pennsylvania
DEPARTMENT OF BANKING
AND SECURITIES

INVESTMENT ADVISER REGISTRATION PACKET

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

PENNSYLVANIA INVESTMENT ADVISER REGISTRATION REQUIREMENTS

Contact:

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GENERAL INSTRUCTIONS & FILING REQUIREMENTS:

An initial application for registration as an investment adviser in Pennsylvania must be filed through the Investment Adviser Registration Depository (IARD). If the applicant is not already a participant in the IARD, participation must be initiated before applying for Pennsylvania registration. For detailed information, forms and instructions on IARD participation see www.iard.com. If already an IARD participant, skip to step 3.

1. The first step in getting started on the IARD is setting up an IARD User Account. This is accomplished via the "Entitlement" process see www.iard.com. Applicant must file (by USPS regular mail or overnight service) an "Entitlement Package" (which consists of one form) with the IARD Entitlement Group at FINRA. Mail completed forms as follows:

2.

USPS Regular Mail	**Overnight Service**
FINRA Entitlement Group	FINRA Entitlement Group
P.O. Box 9495	9509 Key West Avenue
Gaithersburg, MD 20898-9495	Rockville, MD 20850

Once IARD receives your Entitlement Package, they will set-up the IARD User Account, assign a Firm CRD Number, create an IARD billing account and send the investment adviser a confirmation email. The "Entitlement Package" is available for download at both www.iard.com and www.dobs.pa.gov

NOTE: Please note, financial remittances to the IARD are not submitted to the regular IARD addresses. All checks and payments to your IARD account should be mailed as follows:

Regular Mail	**Courier or Overnight**
FINRA	FINRA
P.O. Box 7777-W9995	Attn: 9995
Philadelphia, PA 19175-9995	500 Ross Street 154-0455
	Pittsburgh, PA 15262

3. Upon receipt of the confirmation email, details described at www.iard.com it will be necessary to log-in to the IARD to activate and set-up your firm IARD account.

4. File FORM ADV, Parts 1A, 1B, and appropriate schedules electronically through the IARD. "PA" must be identified under Part 1B, Item 1.

   FORM ADV, Parts 2.A. and 2.B. must be uploaded as an attachment to the firm's IARD record in a searchable PDF format.

5. The $375.00 Pennsylvania Investment Adviser Filing Fee will be deducted from your IARD account.

When applying for registration in Pennsylvania through the IARD, the following additional items must be filed directly with this agency. These items should be sent to:

Department of Banking and Securities
ATTN: Securities Licensing Division
17 N. Second Street
Market Square Plaza, Suite 1300
Harrisburg, PA 17101

6. For an Applicant that maintains discretionary authority over client funds or securities, has custody over client funds or securities, or that requires payment of advisory fees 6 months or more in advance and in excess of $1,200 per client, provide the following:

   A Statement of Financial Condition, which meets the requirements of the Department's Regulation §303.042 (copy enclosed).

7. Reference Item 8, Form ADV-Part 1A. If Applicant has provided an affirmative response to Item 8H, provide specimen copies of the solicitor's agreement and disclosure statement.

8. Provide specimen copies of all forms of contracts and/or agreements to be used by the Applicant for its investment advisory clients. (*See Section 405, Pennsylvania Securities Act of 1972* ("1972 Act") and Regulation 305.019(c)(3)(xvi), attached).

9. It is unlawful for any investment adviser to employ an "Investment Adviser Representative" (IAR) to represent him in Pennsylvania unless registered. Failure to properly register an IAR may result in administrative action by the Department and civil liability for unregistered investment advisory activity. See Section 102(j.1) of the 1972 Act for the definition of Investment Adviser Representative.

   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 IARD 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 date and then return at a later time to complete and electronically submit the Form U4.

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. See Item 1. for instructions on submitting checks.

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 FINRA 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 or investment adviser representative in any state other than this Department for a period exceeding 2 years immediately prior to the date of filing an application with the Commission.

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

SUPPLEMENTAL REQUIREMENTS:

10. In the event your filing contains deficiencies, you will receive a letter identifying such deficiencies with a request that appropriate information be filed with this agency within 60 days from the date of the letter.

