Statement of Accounts' Services on Prospective Financial Information" with "Statement of Standards for Attestation Engagements" in subsection (e) to conform with current terminology; replace "AICPA" with "SSAE" in subsection (e) to conform with current abbreviations; and include format and word choice changes for readability.

Section 609.011 (relating to amendments to filings with department) is proposed to be amended to include format and word choice changes for readability.

Section 609.012 (relating to computing the number of offerees, purchasers and clients) is proposed to be amended to delete subsection (a)(3) as the definition of "entity" is included in proposed section 102.021 as well as to be amended to include format and word choice changes for readability.

Section 609.031 (relating to application) is proposed to be amended to include format and word choice changes for readability.

Section 609.032 (relating to definitions) is proposed to be deleted as a definition for all of the terms in this section, except "fifty-percent, owned person," "material," and "principal holder of equity securities" is included in proposed section 102.021. The phrases "fifty-percent, owned person" and "principal holder of equity securities" are no longer used in the proposed regulation. "Material" is no longer a defined term.

Section 609.033 (relating to accountants) is proposed to be amended to: add "or the auditing standards promulgated by the Public Company Accounting Oversight Board as required by law" to subsection (b)(1) to permit another option regarding auditing standards for brokerages as the Securities and Exchange Commission permits this option; replace "Accounting and Review Services" with "Attestation Engagements" in subsections (b)(2) and (3) to conform to current terminology; and include format and word choice changes for readability.

Section 609.034 (relating to financial statements) is proposed to be amended to delete ", except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years" from proposed subsection (c)(2) to reduce the filing burden for issuers to the standard 2 fiscal years set forth in the same paragraph as well as to include format and word choice changes for readability.

Section 609.036 (relating to financial statements; annual reports) is proposed to be amended to replace "and its parent or" with "and" in subsection (a)(1)(ii) to remove the requirement that the parent also file the documents as well as to include format and word choice changes for readability.

Section 609.037 (relating to foreign financial statements) is proposed to be amended to include format and word choice changes for readability.

CHAPTER 610. DESTRUCTION OF DOCUMENTS AND RECORDS

Section 610.010 (relating to destruction of documents and records) is proposed to be deleted as the destruction of documents and records is governed by the Commonwealth Record Retention rules and the applicable section 610 of the 1972 Act is deleted.

Subpart G. GENERAL PROVISIONS

CHAPTER 701. ADMINISTRATIVE PROVISIONS

Proposed section 701.010 (relating to filing of registration forms) is proposed to be added to address the Department's requirements for the filing of registration forms because currently, format requirements are covered in multiple subsections of the regulation and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Prosed section 701.011 (relating to filing of exemption forms) is proposed to be added to address the Department's requirements for the filing of exemption forms because currently, format requirements are covered in multiple subsections of the regulation and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Proposed section 701.020 (relating to electronic filing) is proposed to be added to address the Department's requirements for electronic filing because currently, electronic filing requirements are covered in multiple subsections of the regulation and the addition of this section and deletion of those subsections will provide clearer guidance for the regulated community.

Proposed section 701.030 (relating to fees) is proposed to be added to address the requirements for the payments of fees to the Department.

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 901. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Section 901.011 (relating to applicability of general rules) is proposed to be deleted as this topic is addressed by section 607(e) of the 1972 Act.

CHAPTER 1001. TAKEOVER DISCLOSURES

Section 1001.010 (relating to takeover offeror report regarding participating broker-dealers) is proposed to be amended to make word choice changes for accuracy.

Affected Parties

The proposed rulemaking would affect the regulated community of broker-dealers, investment advisers and investment adviser representatives. The rulemaking will secondarily impact the customers of the regulated community.

Fiscal Impact

State Government

The proposed rulemaking would have a de minimus impact on the Department. The Department is proposing minor changes to a regulatory structure which already exists. The proposed rulemaking will have no impact on the Commonwealth and its political subdivisions.

Regulated Community

The proposed rulemaking would have a de minimus impact on the regulated community. Some of the proposed changes will reduce costs to the regulated community through simplification of filing requirements.

Paperwork

The proposed rulemaking would have a de minimus impact on paperwork for the regulated community and the Department. The proposed rulemaking includes provisions which permit electronic filing and electronic recordkeeping instead of paper filing and paper records to reduce paperwork for both the regulated community and the Department.

Effectiveness / Sunset Date

Chapters 1, 102, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 301, 302, 303, 304, 305, 401, 404, 501, 504, 513, 601, 602, 603, 604, 605, 606, 609, 610, 701, 901, 1001 will be effective upon final-form publication in the *Pennsylvania Bulletin*. The regulation does not have a sunset date because the Department will periodically review the effectiveness of the regulation.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 2016, the Department submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce Committee and the Senate Banking and Insurance Committee. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to the Office of Chief Counsel, Department of Banking and Securities, Attention: Public Comment on Regulation 3-54, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101-2290, fax (717) 783-5122, ra-pabankreg@pa.gov within 30 days after publication in the *Pennsylvania Bulletin.*

Robin L. Wiessmann,
Secretary

Annex A.

TITLE 10. BANKING AND SECURITIES
PART I. GENERAL PROVISIONS
CHAPTER 1. PRELIMINARY PROVISIONS

Authority

The provisions of this Part I are issued under section 202(C) of the Department of Banking and Securities Code (71 P.S. § 733-202(C)), unless otherwise noted.

Source

The provisions of this Part I adopted _____, effective _____, __ Pa.B. ___, unless otherwise noted.

Sec.
1.1 Definitions.

§ 1.1. Definitions.

(a) The following words and terms, when used in this title, have the following meanings, unless the context clearly indicates otherwise:

Banking Code—Act of November 30, 1965 (P. L. 847, No. 356) (7 P.S. §§ 101—2204).

Commission-- The Banking and Securities Commission of the Commonwealth, as established under Subarticle C of Article XI-A of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking and Securities Code (71 P.S. §§ 733-1121-A - 1122-A).

Department—The Department of Banking and Securities of the Commonwealth.

Secretary—The Secretary of the Department.

* * *

PART VII. SECURITIES

Subpart

A. DEFINITIONS
B. REGISTRATION OF SECURITIES
C. REGISTRATION OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES AND NOTICE FILINGS BY FEDERALLY [-] COVERED ADVISORS

D. FRAUDULENT AND PROHIBITED PRACTICES
E. ENFORCEMENT
F. ADMINISTRATION
G. GENERAL PROVISIONS
H. PRACTICE AND PROCEDURE
I. TAKEOVER DISCLOSURE

Authority

The provisions of this Part VII are issued under section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)) and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)), unless otherwise noted.

Source

The provisions of this Part VII adopted _____, effective _____, __ Pa.B. ___, unless otherwise noted.

Subpart A. DEFINITIONS

* * *

CHAPTER 102. DEFINITIONS

Sec.

§ 102.021. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

203(d) restricted securities - Securities purchased under § 203(d) of the act if the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

3(c)(1) fund – A qualifying private fund that is eligible for exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. § 80a-3(c)(1)).

Accountant's report – A document prepared by an independent certified public accountant indicating the scope of the audit with either of the following:

(i) An opinion regarding the financial statements taken as a whole.

(ii) An assertion that an overall opinion cannot be expressed and the reason why.

Accredited investor – As defined in Rule 501 of Regulation D (17 CFR 230.501 (relating to definitions)).

Act – The Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101 – 1-705).

Advertisement –

(i) As defined in section 102(a) of the act (70 P.S. § 1-102(a)):

(A) Communication includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security.

(B) Publicly disseminated refers to communication directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

(ii) For purposes of § 404.010, any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, by radio or television, or by electronic means, which offers:

(A) An 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.

(B) A 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.

(C) Other investment advisory service with regard to securities.

Agent – As defined in section 102(c) of the act (70 P.S. § 1-102(c)):

(i) Including a person considered an officer, director, partner or employe of an issuer, or an individual occupying a similar status or performing similar functions, if the designation is applied for the purpose of avoiding registration as an agent under the act.

(ii) Excluding persons acting as transfer agents and registrars on behalf of issuers or performing only ministerial duties in handling securities and maintaining lists of securityholders.

Agricultural cooperative association –

(i) An association which admits to membership only persons engaged in agriculture and is organized and operated to engage in any cooperative activity for persons engaged in agriculture in connection with:

(A) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products of agriculture.

(B) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.

(C) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes set forth in clauses (i) and (ii) on a cooperative basis.

(ii) A federation of individual agricultural cooperative associations if the federation possesses no greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

Agricultural cooperative association member – Patron, to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patron to be treated as a member.

Amount – A quantity, which for the purpose of:

(i) Evidence of indebtedness is the principal amount.

(ii) Shares is the number of shares.

(iii) Any other kind of security is the number of units.

Any credit union – An institution organized as a credit union under the applicable laws of this Commonwealth, the business of which is:

(i) Confined substantially to the credit union business (the receipt of deposits from and the making of loans to bona fide members of the credit union).

(ii) Supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over that institution.

Audit – The examination of historical financial statements by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Bank – As defined in section 102(d) of the act (70 P.S. § 1-102(d)), the term does not include:

(i) A holding company for a bank.

(ii) A bank-in-organization as determined by the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.

Bank holding company — A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Beneficial ownership –

(i) For purposes of § 203.191 and section 203(t)(v) of the act, as defined in 17 CFR 240.13d-3 (relating to determination of beneficial owner).

(ii) For purposes of §§ 304.012 and 305.019, as defined in 17 C.F.R. 275.204A-1 (relating to investment adviser codes of ethics).

Bona fide distribution – A distribution not made solely to avoid the registration provisions of section 201 of the act (70 P.S. § 1-201).

Bona fide pledgee –

(i) A secured party who takes securities in pledge to secure a bona fide debt.

(ii) The term does not include a secured party who takes securities in pledge under either of the following circumstances:

(A) Without any intention or expectation that they will be redeemed but merely as a step in the distribution to the public.

(B) Without having secured knowledge, in the exercise of reasonable diligence, before the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.

Bond –

(i) A debt obligation.

(ii) For purposes of § 202.092, an exempt security under section 3(a)(2) of the Securities

Act of 1933 (15 U.S.C.A. § 77c(2)) when either of the following applies:

(A) The issuer of the security is located in this Commonwealth.

(B) The guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is considered to be a separate security under Securities and Exchange Commission Rule 131 (17 CFR 230.131(relating to definition of security issued under governmental obligations)).

Branch office - As defined in FINRA Rule 3110(e) or any successor thereto.

Broker-Dealer –

(i) As defined in section 102(e) of the act (70 P.S. § 1-102(e)).

(ii) The term does not include the following:

(A) Persons acting as transfer agents and registrars on behalf of issuers.

(B) Persons performing only ministerial duties in handling securities and maintaining lists of securityholders.

CRD – The Central Registration Depository operated by FINRA.

Class of a series – Equity securities of an issuer of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

Client –

(i) A person to whom an investment adviser or investment adviser representative has provided investment advice for which the investment adviser or investment adviser representative received compensation.

(ii) For purposes of § 404.012, includes any prospective client.

Compensation - A form of payment or consideration, whether direct or in the form of cash or other benefits.

Comparative financial statement – A document which includes financial statements for two or more years presented in adjacent columnar form.

Confidential information – Records and other information in the department's possession which are not available for public inspection and copying under the act of February 14, 2008 (P.L. 6, No. 3), known as the Right to Know Law (65 P.S. §§ 67.101-67.3104), or section 603(c) of the act (70 P.S. § 1-603(c)).

Control –

(i) As defined in section 102(g) of the act (70 P.S. § 1-102(g)).

(ii) For purposes of §§ 304.012 and 404.014, the term also includes the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise, including the following presumptions:

(A) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser.

(B) A person is presumed to control a corporation if any of the following apply:

(I) The person directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities.

(II) The person has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

(C) A person is presumed to control a partnership if the person has the right to receive on dissolution, or has contributed, 25 percent or more of the capital of the partnership.

(D) A person is presumed to control a limited liability company if any of the following apply:

(I) The person directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company.

(II) The person has the right to receive on dissolution, or has contributed, 25 percent or more of the capital of the limited liability company.

(III) The person is an elected manager of the limited liability company.

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

Convicted – A verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not sentence has been imposed.

Cooperative business association – A person organized exclusively as a retail or wholesale cooperative which admits to membership only persons that legitimately engage, in whole or in part, in the line of business for which the cooperative was organized.

Custody –

(i) For purposes of a person, directly or indirectly holding client funds or securities, with authority to obtain possession of them or the ability to appropriate them.

(ii) For purposes of an investment adviser, if a related person holds directly or indirectly, client funds or securities, or has authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(iii) For purposes of (i) and (ii), the term includes:

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them.

(B) Any arrangement (including a general power of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian on the investment adviser's instruction to the custodian.

(C) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position or another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(iv) For purposes of (i) and (ii), the term does not include:

(A) An investment adviser that has inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours, provided that the adviser keeps a ledger or other listing of all securities or funds held or obtained in this manner as required under § 304.012(a)(22).

(B) An investment adviser acting as a trustee for a beneficial trust in which the beneficial owners of the trust are a parent or step-parent, grandparent or step-grandparent, spouse, brother or step-brother, sister or step-sister, or grandchild or step-grandchild of the investment adviser; if the investment adviser maintains the records required under § 304.012(b)(8).

Customer –

(i) As defined in 17 CFR 240.15c3-3 (customer protection - reserves and custody of securities).

(ii) For the purpose of §§ 303.041 and 304.061, every person other than the broker-dealer.

Date of filing – The date on which any application, registration statement, notice filing, financial statements, reports, correspondence or other documents filed or required to be filed directly with the department, or any material amendment thereto, are received in the Harrisburg office of the department.

Development stage company – A company devoting substantially all of its efforts to establishing a new business if planned principal operations have not commenced, or have commenced, but there has been no significant revenue therefrom.

Discretionary power – Effecting a transaction or placing a trade order without specific authorization from the client, not including 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.

Engaged in agriculture – Farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations.

Entity - A corporation, partnership, association, joint stock company, limited liability company, trust, estate or unincorporated association.

Equity security –

(i) A stock or similar security (including interests in a limited liability company).

(ii) A security convertible, with or without consideration, into a stock or similar security, or carrying a warrant or right to subscribe to or purchase a security described in (i); or a warrant or right.

(iii) For purposes of § 203.091, includes:

(A) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(B) Nontransferable warrants to purchase any of the foregoing.

(C) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

Equity securityholder –

(i) Persons who at the time of offers and sales under the exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) are holders of equity securities.

(ii) The term does not include persons who are holders of equity securities issued in violation of or without compliance with the act and the rules and regulations adopted under the act.

Examination – When used in regard to financial information, the review or verification of financial and other information by an independent certified public accountant for the purpose of expressing an opinion thereon.

Exchange – A National securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) or a National quotation system operated by a National securities association registered with the Securities and Exchange Commission under section 15A of the 1934 Act (15 U.S.C.A. § 78o-3).

Executive officer – Each person serving as chief executive offer, chief operating officer or chief financial officer of a person.

Experienced private placement investor – An individual, or spouse purchasing as a joint tenant or tenant by the entireties, who purchased a minimum of $450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

FINRA – The Financial Industry Regulatory Authority, Inc.

Fair value – The price that would be received to either sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date, as set forth and interpreted in Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Topic 820.

Feasibility study – An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast – A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

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.

Financial projection – A prospective financial statement which:

(i) Presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position.

(ii) Is based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Firm member – All partners and principals in the firm as well as all professional employees participating in an audit or located in an office of the firm participating in a significant part of an

audit.

Fiscal year –

(i) The annual accounting period when a closing date is adopted.

(ii) The calendar year ending on December 31 when no closing date is adopted.

Franchise – An agreement involving a continuing commercial relationship by which a person ("franchisee") is permitted by another person ("franchisor") the right to offer the goods manufactured, processed or distributed by the franchisor, or the right to offer services established, organized, directed or approved by the franchisor, under circumstances where the franchisor continues to exert any control over the method of operation of the franchisee, particularly, but not exclusively, through trademark, trade name or service mark licensing, or structural or physical layout of the business of the franchisee.

Going concern disclosure – The disclosure of substantial doubt contained in the auditor's report, based on the criteria contained in the Statement on Auditing Standard 126 promulgated by the American Institute of Certified Public Accountants, regarding the ability of the issuer to continue as a going concern during the ensuing fiscal year.

Guarantor – Any person who executes a guaranty.

Guaranty – A duly executed written agreement, which cannot be bought, sold or traded as a security or otherwise realized on by a bondholder separately from the bondholder's interest in the bonds, wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption before maturity or otherwise, and premium, if any, when and as the principal and interest shall become due.

Hypothetical assumption – An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

IARD – The Internet-based Investment Adviser Registration Depository operated by FINRA.

Impersonal investment advisory services – As defined in 17 CFR 275.206(4)-3(d)(3) (relating to cash payments for client solicitations).

Independent – As defined in Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accounts, Inc. or the interpretations adopted thereunder, regardless of whether the person is a Certified Public Accountant or not.

Independent certified public accountant – As set forth in Section 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)(relating to qualifications of accountants).

Independent party – A person who:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement, within the preceding consecutive 12 month period.

Independent representative – A person who:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners.

(ii) Does not control, is not controlled by, and is not under common control with investment adviser.

(iii) Does not have, and has not had within the past two years, a material business relationship with the investment adviser.

Individuals controlling – A general partner and, in the case of a corporation, the president and other officers responsible for making investment decisions with respect to the purchase of the securities described in paragraph (iv) of the definition of institutional investor, if the person is currently engaged in that capacity.

Industrial loan association – For purposes of section 202(d) of the act (70 P.S. § 1-202(d)), an institution organized as an industrial loan association under the applicable laws of this Commonwealth, the business of which is:

(i) Substantially confined to the industrial loan business.

(ii) Examined and supervised as an industrial loan association by the appropriate Commonwealth authorities having supervision over the institution.

Industrial loan business – The making and discounting of secured and unsecured loans to bona fide members of the association.

Insolvent, insolvency – Except in the case of entities required under statute or regulation to submit an auditor's report if the auditor's report does not contain a going concern disclosure, the terms mean one of the following:

(i) The inability to pay debts as they fall due in the person's usual course of business.

(ii) Liabilities in excess of the fair value of the person's assets.

Institutional investor – As defined in section 102(k) of the act (70 P.S. § 1-102(k)), including the following:

(i) A corporation, partnership, trust, estate, or other entity (excluding individuals), or a wholly-owned subsidiary of the entity, which has been in existence for at least 18 months and which had a tangible net worth on a consolidated basis of $25 million or more.

(ii) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of $5 million or more according to its most recent audited financial statements; provided that the aggregate dollar amount of securities being sold to the person under the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)) and this title may not exceed 5% of the endowment or trust funds.

(iii) A wholly-owned subsidiary of a bank as defined in section 102(d) of the act.

(iv) A person, except an individual or an entity whose securityholders consist entirely of one individual or group of individuals who are related, which is organized primarily to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with one of the following:

(A) Has purchased $5 million or more of the securities excluding both of the following:

(I) A purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities, unless the purchase occurred under a leveraged buyout financing in which the person does not intend to provide direct management to the issuer.

(II) A dollar amount of a purchase of securities of a corporation which investment represents more than 20% of the person's net worth.

(B) Is capitalized at $2.5 million or more and is controlled by a person which meets the criteria contained in subparagraph (A).

(C) Is capitalized at $10 million or more and has purchased $500,000 or more of the securities, excluding a purchase of securities of a corporation in which the person directly or

beneficially owns more than 50% of the corporation's voting securities.

(D) Is capitalized at $250,000 or more and is a side-by-side fund.

(v) A Small Business Investment Company as the term is defined in § 103 of the Small Business Investment Act of 1958 (15 U.S.C.A. § 662) which either:

(A) Has a total capital of $1 million or more.

(B) Is controlled by institutional investors as defined in § 102(k) of the act or this section.

(vi) A Seed Capital Fund, as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. §§ 395.2 and 395.6).

(vii) A Business Development Credit Corporation, as authorized by the Business Development Credit Corporation Law (7 P.S. §§ 6040-1 – 6040-16).

(viii) A person whose securityholders consist solely of institutional investors or broker-dealers.

(ix) A person as to which the issuer reasonably believed qualified as an institutional investor under this section at the time of the offer or sale of the securities on the basis of written representations made to the issuer by the purchaser.

(x) A qualified institutional buyer as that term is defined in 17 CFR 230.144A (relating to private resales of securities to institutions), or any successor rule thereto.

(xi) A Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal Revenue Code and all plans under section 408 of the Internal Revenue Code if the plan has one of the following:

(A) Plan assets of $5 million or more.

(B) Investments of $500,000 or more in securities and retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P.S. § 1-301) or a Federally covered adviser to give professional investment management advice.

Insurance holding company – A person engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Investment adviser representative –

(i) As defined in section 102(j.1) of the act (70 P.S. § 1-102(j.1)).

(ii) For purposes of § 304.012(a)(12), includes:

(A) A partner, officer or director of the investment adviser.

(B) An employe who participates in any way in the determination of which recommendations shall be made.

(C) An employe of the investment adviser who, in connection with assigned duties, obtains any information concerning which securities are being recommended before the effective dissemination of the recommendations.

(D) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

(iii) For purposes of § 304.012(a)(13), when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients:

(A) A partner, officer, director or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made.

(B) An employe who, in connection with assigned duties, obtains information concerning which securities are being recommended before the effective dissemination of the recommendations.

(C) Any of the following individuals who obtain information concerning securities recommendations being made by the investment adviser before the effective dissemination of the recommendations as follows:

(I) An individual in a control relationship to the investment adviser.

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

Investment supervisory services – The giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

Majority-owned subsidiary – A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent's other majority owned subsidiaries, or both.

Most recent audited financial statements – Audited financial statements dated not more than 16 months before the date of the transaction in which the person proposed to purchase securities in reliance on the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)).

NASAA – The North American Securities Administrators Association, Inc.

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

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

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

(ii) Deferred charges.

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

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

(v) Advances or loans to:

(A) Stockholders and officers in the case of a corporation.

(B) Members and managers in the case of a limited liability company.

(C) Partners in the case of a partnership.

(vi) Receivables from any affiliate, unless enforceable by contract.

Networking arrangement or brokerage affiliate arrangement – A contractual agreement between a broker-dealer registered under section 301 of the act and a financial institution by which 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.

Non-branch office – Any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."

Note or footnote – A clear and concise disclosure of information, including information

necessary to make any item or entry contained in the financial statement not misleading, cross referenced specifically, if practicable, to an item or entry in a financial statement.

Office of supervisory jurisdiction - As defined in FINRA Rule 3110(e) or any successor thereto.

Parent – An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Pooled investment vehicle –

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64).

Portfolio management – The process of determining or recommending securities transactions for any part of a client's portfolio.

Principal –

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

(A) The issuer.

(B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(ii) A director, general partner or comparable person charged by law with the management of one of the following:

(A) The issuer.

(B) A wholly-owned subsidiary of the issuer.

(C) A corporation, partnership or other entity which owns the voting stock or other

voting equity interest of the issuer.

(D) A corporation, partnership or other entity which serves as a general partner of the issuer.

(iii) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

(A) The issuer.

(B) A corporation, partnership or other entity which serves as a general partner of the issuer.

(C) A promoter of the issuer as defined in section 102(o) of the act (70 P.S. § 1-102(o)).

(D) A relative of a person specified in paragraphs (A)-(C), if "relative" means one of the following:

(I) A spouse.

(II) A parent.

(III) A grandparent.

(IV) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.

Prime quality – A description for commercial paper rated in one of the top three rating categories by a Nationally recognized statistical rating organization.

Principal place of business – As defined 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).

Private fund adviser – An investment adviser who provides advice solely to one or more qualifying private funds.

Private placement offering of securities – An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under section 3(b) or 4(a)(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(a)(2)).

Pro rata –

(i) An offering made in this Commonwealth proportionately on the basis of the number of shares owned by the existing equity securityholder or the equity securityholder's percentage ownership interest in the issuer.

(ii) Includes the following:

(A) The issuer offering its existing equity securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date.

(B) The issuer offering an existing equity securityholder owning 3% of the issuer's stock as of a record date the opportunity to purchase 3% of the issuer's current offering.

Professional corporation -

(i) The term includes one of the following:

(A) A corporation incorporated under the 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of that act by virtue of 15 Pa.C.S. § 2904 or § 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(B) A professional association organized under the 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988), if "shares" includes the interest of an associate in a professional association.

(ii) The term does not include an entity which has as a principal purpose, object or activity, whether expressed in its articles of incorporation or other organic documents, that is other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.

Promotional securities – The term includes any of the following:

(i) Securities issued:

(A) Within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

(B) In consideration for services.

(C) In consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(D) Within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

(ii) Securities subject to an order by the department finding that the securities are promotional securities.

Prospective financial statement – A financial forecast or financial projection, including the summaries of significant assumptions and accounting policies.

Publish – As defined in section 102(p) of the act (70 P.S. § 1-102(p)), together with any form of electronic communication, including Internet and e-mail.

Purchase of securities by an experienced private placement investor – The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.

Qualified custodian – Includes:

(i) A bank as that term is defined in section 102(d) of the act.

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act (70 P.S. § 1-102(f.1)).

(iii) A broker-dealer registered with the Securities and Exchange Commission and the department under section 301 of the act.

(iv) A futures commission merchant registered under § 6f(a) of the Commodity Exchange Act (7 U.S.C. § 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon.

(v) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

Qualifying private fund – A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. § 80b-2(a)(29)) that meets the definition of a qualifying private fund in Securities and Exchange Commission Rule 203(m)-1 (17 CFR 275.203(m)-1)(relating to private fund adviser exemption)).

Registrant – The issuer of the securities for which an application, a registration statement or a report is filed.

Related – A relative by marriage residing in the same household or a blood relative.

Related parties –

(i) The registrant and its affiliates; principal owners (the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity), management

(a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued) and members of their immediate families.

(ii) Entities for which investments are accounted for by the equity method.

(iii) Any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

(iv) Another entity with the ability to significantly influence the management or operating policies of the transacting parties.

(v) Another entity with an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

Related person – A person that is an affiliate of an investment adviser.

Rental pool arrangement – The term includes:

(i) A device by which a person, whether or not the seller, undertakes to rent the property on behalf of the owner during periods of time when the property is not in use by its owner, the rents received from all properties participating in the pool and the expenses attributable to the rents being combined with each property owner receiving a ratable share of the rental proceeds regardless of whether his particular property actually was rented.

(ii) Other devices having like attributes.

Review – An analysis of the financial statements by a certified public accountant in accordance with the Statements on Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

Review Report – An accountant's document in which the certified public accountant indicates that a review has been performed, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Securities and Exchange Commission – The United States Securities and Exchange Commission.

Security or *securities* –

(i) As defined in section 102(t) of the act (70 P.S. § 1-102(t)), including:

(A) The offer and sale of real property if any of the following exists:

(I) The purchaser of the property is required under the terms of the purchase or by reason of acquiring title to do one of the following:

(-a-) Use the seller to perform services in connection with a sale, lease or license of the property purchased.

(-b-) Hold the property available to persons other than the purchaser for the other person's lease, license or other use for a specified period of time or for a period of time when the property is not in use by the owner.

(II) The purchaser is required under the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

(B) A franchise where the arrangement between the franchisor and the franchisee:

(I) Is such that the right to engage in the business of offering, selling or distributing goods or services is exercised under a marketing plan or system prescribed in substantial part by the franchisor.

(II) Is such that the franchisee is not required to make significant managerial efforts in the operation of the business that may be expected to affect the success or failure of the franchisee's business.

(III) Arises as a result of an investment of money, notes or other things of value by or on behalf of the franchisee.

(ii) For purposes of § 203.183, membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences one of the following:

(A) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(B) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(iii) For purposes of § 203.188, an equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences one of the following:

(A) A member's interest in a fund, capital investment or other asset of a cooperative business association.

(B) The apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.

Securities issued by a credit union - For the purpose of section 202(d) of the Act, securities issued by a credit union means only those securities which are issued by an entity directly engaged in the credit union business and may not include securities issued by a credit union holding company or other similar entity.

Securities issued by an industrial loan association –

(i) Securities issued by an entity directly engaged in the industrial loan business.

(ii) The term does not include securities issued by an industrial loan holding company or other similar entity.

Share – Stock in a corporation or unit of interest in an unincorporated person.

Side-by-side fund – A person which is:

(i) Promoted and controlled by individuals controlling a person meeting the criteria contained in subparagraphs (iv)(A), (B), or (C) of the definition of institutional investor.

(ii) Formed exclusively to purchase securities of issuers in various amounts and on the same terms and conditions as the person described in subparagraph (i).

Significant subsidiary – A subsidiary, or a subsidiary and its subsidiaries meeting any of the conditions in subparagraph (i)-(iii) based on the most recent annual financial statements including consolidated financial statements of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed.

(i) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share based on their equity interests of the total assets of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

(ii) The parent's and its other subsidiaries' proportionate share based on their equity interests of the total sales and revenues, after intercompany eliminations, of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries; however, if the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last five fiscal years, the average income may be substituted in the determination.

Solicitor – A person or entity who receives direct or indirect compensation for soliciting a client for, or referring a client to, an investment adviser.

Sponsor – An investment adviser that is compensated under a wrap fee program for one of the following:

(i) Administering, organizing or sponsoring the program.

(ii) Selecting or providing advice to clients regarding the selection of other investment advisers in the program.

Standby commission – The commission payable to a broker-dealer registered under the act for its firm commitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

Subsidiary of a specified person – An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Supervised person – As defined in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(25)).

Tangible book value of a company's common shares – The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) Liquidating value, including any premium of excess over par or stated value, payable on involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) Deferred charges including debt issue costs.

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

(v) All other intangible assets including, goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks and organization costs.

Tangible net worth – Net worth less the amount of all items of goodwill, preoperating, deferred or development expenses, patents, trademarks, licenses or other similar accounts.

Totally-held subsidiary – A subsidiary:

(i) Whose parent, or the parent's other totally-held subsidiaries, or both, owns

substantially all of the subsidiary's outstanding equity securities.

(ii) Not indebted to any person other than its parent or the parent's other totally-held subsidiaries or both, in an amount which is material in relation to the particular subsidiary, excluding indebtedness:

(A) Incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

(B) Secured by its parent by guarantee, pledge, assignment or otherwise.

Trade or professional association – For purposes of section 202(e) of the act (70 P.S. § 1-202(e)), an association of persons having some common business or professional interest, the purpose of which is to promote, on behalf of the association's members generally, the common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(i) Includes an association where the activities of the association are specifically directed to the improvement, on behalf of the association's members generally, of business or professional conditions of one or more lines of business or professions as distinguished from the performance of particular services for individuals or entities.

(ii) Does not include an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining.

Trustee for the bondholders – The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.

Venture capital fund – A private fund meeting the definition of a venture capital fund in Securities and Exchange Commission Rule 203(l)-1 (17 CFR 275.203(l)-1)(relating to the definition of venture capital fund).

Voting shares – The sum of one of the following:

(i) All rights, other than as affected by events of default, to vote for election of directors of an incorporated person.

(ii) All interests in an unincorporated person.

Wholly-owned subsidiary – A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent's other wholly-owned subsidiaries, or both.

Wrap fee program – A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may

include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(b) Words and terms not otherwise defined in this part have the meanings specified in the act.

[§ 102.031. Agent registration.]

[A person may not be deemed an officer, director or partner or employe of an issuer, or an individual occupying a similar status or performing similar functions, if the designation is applied for the purpose of avoiding registration as an agent under the act.]

[§ 102.041. Bank holding companies; banks in organization.

[(a) The definition of "bank" in section 102(d) of the act (70 P.S. § 1-102(d)) does not include a holding company for a bank.

(b) he definition of "bank" in section 102(d) of the act (70 P.S. § 1-102(d)) does not include a bank-in-organization. Whether an entity is a "bank" or a "bank-in-organization" shall be determined in accordance with the interpretation of the primary regulatory authority responsible for administration of the banking laws under which the entity is being formed or with which it shall otherwise comply.]

[§ 102.050. Transfer agents and registrars.]

[(a) Persons acting as transfer agents or registrars on behalf of issuers or performing none other than ministerial duties in handling securities and maintaining lists of securityholders are not thereby deemed to be "engaged in the business of effecting transactions in securities," as that phrase is used in section 102(e) of the act (70 P.S. § 1-102(e)) and do not come within the definition of "broker-dealer" contained in that section.

(b) Transfer agents and registrars whose duties are as described in subsection (a) are not deemed to "represent a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities," as that phrase is used in section 102(c) of the act (70 P.S. § 1-102(c)), and do not come within the definition of "agent" contained in that section.]

[§ 102.060. Commission.

[As used in this part, the term Commission means, unless the content otherwise requires, the Securities Commission.]

[§ 102.111. Institutional investor.]

[(a) *Institutional investor.* Institutional investor, as defined in section 102(k) of the act (70 P.S. § 1-102(k)), includes:

(1) A corporation or business trust or a wholly-owned subsidiary of the person which has

been in existence for 18 months and which has a tangible net worth on a consolidated basis, as reflected in its most recent audited financial statements, of $10 million or more.

(2) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of $5 million or more according to its most recent audited financial statements; provided that the aggregate dollar amount of securities being sold to the person under the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)) and this title may not exceed 5% of the endowment or trust funds.

(3) A wholly-owned subsidiary of a bank as defined in section 102(d) of the act (70 P.S. § 1-102(d)) and § 102.041 (relating to banking institution; savings and loan institution).

(4) A person, except an individual or an entity whose securityholders consist entirely of one individual or group of individuals who are related, which is organized primarily for the purpose of purchasing, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and which complies with one of the following:

(i) Has purchased $5 million or more of the securities excluding both of the following:

(A) A purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities, but securities purchased under a leveraged buyout financing in which the person does not intend to provide direct management to the issuer, is not excluded.

(B) A dollar amount of a purchase of securities of a corporation which investment represents more than 20% of the person's net worth.

(ii) Is capitalized at $2.5 million or more and is controlled by an individual controlling a person which meets the criteria contained in subparagraph (i).

(iii) Is capitalized at $10 million or more and has purchased $500,000 or more of the securities, excluding a purchase of securities of a corporation in which the person directly or beneficially owns more than 50% of the corporation's voting securities.

(iv) Is capitalized at $250,000 or more and is a side-by-side fund as defined in subsection (b)(4).

(5) A Small Business Investment Company as the term is defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C.A. § 662) which either:

(i) Has a total capital of $1 million or more.

(ii) Is controlled by institutional investors as defined in section 102(k) of the act (70 P.S. § 1-102(k)) or this section.

(6) A Seed Capital Fund, as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. §§ 395.2 and 395.6).

(7) A Business Development Credit Corporation, as authorized by the Business Development Credit Corporation Law (15 P.S. §§ 2701 - 2716).

(8) A person whose securityholders consist solely of institutional investors or broker-dealers.

(9) A person as to which the issuer reasonably believed qualified as an institutional investor under this section at the time of the offer or sale of the securities on the basis of written representations made to the issuer by the purchaser.

(10) A qualified institutional buyer as that term is defined in 17 CFR 230.144A (relating to private resales of securities to institutions), or any successor rule thereto.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) *Individuals controlling* - A general partner and, in the case of a corporation, the president and other officers responsible for making investment decisions with respect to the purchase of the securities described in subsection (a)(4), if the person is currently engaged in that capacity.

(2) *Most recent audited financial statements* - Audited financial statements dated not more than 16 months prior to the date of the transaction in which the person proposed to purchase securities in reliance upon the exemption contained in section 203(c) of the act (70 P.S. § 1-203(c)).

(3) *Related* - A relative by marriage residing in the same household or a blood relative.

(4) *Side-by-side fund* - A person which is both of the following:

(i) Promoted and controlled by individuals controlling a person meeting the criteria contained in subsection (a)(4)(i), (ii), or (iii).

(ii) Formed exclusively for the purpose of purchasing securities of issuers in various amounts and on the same terms and conditions as the person described in subparagraph (i).

(5) *Tangible net worth* - Net worth less the amount of all items of goodwill, preoperating, deferred or development expenses, patents, trademarks, licenses or other similar accounts.]

[§ 102.112. Retirement and Pension Plans SEPs, IRAs and KEOGHS as institutional investors.]

[Institutional investor, as defined in section 102(k) of the act (70 P.S. § 1-102(k)), includes a Qualified Pension and Profit Sharing and Stock Bonus Plan under section 401 of the Internal

Revenue Code and all plans of 1986 (KEOGH), an Individual Retirement Account under section 408 of the Internal Revenue Code of 1986 (IRA) and a Simplified Employee Pension under section 408(k) of the Internal Revenue Code of 1986 (SEP) if the plan KEOGH, IRA or SEP has one of the following:

(a) Plan assets of $5 million or more.

(b) Retained, on an ongoing basis, the services of an investment adviser registered under section 301 of the act (70 P.S. § 1-301) or a Federally-covered adviser to render professional investment management advice and has investments of $500,000 or more in securities.]

[§ 102.201. Franchises.]

[(a) The term "security" as defined in section 102(t) of the act (70 P.S. § 1-102(t)) shall be deemed to include a franchise where all of the following exist:

(1) The arrangement between the franchisor and the franchisee is such that the right to engage in the business of offering, selling or distributing goods or services is exercised under a marketing plan or system prescribed in substantial part by the franchisor.

(2) The arrangement between the franchisor and the franchisee is such that the franchisee is not required to make significant managerial efforts in the operation of the business that may be expected to affect the success or failure of the franchisee's business.

(3) The arrangement between the franchisor and the franchisee arises as a result of an investment of money, notes or other things of value by or on behalf of the franchisee.

(b) Franchise means an agreement which involves a continuing commercial relationship by which a person ("franchisee") is permitted by another person ("franchisor") the right to offer the goods manufactured, processed or distributed by the franchisor, or the right to offer services established, organized, directed or approved by the franchisor, under circumstances where the franchisor continues to exert any control over the method of operation of the franchisee, particularly, but not exclusively, through trademark, trade name or service mark licensing, or structural or physical layout of the business of the franchisee.]

[§ 102.202. Real property.]

[(a) For purposes of section 102(t) of the act (70 P.S.§ 1-102(t)), the term "security" is deemed to include the offer and sale of real property where any of the following exists:

(1) The purchaser of the property is required by the terms of the purchase or by reason of acquiring title either:

(i) To use the seller to perform services in connection with a sale, lease or license of the property purchased.

(ii) To hold the property available to persons other than the purchaser for the other person's lease, license or other use for a specified period of time or for a period of time when the property is not in use by the owner.

(2) The purchaser is required by the terms of the purchase or by reason of acquiring title to participate in a rental pool arrangement.

(b) For purposes of this section, the term "rental pool arrangement" constitutes either:

(1) A device whereby a person, whether or not the seller, undertakes to rent the property on behalf of the owner during periods of time when the property is not in use by its owner, the rents received from all properties participating in the pool and the expenses attributable to the rents being combined with each property owner receiving a ratable share of the rental proceeds regardless of whether his particular property actually was rented.

(2) Other devices having like attributes.]

* * *

[§ 102.241. Exchange.]

[For purposes of the act, the term "exchange" includes a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) (1934 Act) or a National quotation system operated by a National securities association registered with the SEC under section 15A of the 1934 Act (15 U.S.C.A. § 78o-3).]

Subpart B. REGISTRATION OF SECURITIES

CHAPTER 202. EXEMPT SECURITIES

Sec.

202.095. Charitable gift annuities.

§ 202.010. Securities issued by a governmental unit.

(a) The exemption contained in section 202(a) of the act (70 P.S. § 1-202(a)) is available for [any] a security described in that section which is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § [77c(2)] 77c(a)(2)).

(b) [except for] The exemption in paragraph (a) does not apply to any part of an obligation evidenced by a bond, note, debenture or other evidence of indebtedness issued by [any] a governmental unit specified in section 3(a)(2) that is [deemed] considered to be a separate security under [United States] Securities and Exchange Commission Rule 131 (17 CFR 230.131 (relating to definition of security issued under governmental obligations)).

§ 202.030. Commercial paper.

(a) The exemption contained in section 202(c) of the act (70 P.S. § 1-202(c)) is available for any security which is a Federally [-] covered security by reason of being an exempt security under section 3(a)(3) of the Securities Act of 1933 (15 U.S.C.A. § [77c(3)] 77c(a)(3)) as interpreted by Release 33-4412 (26 FR 9158 (September 20, 1961)) issued by the [United States] Securities and Exchange Commission which provides that:

(1) The commercial paper [shall be] is prime quality of a type not ordinarily purchased by the general public.

(2) The commercial paper is of a type eligible for discounting by banks which are members of the Federal Reserve System.

(3) The commercial paper is not payable on demand and does not contain a provision for automatic "rollover."

(4) The commercial paper is issued to facilitate current operational business requirements.

(5) The commercial paper proceeds [of the commercial paper] are not used to:

(i) Discharge existing indebtedness unless the indebtedness is itself exempt under section 3(a)(3) of the Securities Act of 1933.

(ii) Purchase or construct a plant facility.

(iii) Purchase durable machinery or equipment.

(iv) Fund commercial real estate development or financing.

(v) Purchase real estate mortgages or other securities.

(vi) Finance mobile homes or home improvements.

(vii) Purchase or establish a business enterprise.

[(b) For purposes of this section, "prime quality" means that the commercial paper has been rated in one of the top three rating categories by a Nationally recognized statistical rating organization.]

[(c) When] (b) If commercial paper is being issued by a holding company for a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), the commercial paper [shall] must bear a prominent legend in bold face type of at least 12 points in size indicating that the commercial paper:

(1) Has not been issued by the bank for which the issuer is the holding company.

(2) Is not a deposit of the bank covered by Federal deposit insurance.

[(d) No] (c) General solicitation through public media advertisement, [or] mass mailing, Internet, or other means [may be made] in connection with soliciting offers or sales of commercial paper is prohibited; provided, that [nothing in this section limits] this section does not limit mailings to institutional investors or broker-dealers, as those terms are defined in the act and this subpart.

[§ 202.041. Credit union and industrial loan association securities.]

[(a) For the purpose of section 202(d) of the act (70 P.S. § 1-202(d)), the term, "any credit union" shall mean an institution organized as a credit union under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the credit union business; and

(2) supervised and examined as a credit union by the appropriate Commonwealth authorities having supervision over any such institution. For the purpose of this section the "credit union business" shall be deemed to be exclusively the receipt of deposits from and the making of loans to bona fide members of the credit union. For the purpose of this section, securities issued by a credit union shall mean only those securities which are issued by an entity directly engaged in the credit union business as that term is used herein and shall not include securities issued by a credit union holding company or other similar entity.

(b) For the purpose of section 202(d) of the act, the term "industrial loan association" shall mean an institution organized as an industrial loan association under the applicable laws of this Commonwealth:

(1) the business of which is substantially confined to the industrial loan business; and

(2) examined and supervised as an industrial loan association by the appropriate

Commonwealth authorities having supervision over any such institution.

(c) For the purpose of this section, the "industrial loan business" shall be deemed to be making and discounting of secured and unsecured loans to bona fide members of the association. For the purpose of this section, securities issued by an industrial loan association shall mean only those securities which are issued by an entity directly engaged in the industrial loan business as that term is used herein and shall not include securities issued by an industrial loan holding company or other similar entity.]

* * *

[§ 202.052. Trade or professional association.]

[(a) For the purpose of section 202(e) of the act (70 P.S. § 1-202(e)), the term "trade or professional association" shall mean an association of persons having some common business or professional interest, the purpose of which is to promote, on behalf of the association's members generally, such common interest and not to engage in a regular business or profession of a kind ordinarily carried on for profit.

(b) For example, the activities of a "trade association," as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association's members generally, of business conditions of one or more lines of business as distinguished from the performance of particular services for individuals or entities. Similarly, the activities of a "professional association," as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)), must be specifically directed to the improvement, on behalf of the association's members generally, of professional conditions of one or more professions as distinguished from the performance of particular services for individuals or entities. Therefore, an association whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a "trade or professional association" as that term is used in section 202(e) of the act (70 P.S. § 1-202(e)).]

* * *

§ 202.091. Shares of professional corporations.

(a) [Pursuant to] Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of shares issued by a professional corporation.

[(b) The meaning of "professional corporation" for this section shall be as follows:

(1) Except as provided in paragraph (2), the term "professional corporation," means one of the following:

(i) A corporation incorporated under the 15 Pa.C.S. Subpart B (relating to Business Corporation Law of 1988) or a corporation included within the scope of that act by virtue of 15 Pa.C.S. § 2904 or 2905 (relating to election of an existing business corporation to become a professional corporation; and election of professional associations to become professional corporations).

(ii) A professional association organized under the 15 Pa.C.S. Chapter 93 (relating to Professional Association Act of 1988). The reference in this section to "shares" shall include the interest of an associate in a professional association.

(2) For the purpose of this section, the term "professional corporation" may not include an entity which has as a principal purpose, object or activity, whether or not expressed in its articles of incorporation or other organic documents, a purpose, object or activity other than the rendition of the professional services for which the professional corporation is organized and activities which are in fact incidental thereto.]

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

§ 202.092. Guaranties of certain debt securities exempt.

(a) The exemption established by this section applies to a guaranty of a bond [, as those terms are defined in subsection (d)(1) and (2),] that is offered or sold in this Commonwealth.

(b) Under the authority contained in section 202(i) of the act (70 P.S. § 1–202(i)), the [Commission] department finds that it is not in the public interest [nor] or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1–201) of the guaranty of a bond if all of the following conditions are met:

(1) The official statement or other disclosure document being [utilized] used in connection with the offer and sale of the bonds contains either of the following:

(i) An audited balance sheet and statement of income of the guarantor dated within 120 days [prior to] before the commencement of the offering in this Commonwealth.

(ii) Both of the following:

(A) An audited balance sheet and statement of income of the guarantor for one of the following:

(I) [the] The most recent completed fiscal year [;].

(II) [or for the] The previous most recent completed fiscal year if the fiscal year of the guarantor ended within 90 days [prior to] before the commencement of the offering in this Commonwealth[, an audited balance sheet and statement of income for the prior most recent completed fiscal year].

(B) A statement by a certified public accountant or the guarantor [as to whether there have been] detailing any adverse material changes in the financial condition of the guarantor which occurred from the date of the audited balance sheet submitted in compliance with clause (A) within 5 days [prior to] of the commencement of the offering in this Commonwealth.

