



**BROKER-DEALER
REGISTRATION PACKET
(NON-FINRA MEMBERS ONLY)**

**DEPARTMENT OF BANKING AND SECURITIES
17 N. SECOND STREET
MARKET SQUARE PLAZA, SUITE 1300
HARRISBURG, PA 17101
Filing Requirements: 7/1/2016**

**PENNSYLVANIA BROKER-DEALER REGISTRATION
REQUIREMENTS (NON-FINRA MEMBER FIRMS ONLY)**

Contact: Robyn L. Galloway (717) 783-4211

GENERAL INSTRUCTIONS & FILING REQUIREMENTS:

1. Provide one copy of the Uniform Form BD (as on file with the U.S. Securities and Exchange Commission) with original signatures and original notarizations on the execution page.
2. **\$525.00** Broker-Dealer Filing Fee (Checks must be made payable to the "**Commonwealth of Pennsylvania.**")
3. Provide the effective date of Applicant's registration with the U.S. Securities and Exchange Commission under Section 15 of the Securities Exchange Act of 1934.
4. Transactions with Pennsylvania residents can only be effected by registered agents. This would include all officers and/or principals of the firm acting in the capacity of agents for the firm.

Therefore, NON-FINRA member firms must file the following on behalf of proposed agents directly with the Bureau of Securities Licensing, Compliance and Examinations of the Department of Banking and Securities ("Department"):

- a. Complete Form U-4 with original manual signatures;
- b. \$130.00 Agent Filing Fee (per agent);
- c. Passing results of:
 - (1) The Uniform Securities Agent State Law Examination (Series 63); and
 - (2) The appropriate securities examination for representatives (agents) based on "Plan of Business"

Both of the above examinations are administered by FINRA.

5. Provide a statement identifying that your firm does not do business with the public in Pennsylvania

or

a statement identifying that your firm does do business with the public in Pennsylvania and furthermore, identify the types of clients in Pennsylvania, i.e., institutional investor(s), non-institutional investor(s), or both institutional and non-institutional investor(s).

6. Does any individual who represents the firm in effecting purchases or sales of securities in the state receive compensation for such activity? (See attachment for definition of "agent" as defined in Section 102(c)) of the Pennsylvania Securities Act of 1972). If your response is in the affirmative, registration as an agent is required unless the agent meets the requirements of the exemption contained in 10 Pa. Code §302.064 summarized below:

- a. The agent's only customers are broker-dealers which are registered either with the U.S. Securities and Exchange Commission or registered with the Department, and
- b. The agent is not subject to a currently effective order of the Department denying, suspending or revoking registration or any other order of the Department barring the individual from any form of relationship with a registered broker-dealer, investment adviser, or agent.
- c. The agent is representing a broker-dealer which is a member of a National securities exchange registered with the SEC.

If all the above requirements are not met, then see Item 4.

SUPPLEMENTAL REQUIREMENTS:

7. 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 receipt of the letter.
8. Where Form BD is required to be amended, file all amended pages in full and circle the number of the item being changed. Each amendment must include a new execution page with original signatures and original notarizations.
9. Registered broker-dealers, who desire to withdraw their registrations in Pennsylvania, must file Form BDW directly with this agency.
10. The annual renewal date is December 31 of each year. All NON-FINRA member firms will receive a renewal application which must be returned to the Department with the appropriate renewal fees.

ENCLOSURES:

Pa. Securities Act of 1972

Section 102(c).	Definition of Agent
Section 102(e).	Definition of Broker-Dealer
Section 301.	Registration Requirement
Section 302.	Exemptions

64 Pa. Code

§303.011	Broker-Dealer registration procedures
§303.013	Agent registration procedures
§303.031	Examination requirement for agents
§304.011	Broker-Dealer required records
§305.019	Dishonest and unethical practices
§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. Definitions.

(c) "Agent" means any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include: (i) an individual who represents an issuer in effecting transactions in securities exempted by section 202, transactions exempted by section 203 or transactions in a covered security described in sections 18(b)(3) and (4)(D) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77r) if no compensation is paid or given directly or indirectly for soliciting any person in this State in connection with any of the foregoing transactions; (ii) an individual who represents a broker-dealer in effecting transactions in this State, which transactions are limited to those described in section 15(i)(3) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78o(i)(3)); and (iii) an individual who has no place of business in this State if he effects transactions in this State exclusively with broker-dealers. Except where representing an issuer in effecting transactions in securities registered under section 205 or 206, a bona fide officer, director, or partner or employe of a broker-dealer or issuer, or an individual occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition and receives compensation directly or indirectly related to purchases or sales of securities.

Section 102. Definitions.

