



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

August 2024

**DEPARTMENT OF BANKING AND SECURITIES  
SECURITIES REGISTRATION OFFICE  
17 N. SECOND STREET  
MARKET SQUARE PLAZA, SUITE 1300  
HARRISBURG, PA 17101  
Filing Requirements: 10/12/2023**

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

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**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. **\$550.00** 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 Securities Registration Office of the Department of Banking and Securities ("Department"):

- a. Complete Form U-4 with original manual signatures;

- b. \$135.00 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. Reference 60 day abandonment rule §303.016 (copy enclosed).
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**

§102.021.	Definitions
§303.011	Broker-Dealer registration procedures
§303.013	Agent registration procedures
§303.016.	Considered as abandoned
§303.031	Examination requirement for agents
§304.011	Broker-Dealer required records
§305.019	Dishonest and unethical practices
§305.061	Withdrawal of registration or notice filing

## **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.



## § 102.021. Definitions.

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

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

*203(d) restricted securities*—Securities purchased under section 203(d) of the act (70 P.S. § 1-203(d)) if the purchaser is subject to the restriction not to resell the security for 12 months after the date of the purchase.

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

- (i) An opinion regarding the financial statements taken as a whole.
- (ii) An assertion that an overall opinion cannot be expressed and the reason why.

*Accredited investor*—As defined in Rule 501 of Regulation D (17 CFR 230.501) (relating to definitions and terms used in Regulation D).

*Act*—The Pennsylvania Securities Act of 1972 (70 P.S. §§ 1-101—1-703.1).

*Advertisement*—

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

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

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

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

(A) An analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

(B) A graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

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

*Agent*—As defined in section 102(c) of the act:

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

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

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

*Agricultural cooperative association*—

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

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

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

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

(ii) A federation of individual agricultural cooperative associations if the federation does not possess greater powers or purposes and engages in operations no more extensive than an individual agricultural cooperative association.

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

*Amount*—A quantity, which for the purpose of:

(i) Evidence of indebtedness is the principal amount.

(ii) Shares is the number of shares.

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

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

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

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

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

*Auditor's report*—A written report by an independent certified public accountant which contains either an expression of opinion on an entity's financial statements, taken as a whole, or an assertion that an opinion cannot be expressed.

*Bank*—

(i) As defined in section 102(d) of the act.

(ii) The term does not include:

(A) A holding company for a bank.

(B) A bank-in-organization if the state or Federal regulator with primary authority over the bank-in-organization determines that it is not a bank under the law governing that bank-in-organization.

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

*Beneficial ownership*—

(i) For purposes of § § 203.184 and 609.012 (relating to offers and sales to principals; and computing the number of offerees, purchasers and clients) and section 203(s)(v) and (t)(v) of the act, as defined in 17 CFR 240.13d-3 (relating to determination of beneficial owner).

(ii) For purposes of § 302.070 (relating to registration exemption for investment advisers to private funds), as defined in 17 CFR 270.2a51-2 (relating to definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests).

(iii) For purposes of § § 304.012, 305.019 and 404.011 (relating to investment adviser required records; dishonest and unethical practices; and investment adviser brochure disclosure), as defined in 17 CFR 275.204A-1 (relating to investment adviser codes of ethics).

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

*Bona fide pledgee*—

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

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

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

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

*Bond*—

(i) A debt obligation, including a note, debenture or other evidence of indebtedness.

(ii) For purposes of § 202.092 (relating to guaranties of certain debt securities exempt), an exempt security under section 3(a)(2) of the Securities Act of 1933 (15 U.S.C.A. § 77c(a)(2)) when either of the following applies:

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

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

*Branch office*—As defined in FINRA Rule 3110(e) or any successor rule.

*Broker-dealer*—

(i) As defined in section 102(e) of the act.

(ii) The term does not include persons:

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

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

*CRD*—The Central Registration Depository operated by FINRA, and any successor thereto.

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

*Client*—

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

(ii) For purposes of § 404.012 (relating to cash payment for client solicitation), the term includes a prospective client.