(2) The proceeds from the sale of the bonds are to be [utilized] used for the benefit of a facility which is owned or operated [—user—] by either of the following:

(i) A nonprofit corporation or other nonprofit entity which has been determined by the Internal Revenue Service to be an exempt organization described in 26 U.S.C.A. § 501(c)(3) or has received an opinion of counsel that it is so exempt, and [where] the combined net assets of the user and guarantor [is] are not less than 25% of the amount of the securities being offered.

(ii) An organization which has not been determined by the Internal Revenue Service or by an opinion of counsel to be an exempt organization under 26 U.S.C.A. § 501(c)(3), and [where] the combined net worth of the user and guarantor is not less than 50% of the amount of securities being offered.

(3) The [Under the] guaranty[,] requires the guarantor [is required] to do the following:

(i) File with the trustee for the bondholders a copy of its audited balance sheet and statement of income within 120 days after the completion of its fiscal year.

(ii) Be responsible for expenses incurred by the trustee for the bondholders in complying with paragraph (4)(ii) and (iii) unless there are specific provisions to the contrary in the relevant financing documents.

(iii) Notify the trustee for the bondholders within 24 hours after it becomes insolvent [as that term is defined in subsection (d)(4)].

(4) The [Under the] trust indenture, mortgage, deed of trust or other similar agreement[,] requires the trustee for the bondholders [, as that term is defined in subsection (d)(5), is required] to do the following:

(i) Maintain a current list of the names and addresses of all of the bondholders.

(ii) Provide, to the bondholder, within 30 days of receipt of a written request from a bondholder, a copy of the guarantor's most recent audited balance sheet and statement of income.

(iii) Notify the bondholders of the occurrence of any of the following events no later than 30 days after an occurrence and inform the bondholders that a copy of the bondholders list

described in subparagraph (i) will be provided within 30 days of receipt of a written request for the list:

(A) The date the guarantor failed to comply with subsection (b)(3)(i).

(B) The date the trustee receives a copy of the auditor's report to the guarantor containing going concern disclosure [as that term is defined in 609.032(a) (relating to definitions)].

(C) The date on which the trustee is informed that the guarantor is insolvent [as that term is defined in subsection (d)(4)]. There is no independent duty [on the part of] by the trustee to determine the insolvency of the guarantor.

(c) If the guarantor is a natural person, the guarantor may satisfy the requirements of this section relating to audited balance sheets and statements of income by providing a Statement of Financial Condition prepared utilizing the criteria contained in Personal Financial Statements Guide promulgated by the American Institute of Certified Public Accountants and accompanied by a Review Report [as that term is defined in § 609.032(a)].

[(d) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

(1) *Bond* - This includes only the following:

(i) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) when the issuer of the security is located in this Commonwealth.

(ii) A bond, note, debenture or other evidence of indebtedness that is an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(2)) but when the guaranty issued in connection with the bond, note, debenture or other evidence of indebtedness is deemed to be a separate security pursuant to United States Securities and Exchange Commission Rule 131 (17 CFR 230.131(relating to definition of security issued under governmental obligations)).

(2) *Guaranty* - A duly executed written agreement wherein a person, not the issuer, in connection with offer and sale of bonds in this Commonwealth, guarantees the prompt payment of the principal of, and interest on, the bonds whether at the stated maturity, at redemption prior to maturity or otherwise, and premium, if any, when and as the principal and interest shall become due and the guaranty cannot be bought, sold or traded as a security or otherwise realized upon by a bondholder separately from the bondholder's interest in the bonds.

(3) *Guarantor* - Any person who executes a guaranty.

(4) *Insolvent* — Is defined under § 609.032(a).The inability of a guarantor to pay debts as they fall due in the usual course of business, or having liabilities in excess of the fair market value of assets. For purposes of this paragraph, a guarantor may not be considered insolvent if the

auditor's report to the guarantor's audited balance sheet and statement of income did not contain going concern disclosure as that term is defined in § 609.032(b).

(5) *Trustee for the bondholders* — The person designated in the trust indenture, mortgage, deed of trust or similar agreement to act as trustee for the bonds.]

§ 202.093. Charitable contributions to pooled income funds exempt.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] department finds that it is not in the public interest [nor] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any securities issued or created in connection with contributions or transfers of property to, or certificates of interest or participation in, pooled income funds if the following conditions are met:

(1) A pooled income fund (Fund) as defined in section 642(c)(5) of the Internal Revenue Code [of 1954] (26 U.S.C.A. § 642(c)(5)), is established [for the purpose of permitting] to permit donors to make irrevocable remainder interest gifts to the Fund.

(2) The Fund is afforded a tax deduction under section [642(a)(3)] 642(c)(3) of the Internal Revenue Code [of 1954].

(3) The Fund is in compliance with the [Charitable Organization Reform Act] Solicitation of Funds for Charitable Purposes Act (10 P.S. §§ [161.1 - 161.19] 162.1 – 162.23) and amendments and successor statutes [thereto].

(4) [Each] A prospective donor is provided written disclosure which fully and fairly describes:

(i) The [the] consequences of a contribution or transfer of property to the Fund.

(ii) The [and the] nature, operation and financial condition of the Fund.

(5) [None of those persons] A person responsible for solicitation of contributions to the Fund will not receive commissions or other special compensation based [upon] on the amount of property transferred except that this prohibition does not apply if the person receiving the commissions or special compensation is registered with the [Commission] department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the [Commission] department under section 301 as an agent of the broker-dealer.

(6) [Any person, who for compensation advises] A person receiving compensation for advising the charitable organization as to the advisability of investing in, purchasing or selling securities, including interests in the Fund, or otherwise [performs] performing as an investment adviser is one of the following:

(i) An [either an] investment adviser registered with the [Commission] department under section 301 of the act.

(ii) A Federally covered [or is a Federally – covered] adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the Fund in connection with the solicitation of contributions [but is] subject to the antifraud provisions of sections 401-409 of the act (70 P.S. §§ 1-401 – 1-409) and Subpart D (relating to fraudulent and prohibited practices).

§ 202.094. World class issuer exemption.

Under the authority in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] department finds that it is not in the public interest [nor] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of any security meeting the following conditions:

(1) The securities are one of the following:

(i) Equity securities except options, warrants, preferred stock, subscription rights, securities convertible into equity securities or any right to subscribe to or purchase the options, warrants, convertible securities or preferred stock.

(ii) Units consisting of equity securities permitted by subparagraph (i) and warrants to purchase the same equity security being offered in the unit.

(iii) Nonconvertible debt securities that are rated in one of the four highest rating categories of Standard and Poor's, Moody's, Dominion Bond Rating Services or Canadian Bond Rating Services or another rating organization designated by [order of] the [Commission] department. For purposes of this subsection, nonconvertible debt securities means securities that cannot be converted for at least 1 year from the date of issuance and then only into equity shares of the issuer or its parent.

(iv) American Depository Receipts representing securities described in subparagraphs (i)-(iii).

(2) The issuer is not organized under the laws of the United States, or of any state, territory or possession of the United States, or of the District of Columbia or Puerto Rico.

(3) The issuer meets the following conditions: [,]

(i) At [at] the time an offer or sale is made in reliance on this section, the issuer has been a going concern engaged in continuous business operations for the immediate past 5 years.

(ii) During the 5 year period [and during that period], the issuer has not been the subject of a proceeding relating to insolvency, bankruptcy, involuntary administration, receivership or similar proceeding.

(iii) If an issuer otherwise meets the conditions of (3)(i) and (ii), the issuer may for [For] purposes of this paragraph, use the operating history of any predecessor that represented more than 50% of the value of the assets of the issuer [that otherwise would have met the conditions of this section may be used] toward the 5-year requirement.

(4) The issuer, at the time an offer or sale is made in reliance on this section, has a public float of $1 billion or more. For purposes of this paragraph:

(i) Public float means the market value of all outstanding equity shares owned by nonaffiliates.

(ii) Equity shares means common shares, nonvoting equity shares and subordinated or restricted voting equity shares but does not include preferred shares.

(iii) An affiliate of a person is anyone who beneficially owns, directly or indirectly, or exercises control or direction over, more than 10% of the outstanding equity shares of the person.

(5) The market value of the issuer's equity shares, as defined in paragraph (4)(ii), at the time an offer or sale is made in reliance on this section, is $3 billion or more. [For purposes of this subsection, equity shares means common shares, nonvoting equity shares and subordinated or restricted voting shares but does not include preferred shares].

(6) The issuer, at the time an offer or sale is made in reliance on this section, has a class of equity securities listed for trading on or through the facilities of a foreign securities exchange or recognized foreign securities market included in 17 CFR 230.901 [(a)(1)] (relating to general statement) or successor rule promulgated under the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) or designated by the [United States] Securities and Exchange Commission under 17 CFR 230.902(a)(2) (relating to definitions) promulgated under the Securities Act of 1933.

§ 202.095. Charitable gift annuities.

(a) Under the authority contained in section 202(i) of the act (70 P.S. § 1-202(i)), the [Commission] department finds that it is not in the public interest [nor] or necessary for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) of securities issued or created in connection with the offer or sale of charitable gift annuities if the following conditions are met:

(1) The charitable gift annuity ("annuity") meets the terms and conditions of being exempt from the laws of this Commonwealth regulating insurance under the Charitable Gift Annuity Exemption Act (10 P.S. §§ 361 - 364) [(annuity)].

(2) [Each] A prospective annuitant is provided written disclosure which fully and fairly describes the consequences of a contribution or transfer of property to the qualified charity, as that term is defined in the Charitable Gift Annuity Exemption Act [(qualified charity)].

(3) [None of those] The persons responsible for solicitation of purchasers of annuities will not receive commissions or other special compensation based [upon] on the amount of the annuity purchased [except that this prohibition does not apply if] unless the person receiving the commissions or special compensation is registered with the [Commission] department as a broker-dealer under section 301 of the act (70 P.S. § 1-301) or is registered with the [Commission] department under section 301 as an agent of the broker-dealer.

(4) [A person, who for compensation advises the charitable organization] A person receiving compensation for advising the qualified charity as to the advisability of investing in, purchasing or selling securities, including [interests in the Fund] annuities, or otherwise [performs] performing as an investment adviser is one of the following:

(i) An [either an] investment adviser registered with the [Commission] department under section 301 of the act (70 P.S. § 1-301).

(ii) A [or a] Federally covered adviser that is in compliance with section 303(a) of the act (70 P.S. § 1-303(a)).

(b) If permitted by § 606.031 (relating to advertising literature), advertising literature may be used by the qualified charity in connection with the solicitation of contributions [but is] subject to the antifraud provisions of sections 401-409 of the act (70 P.S. §§ 1-401 – 1-409) and Subpart D (relating to fraudulent and prohibited practices).

CHAPTER 203. EXEMPT TRANSACTIONS

Sec.

203.191. [SEC] Rule 505 offerings.
203.192. [SEC] Rule 801 and 802 offerings exempt.
203.201. Accredited investor exemption.
203.202. Certain transactions with persons from Canada exempt.
203.203. Certain Rule 144A exchange transactions exempt.

§ 203.011. Nonissuer transactions.

(a) The exemption contained in section 203(a) of the act (70 P.S. § 1-203(a)) [shall be] is available for transactions in a security which are not directly or indirectly for the benefit of the issuer or an affiliate of the issuer of the subject security. By way of illustration, an offering of securities is indirectly for the benefit of the issuer or an affiliate if any [portion] part of the proceeds of the transaction will be received indirectly by the issuer or an affiliate.

(b) A transaction that is part of a single plan of distribution which involves a distribution by an issuer of its securities to the public will not be [deemed] considered a nonissuer transaction for purposes of section 203(a) of the act (70 P.S. § 1-203(a)).

* * *

§ 203.041. Limited offerings.

(a) The [application required by] notice required under section 203(d) of the act (70 P.S. § 1-203(d)) shall be filed with the [Commission] department within the time period specified [by that section on the form, designated by the Commission as] on Form E in accordance with the General Instructions [thereto].

(b) The [Commission] department will not consider [that] the requirement of section 203(d)(i) of the act to be [is] met unless [the following steps have been taken by] the issuer:

(1) Enters into a [A] written agreement [is entered into whereby] by which the purchaser agrees not to sell the securities purchased under the exemption within 12 months after the date of purchase, except in accordance with § 204.011 (relating to waivers of the 12-month holding period), and a copy of the agreement to be signed has been filed with the [Commission] department.

(2) Places a [A] legend [is placed] on the security restricting its transferability for 12 months after the date of purchase except in accordance with § 204.011.

(3) [The issuer instructs] Instructs its transfer agent, if any, that no transfer of the securities [shall be] is permitted except in accordance with section 203(d) of the act, § 204.011 and this section.

(c) Except [where] if the promoters, as defined in section 102(o) of the act (70 P.S. § 1-102(o)), are registered under section 301 of the act (70 P.S. § 1-301), the condition contained in section 203(d)(iii) of the act [shall be deemed to be] is met only if a promoter does not receive [

receives no] an underwriting, selling or finder's fee or commission or other remuneration directly or indirectly for the sale of securities under the exemption.

(1) A promoter [shall be deemed] is considered to have received indirect remuneration if money or property is paid to an affiliate of a promoter as compensation for the sale of securities.

(2) The fact that the value of a promoter's investment in the issuer is increased as a result of the offering or that the promoter will receive remuneration from the issuer for services [rendered] given to the issuer in the ordinary course of its business or for the sale of property to it does not, of itself, preclude the availability of the exemption.

(d) During the period of the offering, the issuer shall take steps necessary to ensure that the material information contained in its [application] notice remains current and accurate in all material respects. If a material statement made in the [application] notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [Commission] department in accordance with § 609.011 (relating to amendments to filings with the [Commission] department within 5 business days of the occurrence of the event which required the filing of the amendment.

[§ 203.091. Equity securities issued by reporting company.]

[For purposes of this section and the availability of the exemption contained in section 203(i.1) of the act (70 P.S. § 1-203(i.1)), the term "equity security" includes:

(1) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.

(2) Nontransferable warrants to purchase any of the foregoing.

(3) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.]

§ 203.101. Mortgages.

(a) For the purpose of section 203(j) of the act (70 P.S. § 1-203(j)), the exemption [shall be] is available only if:

(1) The entire bond or other evidence of indebtedness, together with the real or chattel mortgage, deed of trust, agreement of sale or other instrument securing the same is offered and sold as one unit.

(2) The purchaser of the unit is not offered, as part of the offer of the unit or in connection therewith, a property interest that would itself be [deemed] considered to be a security under section 102(t) of the act (70 P.S. § 1-102(t)) or under other regulations adopted under the act.

(3) The outstanding principal amount of all bonds or other evidences of indebtedness that

are secured by the real or chattel mortgage, deed of trust or agreement of sale on the same property (including bonds and other evidences of indebtedness issued in the transaction) does not exceed the fair [market] value of the property [, as defined under § 609.032,] at the time of the transaction.

(4) [No] General solicitation through public media advertisement, [is used,] mass mailing [made or other form of general solicitation is utilized] , Internet or other means does not occur in connection with soliciting the transaction.

(5) [No compensation] Compensation is not paid or given directly or indirectly for soliciting any person in this Commonwealth in connection with the transaction.

(6) The issuer, at the time of the transaction, is in compliance with any applicable licensing requirements of the department [Department of Banking].

(b) The exemption contained in section 203(j) of the act (70 P.S. § 1-203(j)) may not be available for a transaction entered into primarily to avoid [whose primary purpose is avoidance of] the provisions of section 201 of the act (70 P.S. § 1-201) or [a transaction] made in violation of the antifraud provisions of the act (70 P.S. [§ 1-407] §§ 1-401-1-409).

[§ 203.131. Bona fide pledgee.]

[The phrase "bona fide pledgee" as used in subsection (m) of section 203 (70 P.S. § 1-203(m)) shall include a secured party who takes securities in pledge to secure a bona fide debt. Such phrase shall not include a secured party who takes securities in pledge either:

(1) Without any intention or expectation that they will be redeemed but merely as a step in the distribution thereof to the public.

(2) Without having secured knowledge, in the exercise of reasonable diligence, prior to the consummation of the pledge that the securities taken in pledge are lawfully owned by the party making the pledge.]

§ 203.141. Sales to existing equity securityholders.

(a) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) [shall only be] is only available for the offer and sale of equity securities when the following exist:

(1) The offer is made to existing equity securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer [need not be] does not need to be made to all the classes or series.

(2) The offer is made pro rata to all [such] the equity securityholders who are, of record, residents of this Commonwealth.

(3) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a [No] commission or other remuneration, other than a standby commission [, is paid

or given, directly or indirectly, for soliciting any securityholder in this Commonwealth].

(b) The exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) [shall only be] is only available for the offer and sale of debt securities when the following exists:

(1) The offer is made to existing equity securityholders of a class of a series of the issuer's issued and outstanding equity securities, although the offer [need not be] does not need to be made to all the classes or series.

(2) The solicitation of an equity securityholder in this Commonwealth does not result in the payment of a [No] commission or other remuneration, other than a standby commission [, is paid or given, directly or indirectly, for soliciting a securityholder in this Commonwealth].

(c) For purposes of subsection (a)(2), an offer will be [deemed] considered to have been made pro rata when the following exists:

(1) The initial offer is made pro rata. [; and]

(2) After the expiration of a reasonable period of time following the initial offer, an identified equity securityholder acquires securities in an amount exceeding a pro rata share on terms and conditions fully disclosed to the affected equity securityholders.

[(d) For purposes of this section, the term "securityholder" is limited to persons who at the time of offers and sales under the exemption contained in section 203(n) of the act (70 P.S. § 1-203(n)) are holders of equity securities, including by way of illustration, holders of: common stock, preferred stock, securities convertible into common or preferred stock; nontransferable warrants to purchase any of the foregoing, and transferable warrants exercisable within not more than 90 days of their issuance, to purchase any of the foregoing; provided, that the term "securityholder" shall not include persons who are holders of equity securities issued in violation of or without compliance with the act and the rules and regulations adopted thereunder.

(e) For purposes of this section, the term "class" includes equity securities of an issuer which are of substantially similar character, the holders of which enjoy substantially similar rights and privileges.

(f) For purposes of this section, the term "standby commission" means the commission payable to a broker-dealer registered under the act for its firm commitment to purchase securities offered to existing securityholders which are not purchased by the securityholders.

(g) For purposes of this section, the term "pro rata" means the offering will be made in this Commonwealth proportionately on the basis of the number of shares owned by the existing securityholder or the securityholder's percentage ownership interest in the issuer. By way of illustration, an offering will be deemed to have been made on a pro rata basis where the issuer offers its existing securityholder an opportunity to purchase one new share of stock for each five shares owned as of a record date or where the issuer offers an existing securityholder owning 3% of the issuer's stock as of a record date, the opportunity to purchase 3% of the issuer's current

offering.]

§ 203.151. Proxy materials.

(a) Except as provided in subsection (b), in a transaction requiring the filing of proxy materials with the [Commission] department for review under section 203(o) of the act (70 P.S. § 1-203(o)), the materials [shall] must conform to [SEC] Rule 14A, 17 CFR 240.14a-1 - 240.14b-1 (relating to solicitation of proxies) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a - 78mm).

(b) In a transaction subject to the filing requirements of section 203(o) of the act, filing is not required if the number of persons to whom securities are offered and sold in this Commonwealth does not exceed 25, exclusive of principals [- as that term is defined in § 203.184 (relating to offerers and sales to principals) -] of the entities whose securityholders are voting or providing written consent.

(c) Except for transactions described in subsection (b), notice shall be given to the [Commission] department for a transaction requiring the filing of proxy materials with the [Commission] department under section 203(o) of the act by filing [the form designated by the Commission as Form 203-O in accordance with the General Instructions thereto together with the] :

(1) Form 203-O in accordance with the General Instructions.

(2) The exemption filing fee specified in section 602(b.1)(v) of the act (70 P.S. § 1-602(b.1)(v)).

(d) Proxy materials filed under this section may not be distributed to securityholders until the [Commission has determined] department determines that the materials are in compliance with this section and [has communicated] communicates that determination to the person who filed the proxy materials.

§ 203.161. Debt securities of nonprofit organizations.

(a) A person proposing to offer debt securities under section 203(p) of the act (70 P.S. § 1-203(p)) shall [complete]:

(i) Complete and file with the [Commission] department two copies of [the form, designated by the Commission as] Form 203-P in accordance with the General Instructions [thereto].

(ii) File the Form 203-P not later than 5 business days before the earlier of either the issuer [receives] receiving from any person:

(A) An [an] executed subscription agreement or other contract to purchase the securities being offered.

(B) Consideration for the subscription agreement or other contract to purchase the securities being offered. [or the issuer receives consideration from any person therefor, whichever is earlier.]

(b) Except [in cases when] if the delivery of an offering document is not required by [order of the Commission] the department, every offering of debt securities [pursuant to] under section 203(p) of the act shall be made by an offering document containing all material information about the securities being offered and the issuer.

(1) An offering document will be [deemed] considered to meet the requirements of this section if it includes the information that is elicited by Part VII of the Statement of Policy Regarding Church Bonds adopted April 14, 2002, by the North American Securities Administrators Association, Inc. and any successor policy thereto (NASAA Guidelines) and is in the format set forth therein.

(2) A copy of the offering document and any offering literature to be used in connection with the offer or sale of securities under section 203(p) [shall] must be filed with the [Commission] department at the same time the notice [required by] required under subsection (a) must be filed.

(c) The offering document [required by] required under subsection (b) [shall] must meet the following conditions:

(1) Contain a notice of a right to withdraw that complies with § 207.130 (relating to notice to purchasers under section 207(m) of the act (70 P.S. § 1-207(m)).

(2) Contain financial statements of the issuer that comply with § 609.034(b) (relating to financial statements).

(3) Demonstrate compliance with the trust indenture standards and trustee qualification standards and associated disclosure requirements as set forth in Parts V and VI of the NASAA Guidelines if the total amount of securities to be offered exceeds $250,000.

(4) Include whatever data may be necessary to establish that:

(I) The investors will receive a first lien on real estate of the issuer.

(II) The [, that the] issuer has not defaulted on previous obligations.

(III) The [and that the] total amount of securities offered does not exceed 75% of the current fair market value of the real property covered by the securities.

[§ 203.171. Liquidations, dividends, and distributions.]

[The phrase "bona fide distribution" as used in section 203(q) of the act (70 P.S. § 1-203(q)) does not include a dividend or other distribution made for the purpose of avoiding the registration

provisions of section 201 of the act (70 P.S. § 1-201).]

§ 203.183. Agricultural cooperative associations.

[(a) Pursuant to] Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued by an agricultural cooperative association in transactions where all of the following conditions are met:

(1) [Such] The securities are issued by the agricultural cooperative association.

(2) [Such] The securities are offered and sold only to persons who are, at the time of [any such] an offer and sale, [members of the] agricultural cooperative association members or to persons who, [upon] on sale of securities to them, thereby become members of the agricultural cooperative association.

(3) The transfer of [such] the securities for value is restricted to [members of the] agricultural cooperative association members.

(4) [No] A person does not [receives] receive any commission or other compensation as a result of or based [upon] on the sale of [such] the securities other than in connection with the solicitation of nonmembers for membership in the agricultural cooperative association.

[(b) The following words and terms, have, for the purposes of this section, the following meanings:

(1) *Agricultural cooperative association* - An association which admits to membership only persons who are engaged in agriculture and which is organized and operated for the purpose of engaging in any cooperative activity for persons engaged in agriculture in connection with:

(i) Producing, assembling, marketing, buying, selling, bargaining or contracting for agricultural products; harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, transporting, shipping or utilizing the products; or manufacturing or marketing the by-products thereof.

(ii) Manufacturing, processing, storing, transporting, delivering, handling, buying for or furnishing supplies to its members and patrons.

(iii) Performing or furnishing business, educational, recreational or other services, including the services of labor, buildings, machinery, equipment, trucks, trailers and tankers, or other services connected with the purposes set forth in clauses (i) and (ii) on a cooperative basis. The term agricultural cooperative association shall also include a federation of agricultural cooperative associations if the federation possesses no greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

(2) *Members* - For purposes of subsection (a)(2) only, includes patrons to the extent that the organic law or another law to which the agricultural cooperative association is subject requires the patrons to be treated as members.

(3) *Securities* - Membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences:

(i) A member's equity in a fund, capital investment or other asset of the agricultural cooperative association.

(ii) The apportionment, distribution or payment to a member or patron of the net proceeds or savings of the agricultural cooperative association.

(4)*Engaged in agriculture* - Persons engaged in farming, dairying, livestock raising, poultry raising, floriculture, mushroom growing, beekeeping, horticulture and allied occupations shall be deemed to be engaged in agriculture.]

§ 203.184. Offers and sales to principals.

(a) Under the authority contained in section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities offered and sold by an issuer to:

(1) A principal.

(2) A corporation, the outstanding voting stock of which is beneficially owned by one or more principals.

(3) A general partnership or a limited partnership, the interest in which is beneficially owned by one or more principals.

(4) A trust, the trustees of which are principals.

(5) Any other person, the interest in which is beneficially owned by one or more principals.

[(b) For purposes of this section, the term "principal," means the following:

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

(i) The issuer.

(ii) A wholly-owned subsidiary of the issuer.

(iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(2) A director, general partner or comparable person charged by law with the management of one of the following:

(i) The issuer.

(ii) A wholly-owned subsidiary of the issuer.

(iii) A corporation, partnership or other entity which owns the voting stock or other voting equity interest of the issuer.

(iv) A corporation, partnership or other entity which serves as a general partner of the issuer.

(3) A beneficial owner of 10% or more of an outstanding class of voting stock or other voting equity interest of one of the following:

(i) The issuer.

(ii) A corporation, partnership or other entity which serves as a general partner of the issuer.

(4) A promoter of the issuer as defined in section 102(o) of the act (70 P.S. § 1-102(o)).

(5) A relative of a person specified in paragraphs (1)-(4). For purposes of this subsection, the term "relative" means one of the following:

(i) A spouse.

(ii) A parent.

(iii) A grandparent.

(iv) An aunt, uncle, child, child of a spouse, sibling, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law.]

[(c)] (b) For purposes of this section, whether a person is a beneficial owner of a security or other interest will be determined in accordance with the Securities and Exchange Commission Rule 13d-3 (17 CFR 240.13d-3)(relating to determination of a beneficial owner).

[(d)] (c) The exemption set forth in this section [is not applicable] does not apply to any offer or sale to a person who has been appointed or elected a principal [for the primary purpose of obtaining] primarily to obtain the exemption or to an offer or sale to a relative of this person.

(d) A person who is appointed or elected a principal in good faith for a purpose other than [the purpose of obtaining] to obtain the exemption set forth in this section to whom, or to whose relative, securities are sold without registration following the designation or election in reliance [upon] on the exemption set forth in this section will not be [deemed] considered to have been designated or elected a principal [for the primary purpose of obtaining] primarily to obtain the exemption set forth in this section.

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

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is not in the public interest [nor] or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) for securities to be offered but not sold of an applicant filing a registration statement for its securities under section 206 of the act (70 P.S. § 1-206) [prior to] before the effectiveness of [such] the registration statement if the [applicant meets all of the] following criteria are met:

(1) The applicant has done all of the following:

(i) Filed a registration statement under section 206 of the act (70 P.S. § 1-206) to register the securities for which offers will be made.

(ii) Filed a written opinion of management which states that the following conditions apply to the applicant:

(A) The business, including any predecessor, is an existing business which possesses a history of operations of 4 years or more.

(B) The business, including any predecessor, maintains and will continue to maintain a place of business in this Commonwealth which employs at least 25 persons.

(C) The business, including any predecessor, has averaged annual gross revenues of at least $500,000 for the past 2 years.

(D) The business, including any predecessor, possesses at least four years of historical financial information.

(iii) Filed an intention to comply with [paragraphs (4) - (7)] paragraph (3), and subsections (b), (c) and (d).

(2) The minimum amount of the proceeds from the securities to be sold under the registration statement described in paragraph (1)(i) is $500,000.

[(3) Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provisions of paragraph (4) shall not constitute a "sale" of a security. Neither shall moneys deposited under paragraph (5) constitute the "sale" of a security.]

[(4)] (3) There is a withdrawal procedure as follows:

(i) Nonbinding subscription agreements received in connection with the offer but not sale of securities made under this section [shall] must contain withdrawal rights which permit the investor to withdraw moneys tendered under [such] the nonbinding subscription agreements with accrued interest under one of the following circumstances:

(A) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest at any time [prior to] before the effectiveness of the registration statement described in paragraph (1)(i).

(B) Investors may withdraw moneys tendered under a nonbinding subscription agreement with accrued interest within two business days from the date of receipt of notification of effectiveness of the registration statement described in paragraph (1)(i), as set forth in [paragraph (7)] subsection (d).

(ii) Investors [shall be deemed] are considered automatically to have withdrawn any moneys tendered under a nonbinding subscription agreement and [such] the moneys with accrued interest shall be returned to the investors [upon] on the occurrence of any of the following:

(A) The registration statement described in paragraph (1)(i) does not become effective within 150 days from the date of filing with the [Commission] department, unless extended by [order of] the [Commission] department.

(B) The registration statement described in paragraph (1)(i) is withdrawn by the applicant.

(C) The [Commission] department denies the registration statement described in (1)(i), regardless of whether [such] the denial was a result of a hearing or rehearing requested by the applicant unless the [Commission] department permits, in its Denial Order, that the moneys remain in escrow pending any request for a rehearing on the Denial Order.

[(5)] (b) Moneys tendered under nonbinding subscription agreements as a result of offers made under this section shall be placed in interest-bearing escrow accounts in a bank and [shall be] are subject to the investor withdrawal rights set forth in paragraph [(4)] (3).

(1) If, [prior to] before the effectiveness of the registration statement described in paragraph (1)(i), the nonbinding subscription agreement is withdrawn under paragraph [(4)] (3), the deposit and accrued interest [shall be] is payable to the investor.

(2) After the effectiveness of the registration statement described in paragraph (1)(i), the

deposit plus accrued interest [shall be] is payable to the applicant except [where] if the investor withdraws under [paragraph (7)] subsection (d), in which event the investor [shall] will receive the deposit plus accrued interest.

[(6)] (c) All offers for securities made under this section [shall be] must be accompanied by the delivery of a preliminary prospectus which has been prepared and filed to satisfy the requirements of section 206(b) of the act (70 P.S. § 1-206(b)) and § 206.010(c) (relating to registration by qualification).

[(7)] (d) All persons whose moneys have been placed in escrow as a result of the making of offers for the securities that are the subject of the registration statement described in paragraph (1)(i) shall:

(i) [be] Be notified of the effectiveness of [such] the registration statement either by certified mail or by direct delivery of [such] the information.

(ii) [Concurrent with the notification of the effectiveness of the registration statement, all persons shall receive] Receive a copy of the final prospectus concurrent with the notification of the effectiveness of the registration statement unless the [Commission, by order,] department permits a supplement to the preliminary prospectus setting forth all changes and modifications to be [utilized] used for these purposes.

(e) The following will not constitute the sale of a security:

(i) Receipt by the applicant of a nonbinding subscription agreement which is subject to the withdrawal provision of subsection (a)(3).

(ii) Deposit of moneys under subsection (b).

[(b)] (f) The exemption contained in this section may not be available for a transaction entered into primarily to avoid [whose primary purpose is avoidance of] the provisions of section 201 of the act (70 P.S. § 1-201).

§ 203.186. Employee takeovers.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is not in the public interest or necessary for the protection of investors to require the registration under section 201 of the act (70 P.S. § 1-201) of securities issued under an investment plan for employees of an existing person designed to purchase securities of a newly created person in transactions if:

(1) [Where the] The proceeds from the sale of the securities will be used to purchase assets and operations of the existing person.

(2) [Where these] The employees will preserve their jobs through their employment with the newly created person.

(3) [When compulsory] The employees' participation in the investment plan is not required as a condition of employment [is not required].

(4) [When employees] The employees being solicited to purchase securities under the investment plan receive, at least 7 days [prior to] before entering into a binding obligation to purchase or subscribe for the purchase of securities issued or to be issued under the investment plan [,]:

(i) Written [written] offering materials that fully and adequately disclose all material facts about the investment plan, including detailed risk factors explaining the potential loss of their investment.

(ii) An [, and an] opinion of counsel that the security when sold will be legally issued, fully paid and non-assessable and, if a debt security, a binding obligation of the issuer.

(5) [When any] The prospective financial statements [, as that term is defined in § 609.010 (relating to use of prospective financial statements),] used in connection with soliciting the purchase of securities under the investment plan comply with § 609.010(d) (relating to use of prospective financial statements).

(b) The exemption contained in this section may not be available for a transaction entered into primarily to avoid [whose primary purpose is avoidance of] the provisions of section 201 of the act.

§ 203.187. Small issuer exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is [neither] not in the public interest [nor] or necessary 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 [when] if:

(1) The issuer has not sold securities in or out of this Commonwealth to more than ten persons.

(2) The issuer, in connection with offers made for the sale of securities under this section, has not made offers to sell securities to more than 90 persons in this Commonwealth in a period of 12 consecutive months.

(3) The issuer is either organized under the laws of this Commonwealth or has its principal place of business in this Commonwealth.

(4) [Neither the] The issuer [nor] or a promoter, officer or director of the issuer is not subject to the disqualifications in § 204.010(b) (relating to increasing number of purchasers and offerees).

(5) [No] General solicitation through public media advertisement, [is used or] mass mailing [is made] , Internet or other means does not occur in connection with the offers and sales under this section.

(6) [No cash] Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless:

(i) [the] The compensation is given or paid in connection with a sale made by a broker-dealer who either is registered under section 301 of the act (70 P.S. § 1-301) or exempt from registration under section 302(a) of the act (70 P.S. § 1-302(a)).

(ii) [and a] The person receiving compensation is either the broker-dealer or an agent of the broker-dealer who either is registered under section 301 of the act or exempt from registration under section 302(b) of the act.

(b) *Integration.*

(1) Offers and sales made by the issuer under this section [shall be] are counted as offers and sales under applicable numerical limitations set forth in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within a period of 12 consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section [shall be] are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within a period of 6 consecutive months of an offer or sale made under this section.

(c) *Computation.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.188. Cooperative Business Associations Exemption.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is not in the public interest or necessary for the protection of investors to require registration of securities transactions under section 201 of the act (70 P.S. § 1-201) [where] if the following conditions are met:

(1) The issuance, offer and sale of securities of a cooperative business association is made only to persons who are members of the cooperative business association or, [upon] on the purchase of the security offered, will become members of a cooperative business association.

(2) The transfer of the securities for value is restricted to the cooperative business association, members of the cooperative business association or a successor in interest of a transferor who qualifies for membership, as may be further limited by the articles of incorporation of the cooperative business association, if certificates evidencing the securities bear a legend setting forth the restrictions.

(3) [No] A person does not [receives] receive a commission or other compensation directly or indirectly as a result of or based [upon] on the sale of securities of a cooperative business association other than in connection with the solicitation of nonmembers for membership.

[(b) When used in this section, the following terms have the following meanings:

Cooperative business association - A person which is organized exclusively as a retail or wholesale cooperative and admits to membership only persons which bona fide engage, in whole or in part, in the line of business for which the cooperative was organized.

Securities - An equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences a member's interest in a fund, capital investment or other asset of a cooperative business association or the apportionment, distribution or payment to a member of the net proceeds or savings of a cooperative business association.]

[(c)] (b) Section 209.010(b)(relating to required records; report on sales of securities and use of proceeds) [is not applicable] does not apply to the offer and sale of securities without registration under this section.

§ 203.189. Isolated transaction exemption.

(a) *General.* Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds it [neither] not necessary [nor] or 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 if:

(1) Sales made under this section do not result in the issuer having made sales of its securities to more than two persons in this Commonwealth during a period of 12-consecutive months. Only sales described in subsection (c) will be counted as sales for purposes of the numerical limitations contained in this paragraph.

(2) Offers made under this section do not result in the issuer having made offers to sell its securities to more than 90 persons in this Commonwealth during a period of 12-consecutive months. Only offers described in subsection (c) will be counted as offers for purposes of the numerical limitations contained in this paragraph.

(3) The issuer either is organized under the laws of this Commonwealth or has its principal place of business in this Commonwealth.

(4) [Neither the] The issuer [nor] or a promoter, officer or director of the issuer [is] are not subject to the disqualifications in § 204.010(b) (relating to increasing the number of purchasers and offerees).

(5) [No] General solicitation through public media advertisement, [is used or] mass mailing [is made] , Internet or other means does not occur in connection with offers and sales

made under this section.

(6) Cash or securities are not given or paid, directly or indirectly, to a person as compensation in connection with a sale under this section unless:

(i) [the] The compensation is given or paid in connection with a sale made by a broker-dealer who is one of the following:

(A) Registered [either is registered] under section 301 of the act (70 P.S. § 1-301).

(B) Exempt [or exempt] from registration under section 302(a) of the act (70 P.S. § 1-302(a)).

(ii) [and a] A person receiving compensation is either the broker-dealer or an agent of the broker-dealer who is one of the following:

(A) Registered [either is registered] under section 301 of the act.

(B) Exempt [or exempt] from registration under section 302(b) of the act.

(b) *Waivers.*

(1) Subsections (a)(2), (3) and (5) do not apply if the following criteria are met:

(i) The securities to be sold in reliance on this section are registered with the [United States] Securities and Exchange Commission under section 5 of the Securities Act of 1933 (1933 Act) (15 U.S.C.A. § 77e) or exempt from registration under Regulation A adopted under section 3(b) of the 1933 Act (15 U.S.C.A. § [77(c)(b)] 77c(b)).

(ii) The issuer has complied with section 203(h) of the act.

(2) Subsection (a)(3) does not apply if the following criteria are met:

(i) The offers and sales of securities made in reliance on this section would qualify for an exemption from registration under section 5 of the 1933 Act under Rule 505 or Rule 506 of Regulation D (17 CFR 230.505 and 230.506 (relating to exemption for limited offers and sales of securities not exceeding $5 million; and exemption for limited offers and sales without regard to dollar amount of offering)) promulgated under sections 3(b) and 4(a)(2) of the 1933 Act.

(ii) The offers made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the [United States] Securities and Exchange Commission (17 CFR 230.501(a)) (relating to definitions and terms used in Regulation D).

(iii) The sales made in this Commonwealth in reliance on this section are made only to accredited investors as that term is defined in Rule 501(a) of Regulation D promulgated by the [

United States] Securities and Exchange Commission (17 CFR 230.501(a)).

(c) *Inclusion of previous offers and sales.* Offers and sales which occurred within the preceding 12 months from the date of an offer or sale to be made under this section that were made in reliance [upon] on section 203(d), (f) or (s) of the act, §§ 203.187 and 204.010(a)(1) and (2) (relating to small issuer exemption; and increasing number of purchasers and offerees), [SEC] Rule 506 (17 CFR 230.506) or this section [shall be] are counted against the numerical limitations in subsection (a)(1) and (2).

(d) *Integration.*

(1) Offers and sales made by the issuer under this section [shall be] are counted as offers and sales under the applicable numerical limitations in § 204.010(a)(1) and (2) if offers and sales under § 204.010 occur within 12-consecutive months of an offer or sale made under this section.

(2) Offers and sales made by the issuer under this section [shall be] are counted as offers and sales under the applicable numerical limitations in section 203(s) of the act (70 P.S. § 1-203(s)) if offers and sales under section 203(s) occur within 6-consecutive months of an offer or sale made under this section.

(e) *Counting of offerees and purchasers.* Section 609.012 (relating to computing the number of offerees, purchasers and clients) applies to offers and sales of securities made under this section.

§ 203.190. Certain Internet offers exempt.

(a) Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds it [neither] not necessary [nor] or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for offers of securities by an issuer which are communicated electronically by means of a proprietary or common carrier electronic delivery system, the Internet, the World Wide Web or similar media (Internet Offer) [when] if the issuer does not intend to offer and sell the securities in the Commonwealth and meets the following conditions:

(1) The Internet Offer indicates, directly or indirectly, that the securities are not to be offered to persons in this Commonwealth.

(2) An offer is not otherwise specifically directed to any person in this Commonwealth, by or on behalf of the issuer.

(3) [No sales of the] The issuer's securities are [made] not sold in this Commonwealth as a result of the Internet Offer.

(b) [Nothing in this section prohibits] This section does not prohibit, in connection with an Internet Offer, the availability of another exemption which otherwise does not prohibit general solicitation.

§ 203.191. [SEC] Rule 505 Offerings.

(a) *Filing requirement.* The [application required by] notice required under section 203(s)(i) of the act (70 P.S. § 1-203(s)(i)) shall be filed with the [Commission] department within the time period specified [in that section on Commission] on Form E as set forth in § 203.041 (relating to limited offerings).

[(b) *Compensation.* The term "compensation," as used in section 203(s)(iv) of the act, is not limited to receipt of monetary consideration.]

[(c)] (b) *Integration.* Offers and sales made under this section [shall be] are counted as offers and sales under the applicable numerical limitations in section 203(d) and (f) of the act (70 P.S. § 1-203(d) and (f)) and § 204.010 (relating to increasing number of purchasers and offerees).

[(d) *Beneficial ownership.* For purposes of section 203(s)(v), whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3 (relating to determination of beneficial owner)).]

[(e)] (c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to ensure [insure] that all material information contained in the [application] notice remains current and accurate in all material respects. If a material statement made in the [application] notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [Commission] department in accordance with § 609.011 (relating to filing amendments with [Commission] department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.192. [SEC] Rule 801 and 802 offerings exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds it [neither] not necessary [nor] or 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] under Rule 801 or 802 promulgated by the [United States] Securities and Exchange Commission (17 CFR 230.801 or 230.802) (relating to exemption in connection with a rights offering; and exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers).

§ 203.201. Accredited investor exemption.

(a) *Filing requirement.* The [application required by] notice required under section 203(t)(ii) of the act (70 P.S. § 1-203(t)(ii)) shall be filed with the [Commission] department within the time period specified [in that section on Commission] on Form E as set forth in § 203.041 (relating to limited offerings).

(b) *General solicitation.* Use of general solicitation in a manner permitted by section 203(t) will not be considered to be an advertisement subject to section 606(c) of the act (70 P.S. § 1-

606(c)) and § 606.031 (relating to advertising literature) [but is] subject to the antifraud provisions of the act (70 P.S. §§ 1-401 - 1-409) and Subpart D (relating to fraudulent and prohibited practices).

[(c) *Compensation.* The term "compensation," as used in section 203(t)(iv) of the act, is not limited to receipt of monetary consideration.

(d) *Beneficial ownership.* For purposes of section 203(t)(v) of the act, whether a person is a beneficial owner of a security shall be determined in accordance with SEC Rule 13d-3 (17 CFR 240.13d-3) (relating to determination of beneficial owner).]

[(e)] (c) *Amendments.* During the period of the offering, the issuer shall take steps necessary to [insure] ensure that all material information contained in the [application] notice remains current and accurate in all material respects. If a material statement made in the [application] notice, or an attachment thereto, becomes materially incorrect or inaccurate, the issuer shall file an amendment with the [Commission] department in accordance with § 609.011 (relating to filing amendments with [Commission] department) within 5 business days of the occurrence of the event which required the filing of the amendment.

§ 203.202. Certain transactions with persons from Canada exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds it [neither] not necessary [nor] or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security if the following requirements are met:

(1) The security is offered or sold in this Commonwealth only to a person described in § 302.065(1) (relating to Canadian broker-dealer exempt).

(2) The transaction is effected in this Commonwealth solely by a Canadian broker-dealer or agent of a Canadian broker-dealer described in § 302.065(2).

§ 203.203. Certain Rule 144A exchange transactions exempt.

Under section 203(r) of the act (70 P.S. § 1-203(r)), the [Commission] department finds that it is [neither] not necessary [nor] or appropriate for the protection of investors to require registration under section 201 of the act (70 P.S. § 1-201) for the offer or sale of a security in a transaction if the following requirements are met:

(1) A person who owns outstanding debt securities [(and any related guarantees)] , and related guarantees, exchanges those securities for debt securities [(and any related guarantees)] , and related guarantees of the same issuer which are the subject of an effective registration statement filed with the [United States] Securities and Exchange Commission [(SEC)] under section 5 of the Securities Act of 1933 (15 U.S.C.A. §§ [77(e)] 77e)(exchange transaction).

(2) The outstanding debt securities [(and any related guarantees)] , and related guarantees, are restricted securities as that term is defined in 17 CFR 230.144(a)(3) (relating to persons [

deemed] considered not to be engaged in a distribution and therefore not underwriters).

(3) [No consideration is paid by the] The owner of the outstanding debt securities [(and any related guarantees)] , and related guarantees, does not pay consideration in connection with the exchange transaction.

(4) There are no material differences in the terms of the outstanding debt securities [(and any related guarantees)] , and related guarantees, which are the subject of the exchange transaction.

CHAPTER 204. EXEMPTION PROCEEDINGS

Sec.
204.010. Increasing number of purchasers and offerees.
204.011. Waivers of the 12-month holding period.
204.012. Waivers for pre-effective offers under section 203(h).

§ 204.010. Increasing number of purchasers and offerees.

(a) *Increases in purchasers and offerees.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the number of purchasers and offerees permitted under section 203(d) and (e) of the act, respectively (70 P.S. §§ 1-203(d) and (e)) [shall be] are increased as follows, if the issuer complies with all the conditions described in subsection (b):

(1) The total number of persons to whom securities may be offered in this Commonwealth during a period of 12-consecutive months under section 203(e) [shall be] is 90 persons, except that offers made to experienced private placement investors, [as that term is defined in subsection (d)], who actually purchase the securities being offered are not included in the limitation established by this paragraph.

(2) The total number of persons to whom securities may be sold in this Commonwealth during 12-consecutive months under section 203(d) [shall be] is 35 persons, except that sales made to experienced private placement investors, [as that term is defined in subsection (d)] are not included in the numerical limitation established by this paragraph.

(b) *Conditions.*

(1) *Disqualification.* The issuer or a person who is an officer, director, principal, partner [(other than a limited partner)] other than a limited partner, promoter, or controlling person of the issuer or a person occupying a similar status or performing a similar function on behalf of the issuer, has not been convicted of a crime, made the subject of a sanction or otherwise found to have met any of the criteria described in section 305(a)(ii)-(xiii) of the act (70 P.S. § 1-305(a)(ii)-(xiii)) unless the person subject to the disqualification is registered under section 301 of the act (70 P.S. § 1-301).

