Rules under the Investment Advisers Act of 1940

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Rule 0-2 -- General Procedures for Serving Non-Residents

a. *General procedures for serving process, pleadings, or other papers on non-resident investment advisers, general partners and managing agents.* Under Forms ADV and ADV-NR [17 CFR 279.1 and 279.4], a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser by serving any or all of its appointed agents:

   1. A person may serve a non-resident investment adviser, non- resident general partner, or non-resident managing agent by furnishing the Commission with one copy of the process, pleadings, or papers, for each named party, and one additional copy for the Commission's records.

   2. If process, pleadings, or other papers are served on the Commission as described in this section, the Secretary of the Commission (Secretary) will promptly forward a copy to each named party by registered or certified mail at that party's last address filed with the Commission.

   3. If the Secretary certifies that the Commission was served with process, pleadings, or other papers pursuant to paragraph (a)(1) of this section and forwarded these documents to a named party pursuant to paragraph (a)(2) of this section, this certification constitutes evidence of service upon that party.

b. *Definitions.* For purposes of this section:

   1. *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

   2. *Non-resident* means:

      i. An individual who resides in any place not subject to the jurisdiction of the United States;

      ii. A corporation that is incorporated in or that has its principal office and place of business in any place not subject to the jurisdiction of the United States; and

      iii. A partnership or other unincorporated organization or association that has its principal office and place of business in any place not subject to the jurisdiction of the United States.

   3. *Principal office and place of business* has the same meaning as in Rule 203A-3(c).

Rule 0-3 -- References to Rules and Regulations

The term *rules and regulations* refers to all rules and regulations adopted by the Commission pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.

Rule 0-4 -- General Requirements of Papers and Applications

a. *Filings.*

1. All papers required to be filed with the Commission shall, unless otherwise provided by the rules and regulations, be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules and regulations, such papers shall be deemed to have been filed with the Commission on the date when they are actually received by it.

2. All filings required to be made electronically with the Investment Adviser Registration Depository ("IARD") shall, unless otherwise provided by the rules and regulations in this part, be deemed to have been filed with the Commission upon acceptance by the IARD. Filings required to be made through the IARD on a day that the IARD is closed shall be considered timely filed with the Commission if filed with the IARD no later than the following business day.

3. Filings required to be made through the IARD during the period in December of each year that the IARD is not available for submission of filings shall be considered timely filed with the Commission if filed with the IARD no later than the following January 7.

Note to Paragraph (a)(3): Each year the IARD shuts down to filers for several days during the end of December to process renewals of state notice filings and registrations. During this period, advisers are not able to submit filings through the IARD. Check the Commission's Web site at *http://www.sec.gov/iard* for the dates of the annual IARD shutdown.

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b. *Formal specifications respecting applications.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such application, shall be filed in quintuplicate. One copy shall be signed by the applicant, but the other four copies may have facsimile or typed signatures. Such applications shall be on paper no larger than 81/2 x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, those documents may be filed on paper larger than 81/2 x 11 inches in size. The left margin should be at least 11/2 inches wide and, if the application is bound, it should be bound on the left side. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying and microfilming.

c. *Authorization respecting applications.*

1. Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

2. If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

3. When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

d. *Verification of applications and statements of fact.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

State of ----------

County of ----------, ss: ----------

The undersigned being duly sworn deposes and says that he has duly executed the attached ---------- dated -----, 19--, for and on behalf of ---------- (Name of company); that he is the -------- (Title of officer) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature)----------

(Type or print name beneath)----------

Subscribed and sworn to before me a -------- (Title of officer) this ----- day of -----, 19--.

[OFFICIAL SEAL]

My commission expires ----------

e. *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and of the rules and regulations under which application is made.

f. *Name and address.* Every application shall contain the name and address of each applicant and the name and address of any person to whom any applicant wishes any question regarding the application to be directed.

g. *Proposed notice.* A proposed notice of the proceeding initiated by the filing of the application shall accompany each application as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application.

h. *Definition of application.* For purposes of this rule, an "application" means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

i. The manually signed original (or in the case of duplicate original) one duplicate originals of all registrations, applications, statements, reports, or other documents filed under the Investment Advisers Act of 1940, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

Rule 0-5 -- Procedure with Respect to Applications and Other Matters

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

a. Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

b. An order disposing of the matter will be issued as of course following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

c. The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of any interested person or (2) upon its own motion.

d. *Definition of application.* For purposes of this rule, an "application" means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

Rule 0-6 -- Incorporation by Reference in Applications

a. A person filing an application may, subject to the limitations of section 10(f) [of the Securities Act] and section 10(d) [of the Exchange Act], incorporate by reference as an exhibit to such application any document or part thereof, including any financial statement or part thereof, previously or concurrently filed with the Commission pursuant to any act administered by the Commission. The incorporation may be made whether the matter incorporated was filed by such applicant or any other person. If any modification has occurred in the text of any such document since the filing thereof, the applicant shall file with the reference a statement containing the text of any such modification and the date thereof. If the number of copies of any document previously or concurrently filed with the Commission is less than the number required to be filed with the application which incorporates such document, the applicant shall file therewith as many additional copies of the document as may be necessary to meet the requirements of the application.

b. Notwithstanding paragraph (a) of this section, a certificate of an independent public accountant or accountants previously or concurrently filed may not be incorporated by reference in any application unless the written consent of the accountant or accountants to such incorporation is filed with the application.

c. In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified matter is incorporated in the application at the particular place where the information is required.

d. Notwithstanding paragraph (a) of this section, no application shall incorporate by reference any exhibit or financial statement which (1) has been withdrawn, or (2) was filed under any act administered by the Commission in connection with a registration which has ceased to be effective, or (3) is contained in an application for registration, registration statement, or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933, section 8(e) of the Investment Company Act of 1940, section 15(b)(4)(A) of the Securities Exchange Act of 1934, section 203(e)(1) of the Investment Advisers Act of 1940 or to an order entered under any of those sections.

e. Notwithstanding paragraph (a) of this section, the Commission may refuse to permit incorporation by reference in any case in which in its judgment such incorporation would render an application incomplete, unclear, or confusing.

f. *Definition of Application.* For purposes of this rule, an "application" means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

NOTE: Prior to incorporating by reference any document as an exhibit to an application, applicants are advised to review section 10(f) [of the Securities Act] and section 10(d) [of the Exchange Act] as in effect at the time the application is filed to determine whether such incorporation by reference would be permissible under that rule.