(iii) For purposes of § 404.011, the term includes each limited partner of a limited partnership, each member of a limited liability company and each beneficiary of a trust if the investment adviser is the general partner of the limited partnership, manager of the limited liability company or trustee of the trust.

*Commission*—Any form of compensation received by any person for effecting the purchase or sale of a security.

*Comparative financial statement*—A document which includes financial statements for 2 years or more presented in adjacent columnar form.

*Compensation*—Receipt, directly or indirectly, of any payment or consideration, whether or not in the form of cash, or any economic benefit.

*Confidential information*—Records and other information in the Department’s possession which are not available for public inspection and copying under the Right-to-Know Law (65 P.S. § § 67.101—67.3104) or section 603(c) of the act (70 P.S. § 1-603(c)).

*Control*—

(i) As defined in section 102(g) of the act.

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

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

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

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

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

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

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

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

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

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

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

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

*Cooperative business association*—A person organized exclusively as a retail or wholesale cooperative

which admits to membership only persons that legitimately engage, in whole or in part, in the line of business for which the cooperative was organized.

*Custody—*

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

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

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

(A) Possession of client funds or securities, unless the investment adviser receives them inadvertently and returns them to the sender promptly but in any case within 3 business days of receiving them.

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

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

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

(A) An investment adviser that has inadvertently held or obtained a client's securities or funds and returned them to the client within 3 business days or has forwarded third-party checks within 24 hours, provided that the adviser keeps a ledger or other listing of all securities or funds held or obtained in this manner as required under § 304.012(a)(22).

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

*Customer—*

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

(ii) For the purpose of §§ 303.041 and 304.061 (relating to broker-dealer capital requirements; and free credit balances), every person other than the broker-dealer.

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

*Development stage company*—A company devoting substantially all of its efforts to establishing a new business if planned principal operations have not commenced, or have commenced, but there has not been significant revenue therefrom.

*Direct participation program*—A program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, real estate investment trusts, agricultural programs, cattle programs, condominium securities and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof, except tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. § § 401 and 403(a)) and individual retirement plans under section 408 of the Internal Revenue Code of 1986 (26 U.S.C.A. § 408), tax sheltered annuities under section 403(b) of the Internal Revenue Code of 1986, and any company including separate accounts, registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C.A. § § 80a-1—80a-64).

*Discretionary power*—Effecting a transaction or placing a trade order without specific authorization from the client, not including discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

*EFD*—The electronic filing depository operated by NASAA, and any successor thereto.

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

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

*Equity security*—

- (i) A stock or similar security (including interests in a limited liability company).
- (ii) A security convertible, with or without consideration, into a stock or similar security, or carrying a warrant or right to subscribe to or purchase a security described in subparagraph (i); or a warrant or right.
- (iii) For purposes of § 203.091, the term includes:
  - (A) Common stock, preferred stock and nondebt securities convertible into common or preferred stock.
  - (B) Nontransferable warrants to purchase any of the foregoing.
  - (C) Transferable warrants exercisable within not more than 90 days of issuance to purchase any of the foregoing.

*Equity securityholder*—

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

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

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

*Executive officer*—Each person serving as chief executive officer, chief operating officer or chief financial officer of a person.

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

*FINRA*—The Financial Industry Regulatory Authority, Inc., and any successor thereto.

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

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

*Financial forecast*—A prospective financial statement which:

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

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

*Financial institution*—A Federal or State chartered bank, savings and loan association, savings bank or credit union, and any service corporation affiliated with these entities.

*Financial projection*—A prospective financial statement which:

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

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

*Financial statements*—A balance sheet, statement of income, statement of stockholders' equity and statement of cash flow and accompanying notes.

*Firm member*—All partners and principals in the firm and all professional employees participating in an audit or located in an office of the firm participating in a significant part of an audit.

*Fiscal year*—



- (i) The annual accounting period when a closing date is adopted.
- (ii) The calendar year ending on December 31 when a closing date is not adopted.

