



# **INVESTMENT ADVISER NOTICE FILING PACKET**

**DEPARTMENT OF BANKING AND SECURITIES**  
**17 N. Second Street**  
**Market Square Plaza, Suite 1300**  
**Harrisburg, PA 17101**  
**Filing Requirements: 7/1/2016**

**PENNSYLVANIA INVESTMENT ADVISER**  
**NOTICE FILING REQUIREMENTS**

**Contact:**  
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**or**  
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**GENERAL INSTRUCTIONS & FILING REQUIREMENTS:**

Any federally covered adviser desiring to make a "NOTICE" filing in Pennsylvania must file the following thru the Investment Adviser Registration Depository ("IARD"):

1. Form ADV, Part 1A & Part 2 with Pennsylvania identified under Item 2B. Information concerning IARD filings is available at [www.iard.com](http://www.iard.com)
2. **\$350.00** Pennsylvania Notice Filing Fee.  
(Checks or money orders should be made payable to "FINRA".)
3. Please note, any Investment Adviser Representatives [as defined in 17 CFR 275.203A-3(a) attached] who will have a "place of business" [as defined in 17 CFR 275.203A-3(b) attached] in Pennsylvania must be **registered** as an "investment adviser representative". In order to be registered, the "investment adviser representative" must meet the examination requirement contained in Regulation 303.032 (see Item D.)

An initial application for registration as an IAR ("RA" designation) must be filed through the IARD.

NOTE: The investment adviser (entity) must be an IARD participant and have an IAR entitlement before the IARD will accept IAR applications.

- A. Once entitled, the firm can now begin the process of filing an electronic Form U-4 (See Chapter Four of the IARD Firm User's Manual.) It should be noted that the firm does not have to complete the entire Form U-4 at one time. The firm can enter and save the data and then return at a later time to complete and electronically submit the Form U-4.
- B. The \$130.00 Pennsylvania IAR filing fee will be deducted from your IARD account. In addition, the IARD will charge each IAR a one-time initial set-up fee of \$10.00 with an annual maintenance fee of \$10.00.
- C. Pennsylvania does not require the filing of fingerprint cards on behalf of the IAR applicant.
- D. The RA must meet one of the following qualifications (see Department Regulation §303.032):

1. Passing results:

- a. Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Department, a passing grade on The Uniform Investment Adviser Law Examination (Series 65), or successor examination.

-OR-

- b. Received, on or after January 1, 2000, and within 2 years immediately prior to the date of filing an application with the Department, a passing grade on the General Securities Representative Examination (Series 7) administered by the FINRA (Financial Industry Regulatory Authority) and the Uniform Combined State Law Examination (Series 66), or successor examinations.

-OR-

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

NOTE: Grandfathering and examination waivers are set forth in Department Regulation §303.032(b) and (c) respectively.

**SUPPLEMENTAL REQUIREMENTS:**

4. When requesting waiver of the Examination Requirements in accordance with Regulation 604.016, the following must be provided:
  - a. A letter requesting waiver of the examination requirements setting forth your basis for the request;
  - b. A detailed biographical sketch which substantiates the individual's previous experience (to include duties, responsibilities and accomplishments) in securities, banking, finance or other related business that forms the basis for your request.
  - c. Verification of the PROFESSIONAL DESIGNATION (if any) awarded to such individual.
5. Registrant must notify the Department in writing within 30 days after the termination of or withdrawal from employment of any "Investment Adviser Representative" furnishing investment advice in Pennsylvania. In accordance with Regulation §305.061(c) notification shall be filed on Form U-5, "Uniform Termination Notice for Securities Industry Registration.

**Enclosures:**

**Pa. Securities Act of 1972**

Section 102(j).	Definition of "Investment adviser"
Section 102(j.1).	Definition of "Investment adviser representative"
Section 301.	Registration requirement
Section 302.	Exemptions
Section 303.	Registration and Notice Filing Procedure.

**64 Pa. Code**

§303.014.	Investment adviser representative registration procedure
§303.015.	Notice filing for Federally-covered advisers.
§303.032.	Examination requirements for investment advisers and investment adviser representatives
§305.019.	Dishonest and unethical practices
§305.061.	Withdrawal of registration or notice filing.
§604.016	Guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser Law Examination (Series 65) and General Securities Representatives Non-Member Examination (Series-2)- 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.