Rule 0-7 -- Small Entities under the Investment Advisers Act for Purposes of the Regulatory Flexibility Act

a. For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 means an investment adviser that:

   1. Has assets under management, as defined under Section 203A(a)(2) of the Act and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than $ 25 million, or such higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act;

   2. Did not have total assets of $ 5 million or more on the last day of the most recent fiscal year; and

   3. Does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $ 25 million or more (or such higher amount as the Commission may deem appropriate), or any person

(other than a natural person) that had total assets of $ 5 million or more on the last day of the most recent fiscal year.

b. For purposes of this section:

1. *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

i. A person is presumed to control a corporation if the person:

A. Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

B. Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

ii. A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

iii. A person is presumed to control a limited liability company (LLC) if the person:

A. Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

B. Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

C. Is an elected manager of the LLC.

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

2. *Total assets* means the total assets as shown on the balance sheet of the investment adviser or other person described above under paragraph (a)(3) of this section, or the balance sheet of the investment adviser or such other person with its subsidiaries consolidated, whichever is larger.

Rule 202(a)(1)-1 -- Certain Transactions not Deemed Assignments

A transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of section 205(a)(2) of the Act.

Rule 202(a)(11)-1 -- Certain Broker-Dealers

a. *Special compensation.* A broker or dealer registered with the Commission under section 15 of the Securities Exchange Act of 1934 (the “Exchange Act”):

1. Will not be deemed to be an investment adviser based solely on its receipt of special compensation (except as provided in paragraph (b)(1) of this section), provided that:

i. Any investment advice provided by the broker or dealer with respect to accounts from which it receives special compensation is solely incidental to the brokerage services provided to those accounts (including, in particular, that the broker or dealer does not exercise investment discretion as provided in paragraphs (b)(3) and (d) of this section); and

ii. Advertisements for, and contracts, agreements, applications and other forms governing, accounts for which the broker or dealer receives special compensation include a prominent statement that: "Your account is a brokerage account and not an advisory account. Our interests may not always be the same as yours. Please ask us questions to make sure you understand your rights and our obligations to you, including the extent of our obligations to disclose conflicts of interest and to act in your best interest. We are paid both by you and, sometimes, by people who compensate us based on what you buy. Therefore, our profits, and our salespersons' compensation, may vary by product and over time." The prominent statement also must identify an appropriate person at the firm with whom the customer can discuss the differences.

2. Will not be deemed to have received special compensation solely because the broker or dealer charges a commission, mark-up, mark-down or similar fee for brokerage services that is greater than or less than one it charges another customer.

b. *Solely incidental to.* A broker or dealer provides advice that is not solely incidental to the conduct of its business as a broker or dealer within the meaning of section 202(a)(11)(C) of the Advisers Act or to the brokerage services provided to accounts from which it receives special compensation within the meaning of paragraph (a)(1)(i) of this section if the broker or dealer (among other things, and without limitation):

1. Charges a separate fee, or separately contracts, for advisory services;

2. Provides advice as part of a financial plan or in connection with providing financial planning services and:

i. holds itself out generally to the public as a financial planner or as providing financial planning services;

ii. delivers to the customer a financial plan; or

iii. represents to the customer that the advice is provided as part of a financial plan or in connection with financial planning services; or

3. Exercises investment discretion, as that term is defined in paragraph (d) of this section, over any customer accounts.

c. *Special rule.* A broker or dealer registered with the Commission under section 15 of the Exchange Act is an investment adviser solely with respect to those accounts for which it provides services or receives compensation that subject the broker or dealer to the Advisers Act.

d. *Investment discretion.* For purpose of this section, the term investment discretion has the same meaning as given in section 3(a)(35) of the Securities Exchange Act of 1934, except

that it does not include investment discretion granted by a customer on a temporary or limited basis.

Rule 203-1 -- Application for Investment Adviser Registration

a. *Form ADV.* To apply for registration with the Commission as an investment adviser, you must complete and file Form ADV (17 CFR 279.1) by following the instructions in the Form.

b. *Electronic filing.*

1. If you apply for registration after January 1, 2001, you must file electronically with the Investment Adviser Registration Depository (IARD), unless you have received a hardship exemption under Rule 203-3.

Note to Paragraph (b)(1): Information on how to file with the IARD is available on the Commission's website at <http://www.sec.gov/iard>.

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2. You are not required to file with the Commission a copy of Part II of Form ADV if you maintain a copy of your Part II (and any brochure you deliver to clients) in your files. The copy maintained in your files is considered filed with the Commission.

Note to Paragraph (b)(2): The Commission has proposed, but not adopted, substantial changes to Part II of Form ADV. Thus, the rules for preparing, delivering, and offering Part II (or a brochure containing at least the information contained in Part II) have not changed. If you are an SEC-registered adviser, however, you no longer have to file Part II with the Commission. Instead, you must keep a copy in your files, and update the information in your Part II whenever it becomes materially inaccurate. State law may continue to require you to file Part II with the appropriate State securities authority on paper, regardless of whether you are filing Part 1 on paper or through the IARD.

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c. *When filed.* Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

d. *Filing fees.* You must pay FINRA (the operator of the IARD) a filing fee. The Commission has approved the amount of the filing fee. No portion of the filing fee is refundable. Your completed application for registration will not be accepted by FINRA and thus will not be considered filed with the Commission, until you have paid the filing fee.

Rule 203-2 -- Withdrawal from Investment Adviser Registration

a. *Form ADV-W.* You must file Form ADV-W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

b. *Electronic filing.* Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV-W you file must be filed with the IARD, unless you have received a hardship exemption under Rule 203-3.

c. *Effective date -- upon filing.* Each Form ADV-W filed under this section is effective upon acceptance by the IARD, provided however that your investment adviser registration will continue for a period of sixty days after acceptance solely for the purpose of commencing a proceeding under section 203(e) of the Act.

d. *Filing fees.* You do not have to pay a fee to file Form ADV-W through the IARD.

e. *Form ADV-W is a report.* Each Form ADV-W required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act.

Rule 203-3 -- Hardship Exemptions

This section provides two "hardship exemptions" from the requirement to make Advisers Act filings electronically with the Investment Adviser Registration Depository (IARD).

a. *Temporary hardship exemption.*

1. *Eligibility for exemption.* If you are registered or are registering with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

2. *Application procedures.* To request a temporary hardship exemption, you must:

i. File Form ADV-H (17 CFR 279.3) in paper format with no later than one business day after the filing that is the subject of the ADV-H was due; and

ii. Submit the filing that is the subject of the Form ADV-H in electronic format with the IARD no later than seven business days after the filing was due.