(2) *Exemption Notice filing.* With respect to reliance on subsection (a)(2), the issuer files with the [Commission the application required by] department the notice required under section 203(d) of the act and § 203.041 (relating to limited offerings) and pays the filing fee [required by] required under section 602(b.1)(viii) of the act (70 P.S. §.1-602(b.1)(viii)).

(3) *Broker-dealer requirement.*

(i) All offers and sales made to persons in reliance on section 203(d) and (e) of the act, including the increased number of offerees and purchasers permitted by subsection (a), are effected by a broker-dealer registered under section 301 of the act.

(ii) Subsection (b)(3)(i) [, except that this condition] does not apply if the issuer either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth.

(4) *Statutory requirement.* With respect to all offers and sales made to persons permitted under this section, the issuer shall comply with all conditions imposed by section 203(d) and 203(e) of the act, respectively.

(c) *Exceptions.*

(1) Subsection (b)(1) does not apply if either of the following conditions exist:

(i) The [the] person subject to the disqualification enumerated therein is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person [or].

(ii) The [if the] broker-dealer employing the person is licensed or registered in this Commonwealth and disclosed the order, conviction, judgment or decree relating to the person in the Form BD filed with the department. [Commission has disclosed the order, conviction, judgment or decree relating to this person. Nothing in this paragraph shall be construed to]

(2) Subsection (c)(1) does not allow a person disqualified under subsection (b)(1), to act in a capacity other than that for which the person is registered.

[(2)] (3) A disqualification created under this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines [upon] on a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

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

(1) *Experienced private placement investor.* An individual-and spouse when purchasing as joint tenants or as tenants by the entireties-who previously has purchased a minimum of $450,000 of securities within the past 3 years in private placement offerings exclusive of the purchase of

securities of an issuer of which the individual, or spouse, was an affiliate at the time of purchase.

(2) *Private placement offering of securities.* An offering of securities made in reliance on an exemption from the registration provisions of section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77) under section 3(b) or 4(2) of that act (15 U.S.C.A. §§ 77c(b) and 77d(2)).

(3) *Purchase of securities by an experienced private placement investor.* The sale of securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of the sale of the securities to the experienced private placement investor.]

[(e)] (d) *Due diligence obligation.*

(1) A broker-dealer registered under section 301 of the act (70 P.S. § 1-301) that sells a security to an experienced private placement investor in reliance on subsection (a) meets the due diligence obligation if the broker-dealer:

(i) [must receive] Obtains from the purchaser a written representation that the purchaser meets the definition of experienced private placement investor in [subsection (d)(1)] § 102.021.

(ii) [and must have] Has reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

(2) An issuer that either is organized under the laws of the Commonwealth or has its principal place of business in this Commonwealth and sells its securities to experienced private placement investors in reliance on subsection (a) meets the due diligence obligation if the issuer:

(i) [must receive] Obtains from the purchaser a written representation that the purchaser meets the definition of experienced private placement investor in § 102.021~~subsection (d)(1).~~

(ii) [and must have] Has reasonable grounds to believe, after reasonable inquiry, that the written representation is correct.

[(f)] (e) *Statutory basis for offers and sales under this section.* All offers and sales made to persons permitted by this section are [deemed] considered to be offers and sales made under section 203(d) and (e) of the act and all conditions imposed by those sections of the act [are applicable] apply to offers and sales to persons permitted by this section.

§ 204.011. Waivers of the 12-month holding period.

(a) *Automatic waiver.* Under section 204(a) of the act (70 P.S. § 1-204(a)), the restriction under section 203(d)(i) of the act (70 P.S. § 1-203(d)(i)) not to sell securities purchased under that section for 12 months after the date of purchase automatically is waived if:

(1) The 203(d) restricted securities are registered under the act, the Securities Act of 1933 (15 U.S.C.A. §§ 77a-77aa) or the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk) [

subsequent to a notice] after a notice is filed with the [Commission] department under section 203(d) and § 203.041 (relating to limited offerings).

(2) The purchaser dies or becomes disabled or incompetent and a legal guardian for the purchaser is appointed.

(3) The purchaser undergoes liquidation or dissolution if the action is not undertaken [for the purpose of avoiding] to avoid registration.

(4) The purchaser becomes insolvent.

(5) The issuer is merged into another entity and new securities are exchanged for the 203(d) restricted securities, if the merger is not undertaken [for the purpose of avoiding] to avoid registration of the 203(d) restricted security.

(6) The 203(d) restricted securities are sold in a transaction in which an offer to purchase on the same terms is made to all securityholders of that class of the issuer's securities.

(7) A rescission offer is made in connection with a potential violation of State or Federal securities laws.

(8) The 203(d) restricted securities are subject to repurchase under a buy-sell agreement that is conditioned with terms of employment or other commercial, as opposed to, mere investment relationship.

(9) The 203(d) restricted securities are to be exchanged for other securities of the issuer in a transaction exempt from registration under sections 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203), if the exchange is not undertaken [for the purpose of avoiding] to avoid registration.

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

(1) *Restricted securities* – Securities purchased under section 203(d) of the act where the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

(2) *Insolvent* - The inability of the purchaser to pay debts as they fall due in the usual course of business or having liabilities in excess of the fair market value of assets.]

[(c)] (b) *Resale agreement.* For transactions undertaken in reliance on waivers provided in subsections (a)(3) and (4), the person acquiring the restricted securities and the issuer shall agree [with the issuer] in writing at the time of sale not to resell the restricted securities [prior to] before the expiration of the original 12-month holding period.

[(d)] (c) *Discretionary waiver.*

(1) In addition to the automatic waivers set forth in subsection (a), persons may make

application to the [Commission] department under section 204(a) of the act for a discretionary order to waive the 12-month holding period for a restricted security in a proposed specified transaction.

(2) The [in which the] applicant shall demonstrate in the application that the sale of the restricted security is not being undertaken [for the purpose of avoiding] to avoid registration or otherwise [would constitute a distribution] to distribute in violation of the act.

§ 204.012. Waivers for pre-effective offers under section 203(h).

Under section 204(a) of the act (70 P.S. § 1-204(a)), the [Commission] department waives the requirement in section 203(h) of the act (70 P.S. § 1-203(h)) that a registration statement, including a prospectus, be filed with the [Commission] department to make offers, but not sales, of securities in this Commonwealth if the issuer of the securities to be offered under the exemption in section 203(h) has filed a registration statement with the [United States] Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C.A. §§ 77a - 77aa) [prior to] before the time offers are made in this Commonwealth in reliance on section 203(h) of the act.

CHAPTER 205. REGISTRATION BY COORDINATION

Sec.
205.021. Registration by coordination.
205.040. Series of unit investment trusts as separate issuers.

§ 205.021. Registration by coordination.

(a) Except as specified in subsection (b), registration by coordination may be initiated by filing with the [Commission] department 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) and relevant exhibits thereto.

(3) Additional information the [Commission] department may by regulation or order require under section 205(b)(iii) of the act (70 P.S. § 1-205(b)(iii)).

(b) In addition to filing the information and form required [in] under subsection (a), issuers in offerings being made in reliance on [SEC] Regulation A promulgated under Section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) shall execute and file with the [Commission] department within the specified time [period the form, designated by the Commission as] Form R in accordance with the General Instructions [thereto].

(c) The 10-day registration statement filing requirement in section 205(c)(2)(ii) of the act (70

P.S. § 1-205(c)(2)(ii)) [shall be] is reduced to 5 days for the following:

(1) An offering for which a registration statement has been filed with the [Commission] department designated as Form S-2 or S-3 by the Securities and Exchange Commission [SEC].

(2) An offering for which a registration statement has been filed with the [Commission] department designated as Form F-7, F-8, F-9 or F-10, or otherwise equivalent form, by the Securities and Exchange Commission [SEC].

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

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

§ 205.040. Series of unit investment trusts as separate issuers.

[For purposes of complying] To comply with the requirements of section 201 and 211(a) of the act (70 P.S. §§ 1-201 and 211(a)), each series underlying a unit investment trust, as that person is classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1 - 80a-64), constitutes a separate and distinct issuer under the act and shall [be required to] make a separate filing with the [Commission] department under section 211(a) of the act.

CHAPTER 206. REGISTRATION BY QUALIFICATION

Sec.
206.010. Registration by qualification.
[206.020. Tax opinion in offerings of limited partnership interests.]
206.041. Use of preliminary prospectus prohibited.

§ 206.010. Registration by qualification.

(a) Except as specified in subsection (b), registration by qualification shall be initiated by filing with the [Commission] department:

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

(2) A properly executed Uniform Application to Register Securities (Form U-1) and relevant

exhibits.

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

(b) In addition to the information and form required [in] under subsection (a), issuers in the following offerings shall execute and file with the [Commission] department Form R as set forth in § 205.021 (relating to registration by coordination):

(1) Offerings made in reliance on section 3(a)(4) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(4)).

(2) Offerings made in reliance on section 3(a)(11) of the Securities Act of 1933.

(3) Offerings made in reliance on Rule 504 of [SEC] Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(4) Offerings made in reliance on [SEC] Regulation A promulgated under section 3(b) of the Securities Act of 1933.

(c) Financial statements used in connection with an offering under section 206 [shall] must meet the requirements of section 609(c) of the act (70 P.S. § 609(c)) and Chapter 609 (relating to regulations, forms and orders) or as the [Commission shall, by order, require] department requires.

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

[§ 206.020. Tax opinion in offerings of limited partnership interests.]

[(a) Under the authority contained in section 206(b)(17) and (d) of the act (70 P.S. § 1-206(b)(17) and (d)), the Commission has determined that it is necessary:

(1) To require that a registration statement filed under section 206 of the act for the registration of limited partnership interests contain a tax opinion or discussion of tax aspects prepared or reviewed under subsection (c).

(2) To require as a condition for the registration of limited partnership interests under section 206 of the act that the prospectus include tax opinion or tax aspects contained in the registration statement and a statement identifying the preparer or reviewer of the tax opinion or discussion of tax aspects.

(b) Material tax issues in relation to the facts, including but not limited to, whether the limited partnership will be treated as a partnership for Internal Revenue Code tax purposes under 26 CFR 301.7701-2 shall be addressed in the registration statement.

(c) The tax opinion or discussion of tax aspects shall be prepared or reviewed by an independent attorney, certified public accountant or other qualified professional who shall be identified in the registration statement.

(d) For purposes of this section, an attorney, certified public accountant, or other qualified professional may not be considered to be "independent" if the professional or a member of the professional's firm is either:

(1) A promoter, underwriter, general partner, or employe of the issuer.

(2) An affiliate of a promoter, underwriter, general partner, or employe of the issuer.

(e) The requirement of subsection (c) does not apply where the limited partnership has received a favorable ruling from the Internal Revenue Service on all of the tax issues addressed in the tax opinion or discussion of tax aspects contained in the registration statement.]

* * *

CHAPTER 207. GENERAL REGISTRATION PROVISIONS

Sec.

§ 207.050. Reports by engineers, appraisers and others.

(a) The [Commission] department may, under section 207(e) of the act (70 P.S. § 1-207(e)) [, by order,] require as a condition of registration that the issuer or other person seeking to register securities for sale submit a technical report [,].

(1) The report must be prepared and certified by an engineer, appraiser, accountant or other professional person with respect to the value of an asset held by the issuer or other material matter [deemed] considered by [it] the department to be reasonably related to the conduct of the issuer's business.

(2) The cost of preparation of the report will be borne by the applicant for registration.

(b) The [Commission] department may require that an employe of the Commonwealth prepare the report referred to in subsection (a) [be prepared by an employe of the Commonwealth]. If this report is required, the department will:

(i) [In such event the Commission will notify] Notify the applicant for registration of the approximate cost of preparing the report, including travel and living expenses.

(ii) Require [Prior to commencement of preparation of the report,] the applicant to [shall] deposit with the [Commission] department funds sufficient to cover costs with instructions authorizing disbursement of [such] the funds as expenses are incurred before the commencement of preparation of the report.

(iii) [If it appears additional costs will be incurred in preparing the report,] Notify the applicant if it appears additional costs will be incurred in the preparation of the report and require the applicant [will be notified and required] to deposit with the [Commission] department the additional moneys necessary to permit completion of the work.

(c) A person who prepares for submission or submits a technical report to the [Commission] department in response to the [Commission] department request, and a person who prepares for submission or submits a technical report intended to be included or referred to in any part of the registration statement, shall attach to the report:

(i) [a] A statement as to the person's qualifications and experience.

(ii) [and a further] A statement as to a material relationship or other factor which would bear [upon] on the person's independence with respect to the subject matter to which or the person to whom the report relates.

§ 207.071. Escrow of promotional securities.

(a) The [Commission] department will, [where it deems] if it considers necessary for the protection of investors, or in the public interest, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), require as a condition to the registration of securities, whether to be sold by the issuer or another person, that promotional securities be placed in escrow.

(b) The escrow depository shall be a bank or trust company approved by the [Commission] department.

(c) [, provided, that, if] If the escrow depository does not maintain an office in this Commonwealth, the depository shall file with the [Commission] department an irrevocable consent to service of process with respect to actions arising out of its duties as escrow depository.

[(b) For the purposes of this section, the term "promotional securities" includes securities

which are:

(1) Issued within the 5-year period immediately preceding the date of the filing of a registration statement for a consideration substantially different from the proposed public offering price and for which price differential there is no commensurate change in the earnings or financial position of the issuer.

(2) Issued in consideration for services.

(3) Issued in consideration for tangible or intangible property, such as patents, copyrights, licenses or goodwill.

(4) Issued within the 5-year period immediately preceding the date of the filing of a registration statement to a promoter or proposed to be issued to a promoter at a price substantially lower than or on terms and conditions substantially more favorable than those on which securities of the same or a similar class or series have been or are to be sold to public investors.

(5) The subject of an order by the Commission department which includes findings that the securities are promotional securities.]

[(c)] (d) The escrow of promotional securities [shall] must be covered by an agreement which [shall be] is subject to the approval of the [Commission] department.

(e) The issuer shall file one [One] manually signed copy of the agreement [shall be filed] with the [Commission prior to] department before the effectiveness of a registration of the issuer's securities.

§ 207.072. Escrow of proceeds.

(a) The [Commission] department, [when it deems] if it considers it necessary for the protection of investors, and subject to the limitation of section 207(g) of the act (70 P.S. § 1-207(g)), may require as a condition to the registration of securities, whether to be sold by the issuer or another person, that the proceeds:

(1) From the sale of the registered security in this Commonwealth be escrowed until the issuer receives a specified amount from the sale of the security either in this Commonwealth or elsewhere.

(2) [; or that the proceeds from] From the sale of the registered security be escrowed for a specific use as set forth in the prospectus.

(b) The escrow depository shall be a bank or trust company [acceptable to the Commission] approved by the department.

[(b)] (c) The escrow of proceeds [shall] must be covered by an agreement [acceptable to the Commission] approved by the department which, at a minimum, meets the following conditions:

(1) The specified amount of proceeds [shall] will be deposited in an interest bearing escrow or trust account, the terms of which are consistent with this subsection, particularly paragraph [(7)] (6).

(2) The escrow depository [may not be] is not affiliated with the issuer or any officer, director, promoter or affiliate of the issuer or the underwriter of the securities which are the subject of the escrow or trust account.

(3) [The agreement shall provide that the] The escrowed proceeds are not subject to claims by creditors of the issuer, affiliates of the issuer or underwriters until the proceeds have been released to the issuer [pursuant to] under the terms of the agreement.

[(4) A manually signed copy of the agreement shall be filed with the Commission and shall become part of the registration statement.]

[(5) The agreement shall be signed by an] (4) An authorized officer of the issuer, an authorized officer of the underwriter, if applicable, and an authorized officer of the escrow depository sign the agreement.

[(6)] (5) A summary of the principal terms of the agreement [shall be] are included in the prospectus.

[(7)] (6) If the minimum amount of proceeds is not raised within the specified time period or for the specific purpose set forth in the prospectus, the escrowed proceeds [shall] will be released and returned directly to investors by the escrow depository by first class mail together with interest earned and without deductions for expenses (including commissions, fees or salaries), except that payment of interest shall be waived on proceeds held in escrow for less than 90 days.

(c) A manually signed copy of the agreement shall be filed with the department and become part of the registration statement.

§ 207.091. Subscription contracts.

(a) With respect to securities proposed to be sold under one of the following registration statements, a copy of a subscription or sale contract proposed to be used shall be filed with the [Commission] department, as an exhibit, [prior to] before its use in this Commonwealth:

(1) A registration statement filed under section 205 of the act (70 P.S. § 1-205) [when] if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) under Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(2) A registration statement filed under section 206 of the act (70 P.S. § 1-206) [when] if the securities to be sold are exempt from registration under section 5 of the Securities Act of 1933, under section 3(a)(4) or (11), Regulation A promulgated under section 3(b) of the Securities Act

of 1933, or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933.

(3) A registration statement filed under section 205 or 206 of the act [where] if the securities to be sold are interests in a direct public participation program.

§ 207.101. Effective period of registration statement.

(a) A registration statement [which has become] that is effective under section 205(c) of the act (70 P.S. § 1-205(c)) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act, except as provided in subsection (d).

(2) Securities included in the registration statement have been sold or the distribution [terminated] ended in this Commonwealth, or both.

(3) The [Commission] department issues an order under section 208 of the act (70 P.S. § 1-208) denying, suspending or revoking effectiveness of the registration statement.

(b) A registration statement [which has become] that is effective by order of the [Commission] department under section 206 of the act (70 P.S. § 1-206) shall continue in effect until the earliest of the following events:

(1) Twelve months after the effective date of the registration statement under the act.

(2) Securities included in the registration statement are sold or the distribution [terminated] ended in this Commonwealth, or both.

(3) The [Commission] department issues an order under section 208 of the act denying, suspending or revoking effectiveness of the registration statement.

(c) If the [Commission] department has required more than one filing for a registration statement, a separate Form 207-J is required for each filing.

(d) Except with respect to 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--80a-64), the effective period of a section 205 registration statement may be extended beyond the initial 1-year effectiveness period specified in subsection (a)(1) in increments of 1-year periods up to a maximum of 3 years from the initial effectiveness date of the registration statement in this Commonwealth by filing the form designated as Form 207-J in accordance with the General Instructions thereto with the [Commission prior to] department before the expiration of the currently effective period of registration.

(e) The provisions of [this section] subsection (d) are not available if the issuer, during the 3 year period from the initial effectiveness date of the registration statement in this Commonwealth, is required to file a new registration statement with Securities and Exchange Commission.

§ 207.130. Notice to purchasers under section 207(m).

(a) This section applies to offerings of securities which are registered under section 206 of the act (70 P.S. § 1-206) and to securities transactions which are exempt from registration under sections 203(d) and (p) of the act (70 P.S. §§ 1-203(d) and (p)) and, if [required by] required under rule of the [Commission] department, section 203(r) of the act.

(b) The notice to purchasers [required by] required under section 207(m)(1) of the act (70 P.S. § 1-207(m)(1)) [shall be given in accordance with all of] is in compliance with the act if the notice meets the following requirements:

(1) [It shall be] The notice is in writing.

(2) [Reference to the notice shall be made on the] The cover page of the prospectus used in connection with the offer and sale of the securities references the notice.

(3) An explanation of the right of withdrawal contained in section 207(m)(1) of the act, including the procedure to be followed in exercising the right, [shall be given] is in the text of the prospectus.

(4) [Reference to the right of withdrawal shall be made in any] A subscription agreement used references the right of withdrawal.

(5) The reference to the right of withdrawal described in paragraph (2) [shall be] is conspicuous, by setting it apart from other text and by underlining or capitalization.

(c) The notice to purchasers [required by] required under section 207(m)(2) of the act [shall be given in accordance with all of] is in compliance with the act if the notice meets the following requirements:

(1) [It shall be] The notice is in writing.

(2) An explanation of the right of withdrawal contained in section 207(m)(2), including the procedure to be followed in exercising the right, [shall be] is given.

(3) The explanation of the right of withdrawal [shall be] is conspicuous, by setting it apart from other text and by underlining or capitalization.

(d) [Timely notice of withdrawal of the purchase shall be deemed to have been given by a purchaser] A purchaser's notice of withdrawal from the purchase will be considered timely given within the 2-business day period set forth in section 207(m) of the act if, during the 2-business day period [, a written notice to withdraw from the purchase]:

(1) The purchaser drafts a written notice of withdrawal from the purchase.

(2) One of the following apply to the written notice, the notice is:

[(1) Is actually] (i) Actually received by the issuer or its affiliate.

[(2) Is sent] (ii) Sent electronically, including by E-mail or facsimile.

[(3) Is deposited] (iii) Deposited in the United States Postal Service, sent registered or certified mail, and all applicable fees are paid by the sender.

[(4) Is delivered] (iv) Delivered to a messenger or courier service for delivery with applicable fees paid by the sender.

(e) The following language illustrates a right of withdrawal notice which complies with section 207(m)(1) of the act.

"If you have accepted an offer to purchase these securities made pursuant to a prospectus which contains a written notice explaining your right to withdraw your acceptance [pursuant to] under section 207(m) of the Pennsylvania Securities Act of 1972, you may elect, within two business days after the first time you have received this notice and a prospectus (which is not materially different from the final prospectus) to withdraw from your purchase agreement and receive a full refund of all moneys paid by you. Your withdrawal will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or underwriter if one is listed on the front page of the prospectus) indicating your intention to withdraw."

(f) The following language illustrates a right of withdrawal which complies with section 207(m)(2) of the act:

"If you have accepted an offer to purchase these securities and have received a written notice explaining your right to withdraw your acceptance [pursuant to] under section 207(m)(2) of the Pennsylvania Securities Act of 1972, you may elect, within two business days from the date of receipt by the issuer of your binding contract of purchase or, in the case of a transaction in which there is no binding contract of purchase, within two business days after you make the initial payment for the securities being offered, to withdraw your acceptance and receive a full refund of all moneys paid by you. Your withdrawal of acceptance will be without any further liability to any person. To accomplish this withdrawal, you need only send a written notice (including a notice by facsimile or electronic mail) to the issuer (or placement agent if one is listed on the front page of the offering memorandum) indicating your intention to withdraw."

[§ 207.140. Signatures on electronic filings.]

[Under section 207(n) of the act (70 P.S. § 1-207(n)), the Commission authorizes the acceptance of a typed signature in lieu of any requirement for a manual signature on any notice required to be filed with the Commission under section 211 of the act (70 P.S. § 1-211) which is filed with the Commission electronically through its home page on the World Wide Web.]

CHAPTER 208. DENIAL FOR ABANDONMENT

Sec.
208.010. Denial for abandonment.

§ 208.010. Denial for abandonment.

(a) *General rule.* The department may deny as abandoned an application for registration of securities which has been on file with the department for a minimum of 12 consecutive months if the applicant failed to do any of the following:

(1) Respond to the department's notice of abandonment sent by first class mail to the applicant's last known address in the department's files within 60 calendar days after the date the notification was mailed by the department.

(2) Respond to any request for additional information required under the act.

(3) Otherwise complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may withdraw an application at any time with the consent of the department.

(c) *No refund of fee.* On denial for abandonment, the department will not refund any filing fees paid before the date of abandonment or withdrawal.

CHAPTER 209. BOOKS, RECORDS AND ACCOUNTS

Sec.
209.010. Required records; report on sales of securities and use of proceeds.

§ 209.010. Required records; report on sales of securities and use of proceeds.

(a) An issuer who sells securities for their own account, directly or through an underwriter, in an offering registered or required to be registered under section 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) or in an offering exempt from registration under sections 202(e), 203(d), (p) or (r) of the act (70 P. S. §§ 1-202(e), 1-203(d), (p) or (r)) shall preserve the following records during the period of the offering and for a period of 3 years following the last sale of securities in this Commonwealth or 1 year after the disposition of all proceeds, whichever is longer:

(1) Ledgers, journals or other records showing payments received from the sale of securities, including date of receipt, amount and from whom received; and disbursements of the payments, including date paid, purpose, amount and to whom made.

(2) A record showing money borrowed and money loaned together with a record of the collateral [therefor] for both.

(3) Checkbooks, bank statements, copies of deposit slips, cancelled checks and bank record reconciliations.

(4) Minute books and stock ledgers, including stock transfer records.

(5) A copy of filings with the [Commission] department, and related correspondence and exhibits [related thereto].

(6) Copies of communications sent or originated by the issuer pertaining to the offer, sale or transfer of securities, including subscription agreements, purchase contracts and confirmations.

(7) A list of the names and addresses of persons to whom the securities were offered or sold [;] with the following information included:

(i) The [the] type and amount of securities sold to each [;].

(ii) The [the] consideration paid or promised by each [;].

(iii) The [the] method of payment, that is, cash, check, property, services, note or other [;].

(iv) The [and the] name of the broker-dealer or other persons who represented the issuer in effecting each sale.

(b) Except as set forth in paragraph (3), report on sales of securities filing requirements are as follows:

(1) [Issuers which have] An issuer which has an effective registration for the offer and sale of securities in this Commonwealth under section 206 of the act, except for open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64), shall file a report on sales of securities with the [Commission] department by completing Parts I and II of [the form in subsection (c)] Form 209 within 55 days after 1 year from the effective date of the registration statement filed under section 206 of the act.

(2) An issuer which 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, shall file with the [Commission] department an annual report on sales of securities in this Commonwealth on Form NF adopted by the North American Securities Administrators Association, Inc. [(or a successor form thereto)] , or successor form, within the following time periods:

(i) [With respect to an open-end or closed-end investment company or face amount

certificate company, the report required by this subsection shall be filed with the Commission within] 120 days after [its] an open-end or closed-end investment company's or face amount certificate company's fiscal year end.

(ii) [With respect to a unit investment trust, the report required by this subsection shall be filed with the [Commission within] 60 days after 1 year from the date the registration statement relating to the securities sold in the Commonwealth became effective with the [United States] Securities and Exchange Commission with respect to a unit investment trust.

(3) The following issuers are not required to file [the form in subsection (c)] Form 209 or Form NF, [(or a successor form thereto)] , or successor form:

(i) Issuers which are open-end or closed-end investment companies, face amount certificate companies or unit investment trusts, as those persons are classified in the Investment Company Act of 1940, that have paid the maximum fee specified in section 602(b.1)(iv) of the act (70 P.S. § 1-602(b.1)(iv)).

(ii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have an effective registration statement under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) and have paid the maximum fee specified in section 602(b.1)(iii) of the act.

(iii) Issuers with an effective registration statement for the offer and sale of securities in this Commonwealth under section 206 of the act which also have paid the maximum fee specified in section 602(b.1)(iii) of the act.

[(c) The form for reports required in subsection (b), except for subsection (b)(2), shall be filed with the Commission on the form, designated by the Commission as Form 209 in accordance with the General Instructions thereto.]

CHAPTER 210. RETROACTIVE REGISTRATION

Sec.210.010. Retroactive registration [of certain investment company securities].

§ 210.010. Retroactive registration [of certain investment company securities].

(a) [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), which, during the effective period of registration under section 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206, may apply to the Commission on Form 210 in accordance with the General Instructions thereto to register the securities retroactive to the date of the initial registration] Either of the following may apply to the department on Form 210 in accordance with the General Instructions to register the securities retroactive to the date of the initial registration or to amend the notice filing retroactive

to the date of the initial notice filing:

(1) An issuer that has an effective registration statement under section 205 or 206 if an effective registration statement is on file with the Securities and Exchange Commission for the same securities.

(2) 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), which, during the effective period of registration under section 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) or the effective period of a notice filing sold securities in this Commonwealth in excess of the aggregate amount registered for sale in this Commonwealth under section 205 or 206 or covered by the notice filing.

(b) [No application filed on] The department will not grant an application filed on Form 210 [may be granted] if, at the time the application is filed with the [Commission] department, either of the following conditions exist:

(1) A [a] civil, criminal or administrative proceeding is pending alleging violations of section 201 of the act (70 P.S. § 1-201) for the sale of securities in this Commonwealth.

(2) The [or the] securities were sold more than 24 months [prior to] before the date Form 210 was filed with the [Commission] department.

(c) An application filed on Form 210 shall be accompanied by a check made payable to the "Commonwealth of Pennsylvania" in an amount which equals the applicable oversale assessment in section 602.1(d) of the act (70 P.S. § 1-602.1(d)).

CHAPTER 211. FEDERALLY COVERED SECURITIES

Sec.211.010. Notice filings for Federally covered securities.

§ 211.010. Notice filings for Federally covered securities.

(a) *211(a) notice.* The notices required under section 211(a) of the act (70 P.S. § 211(a)) to be filed by an open-end or closed-end investment company, unit investment trust or face amount certificate company, as those persons are classified in the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-65) (investment companies) [shall be made on] must be:

(i) Completed by using the Uniform Investment Company Notice Filing Form (Form NF).

(ii) Accompanied [and shall be accompanied] by the applicable filing fees and administrative assessments in sections 602(b.1)(iv) and 602.1(a)(5) of the act (70 P.S. §§ 1-602(b.1)(iv) and 1-602.1(a)(5)).

(b) *Exceptions.*

(i) [No documents filed by Investment Companies with the SEC need be] The documents filed by an investment company with the Securities and Exchange Commission do not need to be filed with the notice described in subsection (a) except for those documents filed with the Securities and Exchange Commission [SEC] relating to mergers, acquisitions or reorganizations.

(ii) If (b)(i) requires the filing of documents, then an investment company shall file copies of the [in that case, copies of] registration statements, prospectuses or posteffective amendments filed with the Securities and Exchange Commission [SEC are required to be filed with the Commission] with the department at the time the notice [required by] required under subsection (a) is filed.

(c) *211(b) notice.* The notice [required by] required under section 211(b) of the act must be:

(i) Filed [shall be filed] with the [Commission] department on Form D promulgated by the Securities and Exchange Commission [SEC] and effective as of September 1, 1996 [,].

(ii) Filed not later than 15-calendar days after the first sale of the Federally covered security in this Commonwealth.

(iii) Accompanied [and shall be accompanied] by the filing fee in section 602(b.1)(vii) of the act.

(d) *Department orders.* The department may issue an order requiring the following with respect to a federally covered security under section 18(b)(3) of the Securities Act of 1933:

(1) The filing of documents filed with the Securities and Exchange Commission under the Securities Act of 1933 or any notice filing form that has been adopted by the Department.

(2) The payment of fees prescribed to section 602(b.1) of the act.

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

CHAPTER 301. REGISTRATION REQUIREMENT

Sec.

§ 301.020. Agent transfers.

An agent who wishes to [terminate] end employment with one registered broker-dealer and thereafter [commence] begin employment with another registered broker-dealer may do so without causing a suspension in the agent's registration with the [Commission] department if all of the following conditions are met:

(1) Both the terminating and employing broker-dealers are members of [the National Association of Securities Dealers, Inc.] FINRA.

(2) The transfer is effected in accordance with the terms, conditions and execution of Item 15 of the Uniform Application for Securities Industry Registration or Transfer (Form U-4).

CHAPTER 302. EXEMPTIONS

Sec.

* * *

[§ 302.060. Dual registration of agents in certain instances.]

[A controlling person of two otherwise unaffiliated, registered broker-dealers simultaneously may be an agent of both the broker-dealers; provided that, during the period in which the person simultaneously is an agent:

(1) The person's functions and activities on behalf of one broker-dealer are limited exclusively to dealings and transactions with issuers and involve no function or activity in any sales or offers of sales to investors of any securities.

(2) Neither the person's functions and activities on behalf of the other broker-dealer nor the activities of the other broker-dealer involve the sale or offer of sale of a security of an issuer for whom the first broker-dealer conducted, or participated in the conduct of, a transaction at a time when the controlling person was the agent of the first broker-dealer.]

§ 302.061. Auctioneers exemption from broker-dealer and agent registration.

(a) Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the [

Commission deems] department considers it appropriate and in the public interest to exempt persons from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) if all of the following conditions are met:

(1) The person meets one of the following conditions:

(i) Is licensed as an auctioneer, apprentice auctioneer, auction company or auction house under the [Auctioneer License Act] Auctioneers and Auction Licensing Act (AALA) (63 P.S. §§ 734.1 – 734.34).

(ii) Is exempt from registration under section 3(h) of the AALA (63 P.S. § 734.3(h)).

(iii) Holds a special license to conduct an auction under section 3(i) of the AALA.

(2) The person effects transactions in securities solely at an "auction" or at a "sale at auction" as these terms are defined in the AALA.

(3) The person engages only in effecting transactions in securities at an auction or for sale at auction which constitute a "nonissuer transaction" as that term is defined in section 102(m) of the act (70 P.S. § 1-102(m)).

(4) The person does not effect transactions in securities at an auction or for sale at auction more than three times in any consecutive period of 24 months.

(5) The person and any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(i) An order described in section 305(a)(iv) of the act (70 P.S. § 1-305(a)(iv)).

(ii) An injunction described in section 305(a)(iii) of the act.

(iii) A criminal conviction described in section 305(a)(ii) of the act.

(iv) An order of the [Commission] department issued under section 512 of the act (70 P.S.§ 1-512).

(v) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(vi) An order of the [Commission] department imposing an administrative assessment under section 602.1 of the act (70 P.S. § 1-602.1) which has not been paid in full.

(b) [Solely for purposes of subsection (a)(3), a transaction where a bank, as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)), acting as a fiduciary under a trust agreement, estate administration or other similar relationship, causes the bank's securities to be offered and sold at auction from such accounts shall be deemed to be a nonissuer transaction.] For the

purposes of subsection (a)(3), a transaction is considered a non-issuer transaction if a bank, as that term is defined in section 102(d) of the act (70 P.S. § 102(d)), does the following:

(1) Acts as a fiduciary under a trust agreement, estate administration or other similar relationship.

(2) Causes the bank's securities to be offered and sold at action from the accounts described in (b)(1).

§ 302.063. Financial institutions exempt from broker-dealer and agent registration.

[(a)] Under section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] department considers it appropriate and in the public interest to exempt financial institutions and individuals representing financial institutions from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301), if the activities of the financial institution and individuals representing the financial institutions are conducted under a networking arrangement or brokerage affiliate arrangement.

[(b) For purposes of this section, the following terms 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.]

§ 302.064. Stock Exchange exemption from agent registration.

Under the authority contained in section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] department considers it appropriate and in the public interest to exempt agents from the registration provisions of section 301 of the act (70 P.S. § 1-301), if all the following requirements are met:

(1) The agent is representing a broker-dealer which [meets the following requirements] is:

(i) Registered under section 301 of the act.

(ii) A member of a National securities exchange registered with the [United States] Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk).

(2) The agent's only customers are broker-dealers registered with the [United States]

Securities and Exchange Commission under the Securities Exchange Act of 1934 or section 301 of the act.

(3) The agent is not subject to either of the following:

(i) A [a] currently effective order under section 305 of the act (70 P.S. § 1-305) denying, suspending, conditioning or revoking registration.

(ii) A currently effective [or an] order of the [Commission] department issued under section 512 of the act (70 P.S. § 1-512).

§ 302.065. Canadian broker-dealer exempt.

Under section 302(f) of the act (70 P.S. § 1-302(f)), the [Commission deems] department considers it appropriate and in the public interest to exempt Canadian broker-dealers and agents representing Canadian broker-dealers from the broker-dealer and agent registration provisions of section 301 of the act (70 P.S. § 1-301) when effecting transactions in securities in this Commonwealth with persons described in paragraph (1), if the broker-dealer meets the conditions of paragraph (2).

(1) The customer is one of the following:

(i) A person from Canada who temporarily is present in this Commonwealth with whom the Canadian broker-dealer had a *bona fide* business-customer relationship before the person entered this Commonwealth.

(ii) A person from Canada who is present in this Commonwealth whose only transactions with a Canadian broker-dealer in this Commonwealth relate to a self-directed, tax advantaged retirement plan in Canada as to which the person is the holder or contributor.

(2) The Canadian broker-dealer meets the following conditions:

(i) Is a member in good standing of a self-regulatory organization or stock exchange in Canada at the time it is effecting transactions into this Commonwealth in reliance on this section.

(ii) Is registered as a broker or dealer in good standing in the Province or Territory of Canada from which it is effecting transactions into this Commonwealth in reliance on this section.

(iii) Discloses to its customers in this Commonwealth at the time of a transaction made in reliance on this section that it is not registered under the act.

§ 302.070. Registration exemption for investment advisers to private funds.

(a) *Exemption for private fund advisers.* Subject to the additional requirements of paragraph (b), a private fund adviser is exempt from the registration requirements of section 301(c) of the act (70 P.S. § 1-301(c)) if the private fund adviser satisfies the following conditions:

(1) The private fund adviser and any of its advisory affiliates are not subject to a disqualification as described in Rule 262 of Securities and Exchange Commission Regulation A (17 CFR 230.262).

(2) The private fund adviser files with the department each report and amendment that an exempt reporting adviser is required to file with the Securities and Exchange Commission under Securities and Exchange Commission Rule 204-4 (17 CFR 275.204-4).

(b) *Additional requirements for private fund advisers to certain 3(c)(1) funds.* To qualify for the exemption described in subsection (a), a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall also:

(1) Advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities other than short-term paper are beneficially owned entirely by persons who would each meet the definition of a qualified client in Securities and Exchange Commission Rule 205-3 (17 CFR 275.205-3), at the time the securities are purchased from the issuer.

(2) Disclose, at the time of purchase, the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(i) Services, if any, to be provided to individual beneficial owners.

(ii) Duties, if any, the investment adviser owes to the beneficial owners.

(iii) Any other material information affecting the rights or responsibilities of the beneficial owners.

(3) Obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and deliver a copy of the audited financial statements to each beneficial owner of the fund.

(c) *Federally covered investment advisers.* If a private fund adviser is registered with the Securities and Exchange Commission, the adviser will not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federally covered investment advisers in section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)).

(d) *Investment adviser representatives.* A person is exempt from the registration requirements of section 301(c) of the act if the person:

(i) Is employed by or associated with an investment adviser that is exempt from registration in this Commonwealth under this section.

(ii) Does not otherwise act as an investment adviser representative.

(e) *Electronic filing.*

(i) A private fund adviser shall file the report filings described in subsection (a)(2) electronically through the IARD.

(ii) The department will consider a report filed when the report and the fee required under section 602.1 of the act (70 P.S. § 1-602.1) are filed and accepted by the IARD on the department's behalf.

(f) *Transition.* If an investment adviser becomes ineligible for the exemption provided by this rule, the investment adviser shall comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser's eligibility for this exemption ceases.

(g) *Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients.* An investment adviser to a 3(c)(1) fund, other than a venture capital fund, that has one or more beneficial owners who are not qualified clients as described in subsection (b)(1) is eligible for the exemption contained in subsection (a) if the following conditions are satisfied:

(1) The subject fund existed before the effective date of this section.

(2) The subject fund ceases to accept beneficial owners who are not qualified clients, as described in subsection (b)(1), as of the effective date of this section.

(3) The investment adviser discloses in writing the information described in subsection (b)(2) to all beneficial owners of the fund.

(4) The investment adviser delivers audited financial statements as required under subsection (b)(3) as of the effective date of this section.

(h) *Scope.* This section does not supersede an applicable exclusion from the definition of investment adviser or exemption from registration for an investment adviser contained in the act.

§ 302.071. Registration exemption for solicitors.

A solicitor does not need to register as an investment adviser or investment adviser representative if the solicitor:

(1) Is in compliance with all requirements of § 404.012.

(2) Provides impersonal investment advisory services.

(3) Is not subject to any order, judgment or decree described in section 305(a)(ii)-(vi) of the act (70 P.S. § 1-305(a)(ii)-(vi)).

CHAPTER 303. REGISTRATION PROCEDURE

Sec.

§ 303.011. Broker-dealer registration procedures.

(a) An [application] applicant for initial registration as a broker-dealer [shall contain the information requested in and shall be made on] shall complete a Uniform Application for Broker-Dealer Registration (Form BD), or a successor form [and shall be made in the following manner :].

[(1)] (b) An applicant which is not a member of [the National Association of Securities Dealers, Inc. (NASD)] FINRA or a member of a National securities exchange registered with the [United States] Securities and Exchange Commission [(SEC)] under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk) shall complete and file [one copy of Form BD] with the [Commission] department:

(1) A copy of Form BD.

(2) The filing fee required under [accompanied by the required by] section 602(d.1) of the act (70 P.S. § 1-602(d.1)) [,].

(3) The [the] compliance assessment [required by] required under section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3))[,].

(4) Financial [and financial] statements in the form [required by subsections (b) and (c)] required under subsections (e), (f) and (g).

[(2)] (c) An applicant which is not a member of [the NASD] FINRA but is a member of a National securities exchange registered with the Securities and Exchange Commission [SEC] under the Securities Exchange Act of 1934 shall complete and file [one copy of Form BD] with the [Commission] department:

(1) A copy of Form BD.

(2) The filing fee required under [accompanied by the requisite filing fee required by] section 602(d.1) of the act.

(3) The [and the] compliance assessment [required by] required under section 602.1(a)(3) of the act.

[(3)] (d) An applicant which is a member of [NASD] FINRA shall file with the department:

(1) Form BD in the manner set forth in § 603.011(f) (relating to filing requirements).

(2) The filing fee required under [accompanied by the filing fee required by] section 602(d.1) of the act.

(3) The [and the] compliance assessment [required by] required under section 602.1(a)(3) of the act.

[(b)] (e) Except for applicants described in subsections [(a)(2) and (3), every application shall be accompanied by] (c) and (d), applicants shall file a statement of the financial condition of the applicant which meets the following conditions:

(1) The statement is prepared in accordance with generally accepted accounting principles and

(2) The statement is accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant [.], which is as of one of the following:

(i) The [The audited statement of financial condition shall be of the] end of the applicant's most recent fiscal year [,].

(ii) The [or the] preceding fiscal year if:

(A) The [the] statement of financial condition for the most recently ended fiscal year is unavailable.

(B) The [and if the] application is filed within 14 months of the end of the preceding fiscal year.

(f) Except for applicants described in subsections (c) and (d) if [If] the date of the most recent audited statement of financial condition is more than 45 days [prior to] before 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 [. As part of the statement, the Commission] which the department may require include the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

[(c)] (g) Except for applicants described in subsections [(a)(2) and (3)] (c) and (d), if an applicant [that] has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income which is as of one of the following:

(1) The [as of the] end of the applicant's most recent fiscal year[,].

(2) The [or the] preceding fiscal year if:

(i) The [the] statement of income for the most recently ended fiscal year is unavailable.

(ii) The [and if the] application is filed within 14 months of the end of the preceding fiscal year.

[(d)] (h) An applicant described in subsection [(a)(2) and (3) shall provide the Commission] (c) and (d) shall provide to the department, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information [required by SEC] required under the Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange registered with the [SEC] Securities and Exchange Commission of which the applicant is a member.

[(e)] (i) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the [Commission] department an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

§ 303.012. Investment adviser registration procedure.

(a) An [application] applicant for initial registration as an investment adviser [shall contain the information requested in and shall be made on the] shall complete a Uniform Application for Investment Adviser Registration (Form ADV), or a successor form.

(b) The applicant shall complete and file with the [Commission] department or with an investment adviser registration depository designated by the [Commission] department:

(1) Form ADV. [one copy of the form]

(2) The filing fee required under [accompanied by the filing fee in] section 602(d.1) of the act (70 P.S. § 1-602(d.1))[,].

(3) The [the] compliance assessment in section 602.1(a)(4) of the act.

(4) Any [and any] exhibits [required by] required under this section.

[(b)] (c) Except as set forth in subsection [(f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser:] (j), an applicant having custody of client funds or securities or requiring payment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file:

(1) An [An applicant that has custody of client funds or securities or an applicant that requires payment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file an] audited balance sheet of the applicant prepared in accordance with generally accepted accounting principles [and accompanied by] which is as of the end of the applicant's most recent fiscal year.

(2) A [a] standard audit report containing an unqualified opinion of an independent certified public accountant [. The] within which, the accountant shall submit, as a supplementary opinion, comments based [upon] on the audit as to the:

(i) [material] Material inadequacies found to exist in the accounting system [,].

(ii) [the internal] Internal accounting controls [and].

(iii) Procedures [the procedures] for safeguarding securities and funds [and shall indicate] with an indication of corrective action taken or proposed.

(3) [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.] A subsequent balance sheet, if the balance sheet required by (c)(1) is of a date more than 45 days before the filing date of the application:

(i) The subsequent balance sheet must be:

(A) Prepared in accordance with generally accepted accounting principles.

(B) Dated as of a date within 45 days of the filing date of the application.

(ii) The subsequent [This] balance sheet may be unaudited and prepared by management of the applicant.

(d) The balance sheet required under paragraph (c) does not need to be filed if the investment adviser has custody of client funds or securities solely as a result of either of the following:

(1) The investment adviser receives fees directly deducted from clients' funds or securities in compliance with § 303.042(a)(3)(i).

(2) The investment adviser serves as a general partner, manager of a limited liability company or occupies a similar status or performs a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities, if the investment adviser is in compliance with § 303.042(a)(3)(ii).

(e) Except as set forth in subsection (j), an [(2) An] applicant that has discretionary authority over client funds or securities, but not custody, shall file:

(1) A [a] balance sheet [which need not be audited but shall be] prepared in accordance with generally accepted accounting principles [. The balance sheet required by this paragraph shall be] which is as of the end of the applicant's most recent fiscal year.

(2) A [If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a] subsequent balance sheet [, which must be] prepared in accordance with generally accepted accounting principles [as of a date within 45 days of filing the application prior to] and dated within 45 days of the filing date if the balance sheet required by (e)(1) is dated more than 45 days before the filing date of the application.

(f) [Each balance sheet required by this paragraph also] The balance sheets required under (e)(1) and (2):

(1) May be unaudited and prepared by management of the applicant.

(2) [also shall] Shall contain a representation by the applicant that the balance sheet is true and accurate.

(g) Except as set forth in subsection (j), [(3) An] an applicant whose proposed activities do not come within paragraph [(1) or (2) need not] (c) or (e) does not need to file a statement of financial condition.

