

NEBRASKA ADMINISTRATIVE CODE

TITLE 48 - DEPARTMENT OF BANKING AND FINANCE

Chapter 9 - INVESTMENT ADVISER REPRESENTATIVES

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to investment adviser representatives is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ("SEC") or the Financial Industry Regulatory Authority ("FINRA") referenced herein shall mean those statutes and rules as amended on or before the effective date of this Rule. A copy of the applicable statutes or rules referenced in the Rule is attached hereto.

002 APPLICATION. The application for initial registration as an investment adviser representative pursuant to Section 8-1103(3) of the Act shall be filed as directed in Section 008, below, and shall contain the following information:

002.01 Uniform Application for Securities Industry Registration or Transfer ("Form U4"), complete, accurate, and current;

002.02 Proof of passage of a qualifying examination set forth in Section 004, below;

002.03 A copy of Form ADV Part 2B;

002.03A An investment adviser representative affiliated with a federal covered adviser is responsible for ensuring that Form ADV Part 2B is filed with the Director.

002.04 A fee in the amount of forty dollars (\$40.00); and

002.05 Any other information the Director may require.

003 RENEWAL.

003.01 All investment adviser representative registrations automatically expire annually on December 31. An investment adviser's registration must be renewed on or prior to that date.

003.02 The application for renewal of registration as an investment adviser representative pursuant to Section 8-1103(5) of the Act shall be filed as directed in Section 008 below, and shall contain the following information:

003.02A Amendments (if any) to the investment adviser representative's Form U4;

003.02B A copy of Form ADV Part 2B supplement for the investment adviser representative;

003.02B1 An investment adviser representative affiliated with a federal covered adviser is responsible for ensuring that the Form ADV Part 2B is filed with the Director.

003.02C A fee in the amount of forty dollars (\$40.00); and

003.02D Any other information the Director may require.

004 EXAMINATION REQUIREMENTS.

004.01 The investment adviser representative shall have taken and passed the following qualifying examinations administered by the Financial Industry Regulatory Authority:

004.01A The Uniform Investment Adviser Licensing Examination (Series 65 examination) after January 1, 2000; or

004.01B The Uniform Combined State Law Examination (Series 66 examination) after January 1, 2000 and the General Securities Representative Examination (Series 7).

004.02 The examination requirement shall not apply to an individual who currently holds, and who maintains, one of the following professional designations:

004.02A Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

004.02B Chartered Financial Consultant (ChFC) awarded by The American College of Financial Services;

004.02C Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

004.02D Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts; or

004.02E Chartered Investment Counselor (CIC) awarded by the Investment Adviser Association.

004.03 Any individual who was registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, and who has no subsequent gap in registration longer than two years, shall not be required to satisfy the examination requirements for continued registration.

004.04 An individual who has a gap in registration of two years or less between the date of the termination of his or her most recent registration in Nebraska and the date of application for registration shall not be required to comply with the examination requirements of this Rule.

004.05 The Director may require additional examinations for any individual found to have violated any state or federal securities, commodities, banking, insurance or real estate laws.

004.06 The Director may waive the requirements of this section if the Director finds the waiver is consistent with investor protection and is in the public interest.

005 AMENDMENT OF DOCUMENTS.

005.01 If the information contained in any document filed with the Director is or becomes inaccurate or incomplete in any material respect, the investment adviser representative shall file a correcting amendment.

005.02 Any amendment required by this Section for an investment adviser representative shall be made on Form U4 in the manner prescribed by that form, or as otherwise designated by the Director.

005.03 All amendments shall be filed as directed in Section 008, below.

006 WITHDRAWAL. The application for withdrawal of registration as an investment adviser representative pursuant to Section 8-1103(9)(d) of the Act shall be filed upon Form U5, Uniform Notice of Withdrawal of Securities Industry Registration, as directed in Section 008, below.

007 DUAL REGISTRATION. Registration as an investment adviser representative with more than one investment adviser or federal covered adviser at the same time is prohibited unless the investment advisers are affiliates.

007.01 Affiliate shall mean any person who, directly or indirectly, controls, is controlled by, or is under common control with another person.

007.02 For purposes of this Section, control is defined as ownership, either direct or beneficial, of eighty percent or more of the outstanding voting securities of another company.