3. *Effective date -- upon filing.* The temporary hardship exemption will be granted when you file a completed Form ADV-H.

b. *Continuing hardship exemption.*

1. *Eligibility for exemption.* If you are a "small business" (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption.

The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

2. *Application procedures.* To apply for a continuing hardship exemption, you must file Form ADV-H at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after you file Form ADV-H.

3. *Effective date -- upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to FINRA in paper format for the period of time for which the exemption is granted.

4. *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

5. *Small business.* You are a "small business" for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked "no" to each question in Item 12 that you were required to answer.

Rule 203(b)(3)-1 -- Definition of "client" of an Investment Adviser

Preliminary Note to Rule 203(b)(3)-1: This section is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act. Under paragraph (b)(6) of this section, the safe harbor is not available with respect to private funds.

a. *General.* You may deem the following to be a single client for purposes of section 203(b)(3) of the Act:

   1. A natural person, and:

      i. Any minor child of the natural person;

      ii. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

      iii. All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

      iv. All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

   2.

      i. A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

      ii. Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

b. *(b) Special Rules.* For purposes of this section:

1. You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization, *provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

2. You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

3. A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

4. (4) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

5. If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;

6. You may not rely on paragraph (a)(2)(i) of this section with respect to any private fund as defined in paragraph (d) of this section; and

7. For purposes of paragraph (b)(5) of this section, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

c. *Holding out.* If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public as an investment adviser, within the meaning of section 203(b)(3) of the Act, solely because you participate in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

d. *(d) Private fund*.

1. (1) A private fund is a company:

   i. (i) That would be an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by either section 3(c)(1) or section 3(c)(7) of such Act;

   ii. (ii) That permits its owners to redeem any portion of their ownership interests within two years of the purchase of such interests; and

   iii. (iii) Interests in which are or have been offered based on the investment advisory skills, ability or expertise of the investment adviser.

2. (2) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it permits its owners to redeem their ownership interests within two years of the purchase of such interests only in the case of:

   i. (i) Events you find after reasonable inquiry to be extraordinary; and

ii. (ii) Interests acquired through reinvestment of distributed capital gains or income.

3. (3) Notwithstanding paragraph (d)(1) of this section, a company is not a private fund if it has its principal office and place of business outside the United States, makes a public offering of its securities in a country other than the United States, and is regulated as a public investment company under the laws of the country other than the United States.

Rule 203(b)(3)-2 -- Methods for counting clients in certain private funds

a. For purposes of section 203(b)(3) of the Act, you must count as clients the shareholders, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner") of a private fund as defined in paragraph (d) of section Rule 203(b)(3)-1, unless such owner is your advisory firm or a person described in paragraph (d)(1)(iii) of section Rule 205-3.

b. If you provide investment advisory services to a private fund in which an investment company registered under the Investment Company Act of 1940 is, directly or indirectly, an owner, you must count the owners of that investment company as clients for purposes of section 203(b)(3) of the Act.

c. If you have your principal office and place of business outside the United States, you may treat a private fund that is organized or incorporated under the laws of a country other than the United States as your client for all purposes under the Act, other than sections 203, 204, 206(1) and 206(2).

Rule 203A-1 -- Eligibility for SEC Registration; Switching To or From SEC Registration

a. *Eligibility for SEC registration.*

1. *Threshold for SEC registration -- $ 30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you are not required to register with the Commission, unless:

i. You have assets under management of at least $ 30,000,000, as reported on your Form ADV (17 CFR 279.1); or

ii. You are an investment adviser to an investment company registered under the Investment Company Act of 1940.

2. *Exemption for investment advisers having between $ 25 and $ 30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least $ 25,000,000 but less than $ 30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

i. You are an investment adviser to an investment company registered under the Investment Company Act of 1940; or

ii. You are eligible for an exemption described in Rule 203A-2.

Note to Paragraphs (a)(1) and (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between $ 25 and $ 30 million of assets under management.

b. *Switching to or from SEC registration.*

1. *State-registered advisers -- switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you have at least $ 30 million of assets under management.

2. *SEC-registered advisers -- switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you no longer have $ 25 million of assets under management (or are not otherwise eligible for SEC registration), you must file Form ADV-W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then have at least $ 25 million of assets under management or are otherwise eligible for SEC registration). During this period while you are registered with both the Commission and one or more State securities authorities, the Investment Advisers Act of 1940 and applicable State law will apply to your advisory activities.

Rule 203A-2 -- Exemptions from Prohibition on Commission Registration

The prohibition of section 203A(a) of the Act does not apply to:

a. *Nationally recognized statistical rating organizations.* An investment adviser that is a nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of Rule 15c3-1.

b. *Pension Consultants.*

1. An investment adviser that is a "pension consultant," as defined in this section, with respect to assets of plans having an aggregate value of at least $ 50,000,000.

2. An investment adviser is a pension consultant, for purposes of paragraph (b) of this section, if the investment adviser provides investment advice to:

i. Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") [29 U.S.C. 1002(3)];

ii. Any governmental plan described in section 3(32) of ERISA (29 U.S.C. 1002(32)); or

iii. Any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)).

3. In determining the aggregate value of assets of plans, include only that portion of a plan's assets for which the investment adviser provided investment advice (including

any advice with respect to the selection of an investment adviser to manage such assets). Determine the aggregate value of assets by cumulating the value of assets of plans with respect to which the investment adviser was last employed or retained by contract to provide investment advice during a 12-month period ended within 90 days of filing an annual updating amendment to Form ADV (17 CFR 279.1).

c. *Investment advisers controlling, controlled by, or under common control with an investment adviser registered with the Commission.* An investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to register, and registered with, the Commission ("registered adviser"), provided that the principal office and place of business of the investment adviser is the same as that of the registered adviser. For purposes of this paragraph, control means the power to direct or cause the direction of the management or policies of an investment adviser, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of an investment adviser is presumed to control that investment adviser.

d. *Investment advisers expecting to be eligible for SEC registration within 120 days.* An investment adviser that:

1. Immediately before it registers with the Commission, is not registered or required to be registered with the Commission or a securities commissioner (or any agency or officer performing like functions) of any State and has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective;

2. Indicates on Schedule D of its Form ADV (17 CFR 279.1) that it will withdraw from registration with the Commission if, on the 120th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act from registering with the Commission; and

3. Notwithstanding Rule 203A-1(b)(2), files a completed Form ADV-W (17 CFR 279.2) withdrawing from registration with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective.

e. *Multi-State investment advisers.* An investment adviser that:

1. Upon submission of its application for registration with the Commission, is required by the laws of 30 or more States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and thereafter would, but for this section, be required by the laws of at least 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States;

2. Indicates on Schedule D of its Form ADV that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the State securities authorities in the respective States or, in the case of an amendment to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the State securities authorities in the respective States, within 90 days prior to the date of filing Form ADV;

3. Undertakes on Schedule D of its Form ADV to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and that the investment adviser would be prohibited by section 203A(a) of the Act from registering with the Commission, by filing a completed Form ADV-W within 180 days of the adviser's fiscal year end (unless the adviser then has at least $ 25 million of assets under management or is otherwise eligible for SEC registration); and

4. Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

f. *Internet investment advisers.*

1. An investment adviser that:

i. Provides investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months;

ii. Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the Commission under paragraph (f) of this section, a record demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits in paragraph (f)(1)(i) of this section; and

iii. Does not control, is not controlled by, and is not under common control with, another investment adviser that registers with the Commission under paragraph (c) of this section solely in reliance on the adviser registered under paragraph (f) of this section as its *registered adviser.*

2. For purposes of paragraph (f) of this section, *interactive website* means a website in which computer software-based models or applications provide investment advice to clients based on personal information each client supplies through the website.

3. An investment adviser may rely on the definition of *client* in Rule 203(b)(3)-1 in determining whether it provides investment advice to fewer than 15 clients under paragraph (f)(1)(i) of this section.

Rule 203A-3 -- Definitions

For purposes of section 203A of the Act and the rules thereunder:

a.

1. *Investment adviser representative.* "Investment adviser representative" of an investment adviser means a supervised person of the investment adviser:

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

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

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

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

ii. Provides only impersonal investment advice.

3. For purposes of this section:

i. "Excepted person" means a natural person who is a qualified client as described in Rule 205-3(d)(1).

ii. "Impersonal investment advice" means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

4. Supervised persons may rely on the definition of "client" in Rule 203(b)(3)-1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

b. *Place of business.* "Place of business" of an investment adviser representative means:

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

2. Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

c. *Principal office and place of business.* "Principal office and place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Rule 203A-4 -- Investment Advisers Registered with a State Securities Commission

The Commission shall not assert a violation of section 203 of the Act (or any provision of the Act to which an investment adviser becomes subject upon registration under section 203 of the Act for the failure of an investment adviser registered with the securities commission (or any agency or office performing like functions) in the State in which it has its principal office and place of business to register with the Commission if the investment adviser reasonably believes that it does not have assets under management of at least $ 30,000,000 and is therefore not required to register with the Commission.

Rule 204-1 -- Amendments to Application for Registration

a. *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

   1. At least annually, within 90 days of the end of your fiscal year; and

   2. More frequently, if required by the instructions to Form ADV.

Note to Paragraph (a): Information on how to file with the Investment Adviser Registration Depository ("IARD") is available on our website at *www.sec.gov/iard*.

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b. *Electronic filing of amendments.*

   1. You must file all amendments to Part 1A of your Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under Rule 203-3.

   2. If you have received a continuing hardship exemption under Rule 203-3, you must, when you are required to amend your Form ADV, file a completed Part 1A of Form ADV on paper with the SEC by mailing it to FINRA.

c. *Special rule for Part II.* You are not required to file with the Commission a copy of Part II of Form ADV if you maintain a copy of your Part II (and any brochure you deliver to clients) in your files. The copy maintained in your files is considered filed with the Commission.

Note to Paragraph (c): The Commission has proposed, but not adopted, substantial changes to Part II of Form ADV. Thus, the rules for preparing, delivering, and offering Part II (or a brochure containing at least the information contained in Part II) have not changed. If you are an SEC-registered adviser, however, you no longer have to file Part II with the Commission. Instead, you must keep a copy in your files, and update the information in your Part II whenever it becomes materially inaccurate. State law may continue to require you to file Part II with the appropriate State securities authority on paper, regardless of whether you are filing Part 1 on paper or through the IARD.

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d. *Filing fees.* You must pay the FINRA (the operator of the IARD) an initial filing fee when you first electronically file Part 1A of Form ADV. After you pay the initial filing fee, you must pay an annual filing fee each time you file your annual updating amendment. No portion of either fee is refundable. The Commission has approved the filing fees. Your amended Form ADV will not be accepted by FINRA, and thus will not be considered filed with the Commission, until you have paid the filing fee.

e. *Amendments to Form ADV are reports.* Each amendment required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act.

Rule 204-2 -- Books and Records to Be Maintained by Investment Advisers

a. Every investment adviser registered or required to be registered under section 203 of the Act shall make and keep true, accurate and current the following books and records relating to its investment advisory business:

1. A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

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

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

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

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

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

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

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

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

12.
    i. A copy of the investment adviser's code of ethics adopted and implemented pursuant to Rule 204A-1 that is in effect, or at any time within the past five years was in effect;

    ii. A record of any violation of the code of ethics, and of any action taken as a result of the violation; and

    iii. A record of all written acknowledgments as required by Rule 204A-1(a)(5) for each person who is currently, or within the past five years was, a supervised person of the investment adviser.

13.
    i. A record of each report made by an access person as required by Rule 204A-1(b), including any information provided under paragraph (b)(3)(iii) of that rule in lieu of such reports;

    ii. A record of the names of persons who are currently, or within the past five years were, access persons of the investment adviser; and

    iii. A record of any decision, and the reasons supporting the decision, to approve the acquisition of securities by access persons under Rule 204A-1(c), for at least five years after the end of the fiscal year in which the approval is granted.

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

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

15. All written acknowledgments of receipt obtained from clients pursuant to Rule 206(4)-3(a)(2)(iii)(B) and copies of the disclosure documents delivered to clients by solicitors pursuant to Rule 206(4)-3.

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

17.

    i. A copy of the investment adviser's policies and procedures formulated pursuant to Rule 206(4)-7(a) of this chapter that are in effect, or at any time within the past five years were in effect, and

    ii. Any records documenting the investment adviser's annual review of those policies and procedures conducted pursuant to Rule 206(4)-7(b) of this chapter.

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

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

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

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

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

c.