11. FORM ADV-Parts 1A; 1B; 2A or 2B amendments must be filed electronically through the IARD, for any material change in its application no later than 30 days after the occurrence of the event.

12. Regulation §303.042(b) requires **immediate notification** if net worth falls below minimum requirements.

13. When requesting waiver of the examination requirements in accordance with Department Regulation §604.016, the following must be provided:

    a. A letter requesting waiver of the examination requirement(s) 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.

14. 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 Department 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 405.	Contract Requirements

64 Pa. Code

§303.012.	Investment adviser registration procedure
§303.014.	Investment adviser representative registration procedures
§303.021.	Registration and notice filing procedures for successors to a broker dealer investment adviser or Federally-covered adviser
§303.032.	Examination requirements for investment advisers and investment adviser representatives
§303.042.	Investment adviser capital requirements
§303.051.	Surety bonds
§304.012.	Investment adviser required records
§304.022.	Investment adviser required financial reports
§304.052.	Investment adviser compensation
§305.011.	Supervision of agents, investment adviser representatives and employees
§305.019.	Dishonest and unethical practices
§305.061.	Withdrawal of registration or notice filing.
§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.
§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.

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 employes 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 405. Contract Requirements.

It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract if such contract:

(1) 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;

(2) fails to provide in writing that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

(3) fails to provide in writing that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date, or in any other manner permitted by the Investment Advisers Act of 1940 (54 Stat. 847, 15 U.S.C. § 80b-1 et seq.), and the rules and regulations promulgated thereunder or any contract for the rendering of investment advisory services to an institutional investor. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

§ 303.012. Investment adviser registration procedure.

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

(b) Except as set forth in subsection (f), the following statements of financial condition shall accompany an application for initial registration as an investment adviser:

(1) 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 a standard audit report containing an unqualified opinion of an independent certified public accountant. The accountant shall submit, as a supplementary opinion, comments based upon the audit as to material inadequacies found to exist in the accounting system, the internal accounting controls and the procedures for safeguarding securities and funds and shall indicate corrective action taken or proposed. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet prepared in accordance with generally accepted accounting principles as of a date within 45 days of the date of filing. This balance sheet may be unaudited and may be prepared by management of the applicant.

(2) An applicant that has discretionary authority over client funds or securities, but not custody, shall file a balance sheet which need not be audited but shall be prepared in accordance with generally accepted accounting principles. The balance sheet required by this paragraph shall be as of the end of the applicant's most recent fiscal year. If that balance sheet is as of a date more than 45 days prior to the date of filing the application, the applicant also shall file a subsequent balance sheet, which must be prepared in accordance with generally accepted accounting principles as of a date within 45 days of filing the application. Each balance sheet required by this paragraph may be unaudited and prepared by management of the applicant. Each balance sheet required by this paragraph also shall contain a representation by the applicant that the balance sheet is true and accurate.

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

(c) As part of the requirements relating to the statements of financial condition set forth in subsection (b), the Commission 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 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.

(d) 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 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) An applicant that maintains its principal place of business in a state other than this Commonwealth need not comply with subsection (b) 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.

Authority

The provisions of this § 303.012 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 § 303.012 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended December 27, 1985, effective December 28, 1985, 15 Pa.B. 4585; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 278; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 653; 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 § 303.012, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310485) to (310487).

Cross References

This section cited in 10 Pa. Code § 603.031 (relating to public inspection of records).

§ 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).

§ 303.021. 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:

(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 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.

(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 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.

(b) The following shall apply to investment advisers:

(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 solely on a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser may file an initial application for registration by amending Form ADV of the predecessor and, 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 reasons other than a change in the predecessor's date or state of incorporation, form of organization or composition of a partnership, the successor investment adviser shall file Form ADV with the Commission. Upon registration, the successor investment adviser, 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 investment adviser or of another Federally-covered adviser (successor Federally-covered adviser), the successor Federally-covered adviser shall file with the Commission either Form ADV or an amendment to Form ADV as required under SEC Release No. IA-1357 (December 28, 1992) and, under section 303(b) of the act, shall succeed to the unexpired portion of the predecessor's notice period.