(e) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(i) An agent;

(ii) An issuer;

(iii) A bank which meets the exceptions from the definition of "broker" under section 3(a)(4)(B) or (E) or the definition of "dealer" under section 3(a)(5)(B) or (C) of the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78c(a)(4)(B) or (E) or (5)(B) or (C));

(iv) An executor, administrator, guardian, conservator or pledgee;

(v) A person who has no place of business in this State if he effects transactions in this State exclusively with or through (A) the issuers of the securities involved in the transactions, (B) broker-dealers or institutional investors;

(vi) A person licensed as a real estate broker or agent under the act of February 19, 1980 (P.L. 15, No. 9), known as the Real Estate Licensing and Registration Act, and whose transactions in securities are isolated transactions incidental to that business; or

(vii) Other persons not within the intent of this subsection whom the department by regulation designates.

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.

§ 303.011. Broker-dealer registration procedures.

(a) An application for initial registration as a broker-dealer shall contain the information requested in and shall be made on Uniform Application for Broker-Dealer Registration (Form BD), or a successor form, and shall be made in the following manner:

(1) An applicant which is not a member of the National Association of Securities Dealers, Inc. (NASD) or a member of a National securities exchange registered with the United States Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934 (15 U.S.C.A. § § 78a—78kk) shall complete and file one copy of Form BD with the Commission accompanied by the requisite 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)(3) of the act (70 P. S. § 1-602.1(a)(3)), and financial statements in the form required by subsections (b) and (c).

(2) An applicant which is not a member of the NASD but is a member of a National securities exchange registered with the SEC under the Securities Exchange Act of 1934 shall complete and file one copy of Form BD with the Commission accompanied by the requisite filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(3) An applicant which is a member of NASD shall file Form BD in the manner set forth in § 603.011(f) (relating to filing requirements) accompanied by the filing fee required by section 602(d.1) of the act and the compliance assessment required by section 602.1(a)(3) of the act.

(b) Except for applicants described in subsections (a)(2) and (3), every application shall be accompanied by a statement of the financial condition of the applicant prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant. The audited statement of financial condition shall be as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of financial condition for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year. If the date of the most recent audited statement of financial condition is more than 45 days prior to the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing. As a part of the statement, the Commission may require the filing of separate schedules:

(1) Listing the securities owned by the applicant valued at the market.

(2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(c) Except for applicants described in subsections (a)(2) and (3), an applicant that has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income as of the end of the applicant's most recent fiscal year, or the preceding fiscal year if the statement of income for the most recently ended fiscal year is unavailable and if the application is filed within 14 months of the end of the preceding fiscal year.

(d) An applicant described in subsection (a)(2) or (3) shall provide the Commission, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required by SEC rules or the rules of a National securities association or National securities exchange registered with the SEC of which the applicant is a member.

(e) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Commission an amendment on Form BD within 30 days of the occurrence of the event which required the filing of the amendment.

Authority

The provisions of this § 303.011 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(a), (c) and (d) and 1-609(a)).

Source

The provisions of this § 303.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended June 8, 1984, effective June 9, 1984, 14 Pa.B. 1941; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 278; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.011, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (286699) to (286700).

Cross References

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

§ 303.013. Agent registration procedures.

(a) An application for initial registration as an agent of a broker-dealer or issuer shall contain the information requested in and shall be made on Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form. Except as provided in subsection (b), the agent and the broker-dealer or issuer shall complete and file with 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 evidence of passage of the examinations required by § 303.031 (relating to examination requirements for agents).

(b) An applicant for registration as an agent of a broker-dealer which is a member firm of the National Association of Securities Dealers (NASD) shall file the following items in the manner set forth in § 603.011(f) (relating to filing requirements):

- (1) A completed and executed Form U-4 and exhibits thereto.
- (2) The filing fee required by section 602(d.1) of the act.
- (3) The compliance assessment required by section 602.1(a)(1) of the act.
- (4) Evidence of passage of the examinations required by § 303.031.

(c) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Commission 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 § 303.013 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. §§ 1-303(a), (c) and (d) and 1-609(a)).

Source

The provisions of this § 303.013 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended April 4, 1975, effective April 5, 1975, 5 Pa. B. 722; amended June 28, 1985, effective June 29, 1985, 15 Pa.B. 2392; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 280; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.013, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial page (310487).

Cross References

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

§ 303.031. Examination requirement for agents.

(a) An individual may not be registered as an agent under the act unless the individual has met the requirements of subsections (b) and (c).

(b) The applicant has received a passing grade on the securities examination for principals or registered representatives administered by the National Association of Securities Dealers, Inc., the New York Stock Exchange or the United States Securities and Exchange Commission within 2 years prior to the date of filing an application for registration. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the examination and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a waiver of the examination requirement by the NASD.

(iii) The applicant has received a Commission order waiving the examination requirement.