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

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

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

2. Every investment adviser subject to paragraph (a) of this section that exercises voting authority with respect to client securities shall, with respect to those clients, make and retain the following:

i. Copies of all policies and procedures required by Rule 206(4)-6.

ii. A copy of each proxy statement that the investment adviser receives regarding client securities. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a copy of a proxy statement (provided that the adviser has obtained an undertaking from the third party to provide a copy of the proxy statement promptly upon request) or may rely on obtaining a copy of a proxy statement from the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.

iii. A record of each vote cast by the investment adviser on behalf of a client. An investment adviser may satisfy this requirement by relying on a third party to make and retain, on the investment adviser's behalf, a record of the vote cast (provided that the adviser has obtained an undertaking from the third party to provide a copy of the record promptly upon request).

iv. A copy of any document created by the adviser that was material to making a decision how to vote proxies on behalf of a client or that memorializes the basis for that decision.

v. A copy of each written client request for information on how the adviser voted proxies on behalf of the client, and a copy of any written response by the investment adviser to any (written or oral) client request for information on how the adviser voted proxies on behalf of the requesting client.

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

e.

1. All books and records required to be made under the provisions of paragraphs (a) to (c)(1)(i), inclusive, and (c)(2) of this rule (except for books and records required to be made under the provisions of paragraphs (a)(11), (a)(12)(i), (a)(12)(iii), (a)(13)(ii), (a)(13)(iii), (a)(16), and (a)(17)(i) of this section), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

2. Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

3.

iv. Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.

v. *Transition rule.* If you are an investment adviser to a private fund as that term is defined in Rule 203(b)(3)-1, and you were exempt from registration under section 203(b)(3) of the Act prior to February 10, 2005, paragraph (e)(3)(i) of this section does not require you to maintain or preserve books and records that would otherwise be required to be maintained or preserved under the provisions of paragraph (a)(16) of this section to the extent those books and records pertain to the performance or rate of return of such private fund or other account you advise for any period ended prior to February 10, 2005, provided that you were not registered with the Commission as an investment adviser during such period, and provided further that you continue to preserve any books and records in your possession that pertain to the performance or rate of return of such private fund or other account for such period.

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

g. *Micrographic and electronic storage permitted.*

0. *General.* The records required to be maintained and preserved pursuant to this part may be maintained and preserved for the required time by an investment adviser on:

i. Micrographic media, including microfilm, microfiche, or any similar medium; or

ii. Electronic storage media, including any digital storage medium or system that meets the terms of this section.

1. *General requirements.* The investment adviser must:

i. Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

ii. Provide promptly any of the following that the Commission (by its examiners or other representatives) may request:

A. A legible, true, and complete copy of the record in the medium and format in which it is stored;

B. A legible, true, and complete printout of the record; and

C. Means to access, view, and print the records; and

iii. Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

2. *Special requirements for electronic storage media.* In the case of records on electronic storage media, the investment adviser must establish and maintain procedures:

i. To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

ii. To limit access to the records to properly authorized personnel and the Commission (including its examiners and other representatives); and

iii. To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

h.

0. Any book or other record made, kept, maintained and preserved in compliance with Rule 17a-3 and Rule 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept maintained and preserved in compliance with this section.

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

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

j.

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

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

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

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

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

      and

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

3. For purposes of this rule the term *non-resident investment adviser* shall have the meaning set out in Rule 0-2(d)(3) under the Act. [Editor's note: There is no paragraph (d) to Rule 0-2. The term *non-resident* is defined in Rule 0-2(b)(2).]

k. Every investment adviser that registers under section 203 of the Act after July 8, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commission.

l. (l) *Records of private funds.* If an investment adviser subject to paragraph (a) of this section advises a private fund (as defined in Rule 203(b)(3)-1,) and the adviser or any related person (as defined in Form ADV (17 CFR 279.1)) of the adviser acts as the private fund's general partner, managing member, or in a comparable capacity, the books and records of the private fund are records of the adviser for purposes of section 204 of the Act.

Rule 204-3 -- Written Disclosure Statements

a. *General requirement.* Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to section 203 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part II of its form ADV which complies with Rule 204-1(b) under the Act or a written document containing at least the information then so required by Part II of Form ADV.

b. *Delivery.*

1. An investment adviser, except as provided in paragraph (2), shall deliver the statement required by this section to an advisory client or prospective advisory client (i) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

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

c. *Offer to deliver.*

1. An investment adviser, except as provided in paragraph (2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.

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

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

4. Any statement requested in writing by an advisory client pursuant to an offer required by this paragraph must be mailed or delivered within seven days of the receipt of the request.

d. *Omission of inapplicable information.* If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

e. *Other disclosures.* Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

f. *Sponsors of wrap fee programs.*

1. An investment adviser, registered or required to be registered pursuant to section 203 of the Act, that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program, shall, in lieu of the written disclosure statement required by paragraph (a) of this section and in accordance with the other provisions of this section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV (§ 279.1 of this chapter). Any additional information included in such disclosure statement should be limited to information concerning wrap fee programs sponsored by the investment adviser.

2. If an investment adviser is required under this paragraph (f) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

3. An investment adviser need not furnish the written disclosure statement required by paragraph (f)(1) of this section to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

4. An investment adviser that is required under this paragraph (f) to furnish a disclosure statement to clients of a wrap fee program shall furnish the disclosure statement to each client of the wrap fee program (including clients that have previously been furnished the brochure required under paragraph (a) of this section) no later than October 1, 1994.

g. *Definitions.* For the purpose of this rule:

1. *Contract for impersonal advisory services* means any contract relating solely to the provision of investment advisory services (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (iii) any combination of the foregoing services.

2. *Entering into,* in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

3. *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of section 15(c) of that Act.

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

Rule 204A-1 -- Investment Adviser Codes of Ethics

a. *Adoption of code of ethics.* If you are an investment adviser registered or required to be registered under section 203 of the Act, you must establish, maintain and enforce a written code of ethics that, at a minimum, includes:

   1. A standard (or standards) of business conduct that you require of your supervised persons, which standard must reflect your fiduciary obligations and those of your supervised persons;

   2. Provisions requiring your supervised persons to comply with applicable federal securities laws;

   3. Provisions that require all of your access persons to report, and you to review, their personal securities transactions and holdings periodically as provided below;

   4. Provisions requiring supervised persons to report any violations of your code of ethics promptly to your chief compliance officer or, provided your chief compliance officer also receives reports of all violations, to other persons you designate in your code of ethics; and

   5. Provisions requiring you to provide each of your supervised persons with a copy of your code of ethics and any amendments, and requiring your supervised persons to provide you with a written acknowledgment of their receipt of the code and any amendments.

b. *Reporting requirements.*

   1. *Holdings reports.* The code of ethics must require your access persons to submit to your chief compliance officer or other persons you designate in your code of ethics a report of the access person's current securities holdings that meets the following requirements:

      i. *Content of holdings reports.* Each holdings report must contain, at a minimum:

         A. The title and type of security, and as applicable the exchange ticker symbol or CUSIP number, number of shares, and principal amount of each reportable security in which the access person has any direct or indirect beneficial ownership;

B. The name of any broker, dealer or bank with which the access person maintains an account in which any securities are held for the access person's direct or indirect benefit; and

C. The date the access person submits the report.

ii. *Timing of holdings reports.* Your access persons must each submit a holdings report:

A. No later than 10 days after the person becomes an access person, and the information must be current as of a date no more than 45 days prior to the date the person becomes an access person.