Authority

The provisions of this § 303.021 issued under sections 303(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(b) and 1-609(a)); 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 § 303.021 adopted January 17, 1992, effective January 18, 1992, 22 Pa.B. 283; amended September 25, 1992, effective September 26, 1992, 22 Pa.B. 4782; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 303.021, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310489) to (310490).

§ 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).

Cross References

This section cited in 10 Pa. Code § 303.014 (relating to associated person registration procedures); 10 Pa. Code § 604.013 (relating to interim guidelines for the registration of associated persons—statement of policy); 10 Pa. Code § 604.014 (relating to interim guidelines for the qualification and examination of associated persons—statement of policy); 10 Pa. Code § 604.016 (relating to guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Advisor Law

Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2)—statement of policy); and 10 Pa. Code § 606.041 (relating to delegation and substitution).

§ 303.042. Investment adviser capital requirements.

(a) Every investment adviser registered under section 301 of the act (70 P. S. § 1-301) shall maintain at all times the following net worth requirements:

(1) The following applies when an investment adviser has its principal place of business in a state other than this Commonwealth.

(i) If the investment adviser currently is licensed as an investment adviser in the state in which it maintains its principal place of business and is in compliance with that 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 this section shall be the same as if the investment adviser had its principal place of business in this Commonwealth.

(2) Except as provided in subsection (e), an investment adviser that has its principal place of business in this Commonwealth and also is registered as a broker-dealer under section 301 of the act shall maintain at all times a minimum net capital of $25,000.

(3) An investment adviser 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 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 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.

(ii) 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 if:

(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 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 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), 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) 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.

(4) An investment adviser that has its principal place of business in this Commonwealth and has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of $10,000. An investment adviser 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:

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

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

(iii) A third-party trading agreement is executed between the investment adviser, the client and the broker-dealer which specifically limits the investment adviser's authority in the client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(5) An investment adviser that has its principal place of business in this Commonwealth and accepts prepayment of advisory fees of more than 6 months in advance and more than $1,200 per client shall maintain at all times a positive net worth.

(b) As condition of the right to continue to transact business in this Commonwealth, an investment adviser registered under the act shall notify, 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. Within 24 hours after transmitting the notice, the investment adviser shall file a report of its financial condition including the following:

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

(2) A computation of net worth.

(3) An analysis of clients' securities and funds which are not segregated.

(4) A computation of the aggregate amount of clients' ledger debit balances.

(5) A computation of the aggregate amount of clients' ledger credit balances.

(6) A statement 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 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)).

(d) For investment advisers registered or required to be registered under the act, the Commission may require that a current appraisal be submitted to establish the worth of an asset being calculated under the net worth formulation.

(e) 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.

Authority

The provisions of this § 303.042 issued under the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-101—1-704); 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 § 303.042 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended June 18, 1982, effective June 19, 1982, 12 Pa.B. 1873; amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2604; 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 § 303.042, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310495) to (310498) and (324447).

Cross References

This section cited in 10 Pa. Code § 303.051 (relating to surety bonds); and 10 Pa. Code § 304.012 (relating to investment adviser required records).

§ 303.051. Surety bonds.

(a) The following applies with respect to the filing of a surety bond with the Commission by an investment adviser:

(1) An investment adviser that has its principal place of business in this Commonwealth and does not meet the minimum net worth requirements of § 303.042 (relating to investment adviser capital requirements) may, by order of the Commission, have and maintain a surety bond in the amount of the net worth deficiency rounded up to the nearest $5,000. The surety bond shall be filed with the Commission on Uniform Surety Bond Form (Form U-SB) or successor form thereto; shall be subject to the claims of all clients of the investment adviser regardless of the client's state of residence; and shall be issued by a person licensed to issue surety bonds in this Commonwealth.

(2) An investment adviser that has its principal place of business in a state other than this Commonwealth shall comply with paragraph (1) unless the investment adviser meets the following qualifications:

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

(ii) Is in compliance with the applicable net worth and bonding requirements of the state in which it maintains its principal place of business.

