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**Transcript Exhibit(s)**

**Docket #(s):** RS 00000A-98-0240

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**Exhibit #:** Exhibit 1, Exhibit 2

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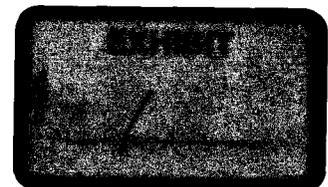
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TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS  
AND ASSOCIATIONS; SECURITIES REGULATION  
CHAPTER 6. INVESTMENT MANAGEMENT  
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ARTICLE 1. GENERAL PROVISIONS RELATING TO THE ARIZONA  
INVESTMENT MANAGEMENT ACT

R14-6-101. Definitions

- A. The definitions set forth in A.R.S. §§ 44-1801 and 44-3101 shall apply to the rules promulgated under A.R.S. title 44, chapter 13.
- B. The following definitions shall apply to all rules promulgated under A.R.S. title 44, chapter 13, unless the context otherwise requires:

~~1. "IM Act" means the Arizona Investment Management Act, A.R.S. § 44-3101 et seq.~~

12. "Advertisement" means, except as set forth in subsections (d) and (e), any notice, circular, letter, or other written, oral, or electronically-generated communication addressed to or reasonably designed by the investment adviser or investment adviser representative to be accessed by more than 1 person, or any notice or other announcement in any publication or by radio or television, that ~~which~~ directly or indirectly offers:
- a. Any analysis, report, or publication ~~that either concerns concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;~~ or
  - b. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or
  - c. Any other investment advisory service with regard to securities; or
  - d. A communication over a computer on-line service including, but not limited to, an electronic bulletin board shall not be deemed to be an advertisement when an investment adviser or an investment adviser representative is either:

- i. Engaged in a discussion regarding securities and does not receive compensation from any person for the discussion; or
  - ii. Responds to unsolicited inquiries regarding the provision of investment advisory services.
- e. A communication by 1 or more investment advisers or investment adviser representatives shall not be deemed to be an advertisement when the communication is addressed solely to or is reasonably designed to be accessed solely by other investment advisers or investment adviser representatives.
- ~~23.~~ “Certified public accountant” or “CPA” means an accountant who has been registered or licensed to practice public accounting and is permitted to use the title “certified public accountant” and to use the initials “CPA” after the accountant’s name.
- ~~4.~~ “Chapter 13” means A.R.S. title 44, chapter 13.
- ~~5.~~ “Commodity Exchange Act” means 7 U.S.C. 1 *et seq.* (1988 & Supp. V 1993), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of state. Copies of the Commodity Exchange Act are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- ~~6.~~ “Division” means the Securities Division of the Corporation Commission.
- ~~3.~~ “Federal covered adviser” means an investment adviser registered under the investment advisers act of 1940.
- ~~47.~~ “Fixed fee basis” means an investment advisory fee that ~~which~~ at any given time can be precisely established in a dollar amount without regard to the investment performance or value of an account and that ~~which~~ is not based on the purchase or sale of specific securities.
- ~~58.~~ “Form ADV” means the Uniform Application for Investment Adviser Registration, 17 CFR 279.1, (1994) (Form amended at 59 FR 21657 (1994) and 59 FR 27659 (1994)), ~~which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of state. Copies of Form ADV are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
- ~~6.~~ “IM Act” means the Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.*
- ~~79.~~ “Impersonal advisory services” means investment advisory services provided solely:
- a. By means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts:

- b. Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or
- c. Any combination of the foregoing services.
8. "Internet" means all proprietary or common carrier electronic systems, or similar media.
9. "Internet communication" means the distribution of information on the Internet.
10. "Investment-related" means pertaining to securities, commodities, banking, insurance, or real estate, including but not limited to acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary.
11. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.
12. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser that is a company or to determine the general investment advice given to clients.
1310. "NASAA" means the North American Securities Administrators Association, Inc., or any successor organization.
1411. "NASD" means the National Association of Securities Dealers, Inc., or any successor or subsidiary organization.
1512. "Relative" means any relationship by blood, marriage, or adoption, not more remote than 1st cousin.
1613. "Rule 204-2" means United States securities and exchange commission rule 204-2, 17 CFR 275.204.2 (1998-1994), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the office of the secretary of state. Copies of Rule 204-2 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- ~~14. "Rule 204-3" means United States Securities and Exchange Commission Rule 204-3, 59 FR 21661 (1994) (to be codified at 17 CFR 275.204.3), which is incorporated by reference, does not contain any later amendments or editions, and is on file in the Office of the Secretary of State. Copies of Rule 204-3 are available from the Division and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.~~
1745. "SEC" means United States Securities and Exchange Commission.
1816. "Securities Act" means the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*

19. “Self-regulatory organization” or “SRO” means any national securities or commodities exchange, registered association, or registered clearing agency.