**Code of Federal Regulations**

§275.203A-3	Definitions "Investment adviser representative" and "Place of business"
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**Section 102(j) “Investment adviser”** means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

“Investment adviser” does not include:

(i) A bank;

(ii) A lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;

(iii) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and does not receive special compensation for the investment advice;

(iv) A publisher of any bona fide newspaper, news column, newsletter, news magazine or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client and is of general, regular and paid circulation; and the agents and servants thereof in the performance of their regular duties on behalf of such publication or service;

(v) A person whose advice, analyses or reports relate only to securities exempted under section 202(a);

(vi) A person who has no place of business in this State if his only clients in this State are other investment advisers, federally covered advisers, broker-dealers or institutional investors;

**Section 102(j.1) “Investment adviser representative” means:**

(i) Except as provided in paragraph (iii), with respect to any investment adviser registered or required to be registered under this act, any partner, officer, director or person occupying a similar status or performing similar functions, or other individuals employed by or associated with an investment adviser who performs any of the following:

- (A) Makes any recommendations or otherwise renders advice regarding securities;
- (B) Manages accounts or portfolios of clients;
- (C) Determines which recommendation or advice regarding securities should be given;
- (D) Provides investment advice or holds himself or herself out as providing investment advice;
- (E) Supervises employees who perform any of the foregoing; or
- (F) Receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice.

(ii) With respect to any federally covered adviser, any individual employed by or associated with a federally covered adviser who is an “investment adviser representative” and who has a “place of business” in this State as those terms are defined in the rules and regulations of the Securities and Exchange Commission.

(iii) An investment adviser representative may not include;

- (A) individuals who perform only clerical or ministerial acts;
- (B) an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services; or
- (C) other individuals that the department determines by regulation.

### **Section 301. Registration Requirement.**

Unless exempted under section 302 hereof:

- (a) It 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) It is unlawful for any broker-dealer or issuer to employ an agent to represent him in this State unless the agent is registered under this act. The registration of an agent is not effective during any period when he is not associated with a specified broker-dealer registered under this act or a specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where affiliated organizations are registered broker-dealers, an agent may represent one or more of such organizations. When an agent begins or terminates an affiliation with a broker-dealer or issuer, or engages in activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the department. The department may adopt a temporary registration procedure to permit agents to change employers without suspension of their registrations hereunder.
- (c) It is unlawful for any person to transact business in this State as an investment adviser unless he is so registered or registered as a broker-dealer under this act or unless he is exempted from registration. It is unlawful for any person to transact business in this State as an investment adviser representative unless he is so registered or exempted from registration.
- (c.1) The following apply:
- (1) It is unlawful for any:
    - (i) Person required to be registered as an investment adviser under this act to employ an investment adviser representative unless the investment adviser representative is registered under this act or exempted from registration, provided that the registration of an investment adviser representative is not effective during any period when he is not employed by an investment adviser registered under this act; or
    - (ii) Federally covered adviser to employ, supervise or associate with an investment adviser representative having a place of business in this Commonwealth unless such investment adviser representative is registered under this act or exempted from registration.
  - (2) If a registered investment adviser representative begins or terminates employment with an investment adviser or a federally covered adviser, the investment adviser in the case under paragraph (1)(i) or the investment adviser representative in the case of paragraph (1)(ii) shall promptly notify the department.
  - (3) The department may adopt a temporary registration procedure to permit investment adviser representatives to change employers without suspension of their registrations under this act.
- (d) It is unlawful for any licensed broker-dealer, agent, investment adviser or investment advisor representative to effect a transaction in securities, directly or indirectly, in this State if the registrant is in violation of this act, or any regulation or order promulgated under this act of which he has notice, if such violation (i) is a material violation; (ii) relates to transactions effected in this State; and (iii) has been committed by such registrant, or if the information contained in his application for registration, as of the date of such transaction, is incomplete in any material respect or is false or misleading with respect to any material fact.

(e) Every registration or notice filing expires on December 31 of each year unless renewed. No registration or notice filing is effective after its expiration, unless a renewal application has been timely filed, and expiration of a registration for which no renewal application has been filed is deemed an application for withdrawal under section 305(f).

(f) It is unlawful for any federally covered adviser to conduct advisory business in this State unless such person complies with the provisions of section 303(a)(iii).