(3) For purposes of this section, the term ''principal place of business'' has the same meaning as set forth in 17 CFR 275.203A-3(c) (relating to definitions) promulgated under the Investment Advisers Act of 1940 (15 U.S.C.A. § § 80b-1—80b-21).

(b) A broker-dealer registered under the act but not registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C.A. § § 78a—78kk) may, by order of the Commission, be permitted to have and maintain for the registration period a surety bond in the amount of the 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, a broker-dealer or investment adviser shall provide evidence of the existence of a surety bond.

Authority

The provisions of this § 303.051 issued under act of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-101—1-704); 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, 1-303, 1-504, 1-603(a) and 1-609); and the Takeover Disclosure Law (70 P. S § 74).

Source

The provisions of this § 303.051 amended December 17, 1982, effective December 18, 1982, 12 Pa.B. 4288; amended April 28, 1989, effective April 29, 1989, 19 Pa.B. 1945; amended September 1, 2000,

effective September 2, 2000, 30 Pa.B. 4551; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 303.051, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (324447) to (324448).

Cross References

This section cited in 10 Pa. Code § 303.041 (relating to broker-dealer capital requirements); and 10 Pa. Code § 606.041 (relating to delegation and substitution).

§ 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 order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

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

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

(6) All trial balances, financial statements, net worth computation, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this subsection, ''financial statements'' shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement and a cash flow statement. The net worth computation means the net worth required by § 303.042 (relating to investment adviser capital requirements), if any.

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

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

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

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

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

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

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

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

(12) Records of transactions as follows:

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

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

(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 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) 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), when 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 account over which neither the investment adviser nor any investment adviser representative of the investment adviser has any 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) 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 written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser under § 404.011 (relating to investment adviser brochure disclosure), and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

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

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

(17) A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employe, 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 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 filed with or received from any state or Federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in paragraph (12), which file should contain, but is not limited to, all applications, amendments, renewal filings and correspondence.

(b) If an investment adviser subject to subsection (a) has custody or possession of securities or funds of any client, the records required to be made and kept by subsection (a) also shall include:

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

(2) A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

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

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

(c) Every investment adviser subject to subsection (a) that renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

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

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

(d) Books or records required by this section may be maintained by the investment adviser so 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) shall preserve the following records in the manner prescribed:

(1) The 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 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 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 subsections (a)(3), (7)—(10), (14)—(15), (17)—(19), (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' physical address, mailing address, electronic mailing address or telephone number.

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

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

(1) Records required to be maintained and preserved under this section may be 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. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

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

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

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

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

(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.

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

(j) The requirements of this section 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.

Authority

The provisions of this § 304.012 amended under sections 304(a), (b) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-304(a), (b) and (e) and 1-609(a)).

Source

The provisions of this § 304.012 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 289; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 304.012, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (286718) to (286720), (317625) to (317626), (286723) to (286724) and (315087) to (315089).

Notes of Decisions

Sufficiency

Although the investigator testified that she believed the licensee had not kept required monthly trial balances, she failed to provide the requisite specific, factual basis for her testimony. Therefore, theevidence did not support the Commission's finding of a violation. *Kalin v. Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002).

Where the investigator testified that the licensee failed to maintain required records, and the licensee so admitted, but that he was unaware of his duty to do so, the Commission's finding of violation was supported by substantial evidence. *Kalin v. Securities Commission*, 805 A.2d 1258 (Pa. Cmwlth. 2002).

Cross References

This section cited in 10 Pa. Code § 606.041 (relating to delegation and substitution).

§ 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).

Authority

The provisions of this § 304.022 amended under sections 303(a) and (c), 304(b) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(a) and (c), 1-304(a), (b) and (e) and 1-609(a)).

Source

The provisions of this § 304.022 amended June 26, 1987, effective June 27, 1987, 17 Pa.B. 2606; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 291; 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 § 304.022, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (315090) to (315091).

Cross References

This section cited in 10 Pa. Code § 603.031 (relating to public inspection records).

§ 304.052. Investment adviser compensation.