008 FORMS SUBMISSION.

008.01 All investment adviser representative applications, amendments, related filings and fees required to be filed with the Director pursuant to the rules promulgated under this Act, shall be filed electronically with, and transmitted to, the Central Registration Depository/Investment Advisers Registration Depository (“CRD/IARD”).

008.02 With respect to any document filed electronically through CRD/IARD, when a signature or signatures are required by the particular instructions of any filing to be made through CRD/IARD, the applicant shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to CRD/IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

008.03 For purposes of Section 8-1103(4)(a) of the Act, a form submitted through the CRD/IARD shall be deemed filed with the Director when the record is transmitted to the Director for review.

009 REGISTRATION OF INVESTMENT ADVISER REPRESENTATIVES OF FEDERAL COVERED ADVISERS. An investment adviser representative of a federal covered adviser is required to register pursuant to Neb. Rev. Stat. § 8-1103(3) only if he or she satisfies the following conditions:

009.01 The investment adviser representative has an office in Nebraska at which the investment adviser representative regularly provides, or has a location in Nebraska which the investment adviser holds 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.

009.02 The investment adviser representative is a partner, officer, director, or other person occupying a similar status or performing similar functions, or employee of a federal covered adviser, or other person who provides investment advice on behalf of the federal covered adviser and is subject to the supervision and control of the federal covered adviser (“supervised person”) who:

009.02A Has more than five clients who are natural persons and more than ten percent of whose clients are natural persons (other than excepted persons as defined in Section 009.02C1, below); and

009.02B On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, or does not provide only “impersonal investment advice,” as defined in Section 010.02C3, below.

009.02C For purposes of this Section:

009.02C1 “Excepted person” means a natural person who immediately after entering into the investment advisory contract with the investment adviser has at least seven hundred fifty thousand dollars (\$750,000.00) under management with the

investment adviser, or who the investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth, together with assets held jointly with a spouse, at the time the contract is entered into of more than one million five hundred thousand dollars (\$1,500,000.00).

009.02C2 The supervised person may rely on the definition of client in 17 C.F.R. 202(a)(30)-1 to identify clients for purposes of this Section, except that a supervised person need not count clients who are not residents of the United States.

009.02C3 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.

009.03 Notwithstanding Section 009.02, above, a person who solicits, offers or negotiates for the sale of, or sells, investment advisory services on behalf of a federal covered adviser shall register as an investment adviser representative even if he or she is not a supervised person.

010 BROCHURE SUPPLEMENT DELIVERY.

010.01 An investment adviser shall disclose, on the Form ADV Part 2B supplement, any alternate name under which the investment adviser representative conducts business.

010.02 An investment adviser representative of a federal covered adviser shall provide a copy of the investment adviser representative's Form ADV Part 2B supplement in accordance with 48 NAC 7.010.

011 USING THE INTERNET FOR GENERAL DISSEMINATION OF INFORMATION ON PRODUCTS AND SERVICES. Investment adviser representatives shall not be deemed to be "transacting business" in this state for purposes of Section 8-1103 of the Act based solely on the use of the Internet, the world wide web, and similar proprietary or common carrier electronic systems (hereinafter the "Internet") to distribute information on available services through certain communications made on the Internet directed generally to anyone having access to the Internet, and transmitted through postings on bulletin boards, social networking sites, blogs or similar sites, displays on "Home Pages" or similar methods (hereinafter, "Internet Communications") if the following conditions are observed:

011.01 The Internet Communications contain a disclosure statement in which it is clearly stated that:

011.01A The investment adviser representative in question may only transact business in this state if first registered or excluded or exempted from the investment adviser representative registration requirements of the Act; and

011.01B The investment adviser representative will not make follow-up, individualized responses to persons in this state that involve the rendering

of personalized investment advice for compensation, unless the investment adviser representative has complied with, or has qualified for an applicable exemption or exclusion from, the investment adviser representative registration requirements of the Act.

011.02 The Internet Communications contain a mechanism, including and without limitation, technical “firewalls” or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said investment adviser representative is first registered in this state or qualifies for an exemption or exclusion from such requirement.

011.02A Nothing in this subsection shall be construed to relieve an investment adviser representative from any applicable securities registration requirement in this state;

011.03 The Internet Communications do not involve the rendering of personalized investment advice for compensation in this state over the Internet, but is limited to the dissemination of general information on products and services.