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

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

*Guarantor*—A person who executes a guaranty.

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

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

*IARD*—The Internet-based Investment Adviser Registration Depository operated by FINRA, and any successor thereto.

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

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

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

*Independent party*—A person who meets all of the following:

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

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

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

*Independent representative*—A person who:

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

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

(iii) Does not have, and has not had within the past 2 years, a material business relationship with the investment adviser.

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

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

(i) Substantially confined to the industrial loan business.

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

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

*Insolvent or insolvency*—Except in the case of entities required under law or regulation to submit an auditor’s report if the auditor’s report does not contain a going concern disclosure, the terms mean either of the following:

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

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

*Institutional investor*—As defined in section 102(k) of the act, including the following:

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

(ii) A college, university or other public or private institution which has received exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and which has a total endowment or trust funds, including annuity and life income funds, of \$5 million or more according to its

most recent audited financial statements; provided that the aggregate dollar amount of securities being sold to the person under the exemption in section 203(c) of the act and this title may not exceed 5% of the endowment or trust funds.

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

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

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

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

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

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

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

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

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

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

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

(vi) A seed capital fund as defined in section 2 and authorized in section 6 of the Small Business Incubators Act (73 P.S. § § 395.2 and 395.6).

(vii) A business development credit corporation as authorized by the Business Development Credit Corporation Law (7 P.S. § § 6040-1—6040-16).

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

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

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

(xi) A qualified pension and profit sharing and stock bonus plan under section 401 of the Internal Revenue Code of 1986 and all plans under section 408 of the Internal Revenue Code of 1986 if the plan has either of the following:

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

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

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

*Investment adviser representative*—

(i) As defined in section 102(j.1) of the act.

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

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

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

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

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

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

(II) An affiliated individual of a controlling person.

(III) An affiliated individual of an affiliated person.

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

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

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

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

- (I) An individual in a control relationship to the investment adviser.
- (II) An affiliated individual of a controlling person.
- (III) An affiliated individual of an affiliated person.

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

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

*Most recent audited financial statements*—Audited financial statements dated not more than 16 months before the date of the transaction in which the person proposed to purchase securities in reliance on the exemption in section 203(c) of the act.

*NASAA*—The North American Securities Administrators Association, Inc.

*National securities association*—An association of brokers and dealers registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78o-3).

*National securities exchange*—Any exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78c) which is registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C.A. § 78f).

*Nationally recognized statistical rating organization*—As defined in section 3(a)(62) of the Securities Exchange Act of 1934.

*Net capital*—As defined in 17 CFR 240.15c3-1, promulgated under the Securities Exchange Act of 1934.

*Net worth*—The excess of assets over liabilities as determined by generally accepted accounting principles reduced by:

- (i) Prepaid expenses except items properly classified as current assets under generally accepted accounting principles.
- (ii) Deferred charges.
- (iii) Goodwill, franchises, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other intangible assets.
- (iv) Home furnishings, automobiles and any other personal items not readily marketable in the case of an individual.
- (v) Advances or loans to:
  - (A) Stockholders and officers in the case of a corporation.
  - (B) Members and managers in the case of a limited liability company.

(C) Partners in the case of a partnership.

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

*Networking arrangement or brokerage affiliate arrangement*—A contractual agreement between a broker-dealer registered under section 301 of the act and a financial institution by which the broker-dealer effects transactions in securities for the account of customers of the financial institution and the general public which transactions are effected on, or emanate from, the premises of a financial institution.

*Nonbranch office*—A location at which a broker-dealer is conducting a securities business that does not come within the definition of “office of supervisory jurisdiction” or “branch office.”

*Note or footnote*—A clear and concise disclosure of information, including information necessary to make an item or entry in the financial statement not misleading, cross-referenced specifically, if practicable, to an item or entry in a financial statement.

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

*PCAOB*—The Public Company Accounting Oversight Board, and any successor thereto.

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

*Pooled investment vehicle*—

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

(ii) The term does not include an investment company that has filed a registration statement under the Investment Company Act of 1940.