No investment adviser registered under the act may charge or receive commissions or other compensation in connection with the giving of investment advice unless the compensation is fair and reasonable and is determined on an equitable basis.

Authority

The provisions of this § 304.052 amended under sections 304(a), (b) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-304(a), (b) and (e) and 1-609(a)).

Source

The provisions of this § 304.052 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 304.052, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (315092) to (315093).

§ 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.

(1) Each broker-dealer and investment adviser, in exercising diligent supervision, shall establish and maintain written procedures and a system for applying and enforcing those written procedures which are reasonably designed to achieve compliance with the act and this title and to detect and prevent any violations of statutes, rules, regulations or orders described in section 305(a)(v) and (ix) of the act (70 P. S. § 1-305(a)(v) and (ix)), the Conduct Rules of the National Association of Securities Dealers, Inc., or any applicable fair practice or ethical standard promulgated by the 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 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 broker-dealer and investment adviser shall implement written procedures, a copy of which shall be kept in each location at which the broker-dealer or investment adviser conducts business, and shall establish, maintain and enforce those written procedures designed to achieve compliance with the act and this title and to detect and prevent violations described in subsection (a). These written procedures, at a minimum, shall address:

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

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

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

(d) Records required to be maintained under this section shall be maintained for 5 years, the first 2 years being in an easily accessible place. The retention and preservation of records may be on microfilm, computer disks or tapes or other electronic medium if adequate facilities are maintained for examination of facsimiles.

(e) To the extent that this section imposes any 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.

Authority

The provisions of this § 305.011 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 § 305.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; amended July 11, 2003, effective July 12, 2003, 33 Pa.B. 3365; transferred and renumbered from 64 Pa. Code § 305.011, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (297505) to (297507).

§ 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, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (317630) to (317631).

§ 404.011. Investment adviser brochure disclosure.

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

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

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

(1) A current firm brochure.

(2) 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 this section shall be delivered in compliance with one of the following:

(1) Not less than 48 hours prior to 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 the contract without penalty within 5 business days after entering into the contract.

(e) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplements required by subsection (b). If a client accepts a written offer, the investment adviser shall send to that client 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 substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if the information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

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

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

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

Authority

The provisions of this § 404.011 issued under sections 404(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-404(a) and 1-609(a)).

Source

The provisions of this § 404.011 adopted September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 404.011, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (268861) to (268862) and (317639).

Cross References

This section cited in 10 Pa. Code § 304.012 (relating to investment adviser required records); and 10 Pa. Code § 404.012 (relating to cash payment for client solicitation).

§ 404.012. Cash payment for client solicitation.

(a) Failure of an investment adviser to comply with the requirements of this section concerning cash payments for client solicitation 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, directly or indirectly, to a solicitor with respect to solicitation activities unless:

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

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

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

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

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

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

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

(A) The investment adviser's written disclosure statement required by § 404.011 (relating to investment adviser brochure 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 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 which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

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

(c) For purposes of subsection (b)(4), this section does not apply to an investment adviser when the cash fee is paid to a solicitor as follows:

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

(2) 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 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.

Authority

The provisions of this § 404.012 issued under sections 404(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-404(a) and 1-609(a)).

Source

The provisions of this § 404.012 adopted September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 404.012, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (317639) to (317640) and (310507).

Cross References

This section cited in 10 Pa. Code § 304.012 (relating to investment adviser required records).

§ 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 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, in one or more bank accounts containing only clients funds.

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

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

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

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

(e) For the purpose of this section, the following terms 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.

Authority

The provisions of this § 404.013 issued under sections 404(a) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-404(a) and 1-609(a)).

Source

The provisions of this § 404.013 adopted 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 § 404.013, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310507) to (310508).

Cross References

This section cited in 10 Pa. Code § 305.019 (relating to dishonest and unethical practices).

§ 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).

Source

The provisions of this § 604.020 adopted July 10, 1998, effective July 11, 1998, 28 Pa.B. 3302; amended December 8, 2006, effective December 9, 2006, 36 Pa.B. 7456; transferred and renumbered from 64 Pa. Code § 604.020, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (324467) to (324469).