## Section 302. Exemptions.

The following persons shall be exempted from the registration provisions of section 301:

(a) A broker-dealer registered under the Securities Exchange Act of 1934, who has not previously had any registration denied or revoked under this act or any predecessor statute, if he has no place of business in this State and, during the preceding 12 months, he does not direct offers to sell or buy into this State in any manner to persons other than broker-dealers, institutional investors or governmental agencies and other instrumentalities designated by regulation of the department, or to more than five other customers in this State, whether or not the offeror or any of the offerees is then present in this State.

(b) An agent in so far as he effects transactions on behalf of a broker-dealer who is exempted by the provisions of subsection (a).

(c) A person who represents an issuer in effecting transactions in securities registered under section 205 or 206 who:

- (1) Is a bona fide officer, director, partner or employe of the issuer or an individual occupying similar status or performing similar functions; and
- (2) Does not receive any compensation, directly or indirectly, for effecting the transactions.

(d) An investment adviser who does not have a place of business in this State that is registered or exempt from registration under the securities act of the state in which the person has his principal place of business and during the preceding twelve-month period has had not more than five clients who are residents of this State exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors.

(d.1) An investment adviser representative who is employed by or associated with an investment adviser insofar as he transacts business in this State on behalf of an investment adviser who is exempted by the provisions of subsection (d).

(d.2) An investment adviser representative who has a place of business in this State and is employed by or associated with a federally covered adviser and the federally covered adviser meets any of the criteria described in section 303(a)(iii)(A), (B) or (C).

(e) Any person who represents an issuer in effecting transactions in:

- (1) Securities that are exempted by section 202(e), (f) or (g);
- (2) Securities involved in a transaction exempted by section 203(c), (g), (k), (l) or (m); or
- (3) Securities which are covered securities under section 18(b)(1) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r(b)(1)).

(e.1) A person that comes within the exclusion described in section 4(b)(1) and (2) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. §77d(b)).

(e.2) A funding portal, as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. §78c(a)(80)), that is registered as a funding portal with the Securities and Exchange Commission and has its principal place of business, as such term is defined by rules of the Securities and Exchange Commission, in this State. The funding portal, however, shall be subject to the provisions of sections 304(d) and 510(f).

(f) The department may by such regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of section 301 any class of persons specified in such regulations.

### Section 303. Registration and Notice Filing Procedure.

(a) (i) Except as provided by clause (iii), any broker-dealer, agent, investment adviser or investment adviser representative may obtain an initial or renewal license by filing an application with the department. The application shall contain such information, and in such detail, as the department by rule requires concerning the applicant's form and place of organization, proposed method of doing business, and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director, or affiliate, or a person occupying a similar status or performing similar functions any injunction or administrative order or conviction referred to in section 305(a)(ii), information about affiliates or predecessors of the applicant, and any other matters which the department determines are relevant to the application. If a broker-dealer, agent, investment adviser or investment adviser representative seeks to obtain an initial or renewal license and, in connection therewith, requests a waiver of any requirement imposed under this section or section 304 or any regulation promulgated thereunder, the department, in granting the waiver may impose conditions on or limit the scope of the initial or renewal license.

(ii) If no denial order is in effect and no proceeding is pending under section 305, the registration becomes effective on the forty-fifth day after the filing of the application therefor or any material amendment thereto, or on such earlier date as the department may order. The department is directed to cooperate with other securities administrators and regulatory authorities to simplify and coordinate registration, application and renewal procedures.

(iii) A federally covered adviser shall file with the department, prior to acting as a federally covered adviser in this State, a copy of such documents as have been filed with the Securities and Exchange Commission which the department by regulation may require, together with the fee specified in section 602(d.1). This requirement shall not apply to a federally covered adviser that:

(A) Has a place of business in this State and whose only clients in this State are investment advisers, federally covered advisers, broker-dealers or institutional investors;

(B) Does not have a place of business in this State and during the preceding twelve-month period has had not more than five clients who are residents of this State, exclusive of other investment advisers, federally covered advisers, broker-dealers or institutional investors; or

(C) Meets the definition of any person described in section 102(j)(i) through (viii), (x) or (xi), except a federally covered adviser that is also a broker-dealer registered under section 301, that has an individual employed by or associated with such person who meets the definition of investment adviser representative in section 102 (j.1)(ii).