*Portfolio management*—The process of determining or recommending securities transactions for any part of a client’s portfolio.

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

*Principal*—

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

(A) The issuer.

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

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

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

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

(A) The issuer.

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

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

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

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

(A) The issuer.

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

(C) A promoter of the issuer as defined in section 102(o) of the act.

(D) A relative of a person specified in clauses (A)—(C), if “relative” means one of the following:

(I) A spouse.

(II) A parent.

(III) A grandparent.

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

*Principal place of business*—The executive office of the business from which the officers, partners or managers of the business direct, control and coordinate the activities of the business.

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

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

*Pro rata*—

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

(ii) The term includes the issuer offering:

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

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

*Professional corporation*—

(i) The term includes either of the following:

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

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

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

*Promotional securities*—The term includes any of the following:

(i) Securities issued:

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

(B) In consideration for services.

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

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

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

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

*Publish*—As defined in section 102(p) of the act, together with any form of electronic communication, including Internet and e-mail.



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

*Qualified custodian*—The term includes:

- (i) A bank as that term is defined in section 102(d) of the act.
- (ii) A Federally covered adviser as that term is defined in section 102(f.1) of the act.
- (iii) A broker-dealer registered with the Securities and Exchange Commission and the Department under section 301 of the act.
- (iv) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C.A. § 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon.
- (v) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

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

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

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

*Related parties*—

- (i) The registrant and its affiliates, principal owners (the owners of record or known beneficial owners of more than 10% of the voting interests of the reporting entity), management (a person having responsibility for achieving the objectives of the organization and the concomitant authority to establish the policies and to make the decisions by which the objectives are to be pursued) and members of their immediate families.
- (ii) Entities for which investments are accounted for by the equity method.
- (iii) Any other party with which the reporting entity may deal when one party has the ability to significantly influence the management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- (iv) Another entity with the ability to significantly influence the management or operating policies of the transacting parties.
- (v) Another entity with an ownership interest in one of the transacting parties and the ability to significantly influence the other to the extent that one or more of the transacting parties might be prevented

from fully pursuing its own separate interests.

*Related person*—A person that is an affiliate of an investment adviser.

*Rental pool arrangement*—The term includes:

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

(ii) Other devices having like attributes.

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

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

*Securities and Exchange Commission*—The United States Securities and Exchange Commission.

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

*Securities issued by an industrial loan association*—

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

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

*Security or securities*—

(i) As defined in section 102(t) of the act, including:

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

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

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

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

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

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

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

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

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

(ii) For purposes of § 203.183 (relating to agricultural cooperative associations), membership agreements, capital stock, membership certificates and an instrument or form of advice which evidences either of the following:

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

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

(iii) For purposes of § 203.188 (relating to Cooperative Business Associations Exemption), an equity or debt security, membership agreement, membership certificate, patronage dividend or form of advice which evidences either of the following:

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

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

*Self-regulatory organization*—As defined in section 3(a)(26) of the Securities Exchange Act of 1934.

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

*Side-by-side fund*—A person which is:

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

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

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

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

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

(iii) The parent's and its other subsidiaries' equity in the income before income taxes and extraordinary items of the subsidiary exceeds 10% of the income of the parent and its consolidated subsidiaries. If the income of the parent and its consolidated subsidiaries is at least 10% lower than the average of the income for the last 5 fiscal years, the average income may be substituted in the determination.

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

*Sponsor*—An investment adviser that is compensated under a wrap fee program for either of the following:

(i) Administering, organizing or sponsoring the program.

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

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

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

*Supervised person*—As defined in section 202(a)(25) of the Investment Advisers Act of 1940.

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

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

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

(iii) Deferred charges including debt issue costs.

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

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

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

*Totally-held subsidiary*—A subsidiary:

(i) Whose parent or the parent's other totally-held subsidiaries, or both, owns substantially all of the subsidiary's outstanding equity securities.