2017. “Unincorporated organization” includes a limited liability company for purposes of the definition of “person,” as defined in A.R.S. § 44-1801(13).

21. “Wrap fee program” means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client’s account for investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers, and execution of client transactions.

R14-6-102. Scope of provisions ~~this Article~~

The following Sections ~~rules~~ are adopted by the Commission under the authority granted pursuant to A.R.S. title 44, chapter 13. Such Sections All rules shall be generally applicable to the administration of the IM Act, but the Commission may at any time abrogate or waive strict adherence to any particular provision when rule in any specific instance where the Commission deems ~~may deem~~ it advisable for the equitable administration of the law. When not in conflict with these Sections ~~rules~~, the applicable provisions of A.A.C. R14-3-101 through R14-3-113 also shall apply.

R14-6-103. Severability

The provisions of the Sections ~~rules~~ promulgated under A.R.S. title 44, chapter 13, are severable. If any provision of a Section ~~rule~~ is held to be invalid, such invalidity shall not affect other provisions that ~~which~~ can be given effect without the invalid provision.

R14-6-104. Enforcement of the Arizona Investment Management Act

The provisions ~~rules~~ relating to investigations and examinations conducted pursuant to and orders issued under the IM Act are contained at A.A.C. R14-4-301 through R14-4-308.

R14-6-106. General dissemination of information on the Internet

A. Investment advisers and investment adviser representatives who use the Internet to distribute information on products and services directed generally to anyone having access to the Internet shall not be deemed to be transacting business in Arizona for purposes of Article 4 of the IM Act based solely on that activity if the following conditions are observed:

1. The Internet communication includes clear and prominent statements that:
  - a. The investment adviser or investment adviser representative may only transact business in Arizona if first compliant with or exempt from licensure or notice filing requirements.
  - b. The investment adviser or investment adviser representative may only communicate with persons in Arizona individually about rendering investment

advice for compensation, or solicit or negotiate for the sale of investment advisory services if first compliant with or exempt from licensure or notice filing requirements.

2. The investment adviser or investment adviser representative complies with the statements contained in the Internet communication under subsection (A)(1).
  3. The Internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any subsequent, direct communication with prospective customers or clients in Arizona, the investment adviser or investment adviser representative is first compliant with or exempt from the licensure or notice filing requirements of the IM Act.
  4. The Internet communication does not involve either the rendering of investment advice for compensation or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.
  5. In the case of an investment adviser representative:
    - a. The affiliation with an investment adviser is prominently disclosed in the Internet communication.
    - b. The investment adviser with whom the investment adviser representative is associated first authorizes the Internet communication.
    - c. The investment adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet communication.
    - d. In distributing information through the Internet, the investment adviser representative acts within the scope of the authority granted by the investment adviser.
- B. Compliance with this Section relieves the investment adviser or investment adviser representative of licensure or notice filing requirements only. The investment adviser or investment adviser representative is subject to Article 9 of the IM Act and related regulations.

## ARTICLE 2. DUTIES OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

R14-6-201. Books and records of investment advisers-Records of Investment Advisers

- A. Except as provided in subsection (G), each Each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under compliance

~~with~~ rule 204-2. The investment adviser shall ~~concurrently~~ file with the Commission ~~commission~~ a copy of any notices or written undertakings required to be filed by federal covered advisers with the SEC under rule 204-2.

- B. To the extent that the SEC amends rule 204-2, investment advisers in compliance with the requirements contained in rule 204-2 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the requirements contained in the amended rule 204-2.
- C. ~~As of the effective date of this Section,~~ Except as provided in subsection (G), each investment adviser licensed or required to be licensed under the IM Act shall make, maintain, and preserve for at least 5 years the following additional books and records:
1. A file containing each customer complaint received relating to advisory activities conducted by the investment adviser, its investment advisory representatives, or its employees, and all correspondence relating to such complaint.;
  2. A file containing all advertisements used by the investment adviser or any investment adviser representative, including any radio or television transcripts and advertisements placed on computer or electronic bulletin boards.;
  3. In each client file, all correspondence received or sent by the investment adviser, any investment adviser representative, or any employee, that related to any client account, securities, or funds.
- D. Books and records that are required to be maintained pursuant to subsection (A) shall be available for inspection by the Commission ~~commission~~ in accordance with the provisions of rule 204-2. Books and records that are required to be maintained pursuant to subsection (C) shall be readily accessible and may be preserved in accordance with rule 204-2(g). Notwithstanding other record preservation requirements of this Section, the following records or copies shall 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:
1. Records required to be preserved under rule 204-2(a)(3), (a)(7) through (10), (a) (14 through (15), (b), and (c).
  2. Records required to be preserved under subsection (C) of this Section.
- E. A record made and kept under a provision of subsections (A) or (C) that contains all of the information required under any other provision of subsections (A) or (C) in a readily accessible format need not be maintained in duplicate in order to meet the requirements of the other provision.
- F. Any book or other record made, kept, maintained, and preserved in compliance with A.A.C. R14-4-132 that 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.