011.04 The Internet Communications meet the following requirements:

011.04A The affiliation with the investment adviser or federal covered adviser of the investment adviser representative is disclosed, in a non-italicized font of at least ten points, within the Internet Communications;

011.04B The investment adviser or federal covered adviser with whom the investment adviser representative is associated retains responsibility for reviewing and approving the content of any Internet Communications by the investment adviser representative;

011.04C The investment adviser or federal covered adviser with whom the investment adviser representative is associated first authorizes the distribution of information on the particular products through the Internet Communications; and

011.04D In disseminating information through the Internet Communications, the investment adviser representative acts within the scope of the authority granted by the investment adviser or federal covered adviser.

012 DISHONEST OR UNETHICAL BUSINESS PRACTICES.

012.01 The conduct set forth in 48 NAC 12.005 shall constitute “an act, practice or course of business which operates, or would operate, as a fraud or deceit upon another person,” for purposes of Section 8-1102(2)(b) of the Act and “dishonest or unethical business practices” for purposes of Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Act by an investment adviser representative.

012.02 The delineation of certain acts and practices is not intended to be all inclusive. Acts or practices not enumerated therein may also be deemed fraudulent and dishonest.

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 4

Date: 2015-04-01

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Title: Section 275.202(a)(30)-1 - Foreign private advisers.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 275 - RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940.

§ 275.202(a) Foreign private advisers.

(30)-1

(a) *Client.* You may deem the following to be a single client for purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)):

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, spousal equivalent, or relative of the spouse or of the spousal equivalent 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) *Special rules regarding clients.* 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) You are not required to count a private fund as a client if you count any investor, as that term is defined in paragraph (c)(2) of this section, in that private fund as an investor in the United States in that private fund; and

(5) You are not required to count a person as an investor, as that term is defined in paragraph (c)(2) of this section, in a private fund you advise if you count such person as a client in the United States.

Note to paragraphs (a) and (b):

These paragraphs are a safe harbor and are not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)).

(c) *Definitions.* For purposes of section 202(a)(30) of the Act (15 U.S.C. 80b-2(a)(30)):

(1) *Assets under management* means the regulatory assets under management as determined under Item 5.F of Form ADV (§ 279.1 of this chapter).

(2) *Investor* means:

(i) Any person who would be included in determining the number of beneficial owners of the outstanding securities of a private fund under section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)), or whether the outstanding securities of a private fund are owned exclusively by qualified purchasers under section 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(7)); and

(ii) Any beneficial owner of any outstanding short-term paper, as defined in section 2(a)(38) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(38)), issued by the private fund.

Note to paragraph (c)(2):

You may treat as a single investor any person who is an investor in two or more private funds you advise.

(3) *In the United States* means with respect to:

(i) Any client or investor, any person who is a U.S. person as defined in § 230.902(k) of this chapter, except that any discretionary account or similar account that is held for the benefit of a person in the United States by a dealer or other professional fiduciary is in the United States if the dealer or professional fiduciary is a related person, as defined in § 275.206(4)-2(d)(7), of the investment adviser relying on this section and is not organized, incorporated, or (if an individual) resident in the United States.

Note to paragraph (c)(3)(i):

A person who is in the United States may be treated as not being in the United States if such person was not in the United States at the time of becoming a client or, in the case of an investor in a private fund, each time the investor acquires securities issued by the fund.

(ii) Any place of business, *in the United States*, as that term is defined in § 230.902(l) of this chapter; and

(iii) The public, *in the United States*, as that term is defined in § 230.902(l) of this chapter.

(4) *Place of business* has the same meaning as in § 275.222-1(a).

(5) *Spousal equivalent* has the same meaning as in § 275.202(a)(11)(G)-1(d)(9).

(d) *Holding out.* If you are relying on this section, you shall not be deemed to be holding yourself out generally to the public in the United States as an investment adviser, within

the meaning of section 202(a)(30) of the Act (15 U.S.C. 80b-2 (a)(30)), solely because you participate in a non-public offering in the United States of securities issued by a private fund under the Securities Act of 1933 (15 U.S.C. 77a).

[76 FR 39701, July 6, 2011]