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

(A) Incurred in the ordinary course of business which is not overdue and which matures within 1 year from the date of its creation, whether evidenced by securities or not.

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

*Trade or professional association*—

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

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

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

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

*Venture capital fund*—A private fund meeting the definition of "venture capital fund" in Securities and Exchange Commission Rule 203(l)-1 (17 CFR 275.203(l)-1).

*Voting shares*—The sum of either of the following:

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

(ii) All interests in an unincorporated person.

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

*Wrap fee program*—A program under which a client is charged a specified fee or fees not based directly on transactions in a client’s account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

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

#### **Authority**

The provisions of this § 102.021 issued under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **Source**

The provisions of this § 102.021 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

#### **Cross References**

This section cited in 10 Pa. Code § 204.010 (relating to increasing the number of purchasers and offerees); and 10 Pa. Code § 304.012 (relating to investment adviser required records).

### **§ 303.011. Broker-dealer registration procedures.**

(a) An applicant for initial registration as a broker-dealer shall complete a Uniform Application for Broker-Dealer Registration (Form BD), or a successor form.

(b) An applicant which is not a member of FINRA or a member of a National securities exchange shall complete and file with the Department:

- (1) A copy of Form BD.
- (2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).
- (3) The compliance assessment required under section 602.1(a)(3) of the act (70 P.S. § 1-602.1(a)(3)).
- (4) Financial statements in the form required under subsections (e), (f) and (g).

(c) An applicant which is not a member of FINRA but is a member of a National securities exchange shall complete and file with the Department:

- (1) A copy of Form BD.
- (2) The filing fee required under section 602(d.1) of the act.
- (3) The compliance assessment required under section 602.1(a)(3) of the act.

(d) An applicant which is a member of FINRA shall file with the Department:

- (1) Form BD in the manner set forth in § 603.011(f) (relating to filing requirements).
- (2) The filing fee required under section 602(d.1) of the act.
- (3) The compliance assessment required under section 602.1(a)(3) of the act.

(e) Except for applicants described in subsections (c) and (d), applicants shall file a statement of the financial condition of the applicant which meets all of the following conditions:

- (1) The statement is prepared in accordance with generally accepted accounting principles.
- (2) The statement is accompanied by an auditor's report containing an unqualified opinion of an independent certified public accountant, which is as of either of the following:
  - (i) The end of the applicant's most recent fiscal year.
  - (ii) The preceding fiscal year if:
    - (A) The statement of financial condition for the most recently ended fiscal year is unavailable.
    - (B) The application is filed within 14 months of the end of the preceding fiscal year.

(f) Except for applicants described in subsections (c) and (d), if the date of the most recent audited statement of financial condition is more than 45 days before the date of filing, the applicant also shall file an unaudited statement of financial condition as of a date within 45 days of the date of filing which the Department may require include the filing of separate schedules:

- (1) Listing the securities owned by the applicant valued at the market.
- (2) Stating material contractual commitments of the applicant not otherwise reflected in the statements.

(g) Except for applicants described in subsections (c) and (d), if an applicant has commenced to act as a broker-dealer, the audited statement of financial condition shall be accompanied by an audited statement of income which is as of either of the following:

- (1) The end of the applicant's most recent fiscal year.
- (2) The preceding fiscal year if:
  - (i) The statement of income for the most recently ended fiscal year is unavailable.
  - (ii) The application is filed within 14 months of the end of the preceding fiscal year.

(h) An applicant described in subsections (c) and (d) shall provide to the Department, within 5 days of receipt of a written or electronic request, a copy of any financial statement or financial information required under the Securities and Exchange Commission rules or the rules of a National securities association or National securities exchange of which the applicant is a member.

(i) A broker-dealer registered under the act shall take steps necessary to ensure that material information contained in its Form BD remains current and accurate. If a material statement made in Form BD becomes incorrect or inaccurate, the broker-dealer shall file with the Department 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)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **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; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364735) to (364736).



## **Cross References**

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

### **§ 303.013. Agent registration procedures.**

(a) An applicant for initial registration as an agent of a broker-dealer or issuer shall complete a Uniform Application for Securities Industry Registration or Transfer (Form U-4) or a successor form.