[(c)] (h) As part of the requirements relating to the statements of financial condition set forth in subsections [(b)] (c) and (e), the [Commission] department may require the following:

(1) A list of the securities reflected in the statement of financial condition of the applicant valued at the market.

(2) A description of material contractual commitments of the applicant not otherwise reflected in the statement of financial condition.

(3) [In the case of a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business, an] An affirmative statement by the applicant that its liabilities which have not been incurred in the course of business as an investment adviser are not greater than the applicant's assets not used in its investment adviser business if the applicant is a sole proprietor, whose statement of financial condition includes only those assets and liabilities used in the applicant's investment adviser business.

[(d)] (i) An investment adviser registered under the act shall take steps necessary to ensure that material information contained in its Form ADV and exhibits remains current and accurate. If a material statement made in Form ADV and exhibits becomes incorrect or inaccurate the investment adviser shall file with the [Commission] department an amendment on Form ADV within 30 days of the occurrence of the event which requires the filing of the amendment.

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

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

[(f)] (j) An applicant that maintains its principal place of business in a state other than this Commonwealth [need not] does not need to comply with [subsection (a)] subsections (c) and (e) if the applicant [meets the following]:

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

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

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

§ 303.013. Agent registration procedures.

(a) An [application] applicant for initial registration as an agent of a broker-dealer or issuer shall [contain the information requested in and shall be made on] complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form.

(b) Except as provided in subsection [(b)] (c), the agent and the broker-dealer or issuer shall complete and file with the [Commission] department:

(1) [One copy of] Form U-4 and exhibits [thereto].

(2) [accompanied by the] The filing fee [required by] required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)) [,].

(3) [the] The compliance assessment [required by] required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) [and evidence] Evidence of passage of the examinations [required by] required under § 303.031 (relating to examination requirements for agents).

[(b)] (c) An applicant for registration as an agent of a broker-dealer which is a member firm of [the National Association of Securities Dealers (NASD)] FINRA shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

(1) A completed and executed Form U-4 and exhibits [thereto].

(2) The filing fee [required by] required under section 602(d.1) of the act.

(3) The compliance assessment [required by] required under section 602.1(a)(1) of the act.

(4) Evidence of passage of the examinations [required by] required under § 303.031.

[(c)] (d) An agent and broker-dealer or issuer 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 inaccurate, the agent and broker-dealer or issuer shall file with the [Commission] department an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.014. Investment adviser representative registration procedures.

(a) An [application] applicant for initial registration as an investment adviser representative of an investment adviser or Federally [-] covered adviser [shall contain the information requested in and shall be made on the] shall complete a Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form.

(b) The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the [Commission] department or with an investment adviser registration depository designated by [order of the Commission] the department:

(1) [one copy of] Form U-4 and exhibits [thereto].

(2) [accompanied by the] The filing fee [required by] required under section 602(d.1) of the act (70 P.S. § 1-602(d.1))[,].

(3) [the] The compliance assessment [required by] required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).

(4) [and the] The results evidencing passage of the examinations [required by] required under § 303.032 (relating to qualification of and examination requirement for investment advisers and investment adviser representatives).

(b) An investment adviser representative and an investment adviser or Federally [-] covered adviser shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or incomplete, the investment adviser representative and the investment adviser or Federally [-] covered adviser shall file with the [Commission] department an amendment to Form U-4 within

30 days of the occurrence of the event which requires the filing of the amendment.

§ 303.015. Notice filing for Federally [-] covered advisers.

(a) [*Initial Filing.* The notice required to be filed by Federally-covered] *Format.* Federally covered advisers required to file notice under section 303(a)(iii) of the act (70 P.S. § 1-303(a)(iii)) shall [be] file the uniform application for investment adviser registration [(Form ADV)], Form ADV, or successor form [thereto] as filed with the [United States] Securities and Exchange Commission.

(b) [Prior to the Federally-covered adviser conducting advisory business in this Commonwealth, a completed Form ADV accompanied by the notice filing fee required by Section 602(d.1) of the act 70 P.S. § 1-602(d.1)) shall be filed with the Commission or with an investment adviser registration depository designated by order of the Commission] *Initial Filing.* Before the Federally covered adviser conducts advisory business in this Commonwealth, the Federally covered adviser shall file a completed Form ADV accompanied by the notice filing fee required under Section 602(d.1) of the act (70 P.S. § 1-602(d.1)) with the department or with an investment adviser registration depository designated by the department.

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

§ 303.016. Considered as abandoned.

(a) *General rule.* The department may consider as abandoned an application for registration as a broker-dealer, agent, investment advisor or investment advisor representative which has been on file with the department for a minimum of six consecutive months if the applicant failed to do any of the following:

(1) Respond within 60 days after written notice sent by first class mail to the applicant's last known address in the department's files warning the applicant that the application will be considered abandoned.

(2) Respond to any request for additional information required under the act.

(3) Complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may, with the consent of the department, withdraw an application at any time.

(c) *No refund of fee.* On abandonment or voluntary withdrawal, there shall be no refund for any filing fee paid before the date of the abandonment or withdrawal.

§ 303.021. Registration and notice filing procedures for successors to a broker-dealer, investment adviser or Federally-covered adviser.

(a) [The following apply with respect to broker-dealers] If a broker-dealer is formed or proposed to be formed to succeed to, and continue 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. § 77o(b)) (successor broker-dealer), and the decision is for one of the following reasons:

(1) [When 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. § 77o(b)) (successor broker-dealer) based] 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 Act of 1934, except that the successor broker-dealer shall file the amendments to Form BD with the [Commission,] department.

(2) [When 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 and as a broker or dealer under section 15(b) of the Securities Exchange Act of 1934 (successor broker-dealer) for] 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 Act of 1934, except that the successor shall file Form BD with the [Commission] department.

(b) [The following shall apply to investment advisers] If an investment adviser is formed or proposed to be formed to succeed to, and continue the business of, an investment adviser registered under section 301 of the act (successor investment adviser), and the decision is for one of the following reasons:

(1)[When 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] 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] shall:

(i) File [file] an initial application for registration by amending Form ADV of the predecessor.

(ii) Succeed to the unexpired part of the predecessor's term of registration under [and, under] 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)[When 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] 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:

(i) File [file] Form ADV with the [Commission] department.

(ii) Succeed to the unexpired part of the predecessor's term of registration, after registration [Upon registration, the successor investment adviser,] under section 303(b) of the act [, shall succeed to the unexpired portion of the predecessor's term of registration].

(c) [When a Federally covered adviser is formed or proposed to be formed for the purpose of succeeding to, and continuing the business of, a registered invvestement adviser or of another Federally-covered adviser (successor Federally-covered adviser, the successor Federally-covered adviser shall file with the Commission] If a Federally covered adviser is formed or proposed to be formed to succeed to, and continue the business of, a registered investment adviser or of another Federally covered adviser, the successor Federally covered adviser shall:

(1) File with the department either Form ADV or an amendment to Form ADV as required under Securities and Exchange Commission Release No. IA-1357 (December 28, 1992) and, under Section 303(b) of the act [,].

(2) Succeed [shall succeed] to the unexpired [portion] part of the predecessor's notice period.

§ 303.031. Examination requirement for agents.

(a) An individual may not be registered as an agent under the act unless the individual [has met] meets the requirements of subsections (b) and (c).

(b) The applicant [has received] receives a passing grade on the securities examination for principals or registered representatives administered by [the National Association of Securities Dealers, Inc., the New York Stock Exchange] FINRA or the [United States] Securities and Exchange Commission within 2 years [prior to] before the date of filing an application for registration. [An applicant will be deemed to have met the requirements] The department considers the requirements of this subsection met if any of the following apply:

(i) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a waiver of the examination requirement by [the NASD] FINRA.

(iii) The applicant has received [a Commission order] notice from the department waiving the examination requirement.

(c) The applicant [has received] receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or [, alternatively,] the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by [the NASD] FINRA within 2 years [prior to] before the date of filing an application for registration. The department considers [An applicant will be deemed to have met] the requirements of this subsection met if any of the following apply:

(i) The applicant previously has passed the Series 63 or [, alternatively,] the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received [a Commission order] notice from the department waiving the requirement to take the Series 63 or [, alternatively,] the Series 66 and Series 7.

§ 303.032. Examination requirements for investment advisers and investment adviser representatives.

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

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

(2) The individual [Received], on or after January 1, 2000, and within 2 years immediately [prior to] before the date of filing an application with the [Commission] department, received a passing grade on the:

(i) General Securities Representative Examination (Series 7) administered by [the National Association of Securities Dealers , Inc. and] FINRA.

(ii) [the] Uniform Combined State Law Examination (Series 66) or successor examinations.

(3) The individual [Received], on or after January 1, 2000 [,]:

(i) Received a passing grade on either the Series 65 examination or passing grades on both the Series 7 and Series 66 examinations [and].

(ii) Has [has] not had a lapse in registration as an investment adviser or investment adviser representative in any state other than this Commonwealth for a period exceeding 2 years immediately [prior to] before the date of filing an application with the [Commission] department.

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following [qualifications] conditions:

(i) The individual, before [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.] FINRA and the Series 65 or Series 66 examinations.

(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 immediately preceding the date of filing an application with the [Commission] department.

(2) [An individual need not comply] Compliance with subsection (a) is waived if the individual meets the following [qualifications] conditions:

(i) The individual, before [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.

(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 2 years immediately preceding the date of filing an application with the [Commission] department.

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

(1) The individual meets the following [qualifications] conditions:

(i) The individual does not have a [Has no] disciplinary history which requires an affirmative response to Items 23A-E or Item 23H of The Uniform Application for Securities Industry Registration or Transfer (Form U-4) or successor items thereto.

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

(A) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, 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] does not have a disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the [Commission] department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(3) The individual is licensed as an attorney, is currently in good standing and [has no] does not have a disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the [Commission] department that the individual is eligible for a waiver of the examination requirement imposed by subsection (a).

(4) The individual has received [an order from the Commission waiving] a waiver from the department regarding compliance with subsection (a).

§ 303.041. Broker-dealer capital requirements.

(a) Except as set forth in subsection [(e)] (d) , every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall maintain net capital of $25,000 [. The] with an aggregate indebtedness [of a registered broker-dealer may not exceed] not exceeding 1500% of its net capital. For purposes of this section, the terms "net capital" and "aggregated indebtedness" have the meanings set forth in [SEC] Rule 15c3-1 (17 CFR 240.15c3-1) (relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a - 78mm).

(b) As a condition of the right to continue to transact business, every broker-dealer registered under the act that is not registered as a broker-dealer with the [United States] Securities and Exchange Commission [(SEC)] under the Securities Exchange Act of 1934 immediately shall notify the [Commission] department if the broker-dealer's aggregate indebtedness exceeds 1500% of its net capital or if its total net capital is less than the minimum required.

(c) Within 24 hours after transmitting the notice required under subsection (b), the broker-dealer shall file a report of its financial condition with the [Commission] department including the following:

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

(2) A computation of net capital and aggregate indebtedness as those terms are used in this section and a computation of the ratio of aggregate indebtedness to net capital.

(3) An analysis of the aggregate market value of fully paid securities in customers' security

accounts which are not segregated.

(4) A proof of ledger net credit balances of moneys borrowed from banks, trust companies and from other financial institutions, and from others, which are fully or partially secured by securities carried for the account of a customer.

(5) A computation of the aggregate amount of customers' ledger debit balances.

(6) A computation of the aggregate amount of customers' ledger credit balances.

(7) A statement as to the approximate number of customer accounts.

[(c) The term "customer" of a broker-dealer as used in this subsection includes every person except the broker-dealer.]

[(d) Commission may by order] (c) The department may permit an applicant for registration as a broker-dealer under section 301 of the act which is not registered or has not applied for registration as a broker or dealer with the [SEC] Securities and Exchange Commission to file, execute and maintain a surety bond in compliance with § 303.051 (relating to surety bonds).

[(e) Every] (d) A broker-dealer registered under section 301 of the act that is registered as a broker or dealer with the [SEC] Securities and Exchange Commission shall maintain minimum net capital and comply with the aggregate indebtedness requirements as set forth in [SEC] Rule 15c3-1 (17 CFR 240.15c3-1)(relating to net capital requirements for brokers and dealers) promulgated under the Securities Exchange Act of 1934.

§ 303.042. Investment adviser capital requirements.

(a) *Net worth requirements.*

(1) [Every] An investment adviser registered under section 301 of the act (70 P.S. § 1-301) [shall maintain at all times the following net worth requirements: The following applies when an investment adviser has its principal place of business in a state other than this Commonwealth] with its principal place of business in a state other than this Commonwealth shall meet the following net worth requirements.

(i) [If] The same as imposed by that state if the investment adviser is:

(A) [currently is] Currently licensed as an investment adviser in the state in which it maintains its principal place of business.

(B) [and is in] In compliance with the state's net worth requirements [, the net worth required by this section shall be the same as the net worth requirement imposed by that state].

(ii) If the investment adviser currently is not licensed as an investment adviser in the state in which it maintains its principal place of business, the net worth [required by] required under

this section [shall be] is the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection [(e)] (d), an investment adviser registered as a broker-dealer under section 301 of the act 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] required under Rule 15c3-1 (17 CFR 240.15c3-1).

(3) An investment adviser registered under section 301 of the act 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 unless the investment adviser has custody solely as the result of one [meets any] of the following:

(i) [The investment adviser has custody solely as a result of receiving fees directly deducted from clients' funds or securities if] Holding the authority to make withdrawals from client accounts maintained by a qualified custodian to pay its advisory fee and the investment adviser:

(A) Possesses written authorization from the client to deduct advisory fees from an account held by a qualified custodian.

(B) Sends the qualified custodian written notice of the amount of the fee to be deducted from the client's account.

(C) Sends the client a written invoice itemizing the fee, including any formulae used to calculate the fee, the time period covered by the fee and the amount of assets under management on which the fee was based.

(D) Notifies the department in writing on Form ADV that the investment adviser intends to use the safeguards provided in subsections (a)(3)(i)(A), (B) and (C).

(ii) [The investment adviser has custody solely as a result of serving] Serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities [if] and the following conditions are met:

(A) The pooled investment vehicle is subject to audit at least annually and distributes its audited financial statements which have been prepared by an independent certified public accountant in accordance with generally accepted accounting principles to all limited partners, members or beneficial owners within 120 days of the end of its fiscal year.

(B) The investment adviser:

(I) Hires an independent party to review all fees, expenses and capital withdrawals from the accounts included in the pooled investment vehicle [prior to] before forwarding them to the qualified custodian with the independent party's approval for payment.

(II) Sends written invoices or receipts to the independent party [which describe] describing:

(-a-) The [the] amount of the fees [(including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based)] , including any formulae used to calculate the fees, the time period covered by the fees and the amount of assets under management on which the fees were based. [,]

(-b-) The expenses or capital withdrawals for the independent party to verify that payment of the fees, expenses or capital withdrawals is in accordance with the documents governing the operation of the pooled investment vehicle and any statutory requirements applicable thereto.

(III) Notifies the department in writing on Form ADV that the investment adviser intends to employ the use of the audit safeguards in subsections (a)(3)(ii)(B)(I) and (II).

[(iii) The investment adviser has custody solely as a result of acting as trustee for a beneficial trust in which the beneficial owners of the trust are a parent or step-parent; grandparent or step-grandparent; spouse, brother or step-brother, sister or step-sister; or grandchild or step-grandchild of the investment adviser, if the investment adviser maintains the records required under § 304.012(b)(8).]

(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] , unless the investment adviser [will 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] and the following conditions are met:

(i) The investment adviser [has executed] executes 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.

(iii) [A third-party trading agreement is executed between the] The investment adviser, the client and the broker-dealer execute a third-party trading agreement 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 6 months in advance and more than $1,200 per client shall maintain [at all times] a positive net worth.

(b) *Notice to the Department.*

(1) As condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify [,] the department by the close of business on the next business day [, the Commission] if the investment adviser's total net worth is less than the minimum required net worth.

(2) Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

[(1)] (i) A proof of money balances of ledger accounts in the form of a trial balance.

[(2)] (ii) A computation of net worth.

[(3)] (iii) An analysis of clients' securities and funds which are not segregated.

[(4)] (iv) A computation of the aggregate amount of clients' ledger debit balances.

[(5)] (v) A computation of the aggregate amount of clients' ledger credit balances.

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

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

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.

Independent party - A person who meets all of the following requirements:

(i) Is engaged by an investment adviser with respect to payment of fees, expenses or capital withdrawals from a pooled investment vehicle in which the investment adviser has custody solely as a result of serving as a general partner, manager of a limited liability company or a person occupying a similar status or performing a similar function which gives the investment adviser or its supervised person legal ownership or access to client funds or securities.

(ii) Does not control, is not controlled by and is not under common control with the investment adviser.

(iii) Within the preceding consecutive 12 month period, did not derive 5% or more of its gross revenues from the investment adviser who hired the person to be an independent party, including the amount to be received from the investment adviser under the terms of the independent party engagement.

Net capital - The meaning set forth in 17 CFR 240.15c3-1 (relating to net capital

requirements for brokers or dealers), promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk).

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

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

(ii) Deferred charges.

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

(iv) Home furnishings, automobiles 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.

Pooled investment vehicle –

(i) A limited partnership, limited liability company or an entity with a similar legal status and performing similar functions.

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940 (15 U.S.C.A. §§ 80a-1--80a-64)

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

Qualified custodian - The following shall be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P.S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Securities and Exchange Commission and the Commission under section 301 of the act (70 P.S. § 1-301).

Supervised person - A person who meets the definition in section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-2(a)(25)).

Related person – A person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.]

[(d)] (c) *Appraisals.* For investment advisers registered or required to be registered under the act, the [Commission] department may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

[(e)] (d) *Exception.* The requirements of subsection (a)(2) do not apply to an investment adviser that has its principal place of business in this Commonwealth and [also] is registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 77o) if the broker-dealer is one of the following:

(1) Subject to, and in compliance with, [SEC] Rule 15c3-1.

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

§ 303.051. Surety bonds.

(a) [The following applies with respect to the filing of a surety bond with the Commission by an investment adviser] A surety bond shall be:

(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 filed with the Commission] Filed with the department on Uniform Surety Bond Form (Form U-SB) or successor form [thereto ;].

(2) [shall be subject] Subject to the claims of all clients [of the investment adviser] regardless of the client's state of residence [;].

(3) [and shall be issued] Issued by a person licensed to issue surety bonds in this Commonwealth.

[(2)] (b) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with paragraph [(1)] (a) unless the investment adviser is [meets the following qualifications]:

[(i) Is registered] (1) Registered as an investment adviser in that state.

[(ii) Is in] (2) In compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

[(3) For purposes of this section, the term "*principal place of business*" has the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Adviser Act of 1940 (15 U.S.C.A. §§ 80b-1 – 80b-21).]

(c) 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) shall, if required by the department, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest $5,000.

[(b)] (d) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk) [may,] shall, as required by the department [by order of the Commission], be permitted to have and maintain for the registration period a surety bond in the amount of the net capital deficiency rounded up to the nearest $5,000. [The surety bond shall:

(1) Be filed with the Commission on Form U-SB or successor form thereto.

(2) Be subject to the claims of all clients of the broker-dealer regardless of the client's state of residence.

(3) Be issued by a person licensed to issue surety bonds in this Commonwealth.]

[(c) Upon request of the Commission] (e) On request of the department, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

CHAPTER 304. POSTREGISTRATION PROVISIONS

Sec.

§ 304.011. Broker-dealer required records.

(a) *Books and Records.*

(1) Every broker-dealer registered under section 301 of the act (70 P.S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under

the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk).

[(b) A] (2) If a broker-dealer registered under the act [that is] and not registered as a broker or dealer with the [United States] Securities and Exchange Commission [(SEC) immediately shall notify the Commission if the broker-dealer] fails to make and keep current the books and records [required by] required under this section, the broker-dealer shall: [.]

(i) Notify the department immediately.

(ii) File a report with the department, within [Within] 24 hours after filing the notice with the [Commission the broker-dealer shall file with the Commission a report] department, stating what steps have been taken and are being taken to fully comply with this section.

[(c)] (b) *Records of complaints.*

(1) Every broker-dealer registered under the act shall make, keep and preserve one of the following:

(i) A [either a] separate file of written complaints of customers and actions taken by the broker-dealer in response. [thereto, or a]

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer.

(2) For purposes of this section a complaint includes [A "complaint" shall be deemed to include] a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer.

(3) A registered broker-dealer that also is registered as a broker or dealer with the [SEC shall be deemed to be] Securities and Exchange Commission is considered in compliance with the requirements of this subsection if it maintains records of customer complaints as [prescribed by] required under applicable [SEC] Securities and Exchange Commission rules.

[(d)] (c) *Retention.* The records required to be maintained under this section:

(1) Shall [shall] be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk).

(2) Shall be made [and made] easily accessible for inspection by the [Commission] department or its representatives.

(3) [The retention and preservation of records as required in this section may be upon] May be retained and preserved as:

(i) Microfilm [microfilm], microfiche, or any similar medium [;].

(ii) Electronic [electronic] or digital storage medium [;].

(iii) Computer [computer] disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly [upon] on reasonable request of the [Commission] department or its representatives.

§ 304.012 Investment adviser required records.

(a) Except as provided in subsection (j), every investment adviser registered under the act shall make and keep 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] the order or instruction and the memorandum must:

(i) Show [The memoranda shall show] the terms and conditions of the order, instruction, modification or cancellation [;].

(ii) Identify [shall identify] the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order [;].

(iii) Show [and shall show] the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed [where] if appropriate.

(iv) Designate orders [Orders] entered [pursuant to] under the exercise of discretionary power [shall be so designated].

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

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

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

(i) For purposes of this subsection, "financial statements" [shall mean] means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement.

(ii) The net worth computation means the net worth [required by] required under § 303.042 (relating to investment adviser capital requirements), if any.

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

(i) [Any] A recommendation made or proposed to be made and any advice given or proposed to be given.

(ii) [Any] A receipt, disbursement or delivery of funds or securities.

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

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

(B) With respect to [any] a 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 following apply:

(-a-) The [the] investment adviser is not required to keep a record of the names and addresses of the persons to whom it was sent.

(-b-) If [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] a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

(11) A file containing:

(i) 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)] ,other than persons connected with the investment adviser.

(ii) A [, 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 [.] 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.

(12) Records of transactions as follows:

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

(A) Transactions effected in any account over which [neither] the investment adviser [nor any] or an investment adviser representative of the investment adviser do not have [has any] direct or indirect influence or control.

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

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

(II) The price at which it was effected.

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

(ii) The record may also contain a statement declaring that the reporting or recording of any transaction will 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] must 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 have the following meanings:

(A) *Investment adviser representative* - A partner, officer or director of the investment adviser; any employe who participates in any way in the determination of which recommendations

shall be made; any employe 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.

(III) Any affiliated person of an affiliated person.

(B) *Control* - The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A 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 the company.]

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

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

(i) Notwithstanding paragraph (12), [where] if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record shall 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 transactions:

(A) Effected in [any] an account over which [neither] the investment adviser [nor any] or an investment adviser representative of the investment adviser [has any] do not have direct or indirect influence or control.

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

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

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

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

(ii) The record may also contain a statement declaring that the reporting or recording

of any transaction will 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 3 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 the following:

(A) Its total sales and revenues.

(B) Its income (or loss) before income taxes and extraordinary items, from other business or businesses].

[(v) For purposes of this paragraph, the following terms 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, the term means any partner, officer, director or employe of the investment adviser who participates in any way in the determination of which recommendations shall be made; any employe 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 as follows:

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

(II) Any affiliated person of a controlling person.

(III) Any affiliated person of an affiliated person.]

[(B) *Control* - The power to exercise a controlling influence over the management or policies of a company, unless the power is solely the result of an official position with the company. A 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 the company.]

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

(14) A copy of [each] the written statement and [each] the amendment or revision, given or sent to [any] a client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure rule), and a record of the dates that [each] the written statement, and [each] the amendment or revision, was given, or offered to be given, to [any] a client or

prospective client who subsequently becomes a client.

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

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

(iii) A copy of the solicitor's written disclosure statement if [required by] required under § 404.012 (relating to cash payment for client solicitation).

[(iv) For purposes of this paragraph, the term "solicitor" means 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] 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.

(i) [, including but not limited to,] Includes 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)] , other than persons connected with the investment adviser.

(ii) Except [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] will be considered to satisfy the requirements of this paragraph.

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

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

(19) Written procedures to supervise the activities of employes 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] the documents, other than any notices of general dissemination, that were filed with or received from [any] a 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)] under § 102.021(a), which file [should contain, but is not limited to,] may include all applications, amendments, renewal filings, and correspondence.

(21) A copy, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of the initial Form U-4 and the amendment to Disclosure Reporting Pages (DRPs U-4) shall be retained by the investment adviser filing on behalf of the investment adviser representative and made available for inspection on regulatory request.

(22) A ledger or other listing of all securities or funds held or obtained in this manner if the adviser has inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours under the definition of custody set forth in § 102.021(a), which ledger or other listing includes the following information:

(i) The issuer.

(ii) The type of security and series.

(iii) The date of issue.

(iv) The denomination, interest rate and maturity date for debt instruments.

(v) The certificate number, including alphabetical prefix or suffix.

(vi) The name in which the security is registered.

(vii) The date given to the adviser.

(viii) The date sent to client or sender.

(ix) The form of delivery to client or sender, or copy of the form of delivery to client or sender.

(x) The mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) Written acknowledgements of receipts obtained from clients under § 404.012(b)(5) and copies of the disclosure documents provided to clients by solicitors under § 404.012(b)(4).

(24) Written procedures relating to the business and continuity plan required under § 304.071.

(b) For purposes of (a)(12) and (13):

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

(2) An investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent 3 fiscal years or for the time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50% of the following from other business or businesses:

(i) Total sales and revenues.

(ii) Income, or loss, before income taxes and extraordinary items.

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

[(b)] (c) If an investment adviser subject to subsection (a) has custody [, as the term is defined in § 303.042(c) or possession of securities or funds of any client,] the records required to be made and kept [by] under 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) A copy [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.

(5) A copy of any and all documents executed by the client, including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian on the adviser's instruction to the qualified custodian.

(6) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of the statements along with the date the statements were sent to the clients.

(7) If an investment adviser has custody because it advises a pooled investment vehicle and is relying on the exception from the minimum net worth requirement in § 303.042(a)(3)(ii), the

adviser shall also keep the following records:

(i) True, accurate and current account statements.

(ii) Documentation of the date of the audit.

(iii) A copy of the audited financial statements.

(iv) Evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(8) Records relating to the adviser's appointment as trustee and the identities of the beneficial owners of the trust if an investment adviser acts as trustee for a beneficial trust under § 102.021(a).

[(c) Every] (d) An investment adviser subject to subsection (a) that gives [renders any] investment supervisory or management service to [any] a 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] A separate record for each client showing 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 client, and the current amount or interest of the client.

[(d)] (e) Books or records [required by] required under this section may be maintained by the investment adviser so that the identity of [any] a client to whom the investment adviser [renders] gives investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

[(e) Every] (f) An investment adviser subject to subsection (a) shall [preserve the following records in the manner prescribed] maintain:

(1) [The books] Books and records required to be made under subsections (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 at least 5 years from the end of the fiscal year during which the last entry was made on record, the first 2 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] for at least 3 years after termination of the enterprise.

(3) Books and records required to be made under subsection (a)(11) and [(18) shall be maintained and preserved] (16) in an easily accessible place for at least 5 years, the first 2 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 (22) shall be maintained and preserved in an easily accessible place for at least 5 years, the first 2 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), (7)-(10), (14)-(15), (17)-(19), (22)-(24), (b) and (c).

(ii) Records or copies required under subsection (a)(11) and (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'] location's physical address, mailing address, electronic mailing address or telephone number.

[(f)] (g) An investment adviser subject to subsection (a), before ceasing to do business as an investment adviser, shall:

(1) Arrange [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].

(2) Notify the department [shall notify the Commission] in writing of the exact address where the books and records will be maintained during the period.

[(g) The requirements for the storage of records] (h) Record storage requirements are as follows:

(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) on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form.] Records required to be maintained and preserved for the required time by this section must:

(i) Be able to be immediately produced or reproduced.

(ii) Be maintained and preserved in at least one of the following manners:

(A) Paper or hard copy form, as those records are kept in their original form.

(B) Micrographic media, including microfilm, microfiche or any similar medium.

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) [If records are produced or reproduced by photographic film or computer storage medium, the] 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] and index the records in a way that permits easy location, access and retrieval of any particular record.

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

(A) A legible, true and complete copy of the record in the medium and format in which it is stored.

(B) A legible, true and complete printout of the record.

(C) A means to access, view and print the records.

(iii) Store separately from the original [one other] a copy of the [film or computer storage medium] record for the time required for preservation of the original record.

[(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.]

[(v) With respect to records stored on photographic film, at all times have available for the Commission's examination of its records under 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.]

(3) For records created or maintained on electronic storage media, the investment advisor shall establish and maintain procedures to:

(i) Maintain and preserve the records to reasonably safeguard them from loss, alteration or destruction.

(ii) Limit access to the records to properly authorized personnel and the department, including its examiners and other representatives.

(iii) Reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true and legible when retrieved.

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

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

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

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

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

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

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

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

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

§ 304.021. Broker-dealer required financial reports.

(a) [Every] A broker-dealer registered under the act [which is] but not registered as a broker or dealer with the [United States] Securities and Exchange Commission [(SEC)] under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78kk) shall file annually with the [Commission] department a report [consisting of] which includes a statement of financial condition as of the end of its fiscal year and an income statement for the year then ended.

(b) The annual report 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. The accountant shall submit as a supplementary opinion comments, based [upon] on the audit, as to material inadequacies found to exist in the accounting system, the internal accounting controls and procedures taken for safeguarding securities and shall indicate corrective action taken or proposed.

(c) A broker-dealer registered under the act [which also is] and registered as a broker or dealer with the Securities and Exchange Commission [SEC] shall provide the [Commission] department, within 5 days of receipt of a written or electronic request, a copy of any financial statement, financial report or other financial information [required by SEC] required under Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange registered with the [SEC] Securities and Exchange Commission of which the applicant is a member.

(d) The report [required by this section] required under subsection (a) shall be filed within 120 days following the end of the broker-dealer's fiscal year.

§ 304.022. Investment adviser required financial reports.

[(a) Except as provided in subsections (b) and (c), 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 6 months or more in advance and in excess of $1,200 per client shall file with the Commission an audited balance sheet as of the end of its fiscal year. The balance sheet shall be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant. 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.

(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 shall be prepared in accordance with generally accepted accounting principles. The balance sheet shall contain a representation by the investment adviser

that it is true and accurate.

[(b) The requirements of subsection (a) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser meets the following conditions:

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

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

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

[(c) When an investment adviser registered under section 301 of the act inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third party checks within 24 hours, the investment adviser will not be deemed to have custody and subject to the requirements of subsection (a) if the investment adviser maintains records which contains the following information about the securities or funds returned to the client:

(1) If a security:

(i) The name of the issuer.

(ii) The type of security.

(iii) The date of issuance.

(iv) A certificate number or other identifying information.

(v) The denomination, interest rate and maturity date applicable to a debt security.

(vi) The name in which the securities are registered.

(2) If funds:

(i) The name of the payee or beneficial owner.

(ii) The check number, transmittal number, payor name and address and any other identifying information.

(3) The date on which the funds or securities were received by the investment adviser.

(4) The date on which the funds or securities were sent by the investment adviser to the client.

(5) The form of delivery used by the investment adviser to transmit the funds or securities to the client and a copy of written confirmation of receipt of the funds or securities by the client.

(d) For purposes of this section, the following term has the following meaning:

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

(a) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has custody of client funds or securities or requires prepayment of advisory fees 6 months or more in advance and in excess of $1,200 per client shall file with the department an audited balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet must be prepared in accordance with generally accepted accounting principles and contain an unqualified opinion of an independent certified public accountant.

(2) 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.

(b) An investment adviser registered under section 301 of the act (70 P.S. § 1-301) that has discretionary authority over client funds or securities, but not custody, shall file with the department a balance sheet as of the end of its fiscal year with the following conditions:

(1) The balance sheet is not required to be audited but shall be prepared in accordance with generally accepted accounting principles.

(2) The balance sheet shall contain a representation by the investment adviser that it is true and accurate.

(c) A sole proprietor registered under section 301 of the act (70 P.S. § 1-301) required to file an affirmative statement under § 303.012(c)(3) shall file with the department an affirmative statement as of the end of its fiscal year.

(d) Except as provided in subsections (e) and (f), investment advisers required to file the reports of financial condition set forth in subsections (a), (b) and (c) shall file the reports with the department within 120 days of the investment adviser's fiscal year end.

(e) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act whose principal place of business is in a state other than this Commonwealth if the investment adviser meets the following conditions:

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

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

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

(f) The requirements of subsection (d) do not apply to an investment adviser registered under section 301 of the act who:

(1) Has custody of client funds or securities solely as a result of activities set forth in § 303.042(a)(3)(relating to investment adviser capital requirements).

(2) Is in compliance with the requirements set forth § 303.042(a)(3).

§ 304.041. Examinations of broker-dealers and investment advisers.

(a) In the conduct of an examination authorized under section 304(d) of the act (70 P.S. § 1-304(d)), every broker-dealer and investment adviser registered under the act:

(1) Shall [shall] honor all requests by representatives of the [Commission] department to have physical access to all areas of the office which is the subject of the examination.

(2) Shall permit the department [and, upon request, shall permit them] to review and examine the files in the physical place where the files routinely are maintained on request.

(3) May accompany the representatives of the department themselves or through [In complying with a request,] a representative of the broker-dealer or investment adviser [may accompany the representatives of the Commission].

(b) Files referred to in subsection (a) include [, but are not limited to,] books, ledgers, accounts, records, and electronic files required to be kept by broker-dealers and investment advisers in accordance with this chapter, rules of the [United States] Securities and Exchange Commission [or] and rules of a National Securities Exchange or National securities association registered with the [United States] Securities and Exchange Commission, and any document reasonably related to these required records.

§ 304.051. Broker-dealer compensation.

(a) A [No] broker-dealer registered under the act may not charge or receive commissions or other compensation in connection with the purchase or sale of securities.

(b) The prohibition contained in subsection (a) does not apply if [unless] the compensation is:

(1) Fair [fair] and reasonable.

(2) Determined [and is determined] on an equitable basis[,].

(3) Adequately [adequately] disclosed to each customer in writing at or [prior to] before final confirmation.

(c) Compensation which complies with the Conduct Rules of [the National Association of Securities Dealers, Inc. shall be deemed] FINRA will be considered fair and reasonable and, unless otherwise required to be disclosed in writing by the Conduct Rules, [need not be] do not need to be disclosed in writing.

* * *

§ 304.061. Free credit balances.

(a) A [No] broker-dealer registered or required to register under the act may not use funds arising out of a free credit balance carried for the account of a customer in connection with the operation of the business of the broker-dealer.

(b) The prohibition contained in subsection (a) will not apply if [unless] the broker-dealer has established adequate procedures under which each customer for whom a free credit balance is carried will be given or sent [, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every 3 months,] a written statement which:

(1) Informs [informing] the customer of the amount due to the customer by the broker-dealer on the date of the statement.

(2) Contains [and containing] a written notice that:

[(1)] (i) Funds are not segregated and may be used in the business of the broker-dealer.

[(2)] (ii) Funds are payable on the demand of the customer.

(iii) Is sent no less than once every 3 months together with or as a part of the customer's statement of account.

[For the purpose of this section, the term "customer" means every person other than the broker-dealer.]

§ 304.071. Business continuity and succession planning.

(a) An investment adviser shall establish, implement and maintain written procedures relating to a business continuity and succession plan.

(b) The investment adviser shall base the business continuity and succession plan on the facts and circumstances of the investment adviser's business model including the size of the firm, type

of services provided and the number of locations of the investment adviser.

(c) The business continuity and succession plan must provide for at least the following:

(1) Protection, backup and recovery of books and records.

(2) Alternate means of communicating notice to customers, key personnel, employees, vendors, regulators and service providers, including third-party custodians, about issues such as:

(i) A significant business interruption.

(ii) The death or unavailability of key personnel.

(iii) Other disruptions or cessation of business activities.

(3) Office relocation if a temporary or permanent loss of a principal place of business occurs.

(4) Assignment of duties to a qualified responsible person if the death or unavailability of key personnel occurs.

(5) Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

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

Sec.

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

(a) 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 [.] by:

(1) [Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain] Establishing and maintaining written procedures and a system for applying and enforcing those written procedures which are reasonably designed to:

(i) Achieve [achieve] compliance with the act and this title.

(ii) Detect [detect] and prevent any violations of statutes, rules, regulations or orders described in any of the following:

(A) Section [section] 305(a)(v)and (ix) of the act (70 P.S. § 1-305(a)(v) and (ix))[,].

(B) The [the] Conduct Rules of [the National Association of Securities Dealers, Inc. ,] FINRA.

(C) An [or any] applicable fair practice or ethical standard promulgated by the [United States] Securities and Exchange Commission or by a National Securities Exchange registered under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a-78kk).

(2) [Final] Accepting 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 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] a broker-dealer [and] or investment adviser shall:

(1) Implement [implement] written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business. [,]

(2) Establish [and shall establish], maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a).

(d) The [These] written procedures required by subsection (c), at a minimum, shall address:

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

(2) [Methods] The 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] The methods to be used to determine the good character, business repute, qualifications, and experience of any person [prior to] before making application for registration of that person with the [Commission] department and 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 this Commonwealth from which business is conducted to ensure that the written procedures and systems are enforced. [In establishing an inspection cycle, the broker-dealer and investment adviser shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done and the number of agents or investment adviser representatives assigned to the location. The obligation of diligent supervision required by this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced. In acquitting their obligations under this section, registrants are to consult NASD Notice to Members 98-38 (May 1998) and SEC Release No. 34-38174 (January 15, 1997). In accordance with NASD Notice to Members 98-38, unannounced visits may be appropriate where there are indicators of misconduct such as receipt of significant customer complaints; personnel with disciplinary records; or excessive trade corrections, extensions, liquidations, or variable contract replacements.]

[(i) An office of supervisory jurisdiction of a broker-dealer shall be inspected at least annually. Branch offices and nonbranch locations of a broker-dealer shall be inspected in accordance with an inspection cycle established in the broker-dealer's written supervisory procedures.]

[(ii) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

[(iii) Written records shall bee maintained reflecting each inspection conducted.]

[(iv) For purposes of this section, the terms "office of supervisory jurisdiction" and "branch office" shall have the same meaning as those terms are defined in NASD Conduct Rule

3010(g) or any successor thereto. The term "nonbranch location" means any location at which a broker-dealer is conducting a securities business that does not come within the definition of "office of supervisory jurisdiction" or "branch office."]

(e) The periodic inspections referenced in subsection (d)(10) shall occur according to the following timeframes:

(1) At least annually for an office of supervisory jurisdiction of a broker-dealer.

(2) In accordance with an inspection cycle established in the broker-dealer's written supervisory procedures for branch offices and nonbranch locations of a broker-dealer.

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

(ii) The obligation of diligent supervision required under this section may require that one or more locations of a broker-dealer or investment adviser in this Commonwealth receive more inspections or be on a periodic inspection cycle different than other locations of the broker-dealer or investment adviser in this Commonwealth and that inspections be unannounced.

(f) It is the responsibility of the broker-dealer or investment adviser to ensure through inspections of each location in this Commonwealth that the written procedures and systems are enforced and the supervisory obligations imposed by this section are being honored.

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

(h) In acquitting their obligations under this section, registrants are to consult FINRA Notice to Members 98-38 (May 1998) and Securities and Exchange Commission Release No. 34-38174 (January 15, 1997).

(i) In accordance with FINRA Notice to Members 98-38, unannounced visits may be appropriate if there are indicators of misconduct including any of the following:

(1) Significant customer complaints.

(2) Personnel with disciplinary records.

(3) Excessive trade corrections, extensions, liquidations, or variable contract replacements.

[(d)] (j) Records required [to be maintained] under this section:

(1) Must [shall] be maintained for 5 years. [,]

(2) Must be maintained [the first 2 years being] in an easily accessible place for the first 2 years.

(3) [The retention and preservation of records may be] May be retained and preserved on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.

[(e)] (k) To the extent that this section imposes any recordkeeping requirement on an investment adviser registered under section 301 of the act (70 P.S. § 1-301), the recordkeeping requirement does not apply if the investment adviser meets the following conditions:

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

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

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

[§ 305.012. Convicted.

The term "convicted," as used in section 305(a)(ii) of the act (70 P.S. § 1-305(a)(ii)), includes a verdict, judgment or plea of guilty, or a finding of guilt on a plea of nolo contendere if the verdict, judgment, plea or finding has not been reversed, set aside or withdrawn, whether or not sentence has been imposed.]

§ 305.019 Dishonest and unethical practices.

(a) Every person registered under section 301 of the act (70 P.S. § 1-301) is a fiduciary and [has a duty to] shall:

(1) Act [act] primarily for the benefit of its customers.

(2) Observe [. Further, these persons shall observe] high standards of commercial honor and just and equitable principals of trade in the conduct of their business.

(b) Under section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)), the [Commission] department may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, 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] department, for purposes of section 305(a)(ix) of the act, will consider [the actions] actions such as those 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, nondisclosure, 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 investment adviser representative.]

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

(i) Engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment [upon] on request of free credit balances reflecting completed transactions of any of its customers.

(ii) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based [upon] on reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the broker-dealer.

(iv) Executing a transaction on behalf of a customer without authorization to do so.

(v) Exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.

(vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(vii) Failing to segregate customers' free securities or securities held in safekeeping.

(viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.

(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership [thereof].

(B) Entering an order for the purchase or sale of a security with the knowledge that an order of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties [for the purpose of creating] to create a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. [Nothing in this subsection prohibits] This subsection does not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, [for the purpose of inducing] to induce the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in [such] a fashion as to be deceptive or misleading. An example of this practice would be a distribution of nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in a brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of a prospectus or disclosure.

(xviii) Failing to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of a security before entering into a contract with or for a customer for the purchase or sale of the security, the existence of the control to the customer, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(xix) Failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member or from a member participating in the distribution as an underwriter or selling group member.

(xx) [Failure or refusal] Failing or refusing to furnish a customer, [upon] on reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable [provision of the Rules of Fair Practice of the National Association of Securities Dealers or an applicable] fair practice or ethical standard promulgated by the Securities and Exchange Commission or by a self-regulatory organization approved by the Securities and Exchange Commission.

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

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

(i) Engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(ii) Effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transactions are authorized in writing by the broker-dealer [prior to] before execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(iv) Sharing directly or indirectly in profits or losses in the account of a customer without the written authorization of the customer and the broker-dealer which the agent represents.

(v) Dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with a person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(vi) Engaging in conduct specified in paragraphs (1)(ii)-(vi), (ix), (x), (xiv)-(xvii) (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.

(iii) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

(iv) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(v) Placing an order to purchase or sell a security for the account of a client [upon] on instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(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] give advice or where an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

(x) Charging a client an unreasonable advisory fee.

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

(A) A compensation arrangement [Compensation arrangements] connected with advisory services to a client which is [clients which are] in addition to compensation from the [clients] client for the services.

(B) [Charging a client an advisory fee] An advisory fee charged to a client for [rendering] giving advice when a commission for executing securities transactions [pursuant to] under the advice will be received by the investment adviser, the investment adviser representative or an employe or affiliated person of the investment adviser.

(xii) Guaranteeing a client that a specific result will be achieved, either a gain or no loss, [- gain or no loss -] with advice which will be [rendered] given.

(xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. §§ 80b-1 - 80b-21).

(xiv) Disclosing the identity, [affairs or] investments, or other financial information of a client unless [required by] required under law to do so, or unless consented to by the client.

(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 § [404.013] 404.014 (relating to investment adviser custody or possession of funds or securities of clients).

(xvi) Entering into, extending or renewing an investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of a prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser and that no assignment of the contract shall be made by the investment adviser without the consent of the other party to the contract.

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

(xviii) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-5) and the

rules and regulations of the [United States] Securities and Exchange Commission promulgated thereunder. This applies 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 [United States] Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3).

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

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4))and the rules and regulations of the [United States] Securities and Exchange Commission promulgated thereunder. This applies 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 United States 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 the person to do directly under [the provisions of] this act or any rule, regulation or order issued thereunder.

(d) [This section does not apply to Federally-covered advisers unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act (70 P.S. § 1-401(a) or (c) or 1-404).] In addition to the conduct described in paragraphs (1)-(3), the Department may deny, suspend, condition or revoke a registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative for conduct inconsistent with the standards in subsection (a), including any of the following:

(1) Forgery.

(2) Embezzlement.

(3) Nondisclosure, incomplete disclosure or misstatement of material facts.

(4) Manipulative or deceptive practices.

(5) Taking unfair advantage of a customer or former customer in any aspect of a tender offer.

(e) This section does not apply to Federally [-] covered advisers unless the conduct otherwise is actionable under sections 401(a) or (c) or 404 of the act (70 P.S. § 1-401(a) or (c) or 1-404).

§ 305.020. Use of senior specific certifications and professional designations.

(a) *General rule.* The use of a senior specific certification or designation by a person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly

or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in a way as to mislead any person shall be a dishonest and unethical practice in the securities business within the meaning of section 305(a)(ix) of the act (70 P.S. § 1-305(a)(ix)).

(b) *Prohibitions.* The prohibited use of senior specific certification or professional designation includes the use of:

(1) A certification or professional designation by a person who has not actually earned or is otherwise ineligible to use the certification or designation.

(2) A nonexistent or self-conferred certification or professional designation.

(3) A certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have.

(4) A certification or professional designation that was obtained from a designating or certifying organization to which any of the following apply:

(i) Is primarily engaged in the business of instruction in sales and/or marketing.

(ii) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants.

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct.

(iv) Does not have reasonable continuing education requirements for its designees or certificants to maintain the designation or certificate.

(c) *Rebuttable presumption.* There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subsection (b)(4) when the organization has been accredited by any of the following:

(1) The American National Standards Institute.

(2) The National Commission for Certifying Agencies.

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

(d) *Factors to be considered.* In determining whether a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing

senior citizens or retirees, the department will consider the following factors:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation.

(2) How those words are combined.