B. At least once each 12-month period thereafter on a date you select, and the information must be current as of a date no more than 45 days prior to the date the report was submitted.

2. *Transaction reports*. The code of ethics must require access persons to submit to your chief compliance officer or other persons you designate in your code of ethics quarterly securities transactions reports that meet the following requirements:

i. *Content of transaction reports.* Each transaction report must contain, at a minimum, the following information about each transaction involving a reportable security in which the access person had, or as a result of the transaction acquired, any direct or indirect beneficial ownership:

A. The date of the transaction, the title, and as applicable the exchange ticker symbol or CUSIP number, interest rate and maturity date, number of shares, and principal amount of each reportable security involved;

B. The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

C. The price of the security at which the transaction was effected;

D. The name of the broker, dealer or bank with or through which the transaction was effected; and

E. The date the access person submits the report.

ii. *Timing of transaction reports.* Each access person must submit a transaction report no later than 30 days after the end of each calendar quarter, which report must cover, at a minimum, all transactions during the quarter.

3. *Exceptions from reporting requirements.* Your code of ethics need not require an access person to submit:

i. Any report with respect to securities held in accounts over which the access person had no direct or indirect influence or control;

ii. A transaction report with respect to transactions effected pursuant to an automatic investment plan;

iii. A transaction report if the report would duplicate information contained in broker trade confirmations or account statements that you hold in your records so long as you receive the confirmations or statements no later than 30 days after the end of the applicable calendar quarter.

c. *Pre-approval of certain investments.* Your code of ethics must require your access persons to obtain your approval before they directly or indirectly acquire beneficial ownership in any security in an initial public offering or in a limited offering.

d. *Small advisers.* If you have only one access person (i.e., yourself), you are not required to submit reports to yourself or to obtain your own approval for investments in any security in an initial public offering or in a limited offering, if you maintain records of all of your holdings and transactions that this section would otherwise require you to report.

e. *Definitions.* For the purpose of this section:

1. *Access person means*:

i. Any of your supervised persons:

A. Who has access to nonpublic information regarding any clients' purchase or sale of securities, or nonpublic information regarding the portfolio holdings of any reportable fund, or

B. Who is involved in making securities recommendations to clients, or who has access to such recommendations that are nonpublic.

ii. If providing investment advice is your primary business, all of your directors, officers and partners are presumed to be access persons.

2. *Automatic investment plan* means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An automatic investment plan includes a dividend reinvestment plan.

3. *Beneficial ownership* is interpreted in the same manner as it would be under 240.16a-1(a)(2)of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) and the rules and regulations thereunder. Any report required by paragraph (b) of this section may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the security to which the report relates.

4. *Federal securities laws* means the Securities Act of 1933, the Securities Exchange Act of 1934, the Sarbanes-Oxley Act of 2002, the Investment Company Act of 1940, the Investment Advisers Act of 1940, Title V of the Gramm-Leach-Bliley Act, any rules adopted by the Commission under any of these statutes, the Bank Secrecy Act as it applies to funds and investment advisers, and any rules adopted thereunder by the Commission or the Department of the Treasury.

5. *Fund* means an investment company registered under the Investment Company Act.

6. Initial public offering means an offering of securities registered under the Securities Act of 1933, the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934.

7. *Limited offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(6) or pursuant to Rule 504, Rule 505, or Rule 506 of this chapter.

8. *Purchase or sale of a security* includes, among other things, the writing of an option to purchase or sell a security.

9. Reportable fund means:

    i. Any fund for which you serve as an investment adviser as defined insection 2(a)(20) of the Investment Company Act of 1940 (i.e., in most cases you must be approved by the fund's board of directors before you can serve); or

    ii. Any fund whose investment adviser or principal underwriter controls you, is controlled by you, or is under common control with you. For purposes of this section, control has the same meaning as it does in section 2(a)(9) of the Investment Company Act of 1940.

10. *Reportable security* means a security as defined in section 202(a)(18) of the Act (15 U.S.C. 80b-2(a)(18)), except that it does not include:

    i. Direct obligations of the Government of the United States;

    ii. Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements;

    iii. Shares issued by money market funds;

    iv. Shares issued by open-end funds other than reportable funds; and

    v. Shares issued by unit investment trusts that are invested exclusively in one or more open-end funds, none of which are reportable funds.

Rule 205-1 -- Definition of "investment performance" of an Investment Company and "investment record" of an Appropriate Index of Securities Prices

a. Investment performance of an investment company for any period shall mean the sum of:

    1. The change in its net asset value per share during such period;

    2. The value of its cash distributions per share accumulated to the end of such period; and

    3. The value of capital gains taxes per share paid or payable on undistributed realized long-term capital gains accumulated to the end of such period; expressed as a percentage of its net asset value per share at the beginning of such period. For this purpose, the value of distributions per share of realized capital gains, of dividends per share paid from investment income and of capital gains taxes per share paid or

payable on undistributed realized long-term capital gains shall be treated as reinvested in shares of the investment company at the net asset value per share in effect at the close of business on the record date for the payment of such distributions and dividends and the date on which provision is made for such taxes, after giving effect to such distributions, dividends and taxes.

b. Investment record of an appropriate index of securities prices for any period shall mean the sum of:

1. The change in the level of the index during such period; and

2. The value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period; expressed as a percentage of the index level at the beginning of such period. For this purpose cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the payment of the dividend.

Rule 205-2 -- Definition of "specified period" Over Which the Asset Value of the Company or Fund under Management is Averaged

a. For purposes of this rule:

1. *Fulcrum fee* shall mean the fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

2. *Rolling period* shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

b. The specified period over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices or such other measure of investment performance are computed.

c. Notwithstanding paragraph (b) of this section, the specified period over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if:

1. The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each subperiod of the rolling period; and

2. The fulcrum fee is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the rolling period.

Rule 205-3 -- Exemption from the Compensation Prohibition of Section 205(a)(1) for Investment Advisers

a. *General.* The provisions of section 205(a)(1) of the Act will not be deemed to prohibit an investment adviser from entering into, performing, renewing or extending an investment

advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided,* That the client entering into the contract subject to this section is a qualified client, as defined in paragraph (d)(1) of this section.

b. *Identification of the client.* In the case of a private investment company, as defined in paragraph (d)(3) of this section, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202(a)(22) of the Act, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for purposes of paragraph (a) of this section.

c. *Transition rule.*

1. An investment adviser that entered into a contract before August 20, 1998 and satisfied the conditions of this section as in effect on the date that the contract was entered into will be considered to satisfy the conditions of this section; *Provided,* however, that this section will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after August 20, 1998.