(b) Except as provided in subsection (c), the agent and the broker-dealer or issuer shall complete and file with the Department:

- (1) Form U-4 and exhibits.
- (2) The filing fee required under section 602(d.1) of the act (70 P.S. § 1-602(d.1)).
- (3) The compliance assessment required under section 602.1(a)(1) of the act (70 P.S. § 1-602.1(a)(1)).
- (4) Evidence of passage of the examinations required under § 303.031 (relating to examination requirement for agents).

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

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

(d) An agent and broker-dealer or issuer shall take necessary steps to ensure that material information contained in Form U-4 remains current and accurate. If a material statement made in the Form U-4 becomes incorrect or inaccurate, the agent and broker-dealer or issuer shall file with the Department 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)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **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; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364739) to (364740).

## **Cross References**

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

## **§ 303.016. Considered as abandoned.**

(a) *General rule.* The Department may consider as abandoned an application for registration as a broker-dealer, agent, investment adviser or investment adviser representative which has been on file with the Department for a minimum of 6 consecutive months if the applicant failed to do any of the following:

(1) Respond within 60 days after written notice sent by first class mail to the applicant's last known address in the Department's files warning the applicant that the application will be considered abandoned.

(2) Respond to any request for additional information required under the act.

(3) Complete the showing required for action on the application.

(b) *Voluntary withdrawal.* An applicant may, with the consent of the Department, withdraw an application at any time.

(c) *No refund of fee.* On abandonment or voluntary withdrawal, there will not be a refund for any filing fee paid before the date of the abandonment or withdrawal.

### **Authority**

The provisions of this § 303.016 issued under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

### **Source**

The provisions of this § 303.016 adopted January 12, 2018, effective January 13, 2018, 48 Pa.B. 389.

### **§ 303.031. Examination requirement for agents.**

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

(b) The applicant receives a passing grade on the securities examination for principals or registered representatives administered by FINRA or the Securities and Exchange Commission within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

(1) 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.

(2) The applicant has received a waiver of the examination requirement by FINRA.

(3) The applicant has received notice from the Department waiving the examination requirement.

(c) The applicant receives a passing grade on the Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66) and the General Securities Representative Examination (Series 7) or successor examination administered by FINRA within 2 years before the date of filing an application for registration. The Department considers the requirements of this subsection met if any of the following apply:

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

(2) The applicant has received notice from the Department waiving the requirement to take the Series 63 or 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)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **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; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364742) to (364743).

#### **Cross References**

This section cited in 10 Pa. Code § 303.013 (relating to agent registration procedures).

## § 304.011. Broker-dealer required records.

### (a) *Books and records.*

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

(2) If a broker-dealer registered under the act and not registered as a broker or dealer with the Securities and Exchange Commission fails to make and keep current the books and records required under this section, the broker-dealer shall:

(i) Notify the Department immediately.

(ii) File a report with the Department, within 24 hours after filing the notice with the Department, stating what steps have been taken and are being taken to fully comply with this section.

### (b) *Records of complaints.*

(1) Every broker-dealer registered under the act shall make, keep and preserve one of the following:

(i) A separate file of written complaints of customers and actions taken by the broker-dealer in response.

(ii) A separate record of the complaints and a clear reference to the files containing the correspondence connected with the complaint maintained by the broker-dealer.

(2) For purposes of this section, a complaint includes a written statement of a customer or a person acting on behalf of a customer or a written notation of verbal communication alleging a grievance involving the purchase or sale of securities, the solicitation or execution of a transaction, or the disposition of securities or funds of the customer.

(3) A registered broker-dealer that also is registered as a broker or dealer with the Securities and Exchange Commission is considered in compliance with the requirements of this subsection if it maintains records of customer complaints as required under applicable Securities and Exchange Commission rules.

### (c) *Retention.* The records required to be maintained under this section:

(1) 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.