(e) *Exception.* For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, including an agency that regulates broker-dealers, investment advisers or investment companies as defined under the Investment Company Act of 1940, when that job title does any of the following:

(1) Indicates seniority or standing within the organization.

(2) Specifies an individual's area of specialization within the organization.

(f) *No limitation on department enforcement.* This section does not limit the department's authority to enforce existing provisions of law.

§ 305.061. Withdrawal of registration or notice filing.

(a) *Investment adviser.* [The following applies to investment advisers that want to] To withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301) because the investment adviser has:

(1) [For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser has become] Become a Federally [-] covered adviser subject to exclusive registration with the [United States] Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the [Commission] department or with an investment adviser registration depository designated by [order of] the [Commission] department.

(2) [For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser no longer transacts] Stopped transacting business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W), or a successor form with the [Commission] department or with an investment adviser registration depository designated by [order of] the [Commission] department.

(b) [An application to] *Broker-dealer.* To withdraw from registration as a broker-dealer, the broker-dealer shall [contain the information requested in and shall be made on] file a completed Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form with the department.

(c) *Investment adviser representative.* To withdraw from registration as investment adviser representative, the investment adviser or Federally covered adviser for whom the investment adviser representative was employed shall file the Uniform Termination Notice for Securities/Futures Industry Registration (Form U-5) or a successor form [thereto] with the [Commission] department or with an investment adviser registration depository designated by [order of] the [Commission] department within 30 days from the date of termination.

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

(e) *Federally covered adviser.* To withdraw a notice filing, a Federally [-] covered adviser shall file a notice with the [Commission] department or with an investment adviser registration depository designated by [order of] the [Commission] department.

Subpart D. FRAUDULENT AND PROHIBITED PRACTICES

CHAPTER 401. SALES AND PURCHASES

Sec.
401.010. [Reserved].
401.020. Professional responsibility.
401.030. Underwriting commitment letters and letters of intent.
401.040. [Reserved].

§ 401.020. Professional responsibility.

For the purposes of any action or proceeding initiated by the [Commission] department, under 2 Pa.C.S. § 503 (relating to discipline), 1 Pa. Code § 31.28 (relating to suspension and disbarment) or under any other applicable rules of practice adopted by the [Commission] department, the phrase ''act, practice or course of business'' as used in this chapter shall include a statement, opinion, report or service by an attorney, accountant, engineer, appraiser or other professional person who examines, [renders] gives or produces a statement, opinion, report or service if [such] the professional person knew or in the exercise of reasonable care should have known that [such] the statement, opinion, report or service materially aided or abetted a violation of the act or the regulations adopted thereunder.

* * *

CHAPTER 404. PROHIBITED ACTIVITIES; INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

Sec.
404.010. Advertisements by investment advisers and investment adviser representatives.

404.011. Investment adviser brochure disclosure.
404.012. Cash payment for client solicitation.
[404.013. Investment adviser custody or possession of funds or securities of clients.]
404.014. Custody requirements for investment advisers.
404.020. [Reserved].

§ 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] The department will consider the direct or indirect publication, circulation or distribution of an advertisement by an investment adviser or investment adviser representative to be 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), if the advertisement:

(1) [Which refers] 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] given to the customer by the investment adviser or investment adviser representative.

(2) [Which refers] 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 does not prohibit an advertisement which sets forth or offers] except that an advertisement setting forth or offering 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] is not prohibited if the advertisement:

(i) Includes the name of each [such] security recommended, the date and nature of each [such] recommendation [(for example, whether to buy, sell or hold)] including whether to buy sell or hold, the market price at the time, the price at which the recommendation was to be acted [upon] on, and the current market price of each [such] 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] Represents, directly or indirectly, that any graph, chart, formula or other device being offered:

(i) Can [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]

(ii) Will [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] 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.

(5) [Which contains] 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, [(including free or discounted securities)] received directly or indirectly in connection with making a recommendation concerning a specific security.

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

(i) The total number of shares or other units of the security held by the investment adviser or investment adviser representative for its own account or for the account of officers, directors, trustees, partners or affiliates of the investment adviser or for discretionary accounts of the investment adviser or investment adviser representative maintained for 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 section, the term ''advertisement'' includes any notice, circular, letter or other written communication addressed to more than one person or any notice or other announcement in any publication, 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.

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

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

[(d)] (b) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P. S. §§ 1-401(a), [or] (c), [or] 1-404).

§ 404.011. Investment adviser brochure disclosure.

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

(b) An investment adviser registered under section 301 of the act (70 P. S. § 1-301) shall offer and deliver to each client and prospective client a current firm brochure and one or more supplements as [required by] required under this section [. The brochure and supplements shall] which must contain the information [required by] required under Part 2 of Form ADV (17 CFR 279.1).

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

(1) A current firm brochure.

(2) The current [Current] brochure supplements for each investment adviser representative who will provide advisory services to a client.

(d) The firm brochure and one or more supplements [required by] required under this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours [prior to] before entering into any investment advisory contract with the client or prospective client.

(2) At the time of entering into a contract, if the advisory client has a right to [terminate] end the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall: [,]

(1) [at least once a year, without charge, deliver] Deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements [required by] required under subsection (b) without charge at least once a year.

(2) [If a client accepts a written offer, the investment adviser shall send to that client] Send to a client that accepts a written offer the current brochure and supplements within 7 days after the investment adviser is notified of the acceptance.

(f) If, as an investment adviser, the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser shall treat each of the partnership's limited partners, the company's

members or the trust's beneficial owners as a client. For the purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(g) If an investment adviser [renders] gives substantially different types of investment advisory services to different clients, the investment adviser may do the following:

(1) Provide the clients [may provide them] with different brochures, so long as each client receives all applicable information about services and fees.

(2) Omit from the [The] brochure delivered to a client [may omit] any information [required by] required under Part 2A of Form ADV if the information [is applicable] applies only to a type of investment advisory service or fee which is not [rendered] given or charged, or proposed to be [rendered] given or charged, to that client or prospective client.

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

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

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

(3) Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(i) In accordance with Part 2 of Form ADV, if information contained in the brochure or brochure supplement becomes materially inaccurate, the investment adviser shall:

(1) Amend [amend] its brochure and any brochure supplement.

(2) Deliver [and deliver] the amendments to clients promptly [when any information contained in the brochure or brochure supplement becomes materially inaccurate].

(3) Promptly file the amendments [The amendments shall be promptly filed] with the [Commission] department or with an investment adviser registration depository designated by the [Commission] department.

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

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

(1) *Client*—A 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, the term does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

(3) *Portfolio manager*—The process of determining or recommending securities transactions for any portion of a client's portfolio.

(4) *Sponsor*—An 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.

(5) *Wrap fee program*—A program under which a client is charged a specified fee or fees not based directly on transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.] The delivery requirement set forth in (d) does not apply to the extension or renewal of an investment advisory contract without material changes of the contract which is in effect immediately prior to the extension or renewal.

§ 404.012. Cash payment for client solicitation.

(a) [Failure of an investment adviser] An investment adviser's failure to comply with the requirements of this section concerning cash payments for client solicitation constitutes a fraudulent, deceptive or manipulative act, practice or course of business, within the meaning of section 404 of the act (70 P. S. § 1-404).

(b) An investment adviser may not pay a cash fee or any other economic benefit, 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] is registered as an investment adviser representative or is exempt from registration under § 302.071 (relating to registration exemption for solicitors) or qualifies for another exemption under the act.

(3) The cash fee or other economic benefit is paid [pursuant to] under a written agreement to which the investment adviser is a party.

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

(i) [Describe] 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) [Contain] 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) [Require] 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 prospective client with a current copy of the following:

(A) The investment adviser's written disclosure statement [required by] required under § 404.011 (relating to investment adviser brochure disclosure).

(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 the solicitation services by the investment adviser.

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

(VI) The amount, if any, for the cost of obtaining his account the prospective 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 the differential is attributable to the existence of any arrangement [pursuant to] under which the investment adviser has agreed to compensate the solicitor for soliciting prospective clients for, or referring prospective clients to, the investment adviser.

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

(c) For purposes of subsection [(b)(4)] (b)(5), this section does not apply to an investment adviser [when the cash fee is paid to a solicitor] as follows:

(1) If the cash fee is paid to a solicitor with [With] respect to solicitation activities for the provision of impersonal investment advisory services only.

(2) If the cash fee is paid to a [A] solicitor who is one of the following:

(i) A partner, officer, director or employe of the investment adviser.

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

(d) [Nothing in this section relieves] This section does not relieve a person of a fiduciary or other obligation to which the person may be subject under the law.

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

(1) *Client*—Any prospective client.

(2) *Impersonal advisory services*—Investment advisory services provided solely by means of one of the following:

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

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

(iii) Any combination of the foregoing services.

(3) *Solicitor*—A person or entity who, for compensation, directly or indirectly, solicits a client for, or refers a client to, an investment adviser.]

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

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

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

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

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

(3) Deposit all client funds with a qualified custodian in a separate account for each client under the client's name, in one or more bank accounts containing only client's funds.

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

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

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

(7) At least once every 3 months, send each client or the client's authorized representative as defined in this section an itemized statement showing the funds and securities in the investment adviser's custody at the end of each period and all debits, credits and transactions in the client's account during that period or have a reasonable basis for believing that a qualified custodian will send an itemized statement to each client or the client's authorized representative during the same time interval containing substantially the same information.

(8) At least once every calendar year, engage an independent certified 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, must be filed with the Commission Department within 30 days after each examination.

(c) When an independent certified public accountant makes an examination described in subsection (b)(8) and, upon examination, finds material discrepancies, the accountant shall notify the Commission Department within 1 business day of the finding by means of facsimile transmission or electronic mail, followed by first class mail, directed to the Commission's Department's Division of Licensing.

(d) For purposes of this section, the term "custody" and "qualified custodian" are defined under § 303.042(c). a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

(e) For the purpose of this section, the following terms "authorized representative" shall mean have the following meanings:

Authorized representative—The person specified in a written authorization which the client has signed and filed with the investment adviser or qualified custodian authorizing the investment adviser or qualified custodian to deliver the client's account statements to that person.

Qualified custodian—The following will be considered qualified custodians for purposes of this section:

(i) A bank as that term is defined in section 102(d) of the act (70 P. S. § 1-102(d)).

(ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.

(iii) A broker dealer registered with the Commission under section 301 of the act.]

§ 404.014. Custody requirements for investment advisers.

(a) *Safekeeping required.* It is unlawful and considered to be 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 an investment adviser, registered or required to be registered under section 301 of the act (70 P.S. § 1-301), to have custody of client funds or securities unless:

(1) The investment adviser notifies the department promptly in writing on Form ADV that the investment adviser has or may have custody.

(2) A qualified custodian maintains those funds and securities in one of the following:

(i) A separate account for each client under that client's name.

(ii) Accounts that contain only the investment adviser's clients' funds and securities under the investment adviser's name as agent or trustee for the clients or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

(3) The investment adviser meets the following conditions:

(i) If the investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and how the funds or securities are maintained, promptly when the account is opened and following any changes to this information..

(ii) If the investment adviser sends account statements to a client to which the investment adviser is required to provide the notice in (a)(3)(i), the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser

sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) The investment adviser meets the following conditions:

(i) The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities and the account statement:

(A) Identifies the amount of funds in the account.

(B) Identifies the amount of each security in the account at the end of the period.

(C) Sets forth all transactions in the account during that period.

(ii) If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (3) must be sent to each limited partner (or member or other beneficial owner).

(5) The investment adviser meets the following conditions:

(i) The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, under a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without previous notice or announcement to the investment adviser and that is irregular from year to year.

(ii) The written agreement provides for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities under this section as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report.

(iii) The written agreement must require the independent certified public accountant to:

(A) File a certificate on Form ADV-E with the department within 120 days of the time chosen by the independent certified public accountant in this paragraph, stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) Notify the department within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the department on finding any material discrepancies during the course of the examination.

(C) File Form ADV-E within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration

for being reappointed, accompanied by a statement that includes:

(I) The date of resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to resignation, dismissal, removal, or other termination.

(6) If the investment adviser has custody because a related person maintains client funds or securities under this section as a qualified custodian in connection with advisory services the investment adviser provides to clients, the investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant that performs the independent verification required under paragraph (5) that complies with the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year.

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person.

(7) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (3) and (4).

(b) *Exceptions.*

(1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 (mutual fund), the investment adviser may use the mutual fund's transfer agent instead of a qualified custodian to comply with subsection (a).

(2) *Certain privately offered securities.*

(i) The investment adviser does not need to comply with subsection (a)(2) with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering.

(B) Uncertificated and ownership is recorded only on the books of the issuer or its transfer agent in the name of the client.

(C) Transferable only with previous consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i), the provisions of this paragraph are available with respect to securities held for the account of a pooled investment vehicle only if the pooled investment vehicle is audited, and the audited financial statements are distributed, in accordance with § 303.042(a)(3)(ii) and the investment adviser notifies the department in writing on Form ADV that the investment adviser intends to provide audited financial statements, as described above.

(3) *Fee deduction.* Notwithstanding subsection (a)(5), an investment adviser does not need to obtain an independent verification of client funds and securities maintained by a qualified custodian if the investment adviser is in compliance with § 303.042(a)(3)(i).

(4) *Limited partnerships subject to annual audit.* An investment adviser does not need to comply with paragraphs (a)(3) and (a)(4) and will be considered to have complied with subsection (a)(5) with respect to the account of a pooled investment vehicle that is subject to audit and is in compliance with § 303.042(a)(3)(ii).

(5) *Registered investment companies.* The investment adviser does not need to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) *Delivery to Related Persons.* Sending an account statement under subsection (a)(4) or distributing audited financial statements under subsection (b)(4) does not satisfy the requirements of this section if the account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) *Department Authority.* Any investment adviser who cannot comply with one or more of the specific provisions established by this section may request that the department waive the specific provisions if the investment adviser can establish that undue hardship would be placed on the investment adviser and that investment adviser can establish sufficient alternative safeguards.

Subpart E. ENFORCEMENT

CHAPTER 501. CIVIL LIABILITIES

Sec.
501.011. Criminal referrals.

§ 501.011. Criminal referrals.

(a) The [Commission] department may:

(i) Take [take such] action as it [deems] considers necessary to institute a prosecution or obtain a conviction for offenses as set forth in section 511 of the act (70 P.S. § 1-511).

(ii) Refer the [The Commission may refer such] evidence as is available concerning any violation of the act or any rule or order thereunder or any other applicable statute to the appropriate authorities, Federal and State, who may, with or without [such a] the reference, institute appropriate criminal proceedings.

(b) [Neither the act nor the rules and regulations adopted thereunder shall in any way] The act, and the rules and regulations, do not limit the power of the Commonwealth to punish [any] a person for [any] conduct which constitutes a crime under any other statute.

CHAPTER 504. TIME LIMITATIONS ON RIGHTS OF ACTION

Sec.
504.060. Rescission offers.

§ 504.060. Rescission offers.

(a) A person proposing to make an offer under section 504(d) or (e) of the act (70 P.S. § 1-504(d) or (e)) shall follow the procedure for the registration of securities by qualification, as described in sections 206 and 207 of the act (70 P.S. §§ 1-206 and 1-207).

(1) The forms required to be filed and time periods for [Commission] department action [shall be] are those applicable to registration by qualification [, except that it shall be noted] and a person shall note at the top of Form R that the offer is a rescission offer.

(2) The [Commission] department may, [upon] on petition by the proposed offeror, waive or modify any requirement for the registration if it finds the requirement burdensome and not necessary for the protection of investors.

(b) The department may waive compliance [Compliance] with the procedures in subsection (a) [is waived : (1) For] for a person making a rescission offer for possible violations of the act if the securities which are the subject of the rescission offer were sold to and purchased by no more than 35 persons in this Commonwealth during 12 consecutive months and the following conditions are met: [.]

(1) The person making the rescission offer [must file] files the form designated by the [Commission] department as Form RO in accordance with the General Instructions requesting waiver of the procedures in subsection (a) accompanied by disclosure materials prepared to satisfy the anti-fraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)).

(2) The person making the rescission offer gives the documents specified in subsection (b)(1) [which will be given] to each rescission offeree.

(3) The department does not deny [, and] the waiver request [is not denied] within one of

the following time periods:

(i) Five business days from the date a complete filing is made with the [Commission which contains the items required in this paragraph] department if the issuer is making the rescission offer for possible violations of section 201 of the act (70 P.S. § 1-201) and [neither] the issuer [nor] or a promoter, general partner of a limited partnership, managing general partner of a limited partnership, executive officer or director of the issuer [is] are not subject to the disqualifications in § 204.010(b) (relating to increasing number of purchasers and offerees).

(ii) Ten business days from the date a complete filing is made with the [Commission which contains the items required in this paragraph] department for all other rescission offers made under this subparagraph.

(4) If a rescission offer is being made under section 504(e) of the act (70 P.S. § 1-504(e)), the offer shall comply with section 201 of the act as section 102(r)(vi) of the act (70 P.S. § 1-102(r)(vi)) states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

[(2) For] (c) The department may waive compliance with the procedures in subsection (a) for a person making a rescission offer for possible violations of section 301 or 401 - 409 of the act (70 P.S. §§ 1-301 and 1-401 - 1-409) if the following apply:

[(i)] (1) The transactions subject to the rescission offer were effected in compliance with section 202 or 203 of the act (70 P.S. §§ 1-202 and 1-203) which did not require any filing to be made with the [Commission] department.

[(ii)] (2) The rescission offer is not being made to more than five investors in this Commonwealth, exclusive of investors which purchased under section 203(c) of the act (70 P.S. § 1-203(c)).

[(iii) Neither the] (3) The person making the rescission offer [nor], and if the person is the issuer, a general partner of a limited partnership, managing general partner of a limited partnership, promoter, executive officer or director of the issuer [is] are not subject to the disqualifications in § 204.010(b).

[(iv)] (4) The rescission offer is being made under section 504(d) of the act (70 P.S. § 1-504(d)) or if a rescission offer is being made under section 504(e) of the act, the offeror [shall comply] complies with section 201 of the act in that section 102(r)(vi) of the act states that an offer of rescission made under section 504(e) of the act involves an offer and sale.

[(v) No public] (5) Public media advertising or general solicitation [was utilized] were not used in connection with the offer or sale of the securities subject to the rescission offer.

[(vi) No mass] (6) Mass mailings were not used [utilized] in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of [SEC] Regulation D.

[(vii)] (7) The person making the rescission offer provides to each offeree [the] disclosure [required by] materials prepared to satisfy the anti-fraud provisions of section 401(b) of the act (70 P.S. §1-401(b)).

[(viii)] (8) The person making the rescission offer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to [Commission] department Form RO which will be given to each rescission offeree.

[(3) For] (d) The department may waive compliance with the procedures in subsection (a) for an issuer which, after offering rescission for possible violations of section 201 of the act under this paragraph, will not have made rescission offers to more than five investors in this Commonwealth within the past 24 months, exclusive of investors which purchased under section 203(c) of the act and the following apply:

[(i) No] (1) A person did not receive commissions directly or indirectly [received commissions] for the sale of the securities subject to the rescission offer.

[(ii) Neither the] (2) The issuer or [nor] a promoter, general partner, executive officer or director of the issuer [is] are not subject to the disqualifications in § 204.010(b)(relating to increasing the number of purchasers and offerees).

[(iii)] (3) The issuer provides a letter offering rescission to each rescission offeree which contains only the information set forth in Item 14 of the General Instructions to [Commission] department Form RO which will be given to each rescission offeree.

[(iv)] (4) The issuer provides to each offeree [the] disclosure [required by] materials prepared to satisfy the anti-fraud provisions of section 401(b) of the act.

[(v) No public] (5) Public media advertising or general solicitation [was utilized] were not used in connection with the offer or sale of the securities subject to the rescission offer.

[(vi) No mass] (6) Mass mailings were not used [utilized] in connection with the offer or sale of the securities subject to the rescission offer, except in offerings made in good faith reliance on Rule 505 or 506 of [SEC] Regulation D.

(e) If an offer is made under section 504(d) or (e) of the act and this section, an offeree's right to remedy under the act is terminated by either of the following:

(1) A nonresponse to the offer within 30 days of receipt of the offer.

(2) An affirmative rejection of the offer within 30 days of receipt of the offer.

[(c)] (f) A person making a rescission offer under this section shall:

(1) Advise the department of the results of the rescission offer within 15 calendar days after

the expiration of the rescission offer period.

(2) Keep [and shall keep] and maintain for 3 years following the expiration of each rescission offer period a complete set of books, records and accounts of the rescission offers made [-] including:

(i) Copies [copies] of the rescission offers given or mailed to rescission offerees in this Commonwealth. [,].

(ii) Records [records] of acceptances and rejections and records of cash disbursements to offerees who accepted the rescission offer [– for 3 years following the expiration of each rescission offer period].

(3) Promptly furnish to the department on request records [Records] concerning a rescission offer made in this Commonwealth under this section. [shall be furnished promptly to the Commission upon request.]

[(d) For purposes of this section, the following terms have the following applications:

(1) The term "executive officer" applies to, and includes, each person who serves as chief executive offer, chief operating officer or chief financial officer of a person.

(2) The term "general partner" applies to one of the following:

(i) A person who, under the terms of the limited partnership agreement, is designated a general partner of a limited partnership.

(ii) A person who, under the terms of the limited partnership agreement, is designated as a managing general partner of a limited partnership.]

[(e) This] (g) The requirements of this section also apply [applies if] if the following rescission offers are [being] made [as follows]:

(1) The purchaser of securities which are the subject of a rescission offer under this section no longer owns the securities [prior to] before receipt of the rescission offer and, under section 504(d)(i) of the act, is being offered an amount in cash equal to damages, if any, as computed in accordance with section 501(a) of the act (70 P.S. § 1-501(a)).

(2) A person who purchased a security in violation of the act no longer owns the security and, under section 504(e)(ii) of the act, offers to pay the seller an amount in cash equal to damages, if any, computed in accordance with section 501(b) of the act.

CHAPTER 513. RESCISSION ORDERS

Sec.

513.010. Rescission orders.

§ 513.010. Rescission orders.

When the [Commission] department, under section 513 of the act (70 P.S. § 1-513), orders an issuer or control person of an issuer to effect a rescission offer, the rescission offer shall be effected in accordance with § 504.060(a) (relating to rescission offers) unless the [Commission] department, by order, otherwise [prescribes] requires.

Subpart F. ADMINISTRATION

CHAPTER 601. ADMINISTRATION

Sec.
[601.010. Commission quorum; action; disqualification.]
[601.020. Secretary, Assistant secretaries.]
601.030. Access to confidential information.

[§ 601.010. Commission quorum; action; disqualification.

(a) For the purpose of computing the quorum required for actions, determinations or dispositions by the Commission: when a single Commissioner has disqualified himself or is otherwise not available, a quorum shall consist of the two remaining Commissioners; when two Commissioners have disqualified themselves, a quorum shall consist of the single remaining Commissioner; where all three members of the Commission have disqualified themselves, a hearing examiner shall be designated by the Commission and the hearing examiner's findings, conclusions and recommended order, determination or disposition shall be adopted by the Commission.

(b) Hearings shall be held before the Commission, a member or members thereof, or a Hearing Examiner as provided in this chapter; Commission action, determinations or dispositions as a result of any hearing shall be made at any meeting of the Commission at which a quorum, determined as set forth in subsection (a) is present. Where a hearing has been conducted before less than the full three-member Commission, all Commissioners not present at any such hearing shall render their decision on the basis of a review of all pleadings, briefs and other papers filed in the matter and on the basis of the transcript and exhibits produced at such hearing.

(c) Commissioners may disqualify themselves from participating in any hearing or decision thereon or in any other action, determination or disposition on grounds of prejudice and bias in a particular matter, or for other good cause.]

[§ 601.020. Secretary, Assistant secretaries.

(a) The Secretary of the Commission shall attend all meetings of the Commission; keep the minutes of such meetings in one or more books provided for that purpose; be custodian of the public records of the Commission and of all orders or other documents and instruments, the

execution of which on behalf of the Commission under its seal is duly authorized in accordance with the provisions of the act and this part, sign orders, subpoenas, other documents and instruments the issuance and execution of which on behalf of the Commission shall have been duly authorized in accordance with the provisions of the act and the regulations adopted thereunder or as provided in an order, approval or other direction of the Commission; have general charge of the public files and public records of the Commission; and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Commission. The Secretary shall keep in safe custody the seal of the Commission.

(b) The Assistant Secretaries as thereunto authorized by the Commission may sign (under seal) orders, subpoenas and other documents and instruments the issuance and execution of which on behalf of the Commission is duly authorized in accordance with the provisions of the act and the regulations adopted thereunder or as provided in any order, approval, or other direction of the Commission.]

§ 601.030. Access to confidential information.

(a) *General rule.* The department may, on a showing that the information is needed, provide confidential information in its possession to any of the following persons if the person receiving the confidential information provides assurances of confidentiality as the department considers appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of the government.

(2) A self-regulatory organization.

(3) A foreign financial regulatory authority as defined in Section 3(a)(52) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(52)).

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed under Section 5(b) of the Securities Investor Protection Act of 1970 (15 U.S.C. § 78eee(b)).

(5) A trustee in bankruptcy.

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the act, if the trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the department of the act.

(7) A duly authorized agent, employe or representative of any of the above persons.

(b) *Nonapplicability.* This section does not affect the department's authority or discretion to

provide access to, or copies of, nonpublic information in its possession in accordance with the other authority or discretion as the department possesses by statute, regulation or statement of policy.

CHAPTER 602. FEES

Sec.
[602.022. Denial for abandonment.]
[602.060. Charges for Commission publications.]

[§ 602.022. Denial for abandonment.

The Commission Department may order an application for registration of securities or an application for registration as a broker-dealer, investment adviser, agent or investment adviser representative denied upon the failure of the applicant, within 60 days after written notice warning such applicant that an application will be denied and deemed abandoned, to respond to any request for additional information required under the act or the provisions thereunder or otherwise to complete the showing required for action upon the application; or the applicant may with the consent of the Commission Department withdraw the application. Upon denial for abandonment, there shall be no refund of any filing fee paid prior to the date of abandonment.]

[§ 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) 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.

(2) Compendium Annual Supplement Service: $20 per annual subscription.

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

CHAPTER 603. ADMINISTRATIVE FILES

Sec.
603.011. Filing requirements.
603.031. Public inspection of records.
603.040. Charges for [Commission] department services.

§ 603.011. Filing requirements.

(a) Except as set forth in subsection (f), documents and other communications to be filed with the [Commission] department shall be filed in the Harrisburg office of the [Commission]

department.

(b) If mailed, all documents and communications [should] shall be sent registered or certified mail, postage prepaid, return receipt requested.

(c) [A document or communication, if complete and properly executed in all material respects, will be deemed filed when it is received by the Commission] The department will consider a completed and properly executed document or communication to be filed on receipt.

(d) Unless the filings and request are accompanied by the required fees or charges as provided by the act and this section, the department will not:

(1) Accept for filing a [No] notice, statement, form or other document [will be accepted for filing;].

(2) Grant a [no] request for copies of documents. [will be granted; and no]

(3) Take action [will be taken by the Commission unless the filings and request are accompanied by the required fees or charges as provided by the act and this section].

(e) Except as set forth in subsection (f), checks for payment of fees and charges shall be:

(1) Made [made] payable to the order of "Commonwealth of Pennsylvania."

(2) Delivered [and delivered] or mailed to: [Secretary, Pennsylvania Securities Commission; 1010 N. Seventh Street, Harrisburg, Pennsylvania 17102-1410] Commonwealth of Pennsylvania Department of Banking and Securities, 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101, or other address as the department may designate.

(f) Required documents shall be filed in the following manner:

(1) *Broker-dealer*. The Uniform Application for Broker-Dealer Registration (Form BD), the Uniform Request for Withdrawal from Registration as a Broker-Dealer (Form BDW), or successor forms, and amendments thereto required to be filed with the [Commission] department by a member firm of [the National Association of Securities Dealers, Inc. (NASD)] FINRA with respect to an initial registration, renewal, amendment or withdrawal from registration as a broker-dealer shall be:

(i) Made [made] solely with the [Central Registration Depository (CRD)] CRD maintained by [the NASD] FINRA under an agreement and guidelines established by [North American Securities Administrators Association, Inc.] NASAA.

(ii) Mailed [and shall be mailed] to: [NASAA/NASD] NASAA/FINRA Central Registration Depository; Post Office Box 9401, Gaithersburg, Maryland 20898-9401, or any successor address.

(2) *Agent.*

(i) Documents and other communications required to be filed with the [Securities Commission] department by a member firm of [the NASD] FINRA with respect to the initial registration, renewal, transfer or withdrawal from registration as an agent shall be made solely with the CRD [at this] to the address in subsection (1)(ii).

(ii) Checks for payment of fees [required by] required under sections 602(d) and 602.1(a) of the act (70 P.S. §§ 1-602(d) and 602.1(a)) for the filing of a document described in this subsection shall be made payable to the order of ["National Association of Securities Dealers, Inc."] "FINRA" and mailed with the documents to the address listed in [this] subsection (1)(ii).

(g) [Filings made with the CRD under this subsection will be deemed as filed with the Commission.] The department will consider filings made with the CRD under subsection (f) as filed with the department.

[(g) In connection with notice filings relating to a Federally-covered security under section 211 of the act (70 P.S. § 1-211), notice forms may be filed electronically with the Commission as permitted by order of the Commission. In conjunction with an electronic filing, fees or assessments required under sections 602 or 602.1 of the act (70 P.S. §§ 1-602 or 1-602.1) shall be paid by means of an Automated Clearing House transfer of funds to the Commission's depository bank].

(h) Required forms will be available on the [Commission's] department's website at [www.psc.state.pa.us] www.dobs.pa.gov and in [In addition, forms are available in] paper format from the [Commission] department.

§ 603.031. Public inspection of records.

(a) During the regular business hours of the [Commission] department, members of the public may, [upon] on written request to do so, inspect at the [Commission's] department's Harrisburg Office those documents which are public records. The written request [required by] required under this subsection shall set forth the public records to be inspected.

(b) The [Commission] department may withhold from public inspection those records which it determines are excluded from the definition of public records in section [1 of the act of June 21, 1957 (P.L. 390, No. 212) (65 P.S. § 66.1(2))] 102 of the act of February 14, 2008 (P.L. 6, No. 3), known as the Right-to-Know Law (65 P.S. § 67.102), and any successor statute.

(c) A request for the confidential treatment of information contained in a statement, application, notice or report submitted to the [Commission] department may accompany the statement, application, notice or report and specify the reasons for the request.

(i) Material [; the material] which is the subject of the request should be separated from other parts of the filing.

(ii) On [Upon] proper showing, the [Commission] department will treat as confidential

the material which is the subject of the request.

(d) [Nothing in this section may be deemed to] This section does not make available for public inspection the following:

(1) Books, [books,] papers, correspondence, memoranda, agreements or other documents or records contained in an investigative or examination file maintained by the [Commission] department.

(2) Minutes, [In addition, no minutes,] documents or other memoranda of the [Commission] department or of the staff which deal with or concern the institution, maintenance or termination of an investigation [may be available for public inspection].

(e) Except as set forth in paragraphs (1) and (2), financial statements required to be filed under §§ 303.011, 303.012, 304.021 and 304.022, [shall be] are public.

(1) Statements of income required to be filed under §§ 303.011 and 304.021 (relating to broker-dealer registration procedures; and broker-dealer required financial reports) and nonrequired statements of income filed under §§ 303.011, 303.012, 304.021 and 304.022 [shall be] are confidential if the income statements are bound separately from the accountant's report, the statement of financial condition and the accompanying notes.

(2) Financial statements which are [deemed] considered confidential under paragraph (1) [shall be] are available for official use by:

(i) An [an] official or employe of the government of the United States or a state.

(ii) A [, by a] National Securities Exchange or registered National securities association of which the person filing the financial statements is a member.

(iii) Other [, and by other] persons whom the [Commission] department authorizes disclosure of the information as being in the public interest.

(3) This section is not [Nothing in this subsection may be deemed to be] in derogation of the rules of a registered National Securities Exchange or registered National securities association which give customers of a member broker or dealer the right, [upon] on request to the member broker or dealer, to obtain information relative to its financial condition.

(f) The [Commission has determined to treat confidential] department will treat the following information [which will] as confidential and not be available for public inspection under any provision of the act and [which the Commission deems] considers the information excluded from the definition of public records in section [1(2)] 102 of the Right-to-Know Law:

(1) [Social] The Social Security number [,] and date of birth [and home address] of an individual registered or applying for registration as an agent or an investment adviser representative that appears on the uniform application for securities industry registration or

transfer, [( ] Form U-4 [ )] or successor form [thereto], required to be filed with the [Commission] department under § 303.013 or 303.014 (relating to agent registration procedures; and investment adviser representative registration procedures).

(2) The Social Security number [,] and date of birth [and home address] of an individual registered or applying for registration as an investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for investment adviser registration, [( ] Form ADV [ )] or successor form [thereto], required to be filed with the [Commission] department or an investment adviser registration depository designated by [order of] the [Commission] department under § 303.012 or 303.015 (relating to investment adviser registration procedure; and notice filing for Federally covered advisers).

(3) The Social Security number [,] and date of birth [and home address] of an individual who is a principal of a person registered or applying for registration as a broker-dealer or investment adviser or filing a notice as a Federally covered adviser that appears on the uniform application for broker-dealer registration, [( ] Form BD [ )], [or] Form ADV or successor forms. [thereto. For purposes of this section, the term "principal" has the meaning as set forth in § 303.012(e).]

§ 603.040. Charges for [Commission] department **services.**

The following fees will be charged by the [Commission] department and remitted to the General Fund of the Commonwealth:

(1) Photocopies of documents on file with the [Commission] department -$.50 per page.

(2) Certification of documents on file with the [Commission] department -$5 per certification.

(3) Facsimile transmission of copies of documents on file with the [Commission] department -$2 per page.

CHAPTER 604. [INTERPRETATIVE OPINIONS OF COMMISSION – STATEMENT OF POLICY]

Sec.

Securities Representative non-Member Examination (Series 2) – statement of policy.
604.017. Guidelines concerning the continuance of hearings by hearing officers – statement of policy.
604.018. Imposition of administrative assessments under section 602.1(c) – statement of policy.
604.019. Requests for oral argument – statement of policy.
604.020. Broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services – statement of policy.
604.021. Denial of allegations – statement of policy.
604.022. Offers of settlement and consent injunctions – criminal referrals and investigations – statement of policy.
604.023. No-action letters – statement of policy.

[§ 604.010. Interpretative opinions – statement of policy.]

[Each request for an interpretative opinion of the Commission shall be made in writing and shall set forth:

(1) The particular statutory provision for which an interpretation is requested.

(2) The questions presented.

(3) The relevant statutory or decisional authority relied upon.

(4) The names of persons and entities concerning whom an interpretative opinion is requested.

(5) All relevant facts and circumstances pertinent to the request.]

[§ 604.011. Filings of copies – by facsimile or otherwise – of submittals, pleadings and other nonoriginal documents- statement of policy.]

[(a) For purposes of this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

Nonoriginal document – A copy of an original document.

Original document – An original submittal, pleading or other document, signed in ink by the party in interest or by its attorney.

Pleading – An application, complaint, petition, answer, protest, reply or other similar document filed in an adjudicatory proceeding.

Submittal – An application, amendment, exhibit or other similar document filed in an ex parte or other nonadversary proceeding.

(b) A document filed with the Commission, whether as an original document or as a nonoriginal document, is subject to section 407(a) of the act (70 P.S. § 1-407(a)).

(c) A facsimile transmission of an original document is a nonoriginal document.

(d) The filing of a facsimile transmission of an original document or other nonoriginal document which is subject to 1 Pa. Code § 33.11 (relating to execution) without the same day filing of the original document constitutes a deficient filing which does not satisfy the act (70 P.S. §§ 1-101 – 1-704) or the Takeover Disclosure Law (70 P.S. §§ 71-85) or regulations promulgated thereunder, or applicable rules contained in 1 Pa. Code Part II (relating to general rules of administrative practice and procedure), including those relating to the time fixed or the time period prescribed for the filing.

(e) Only the filing of the original document with the Commission shall satisfy the requirements in subsection (d) and the filing of a nonoriginal document does not extend the time fixed nor the time period prescribed for the filing of the original document.

(f) Subsections (d) and (e) do not apply to documents filed with the NASAA/NASD Central Registration Depository under § 603.011(f) (relating to filing requirements).]

[§ 604.012. Nonresponse or affirmative rejection of offers made under section 504(d) or (e) of the act and § 504.060 (relating to rescission offers) – statement of policy.]

[(a) Section 504(d) and (e) of the act (70 P.S. § 1-504(d) and (e)) requires that an offer made under those subsections remain open for acceptance for a period of not less than 30 days from receipt of the offer and § 504.060 (relating to rescission offers) sets forth the minimum amount of information to be contained in the offer.

(b) A nonresponse to an offer made under section 504(d) or (e) of the act and § 504.060 within 30 days of receipt thereof or an affirmative rejection of the offer within 30 days of receipt thereof terminates the offeree's right to remedy under the act.]

§ 604.013. [Reserved].

§ 604.014. [Reserved].

§ 604.015. [Reserved].

[§ 604.016. Guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser Law Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2) – statement of policy.]

[(a) Under § 606.041(b)(2) (relating to delegation and substitution), the Commission has delegated to the Director of the Division of Licensing the authority to waive the requirement of §§ 303.031 and 303.032 (relating to examination requirement for agents; and examination requirements for investment advisers and investment adviser representatives) to take and pass the

Series 63, Series 65 and Series 2 examinations administered by the National Association of Securities Dealers (collectively, the "examination") or successor examinations.

(b) Without otherwise restricting the discretionary authority granted to Commission staff persons by § 606.041, the staff persons will consider the factors listed in this subsection in determining whether a waiver from the examination requirements of § 303.031 or § 303.032 would be granted. These factors are set forth for illustrative purposes only and do not constitute the entire range of considerations that may form the basis for granting or denying a waiver request.

(1) Whether the applicant has disciplinary history for which staff persons would place the applicant under the Commission's Special Investment Adviser Representative or Agent Review Program.

(2) Whether the applicant has certified to Commission staff persons that the applicant has reviewed the act and this title.

(3) Whether the applicant has substantial long-term and continuous experience as a principal, agent or employe, other than in a clerical capacity, of a broker-dealer or investment adviser. Staff persons also will consider whether the applicant has similar experience in a responsible position, other than in a clerical capacity, in the securities, banking, finance or other related business.

(4) Whether the applicant has some continuous experience in a responsible position, other than in a clerical capacity, in the securities, banking, finance or other related business and also possesses educational credentials or professional designations such as one of the following:

(i) Ad advanced degree obtained through graduation from a formal degree program of an accredited educational institution with a concentration in economics, finance, mathematics, business, business administration or similar subjects.

(ii) A professional designation, such as Chartered Financial Analyst (CFA), Chartered Investment Counselor (CIC), Certified Financial Planner (CFP), Chartered Financial Consultant (ChFC) or Masters of Science in Financial Services (MSFS).

(iii) A license as a certified public accountant and is in good standing with the relevant licensing authority.

(5) Whether the applicant is admitted to the bar of any state to practice law and is a member of the bar in good standing.

(6) Whether the applicant previously has passed the examination and has remained continuously employed in the securities industry or possesses some employment experience in the securities industry and has not had a significant lapse of this employment as of the date of filing of the application for registration with the Commission.]

[§ 604.017. Guidelines concerning the continuance of hearings by hearing officers – statement of policy.]

[(a) It is the policy of the Commission to afford persons charged with violating the Pennsylvania Securities Act of 1972 with a just and speedy hearing as well as to minimize inconvenience and expense to parties and witnesses. The Commission's hearing officers are to utilize the following guidelines concerning the continuance of hearings. In every instance, however, the granting or denial of a motion for continuance is a matter for the exercise of sound discretion by the hearing officer. In the exercise of sound discretion, the hearing officer may make any decision consistent with the policy of this section or as otherwise required by law.

(b) Except as provided for in subsection (c), a motion for continuance is to be made in writing and filed with the Secretary of the Commission and copies provided to the hearing officer and served on all parties or their attorneys, including the staff attorney in charge of the case. The signature of a party or of an attorney constitutes a certification of the accuracy of the statements made in, and in connection with, the motion.

(c) After the hearing has begun, a motion for continuance may be orally presented unless the hearing officer requires that the motion be reduced to writing and filed separately.

(d) The filing of a motion for continuance, without an order granting the motion, does not act to delay the start of the hearing, and all parties shall be prepared to proceed as scheduled in the event the motion is denied.

(e) A motion for continuance is to be filed as far in advance of the hearing as practicable. If it is filed less than 10 days in advance, the motion may be denied unless it is shown that one of the following applies:

(1) The facts on which the motion is based occurred within the immediately preceding 10-day period.

(2) Although the facts occurred prior to that 10-day period they did not become known to, and by the exercise of reasonable diligence could not have been discovered by, the moving party more than 10 days before the hearing date.

(f) A motion for continuance of a hearing may be granted by the hearing officer for one or more of the following reasons:

(1) Agreement of all parties or their attorneys.

(2) Illness or injury of counsel of record or a party. If requested by the hearing officer a certificate of a physician shall be furnished, stating that the illness or injury is of sufficient severity and will probably be of a duration that prevents the ill or injured person from participating in the hearing as scheduled.

(3) Engagement of counsel in a court of record or attachment of counsel by the court, in which event the motion for continuance is to be filed with the Secretary of the Commission and copies provided to the hearing officer and served on all parties or their attorneys, including the

staff attorney in charge of the case, as promptly as possible before the date and time the hearing is scheduled to commence. The motion shall state the name and location of the court in which counsel is engaged or attached, the name of the judges before whom the matter is pending, the caption of the matter, the date upon which the matter is expected to be concluded and the statement by counsel that no partner, associate or co-counsel is sufficiently prepared to be able effectively to represent the party at the hearing.

(4) Absence of a material witness whose testimony is essential to the matter pending, if the motion states:

(i) The reason for the absence of the witness.

(ii) The facts to which the witness would testify if present or if the witness's deposition were to be taken.

(iii) The grounds for believing that the absent witness would so testify at the hearing or deposition.

(iv) The efforts made to procure the attendance or deposition of the absent witness.

(v) The reasons for believing that the witness will attend the hearing at a subsequent date or that the witness's deposition can and will be obtained.

(vi) The reasons for believing that the testimony of the witness is both material and essential to the pending matter.

(g) If the witness could have been subpoenaed or if the adverse party agrees to the testimony that the witness would have given, the motion described in subsection (f) may be refused.

(h) In the absence of a material witness whose testimony is essential to the pending matter, the hearing officer, upon motion or otherwise, may recess the hearing after all other witnesses have testified and continue the hearing to a subsequent date, subject to the time limitations in subsection (k) to allow for the obtaining of the deposition or the attendance of the witness.

(i) A hearing officer may deny a continuance motion based upon recent change of counsel or recent initial retaining of counsel where a party has been given at least 30 days notice of the date, time and place of hearing.

(j) Except for cause shown in special cases, no reason enumerated in subsection (f) for a continuance of a hearing other than continuances granted on the basis of agreement of all parties or their attorneys, is to be of effect beyond on application made in behalf of one party or group of parties having similar interests.

(k) A continuance is to be a date and time certain, rarely for more than 60 days, unless the circumstances in the matter make it impractical to so specify.

(l) The hearing officer may not refer appeals of rulings on motions for continuances to the Commission except in extraordinary circumstances where a prompt decision by the Commission is necessary to prevent detriment to the public interest.]

[§ 604.018. Imposition of administrative assessments under section 602.1(c) – statement of policy.]

[(a) Section 602.1(c) of the act (70 P.S. § 1-602.1(c)) authorizes the Commission, after giving notice and opportunity for a hearing, to impose administrative assessments against a broker-dealer, agent, investment adviser or associated person registered under section 301 of the act (70 P.S. § 1-301) or an affiliate of the broker-dealer or investment adviser if the Commission finds that the person either willfully has violated the act or a rule or order of the Commission under the act or has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer.

(b) Section 602.1(c)(2) of the act requires the Commission to consider certain factors in making a determination to impose an administrative assessment, including factors the Commission finds appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the act.

(c) Under section 21B of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78u-1), the United States Securities and Exchange Commission (SEC) may impose civil administrative penalties for violations of the Federal securities laws.

(d) Section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f) forbids the SEC to register an exchange as a national securities exchange unless the rules of the exchange provide that its members and associated persons are subject to certain disciplinary rules of the exchange, including imposition of fines.

(e) Section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3) forbids the SEC to register an association of brokers and dealers as a national securities association unless the rules of the association provide that its members and associated persons are subject to certain disciplinary rules of the association, including imposition of fines.

(f) Therefore, the general policy of the Commission will be not to adopt an order under section 602.1(c) of the act to impose an administrative assessment on a person who, for the same conduct, already has been assessed a civil administrative penalty by the SEC under section 21B of the Securities Exchange Act of 1934 or has been fined by a national securities exchange or a national securities association registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78mm).

(g) This section does not preclude the Commission from issuing an order accepting an offer of settlement submitted by a party to an administrative proceeding, the terms of which provide for payment to the Commission of a sum of money designated as an administrative assessment under section 602.1(c) of the act.]

[§ 604.019. Requests for oral argument – statement of policy.]

[(a) *Criteria.* While the following outlines general criteria to be applied to requests for oral argument filed with the Commission under 1 Pa. Code § 35.214 (relating to oral argument on exceptions), it is not to be construed as limiting any commissioner's discretion in voting whether to grant a request for oral argument:

(1) The Commission usually will find oral argument is unnecessary or inappropriate when:

(i) The request has not been filed timely.

(ii) The request is frivolous.

(iii) The request does not set forth the issue with clarity and specificity.

(iv) The issue is tightly constrained, not novel, and the briefs adequately cover the arguments.

(v) The issue in controversy clearly has been decided by the courts.

(vi) The facts and legal arguments have been presented adequately in the record and accompanying briefs and oral argument would not be of significant assistance to the Commission in the decisional process.

(2) A commissioner usually will vote for granting a request for oral argument when:

(i) The request presents a substantial or novel, or both, legal issue.

(ii) The resolution of the issue presented will be of institutional or precedential value.