- G. Every investment adviser licensed or required to be licensed in Arizona that has its principal place of business in a state other than Arizona shall be exempt from the requirements of this Section, provided the investment adviser is licensed in such other state and is in compliance with that state's recordkeeping requirements.

R14-6-202. Supervision

For purposes of A.R.S. § 44-3201(A)(12), no investment adviser shall be deemed to have failed to reasonably supervise its investment adviser representatives or employees if:

1. The investment adviser has ~~There have been~~ established and maintained written procedures, and a system for applying such procedures, ~~that which would~~ reasonably may be expected to prevent and detect, insofar as practicable, any violation of the IM Act or any rule adopted thereunder by such investment adviser representatives or ~~employees of the IM Act, or any rule adopted thereunder;~~ and
2. Such investment adviser has ~~reasonably~~ discharged reasonably the duties and obligations incumbent upon it by reason of such procedures and system without reasonable cause to believe that the investment adviser representatives or employees are not complying with such procedures and system ~~were not being complied with.~~

R14-6-203. Dishonest and unethical practices ~~Unethical Practices~~

"Dishonest and unethical practices", with respect to investment advisers and investment adviser representatives subject to ~~under~~ A.R.S. § 44-3201(A)(13), shall include, but not be limited to, the following:

1. Refusing to allow or otherwise impeding ~~designees of~~ the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.;
2. Placing an order to purchase or sell a security for the account of a client without authority to do so.;
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.;
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.;
5. 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.;

6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.;
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.;
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.;
9. Providing a report or recommendation to any 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 investment advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.;
10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client, ~~and whether the investment adviser has disclosed that lower fees for comparable services may be available from other sources;~~
11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that ~~which~~ could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:
  - a. Compensation arrangements connected with investment advisory services to clients that ~~which~~ are in addition to compensation from such clients for those services; and
  - b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.;
12. Guaranteeing ~~Promising or guaranteeing~~ a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.;

13. Disclosing the identity, affairs, or investments of a client to any 3<sup>rd</sup> party unless required by law to do so, or ~~unless~~ consented to by the client.;
  14. With respect to any client initially retained after July 19, 1996, ~~the effective date of this rule~~, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract termination or non-performance, and ~~that of any grant~~ of any discretionary power to the investment adviser.;
  15. With respect to any client initially retained after July 19, 1996, ~~the effective date of this rule~~, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.;
  16. Entering into, extending, modifying, or renewing any investment advisory contract that ~~which~~ allows the assignment of such contract by the investment adviser without the prior written consent of the client.;
  17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities ~~by an agency of any state~~, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as a fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.;
  18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.
1918. ~~For any investment adviser to, in any manner, request, or require, in any contract, agreement, or otherwise, any condition, stipulation, or provision binding on Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.~~

R14-6-204. Written examination ~~Examination~~

- A. Prior to licensure, except as provided in subsection (B), each investment adviser who is an individual and each investment adviser representative shall ~~each of whom is hereafter referred to as an "applicant," must~~ take and receive a score of at least 70% on:
  1. The NASAA Series 65 Uniform Investment Adviser State Law Examination or Series 66 Combined State Law Examination; and
  2. The NASD Series 7 General Securities Registered Representative Examination or Series 2 General Securities Representative (Non-member) Examination.

- B. The examinations described in subsection (A)(2) shall not be required of an investment adviser or an investment adviser representative applicant who has completed and maintains 1 of the following credentials:
1. Certified Financial Planner (CFP) designation awarded by the Certified Financial Planner Board of Standards, Inc.;
  2. Chartered Financial Analyst (CFA) designation awarded by the Institute of Chartered Financial Analysts;
  3. Chartered Financial Consultant (ChFC) designation awarded by the American College, Bryn Mawr, Pennsylvania;
  4. Chartered Investment Counselor (CIC) designation awarded by the Investment Counsel Association of America, Inc.;
  5. Personal Financial Specialist (PFS) designation awarded by the American Institute of Certified Public Accountants.
- C. In the event that the NASAA or NASD Series examination numbers change, the most current examination series deemed applicable by the Commission to the category of licensure shall apply.
- D. In the event that the title changes for any of the credentials designated in subsection (B), the title deemed applicable by the Commission shall apply.