(c) The applicant has received a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or, alternatively, the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by the NASD within 2 years prior to the date of filing an application for registration. An applicant will be deemed to have met the requirements of this subsection if any of the following apply:

(i) The applicant previously has passed the Series 63 or, alternatively, the Series 66 and Series 7, and has not had a lapse in employment with a broker-dealer for a period exceeding 2 years.

(ii) The applicant has received a Commission order waiving the requirement to take the Series 63 or, alternatively, the Series 66 and Series 7.

Authority

The provisions of this § 303.031 amended under sections 303(a), (c) and (d) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P. S. § § 1-303(a), (c) and (d) and 1-609(a)).

Source

The provisions of this § 303.031 adopted March 29, 1974, effective March 30, 1974, 4 Pa. B. 582; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 281; amended September 8, 1995, effective September 9, 1995, 25 Pa.B. 3722; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 303.031, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (310490) to (310491).

Cross References

This section cited in 10 Pa. Code § 303.013 (relating to agent registration procedures); 10 Pa. Code § 604.016 (relating to guidelines for waivers of Uniform Securities Agent State Law Examination (Series 63), Uniform Investment Adviser Law Examination (Series 65) and General Securities Representative Non-Member Examination (Series 2)—statement of policy); and 10 Pa. Code § 606.041 (relating to delegation and substitution).

§ 304.011. Broker-dealer required records.

(a) Every broker-dealer registered under section 301 of the act (70 P. S. § 1-301) shall make and keep the records required to be maintained as described in Rule 17a-3 (17 CFR 240.17a-3) (relating to records to be made by certain exchange members, brokers and dealers) adopted under the Securities Exchange Act of 1934 (15 U.S.C.A. § § 78a—78kk).

(b) A broker-dealer registered under the act that is not registered as a broker or dealer with the United States Securities and Exchange Commission (SEC) immediately shall notify the Commission if the broker-dealer fails to make and keep current the books and records required by this section. Within 24 hours after filing the notice with the Commission, the broker-dealer shall file with the Commission a report stating what steps have been taken and are being taken to fully comply with this section.

(c) Every broker-dealer registered under the act shall make, keep and preserve either a separate file of written complaints of customers and actions taken by the broker-dealer in response thereto, or a separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer. A “complaint” shall be deemed to include a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction or the disposition of securities or funds of the customer. A registered broker-dealer that also is registered as a broker or dealer with the SEC shall be deemed to be in compliance with the requirements of this subsection if it maintains records of customer complaints as prescribed by applicable SEC rules.

(d) The records required to be maintained under this section shall be retained and preserved for the period of time designated in Rule 17a-4 (17 CFR 240.17a-4) (relating to records to be preserved by certain exchange members, brokers and dealers) promulgated under the Securities Exchange Act of 1934 (15 U.S.C.A. § § 78a—78kk) and made easily accessible for inspection by the Commission or its representatives. The retention and preservation of records as required in this section may be upon microfilm, microfiche, or any similar medium; electronic or digital storage medium; computer disks or tapes or other similar recording process if adequate facilities are maintained for the examination of the facsimiles and if enlargements or paper copies of the facsimiles can be provided promptly upon reasonable request of the Commission or its representatives.

Authority

The provisions of this § 304.011 amended under sections 304(a), (d) and (e) and 609(a) (70 P. S. § § 1-304(a), (d) and (e) and 1-609(a)).

Source

The provisions of this § 304.011 adopted March 29, 1974, effective March 30, 1974, 4 Pa.B. 582; corrected at May 16, 1987, 17 Pa.B. 1921; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 288; amended January 28, 1994, effective January 29, 1994, 24 Pa.B. 654; amended December 28, 2001, effective December 29, 2001, 31 Pa.B. 7032; transferred and renumbered from 64 Pa. Code § 304.011, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533. Immediately preceding text appears at serial pages (286717) to (286718).

§ 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).

Notes of Decisions

Construction with Federal Law

A statutory fiduciary under state law and this regulation is only considered a fiduciary for purposes of the bankruptcy code, 11 U.S.C.A. § 523, if the statute: (1) defines the trust res; (2) identifies the trustee's fund management duties and authority; and (3) imposes obligations on the fiduciary prior to the alleged wrongdoing. In this case, the debtor was clearly not a statutory fiduciary for purposes of section 523. The Pennsylvania statutes and regulations did not define the trust res, and in fact precluded registered agents such as the debtor from "acting as a custodian for money. . . ." Thus, the Bankruptcy Court correctly concluded that although the debtor was a statutory fiduciary under Pennsylvania law, the same was not true with respect to section 523(a)(4). *In re Librandi*, 183 Bankr. 379 (M. D. Pa. 1975).

§ 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).