(iii) The Commission has asked counsel to clarify an important legal, factual or procedural point. In lieu of, or in combination with, the granting of a request for oral argument, the Commission may request the participants to address these points in writing.

(iv) A court decision, legislation, regulation or an event subsequent to the filing of the last brief may bear significantly upon the matter. In lieu of, or in combination with, the granting of a request for oral argument, the Commission may request the participants to address these issues in writing.

(v) An important public interest may be affected.

(b) *Timing.* The Commission generally will respond to a request for oral argument after the following conditions have been met:

(1) The Commission has reviewed the record, the recommended decision and the post-hearing pleadings.

(2) Each commissioner has communicated the commissioner's views on the request for oral argument to the other commissioners.

(c) *Notice to parties.* Upon receipt of a filing of a request for oral argument:

(1) The Secretary to the Commission will issue a letter to the party filing the request acknowledging receipt of the request and advising that the Commission will consider the request after it has reviewed the record, the recommended decision and the post-hearing pleadings.

(2) The letter issued by the Secretary to the Commission should not be construed to constitute or serve as a waiver of possible deficiencies in the request, including, but not limited to, time periods for filing, to the extent that the deficiencies, if any, may be applicable.

(d) *Consideration by the Commission.*

(1) The Commission will consider a request for oral argument at a Commission meeting.

(2) As with other decisions made by the Commission, an affirmative vote of a majority of the commissioners participating in the consideration of a request for oral argument is necessary for the Commission to act favorably upon the request.]

[§ 604.020. Broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives using the Internet for general dissemination of information on products and services – statement of policy.]

[(a) Section 301(a) of the act (70 P.S. § 1-301(a)) provides that "[i]t is unlawful for any person to transact business in this State as a broker-dealer or agent unless he is registered under this act."

(b) Section 301(c) of the act provides that "[i]t is unlawful for any person to transact business in this State as an investment adviser unless the person is so registered or registered as a broker-dealer under this act or unless the person is exempted..." Section 301(c) further providers that "[i]t is unlawful for any person to transact business in this State as an investment adviser representative unless the person is so registered or exempted from registration..."

(c) The Commission acknowledges that the Internet, the World Wide Web and similar proprietary or common carrier electronic systems (collectively, the "Internet") have facilitated greatly the ability of broker-dealers, investment advisers, broker-dealer agents and associated persons of investment advisers to advertise and otherwise disseminate information on products and services to prospective customers and clients.

(d) The Commission also acknowledges that certain communications made on the Internet are directed generally to anyone having access to the Internet and may be transmitted through postings on Bulletin Boards, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications").

(e) The Commission further acknowledges that in certain instances, by distributing information on available products and services through Internet Communications available to persons in this Commonwealth, broker-dealers, investment advisers, agents and associated persons, as defined under section 102 of the act (70 P.S. § 1-102), could be construed as "transacting business" for purposes of section 301(a) and (c) of the act so as to require registration in this Commonwealth under section 301 of the act, since the Internet Communications would be received in this Commonwealth regardless of the intent of the person originating the communication.

(f) Broker-dealers, investment advisers, broker-dealer agents (hereinafter, BD agents) and investment adviser representatives (hereinafter, IA reps) who use the Internet to distribute information on available products and services through Internet Communications directed generally to anyone having access to the Internet, will not be deemed to be "transacting business" in this Commonwealth for purposes of section 301(a) and (c) of the act based solely on that fact if all the following conditions are met:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(i) The broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this Commonwealth if first registered, excluded or exempted from State broker-dealer, investment adviser, BD agent or IA rep registration requirements.

(ii) Follow-up, individualized responses to persons in the Commonwealth by the broker-dealer, investment adviser, BD agent or IA rep that involve either effecting or attempting to effect transactions in securities, or rendering personalized investment advice for compensation, will not be made absent compliance with State Broker-dealer, investment adviser, BD agent or IA rep registration requirements, or an applicable exemption or exclusion.

(2) The Internet Communications contains a mechanism, including and without limitation, technical "fire walls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in the Commonwealth, the broker-dealer, investment adviser, BD agent or IA rep is first registered in this Commonwealth or qualifies for an exemption or exclusion from the requirement. Nothing in this paragraph relives a broker-dealer, investment adviser, BD agent or IA rep registered in this Commonwealth from any applicable securities registration requirement in this Commonwealth.

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities or the rendering of personalized investment advice for compensation in this Commonwealth over the Internet, but is limited to the dissemination of general information on products or services.

(4) In the case of a BD agent or IA rep, the following apply:

(i) The affiliation of the BD agent or IA rep with the broker-dealer or investment adviser is prominently disclosed within the Internet Communication.

(ii) The broker-dealer or investment adviser with whom the BD agent or IA rep is

associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep.

(iii) The broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorized the distribution of information on the particular products and services through the Internet Communication.

(iv) In disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(g) The position expressed in this section extends to broker-dealer, investment adviser, BD agent and IA rep registration requirements within this Commonwealth only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(h) Nothing in this statement of policy affects the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this Commonwealth that is not subject to the jurisdiction of the Commission under the National Securities Markets Improvement Act of 1996. (Pub. L. no. 104-290, 110 Stat. 3416), which will be codified in various sections of 15 U.S.C.]

[§ 604.021. Denial of allegations – statement of policy.]

[The Commission has adopted a policy that in a civil lawsuit brought by the Commission or in an administrative proceeding of an accusatory nature pending before the Commission, it is important to avoid creating, or permitting to be created an impression that a decree is being entered or a sanction is being imposed, when the conduct alleged did not, in fact, occur. Accordingly, it is the policy of the Commission not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or the Commission's order instituting an administrative proceeding of any accusatory nature. The Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations.]

[§ 604.022. Offers of settlement and consent injunctions – criminal referrals and investigations – statement of policy.]

[(a) In the course of Commission investigations, civil lawsuits and administrative proceedings, Commission staff may discuss with persons involved the disposition of these matters by consent, by settlement or in some other manner.

(b) It is the policy of the Commission that the disposition of a matter may not, expressly or impliedly, extend to criminal charges that have been, or may be, brought against the person or a recommendation by the Commission under § 501.011 (relating to criminal referrals) with respect thereto.

(c) A person involved in an enforcement matter before the Commission who consents, or agrees to consent, to a judgment or order does so solely for the purpose of resolving claims against the person with respect to that investigative, civil or administrative matter and not for the purpose of

resolving criminal charges that have been, or might be, brought against the person.

(d) This statement of policy reflects that fact that neither the Commission nor its staff have the authority or responsibility for instituting, conducting, settling or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Office of Attorney General and the district attorneys of the several counties.]

[§ 604.023. No-action letters – statement of policy.]

[(a) A person may request in writing a no-action letter from Commission staff that, based on the facts stated in the written request, staff will not recommend enforcement action against certain specified persons engaging in the activities described in the request. Commission staff is not obligated to respond to each request, particularly when the matter in question is well-settled law.

(b) Each request for a no-action letter shall be in writing and shall be filed with the Office of Chief Counsel at the Commission's Harrisburg Office address. Each request shall include the following:

(1) The particular statutory provision or rule upon which the request is based.

(2) The names of all persons involved. Letters relating to unnamed persons or to hypothetical situations will not be answered.

(3) A detailed statement of the facts necessary to reach a legal conclusion in the matter. Letters should be concise and to the point and should not attempt to include every possible type of situation which may arise in the future so that the request is overly broad or calls for a speculative response.

(4) A detailed discussion and analysis of the law as it relates to the facts. The writer must indicate why the writer believes a problem exists and must give or provide a legal opinion in the matter, including the basis for the opinion.

(5) A statement of the reasons why a no-action letter is appropriate.

(6) A representation that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth in the no-action letter quest.

(7) A representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.

(c) If used, a no-action letter expresses only the current position of Commission staff with respect to recommendation of administrative enforcement action against specific persons engaging in specific transactions; may be relied upon only by the requesting party; and does not bind the Commission or third parties.

(d) There is no fee required for issuance of a no-action letter.]

CHAPTER 605. [COMMISSIONERS AND COMMISSION] DEPARTMENT EMPLOYEES; RELATIONSHIP WITH LICENSED PERSONS OR QUALIFIED ORGANIZATIONS

Sec.
605.020. Conflict of interest.

§ 605.020. Conflict of interest.

(a) [For the purpose of protecting] To protect the public interest and [avoiding] avoid conflicts of interest, the [Commission] department has determined, [pursuant to] under section 605(b) of the act (70 P.S. § 1-605(b)), that the provisions of section 605(a) of the act (70 P.S. § 1-605(a)) [shall] do not prohibit the holding or purchasing of any securities by any employe of the [Commission] department if one of the following apply:

(1) [the] The employe did not perform a principal review of the application for the registration of [such] the securities or any other securities of the same issuer registered with the [Commission] department under sections 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206) or was not involved in an investigation, audit, or examination of the registration. [; or]

(2) [the] The securities to be held or purchased are those of an open-end or closed-end investment company, face amount certificate company, or unit investment trust, as those terms are defined in the Investment Company Act of 1940 (15 U.S.C. § 80a-2) which have been registered with the [Commission] department under sections 205 or 206 of the act (70 P.S. §§ 1-205 or 1-206).

(3) The employe did not perform a principal review of the application for licensure or registration of a broker-dealer, agent, investment adviser or investment adviser representative filed with the department under section 303 of the act (70 P.S. § 1-303) or was not involved in an investigation, audit or examination of the licensee or registrant.

(b) If, under sections 605(a) and 605(b) of the act, there may be a conflict of interest with an employe of the [Commission] department which is not permitted by subsection (a), [such] the employe may present a formal request to the [Commission] department for permission to hold or purchase [such] the securities.

(1) The [Such a] request [shall] must set forth the type and amount of securities to be held or purchased, the issuer of the securities, any other relationship between the employe and the issuer, the functions which the employe performed relative to the registration of the issuer, and all other pertinent reasons as to why the employe feels the [Commission] department should grant the employe's request.

(2) The [Commission] department may grant the employe's request if it finds that in doing so it would be protecting the public interest and avoiding conflicts of interest.

(c) [No] An employe of the [Commission] department [shall] may not hold or purchase a security which would otherwise be permitted by subsections (a) and (b) if the holding and purchasing of [such] the security would [be violative of] violate any other applicable [conflict-of-interest] conflict of interest statute or regulation.

CHAPTER 606. MISCELLANEOUS POWERS OF [COMMISSION] THE DEPARTMENT

Sec.
606.011. Financial reports to security holders.
606.031. Advertising literature.
606.032. [Reserved].
606.033. [Reserved].
606.034. [Reserved].
[606.041. Delegation and substitution.]

§ 606.011. Financial reports to securityholders.

(a) In the case of securities issued under section 203(d) or (p) of the act (70 P.S. § 1-203(d) or 203(p)), or registered under sections 205 or 206 of the act (70 P.S. §§ 1-205 and 1-206), the issuer shall, so long as the securities are held of record by a Commonwealth resident, deliver its financial statements to each holder at least annually and within 120 days after the close of the fiscal year of the issuer.

(b) The financial statements [shall] must comply with section 609(c) of the act (70 P.S. § 1-609(c)) and the rules and regulations adopted thereunder, except that, if the securities were issued in a transaction subject to this section wherein [none of] the financial statements delivered to offerees were not required to be audited or if [no] the financial statements were not required to be given to the offerees, the financial statements [need not] do not need to be audited.

(c) This section does not apply if, on the date of the close of the issuer's fiscal year, the issuer is subject to sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78m and 78o(d)) and, within 120 days of that date, has made a filing with the [United States] Securities and Exchange Commission in accordance with either of those sections.

§ 606.031. Advertising literature.

(a) *Advertisements.* Except as permitted by section 606(c) of the act (70 P.S. § 1-606(c)), a person may not publish [any] an advertisement concerning [any] a security in this Commonwealth unless all of the following are met:

(1) The advertisement is [either] one of the following:

(i) Permitted by this section and complies with any requirements imposed by this section.

(ii) Specifically excluded from application of this section by subsection (f).

(2) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, [( ] including financial projections or forecasts [ )].

(3) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary [in order] to make the statements made, in the light of the circumstances under which they are made, not misleading.

(b) *Registered offerings: permitted advertisements after filing but [prior to] before effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has been filed with the [Commission] department under section 205 or 206 of the act (70 P.S. § 1-205 or § 1-206) that has not yet become effective.

(1) In connection with a registration statement filed with the [Commission] department under section 205 or 206 of the act for the sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), a person may publish any of the following in this Commonwealth [prior to] before effectiveness of the registration statement under the act:

(i) Advertisements which comply with section 2(a)(10)(b) of the Securities Act of 1933 (15 U.S.C.A. § 77b(a)(10)(b)).

(ii) Advertisements which comply with Rule 134 (17 CFR 230.134)(relating to communications not [deemed] considered a prospectus) promulgated by the [United States] Securities and Exchange Commission [(SEC)].

(iii) A preliminary prospectus which is part of a registration statement that has been filed with the [SEC] Securities and Exchange Commission under section 5 of the Securities Act of 1933 [which] and complies with Rule 430 (17 CFR 230.430)(relating to prospectus for use [prior to] before effective date) promulgated by the [SEC] Securities and Exchange Commission.

(iv) A summary prospectus which is part of a registration statement that has been filed with the [SEC] Securities and Exchange Commission under section 5 of the Securities Act of 1933 [which] and complies with Rule 431 (17 CFR 230.431) (relating to summary prospectus) promulgated by the [SEC] Securities and Exchange Commission.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth filed with the [SEC] Securities and Exchange Commission under Regulation A (17 CFR 230.251 - 230.263), relating to conditional small issues exemption, promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and with the [Commission] department under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth that complies with Rule 251(d)(1)(ii)(C) (17 CFR 230.251(d)(1)(ii)(C)) (relating

to scope of exemption) promulgated by the [SEC prior to] Securities and Exchange Commission before effectiveness of the offering circular under the act if the following conditions are met:

(i) The [the] advertisement is filed with the [Commission] department 10 days before publication in this Commonwealth.

(ii) The department does not issue a letter disallowing its publication in this Commonwealth before [and, prior to] the expiration of the 10-day period [, the Commission does not issue a letter disallowing its publication in this Commonwealth].

(3) In connection with a registration statement filed with the [Commission] department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the [SEC] Securities and Exchange Commission in reliance on section 3(a)(4) or (11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) (relating to exemption for limited offerings and sales of securities not exceeding $1,000,000) promulgated by the [SEC] Securities and Exchange Commission under section 3(b) of the Securities Act of 1933, a person may publish an advertisement in this Commonwealth [prior to] before effectiveness of the registration statement under the act if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield, and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement providing the name and address of the underwriter or where a prospectus may be obtained.

(F) A statement in the following form: "A registration statement has been filed with the Pennsylvania [Securities Commission] Department of Banking and Securities but has not yet become effective. These securities may not be sold nor may offers to buy be accepted [prior to] before the time the registration statement becomes effective. This advertisement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in the Commonwealth of Pennsylvania [prior to] before registration of the securities under the Pennsylvania Securities Act of 1972."

(ii) The advertisement is filed with the [Commission] department 10 days before publication in this Commonwealth.

(iii) The Department does not issue a letter disallowing its publication in this Commonwealth before [and, prior to] the expiration of the 10-day period [, the Commission does not issue a letter disallowing its publication in this Commonwealth].

(c) *Registered offerings: permitted advertisements after effectiveness.* The following apply with respect to publication of advertisements in this Commonwealth in connection with an offering of securities in this Commonwealth for which a registration statement has become effective under section 205 or 206 of the act.

(1) In connection with a registration statement filed with the [Commission] department under section 205 or 206 of the act for the offer and sale of securities in this Commonwealth which also are the subject of a registration statement filed under section 5 of the Securities Act of 1933 which has become effective, a person may publish an advertisement in this Commonwealth if it is preceded or accompanied by a copy of the final prospectus.

(2) In connection with an offering circular for the offer and sale of securities in this Commonwealth that has been filed with the [SEC pursuant to] Securities and Exchange Commission under Regulation A (17 CFR 230.251 - 230.263) promulgated under section 3(b) of the Securities Act of 1933 and with the [Commission] department under section 205 or 206 of the act and has been qualified by the [SEC] Securities and Exchange Commission under Regulation A and has become effective under section 205 or 206 of the act, a person may publish an advertisement in this Commonwealth if the advertisement is accompanied or preceded by a copy of the final offering circular.

(3) In connection with a registration statement filed with the [Commission] department under section 206 of the act for the offer and sale of securities in this Commonwealth for which no registration statement has been filed with the [SEC] Securities and Exchange Commission in reliance on section 3(a)(4) or 3(a)(11) of the Securities Act of 1933 and regulations promulgated thereunder or Rule 504 (17 CFR 230.504) promulgated by the [SEC] Securities and Exchange Commission under section 3(b) of the Securities Act of 1933 that has become effective under the act, a person may publish in this Commonwealth an advertisement if all of the following are met:

(i) The advertisement contains no more than the following:

(A) The name and address of the issuer of the security.

(B) The title of the security, the number of securities being offered, the total dollar amount of securities being offered, yield, and the per unit offering price to the public.

(C) A brief, generic description of the issuer's business.

(D) A statement, if applicable, that completion of the offering is subject to receipt of subscriptions meeting a stated minimum offering amount.

(E) A statement, if applicable, that funds accompanying the subscription agreement are subject to escrow and the terms of the escrow.

(F) The name and address where the final prospectus may be obtained if delivery of the final prospectus does not precede or accompany the advertisement.

(G) A statement in the following form: "This advertisement does not constitute an offer to sell nor a solicitation of an offer to buy any of the securities. The offering is made only by the prospectus."

(ii) The advertisement is filed with the [Commission] department 5 days before publication in this Commonwealth.

(iii) The department does not issue a letter disallowing publication in this Commonwealth before [and, prior to] the expiration of the 5-day period [, the Commission does not issue a letter disallowing publication in this Commonwealth].

(4) A person may not publish an advertisement in this Commonwealth in connection with the offer and sale of any security registered under section 205 or 206 of the act at any time after the expiration of the effective period of the registration statement relating to that security as determined by section 207 of the act (70 P.S. § 1-207).

(d) *Exempt securities.* The following apply:

(1) *Exempt securities other than sections 202(a) and 202(i).* Except as provided in paragraphs (2) and (3), a person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202 of the act (70 P.S. § 1-202).

(2) *Section 202(a).* In connection with the offer or sale of any security in this Commonwealth made in reliance on section 202(a) of the act which is issued by the Commonwealth, any political subdivision, or any agency or corporate or instrumentality [thereof] of the Commonwealth and which security represents less than a general obligation of the issuer, a legend adequately describing the limited nature of the obligation [shall] must appear prominently in bold face type of at least 12 points in size on the face page of any preliminary offering statement, official offering statement or advertisement published in this Commonwealth.

(3) *Section 202(i).* A person may publish an advertisement in this Commonwealth in connection with the offer or sale of a security in this Commonwealth which is exempt under section 202(i) of the act except [where the Commission] if the department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(e) *Exempt transactions.* The following apply:

(1) *Advertisements permitted.* Except as provided in paragraph (2), a person may publish any advertisement in this Commonwealth in connection with a securities transaction in this Commonwealth which is exempt from registration under section 203 of the act.

(2) *Advertisements prohibited.* A person may not publish any advertisement in this Commonwealth in connection with the following securities transactions which are effected in this Commonwealth:

(i) A sale of a security made in reliance on section 203(d) of the act.

(ii) An offer of a security made in reliance on section 203(e) of the act which results in a sale under section 203(d) of the act.

(iii) An offer or sale of a security made in reliance on section 203(j) of the act.

(iv) An offer or sale of a security made in reliance on section 203(s) of the act.

(v) An offer or sale of a security made in reliance on § 203.187 (relating to small issuer exemption).

(vi) An offer or sale of a security made in reliance on § 203.189 (relating to isolated transaction exemption).

(vii) An offer or sale of a security which is exempt under section 203(r) of the act when the [Commission] department, by rule or order, has prohibited use of advertisements as a condition of the availability of the exemption.

(f) *Excluded advertisements.* The following apply.

(1) This section does not apply to advertisements described in paragraph (2) if all of the following are met:

(i) The character and composition of the statements and graphics contained in the advertisement do not exaggerate the investment opportunity, overemphasize any aspect of the offering, minimize the risks of the enterprise or predict revenues, profits or payment of dividends, [( ] including financial projections or forecasts [ )].

(ii) The advertisement does not contain any statement that is false or misleading in any material respect or omits to make any material statement necessary to make the statements made, in the light of the circumstances under which they are made, not misleading.

(2) The following advertisements are excluded from the provisions of this section if the requirements of paragraph (1) have been met:

(i) [The use of general] General solicitation in connection with the offer or sale of a security in reliance on section 203(t) of the act.

(ii) Advertisements which comply with Rule 135 promulgated by the [SEC] Securities and Exchange Commission (17 CFR 230.135) (relating to notice of proposed registered offering).

(iii) Advertisements which comply with Rule 135c promulgated by the [SEC] Securities and Exchange Commission (17 CFR 230.135c)(relating to notice of certain proposed unregistered offerings).

(iv) Advertisements in connection with an offer of a security in reliance on § 203.190 (relating to certain Internet offers exempt) which comply with the legend requirement of § 203.190(a)(1).

(v) Advertisements in connection with the offer or sale of federally covered securities under section 18(b)(4)(E) and (F) of the Securities Act of 1933 (15 U.S.C.A. §§ 77r(b)(4)(E) and (F)) where the issuer relies upon and is in compliance with Rule 506(c) of Regulation D (17 C.F.R. § 230.506.)

[(g) *Definitions.* For purposes of this chapter, the following terms have the following meanings:

Advertisement – The meaning in section 102(a) of the act (70 P.S. § 1-102(a)). The term "communication" as used in that definition includes, without limitation, letters, brochures, pamphlets, displays, sales literature and any form of electronic communication, including e-mail, which is used in connection with a sale or purchase or an offer to sell or purchase a security. The term "publicly disseminated" as used in that definition means that the communication has been directed to or, in fact, communicated to more than 50 persons in this Commonwealth.

Publish – The meaning in section 102(p) of the act and includes any form of electronic communication, including Internet and e-mail.]

[(h) *SEC*] (g) *Securities and Exchange Commission interpretive advice on use of electronic media.* A person who uses electronic media to publish an advertisement in this Commonwealth in connection with a security which is the subject of a registration statement filed with the [Commission] department under section 205 or 206 of the act and with the [SEC] Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) may rely on the interpretive advice of the [SEC] Securities and Exchange Commission in [SEC] Release No. 33-7856 (April 28, 2000) and subsequent advice given [pursuant to] under that release. To the extent that the interpretive advice contradicts any requirement in subsection (a)(1) or (b)(1), the [Commission] department will not take any enforcement action if the person complies with the interpretive advice.

[§ 606.041. Delegation and substitution.

(a) The Commission delegates to the Director and Assistant Directors of the Division of Enforcement, Litigation and Compliance:

(1) The powers in section 510(a)(i) – (iii), (b), except for hearings, and (c) of the act (70 P.S. § 1-510(a)(i) – (iii), (b) and (c)) and the authority to close, vacate, modify or amend an action authorized under this paragraph.

(2) The power to commence an administrative proceeding against a person under 1 Pa. Code §§ 35.14 and 35.37 (relating to orders to show cause; and answers to orders to show cause) and the authority to vacate, modify or amend an order to show cause issued under this paragraph. A hearing will not be held, nor will a remedial or disciplinary order issue following upon the institution of the proceedings, except upon the express order of the Commission.

(3) The power exercisable by the Commission under section 606(c) of the act (70 P.S. § 1-606(c)) to issue a summary order to cease advertising and the authority to vacate, modify or amend a summary order to cease advertising issued under this paragraph.

(4) The power exercisable under section 606(c.1) of the act to issue a cease and desist order against a registered broker-dealer or investment adviser when the registrant is engaging in an act or practice which constitutes a violation of § 304.011(e) or § 304.012(e) (relating to broker-dealer required records; and investment adviser required records) by refusing to make available for inspection by Commission staff acting under the examination authority in section 304(d) of the act (70 P.S. § 1-304(d)), the records specified in §§ 304.011 or 304.012.

(5) The power to institute a proceeding under sections 512 - 514 of the act (70 P.S. §§ 1-512 - 1-514) to do one of the following:

(i) Impose a statutory bar under section 512 of the act (70 P.S. § 1-514).

(ii) Mandate a rescission offer under section 513 of the act (70 P.S. § 1-513).

(iii) Compel the return of sales commissions under section 514 of the act (70 P.S. § 1-514).

(b) The Commission delegates to the Director of the Division of Licensing:

(1) The power exercisable under section 303(a)(ii) of the act (70 P.S. § 1-303(a)(ii)) to order applications for registration filed under section 303 of the act to become effective on any day earlier than the 45th day after the filing of the application or material amendment thereto as the Director may determine. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

(2) The power exercisable under section 609(a) of the act (70 P.S. § 1-609(a)) to waive the provisions of §§ 303.031 and 303.032 (relating to examination requirement for agents; and examination requirements for investment advisers and investment adviser representatives).

(3) The power exercisable under section 305(f) of the act (70 P.S. § 1-305(f)) to order applications to withdraw from the status of a registered broker-dealer, agent, investment adviser or investment adviser representative to become effective on any day earlier than the 30th day after filing of the application.

(4) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 303 of the act.

(5) The power exercisable under section 609(f) of the act (70 P.S. § 1-609(f)) with respect to applications for registration of a broker-dealer, agent, investment adviser or investment adviser representative. For purposes of this paragraph, the term "application" means an application for either an initial or renewal license.

(6) The power exercisable under section 303(a)(i) of the act to grant a waiver of any requirement imposed under section 303(a)(i) of the act or section 304 of the act (70 P.S. § 1-304) or any regulation promulgated thereunder and impose conditions on, or limit the scope of, an initial or renewal license of a broker-dealer, agent, investment adviser or investment adviser representative.

(7) The power exercisable under section 603(c) of the act (70 P.S. § 1-603(c)) and § 606.031(c) (relating to public inspection of records) to treat documents filed with the Division of Licensing as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(8) The power exercisable under section 609(a) of the act to order a broker-dealer, agent, investment adviser or investment adviser representative registered under section 301 of the act (70 P.S. § 1-301) to furnish material information reasonably related to the registration.

(9) The power exercisable under sections 303(a)(i) and 609(a) of the act to order an applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative under section 301 of the act to furnish material information reasonably related to the application.

(10) The power exercisable under § 303.051(a) and (b) (relating to surety bonds).

(11) The power exercisable under section 305(d) of the act to issue a summary order with respect to an application for registration.

(c) The Commission delegates to the Director of the Division of Corporation Finance:

(1) The power exercisable under section 206(c) of the act (70 P.S. § 1-206(c)) to order effective a registration statement filed under section 206 of the act for securities that have met the requirements for registration under the Mid-Atlantic Regional Review Protocol for Small Corporate Offering Registrations.

(2) The power exercisable under section 204(b) of the act (70 P.S. § 1-204(b)) to:

(i) Issue summary orders denying or revoking exemptions from registration under section 202 or 203 of the act (70 P.S. § 1-202 or § 1-203).

(ii) Modify or vacate the summary orders.

(3) The power exercisable under section 609(f) of the act (70 P.S. 1-609(f)) with respect to applications for registration of securities.

(4) The power exercisable by the Commission to waive the provisions of § 504.060(a) and (b) (relating to rescission offers) when:

(i) The securities which are the subject of the rescission offer being made in this Commonwealth were sold to and purchased by no more than 35 persons during 12 consecutive months.

(ii) Disclosure satisfying the anti-fraud provisions of section 401(b) of the act (70 P.S. § 1-401(b)) will be given to a rescission offeree.

(5) The power exercisable under section 206(c) of the act to order effective a registration statement under section 206 of the act for securities of an issuer which meets all of the following:

(i) The issuer is an entity described in section 202(e)(i) of the act (70 P.S. § 1-202(e)(i)).

(ii) The issuer has not registered the securities with the United States Securities and Exchange Commission under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e) in good faith reliance on section 3(a)(4) thereof (15 U.S.C.A. § 77c(4)).

(iii) The issuer, within the immediately preceding 18 months, had an effective registration statement with the Commission for similar securities.

(iv) The registration statement complies with the Statement of Policy Regarding General Obligation Financing by Religious Denominations adopted by the North American Securities Administrators Association (April 17, 1994) or any successor statement of policy.

(v) The issuer has not requested a waiver of any provision of the act or rule or order thereunder that otherwise would apply to the registration statement.

(vi) The issuer or any affiliate of the person currently is not subject or, within the past 10 years, was not subject to any of the following:

(A) An order described in section 305(a)(iv) of the act.

(B) An injunction described in section 305(a)(iii) of the act.

(C) A criminal conviction described in section 305(a)(ii) of the act.

(D) An order of the Commission issued under section 512 of the act (70 P.S.§ 1-512).

(E) A court order finding civil contempt under section 509(c) of the act (70 P.S. § 1-509(c)).

(F) An order of the Commission imposing an administrative assessment under section 602.1 of the act (70 P.S.§ 1-602.1) which has not been paid in full.

(6) The power exercisable under section 210 of the act (70 P.S. § 1-210) to grant effectiveness to an application filed under § 210.010 (relating to retroactive registration of certain investment company securities).

(7) The power exercisable under 1 Pa. Code § 33.42(a) (relating to withdrawal or termination) for proceedings under section 202, 203, 205 or 206 of the act.

(8) The power exercisable under section 603(c) of the act and § 603.031(c) to treat documents filed with the Division of Corporation Finance as temporarily confidential until the close of the Commission meeting at which the request for confidentiality is acted upon by the Commission.

(9) The power exercisable under section 206(c) of the act to order effective a registration statement filed with the Commission under section 206 of the act by an issuer which also has a currently effective registration statement for the same securities on file with the SEC.

(10) The power exercisable under section 211 of the act (70 P.S. § 1-211) to:

(i) Issue a stop order suspending the offer or sale of any security described in section 211(b) or (c).

(ii) Modify or vacate a stop order.

(11) The power exercisable under section 207(l) of the act (70 P.S. § 1-207(l)) to declare effective an amendment to any currently effective registration statement relating to the increase in the specified amount of securities proposed to be offered in this Commonwealth, if the applicable filing fee, if any, required by section 602(b.1) of the act (70 P.S. § 1-602(b.1)) has been paid.

(12) The power, exercisable under § 606.031(b)(2), (3)(ii) and (c)(3)(ii) (relating to advertising literature) to issue a letter disallowing publication of an advertisement in this Commonwealth in connection with the offer or sale of a security [in] this Commonwealth.

(d) The Commission delegates to the Chief Accountant the power to waive, in a filing with the Commission, a nonmaterial technical financial statement noncompliance with a provision relating to the form and content of financial statements.

(e) The Commission authorizes the following:

(1) The Chief Counsel, Deputy Chief Counsel or the Assistant Director of the Division of Corporation Finance may exercise the delegations given in this section in the absence of the Director of the Division of Corporation Finance.

(2) The Chief Counsel and Deputy Chief Counsel may exercise the delegations given in this section in the absence of the Director of the Division of Licensing.]

CHAPTER 609. REGULATIONS, FORMS AND ORDERS

Sec.

§ 609.010. Use of prospective financial statements.

[(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Feasibility study - An analysis of a proposed investment or course of action which may involve the preparation of a financial forecast or a financial projection.

Financial forecast - A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations and changes in financial position. A financial forecast is based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take.

Financial projection - A prospective financial statement that presents, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations and changes in financial position. A financial projection is sometimes prepared to present one or more hypothetical courses of action for evaluation, as in response to questions such as "What would happen if . . .?" A financial projection is based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken, given one or more hypothetical assumptions.

Hypothetical assumption - An assumption used in a financial projection to present a condition or course of action that is not necessarily expected to occur, but is consistent with the purpose of the projection.

Independent - A person-regardless of whether the person is a Certified Public Accountant-may not be considered independent if the person is not independent under Rule 101 of the Code of Professional Ethics of the American Institute of Certified Public Accounts, Inc. or under the interpretations adopted thereunder.

Prospective financial statement - A financial forecast or financial projection including the

summaries of significant assumptions and accounting policies.]

[(b)](a) Except as set forth in subsection [(c)] (b), the use of prospective financial statements, including those contained in feasibility studies, [are] is prohibited in connection with offerings registered under sections 205 and 206 of the act (70 P.S. §§ 1-205 and 1-206) or in offerings exempt from registration under section 202(a) or 203(d) of the act (70 P.S. § 1-202(a) or 1-203(d)), unless the prospective financial statements used [utilized] or distributed comply with the act and this section.

[(c)](b) The use or distribution of prospective financial statements in connection with the following securities offerings is permissible if it complies with section 401 of the act (70 P.S.§ 1-401):

(1) Offers or sales of securities of reporting companies as the term is defined in section 102(q) of the act (70 P.S. § 1-102(q)).

(2) Offers and sales of securities made under an exemption not set forth in subsection (b).

(3) Offers and sales of securities made to experienced private placement investors [as that term is defined in § 204.010(d)(1)(relating to increasing number of purchasers and offerees)].

(4) Offers and sales of securities to an individual, [-] and spouse when purchasing as joint tenants or as tenants by the entireties, [- where] if the minimum amount of securities to be purchased in the offering by the individual is $500,000 or more and the purchase of the securities is for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities.

(5) Offers and sales of securities to a person which is organized primarily [for the purpose of purchasing] to purchase, in nonpublic offerings, securities of corporations or issuers engaged in research and development activities in conjunction with a corporation and one of the following exists:

(i) The person has purchased $450,000 or more of the securities for cash or for an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities, excluding a purchase of securities of a corporation in which the affiliates of the person directly or beneficially own more than 50% of the corporation's voting securities.

(ii) The person is purchasing $500,000 or more of the securities being offered for cash or an unconditional obligation to pay cash which obligation is to be discharged within 5 years from the date of sale of the securities being purchased.

(6) Offers and sales of securities made to accredited investors as that term is defined in Rule 501(a) (17 CFR 230.501(a) (relating to definitions and terms used in Regulation D)) in Regulation D of the Securities Act of 1933 (15 U.S.C.A. §§ 77a - 77z-3).

[(d)] (c) Except as set forth in subsections [(e) and (f)] (d) and (e), prospective financial statements used [utilized] or distributed in connection with the securities offerings described in subsection [(b)] (a) shall comply with the following requirements:

(1) *Assumptions*. Assumptions [includes] include:

(i) Prospective financial statements [shall] must be based [upon] on reasonable assumptions and [shall] clearly set forth in the assumptions made with respect to all material features of the presentation.

(ii) With respect to financial projections, the hypothetical assumptions used [shall] must be clearly identified and [shall] be consistent with the purpose of the presentation. With respect to multiple presentations there [shall] must be a preponderance of information to suitably support the amount presented being within the range of the hypothetical assumptions.

(2) *Preparation*. Preparation includes:

(i) Prospective financial statements shall either be prepared by an independent qualified person-preparer [-] or reviewed by an independent qualified person [-] reviewer. The preparer or reviewer may rely on another preparer or reviewer for the preparation or review of the underlying assumptions or other aspects of the prospective financial statement if the report complies with paragraph (3).

(ii) The [Commission] department will not recognize a person as a qualified independent reviewer or preparer unless that person can demonstrate [that the person has] adequate knowledge of the industry and the accounting principles and practices of the industry portrayed in the prospective financial statements.

(3) *Report*. Report shall include:

(i) Prospective financial statements [shall be] accompanied by a report of each preparer or reviewer of the following:

(A) The prospective financial statements.

(B) The underlying assumptions.

(C) Other material aspects of the prospective financial statements.

(ii) With respect to prospective financial statements, the preparer or reviewer's report:

(A) [shall] Must include a statement of the work performed, [- which shall include] including a review of the assumptions.

(B) [The report may] May not contain a disclaimer with respect to the reasonableness of the assumptions or the reasonableness of the prospective financial statements.

(C) [The report may] May not contain language that suggests or implies that the preparer or reviewer vouches for the achievability of the prospective financial statements.

(iii) A report on the preparation or review of the financial projections [should explicitly describe] explicitly describing the hypothetical assumptions on which the projection is based, for example, "assuming the granting of the requested loan [for the purpose of expanding] to expand the Company's plant as described in the summary of significant assumption(s)."

(4) *Contents of reports with more than one preparer or reviewer.* Collectively, the reports described in paragraph (3) [shall] must include a statement of the work performed by each preparer or reviewer and the degree of responsibility each is taking.

(5) *Professional responsibility.* A preparer or reviewer of a prospective financial statement or of the underlying assumptions shall [be mindful of] follow the requirements of § 401.020 (relating to professional responsibility).

(6) *Fair presentation.* Prospective financial statements [shall] must include material information necessary for a fair presentation including[, by way of illustration,] if applicable:

(i) Sales or gross revenue by sources for each period presented.

(ii) Expenses by classifications for each period presented.

(iii) Provision for income taxes for each period presented.

(iv) Net income for each period presented.

(v) Primary and fully diluted earnings per share of common stock for each period presented.

(vi) A cash flow analysis or a statement of significant changes in financial position for each period presented, including the sources and uses of cash.

(vii) Balance sheets at the beginning and end of the entire period for which prospective financial statements are presented.

(viii) Forecasted or projected annual taxable income or loss with a discussion of the assumptions affecting tax benefits and, if appropriate, alternative forecasted or projected results based on alternative tax treatment.

(ix) Significant accounting principles and policies followed.

(7) *Minimum period.* Prospective financial statements shall [ordinarily] cover a minimum period of 3 years. The period [shall] must be extended [where] if appropriate to evaluate properly the investment consequences.

(8) *Explanatory notes.* Prospective financial statements [shall] must be accompanied by explanatory notes describing significant assumptions made and, if appropriate, referenced to tabular and numerical data and risk factors.

(9) *Conspicuous statement.* Prospective financial statements [shall] must be clearly distinguished from historical financial statements and [shall] contain a conspicuous statement indicating that it is based on assumptions of the future.

[(e)] (d) The department will consider prospective [Prospective] financial statements examined in accordance with the [Statement of Standards for Accounts' Services on Prospective Financial Information] Statement of Standards for Attestation Engagements promulgated by the American Institute of Certified Public Accountants, Inc. ([AICPA] SSAE Statement) [shall be deemed] to comply with this section [where] if a standard report on an examination prepared in accordance with the [AICPA] SSAE Statement [,] is issued by an independent person.

[(f)] (e) The primary responsibility for prospective financial statements used [utilized] or distributed under this section rests with management.

§ 609.011. Amendments to filings with [Commission] department.

[Whenever an application, notice, statement, report or any other document (Document) has been filed with the Commission and the person who filed the Document wishes to amend or otherwise ensure that the Document is current and accurate in all material respects, the person shall make a filing with the Commission constituting the amendment which] A person wishing to amend or otherwise ensure that a previously filed application, notice, statement, report or any other document is current and accurate in all material respects, shall file with the department an amendment which meets the following conditions:

(1) The amendment must [also shall] identify the [Document] previously filed document being amended.

(2) If amending [including, with respect to an amendment to] a form promulgated by the [Commission] department, the amendment must identify the:

(i) Name [the name] of the form[,].

(ii) Date [the date] the form originally was filed with the [Commission] department.

(iii) Items [and the items] or schedules of the form which are being amended.

§ 609.012. Computing the number of offerees, purchasers and clients.

(a) Under section 609(a) of the act (70 P.S. § 1-609(a)), the [Commission] department, [for the purpose of providing] to provide a consistent method of computing the number of offerees, purchasers and clients under relevant provisions of the act and regulations promulgated thereunder,

has determined that the following apply:

(1) A person who is offered or purchases securities or becomes a client [shall count] is counted as a separate offeree, purchaser or client, unless the person is otherwise specifically excluded under this section.

(2) [Where] If more than one person, related by blood or marriage, are offerees, purchasers or clients, the persons [shall be] is counted as one offeree, purchaser or client if they either:

(i) Reside in the same household.

(ii) Are under the age of 18.

[(3) As used in this section, the term "entity" means a corporation, partnership, association, joint stock company, trust, estate or unincorporated association.]

[(4)] (3) An entity [shall be] is counted as one person, and a direct or beneficial owner of equity interests or equity securities in the entity [shall not be] is not counted as an offeree, purchaser or client, unless one of the following applies:

(i) With respect to computing offerees and purchasers, the entity was organized [for the specific purpose of acquiring] to specifically acquire the securities being offered or purchased.

(ii) With respect to computing clients, [where] if the services provided by the person effecting transactions in securities for the account of the entity or providing investment advice to the entity are based [upon] on the investment decisions of the direct or beneficial owners rather than [upon] on the investment objectives of the entity.

[(5)](4) Notwithstanding the provisions of paragraph [(4)(i)] (3)(i):

(i) In [in] the case of a trust [where] , if the settlor and the beneficiaries are related by blood or marriage, the trust and the trustee, [-] when acting on behalf of the trust or simultaneously on his own behalf , [- shall count] is counted only as one offeree, purchaser or client.

(ii) Multiple trusts [shall be] are counted as one offeree, purchaser or client if all of the beneficiaries are related by blood or marriage.

[(6)](5) Notwithstanding the provisions of paragraph [(4)(i)] (3)(i) in an entity in which all owners of equity interests or equity securities, excluding contingent interests and director's qualifying shares, are persons related by blood or marriage residing in the same household, the following will apply:

(1) The entity [shall] is be counted as one person.

(2) The [and the] owners of the interests or securities in the entity [shall not be] is not counted as offerees, purchasers and clients.

(b) This section does not apply if a section of the act or a regulation promulgated thereunder sets forth another method of computing offerees, purchasers or clients.

§ 609.031. Application.

(a) This chapter, [together with the] and constructions and interpretations [hereof as the Commission may issue from time to time] issued by the department, set forth the minimum requirements for financial statements included, under the act, as part of the following:

(1) Registration Statements under section 206 of the act (70 P.S. § 1-206).

(2) Registration Statements under section 205 of the act (70 P.S. § 1-205) which are exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)).

(3) Proxy materials under section 203(o) of the act (70 P.S. § 1-203(o)).

(4) Reports distributed to securityholders under section 606(a) (70 P.S. § 1-606(a)).

(5) Broker-Dealer and Investment Adviser Financial Reports.

(6) Exempt transactions under section 203(p) of the act (70 P.S. § 1-203(p)).

(b) Offerings of securities registered under the Securities Act of 1933 (15 U.S.C.A. §§ 77a – 77z-3), or filings of proxy materials under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a – 78mm) which meet the requirements of Reg. S-X, 17 CFR 210.8-01 - 210.8-03 (1974), adopted by the [United States] Securities and Exchange Commission [("S-X")] or broker-dealer reports filed under the Securities Exchange Act of 1934 under regulations adopted thereunder [shall be] are exempted from this chapter, except [where] if otherwise indicated.

(c) References to "registration" under the Securities Act of 1933 are to be construed strictly. By way of illustration the procedure of "notification" under the Regulation ["A"] A (17 C.F.R. § 230.251 et seq.) of that act will not be recognized as "registration."

[§ 609.032. Definitions.

(a) Unless the context otherwise requires, or unless specific language otherwise controls, the following terms apply any time financial information is required to be filed under the act or under this title:

Accountant's report — A document in which an independent certified public accountant indicates the scope of the audit the accountant has made and sets forth the accountant's opinion regarding the financial statements taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

Amount — When used in regard to securities, the principal amount if relating to evidence of indebtedness, the number of shares if relating to shares and the number of units if relating to any other kind of security.

Audit - Audited and reported upon with an opinion expressed by an independent certified public accountant.

Audit or examination — An audit of the statements by a certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Bank holding company — A person which is engaged, either directly or indirectly, primarily in the business of owning securities of one or more banks for the purpose, and with the effect, of exercising control.

Comparative financial statements - Financial statements in which data for 2 or more years are presented in adjacent columnar form.

Date of filing — The date on which the financial statements or any material amendment thereto are received in the Harrisburg office of the Commission.

Development stage company — A company devoting substantially all of its efforts to establishing a new business with either of the following conditions existing: planned principal operations have not commenced, or planned principal operations have commenced but there has been no significant revenue therefrom.

Equity security — Any stock or similar security (including interests in a limited liability company); or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right.

Fifty-percent, owned person — In relation to a specified person, a person approximately 50% of whose outstanding voting shares is owned by the specified person either directly or indirectly through one or more intermediaries.

Fiscal year — The annual accounting period, or if no closing date has been adopted, the calendar year ending on December 31.

Going concern disclosure — The disclosure of substantial doubt about the ability of the issuer to continue as a going concern during the ensuing fiscal year contained in the auditor's report based upon the criteria contained in the Statement on Auditing Standard 59 promulgated by the American Institute of Certified Public Accountants.

Insurance holding company — A person who is engaged, either directly or indirectly, primarily in the business of owning securities of one or more insurance companies for the purpose and with the effect of exercising control.

Majority-owned subsidiary — A subsidiary more than 50% of whose outstanding voting shares is owned by its parent or the parent's other majority owned subsidiaries, or both.

Material — When used to qualify a requirement for the furnishing of information as to any subject, means or refers to the magnitude of an omission or misstatement of information that, in the light of surrounding circumstances, makes it probable that the judgement of an average prudent investor would have been changed or influenced by the omission or misstatement.

Note or footnote — When used in regard to financial statements, a clear and concise disclosure of information, including information necessary to make any item or entry contained in the financial statement not misleading, cross referenced specifically, if practicable, to an item or entry in a financial statement. A note shall be prepared in conformity with generally accepted accounting principles and practices.

Parent — An affiliate controlling a specified person directly or indirectly through one or more intermediaries.

Principal holder of equity securities — When used in respect of a registrant or other person named in a particular statement or report, a holder of record or a known beneficial owner of more than 10% of any class of equity securities of the registrant or other person, respectively, as of the date of the related balance sheet filed.

Registrant — The issuer of the securities for which an application, a registration statement, or a report is filed.

Related parties — The registrant; its affiliates; principal owners, management, and members of their immediate families; entities for which investments are accounted for by the equity method; and any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. Related parties also exist when another entity has the ability to significantly influence the management or operating policies of the transacting parties or when another entity has an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. For purposes of this definition, "principal owner" means the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity, and "management" means a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued.

Review — A review of the statements by a certified public accountant in accordance with the Statements on Standards for Accounting and Review Services promulgated by the American Institute of Certified Public Accountants, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for

those modifications, if any, described in the review report.