R14-6-205. Information to be ~~furnished to clients~~Furnished to Clients ("Brochure Rule")

- A. Each investment adviser licensed or required to be licensed under the IM Act shall ~~comply with the provisions of Rule 204-3~~ furnish each client and prospective client with a written disclosure statement that may be either a copy of Part II of its Form ADV or a written document containing at least the information required by Part II of Form ADV.
- ~~B. To the extent that the SEC amends Rule 204-3, investment advisers in compliance with Rule 204-3 as amended shall not be deemed to be in violation of this Section and shall not be subject to enforcement action by the Commission for violation of this Section to the extent that the violation results solely from the investment adviser's compliance with the amended Rule 204-3.~~
- B. The information required to be disclosed by subsection (A) shall be disclosed to clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.
- C. An investment adviser need not deliver the statement required by subsection (A) in connection with entering into an investment company contract or a contract for impersonal advisory services. The investment adviser shall, however, offer in writing to deliver the statement within 7 business days upon receipt of a written request.

- D. Without charge and to each of its clients, an investment adviser licensed or required to be licensed under the IM Act shall deliver annually within 7 business days upon receipt of a written request or offer in writing to deliver the statement required by this Section.
- E. If an investment adviser licensed or required to be licensed under the IM Act renders substantially different types of investment advisory services to different clients, any information required by Part II of Form ADV may be omitted from the statement furnished to the client or prospective client if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.
- F. Nothing in this Section shall relieve any investment adviser from any obligation pursuant to any provision of the IM Act or the rules and regulations thereunder or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this Section.
- G. An investment adviser licensed or required to be licensed under the IM Act that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the programs, shall, in lieu of the written disclosure statement required by subsection (A) and in accordance with the other subsections of this Section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV. Any additional information included in such disclosure shall be limited to information concerning wrap fee programs sponsored by the investment adviser.
- H. If the investment adviser is required under subsection (G) to furnish disclosure statements to clients or prospective clients of more than 1 wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.
- I. An investment adviser need not furnish the written disclosure statement required by subsection (G) to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

R14-6-206. Custody of client funds or securities by investment advisers ~~Client Funds or Securities by Investment Advisers~~

- A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to take or have custody of any securities or funds of any client unless:
1. The investment adviser notifies the Commission in writing that the investment adviser has or may have custody of client funds or securities. Such notification may be given on Form ADV.

2. The securities of each client are segregated, 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. All client funds are deposited in 1 or more bank or similar accounts containing only clients' funds, such accounts are maintained in the name of the investment adviser as agent or trustee for such clients, and the investment adviser maintains a separate record for each such account showing the name and address of the bank or similar institution where the account is maintained, the dates and amounts of deposits into and withdrawals from the account, and the exact amount of each client's beneficial interest in the account.;
4. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies 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 to the client within prompt (but in no event more than 10 business days.) ~~written notice thereof to the client;~~
5. At least once every 3 months, the investment adviser sends each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of such period and all debits, credits, and transactions in the client's account during such period.;
6. At least once every calendar year, an independent CPA or public accountant verifies all client funds and securities by actual examination at a time chosen by the independent CPA or public accountant without prior notice to the investment adviser. The independent CPA's or public accountant's report stating that such CPA or public accountant has made an examination of such funds and securities, and describing the nature and extent of the examination, shall be filed with the Commission within 30 calendar days ~~promptly (but in no event more than 30 days)~~ after the ~~each such~~ examination.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-207. Suitability of investment advisory services ~~Investment Advisory Services~~

A. Except as otherwise provided in subsection (B), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any person providing investment advisory services to provide investment advisory services to any client, other than in connection with impersonal advisory services, unless the person:

1. Before providing any investment advisory services, and as appropriate thereafter, makes a reasonable inquiry of the client as to the financial situation, investment experience, and investment objectives of the client; and

2. Reasonably determines that the investment advisory services are suitable for the client based upon the information obtained from the client in accordance with subsection (1) above.

B. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-208. Advertisements by investment advisers or investment adviser representatives  
~~Investment Advisers or Investment Adviser Representatives~~

A. Except as otherwise provided in subsection (D), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser or investment adviser representative, directly or indirectly, to use any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or investment adviser representative or concerning any advice, analysis, report, or other service rendered by such investment adviser or investment adviser representative. ~~or~~
2. Which refers, directly or indirectly, to past specific recommendations of the such investment adviser or investment adviser representative that which were or would have been profitable to any person; except that an investment adviser or investment adviser representative may provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish or offer to furnish a list of all recommendations made by the such investment adviser or investment adviser representative within the immediately preceding period of not less than 1 year if the investment adviser or investment adviser representative also furnishes: if such advertisement, and such list if it is furnished separately;
  - a. The States the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell, or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security ~~as of the most recent practicable date;~~ and
  - b. The Contains the following cautionary legend on the 1st page ~~thereof~~ in prominent print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list." ~~or~~
3. Which represents, directly or indirectly, that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's his or her own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use. ~~or~~

4. Which represents, directly or indirectly, ~~that contains any statement to the effect that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation, directly or indirectly, or~~
  5. Which states that the Commission has approved any advertisement.
- B. When requested by the Commission, any advertisement used directly or indirectly in connection with the provision of investment advisory services shall be filed with the Commission at least 10 business days prior to its proposed use.
- C. Any advertisement that has been requested by the Commission pursuant to the provisions of subsection (B) but that has not been filed with the Commission shall not be used.
- D. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the investment advisers act of 1940.

R14-6-209. Financial and disciplinary information that investment advisers shall disclose to clients  
~~Disciplinary Information that Investment Advisers Must Disclose to Clients~~

~~A. The following definitions shall apply to this Section:~~

- ~~1. "Investment related" means pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity, or person required to be registered under the Commodity Exchange Act, or fiduciary).~~
- ~~2. "Involved" means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with, or failing reasonably to supervise another in doing an act.~~
- ~~3. "Management person" means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an investment adviser which is a company or to determine the general investment advice given to clients.~~
- ~~4. "Self-regulatory Organization" or "SRO" means any national securities or commodities exchange, registered association, or registered clearing agency.~~

AB. Except as otherwise provided in subsection (F), it shall constitute a fraudulent practice within the meaning of A.R.S. § 44-3241(A)(4) for any investment adviser to fail to disclose to any client or prospective client all material facts with respect to:

1. A financial condition of the investment adviser that is reasonably likely to impair the ability of the investment adviser to meet contractual commitments to clients, if the investment adviser has discretionary authority (express or implied) or custody over

~~such~~ the client's funds or securities, or requires prepayment of advisory fees of more than \$500 from such client, 6 months or more in advance. ~~or~~

2. A legal or disciplinary event that is material to an evaluation of the investment adviser's or an investment adviser representative's integrity or ability to meet contractual commitments to clients.
3. A failure to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. title 44, chapter 12.

BC. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the investment adviser, an investment adviser representative, or a management person of the investment adviser (any of the foregoing being referred to hereafter as a "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of subsection (A)(2) for a period of 10 years from the time of the event. No affirmative or negative presumption of materiality shall be created under subsection (A)(2) for events not specifically set forth in this subsection.

1. A criminal or civil action in a court of competent jurisdiction in which the person:
  - a. Was convicted, or pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;
  - b. Was found to have been involved in a violation of an investment-related statute or rule; or
  - c. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person ~~from~~, or otherwise limiting the person ~~from~~, engaging in any investment-related activity.
2. An administrative ~~Administrative~~ proceeding before the ~~SEC, Securities and Exchange Commission, the Commission, or any federal or state regulatory agency or any state agency~~ (any of the foregoing being referred to hereafter as "agency") in which the person:
  - a. Was found to have caused an investment-related business to lose its authorization to do business; or
  - b. Was found to have been involved in a violation of an investment-related statute or rule, and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

3. ~~Self-regulatory Organization ("SRO")~~ proceedings in which the person:
  - a. Was found to have caused an investment-related business to lose its authorization to do business; or
  - b. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than \$2,500; or otherwise significantly limiting the person's investment-related activities.

CD. The information required to be disclosed by subsection (AB) shall be disclosed to clients within 30 calendar days ~~promptly but in no event later than 30 days~~ after the occurrence of the event requiring disclosure, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within 5 business days after entering into the contract.

DE. For purposes of calculating the 10-year period during which events are presumed to be material under subsection (BC), the date of the reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

EE. Compliance with subsection (BC) shall not relieve any investment adviser from the disclosure obligations of subsection (AB); compliance with subsection (AB) shall not relieve any investment adviser from any other disclosure requirement under the IM Act, the rules thereunder, or under any other state or federal law. ~~Note:~~ Investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under R14-6-205, provided, that the delivery of the brochure satisfies the timing of disclosure requirements described in subsection (CD).