(b) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the registrant's term. A federally covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the notice period. There shall be no filing fee.

(c) The department may by regulation prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent a broker-dealer or an investment adviser, and the department may by order require an examination of a licensed broker-dealer, agent, investment adviser or investment adviser representative for due cause.

(d) The department may by regulation require a minimum capital for registered broker-dealers subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) and establish minimum financial requirements for investment advisers subject to the limitations of section 222 of the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-18a). The department may classify broker-dealers for purposes of such requirements and may establish different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over same and those investment advisers who do not.

(e) The department may by regulation require surety bonds to be posted by any broker-dealer, investment adviser, and any issuer who employs agents subject to registration under section 301 in connection with effecting transactions in any security not exempted by section 202(e), (f) or (g) or effecting securities transactions not exempted by section 203(c), (g), (k), (l) or (m) in any amount the department may prescribe, subject to the limitations of section 15 of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o) for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers and may determine their conditions. All bonds required shall provide for suit thereon by injured customers, clients or purchasers, but no bond may be required of any registered broker-dealer or investment adviser whose net capital or minimum financial requirements exceeds the amount prescribed by regulation for this purpose. Such bond, unless canceled as provided herein, shall be in effect during the entire period that a registration is in effect. Every bond shall contain a provision that such bond is not cancellable, except on thirty-days prior written notice to the person by whom the bond was posted and the department, provided that such cancellation shall not affect any liability incurred or accrued prior to the effective date of such cancellation.

**§ 303.014. Investment adviser representative registration procedures.**

(a) An application 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 Uniform Application for Securities Industry Registration or Transfer Form (Form U-4), or a successor form. The investment adviser representative and the investment adviser or Federally covered adviser shall complete and file with the Commission or with an investment adviser registration depository designated by order of the Commission one copy of Form U-4 and exhibits thereto accompanied by the filing fee required by section 602(d.1) of the act (70 P. S. § 1-602(d.1)), the compliance assessment required by section 602.1(a)(1) of the act (70 P. S. § 1-602.1(a)(1)) and the results evidencing passage of the examinations required by § 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 an amendment to Form U-4 within 30 days of the occurrence of the event which requires the filing of the amendment.

**Authority**

The provisions of this § 303.014 issued under section 303(a)(i) of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-303(a)(i)); amended under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(a)—(e) and 1-609(a)).

**Source**

The provisions of this § 303.014 adopted January 17, 1992, effective January 18, 1992, 22 Pa.B. 281; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 303.014, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (310488).

**§ 303.015. Notice filing for Federally-covered advisers.**

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

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

**Authority**

The provisions of this § 303.015 issued under sections 303(a)—(e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-303(a)—(e) and 1-609(a)).

**§ 303.032. Examination requirements for investment advisers and investment adviser representatives.**

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

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

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

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

(b) *Grandfathering.*

(1) Compliance with subsection (a) is waived if the individual meets the following qualifications:

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

(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.

(2) An individual need not comply with subsection (a) if the individual meets the following qualifications:

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

(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.

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

(1) The individual meets the following qualifications:

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

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

(A) Certified Financial Planner (CFP) awarded by the 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 Specialist (PFS) awarded by the American Institute of Certified Public Accountants.

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

(2) The individual is licensed as a certified public accountant, is currently in good standing and has no disciplinary history that requires an affirmative response to Items 14A-E or Item 14H of Form U-4 or successor items thereto, and has notified the Commission 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 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 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 compliance with subsection (a).

### **Authority**

The provisions of this § 303.032 amended under sections 303(a)—(e), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(a)—(e), 1-304(b) and 1-609(a)).

### **Source**

The provisions of this § 303.032 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; corrected July 3, 1987, 17 Pa.B. 2822; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 285; amended September 8, 1995, effective September 9, 1995, 25 Pa. B. 3722; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended April 15, 2005, effective April 16, 2005, 35 Pa.B. 2307; transferred and renumbered from 64 Pa. Code § 303.032, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310491) to (310492) and (317623).