Review Report —An accountant's review report, which is a document in which the certified public accountant indicates that a review has been performed, and on the basis of that review, the accountant is not aware of any material modifications that should be made to the financial statements for the financial statements to be in conformity with generally accepted accounting principles, except for those modifications, if any, described in the review report.

Share — A share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary —A subsidiary, or a subsidiary and its subsidiaries, which meet any of the conditions described in this definition based on the most recent annual financial statements, including consolidated financial statements, of the subsidiary which would be required to be filed if the subsidiary were a registrant and the most recent annual consolidated financial statements of the registrant being filed:

(i) The parent's and its other subsidiaries' investments in and advances to, or their proportionate share (based on their equity interests) of the total assets of, the subsidiary exceed 10% of the total assets of the parent and its consolidated subsidiaries.

(ii) The parent's and its other subsidiaries' proportionate share (based on their equity interests) of the total sales and revenues (after intercompany eliminations) of the subsidiary exceeds 10% of the total sales and revenues of the parent and its consolidated subsidiaries.

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries; however, if the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last five fiscal years, the average income may be substituted in the determination.

Subsidiary of a specified person — An affiliate controlled by the person directly or indirectly through one or more intermediaries.

Tangible book value of a company's common shares — The excess of total assets over total liabilities as determined by generally accepted accounting principles of the company reduced by the following:

(i) Liquidating value, including any premium of excess over par or stated value, payable upon involuntary liquidation, of any capital obligations, preferred shares or shares having a seniority in rank, or any degree of preference or priority over the issue of common shares for which book value is being computed, including accrued and unpaid dividends to the extent entitled to recognition and preference in the event of liquidation.

(ii) An amount equal to any appraisal capital from revaluation of properties or any similar account title to the extent that the appraisal increase has not been fully depreciated in the accounts.

(iii) Deferred charges including debt issue costs.

(iv) Prepaid expenses except as to items properly classified as current assets under generally accepted accounting principals.

(v) All other assets of an intangible nature including, but not limited to, goodwill, patents, copyrights, franchises, distribution rights, intellectual property rights, leasehold improvements, licensing agreements, noncompete covenants, customer lists, trade names, trademarks, and organization costs.

Totally-held subsidiary — A subsidiary substantially all of whose outstanding equity securities are owned by its parent or the parent's other totally-held subsidiaries or both, and which is not indebted to any person other than its parent or the parent's other totally-held subsidiaries or both, in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and excluding indebtedness of a subsidiary which is secured by its parent by guarantee, pledge, assignment or otherwise.

Voting shares — The sum of all rights, other than as affected by events of default, to vote for election of directors or the sum of all interests in an unincorporated person.

Wholly-owned subsidiary — A subsidiary substantially all of whose outstanding voting shares are owned by its parent or the parent's other wholly-owned subsidiaries, or both.]

§ 609.033. Accountants.

(a) *Qualification of accountants.* [Qualifications of accountants shall be in accordance with the following:]

(1) The [Commission] department will not recognize [any] a person:

(i) As [as] a certified public accountant who is not registered and in good standing [as such] under the laws of the place of [such] the person's residence or principal office.

(ii) [The Commission will not recognize any person as] As a public accountant who is not in good standing and entitled to practice [as such] under the laws of the place of [his] the individual's residence or principal office.

(2) The [Commission] department will not recognize [any] a certified public accountant or public accountant as independent who is not in fact independent. For example, [any] an accountant will be considered not independent with respect to [any] a person, or any of its parents, its subsidiaries or other affiliates in which either of the following apply:

(i) [, during] During the period of [his] the accountant's professional engagement to

examine the financial statements being reported on or at the date of his report, [he or his] the accountant or accountant's firm or a firm member [thereof] had, or was committed to acquire, [any] a direct financial interest or [any] a material indirect financial interest [;].

(ii) [or with which, during] During the period of [his] the accountant's professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, [he or his] the accountant or accountant's firm or a firm member [thereof] was connected as a promoter, underwriter, voting trustee, director, officer or employee [,].

(3) [except that a firm will not be deemed] A firm will be considered [not] independent in regard to a particular person if a former officer or employe of [such] the person is employed by the firm and [such] the individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of [his] the individual's employment by the person. [For the purposes of this subsection the term "member" means all partners and principals in the firm; and all professional employes participating in the audit or located in an office of the firm participating in a significant portion of the audit].

[(3)] (4) In determining whether an accountant is in fact independent with respect to a particular registrant, the [Commission] department will give appropriate consideration to all relevant circumstances including evidence bearing on all relationships between the accountant and the registrant or any affiliate [thereof] of the registrant, and will not confine itself to the relationships existing in connection with the filing of reports with the [Commission] department.

(b) *Accountant's reports.* [Accountant's reports shall be in accordance with the following:]

(1) *Auditor's report format.* The format of the auditor's report [shall] must be in accordance with the reporting standards established by generally accepted auditing standards including Statements on Auditing Standards promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants or the auditing standards promulgated by the Public Company Accounting Oversight Board as [required by] required under law.

(2) *Accountant's review report format.* The format of the accountant's review report [shall] must be in accordance with the reporting standards established by Statements on Standards for [Accounting and Review Services] Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(3) *Accountant's compilation report format.* The format of the accountant's compilation report [shall] must be in accordance with the reporting standards established by Statements on Standards for [Accounting and Review Services] Attestation Engagements promulgated by the American Institute of Certified Public Accountants.

(4) *Certain accountant's reports.* Auditor's reports, accountant's review reports or accountant's compilation reports issued by public accountants are not permitted for reports [required by] required under § 609.034 (relating to financial statements).

§ 609.034. Financial statements.

(a) [When] If an issuer proposes to register its securities for sale under section 205 or section 206 of the act (70 P.S. §§ 1-205 and 1-206), and for which securities a registration statement has been filed with the [United States] Securities [&] and Exchange Commission [(SEC)] under section 5 of the Securities Act of 1933 (15 U.S.C.A. § 77e), the issuer shall:

(1) Comply [comply] with the financial statement requirements as set forth in the rules and regulations of the [SEC] Securities and Exchange Commission (17 CFR 210.1-01 - 210.12-29)[,].

(2) Prepare the financial statements [all of which shall be prepared] in accordance with generally accepted accounting principles.

(3) Present the financial statements [and presented] in comparative form.

(b) Except as provided in subsection [(c)] (d), an issuer shall file the financial statements listed in subsection (c) if one of the following conditions apply:

(1) The [when an] issuer proposes to register its securities for sale under section 206 of the act[,].

(2) The [when an] issuer proposes to sell its securities under the exemption contained in Regulation A promulgated under section 3(b) of the Securities Act of 1933 (15 U.S.C.A. § 77c(b)) and proposes to register the securities under section 205 of the act[,].

(3) The [or when an] issuer proposes to sell its securities under the exemption contained in section 203(p) of the act (70 P.S. § 1-203(p))[,].

(4) The [or when an] issuer is required to file proxy materials under section 203(o) of the act (70 P.S. § 1-203(o))[,].

(c) If required under subsection (b), the issuer [it] shall file the following financial statements, [all of which shall be] prepared in accordance with generally accepted accounting principles and presented in comparative form:

(1) A balance sheet of the issuer, dated within 120 days of the date of filing with the [Commission] department and comply with the one of the following requirements if the balance sheet is not audited: [.]

(i) [If the balance sheet is not audited, there shall be filed, in addition,] The issuer shall also file an audited balance sheet as of the issuer's last fiscal year [,].

(ii) [unless such last fiscal year ended within 90 days of the date of filing, in which case there shall be filed] The issuer shall also file an audited balance sheet as of the end of the issuer's

next preceding fiscal year if the issuer's last fiscal year ended within 90 days of the date of filing.

(2) Statements of income, stockholders' equity and cash flows for each of 2 fiscal years or less, if the issuer and its predecessors have been in existence for less than 2 years preceding the date of the latest balance sheet filed, and for the period, if any, between the close of the latest of the fiscal years and the date of the latest balance sheet filed [, except that issuers offering interests in a direct participation program and any corporation which has or intends to have significant oil and gas operations must file the statements for each of 3 fiscal years].

(i) These statements [shall] must be audited up to the date of the latest audited balance sheet filed.

(ii) [However, if] If changes in stockholders' equity accounts are set forth in a note to the financial statements, a separate statement of stockholders' equity [need not] does not need to be filed.

(3) Consolidated balance sheets, statements of income, stockholders' equity, and cash flows complying with the audit requirements in paragraphs (1) and (2) [should] must be filed for the issuer and its subsidiaries in accordance with this section.

(4) [If the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities or capital accounts, include a] A balance sheet of the issuer [prior to] before the reorganization, a column showing the changes to be effected in the reorganization, and a pro forma balance sheet after the reorganization if the issuer is about to undergo a reorganization which will effect substantial changes in its assets, liabilities or capital accounts.

(i) The issuer shall explain [Explain] in a footnote the adjustments made.

(ii) If a reorganization has taken place at any time covered by the statements of income filed, the issuer shall explain in a footnote the effect [thereof] of the reorganization.

(5) [If the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation or otherwise, describe] A description of the plan of succession, [show,] showing in columnar form, the balance sheets of the parties to the transaction, the changes effected or to be effected and the balance sheet of the issuer as a result of the transaction, and statements of income for each of the businesses for the periods covered by paragraph (2), to include a consolidating pro forma statement of income if the issuer has succeeded, or is about to succeed, to one or more businesses, by merger, consolidation or otherwise. This paragraph does not apply to the issuer's succession to the business of any totally–held subsidiary or to the acquisition of subsidiaries not constituting, in the aggregate, a significant subsidiary.

(6) [If the issuer has acquired any business (or the securities of any person giving the issuer control over such person) after the date of its latest balance sheet filed pursuant to paragraph (1), or if the issuer proposes to acquire such a business or securities, include financial] Financial statements for [such] the business as would be required if it were an issuer if the issuer has acquired any business (or the securities of any person giving the issuer control over the person)

after the date of its latest balance sheet filed under paragraph (1), or if the issuer proposes to acquire those types of business or securities.

(i) [There shall also be filed] The issuer shall also file pro forma statements of income in columnar form.

(ii) The acquisition of securities which will extend the issuer's control over another person [shall be deemed] is considered the acquisition of a business if the securities being registered under section 206 of the act (70 P.S. § 1-206) are to be offered for the securities to be acquired, or if the purpose of the proxy statement is to effectuate [such] the acquisition.

(iii) [No financial] Financial statements [need not] do not need to be filed under this paragraph for any acquisition from a totally-held subsidiary.

(iv) Statements of businesses may be omitted if considered in the aggregate as a single subsidiary, they would not constitute a significant subsidiary, except that [such] the statements may not be omitted when the securities being registered under section 206 of the act (70 P.S. § 1-206) are to be offered in exchange for the securities to be acquired, or if the purpose of the proxy statement is to effectuate [such] the acquisition.

(7) [For an issuer proposing to register its securities under section 206 of the act, the] The registration statement [shall contain] with summary statements for each of the 3 most recent fiscal years and for the period from the date of the end of the latest fiscal year to the date of the latest balance sheet filed if an issuer proposes to register its securities under section 206 of the act. The summary statements of income required in this paragraph are in addition to the financial statements required under paragraph (2).

[(c) When] (d) If an issuer proposes to register its equity securities for sale under section 206 of the act, which securities are exempt from registration under section 5 of the Securities Act of 1933 under an exemption contained in section 3(a)(11) of the Securities Act of 1933, or Regulation A or Rule 504 of Regulation D promulgated under section 3(b) of the Securities Act of 1933, the issuer shall file the financial statements [required by] required under subsection [(b)] (c) except that the financial statements may be reviewed by an independent certified public accountant in accordance with the standards established by the American Institute of Certified Public Accountants or the Canadian equivalent if:

(1) The amount of the present offering does not exceed $1 million.

(2) The issuer previously has not sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation or any other method directed toward the public.

(3) The issuer previously has not been required under Federal, State, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(4) The aggregate amount of all previous sales of securities by the issuer (exclusive of debt

financing with banks and similar commercial lenders) does not exceed $1 million.

[(d)] (e) The financial statements [required by] required under subsections [(b) and (c) shall] (c) and (d) must be included in the prospectus or offering circular distributed to offerees in this Commonwealth.

[(e)] (f) For purposes of this subsection, the department used the corporate form of financial statement title [has been used. Financial] , but because financial statement title terminology may differ for other types of accounting entities, including not-for-profit organizations [. In this case,] , those entities shall include the analogous financial statements [of those entities should be included].

[(f) When] (g) If consistent with the protection of investors, the [Commission] department may:

(1) Permit [permit] the omission of one or more of the financial statements [required by] required under this section or the filing in substitution [therefor] of appropriate statements of comparable character.

(2) Require [The Commission, by order, also may require] the filing of other financial statements in addition to, or in substitution for, the financial statements [required by] required under this section or when the financial statements are necessary for an adequate presentation of the financial condition of the issuer.

§ 609.036. Financial statements; annual reports.

(a) *Distribution and auditing.*

(1) [When] If an issuer is required under the act and this title to distribute financial information to securityholders, it shall include the following financial statements [as a part thereof]:

(i) [Financial statements to include balance] Balance sheets, statements of income, stockholders' equity and cash flows all in comparative form, for the issuer's last 2 fiscal years.

(ii) Consolidated financial statements of the issuer [and its parent or] and its subsidiaries, or both, in comparative form, for the issuer's last 2 fiscal years.

(2) The financial statements [shall] must be audited and prepared in conformity with generally accepted accounting principles applied consistently with past periods or noting any changes [. The financial statements need not] , except that the financial statements do not need to be audited [where] if the issuer is permitted by this title or by [order of] the [Commission] department to distribute unaudited financial information to securityholders.

(b) *Form of financial statement.* For purposes of this subsection, the department used the corporate form of financial statement title [has been used. Financial] , but because financial

statement title terminology may differ for other types of accounting entities, including not-for-profit organizations [. In this case,] , those entities shall include the analogous financial statements [of those entities should be included].

§ 609.037. Foreign financial statements.

(a) Under section 609(c) of the act (70 P.S. § 1-609(c)), [the Commission has determined that] financial statements and financial information [which have been] prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be distributed to the public if a registration statement designated as Form F-7, F-8, F-9 or F-10 by the Securities and Exchange Commission has been filed with the department under Section 205 or 206 of the act (70 P.S. §§ 1-205 and 206) and the following apply:

[(1) A registration statement has been filed with the Commission under Section 205 or 206 of the act (70 P.S. §§ 1-205 and 206) which registration statement has been designated as Form F-7, F-8, F-9 or F-10 by the United States Securities and Exchange Commission (SEC)].

[(2)] (1) The securities which are the subject of the registration statement designated as Form F-9 by the [SEC] Securities and Exchange Commission are either nonconvertible preferred stock or nonconvertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

[(3)] (2) The securities which are the subject of a registration statement designated as Form F-7 by the [SEC] Securities and Exchange Commission are offered for cash [upon] on the exercise of rights granted to existing securityholders.

[(4)] (3) The securities which are the subject of a registration statement designated as Form F-8 by the [SEC] Securities and Exchange Commission are securities to be issued in an exchange offer.

[(5)] (4) The securities which are the subject of a registration statement designated as Form F-10 by the [SEC] Securities and Exchange Commission are offered and sold pursuant to a prospectus in which the [SEC] Securities and Exchange Commission has not required a reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(b) For purposes of this section, preferred stock and debt securities which are not convertible for at least 1 year from the date of effectiveness of the registration statement will be [deemed] considered to meet the requirement of subsection [(a)(2)] (a)(1).

CHAPTER 610. DESTRUCTION OF DOCUMENTS AND RECORDS

Sec.
[610.010. Destruction of documents and records.]

[§ 610.010. Destruction of documents and records.

(a) The Commission may destroy registration filings, exemption filings, notices or statements and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act (70 P.S. § 1-603(b)) and any Commission action taken related to these filings.

(b) The Commission may destroy an application for registration of broker-dealers, investment advisers, agents or investment adviser representatives and correspondence and exhibits related thereto in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record the information required by section 603(b) of the act and any Commission action taken related to these filings.

(c) Documents relating to investigations, hearings and proceedings shall be retained in a manner consistent with a records retention schedule adopted by order of the Commission which conforms to the requirements of relevant Management Directives issued by the Office of Administration, except that the Commission shall retain as a permanent record any Commission action relating to investigations, hearings and proceedings, transcripts of hearings and summary information relating to investigations authorized under section 510 of the act (70 P.S. § 1-510).

(d) Information required to be retained by the Commission under this section may be maintained in paper, microfilm or electronic format. Copies of destroyed documents retained in a microfilm or electronic format shall be accepted as original documents when certified by the Secretary of the Commission.]

Subpart G. GENERAL PROVISIONS

CHAPTER 701. [SERVICE OF PROCESS] ADMINISTRATIVE PROVISIONS

Sec.
701.010. Filing of registration forms.
701.011. Filing of exemption forms.
701.020. Electronic filing.
701.030. Fees.

§ 701.010 Filing of registration forms.

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) Forms filed with the Department must be in the format prescribed by the Bureau in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Bureau or the Securities and Exchange Commission, NASAA or successors.

(d) The use of an electronic signature shall have the same force and effect as a manual signature.

§ 701.011. Filing of exemption forms.

(a) The Department will provide links to all forms and General Instructions on the Department's web site.

(b) All forms and accompanying documents filed with the Department must be in the format prescribed by the Department in the General Instructions.

(c) All references to forms mean paper forms or an electronic format prescribed by the Department or the Securities and Exchange Commission or successors.

(d) The use of an electronic signature shall have the same force and effect as a manual signature.

§ 701.020. Electronic filing.

(a) Unless the Department orders otherwise, all documents must be filed with the Department in the manner prescribed in the accompanying General Instructions.

§ 701.030. Fees.

Issuers filing registration or exemption forms by electronic means shall include the payment of fees or assessments required by sections 602 or 602.1 of the act (70 P.S. §§1-602 or 1-602.1) by one of the following means:

(a) Automated Clearing House transfer of funds to the Department's designated depository.

(b) As otherwise required by the Department in the General Instructions.

* * *

Subpart H. PRACTICE AND PROCEDURE

CHAPTER 901. SPECIAL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE

Sec.
[901.011. Applicability.]

[§ 901.011. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code, Part II, (relating to general rules of administrative practice and procedure), is applicable to the activities of and proceedings before the Securities Commission.]

Subpart I. TAKEOVER OFFERORS

CHAPTER 1001. TAKEOVER DISCLOSURES

Sec.
1001.010. Takeover offeror report regarding participating broker-dealers.

§ 1001.010. Takeover offeror report regarding participating broker-dealers.

The [Commission] department has determined that, to carry out the purposes of the Takeover Disclosure Law (70 P.S. §§ 71–85), it is necessary to require the offeror to file, as an exhibit to the registration statement filed under section 4 of the law (70 P.S. § 74), [Commission] department Form TDL-1 in accordance with the General Instructions thereto.

TITLE 17 -- COMMODITY AND SECURITIES EXCHANGES
CHAPTER II -- SECURITIES AND EXCHANGE COMMISSION
PART 240 -- GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934
SUBPART A -- RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934
INSPECTION AND PUBLICATION OF INFORMATION FILED UNDER THE ACT

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17 CFR 240.24c-1

§ 240.24c-1 Access to nonpublic information.

(a) For purposes of this section, the term "nonpublic information" means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Act, or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Act), the Commodity Exchange Act (7 U.S.C. 1, et seq.), or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the

securities laws (as defined in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401-22) as limited by section 21(h) of the Act.

HISTORY:
[58 FR 52419, Oct. 8, 1993]

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78 l, 78m, 78n, 78n-1, 78 o, 78 o -4, 78 o -10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78 ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111-203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.
Sections 240.0-9, 240.0-11, 240.13e-1, 240.13e-100, 240.13e-101 and 240.14d-100 also issued under secs. 12, 13 and 14, 15 U.S.C. 78l, 78m and 78n;
Section 240.3a4-1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended;
Section 240.3a12-8 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a);
Section 240.3a12-10 also issued under 15 U.S.C. 78b and c;
Section 240.3a12-9 also issued under secs. 3(a)(12), 7(c), 11(d)(1), 15 U.S.C. 78c(a)(12), 78g(c), 78k(d)(1));
Sections 240.3a43-1 and 240.3a44-1 also issued under sec. 3; 15 U.S.C. 78c;
Sections 3a67-1 through 3a67-9 and 3a71-1 and 3a71-2 are also issued under Pub. L. 111-203, §§ 712, 761(b), 124 Stat. 1841 (2010).
Sections 240.3a67-10, 240.3a71-3, 240.3a71-4, and 240.3a71-5 are also issued under Pub. L. 111-203, section 761(b), 124 Stat. 1754 (2010), and 15 U.S.C. 78dd(c).
Section 240.3b-6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).
Section 240.3b-9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78o);
Section 240.9b-1 is also issued under sec. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 120, 48 Stat. 905, 906, 908; secs. 1-4, 8, 68 Stat. 683, 685; sec. 12(a), 73

Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57; sec. 505, 94 Stat. 2292; secs. 9, 15, 23(a), 48 Stat. 889, 895, 901; sec. 230(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; sec. 2, 52 Stat. 1075; secs. 6, 10, 78 Stat. 570-574, 580; sec. 11(d), 84 Stat. 121; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78o, 78w(a);
Section 240.10b-10 is also issued under secs. 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k-1, 78o, 78q);
Section 240.12a-7 also issued under 15 U.S.C. 78a et seq., particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).
Sections 240.12b-1 to 240.12b-36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78l, 78m, 78o;
Section 240.12b-15 is also issued under secs. 3(a) and 302, Pub.L. No. 107-204, 116 Stat. 745.
Section 240.12b-25 is also issued under 15 U.S.C. 80a-8, 80a-24(a), 80a-29, and 80a-37.
Section 240.12g-3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).
Section 240.12g3-2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).
Section 240.13a-10 is also issued under secs. 3(a) and 302, Pub.L. No. 107-204, 116 Stat. 745.
Section 240.13a-11 is also issued under secs. 3 (a) and 306(a), Pub L. 107-204, 116 Stat. 745.
Section 240.13a-14 is also issued under secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.
Section 240.13a-15 is also issued under secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.
Section 240.13d-3 is also issued under Public Law 111-203 § 766, 124 Stat. 1799 (2010).
Sections 240.13e-4, 240.14d-7, 240.14d-10 and 240.14e-1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C. 80a-23(c);
Sections 240.13e-4 to 240.13e-101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3-5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78o(c); sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a-23(c);
Section 240.13f-2(T) also issued under sec. 13(f)(1) (15 U.S.C. 78m(f)(1));
Section 240.13p-1 is also issued under sec. 1502, Pub. L. 111- 203, 124 Stat. 1376.
Section 240.13q-1 is also issued under sec. 1504, Pub. L. 111-203, 124 Stat. 2220.
Sections 240.14a-1, 240.14a-3, 240.14a-13, 240.14b-1, 240.14b-2, 240.14c-1, and 240.14c-7 also issued under secs. 12, 15 U.S.C. 781, and 14, Pub. L. 99-222, 99 Stat. 1737, 15 U.S.C. 78n;
Sections 240.14a-3, 240.14a-13, 240.14b-1 and 240.14c-7 also issued under secs. 12, 14 and 17, 15 U.S.C. 781, 78n and 78g;
Sections 240.14c-1 to 240.14c-101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n;
Section 240.14d-1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 80a-37.
Section 240.14e-2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 80a-37(a).
Section 240.14e-4 also issued under the Exchange Act, 15 U.S.C. 78a et seq., and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78o(c), and 78w(a)).
Section 240.15a-6, also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78o, and 78q;
Sections 240.15b1-3 and 240.15b2-1 also issued under 15 U.S.C. 78o, 78q;
Section 240.15b2-2 also issued under secs. 3, 15; 15 U.S.C. 78c, 78o;
Sections 240.15b10-1 to 240.15b10-9 also issued under secs. 15, 17, 48 Stat. 895, 897,

sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt.;
Section 240.15c2-6, also issued under secs. 3, 10, and 15, 15 U.S.C. 78c, 78j, and 78o.
Section 240.15c2-11 also issued under 15 U.S.C. 78j(b), 78o(c), 78q(a), and 78w(a).
Section 240.15c2-12 also issued under 15 U.S.C. 78b, 78c, 78j, 78o, 78o-4 and 78q.
Section 240.15c3-1 is also issued under secs. 15(c)(3), 15 U.S.C. 78o(c)(3).
Sections 240.15c3-1a, 240.15c3-1e, 240.15c3-1f, 240.15c3-1g are also issued under Pub. L. 111-203, secs. 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78 o -7 note).
Section 240.15c3-3a is also issued under Pub. L. 111-203, §§ 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78 o -7 note).
Section 240.15d-5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).
Section 240.15d-10 is also issued under 15 U.S.C. 80a-20(a) and 80a-37(a), and secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.
Section 240.15d-11 is also issued under secs. 3 (a) and 306(a), Pub L. 107-204, 116 Stat. 745.
Section 240.15d-14 is also issued under secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.
Section 240.15d-15 is also issued under secs. 3(a) and 302, Pub. L. No. 107-204, 116 Stat. 745.
Sections 240.15Ba1-1 through 240.15Ba1-8 are also issued under sec. 975, Public Law 111-203, 124 Stat. 1376 (2010).
Section 240.15Bc4-1 is also issued under sec. 975, Public Law 111-203, 124 Stat. 1376 (2010).
Sections 240.15Ca1-1, 240.15Ca2-1, 240.15Ca2-2, 240.15Ca2-3, 240.15Ca2-4, 240.15Ca2-5, 240.15Cc1-1 also issued under secs. 3, 15C; 15 U.S.C. 78c, 78o-5;
Section 240.15Ga-1 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.
Section 240.15Ga-2 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.
Section 240.16a-1(a) is also issued under Public Law 111-203 § 766, 124 Stat. 1799 (2010).
Section 240.17a-3 also issued under secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d-1, 78d-2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565-568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 78l, 78n, 78q, 78w(a);
Section 240.17a-4 also issued under secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78a, 78d-1, 78d-2; sec. 14, Pub. L. 94-29, 89 Stat. 137 (15 U.S.C. 78a); sec. 18, Pub. L. 94-29, 89 Stat. 155 (15 U.S.C. 78w);
Section 240.17a-23 also issued under 15 U.S.C. 78b, 78c, 78q, and 78w(a).
Section 240.17f-1 is also authorized under sections 2, 17 and 17A, 48 Stat. 891, 89 Stat. 137, 141 (15 U.S.C. 78b, 78q, 78q-1);
Section 240.17g-7 is also issued under sec. 943, Pub. L. 111-203, 124 Stat. 1376.
Section 240.17g-8 is also issued under sec. 938, Pub. L. 111-203, 124 Stat. 1376.
Section 240.17g-9 is also issued under sec. 936, Pub. L. 111-203, 124 Stat. 1376.
Section 240.17h-1T also issued under 15 U.S.C. 78q.
Sections 240.17Ac2-1(c) and 240.17Ac2-2 also issued under secs. 17, 17A and 23(a); 48 Stat. 897, as amended, 89 Stat. 137, 141 and 48 Stat. 901 (15 U.S.C. 78q, 78q-1, 78w(a));
Section 240.17Ad-1 is also issued under secs. 2, 17, 17A and 23(a); 48 Stat. 841 as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. 78b, 78q, 78q-1, 78w);
Sections 240.17Ad-5 and 240.17Ad-10 are also issued under secs. 3 and 17A; 48 Stat. 882,

as amended, and 89 Stat. (15 U.S.C. 78c and 78q-1);
Section 240.17Ad-7 also issued under 15 U.S.C. 78b, 78q, and 78q-1.
Section 240.17Ad-17 is also issued under Pub. L. 111-203, section 929W, 124 Stat. 1869 (2010).
Section 240.17Ad-22 is also issued under 12 U.S.C. 5464(a)(2).
Section 240.19b-4 is also issued under 12 U.S.C. 5465(e).
Sections 240.19c-4 also issued under secs. 6, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3, and 78s);
Section 240.19c-5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k-1, and 78s.
Section 240.31-1 is also issued under sec. 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

NOTES:
NOTES APPLICABLE TO ENTIRE PART:
EDITORIAL NOTE: For nomenclature changes to this part, see 57 FR 36501, Aug. 13, 1992, and 57 47409, Oct. 16, 1992.
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 240 Extension of phase-in period, see: 57 FR 28781 (1992); 58 FR 36866 (1993); 59 FR 42448 (1994); 61 FR 30396, June 14, 1996; 62 FR 6468, 6469, Feb. 12, 1997.]
[PUBLISHER'S NOTE: For Federal Register citations concerning Part 240 Exemptive order, see: 76 FR 36287, June 22, 2011.]

LexisNexis (R) Notes:

CASE NOTES
Securities Law > U.S. Securities & Exchange Commission > Administration & Establishment
Securities Law > U.S. Securities & Exchange Commission > Administrative Proceedings > General Overview
Securities Law > U.S. Securities & Exchange Commission > Special Powers

Securities Law > U.S. Securities & Exchange Commission > Administration & Establishment
SEC v. R.J. Reynolds Tobacco Holdings, Inc., 2004 U.S. Dist. LEXIS 24545 (DDC June 29, 2004).

Overview: *Because forecasted litigation costs presented on a case-specific level could reveal the judgments of the attorneys who made the estimates, a tobacco company's costs of litigation that were broken down using such a method were protected as work product.*

- Sections 21(b), 24(c) of the Exchange Act, 15 U.S.C.S. § 78x(c), and 17 C.F.R. § 240.24c-1 thereunder, allow the Securities and Exchange Commission (SEC) to share documents and information with other law enforcement agencies (including United States Department of Justice) and regulatory organizations when the SEC deems it appropriate. Go To Headnote

Securities Law > U.S. Securities & Exchange Commission > Administrative Proceedings > General Overview
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Securities Law > U.S. Securities & Exchange Commission > Special Powers
United States v. Peitz, 2002 U.S. Dist. LEXIS 4812 (ND Ill Mar. 22, 2002).

Overview: *In a criminal fraud action, the SEC's motion to quash subpoenas was denied. The regulation did not require service in Washington, D.C. The defendant's motion for an evidentiary hearing was denied as moot pending an outcome of the SEC's production.*

- The referenced exception contained in 17 C.F.R. § 203.2 regarding the disclosure of information or documents obtained by officers or employees of the Commission in the course of any examination or investigation is limited to disclosures to specified persons and entities. 17 C.F.R. § 240.24c-1(b). Go To Headnote

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TITLE 17 -- COMMODITY AND SECURITIES EXCHANGES
CHAPTER II -- SECURITIES AND EXCHANGE COMMISSION
PART 275 -- RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Go to the CFR Archive Directory

17 CFR 275.206(4)-3

§ 275.206(4)-3 Cash payments for client solicitations.

(a) It shall be unlawful for any investment adviser required to be registered pursuant to section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1)(i) The investment adviser is registered under the Act;

(ii) The solicitor is not a person (A) subject to a Commission order issued under section 203(f) of the Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Act, or (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Act; and

(iii) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

NOTE: The investment adviser shall retain a copy of each written agreement required by this paragraph as part of the records required to be kept under § 275.204-2(a)(10) of this chapter.

(2) Such cash fee is paid to a solicitor:

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

(ii) Who is (A) a partner, officer, director or employee of such investment adviser or (B) 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, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

(iii) Other than a solicitor specified in paragraph (a)(2) (i) or (ii) of this section if all of the following conditions are met:

(A) The written agreement required by paragraph (a)(1)(iii) of this section: (1) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor; (2) contains an undertaking by the solicitor to perform his 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; (3) 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 the investment adviser's written disclosure statement required by § 275.204-3 of this chapter ("brochure rule") and a separate written disclosure document described in paragraph (b) of this rule.

(B) 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 and the solicitor's written disclosure document.

NOTE: The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under § 275.204-2(a)(15) of this chapter.

(C) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this section shall contain the following information:

(1) The name of the solicitor;

(2) The name of the investment adviser;

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

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

(5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) 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 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.

(c) 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 any law.

(d) For purposes of this section,

(1) Solicitor means any person who, 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.

(e) Special rule for solicitation of government entity clients. Solicitation activities involving a government entity, as defined in § 275.206(4)-5, shall be subject to the additional limitations set forth in that section.

HISTORY:
[44 FR 42130, July 18, 1979; 54 FR 32441, Aug. 8, 1989; 62 FR 28112, 28135, May 22, 1997; 63 FR 39708, 39716, July 24, 1998; 75 FR 41018, 41069, July 14, 2010]

AUTHORITY:
AUTHORITY NOTE APPLICABLE TO ENTIRE PART:
15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.
Section 275.203A-1 is also issued under 15 U.S.C. 80b-3a.
Section 275.203A-2 is also issued under 15 U.S.C. 80b-3a.
Section 275.203A-3 is also issued under 15 U.S.C. 80b-3a.
Section 275.203A-5 is also issued under 15 U.S.C. 80b-3a.
Section 275.204-1 is also issued under sec. 407 and 408, Pub. L. 111-203, 124 Stat. 1376.
Section 275.204-2 is also issued under 15 U.S.C. 80b-6.
Section 275.204-4 is also issued under sec. 407 and 408, Pub. L. 111-203, 124 Stat. 1376.
Section 275.205-3 is also issued under 15 U.S.C. 80b-5(e).

NOTES:
[EFFECTIVE DATE NOTE: 75 FR 41018, 41069, July 14, 2010, amended this section, effective Sept. 13, 2010. For compliance date information, see: 75 FR 41018, July 14, 2010.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note
Securities Law > Investment Advisers > Compensation
Securities Law > Investment Advisers > Fiduciary Responsibilities

Securities Law > Investment Advisers > Compensation
Strauss v. Newmarket Global Consulting Group, Llc, 5 A.3d 1027, 2010 D.C. App. LEXIS 589 (DC Oct. 14, 2010).

Overview: *It was improper to rule in favor of an LLC and its president in their action against a stockbroker seeking to enforce an oral agreement to evenly split brokerage commissions, consulting fees, or finder or solicitor's fees earned from investments because no oral contract existed. The terms of the alleged agreement were not memorialized.*

- An SEC registered investment adviser firm may pay cash referral fees to a third-party that solicits investment adviser clients on behalf of the registered investment adviser firm only if the solicitor referral arrangement between the investment adviser and third-party solicitor is in writing and includes certain provisions. SEC Investment Advisers Act of 1940 Rule, 17 C.F.R. § 275.206(4)-3(a)(2)(iii)(A) (2010). These provisions include: (1) the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor, (2) an undertaking by the solicitor to perform such activities consistent with instructions of the investment adviser and in compliance with the Investment Advisers Act of 1940, and rules thereunder, and (3) an undertaking by the solicitor to provide the client with additional written documents, including separate solicitor and investment adviser disclosures, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser. Go To Headnote

Shea v. Angulo, 1994 U.S. Dist. LEXIS 1846 (ND Ill Feb. 22, 1994).

Overview: *Motion to strike portions of plaintiff's affidavit was stricken and his motion for summary judgment as to six of seven affirmative defenses was granted. Issue of novation was reserved for trial and defendants' motion to transfer venue was denied.*

- 17 C.F.R. § 275.206(4)-3 governs cash payments by investment advisors for solicitation services, not commissions on trades that are placed with a brokerage firm. Go To Headnote

Securities Law > Investment Advisers > Fiduciary Responsibilities
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NASAA Custody Requirements for Investment Advisers
Model Rule 102(e)(1)-1

Adopted April 3, 2000, Amended 4/18/04, 9/11/05; Amended 9/11/2011

Rule 102(e)(1)-1 Custody of Client Funds or Securities by Investment Advisers.

(a) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:

(1) **Notice to [Administrator].** The investment adviser notifies the [Administrator] promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;

(2) **Qualified Custodian.** A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle

(3) **Notice to clients.** If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) **Account Statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(5) **Special rule for limited partnerships and limited liability companies. [ALTERNATIVE ONE]** *Without gatekeeper requirement.*
If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner).

[ALTERNATIVE TWO] *With additional gatekeeper requirement.*
If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle)

(A) the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner), and

(B) The investment adviser must:

(i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;

(ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

a. determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

b. forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(6) **Independent Verification.** The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(A) file a certificate on Form ADV-E with the [Administrator] within 120 days of the time chosen by the independent certified public accountant in paragraph (a)(6) of this rule, stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) notify the [Administrator] within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the [Administrator]; and

(C) file within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) **Investment advisers acting as qualified custodians.** If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or

securities pursuant to this rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(A) The independent certified public accountant the investment adviser retains to perform the independent verification required by paragraph (a)(6) of this rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(B) The investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year;.

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(3) and (a)(4) of this rule.

(b) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this rule;

(2) **Certain privately offered securities.**

(A) The investment adviser is not required to comply with paragraph (a)(2) of this rule with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding paragraph (b)(2)(A) of this rule, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this rule and the investment adviser notifies the [Administrator] in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

(3) **Fee Deduction.** Notwithstanding paragraph (a)(6) of this rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the qualified custodian [sends the independent party designated pursuant to section (a)(5)(B)(ii)] an invoice or statement of the amount of the fee to be deducted from the client's account; and

If the administrator has adopted the gatekeeper requirements of sub. (a)(5) Alternative Two, this subsection should refer to the bracketed language with regard to only sending the invoice to the independent party (not directly to the custodian) who will upon approval forward the invoice to the custodian for action.

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(D) The investment adviser notifies the [Administrator] in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

The bracketed language in (C)(i) is to be used when the administrator adopts ALTERNATIVE TWO of sub. (a)(5).

(4) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with paragraphs (a)(3) and (a)(4) and shall be deemed to have complied with paragraph (a)(6) of this rule with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;
(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50;

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in sub. (ii) follows FASB rule ASC 946-210-50-6 whereby, long and short positions representing more than 5% of the net assets of the fund must be reported as outlined in this subsection of the FASB rule. All provisions of subsection 50-6 apply to the position disclosure required on the quarterly customer statement. This is the same reporting format required by rule 13F under the Securities Exchange Act of 1934 for investment managers' annual reports.

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) [and the Administrator] within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the [Administrator] within four business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(F) The investment adviser must also notify the [Administrator] in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) **Registered Investment Companies.** The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) **Delivery to Related Persons.** Sending an account statement under paragraph (a)(5) of this rule or distributing audited financial statements under paragraph (b)(4) of this rule shall not satisfy the requirements of this rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) **Definitions.** For purposes of the rule:

(1) "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(C) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company;

(iii) is an elected manager of the limited liability company; or

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them [or has the ability to appropriate them]. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general partner of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains the records required under Rule 203(a)-2(a)(22);

(3) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

[(4) "Independent party" means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser; and

(C) does not have, and has not had within the part two years, a material business relationship with the investment adviser.

(D) shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.]

(5) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) "Qualified custodian" means the following:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or

other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

NASAA Registration Requirements for Investment Advisers
Model Rule USA 2002 403(a)
Adopted 9/17/2008

Rule USA 2002 403(a) Application for Investment Adviser Registration [Licensure]

(a) INITIAL APPLICATION. The application for initial registration [licensure] as an investment adviser pursuant to Section 403(a) of the Act shall be made by completing Form ADV (Uniform Application for Investment Adviser Registration) in accordance with the form instructions and by filing the form electronically with IARD. The application for initial registration [licensure] shall also include the following:

(1) Proof of compliance by the investment adviser with the examination requirements of Rule 412(e)-1;

(2) Such financial statements as set forth in Rule 411(b)-1, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule 411(b)-1;

(3) A copy of the surety bond required by Rule 411(e)-1, if applicable, shall be made available upon request of the [Administrator];]

(4) The fee required by Section 410(c) of the Act [Rule 410(a)(3)], and;

(5) Any other information the [Administrator] may reasonably require.

(b) FORM ADV PART II. The [Administrator] may:

(1) accept a copy of Part II of Form ADV as filed electronically with IARD; or

(2) require a paper copy of Part II of Form ADV be filed directly with the [Administrator].

(c) ANNUAL RENEWAL. The application for annual renewal registration [licensure] as an investment adviser shall be filed electronically with IARD. The application for annual renewal registration [licensure] shall include the following:

(1) The fee required by Section 410(c) of the Act [Rule 410(a)(3)]; and

(2) [A copy of the surety bond required by Rule 411(e)-1, if applicable.]

(d) UPDATES AND AMENDMENTS.

(1) An investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's Form ADV;

(2) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and

(3) Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file electronically with IARD an Annual Updating Amendment to the Form ADV.

(e) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 403(a) of the Act until the required fee and all required submissions have been received by the [Administrator].

56 Act cross reference 202(a)-1

NASAA Registration Requirements for Investment Adviser Representatives
Model Rule USA 2002 404(a)
Adopted 9/17/2008

Rule USA 2002 404(a) Application for Investment Adviser Representative Registration [Licensure]

(a) INITIAL APPLICATION. The application for initial registration [licensure] as an investment adviser representative pursuant to Section 404(a) of the Act shall be made by completing Form U4 (Uniform Application for Securities Industry Registration or Transfer) in accordance with the form instructions and by filing the Form U4 electronically with IARD. The application for initial registration [licensure] shall also include the following:

(1) Proof of compliance by the investment adviser representative with the examination requirements of Rule 412(e)-1;

(2) The fee required by section 410(d) of the Act [Rule 410(a)(4)].

(b) ANNUAL RENEWAL. The application for annual renewal registration [licensure] as an investment adviser representative shall be filed electronically with IARD. The application for annual renewal registration [licensure] shall include the fee required by Section 410(d) of the Act [Rule 410(a)(4)].

(c) UPDATES AND AMENDMENTS.

(1) The investment adviser representative is under a continuing obligation to update information required by Form U4 as changes occur.

(2) An investment adviser representative and the investment adviser must electronically file promptly with IARD any amendments to the representative's Form U4; and

(3) An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment.

(d) COMPLETION OF FILING. An application for initial or renewal registration is not considered filed for purposes of Section 404(a) of the Act until the required fee and all required submissions have been received by the [Administrator].

56 Act cross reference 202(a)-2

NASAA Notice Filing Requirements for Federal Covered Investment Advisers
Model Rule USA 2002 405(a)
Adopted 9/17/2008

Rule USA 2002 405(a) Notice Filing Requirements for Federal Covered Investment Advisers

(a) NOTICE FILING. The notice filing for a federal covered investment adviser pursuant to Section 405(a) of the Act shall be filed electronically with IARD on an executed Form ADV (Uniform Application for Investment Adviser Registration). A notice filing of a federal covered investment adviser shall be deemed filed when the fee required by Section 410(e) of the Act [Rule 410(a)(5)] and the Form ADV are filed electronically with and accepted by IARD on behalf of the state.

(b) FORM ADV PART II. The [Administrator] may:

(1) accept a copy of Part II of Form ADV as filed electronically with IARD; or

(2) deem Part II of Form ADV filed if a federal covered investment adviser provides, within 5 days of a request, Part II of Form ADV to the [Administrator]. Because the [Administrator] deems Part II of Form ADV to be filed, a federal covered investment adviser is not required to submit Part II of Form ADV to the [Administrator] unless requested.

(c) RENEWAL. The annual renewal of the notice filing for a federal covered investment adviser pursuant to section 405(c) of the Act shall be filed electronically with IARD. The renewal of the notice filing for a federal covered investment adviser shall be deemed filed when the fee required by Section 410(e) of the Act [Rule 410(a)(5)] is filed with and accepted by IARD on behalf of the state.

(d) UPDATES AND AMENDMENTS. A federal covered investment adviser must file electronically with IARD, in accordance with the instructions in the Form ADV, any amendments to the federal covered investment adviser's Form ADV.

56 Act cross reference 202(b)-1

NASAA Electronic Filing Requirements for Investment Advisers
Model Rule USA 2002 406(e)-1
Adopted 9/17/2008

Rule USA 2002 406(e)-1 Electronic Filing With Designated Entity

(a) DESIGNATION. Pursuant to section 406 of the Act, the [Administrator] designates the web-based Investment Adviser Registration Depository ("IARD") to receive and store filings and collect related fees from investment advisers and investment adviser representatives on behalf of the [Administrator].

(b) USE OF IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the [Administrator] pursuant to the rules promulgated under the Act, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(1) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made electronically through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing electronically to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(2) When filed. Solely for purposes of a filing made electronically through IARD, a document is considered filed with the [Administrator] when all fees are received and the filing is accepted by IARD on behalf of the state.

(c) ELECTRONIC FILING. Notwithstanding subsection (b) of this rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and [30 days] notice is provided by the [Administrator]. Any documents or fees required to be filed with the [Administrator] that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed directly with the [Administrator].

(d) HARDSHIP EXEMPTIONS. This section provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

(1) Temporary Hardship Exemption.

(A) Investment advisers registered [licensed] or required to be registered [licensed] under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.

(B) To request a temporary hardship exemption, the investment adviser must:

(i) File an Application for a Temporary or Continuing Hardship Exemption, Form ADV-H, in paper format with the [Administrator] where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and

(ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(C) Effective Date--Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the [Administrator] of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the [Administrator].

(2) Continuing Hardship Exemption.

(A) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(B) To apply for a continuing hardship exemption, the investment adviser must:

(i) File Form ADV-H in paper format with the [Administrator] at least twenty business days before a filing is due; and

(ii) If a filing is due to more than one [Administrator], the Form ADV-H must be filed with the [Administrator] where the investment adviser's principal place of business is located. The [Administrator] who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(C) Effective Date--Upon Approval. The exemption is effective upon approval by the [Administrator]. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the [Administrator] approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the [Administrator] where the investment adviser's principal place of business is located, which decision will be followed by the [Administrator] in the other state(s) where the investment adviser is registered.

56 Act cross reference 202(a)-A

NASAA IARD Transition Filing for Investment Advisers
Model Rule USA 2002 406(e)-2
Adopted 9/17/2008

Rule USA 2002 406(e)-2 IARD Transition Rule

(a) Electronic Filing of Form ADV.

(1) By (date to be determined), each investment adviser registered [licensed] or required to be registered [licensed] under the Act must resubmit its Form ADV electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under Rule 406(e)-1(d).

(2) If the amendment to Form ADV is made after (date to be determined), or at an earlier date if an investment adviser has filed its Form ADV (or any amendments to Form ADV) electronically with IARD, the registrant [licensee] must file amendments to Form ADV required by this section electronically with IARD, unless it has been granted a hardship exemption under Rule 406(e)-1(d).