F. With respect to federal covered advisers, the provisions of this Section only apply to the extent permitted by Section 203A of the investment advisers act of 1940.

#### R14-6-210. Licensure of investment adviser representatives

A. The definition of investment adviser representative in A.R.S. § 44-1301 includes an individual employed by a federal covered adviser only if the individual has a place of business in Arizona and either:

1. Is a supervised person and meets all of the following conditions:
  - a. Has more than 5 clients who are natural persons, other than excepted persons.



2. The individual does not accept or receive directly or indirectly any commission, fee, or other remuneration in connection with a referral to or recommendation of the services of an investment adviser or an investment adviser representative.
- B. The term "remuneration" shall be broadly construed, but shall not include the exchange of client referrals between professionals without an exchange of additional compensation.
- C. No individual or entity subject to an order or finding that denies, revokes, or suspends licensure or registration under the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Securities Act, the IM Act, or the rules or regulations of an SRO may solicit, offer, or negotiate for the sale of or sell investment advisory services.

R14-6-212. Application, notice filing, and renewal Filing requirements

- A. An application for licensure as an investment adviser under A.R.S. § 44-3153(B) shall include the following:
  1. An original typewritten Form ADV with all information and exhibits required by the form.
  2. An audited balance sheet if the investment adviser will have custody of client funds or if the investment adviser requires the payment of advisory fees six months or more in advance and in excess of \$500 for each client. The audited balance sheet shall be based on the investment adviser's fiscal year end, shall be prepared in accordance with generally accepted accounting principles, and shall be audited by an independent certified public accountant. The notes to the balance sheet shall state the principles used to prepare the balance sheet, the basis of included securities, and any other explanation required for clarity.
  3. A notarized affidavit of any officer, director, partner, member, trustee, or manager of the applicant stating:
    - a. That a review of the records of the investment adviser has been conducted.
    - b. Whether any investment adviser activity has been conducted with residents of Arizona prior to licensure as an investment adviser.
  4. If the applicant intends to have a branch office in Arizona, the address and name of a contact individual located at such branch.
  5. If part II of the Form ADV is not completed, the applicant shall submit a copy of the disclosure brochure the applicant gives or will give to clients.
  6. The documents and fees required for each investment adviser representative as described in subsection C.
  7. The annual licensure fee required by A.R.S. § 44-3181(A).

- B. A notice filing under A.R.S. § 44-3153(D) shall include the following:
1. A manually signed and notarized Form ADV, part 1, page 1, or a copy of Form ADV, part 1, page 1, and an originally executed consent to service of process.
  2. The documents and fees required for each investment adviser representative as described in subsection C.
  3. The annual notice filing fee required by A.R.S. § 44-3181(A).
- C. An application for an investment adviser representative licensure under A.R.S. § 44-3156 shall include the following:
1. A complete Form U-4.
  2. Proof of successful completion of required examinations in accordance with A.A.C. R14-6-204.
  3. The annual licensure fee required by A.R.S. § 44-3181(A).
- D. For purposes of A.R.S. § 44-3158(A), a license of an investment adviser or an investment adviser representative shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.
- E. For purposes of A.R.S. § 44-3153(E), a notice filing shall be renewed upon receipt of the nonrefundable license fee prescribed in A.R.S. § 44-3181.

## Securities and Exchange Commission

## § 275.204-2

CFR 279.3), the Commission has instituted a proceeding pursuant to section 203(e) of the Act (15 U.S.C. 80b-3(e)) to suspend or revoke registration, or a proceeding pursuant to section 203(h) of the Act (15 U.S.C. 80b-3(h)) to impose terms or conditions upon withdrawal, the withdrawal from registration shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

[62 FR 28134, May 22, 1997]

**§ 275.204-1 Amendments to application for registration.**

(a) Every investment adviser whose registration with the Commission is effective on the last day of its fiscal year shall, within 90 days of the end of its fiscal year, unless its registration has been withdrawn, cancelled, or revoked prior to that day, file:

(1) Schedule I to Form ADV (17 CFR 279.1);

(2) A balance sheet if the balance sheet is required by Item 14 of Part II of Form ADV (17 CFR 279.1); and

(3) An executed page one of Part I of Form ADV (17 CFR 279.1).

(b)(1) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (17 CFR 279.1) correcting the information.

(2) For all other changes not designated in paragraph (b)(1) of this section, the investment adviser shall file an amendment on Form ADV (17 CFR 279.1) updating the information together with the amendments required by paragraph (a) of this section.