2. *Advisers to private funds with non-qualified investors.* If you are an investment adviser to a private investment company that is a private fund as that term is defined in rule 203(b)(3)-1, and you were exempt from registration under section 203(b)(3) of the Act prior to February 10, 2005, paragraph (b) of this section will not apply to the existing account of any equity owner of a private investment company who was an equity owner of that company prior to February 10, 2005.

3. *Advisers to private funds with non-qualified clients.* If you are an investment adviser to a private investment company that is a private fund as that term is defined in rule 203(b)(3)-1, and you were exempt from registration under section 203(b)(3) of the Act prior to February 10, 2005, section 205(a)(1) of the Act will not apply to any investment advisory contract you entered into prior to February 10, 2005, provided, however, that this paragraph will not apply with respect to any contract to which a private investment company is a party, and provided further that section 205(a)(1) of the Act will apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract on or after February 10, 2005.

d. *Definitions.* For the purposes of this section:

1. The term *qualified client* means:

i. A natural person who or a company that immediately after entering into the contract has at least $ 750,000 under the management of the investment adviser;

ii. A natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, either:

A. Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $ 1,500,000 at the time the contract is entered into; or

B. Is a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

iii. A natural person who immediately prior to entering into the contract is:

A. An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

B. An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

2. The term *company* has the same meaning as in section 202(a)(5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

3. The term *private investment company* means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

4. The term *executive officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

Rule 206(3)-1 -- Exemption of Investment Advisers Registered as Broker-Dealers in Connection with the Provision of Certain Investment Advisory Services

a. An investment adviser which is a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 shall be exempt from section 206(3) in connection with any transaction in relation to which such broker or dealer is acting as an investment adviser solely (1) by means of publicly distributed written materials or publicly made oral statements; (2) by means of written materials or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (3) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or (4) any combination of the foregoing services: *Provided, however,* That such materials and oral statements include a statement that if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security which is a subject of such communication, the adviser may act as principal for its own account or as agent for another person.

b. For the purpose of this Rule, publicly distributed written materials are those which are distributed to 35 or more persons who pay for such materials, and publicly made oral

statements are those made simultaneously to 35 or more persons who pay for access to such statements.

NOTE: The requirement that the investment adviser disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the investment adviser of any disclosure obligation which, depending upon the nature of the relationship between the investment adviser and the client, may be imposed by subparagraphs (1) or (2) of section 206 or the other provisions of the federal securities laws.

Rule 206(3)-2 -- Agency Cross Transactions for Advisory Clients

a. An investment adviser, or a person registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 and controlling, controlled by, or under common control with an investment adviser, shall be deemed in compliance with the provisions of sections 206(3) of the Act in effecting an agency cross transaction for an advisory client, if:

1. The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure that with respect to agency cross transactions the investment adviser or such other person will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

2. The investment adviser, or any other person relying on this rule, sends to each such client a written confirmation at or before the completion of each such transaction, which confirmation includes (i) a statement of the nature of such transaction, (ii) the date such transaction took place, (iii) an offer to furnish upon request, the time when such transaction took place, and (iv) the source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this rule in connection with the transaction, *Provided, however,* That if, in the case of a purchase, neither the investment adviser nor any other person relying on this rule was participating in a distribution, or in the case of a sale, neither the investment adviser nor any other person relying on this rule was participating in a tender offer, the written confirmation may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer;

3. The investment adviser, or any other person relying in this rule, sends to each such client, at least annually, and with or as part of any written statement or summary of such account from the investment adviser or such other person, a written disclosure statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and the total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this rule in connection with such transactions during such period;

4. Each written disclosure statement and confirmation required by this rule includes a conspicuous statement that the written consent referred to in paragraph (a)(1) of this

section may be revoked at any time by written notice to the investment adviser, or to any other person relying on this rule, from the advisory client; and

5. No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

b. For purposes of this rule the term *agency cross transaction for an advisory client* shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, acts as broker for both such advisory client and for another person on the other side of the transaction.

c. This rule shall not be construed as relieving in any way the investment adviser or another person relying on this rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may be imposed by subparagraphs (1) or (2) of section 206 of the Act or by other applicable provisions of the federal securities laws.

Rule 206(4)-1 -- Advertisements by Investment Advisers

a. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser registered or required to be registered under section 203 of the Act, directly or indirectly, to publish, circulate, or distribute any advertisement:

1. Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, analysis, report or other service rendered by such investment adviser; or

2. Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person: *Provided, however,* That this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately: (i) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (ii) contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

3. Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell

them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

4. Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

5. Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

b. For the purposes of this section the term *advertisement* shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any 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, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

Rule 206(4)-2 -- Custody or Possession of Funds or Securities of Clients by Investment Advisors

a. *Safekeeping required.* If you are an investment adviser registered or required to be registered under section 203 of the Act, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act for you to have custody of client funds or securities unless --

1. *Qualified custodian.* A qualified custodian maintains those funds and securities -- (i) In a separate account for each client under that client's name; or (ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

2. *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information.

3. *Account statements to clients*. (i) *By qualified custodian.* You have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period; or

(ii) *By adviser,*

A. You send a quarterly account statement to each of your clients for whom you have custody of funds or securities, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

B. An independent public accountant verifies all of those funds and securities by actual examination at least once during each calendar year at a time that

is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year, and files a certificate on Form ADV-E [17 CFR 279.8] with the Commission within 30 days after the completion of the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

C. The independent public accountant, upon finding any material discrepancies during the course of the examination, notifies the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

(iii) Special rule for limited partnerships and limited liability companies. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraphs (a)(3)(i) or (a)(3)(ii) of this section must be sent to each limited partner (or member or other beneficial owner).