(b) Electronic Filing of Form U4. By (date to be determined), for each investment adviser representative registered [licensed] or required to be registered [licensed] under the Act, Form U4 must be submitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under Rule 406(e)-1(d).

56 Act cross reference 203(d)-1

NASAA Withdrawal of Investment Adviser Representative Registration
Model Rule USA 2002 408(a)-1
Adopted 9/17/2008

Rule USA 2002 408(a)-1 Withdrawal Of Investment Adviser Representative Registration [Licensure]

The application for withdrawal of registration [licensure] as an investment adviser representative pursuant to Section 408(a) of the Act shall be completed by following the instructions on Form U5 (Uniform Termination Notice for Securities Industry Registration) and filed electronically upon Form U5 with IARD within 30 days of the date of termination.

56 Act cross reference 204(e)-1(b)

NASAA Withdrawal of Investment Advisers Registration
Model Rule USA 2002 409-1
Adopted 9/17/2008

Rule USA 2002 409-1 Withdrawal Of Investment Adviser Registration [Licensure]

The application for withdrawal of registration [licensure] as an investment adviser pursuant to Section 409 of the Act shall be completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) and filed electronically upon Form ADV-W with IARD.

56 Act cross reference 204(e)-1(a)

NASAA Late Fee Payment Remedies Requirements for Investment Advisers
Model Rule USA 2002 410 [410(a)-1]
Adopted 9/17/2008

Rule USA 2002 410 [410(a)-1] Promptly Remedied

For purposes of sections 410(c), 410(d) and 410(e) of the Act [Rules 410(a)(3), 410(a)(4) and 410(a)(5)], an investment adviser, an investment adviser representative and a federal covered investment adviser, respectively, will have "promptly remedied" a delay in payment or under payment of fees if the adviser or representative remits the fee payment to the [Administrator] within ten business days of receipt of notification from the [Administrator] of the delay or underpayment. If such payment is not received within the ten business day period, an investment adviser, an investment adviser representative and a federal covered investment adviser will be found to have refused to pay the fee.

56 Act cross reference 401(n)-1

NASAA Minimum Financial Requirements for Investment Advisers
Model Rule USA 2002 411(a)-1
Adopted 9/17/2008; Amended 9/11/2011

Rule USA 2002 411(a)-1 Minimum Financial Requirements for Investment Advisers

(a) An investment adviser registered [licensed] or required to be registered [licensed] under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000 except:

(1) An investment adviser having custody solely due to direct fee deduction and complying with the terms described under Rule 411(f)-1(b)(3) and related books and records, as described in Rule 411(c)-1, shall not be required to comply with the net worth or bonding requirements of this Rule.

(2) An investment adviser having custody solely due to advising pooled investment vehicles and complying with the terms described under Rule 411(f)-1(a)(5) or Rule 411(f)-1(b)(4) and related books and records, as described in Rule 411(c)-1, shall not be required to comply with the net worth or bonding requirements of this Rule.

(b) An investment adviser registered [licensed] or required to be registered [licensed] under the Act who 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.

(c) An investment adviser registered [licensed] or required to be registered [licensed] under the Act who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

(d) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered [licensed] or required to be registered [licensed] under the Act shall by the close of business on the next business day notify the [Administrator] if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the [Administrator] of its financial condition, including the following:

(1) A trial balance of all ledger accounts;

(2) A statement of all client funds or securities which are not segregated;

(3) A computation of the aggregate amount of client ledger debit balances; and

(4) A statement as to the number of client accounts.

(e) For purposes of this Rule, the term "net worth," shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home, home furnishings, automobile(s), and any other 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.

(f) For purposes of this Rule, "custody" is defined in Rule 411(f)-1(d)(2).

(g) For purposes of this Rule an investment adviser shall not be deemed to be exercising discretion when it places trade orders with a broker-dealer pursuant to a third party trading agreement if:

(1) the investment adviser has executed a separate investment adviser contract exclusively with its client which acknowledges that a third party trading agreement will be executed to allow the

investment adviser to effect securities transactions for the client in the client's broker-dealer account; and

(2) 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

(3) a third party trading agreement is executed between the client and a 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.

(h) The [Administrator] may require that a current appraisal be submitted in order to establish the worth of any asset.

(i) Every investment adviser that has its principal place of business in a state other than this state shall maintain only such minimum net worth as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's minimum capital requirements.

56 Act cross reference 202(d)-1

NASAA Financial Reporting Requirements for Investment Advisers
Model Rule USA 2002 411(b)-1
Adopted 9/17/2008

Rule USA 2002 411(b)-1 Financial Reporting Requirements for Investment Advisers

(a) Every registered [licensed] investment adviser who has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the [Administrator] an audited balance sheet as of the end of the investment adviser's most recent fiscal year. Each balance sheet filed pursuant to this Rule must be:

(1) Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

(2) Audited by an independent certified public accountant; and

(3) Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare it, the basis of included securities, and any other explanations required for clarity.

(b) Every registered [licensed] investment adviser who has discretionary authority over client funds or securities, but not custody, shall file with the [Administrator] a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the [Administrator] and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's most recent fiscal year.

(c) The financial statements required by this Rule shall be filed with the [Administrator] within 90 days following the end of the investment adviser's fiscal year.

(d) Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is registered or licensed in such state and is in compliance with such state's financial reporting requirements.

56 Act cross reference to 203(c)-1

NASAA Recordkeeping Requirements for Investment Advisers
Model Rule USA 2002 411(c)-1
Adopted 9/17/2008; Amended 9/11/2011

NOTE: Italicized information is explanatory and not intended for inclusion in the rule text.

Rule USA 2002 411(c)-1 Recordkeeping Requirements [ALTERNATIVE 1]:

(a) Every investment adviser registered [licensed] or required to be registered [licensed] under the Act shall make and keep 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.

(6) All trial balances, financial statements and internal audit working papers relating to the investment adviser's business.

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

(A) any recommendation made or proposed to be made and any advice given or proposed to be given,

(B) any receipt, disbursement or delivery of funds or securities, or

(C) the placing or execution of any order to purchase or sell any security, provided, however,

(i) that the investment adviser 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

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, 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) (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

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

(ii) 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. 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 advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subsection (12) the following definitions will apply;

(i) The term "advisory 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 who, in connection with his 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:

a. any person in a control relationship to the investment adviser,

b. any affiliated person of a controlling person and

c. any affiliated person of an affiliated person.

(ii) "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.

(C) An investment adviser shall not be deemed to have violated the provisions of this subsection (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13) (A) Notwithstanding the provisions of subsection (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 advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

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

(ii) 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. 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 advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) 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

(i) its total sales and revenues, and

(ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subsection (13) the following definitions will apply:

(i) The term "advisory 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 recommendation shall be made, or whose functions or duties relate to the determination of 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 such the recommendations or of the information concerning the recommendations:

a. any person in a control relationship to the investment adviser,

b. any affiliated person of a controlling person and

c. any affiliated person of an affiliated person.

(ii) "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 percent of the voting securities of a company shall be presumed to control such company.

(D) An investment adviser shall not be deemed to have violated the provisions of this subsection (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used 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 Rule 411(g) of the Act, 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

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

(B) 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,

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940. For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(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); provided, however, 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 subsection (a)(12)(B) of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(21) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure

Reporting Pages (DRPs Form U4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(22) Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep a ledger or other listing of all securities or funds held or obtained, including the following information:

(A) Issuer;

(B) Type of security and series;

(C) Date of issue;

(D) For debt instruments, the denomination, interest rate and maturity date;

(E) Certificate number, including alphabetical prefix or suffix;

(F) Name in which registered;

(G) Date given to the adviser;

(H) Date sent to client or sender;

(I) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(23) If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under Rule 411(f)-1(b)(2), the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) (1) If an investment adviser has custody, as that term is defined in Rule 411(f)-1(d)(2), the records required to be made and kept under paragraph (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) 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.

(C) 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.

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

(E) 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.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

(2) If an investment adviser has custody because it advises a pooled investment vehicle, the adviser shall also keep the following records:

(A) True, accurate and current account statements;

(B) Where the adviser complies with Rule 411(f)-1(b)(4) the records required to be made and kept shall include:

(i) the date(s) of the audit;

(ii) a copy of the audited financial statements; and

(iii) evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with rule 411(f)-1(a)(5) the records required to be made and kept shall include:

(i) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

(ii) Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this Rule who 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) Any books or records required by this Rule 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) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), 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 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 the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years 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 the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule 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 such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Rule, 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:

(A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule 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. The records will be maintained for the period described in subsection (e) of this Rule.

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

(g) (1) Pursuant to Rule 411(c)-1(e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) Paper or hard copy form, as those records are kept in their original form; or

(B) Micrographic media, including microfilm, microfiche, or any similar medium; or

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(2) The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the [Administrator] (by its examiners or other representatives) may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;
(ii) A legible, true, and complete printout of the record; and
(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(3) In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the [Administrator] (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) For purposes of this Rule, "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.

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 and 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 Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

(j) Every investment adviser registered [licensed] or required to be registered [licensed] in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is registered or licensed in such state and is in compliance with such state's recordkeeping requirements.

Rule USA 2002 411(c)-1 Recordkeeping Requirements [ALTERNATIVE 2] *(Language for states which incorporate by reference Rule 204-2 of the Investment Advisers Act of 1940)*

(a) Every investment adviser registered [licensed] or required to be registered [licensed] under this Act shall make and keep true, accurate and current the following books, ledgers and records:

(1) Those books and records required to be maintained and preserved in compliance with Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)), notwithstanding the

fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(2) All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, "financial statements" means balance sheets, income statements, cash flow statements and net worth computations as required by Rule 202(d)-1.

(3) A list or other record of all accounts with respect to the funds, securities, or transactions of any client.

(4) A copy in writing of each agreement entered into by the investment adviser with any client.

(5) A file containing a copy of each record required by Rule 204-2(11) of the Investment Advisers Act of 1940 including any communication 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)

(6) 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 Rule 411(g) of the Act 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.

(7) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser, records required by Rule 206(4)-3 of the Investment Advisers Act of 1940, notwithstanding the fact that the investment adviser is not registered or required to be registered under the Investment Advisers Act of 1940.

(8) All records required by Rule 204-2(16) of the Investment Advisers Act of 1940 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).

(9) 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.

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

(11) 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.

(12) 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 which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(13) For investment advisers who have custody, as that term is defined in Rule 411(f)-1(d)(2), of client funds or securities, all records and evidence of compliance required by Rule 206(4)-2 under the Investment Advisers Act of 1940.

(b) Every investment adviser subject to subsection (a) of this rule shall preserve for the period described in subsection (e) of this Rule the following records in the manner prescribed:

(1) Books and records required to be made under the provisions of paragraph (a)(1) of this Rule 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 such record, the first two years in the principal office of the investment adviser.

(2) Books and records required to be made under the provisions of paragraphs (a)(2)-(a)(13), inclusive, of this Rule 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 such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(3) Notwithstanding other record preservation requirements of this Rule, 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:

(A) records required to be preserved under

i. paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940.

ii. paragraphs (a)(9)-(11) of this Rule; and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule 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.

(c) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the [Administrator] for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is registered or licensed in such state and is in compliance with the state's recordkeeping requirements.

(e) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

(1) All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), 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 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 the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years 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 the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule 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 such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

(5) Notwithstanding other record preservation requirements of this Rule, 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:

(A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule 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. The records will be maintained for the period described in subsection (e) of this Rule.

56 Act cross reference 203(a)-2

NASAA Bonding Requirements for Investment Advisers
Model Rule USA 2002 411(e)-1
Adopted 9/17/2008; Amended 9/11/2011

Rule USA 2002 411(e)-1 Bonding Requirements for Certain Investment Advisers

(a) Any bond required by this Rule shall be issued by a company qualified to do business in this state in the form determined by the [Administrator] and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

(1) Every investment adviser registered [licensed] or required to be registered [licensed] under the Act having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the [Administrator] based upon the number of clients and the total assets under management of the investment adviser.

(2) Every investment adviser registered [licensed] or required to be registered [licensed] under the Act who has custody or discretion of client funds or securities who does not meet the minimum net worth standard in Rule 411(a)-1(a) and (b) shall be bonded in the amount of the net worth deficiency rounded up to the nearest $5,000.

(b) For purposes of this Rule, "custody" is defined in Rule 411(f)-1(d)(2).

(c) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subsection (a) of this section, provided that the investment adviser is registered or licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

56 Act cross reference to 202(e)-1

NASAA Custody Requirements for Investment Advisers
Model Rule USA 2002 411(f)-(1)
Adopted 9/17/2008; Amended 9/11/2011

Rule USA 2002 411(f)-(1) Custody Requirements for Investment Advisers

(a) **Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless:

(1) **Notice to [Administrator].** The investment adviser notifies the [Administrator] promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV;

(2) **Qualified Custodian.** A qualified custodian maintains those funds and securities:

(A) in a separate account for each client under that client's name; or

(B) in accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle

(3) **Notice to clients.** If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to which the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

(4) **Account Statements.** The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(5) **Special rule for limited partnerships and limited liability companies.**
[ALTERNATIVE ONE] *Without gatekeeper requirement.*
If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under

paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner).

[ALTERNATIVE TWO] *With additional gatekeeper requirement.*
If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle),

(A) the account statements required under paragraph (a)(4) of this rule must be sent to each limited partner (or member or other beneficial owner), and

(B) the investment adviser must:

(i) enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts;

(ii) send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

(a) determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement) and

(b) forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

(6) **Independent Verification.** The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant, pursuant to a written agreement between the investment adviser and the independent certified public accountant, at a time that is chosen by the independent certified public accountant without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this paragraph, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the independent certified public accountant to:

(A) file a certificate on Form ADV-E with the [Administrator] within 120 days of the time chosen by the independent certified public accountant in paragraph (a)(6) of this rule, stating that it has examined the funds and securities and describing the nature and extent of the examination.

(B) notify the [Administrator] within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the [Administrator]; and

(C) file within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(7) **Investment advisers acting as qualified custodians.** If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(A) The independent certified public accountant the investment adviser retains to perform the independent verification required by paragraph (a)(6) of this rule must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(B) The investment adviser must obtain, or receive from its related person, within six months of becoming subject to this paragraph and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of

a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment advisers clients, during the year;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment advisers related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

(8) **Independent representatives.** A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(3) and (a)(4) of this rule.

(b) **Exceptions.**

(1) **Shares of mutual funds.** With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ('mutual fund"), the investment adviser may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this rule;

(2) **Certain privately offered securities.**

(A) The investment adviser is not required to comply with paragraph (a)(2) of this rule with respect to securities that are:

(i) acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

(iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(B) Notwithstanding paragraph (b)(2)(A) of this rule, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or

other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(4) of this rule and the investment adviser notifies the [Administrator] in writing that the investment adviser intends to provide audited financial statements, as described above. Such notification is required to be provided on Form ADV.

(3) **Fee Deduction.** Notwithstanding paragraph (a)(6) of this rule, an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following are met:

(A) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(B) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(C) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

(i) sends the qualified custodian [sends the independent party designated pursuant to section (a)(5)(B)(ii)] an invoice or statement of the amount of the fee to be deducted from the client's account; and

If the administrator has adopted the gatekeeper requirements of sub. (a)(5) Alternative Two, this subsection should refer to the bracketed language with regard to only sending the invoice to the independent party, not directly to the custodian, who will upon approval forward the invoice to the custodian for action.

(ii) sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(D) The investment adviser notifies the [Administrator] in writing that the investment adviser intends to use the safeguards provided above. Such notification is required to be given on Form ADV.

The bracketed language in (C)(i) is to be used when the administrator adopts ALTERNATIVE TWO of sub. (a)(5).

(4) **Limited partnerships subject to annual audit.** An investment adviser is not required to comply with paragraphs (a)(3) and (a)(4) and shall be deemed to have complied with paragraph (a)(6) of this rule with respect to the account of a limited partnership (or

limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(A) The adviser sends to all limited partners (or members or other beneficial owners) at least quarterly, a statement showing:

(i) the total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

(ii) a listing of all long and short positions on the closing date of the statement in accordance with FASB Rule ASC 946-210-50;

(iii) the total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

The listing in sub. (ii) follows FASB rule ASC 946-210-50-6 whereby, long and short positions representing more than 5% of the net assets of the fund must be reported as outlined in this subsection of the FASB rule. All provisions of subsection 50-6 apply to the position disclosure required on the quarterly customer statement.

(B) At least annually the fund is subject to an audit and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) [and the Administrator] within 120 days of the end of its fiscal year;

(C) The audit is performed by an independent certified public accountant that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(D) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the Administrator promptly after the completion of such audit;

(E) The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being

reappointed, notify the [Administrator] within four business days accompanied by a statement that includes:

(i) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(ii) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(F) The investment adviser must also notify the [Administrator] in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described above. Such notification is required to be given on Form ADV.

(5) **Registered Investment Companies.** The investment adviser is not required to comply with this rule with respect to the account of an investment company registered under the Investment Company Act of 1940.

(c) Delivery to Related Persons. Sending an account statement under paragraph (a)(5) of this rule or distributing audited financial statements under paragraph (b)(4) of this rule shall not satisfy the requirements of this rule if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

(d) Definitions. For purposes of the rule:

(1) "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes:

(A) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(B) A person is presumed to control a corporation if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(C)A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(D) A person is presumed to control a limited liability company if the person:

(i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

(ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company;

(iii) is an elected manager of the limited liability company; or

(E) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them [or has the ability to appropriate them]. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(A) Custody includes:

(i) Possession of client funds or securities unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general partner of attorney) under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.

(B) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within 3 business days of receipt and the investment adviser maintains the records required under Rule 411(c)-1(a)(22);

(3) "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

[(4) "Independent party" means a person that:

(A) is engaged by the investment adviser to act as a gatekeeper for the payment of fees, expenses and capital withdrawals from the pooled investment;

(B) does not control and is not controlled by and is not under common control with the investment adviser; and

(C) does not have, and has not had within the part two years, a material business relationship with the investment adviser.

(D) Shall not negotiate or agree to have material business relations or commonly controlled relations with an investment adviser for a period of two years after serving as the person engaged in an independent party agreement.]

(5) "Independent representative" means a person who:

(A) acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners or a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

(B) does not control, is not controlled by, and is not under common control with investment adviser; and

(C) does not have, and has not had within the past two years, a material business relationship with the investment adviser.

(6) "Qualified custodian" means the following:

(A) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(B) A broker-dealer registered in this jurisdiction and with the SEC holding the client assets in customer accounts;

(C) A registered futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act, holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(D) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(7) "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

56 Act cross reference 102(e)1-1

NASAA Brochure Rule Requirements for Investment Advisers
Model Rule USA 2002 411(g)
Adopted 9/17/2008; Amended 9/11/2011

Rule USA 2002 411(g) Investment Adviser Brochure Rule

(a) GENERAL REQUIREMENTS. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to Section 403 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with:

(1) a brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

(2) a copy of its Part 2B brochure supplement for each individual

(A) providing investment advice and having direct contact with clients in this state; or

(B) exercising discretion over assets of clients in this state, even if no direct contact is involved;

(3) a copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

(4) a summary of material changes, which may be included in FORM ADV Part 2 or given as a separate document; and

(5) such other information as the [Administrator] may require.

(6) The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.

> *Administrators should note that the SEC's Instructions for Part 2A of Form ADV exclude a change in advisory fee from its interpretation of "material change" such that it would not trigger an other than annual amendment of Form ADV Part 2A. The Administrator may wish to include a note or additional rule subsection to clarify fee changes constitute material changes requiring an update to all parts of Form ADV.*

(b) DELIVERY.

(1) INITIAL DELIVERY. An investment adviser, except as provided in subsection (b)(3), shall deliver the Part 2A brochure and any brochure supplements required by this section to a prospective advisory client:

(A) Not less than 48 hours prior to entering into any advisory contract with such client or prospective client; or

(B) 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) ANNUAL DELIVERY. An investment adviser, except as provided in subsection (b)(3), must:

(A) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

(B) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochures and supplements.

Advisers do not have to deliver a summary of material changes or a brochure to clients if no material changes have taken place since the last summary and brochure delivery.

(3) Delivery of the brochure and related brochure supplements required by subsections (b)(1) and (2) need not be made to:

(A) clients who receive only impersonal advice and who pay less than $500 in fees per year; or

(B) An investment company registered under the Investment Company Act of 1940; or

(C) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that Act.

(4) Delivery of the brochure and related supplements may be made electronically if the investment adviser:

(A) in the case of an initial delivery to a potential client, obtains a verification that a readable copy of the brochure and supplements were received by the client;

(B) in the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;

(C) prepares the electronically delivered brochure and supplements in the format prescribed in sub. (a) and instructions to Form ADV Part 2;

(D) delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form;

(E) establishes procedures to supervise personnel transmitting the brochure and supplements and prevent violations of this rule.

(c) OTHER DISCLOSURES. Nothing in this rule 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 required by this rule.

(d) DEFINITIONS. For the purpose of this rule:

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

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

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

(C) any combination of the foregoing services.

(2) "entering into," in reference to an 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.

56 Act cross reference to 203(b)-1

NASAA EXAMINATION REQUIREMENTS FOR INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES
Model Rule USA 2002 412(e)-1
Adopted 9/17/2008

Rule USA 2002 412(e)-1 Examination Requirements

(a) Unless otherwise waived by the [Administrator], an investment adviser or an investment adviser representative shall take and pass within the two year period immediately preceding the date of the application:

(1) the Uniform Investment Adviser State Law Examination (S65); or

(2) the Uniform Combined State Law Examination (S66) and the General Securities Representative Examination (S7).

(b) If the investment adviser is an entity, then a supervisory or control individual shall take and pass the examination(s) as required in subsection (a) of this Rule.

(c) Any person who has been registered as an investment adviser or an investment adviser representative in any state requiring the licensing, registration or qualification of investment advisers or investment adviser representatives within the two year period immediately preceding the date of filing an application shall not be required to comply with the examination requirement set forth in subsection (a) of this Rule.

(d) Compliance with subsections (a) and (b) is waived if the applicant has been awarded any of the following designations and at the time of filing an application is current and in good standing:

(1) Certified Financial Planner (CFP) awarded by the Certified Financial Planners Board of Standards.

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

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

(4) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

(5) Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

(e) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (S65) within 2 years prior to the date the application is filed with the [Administrator] or at any time if the applicant has been registered or licensed as an investment adviser, investment adviser representative [or securities agent] within the 2 years prior to the date the application is filed with the [Administrator], shall not be required to take and pass the Uniform Investment Adviser State Law Examination again.

(f) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in subsection (a) of this Rule necessary to provide advisory services on behalf of the broker-dealer/investment adviser, shall not be required to take and pass the Uniform Investment Adviser State Law Examination (S65) again.

(g) [Persons deemed to be investment adviser representatives only because they solicit, offer or negotiate for the sale of or sell investment advisory services in this state shall not be required to take and pass the examinations in subsection (a) of this Rule.]

NASAA Prohibited Conduct of Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers
Model Rule USA 2002 502(b)
Adopted 9/17/2008

Rule USA 2002 502(b) Prohibited Conduct in Providing Investment Advice

A person who is an investment adviser, an investment adviser representative or a federal covered investment adviser is a fiduciary and has a duty to act primarily for the benefit of its clients. The provisions of this subsection apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996. While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative or a federal covered investment adviser shall not engage in prohibited fraudulent, deceptive, or manipulative conduct, including but not limited to the following:

(a) Recommending to a client to whom investment advisory services are provided the purchase, sale or exchange of any 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, investment adviser representative or federal covered investment adviser.

(b) Exercising any discretionary authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary authority 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.

(c) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.[1]

(d) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(e) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(f) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(g) Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(h) Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, investment adviser representative, federal covered investment adviser, or any employee, or person affiliated with the investment adviser, investment adviser representative or federal covered investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such 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.

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[1] The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account" in light of the fact that an investment adviser or an investment adviser representative in such situations can directly benefit from the number of securities transactions effected in a client's account.

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

(j) Charging a client an unreasonable fee.

(k) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative or federal covered investment adviser, or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

(1) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an investment advisory fee for rendering investment advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative or federal covered investment adviser or its employees, or affiliated persons.

(l) While acting as principal for its own advisory account, to knowingly sell any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, to knowingly effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(1) The prohibitions of this subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.[2]

(2) The prohibitions of this subsection shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts as an investment adviser solely:

(A) by means of publicly distributed written materials or publicly made oral statements;

(B) by means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

(C) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

(D) any combination of the foregoing services.[3]

(3) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve it of any other disclosure obligations under the Act.[4]

(4) Definitions for purposes of this Rule,

(A) "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

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[2] Note: 1956 Act § 102(a)(3) not included in 2002 Act

[3] Note: 1956 Rule 102(f)-2(b) not included in 2002 Act

[4] Note: 1956 Rule 102(f)-2(c)

(B) "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

(m) The prohibitions of this Rule shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:[5]

(1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on this rule sends the client a written confirmation. The written confirmation shall include:

(A) A statement of the nature of the transaction;

(B) The date the transaction took place;

(C) An offer to furnish, upon request, the time when the transaction took place; and

(D) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying:

(A) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(B) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(5) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection (m)(1) of this rule at any time by providing written notice to the investment adviser.

(6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(7) For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered [licensed] as a broker-dealer in this state unless excluded from the definition.

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[5] Note: 1956 Rule 102(f)-1

(8) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

(n) Guaranteeing a client that a specific result will be achieved with advice rendered.

(o) **[Alternative 1]** Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(o) **[Alternative 2]** Publishing, circulating or distributing any advertisement which directly or indirectly does any one of the following:

(1) Refers to any testimonial of any kind concerning the investment adviser, investment adviser representative or federal covered investment adviser, or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative.

(2) Refers to past specific recommendations of the investment adviser, investment adviser representative or federal covered investment adviser that were or would have been profitable to any person; except that an investment adviser or investment adviser representative may furnish or offer to furnish a list of all recommendations made by the investment adviser, investment adviser representative or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(A) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(B) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

(3) Represents 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 that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use.

(4) Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

(5) Represents that the [Administrator] has approved any advertisement.

(6) Contains any untrue statement of a material fact, or that is otherwise false or misleading.

(7) For the purposes of this 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 electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(A) Any analysis, report, or publication concerning securities.

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

(C) 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.

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

(p) Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.[6]

(q) 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.

(r) Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(s) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the action of the investment adviser or investment adviser representative is subject to and does not comply with the requirements of Rule 411(f)-1.

(t) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative or unethical.

(u) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Act or any rule or regulation thereunder.

56 Act cross reference 102(a)(4)-1

[6] Note: 1956 Act § 102(b)

NASAA Contents of Investment Advisory Contract
Model Rule USA 2002 502(c)
Adopted 9/17/2008

Rule USA 2002 502(c) Contents of an Investment Advisory Contract

[Introduction] The provisions of this subsection apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

(a) It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) the services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or non-performance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser;

(2) that no direct or indirect assignment or transfer of the contract may be made by the investment adviser, investment adviser representative or federal covered investment adviser without the consent of the client or other party to the contract;

(3) that the investment adviser, investment adviser representative or federal covered investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(4) that the investment adviser, investment adviser representative or federal covered investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

(b) It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to:

(1) include in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

(2) enter into, extend or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

(c) Notwithstanding subsection (a)(3) of this rule, an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in subsections (c)(1) through (c)(4) of this rule are met.

(1) The client entering into the contract must be:

(A) a natural person or a company who, immediately after entering into the contract, has at least $ 750,000 under the management of the investment adviser; or

(B) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse.

(2) The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(A) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(B) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

(i) The realized capital losses of securities over the period; and

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(C) The formula must provide that any compensation paid to the investment adviser under this rule is based on the gains less the losses (computed in accordance with subsections (A) and (B) of this subsection) in the client's account for a period of not less than one year.

(3) Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

(A) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(B) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(C) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(D) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(E) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

(4) The investment adviser (and any investment adviser representative) who enters into the contract must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in subsection (f)(4) of this rule, the person representing

the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection (f)(3) of this rule.

(d) Any person entering into or performing an investment advisory contract under this rule is not relieved of any obligations under Rule 502(b) or any other applicable provision of the Act or any rule or order thereunder.

(e) Nothing in this rule shall relieve a client's independent agent from any obligation to the client under applicable law.

(f) The following definitions apply for purposes of this rule:

(1) "Affiliate" shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

(2) "Assignment," as used in subparagraph (a)(2) of this Rule, includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities who had such power as of the date when the contract was first entered into, extended or renewed.

(3) "Client's independent agent" means any person who agrees to act as an investment advisory client's agent in connection with the contract, but does not include:

(A) the investment adviser relying on this rule;

(B) an affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

(C) an interested person of the investment adviser;

(D) a person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

(E) a person with any material relationship between himself (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

(4) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(A) A company required to be registered under the Investment Company Act of 1940 but which is not so registered;

(B) A private investment company (for purposes of this subparagraph (B), a private investment company is a company which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act);

(C) An investment company registered under the Investment Company Act of 1940; or

(D) A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of subsection (f)(4) of this rule.

(5) "Interested person" means:

(A) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(B) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

(i) one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

(ii) five percent of the total assets of the person seeking to act as the client's independent agent; or

(C) Any person or partner or employee of any person who, at any time since the beginning of the last two years, has acted as legal counsel for the investment adviser.

NASAA Investment Adviser Representative Definition
Model Rule USA 2002 102(16)
Adopted 9/17/2008

Rule USA 2002 102(16) Investment Adviser Representative (ALTERNATIVE 1)

(a) Notwithstanding Section 102(16) of the Act, the term "investment adviser representative" as it applies to a person who is employed by or associated with a federal covered investment adviser only includes an individual who has a "place of business" in this jurisdiction, as that term is defined in rules or regulation promulgated under Section 203A of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission, and who either:

(1) is an "investment adviser representative" as that term is defined in rules or regulations promulgated under Section 203A of the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) (A) is not a "supervised person" as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; and

(B) solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

Rule USA 2002 102(16) Investment Adviser Representative (ALTERNATIVE 2)

(a) Notwithstanding Section 102(16) of the Act, the term "investment adviser representative" as used in the Act and applied to federal covered investment advisers only includes a person who has a "place of business", as that term is defined in paragraph (b)(4) of this rule, and who either:

(1) is a "supervised person", as defined in paragraph (b)(3) of this rule, provided the supervised person:

(A) has more than five clients who are natural persons, (other than "excepted persons", as defined in paragraph (b)(1) of this rule); and

(B) more than 10% of whose clients are natural persons (other than "excepted persons" as defined in paragraph (b)(1) of this rule); and

(C) (i) on a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered investment adviser; and

(ii) does not provide only "impersonal investment advice", as defined in paragraph (b)(2) of this rule; or who

(2) (A) is not a "supervised person" as that term is defined in paragraph (b)(3) of this rule; and

(B) solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered investment adviser.

(b) For purposes of this section:

(1) "Excepted person" means a natural person who:

(A) immediately after entering into the investment advisory contract with the investment adviser has at least $750,000 under management with the investment adviser; or

(B) the investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) at the time the contract is entered into of more than $1,500,000.

(2) "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(3) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(4) "Place of business" means:

(A) an office at which the "investment adviser representative" regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; or

(B) any other location that is held out to the general public as a location at which the "investment adviser representative" provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(c) Supervised persons may rely on the definition of "client" in SEC Rule 275.203(b)(3)-1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

56 Act cross reference 401g2-1

NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS

Adopted March 20, 2008

Model Rule

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of **[INSERT APPROPRIATE STATE SECURITIES ACT PROVISION]**. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) use of a nonexistent or self-conferred certification or professional designation;

(c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and

(d) use of a certification or professional designation that was obtained from a designating or certifying organization that:

(i) is primarily engaged in the business of instruction in sales and/or marketing;

(ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(iv) does not have reasonable continuing education requirements for its

designees or certificants in order to maintain the designation or certificate.

2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

(i) The American National Standards Institute; or

(ii) The National Commission for Certifying Agencies; or

(iii) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(a) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) the manner in which those words are combined.

4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(a) indicates seniority or standing within the organization; or

(b) specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this rule shall limit the Administrator's authority to enforce existing provisions of law.

NASAA Registration Exemption for Investment Advisers to Private Funds Model Rule

*Adopted December 16, 2011; Amended October 08, 2013**

I. TEXT OF MODEL RULE

Rule XXX. Registration exemption for investment advisers to private funds.

(a) ***Definitions.*** For purposes of this regulation, the following definitions shall apply:

(1) "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.

(2) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

(3) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 C.F.R. 275.203(m)-1.

(4) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

(5) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 C.F.R. § 275.203(l)-1.

(b) ***Exemption for private fund advisers.*** Subject to the additional requirements of paragraph (c) below, a private fund adviser shall be exempt from the registration requirements of Section XXX [403 of USA 2002] if the private fund adviser satisfies each of the following conditions:

(1) neither the private fund adviser nor any of its advisory affiliates are subject to an event that would disqualify an issuer under Rule 506(d)(1) of SEC Regulation D, 17 C.F.R. § 230.506(d)(1);

(2) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 C.F.R. § 275.204-4; and

(3) the private fund adviser pays the fees specified in Section XXX [410 of USA 2002].

(c) ***Additional requirements for private fund advisers to certain 3(c)(1) funds.*** In order to qualify for the exemption described in paragraph (b) of this regulation, a private fund adviser who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraphs (b)(1) through (b)(3), comply with the following requirements:

* *Amendments Adopted at NASAA's Annual Conference (Salt Lake City, UT)*

(1) The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 C.F.R. § 275.205-3, at the time the securities are purchased from the issuer;

(2) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(A) all services, if any, to be provided to individual beneficial owners;

(B) all duties, if any, the investment adviser owes to the beneficial owners; and

(C) any other material information affecting the rights or responsibilities of the beneficial owners.

(3) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

(d) ***Federal covered investment advisers.*** If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers in Section XXX [405 of USA 2002].

(e) ***Investment adviser representatives.*** A person is exempt from the registration requirements of Section XXX [404 of USA 2002] if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to this regulation and does not otherwise act as an investment adviser representative.

(f) ***Electronic filing.*** The report filings described in paragraph (b)(2) above shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by Section XXX [410 of USA 2002] are filed and accepted by the IARD on the state's behalf.

(g) ***Transition.*** An investment adviser who becomes ineligible for the exemption provided by this rule must comply with all applicable laws and rules requiring registration or notice filing within ninety (90) days from the date the investment adviser's eligibility for this exemption ceases.

(h) Waiver Authority with Respect to Statutory Disqualification. Paragraph (b)(1) shall not apply upon a showing of good cause and without prejudice to any other action of the [state securities regulator], if the [Administrator] determines that it is not necessary under the circumstances that an exemption be denied.

[(i) Grandfathering for investment advisers to 3(c)(1) funds with non-qualified clients. *An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subparagraph (c)(1) is eligible for the exemption contained in paragraph (b) of this regulation if the following conditions are satisfied:*

(1) the subject fund existed prior to the effective date of this regulation;

(2) as of the effective date of this regulation, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subparagraph (c)(1) of this regulation;

(3) the investment adviser discloses in writing the information described in paragraph (c)(2) to all beneficial owners of the fund; and

(4) as of the effective date of this regulation, the investment adviser delivers audited financial statements as required by paragraph (c)(3).]

II. COMMENTARY

1. Section (a). Section (a) defines key terms in the model rule. The definitions are structured such that the types of private funds covered under the rule will include funds excluded from the definition of investment company under Sections 3(c)(1) and 3(c)(7) of the Investment Company Act, along with other private funds that would satisfy the statutory requirements found in these exclusions.

2. Section (b). Section (b) explains that in order to claim the exemption from registration, the adviser and its affiliates must not be subject to a "bad boy" disqualification. This section of the rule also explains that the exemption is contingent upon the adviser filing a report with the state securities administrator. This report is identical to the one required by the SEC for advisers to venture capital funds and private funds with less than $150 million in assets under management. Changes to Form ADV and to IARD have been implemented that will accommodate the filing of the report with state regulators. The report will consist of the following items on Part 1A of Form ADV: Items 1 (Identifying Information), 2.B. (SEC Reporting by Exempt Reporting Advisers), 3 (Form of Organization), 6 (Other Business Activities), 7 (Financial Industry Affiliations and Private Fund Reporting), 10 (Control Persons), and 11 (Disclosure Information). In addition, the corresponding sections of Schedules A, B, C, and D must be completed.

3. Section (c). Section (c) and its subparts place additional conditions upon advisers to 3(c)(1) funds. Specifically, in order to qualify for the exemption from investment adviser registration, the 3(c)(1) fund must be comprised entirely of "qualified clients" under SEC Rule 205-3. This means that individual investors must have either $1 million in investments managed by the adviser or at least $2 million in net worth. The model rule states that the value of the primary residence is not included in calculating net worth. The value of the primary residence will be an estimate of the fair market value made at the time the net worth calculation is conducted. Section (c) also requires the adviser to deliver annual audited financial statements to the investors in the fund, and it requires the adviser to make other specific disclosures to those investors.

4. Section (d). This section simply notes that advisers registered with the SEC are not eligible for the exemption. They are treated the same as other federal covered advisers.

5. Section (e). The rule establishes an exemption from registration for investment advisers. Therefore, this section explains that the investment adviser representatives employed by the advisers would not be required to register.

6. Section (f). Section (f) requires the reports filed by the advisers to be filed with the state through IARD. The rule recognizes that a state may charge a fee for this report, but in most instances a statutory change would likely be required to implement the fee.

7. Section (g). When an exempt reporting adviser loses the exemption by, for instance, adding a client that does not meet the financial requirements under the rule, the adviser would be required to register. This paragraph gives the adviser 90 days in which to complete that registration.

8. Section (h). Section (h) is an optional "grandfathering" provision that would allow advisers to private funds currently exempt under state law to remain exempt provided that the adviser files the reports required under the rule, does not accept new investors that will not meet the financial requirements imposed by the rule, and provides the required disclosures to the investors.

NASAA Recordkeeping Requirements For Investment Advisers
Model Rule 203(a)-2

Adopted 9/3/87, amended 5/3/99, 4/18/04, 9/11/05; Amended 9/11/2011

NOTE: Italicized information is explanatory and not intended for inclusion in the rule text. Language based on the Uniform Securities Act of 1956, as amended.

Rule 203(a)-2 Recordkeeping Requirements [ALTERNATIVE 1]:

(a) Every investment adviser registered or required to be registered under the Act shall make and keep 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 prepared in accordance with generally accepted accounting principles, 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, a cash flow statement and a net worth computation, if applicable, as required by Rule 202(d)-1 of this Act.

7. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to (A) any recommendation made or proposed to be made and any advice given or proposed to be given, (B) any receipt, disbursement or delivery of funds or securities, or (C) the placing or execution of any order to purchase or sell any security, provided, however, (i) that the investment adviser 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 (ii) that if the

investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, 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. (A) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

i. transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

ii. 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. 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 advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) For purposes of this subdivision (12) the following definitions will apply. The term "advisory 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 who, in connection with his 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.

"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.

(C) An investment adviser shall not be deemed to have violated the provisions of this subdivision (12) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. (A)Notwithstanding the provisions of subdivision (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 advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except

i. transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

ii. 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. 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 advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(B) 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

i. its total sales and revenues, and

ii. its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this subdivision (13) the following definitions will apply. The term "advisory 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 recommendation shall be made, or whose functions or duties relate to the determination of 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 such the recommendations or of the information concerning 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.

"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 percent of the voting securities of a company shall be presumed to control such company.

(D) An investment adviser shall not be deemed to have violated the provisions of this subdivision (13) because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that it instituted adequate procedures and used 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 Rule 203(b)1 of this Act, 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

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

(B) 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,

(C) a copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

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); provided, however, 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 subdivision (a)(12)(A) of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

22. Where the adviser inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or has forwarded third party checks within 24 hours the adviser will be considered as not having custody but shall keep the following records relating to the inadvertent custody:

A ledger or other listing of all securities or funds held or obtained, including the following information:

(A) Issuer;

(B) Type of security and series;

(C) Date of issue;

(D) For debt instruments, the denomination, interest rate and maturity date;

(E) Certificate number, including alphabetical prefix or suffix;

(F) Name in which registered;

(G) Date given to the adviser;

(H) Date sent to client or sender;

(I) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(J) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

23. If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under NASAA Model Rule 102(e)((1)-1(b)(2), the adviser shall keep the following records;

(A) A record showing the issuer or current transfer agent's name address, phone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

(B) A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) 1. If an investment adviser has custody, as that term is defined in NASAA Model Rule 102(e)(1)-1(d)(2), of the NASAA Custody Rules, the records required to be made and kept under paragraph (a) above shall include:

(A) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(B) 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.

(C) 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.

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

(E) 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.

(F) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the adviser also generates a statement that is delivered to the client, the adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

(G) If applicable to the adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(H) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(I) If applicable, evidence of the client's designation of an independent representative.

2. If an investment adviser has custody because it advises a pooled investment vehicle, as defined in Rule 102(e)(1)-1(d)(2)(A)(iii), the adviser shall also keep the following records:

(A) True, accurate and current account statements;

(B) Where the adviser complies with Rule 102(e)(1)-1(b)(4) the records required to be made and kept shall include:

i. the date(s) of the audit;

ii. a copy of the audited financial statements; and

iii. evidence of the mailing of the audited financial to all limited partners, members or other beneficial owners within 120 days of the end of its fiscal year.

(C) Where the adviser complies with rule 102(e)(1)-1(a)(5) the records required to be made and kept shall include:

i. A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent third party.

ii. Copies of all invoices and receipts showing approval by the independent party for payment through the qualified custodian.

(c) Every investment adviser subject to subsection (a) of this Rule who 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) Any books or records required by this Rule 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.

(c) Every investment adviser subject to subsection (a) of this rule shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of paragraph (a) to (c)(1), inclusive, of this Rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this Rule), 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 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 the provisions of paragraphs (a)(11) and (a)(16) of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an 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 the provisions of paragraphs (a)(17)-(22), inclusive, of this Rule 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 such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this Rule, 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: (A) records required to be preserved under paragraphs (a)(3),(a)(7)-(10), (a)(14)-(15), (a)(17)-(19), (b) and (c) inclusive, of this Rule, and (B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule 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. The records will be maintained for the period described in subdivision (e) of this Rule.

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

(g) 1. Pursuant to Rule 203(a)2 (e) the records required to be maintained and preserved may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(A) Paper or hard copy form, as those records are kept in their original form; or

(B) Micrographic media, including microfilm, microfiche, or any similar medium; or

(C) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

2. The investment adviser must:

(A) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(B) Provide promptly any of the following that the [Administrator] (by its examiners or other representatives) may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;
(ii) A legible, true, and complete printout of the record; and
(iii) Means to access, view, and print the records; and

(C) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

3. In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(A) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(B) To limit access to the records to properly authorized personnel and the [Administrator] (including its examiners and other representatives); and

(C) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(h) For purposes of this Rule, "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.

(i) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 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 Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

(j) Every investment adviser registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's recordkeeping requirements.

Rule 203(a)-2 Recordkeeping Requirements [ALTERNATIVE 2] *(Language for states which incorporate by reference Rule 204-2 of the Investment Advisers Act of 1940)*

(a) *[Every investment adviser registered or required to be registered under this Act shall make and keep true, accurate and current the following books, ledgers and records:]*

13. For investment advisers who have custody, as that term is defined in Rule 102 (e) (1) -1 (d) (2), of client funds or securities, all records and evidence of compliance required by Rule 206(4)-2 under the Investment Advisers Act of 1940.

(b) Every investment adviser subject to subsection (a) of this rule shall preserve for the period described in subdivision (e) of this Rule the following records in the manner prescribed:

1. Books and records required to be made under the provisions of paragraph (a)(1) of this Rule 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 such record, the first two years in the principal office of the investment adviser.

2. Books and records required to be made under the provisions of paragraphs (a)(2)-(a)(13), inclusive, of this Rule 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 such record, the first two

years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

3. Notwithstanding other record preservation requirements of this Rule, 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:

(A) records required to be preserved under

i. paragraphs (a)(3), (a)(7)-(10), (a)(14)-(15), (b) and (c) inclusive, of SEC Rule 204-2 of the Investment Advisers Act of 1940 (17 C.F.R. 275.204-2 (1996)),

ii. paragraphs (a)(9)-(11) of this Rule; and

(B) the records or copies required under the provision of paragraphs (a)(11) and (a)(16) of this Rule 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.

(c) To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules of the Investment Advisers Act of 1940, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the [Administrator] for violation of this Rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(d) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of this section, provided the investment adviser is licensed in such state and is in compliance with the state's recordkeeping requirements.

pennsylvania
DEPARTMENT OF BANKING
AND SECURITIES

MEMO

DATE: June 9, 2016

TO: Independent Regulatory Review Commission

FROM: Paul H. Wentzel, Jr.
Senior Legislative Director

RE: Proposed Regulation – Securities Regulation

Attached please find the Proposed Regulation Packet for the Department of Banking and Securities' Securities Regulation #3-54.

The Packet includes the:

1. Legislative Reference Bureau Face Sheet
2. Preamble
3. Annex A – Proposed Regulation
4. Regulatory Analysis Form

Secretary Wiessmann is available to discuss this proposed regulation with you and your staff at your convenience.

Attachments

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 3-54

SUBJECT: SECURITIES REGULATION OMNIBUS AMENDMENTS

AGENCY: DEPARTMENT OF BANKING AND SECURITIES

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON COMMERCE
6/9/16	Jill Beatty	MAJORITY CHAIR Honorable Adam Harris
6/9/16		MINORITY CHAIR Honorable W. Curtis Thomas
		SENATE COMMITTEE ON BANKING & INSURANCE
6/9/16	Anne Gelbrich	MAJORITY CHAIR Honorable Donald C. White
6/9/16	Anne Rybarz	MINORITY CHAIR Honorable Sean Wiley
6/9/16	K Cooper	*INDEPENDENT REGULATORY REVIEW COMMISSION*
N/A	N/A	*ATTORNEY GENERAL* (for Final Omitted only)
6/9/16	Corinne Mantz	*LEGISLATIVE REFERENCE BUREAU* (for Proposed only)

June 9, 2016