**§ 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 act primarily for the benefit of its customers. 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 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, for purposes of section 305(a)(ix) of the act, will consider the actions in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer. The conduct described in paragraphs (1)—(3) is not exclusive. Engaging in other conduct inconsistent with the standards in subsection (a), such as forgery, embezzlement, 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 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 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 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 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 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 to furnish a customer, upon 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 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 paragraph (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 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 employee of the investment adviser or misrepresenting the nature of the advisory services being offered or fees to be charged for the service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

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

(x) Charging a client an unreasonable advisory fee.

(xi) Failing to disclose to clients in writing before advice is rendered a material conflict of interest relating to the investment adviser, the investment adviser representative or an employee of the

investment adviser which could reasonably be expected to impair the rendering of unbiased and objective advice including:

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

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

(xii) Guaranteeing a client that a specific result will be achieved—gain or no loss—with advice which will be rendered.

(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 of a client unless required by 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 (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, 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 section 401(a) or (c) or 404 of the act (70 P. S. § 1-401(a) or (c) or 1-404).

#### **Authority**

The provisions of this § 305.019 issued under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-305(a) and (f) and 1-609(a)).

#### **Source**

The provisions of this § 305.019 adopted March 9, 1990, effective March 10, 1990, 20 Pa.B. 1408; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 292; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 305.019, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (297508) to (297509), (317627) to (317628), (268851) to (268852) and (317629) to (317630).

### **§ 305.061. Withdrawal of registration or notice filing.**

(a) The following applies to investment advisers that want to withdraw from registration as an investment adviser registered under section 301 of the act (70 P. S. § 1-301):

(1) For an investment adviser that seeks to withdraw from registration under section 301 of the act because the investment adviser has become a Federally-covered adviser subject to exclusive registration with the 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 or with an investment adviser registration depository designated by order of the Commission.

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

(b) An application to withdraw from registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form.

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

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

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

#### **Authority**

The provisions of this § 305.061 issued under the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-101—1-704); amended under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-305(a) and (f) and 1-609(a)).

#### **Source**

The provisions of this § 305.061 adopted July 26, 1974, effective July 27, 1974, 4 Pa.B. 1533; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended May 27, 1977, effective May 28, 1977, 7 Pa.B. 1438; amended through June 28, 1985, effective June 29, 1985, 15 Pa.B. 2394; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 293; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 305.061,

**§ 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) An 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.

#### **Authority**

The provisions of this § 604.016 amended under sections 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-203(d), (o) and (p), 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); and the Takeover Disclosure Law (70 P. S. § 74).

#### **Source**

The provisions of this § 604.016 adopted January 17, 1992, effective January 18, 1992, 22 Pa.B. 301; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 604.016, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (324461) to (324462).

**§ 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 provides 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 this 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 Communication 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 this 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 relieves 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 authorizes 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.

#### **Authority**

The provisions of this § 604.020 amended under sections 203(d), (o) and (p), 205, 206, 301, 303, 504, 603(a) and 609 of the Pennsylvania Securities Act of 1972 (70 P. S. § 1-203(d), (o) and (p), 1-205, 1-206, 1-301, 1-303, 1-504, 1-603(a) and 1-609); and the Takeover Disclosure Law (70 P. S. § 74).

§ 275.203A-3 Definitions (SEC Regulations).

For purposes of section 203A of the Act (15 U.S.C. 80b-3a) and the rules thereunder:

(a)(1) *Investment adviser representative*. “Investment adviser representative” of an investment adviser means a supervised person of the investment adviser:

(i) Who has more than five clients who are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section); and

(ii) More than ten percent of whose clients are natural persons (other than excepted persons described in paragraph (a)(3)(i) of this section).

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) “Excepted person” means a natural person who is a qualified client as described in § 275.205-3(d)(1).

(ii) “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.

(4) Supervised persons may rely on the definition of “client” in § 275.202(a)(30)-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.

(b) *Place of business*. “Place of business” of an investment adviser representative means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) 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) *Principal office and place of business*. “Principal office and place of business” of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

(d) *Assets under management.* Determine “assets under management” by calculating the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services as reported on the investment adviser's Form ADV (17 CFR 279.1).

(e) *State securities authority.* “State securities authority” means the securities commissioner or commission (or any agency, office or officer performing like functions) of any State.

[62 FR 28134, May 22, 1997, as amended at 63 FR 39715, July 24, 1998; 69 FR 72088, Dec. 10, 2004; 76 FR 43012, July 19, 2011]