[62 FR 28135, May 22, 1997]

**§ 275.204-2 Books and records to be maintained by investment advisers.**

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b-3) shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

(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 concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such 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 such order; and shall show the account for which entered, the date of entry, and the bank, broker or 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, cancelled checks and cash reconciliations of the investment adviser.

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

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (1) any recommendation made or proposed to

be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security: *Provided, however,* (a) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (b) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

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

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12)(i) A record of every transaction in a security in which the investment

adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this paragraph—

(A) The term *advisory representative* shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment advisor prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (1) Any person in a control relationship to the investment adviser, (2) any affiliated person of such controlling person, and (3) any affiliated person of such affiliated person.

(B) Control as that of the Investor as amended.

(iii) An investment adviser shall not be deemed to have control over securities transactions if the investment adviser has not instituted any record-keeping system used reasonably promptly required to be maintained.

(13)(i) Notwithstanding to the extent provided above, an investment adviser is not deemed to have control over securities transactions if the investment adviser has not instituted any record-keeping system used reasonably promptly required to be maintained.

(ii) For

(A) The investment adviser shall not be deemed to have control over securities transactions if the investment adviser has not instituted any record-keeping system used reasonably promptly required to be maintained.

(B) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(iii) An investment adviser shall not be deemed to have violated the provisions of paragraph (a)(12) of this section because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13)(i) Notwithstanding the provisions of paragraph (a)(12) of this section above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this paragraph—

(A) The term *advisory representative*, when used in connection with a company primarily engaged in a business or businesses other than advising reg-

istered investment companies or other advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendation being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (1) Any person in a control relationship to the investment adviser, (2) any affiliated person of such controlling person, and (3) any affiliated person of such affiliated person.

(B) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(C) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (1) its total sales and revenues, and (2) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) An investment adviser shall not be deemed to have violated the provisions of this paragraph (a)(13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule 204-3 under the Act, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) All written acknowledgments of receipt obtained from clients pursuant to § 275.206(4)-3(a)(2)(iii)(B) and copies of the disclosure documents delivered to clients by solicitors pursuant to § 275.206(4)-3.

(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 any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); *provided, however*, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

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

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

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securi-

ties, 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 such client.

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

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

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

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

(d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1), inclusive, of this rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and

stock certificate shall be preserved until terminated

(3) Books made up in graphs shall be an easily accessible place for not less than five years in investment fiscal year and otherwise directly, in letter, in tion.

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of the security interest in the securities, the name of the issuer, the location of the issuer

of the issuer subject to the supervision of any client, and to the extent reasonably practicable, to keep

separately for each purchase and

which any investment adviser shall maintain the current list of

required by the investment adviser to whom the securities are sold, in alphabetical order.

Records required by the provisions of this section, and records of the purchase and sale of securities, shall be maintained and preserved in a readily accessible place for a period of not less than five years after the date of the purchase or sale, in an appropriate form, and in accordance with the following requirements:

stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate 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.

(f) An investment adviser subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office, Washington, D.C. 20549, of the exact address where such books and records will be maintained during such period.

(g)(1) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph (g)(2) of this section, 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 print-out or copy of the computer storage medium which the Commission by its examiners or other representatives may request,

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

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

(v) With respect to records stored on photographic film, at all times have available for Commission examination of its records pursuant to section 204 of the Investment Advisers Act of 1940, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to paragraph (g)(1) of this section an 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)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a-3 and 240.17a-4 of this chapter under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept maintained and preserved in compliance with this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section, which contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of this section.

(i) As used in this section the term "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(j)(1) Except as provided in paragraph (j)(3) of this section, each non-resident investment adviser registered or applying for registration pursuant to section 203 of the Act shall keep, maintain and preserve, at a place within the United States designated in a notice from him as provided in paragraph (j)(2) of this section true, correct, complete and current copies of books and records which he is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Act.

(2) Except as provided in paragraph (j)(3) of this section, each nonresident investment adviser subject to this paragraph (j) shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by him pursuant to paragraph (j)(1) of this section are located. Each non-resident investment adviser registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after such rule becomes effective. Each non-resident investment adviser who files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (j)(1) and (2) of this section, a non-resident investment adviser need not keep or preserve within the United States copies of the books and records referred to in said paragraphs (j)(1) and (2), if:

(1) Such non-resident investment adviser files with the Commission, at the time or within the period provided by paragraph (j)(2) of this section, a written undertaking, in form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at its principal office in Washington, D.C., or at any Regional or District Office of the Commission designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of

such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at its principal office in Washington, D.C. or at any Regional or District Office of said Commission specified in a demand for copies of books and records made by or on behalf of said Commission, true, correct, complete and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Investment Advisers Act of 1940. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with Rule 204-2(j) under the Investment Advisers Act of 1940. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce same.

and

(ii) Such non-resident investment adviser furnishes to the Commission, at his own expense 14 days after written demand therefor forwarded to him by registered mail at his last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such investment adviser is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the Commission at its principal office in Washington, D.C., or at any Regional or District Office of the Commission which may be specified in said written demand.