(2) Shall be made easily accessible for inspection by the Department or its representatives.

(3) May be retained and preserved as:

(i) Microfilm, microfiche or any similar medium.

(ii) Electronic or digital storage medium.

(iii) 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 on reasonable request of the Department or its representatives.

#### **Authority**

The provisions of this § 304.011 amended under sections 304(a), (d) and (e) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § § 1-304(a), (d) and (e) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **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; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364753) to (364754).

## § 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 shall:
- (1) Act primarily for the benefit of its customers.
  - (2) 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 Department may deny, suspend, condition or revoke a broker-dealer, agent, investment adviser or investment adviser representative registration or censure a broker-dealer, agent, investment adviser or investment adviser representative registrant if the registrant or applicant, or in the case of any broker-dealer or investment adviser, any affiliate, has engaged in dishonest or unethical practices in the securities business or has taken unfair advantage of a customer within the previous 10 years.
- (c) The Department, for purposes of section 305(a)(ix) of the act, will consider actions such as those in paragraphs (1)—(3) to constitute dishonest or unethical practices in the securities business or taking unfair advantage of a customer.
- (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 on request of free credit balances reflecting completed transactions of any of its customers.
    - (ii) Inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.
    - (iii) Recommending to a customer the purchase, sale or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based on reasonable inquiry concerning the customer's investment objectives, financial situation and needs and other relevant information known by the broker-dealer.
    - (iv) Executing a transaction on behalf of a customer without authorization to do so.
    - (v) Exercising discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price, or both, for the execution of orders.
    - (vi) Executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.
    - (vii) Failing to segregate customers' free securities or securities held in safekeeping.
    - (viii) Hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by rules of the Securities and Exchange Commission.



(ix) Entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(x) Failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include information set forth in the final prospectus.

(xi) Charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping or custody of securities and other services related to its securities business.

(xii) Offering to buy from or sell to a person at a stated price unless the broker-dealer is prepared to purchase or sell at a price and under the conditions that are stated at the time of the offer to buy or sell.

(xiii) Representing that a security is being offered to a customer “at the market” or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by a person for whom the broker-dealer is acting or with whom is associated in the distribution, or a person controlled by, controlling or under common control with the broker-dealer.

(xiv) Effecting a transaction in, or inducing the purchase or sale of, a security by means of a manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include:

(A) Effecting a transaction in a security which involves no change in the beneficial ownership.

(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 to create a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security. This subsection does not prohibit a broker-dealer from entering bona fide agency cross transactions for its customers.

(C) Effecting, along or with one or more other persons, a series of transactions in a security creating actual or apparent active trading in the security or raising or depressing the price of the security, to induce the purchase or sale of the security by others.

(xv) Guaranteeing a customer against loss in a securities account of the customer carried by the broker-dealer or in a securities transaction effected by the broker-dealer with or for the customer.

(xvi) Publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service or communication of any kind which purports to report a transaction as a purchase or sale of a security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for a security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(xvii) Using advertising or sales presentation in 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) Failing or refusing to furnish a customer, on reasonable request, information to which he is entitled, or to respond to a formal written request or complaint.

(xxi) Failing to comply with an applicable 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 and 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 before execution of the transaction.

(iii) Establishing or maintaining an account containing fictitious information 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 on instruction of a third party without first having obtained a written third-party trading authorization from the client.

(vi) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser or a financial institution engaged in the business of loaning funds.

(vii) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(viii) Misrepresenting to an advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative or an 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 when the investment adviser or investment adviser representative uses published research reports or statistical analyses to give advice or when an investment adviser or investment adviser representative orders the report in the normal course of providing advice.

(x) Charging a client an unreasonable advisory fee.

(xi) Failing to disclose to a client in writing, before advice is given, 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 giving of unbiased and objective advice including:

(A) A compensation arrangement connected with advisory services to a client which is in addition to compensation from the client for the services.

(B) An advisory fee charged to a client for giving advice when a commission for executing securities transactions under the advice will be received by the investment adviser, the investment adviser representative or an employee or affiliated person of the investment adviser.