4. *Independent representatives.* A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.

b. *Exceptions.*

1. *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section;

2. *Certain privately offered securities.*

(i) You are not required to comply with this section with respect to securities that are:

. acquired from the issuer in a transaction or chain of transactions not involving any public offering;

A. uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

B. transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(3) of this section.

3. *Limited partnerships subject to annual audit.* You are not required to comply with paragraph (a)(3)of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is

subject to audit (as defined in section 2(d) of Article 1 of Regulation S-X at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year or in the case of a fund of funds within 180 days of the end of its fiscal year; and

4. Registered investment companies. You are not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940.

c. *Definitions.* For the purposes of this section --

1. "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Custody includes --

(i) Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties,) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

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

2. "Independent representative" means a person that —

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or 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 (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

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

3. "Qualified custodian" means --

(i) A bank as defined in Section 202(a)(2) of the Advisers Act or a savings association as defined in Section 3(b)(1) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)(1)] that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act [12 U.S.C. 1811];

(ii) A broker-dealer registered under Section 15(b)(1) of the Securities Exchange Act of 1934 holding the client assets in customer accounts;

(iii) A futures commission merchant registered under Section 4f(a) of the Commodity Exchange Act [7 U.S.C. 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; and

(iv) 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.

4. *Fund of funds* means a limited partnership (or limited liability company, or another type of pooled investment vehicle) that invests 10 percent or more of its total assets in other pooled investment vehicles that are not, and are not advised by, a related person (as defined in Form ADV), of the limited partnership, its general partner, or its adviser.

Rule 206(4)-3 -- Cash Payments for Client Solicitations

a. It shall be unlawful for any investment adviser required to be registered pursuant to section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

1.

i. The investment adviser is registered under the Act;

ii. The solicitor is not a person (A) subject to a Commission order issued under section 203(f) of the Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Act, or (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Act; and

iii. Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

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NOTE: The investment adviser shall retain a copy of each written agreement required by this paragraph as part of the records required to be kept under Rule 204-2(a)(10).

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2. Such cash fee is paid to a solicitor:

i. With respect to solicitation activities for the provision of impersonal advisory services only; or

ii. Who is (A) a partner, officer, director or employee of such investment adviser or (B) a partner, officer, director or employee of a person which

controls, is controlled by, or is under common control with such investment adviser: *Provided,* That the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

iii. Other than a solicitor specified in paragraph (a)(2) (i) or (ii) of this section if all of the following conditions are met:

A. The written agreement required by paragraph (a)(1)(iii) of this section: *(1)* Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor; *(2)* contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder; *(3)* requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule 204-3 ("brochure rule") and a separate written disclosure document described in paragraph (b) of this rule.

B. The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

NOTE: The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under Rule 204-2(a)(15).

C. The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

b. The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this section shall contain the following information:

1. The name of the solicitor;

2. The name of the investment adviser;

3. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

4. A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

5. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

6. The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

c. Nothing in this section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

d. For purposes of this section,

1. *Solicitor* means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. *Client* includes any prospective client.

3. *Impersonal advisory services* means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

Rule 206(4)-4 -- Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients

a. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser registered or required to be registered under section 203 of the Act to fail to disclose to any client or prospective client all material facts with respect to:

1. A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $ 500 from such client, 6 months or more in advance; or

2. A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

b. It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as "person") that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of paragraph (a)(2) of the rule for a period of 10 years from the time of the event:

1. A criminal or civil action in a court of competent jurisdiction in which the person --

i. Was convicted, pleaded guilty or nolo contendere ("no contest") to a felony or misdemeanor, or is the named subject of a pending criminal proceeding

(any of the foregoing referred to hereafter as "action"), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

ii. Was found to have been involved in a violation of an investment-related statute or regulation; or

iii. Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from, or otherwise limiting the person from, engaging in any investment-related activity.

2. Administrative proceedings before the Securities and Exchange Commission, and other federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as "agency") in which the person --

i. Was found to have caused an investment-related business to lose its authorization to do business; or

ii. Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

3. Self-Regulatory Organization (SRO) proceedings in which the person --

i. Was found to have caused an investment-related business to lose its authorization to do business; or

ii. Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $ 2,500; or otherwise significantly limiting the person's investment-related activities.

c. The information required to be disclosed by paragraph (a) of this section shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

d. For purposes of this rule:

1. *Management person* means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

2. *Found* means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

3. *Investment-related* means pertaining to securities commodities, banking, insurance, or real estate (including, but not limited to, action as or being associated with a

broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or fiduciary).

4. *Involved* means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

5. S*elf-Regulatory Organization* or *SRO* means any national securities or commodities exchange, registered association, or registered clearing agency.

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

f. Compliance with paragraph (b) of this rule shall not relieve any investment adviser from the disclosure obligations of paragraph (a) of the rule; compliance with paragraph (a) of the rule shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

NOTE: Registered investment advisers may disclose this information to clients and prospective clients in their "brochure," the written disclosure statement to clients under Rule 204-3; *Provided,* That the delivery of the brochure satisfies the timing of disclosure requirements described in paragraph (c) of this rule.

Rule 206(4)-6 -- Proxy Voting

If you are an investment adviser registered or required to be registered under section 203 of the Act, it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act, for you to exercise voting authority with respect to client securities, unless you:

a. Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

b. Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

c. Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

Rule 206(4)-7 -- Compliance Procedures and Practices

If you are an investment adviser registered or required to be registered under section 203 of the Investment Advisers Act of 1940 it shall be unlawful within the meaning of section 206 of the Act for you to provide investment advice to clients unless you:

a. Policies and procedures. Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Act and the rules that the Commission has adopted under the Act;

b. Annual review. Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

c. Chief compliance officer. Designate an individual (who is a supervised person) responsible for administering the policies and procedures that you adopt under paragraph (a) of this section.

Rule 206(4)-8 -- Pooled Investment Vehicles

a. *Prohibition*. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act for any investment adviser to a pooled investment vehicle to:

1. Make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or

2. Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

b. *Definition*. For purposes of this section "pooled investment vehicle" means any investment company as defined in section 3(a) of the Investment Company Act of 1940 or any company that would be an investment company under section 3(a) of that Act but for the exclusion provided from that definition by either section 3(c)(1) or section 3(c)(7) of that Act.

Rule 222-1 – Definitions

For purposes of section 222 of the Act:

a. *Place of business.* "Place of business" of an investment adviser means:

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

2. Any other location that is held out to the general public as a location at which the investment adviser provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

b. *Principal place of business.* "Principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Rule 222-2 -- Definition of "client" for Purposes of the National de Minimis Standard

For purposes of section 222(d)(2) of the Act, an investment adviser may rely upon the definition of "client" provided by Rule 203(b)(3)-1 without giving regard to paragraph (b)(6) of that section.

http://www.law.uc.edu/CCL/InvAdvRls/index.html