(4) For purposes of this rule the term *non-resident investment adviser* shall have the meaning set out in §275.0-2(d)(3) under the Act.

(k) registered (15 U.S.C. 80b-6; see by Pub. 886, 887, U.S.C. 80 [26 FR 5 10921, A; 40 FR 4 1979; 44 Jan. 17, 5946, Fed

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dertakes to fur- e Securities and principal office any Regional or mission specified oaks and records id Commission, urrent copies of the books and d is required to rve pursuant to egulation of the mmission under of 1940. This un- l during any es making, keep- copies of all of place within the with Rule 204- Advisers Act of be binding upon eirs, successors d, and the writ- powers of attor- general partners with the Securi- on shall extend force same.

(k) Every investment adviser that registers under section 203 of the Act (15 U.S.C. 80b-3) after July 8, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commis- sion.

(Sec. 206, 54 Stat. 852, as amended, 15 U.S.C. 80b-6; sec. 211(a); Pub. L. 76-768, as amended by Pub. L. 86-750; 855 as amended by 74 Stat. 886, 887, 888; secs. 204, 206(4) and 211(a) (15 U.S.C. 80b-4 and 80b-11(a)))

[26 FR 5002, June 6, 1961, as amended at 31 FR 10921, Aug. 17, 1966; 40 FR 8549, Feb. 28, 1975; 40 FR 45162, Oct. 1, 1975; 44 FR 7877, Feb. 7, 1979; 44 FR 42130, July 18, 1979; 50 FR 2543, Jan. 17, 1985; 53 FR 32035, Aug. 23, 1988; 59 FR 5946, Feb. 9, 1994; 62 FR 28135, May 22, 1997]

§ 275.204-3 Written disclosure state- ments.

(a) *General requirement.* Unless other- wise provided in this rule, an invest- ment adviser, registered or required to be registered pursuant to section 203 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advi- sory client with a written disclosure statement which may be either a copy of Part II of its form ADV which com- plies with § 275.204-1(b) under the Act or a written document containing at least the information then so required by Part II of Form ADV.

(b) *Delivery.* (1) An investment ad- viser, except as provided in paragraph (2), shall deliver the statement re- quired by this section to an advisory client or prospective advisory client (i) not less than 48 hours prior to entering into any written or oral investment ad- visory contract with such client or pro- spective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to termi- nate the contract without penalty within five business days after entering into the contract.

(2) Delivery of the statement re- quired by paragraph (1) need not be made in connection with entering into (i) an investment company contract or (ii) a contract for impersonal advisory services.

(c) *Offer to deliver.* (1) An investment adviser, except as provided in para- graph (2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement re- quired by this section.

(2) The delivery or offer required by paragraph (c)(1) of this section need not be made to advisory clients receiv- ing advisory services solely pursuant to (i) an investment company contract or (ii) a contract for impersonal advi- sory services requiring a payment of less than \$200;

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a con- tract for impersonal advisory services which requires a payment of \$200 or more, an offer of the type specified in paragraph (c)(1) of this section shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writ- ing by an advisory client pursuant to an offer required by this paragraph must be mailed or delivered within seven days of the receipt of the re- quest.

(d) *Omission of inapplicable informa- tion.* If an investment adviser renders substantially different types of invest- ment advisory services to different ad- visory clients, any information re- quired by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective ad- visory client if such information is ap- plicable 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.

(e) *Other disclosures.* Nothing in this rule shall relieve any investment ad- viser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any in- formation to its advisory clients or prospective advisory clients not spe- cifically required by this rule.

(f) *Sponsors of wrap fee programs.* (1) An investment adviser, registered or required to be registered pursuant to section 203 of the Act, that is com- pensated under a wrap fee program for

vestment ad- ommission, at after written led to him by ast address of mmission and f the Commis- e Commission in its behalf, and current is and records adviser is re- rrent or pre- vision of any e Commission r any part of which may be demand. Such l to the Com- fice in Wash- gional or Dis- mission which d written de-

rule the term adviser shall out in § 275.0-