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

(xiii) Publishing, circulating or distributing an advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940 (15 U.S.C.A. § § 80b-1—80b-21).

(xiv) Disclosing the identity, investments or other financial information of a client unless required under law to do so, or unless consented to by the client.

(xv) Taking an action, directly or indirectly, with respect to those securities or funds in which a client has a beneficial interest, when 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 § 404.014 (relating to custody requirements for investment advisers).

(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 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 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 Securities and Exchange Commission under section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-3(b)).

(xix) Indicating, in an advisory contract, any condition, stipulation or provision binding any person to waive compliance with any provision of the act.

(xx) Engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative or contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940 (15 U.S.C.A. § 80b-6(4)) and the rules and regulations of the 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 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 act or any rule, regulation or order issued thereunder.

(d) In addition to the conduct described in paragraphs (1)—(3), the Department may deny, suspend, condition or revoke a registration or application for registration of a broker-dealer, agent, investment adviser or investment adviser representative for conduct inconsistent with the standards in subsection (a), including any of the following:

(1) Forgery.

(2) Embezzlement.

(3) Nondisclosure, incomplete disclosure or misstatement of material facts.

(4) Manipulative or deceptive practices.

(5) Taking unfair advantage of a customer or former customer in any aspect of a tender offer.

(e) This section does not apply to Federally covered advisers unless the conduct otherwise is actionable under section 401(a) or (c) or 404 of the act (70 P.S. § § 1-401(a) and (c) and 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)); amended under section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); section 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § 1-609(a)); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

#### **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; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364772) to (364778).

#### **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).

#### **Cross References**

This section cited in 10 Pa. Code § 102.021 (relating to definitions).

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

(a) *Investment adviser.* To withdraw from registration as an investment adviser registered under section 301 of the act (70 P.S. § 1-301) because the investment adviser has:

(1) Become a Federally covered adviser subject to exclusive registration with the Securities and Exchange Commission, the investment adviser shall file an amendment to the uniform application for investment adviser registration (Form ADV) or successor form thereto with the Department or with IARD.

(2) Stopped transacting business in this Commonwealth as an investment adviser, the investment adviser shall file a notice of withdrawal from registration as an investment adviser form (Form ADV-W) or a successor form with the Department or with IARD.

(b) *Broker-dealer.* To withdraw from registration as a broker-dealer, the broker-dealer shall file a completed Uniform Request for Withdrawal from Registration as a Broker-Dealer Form (Form BDW) or a successor form with the Department.

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

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

(e) *Federally covered adviser.* To withdraw a notice filing, a Federally covered adviser shall file a notice with the Department or with IARD.

### **Authority**

The provisions of this § 305.061 issued under the Pennsylvania Securities Act of 1972 (70 P.S. § § 1-101—1-704); amended under sections 305(a) and (f) and 609(a) of the Pennsylvania Securities Act of 1972 (70 P.S. § § 1-305(a) and (f) and 1-609(a)); section 202.C of the Department of Banking and Securities Code (71 P.S. § 733-202.C); and section 9(b) of the Takeover Disclosure Law (70 P.S. § 79(b)).

### **Source**

The provisions of this § 305.061 adopted July 26, 1974, effective July 27, 1974, 4 Pa.B. 1533; amended April 4, 1975, effective April 5, 1975, 5 Pa.B. 722; amended May 27, 1977, effective May 28, 1977, 7 Pa.B. 1438; amended through June 28, 1985, effective June 29, 1985, 15 Pa.B. 2394; amended January 17, 1992, effective January 18, 1992, 22 Pa.B. 293; amended September 1, 2000, effective September 2, 2000, 30 Pa.B. 4551; transferred and renumbered from 64 Pa. Code § 305.061, December 14, 2012, effective December 15, 2012, 42 Pa.B. 7533; amended January 12, 2018, effective January 13, 2018, 48 Pa.B. 389. Immediately preceding text appears at serial pages (364778) to (364779).